

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING DECEMBER 2024. AND INVITATION TO JOIN STATE ENGINEER'S SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST AND/OR THE STATE ENGINEER'S PRODUCED NONTRIBUTARY GROUND WATER NOTIFICATION LIST. (This publication can be viewed in its entirety on the state court website at: [www.coloradojudicial.gov](http://www.coloradojudicial.gov)).  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during December 2024, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CASE NO. 2024CW7; Previous Case Nos. 16CW3104, 21CW2, 23CW4 – WILBUR C. MILLER FAMILY LLLP, PO Box 1576, Westcliffe, CO 81252, (719) 371-0725 and 2 R LAND HOLDINGS, LLC, 2795 County Road 129, Westcliffe, CO 81252, (719) 371-3026**  
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Application to Make Absolute in Whole or in Part

**CUSTER COUNTY**

**2. Name of Structure:** Jarvis Ditch Expansion (WDID 1300783) Type: Ditch. **3. Describe conditional water right:** **A. Date of Original Decree:** July 13, 2017 **Case No:** 16CW3104 **Court:** District Water Court, Division 2. **B. List all subsequent decrees:** February 7, 2024 23CW4, District Water Court Division 2 Exhibit E attached to application (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **C. Legal description:** SW ¼ of the SE ¼ of Section 2, Township 23 South, range 73 West of the 6<sup>th</sup> PM, at a point 150 feet from the South section line and 1400 feet from the East Section line. **D. Source of water:** Dry Creek. **E. Appropriation Date:** December 31, 2016. **Amount:** 6.63 cfs **F. Use:** Irrigation. **G. Depth:** N/A **4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed:** The applicants have installed a trash pre-cleaning structure, a diversion structure, a measuring device, and a pipeline inlet structure with subsequent pipeline sized to accommodate Aldrich (1.26 CFS). Charles Jarvis (4.11 CFS) and Charles Jarvis Expansion (6.63 CFS) for a total of 12 CFS from point of diversion to the east side of the land owned by 2R Land Holdings, LLC. From this point an adequately sized pipeline conveys Aldrich #1 as well as a smaller portion of the Charles Jarvis Expansion when available to the land owned by Wilbur C. Miller Family LLLP. The pipeline has been fitted with valves and turnouts to allow use of the Charles Jarvis Expansion on the land shown on the attached map. Exhibit C. **5. Claim to make absolute in whole or in part. A. Date water applied to beneficial use:** May 31, 2024 **Amount:** 4.0 cfs **Use:** Irrigation, see attached diversion record, exhibit B. **B. The application shall include supporting evidence that applicants diverted water in-priority and applied such water to the beneficial uses claimed in the amounts claimed:** See attached, Exhibit B. **C. Description of place of use where water is applied to beneficial use:** Exhibit C. **D. 2.63 CFS Was made absolute**

September 16, 2021 Case 2021CW2 Exhibit D. **6. If actual location of the structure is different from the location in paragraph 3.C. above, provide actual description:** N/A.

**7. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** N/A **8. Remarks:**

The applicants are not attempting to claim new use but rather to document and formalize the current practice which has been taking place for at least the last 50 years. Dry Creek occasionally delivers initial high-volume flow that occurs for a few days when there is more than adequate snow melt conditions. The stream channel below the current point of diversion becomes indeterminate resulting in random flows down gradient and causing damage to driveways, structures, and property. Recent history shows a very typical pattern for this stream; 2018, the stream did not run; 2019, 2021, and 2023, stream performed very similar to 2024, 2020 and 2022, streamflow satisfied. Aldrich #1 and part of the Charles Jarvis for a little over a week. Dry Creek has never been a high-yielding stream, in fact it is prone to failure approximately 2 out of every 10 years. At one time there was approximately 12 CFS decreed to this stream, but after abandonments only 8.5 CFS is left and currently only 5.37 CFS is actively being used, leaving room for the Charles Jarvis Extension of 6.6 CFS when there is well above average snowpack.

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

**CASE NO. 2024CW3050, Water Division 2 and CASE NO. 2024CW3169, Water Division 1 – PRI #2, LLC, a Colorado limited liability company, 2138 Flying Horse Club Drive, Colorado Springs, CO 80921** – (Alan Hill, Ashley Pollock Zahedi, Curtis, Justus, & Zahedi, LLC, 1333 W 120<sup>th</sup> Ave., Suite 302, Westminster, CO 80234, (303) 595-9441)

Application For Adjudication Of Nontributary And Not Nontributary Groundwater And Approval Of A Supplement To The Plan For Augmentation For Use Of Not Nontributary Groundwater Decreed In Case No. 16CW3190, Division 1

**EL PASO COUNTY**

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

**CASE NO. 2024CW3051, Water Division 2 and CASE NO. 2024CW3172, Water Division 1 –MICHAEL & HOLLY JILES LIVING TRUST, 3842 Estates Circle; Larkspur CO 80118** – (Eric Trout, McGeedy Beecher Cortese Williams P.C., 450 E 17<sup>th</sup> Avenue Suite 400, Denver CO 80203, (303) 592-4380)

Application For Underground Water Rights From Nontributary And Not Nontributary Sources And Approval Of Plan For Augmentation In The Nontributary Denver, Arapahoe And Laramie-Fox Hills Aquifers And The Not-Nontributary Dawson Aquifer

**DOUGLAS COUNTY**

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**CASE NO. 2024CW3052; Previous Case Nos. 2018CW3017, 2009CW11 – CITY OF TRINIDAD, c/o City Manager, PO Box 880, Trinidad, CO 81082** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Madoline Wallace-

Gross and Anthony J. Basile, Lyons Gaddis, PC, PO Box 978, Longmont, CO 80502-0978; Telephone: (303) 776-9900; mwg@lyonsgaddis.com; abasile@lyonsgaddis.com)  
First Amended Application for Findings of Reasonable Diligence and to Make a Conditional Water Right Absolute in Part

## **LAS ANIMAS COUNTY**

**2. Names of Conditional Water Rights:** A. Trinidad Reservoir to Monument Lake Ditch No. 1 Exchange. B. Trinidad Reservoir to Monument Lake Ditch No. 2 Exchange. C. Trinidad Reservoir to C Ditch & Pipeline Exchange. D. Trinidad Reservoir to Cherry Creek Ditch Exchange.

**3. Descriptions of Conditional Water Rights (See Exhibit A attached to the application for map of structures):** (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

A. **Original Decree:** Case No. 2009CW11, District Court, Water Division No. 2, on February 21, 2012. B. **Diligence Decree:** Case No. 2018CW3017, District Court, Water Division No. 2, on December 19, 2018. C. **Trinidad Reservoir to Monument Lake Ditch No. 1 Exchange:**

i. **Operation:** The exchange operates on the Purgatoire River and the North Fork of the Purgatoire River. Applicant will use this exchange to divert water at Monument Lake Ditch No. 1 for storage in Monument Lake (WDID 1903857; 495987.5 E, 4118033.6 N) and/or to divert water at North Lake Inlet (WDID 1900554; 495693 E, 4121336 N) for storage in North Lake (WDID 1903855; 496786.5 E, 4121484.6 N). ii.

**Downstream Terminus:** Trinidad Reservoir dam, which is located in § 27, T33S, R64W to the 6<sup>th</sup> P.M., Las Animas County, Colorado. WDID 1903935; 539874.8 E, 4110634.4 N. iii.

**Upstream Terminus:** Headgate of the Monument Lake Ditch No. 1 (aka A Ditch), which is located in the SE ¼ SW ¼ § 24, T32S, R69W of the 6<sup>th</sup> P.M. on the right bank of the North Fork of the Purgatoire River whence the SW corner of § 24 bears S67° W 2470 feet. WDID 1900762; 494863 E, 4121365 N. D. **Trinidad Reservoir to Monument Lake Ditch No. 2 Exchange:**

i. **Operation:** The exchange operates on the Purgatoire River, the North Fork of the Purgatoire River and Brown Creek. Applicant will use this exchange to fill Monument Lake. ii.

**Downstream Terminus:** Trinidad Reservoir dam, see paragraph 3.C.ii. iii. **Upstream Terminus:** Headgate of the Monument Lake Ditch No. 2 (aka D Ditch), which is located in the NE ¼ SE ¼ §25, T32S, R69W of the 6<sup>th</sup> P.M. on the south bank of Brown Creek whence the SE corner of § 25 bears S 18° E 2200 feet. WDID 1900623; 495676 E, 4120014 N. E. **Trinidad Reservoir to C Ditch & Pipeline Exchange**

i. **Operation:** The exchange operates on the Purgatoire River, the North Fork of the Purgatoire River and Whiskey Creek. Applicant will use this exchange to fill Monument Lake. ii.

**Downstream Terminus:** Trinidad Reservoir dam, see paragraph 3.C.ii. iii. **Upstream Terminus:** Headgate of the C Ditch & Pipeline, which is located in the SW ¼ NE ¼ §1, T33S, R69W of the 6<sup>th</sup> P.M. on the south bank of Whiskey Creek, whence the NE corner of § 1, bears N54°27'E 3044.7 feet. WDIDs 1900831 and 1900829; 495005 E. 4117232 N. Applicant notes the 09CW11 Decree erroneously identifies the headgate's location as being in the SW ¼ NE ¼ §1, T33S, R69W of the 6<sup>th</sup> P.M. on the south bank of Whiskey Creek, whence the NE corner of § 11, bears N54°27'E 3044.7 feet. F. **Trinidad Reservoir to Cherry Creek Ditch Exchange:**

i. **Operation:** The exchange will operate on the Purgatoire River, the North Fork of the Purgatoire River, Brown Creek and Cherry Creek. Applicant will use this exchange to fill Monument Lake. ii.

**Downstream Terminus:** Trinidad Reservoir dam, see paragraph 3.C.ii. iii. **Upstream Terminus:** Headgate of the Cherry Creek Ditch, which is located at a point on Cherry

Creek in the NE ¼ NE ¼ of § 1, T33S, R69W of the 6<sup>th</sup> P.M. whence the NE corner of § 1 bears N62°E 410.3 feet. WDID 1900828; 495597 E; 4117700 N. **4. Water to be used for exchanges:** Any water stored in Applicant's account in Trinidad Reservoir, which includes, but is not limited to, water stored pursuant to decrees entered in Case Nos. 88CW61, 06CW78, and 08CW101, District Court, Water Division No. 2. **5. Appropriation dates for all exchanges:** January 26, 2009. **6. Decreed rates of exchange:** The cumulative rate of exchange for all exchanges is 19.97 c.f.s. A. **Trinidad Reservoir to Monument Lake Ditch No. 1 Exchange:** i. 8.17 c.f.s., original decreed amount (conditional). ii. 2.15 c.f.s., amount previously made absolute. iii. 6.02 c.f.s. amount remaining conditional. B. **Trinidad Reservoir to Monument Lake Ditch No. 2 Exchange:** i. 2.0 c.f.s., original decreed amount (conditional). ii. 0.42 c.f.s., amount previously made absolute. iii. 1.58 c.f.s., amount remaining conditional. C. **Trinidad Reservoir to C Ditch & Pipeline Exchange:** i. 5.0 c.f.s., original decreed amount (conditional). ii. 1.45 c.f.s., amount previously made absolute. iii. 3.55 c.f.s., amount remaining conditional. D. **Trinidad Reservoir to Cherry Creek Ditch Exchange:** i. 4.8 c.f.s., original decreed amount (conditional). E. **Decreed cumulative volumetric limitation for all exchanges:** 3,476 a.f., of which 210 a.f. has previously been made absolute. F. **Use:** Water diverted by exchange will be used directly or stored in and subsequently released from Monument Lake or North Lake for all municipal uses, including, but not limited to, domestic, commercial, manufacturing, industrial, fire protection, generation of electric power and power generally, recreation, fish and wildlife propagation, sewage treatment, street sprinkling, replacement, substitution and augmentation (including augmentation of domestic, commercial and industrial wells). **7. Claim to Make Absolute:** A. **Trinidad Reservoir to Monument Lake Ditch No. 1 Exchange** i. **Date Water Applied to Beneficial Use:** September 4, 2020 – September 7, 2020. ii. **Amount:** Applicant exercised an additional 1.81 c.f.s. of the 6.02 c.f.s. remaining conditional. As a result, Applicant claims 3.96 c.f.s. absolute of the 8.17 c.f.s. originally decreed, which leaves 4.21 c.f.s. conditional. See **Exhibit B**. iii. **Use:** See ¶ 6.F. B. **Remarks:** i. Applicant operated this exchange by diverting water at North Lake Inlet for storage in North Lake. See ¶ 3.C.i. ii. Applicant reserves the right to claim absolute any additional portions of the water rights that are diverted by exchange during the pendency of this diligence proceeding without filing an additional amendment to the application. **8. Integrated System:** The water rights are part of an integrated water supply system owned and developed by the Applicant, pursuant to § 37-92-301(4)(b), C.R.S. Applicant's integrated water supply consists of tributary water rights, augmentation plans, appropriative rights of exchange, conditional water rights and nontributary groundwater rights. **9. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** During the subject diligence period, Applicant conducted the following work in furtherance of the conditional exchanges, and on its integrated water system, at a cost in excess of \$1 million. A. Operation of the Trinidad Reservoir to Monument Lake Ditch No. 1 Exchange in priority. B. Paid RJH approximately \$154,000.00 for design and inspection costs associated with North Lake. C. Rehabilitated the dam at North Lake, at a total cost of approximately \$482,372.00. D. Stored water rights in Trinidad Reservoir annually that are the sources of substitute supply for the conditional appropriations. E. Paid ditch company assessments and fees for the

water rights that are the sources of substitute supply for the conditional appropriations at a cost of approximately \$166,000. F. Paid approximately \$229,000 to the Purgatoire River Water Conservancy District associated with the Applicant's Trinidad Reservoir storage capacity. G. Paid approximately \$4,800.00 to the Division of Water Resources for installation of satellite monitoring equipment for Johns Flood Ditch's Duran headgate, which was necessary for accounting of Trinidad's changed rights. H. Paid approximately \$88,00.00 to the Division of Water Resources for Hoehne steam gage and Duran headgate monitoring. I. Filed an application and obtained a decree in Case No. 21CW3083 to exchange fully consumable and reusable effluent from the Trinidad Wastewater Treatment Plant outfall to Trinidad Reservoir for storage and/or release for subsequent use, reuse and successive use until extinction. J. Opposed water rights filed by other water users to protect the conditional appropriations, including in Case Nos. 20CW3029, 20CW3087, and 23CW3006. **10. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** A. Trinidad Reservoir - U.S. Corps of Engineers, Reservoir Control Branch (Trinidad Reservoir), Albuquerque District, 4101 Jefferson Plaza NE Albuquerque, NM 87109, with a copy to the United States Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18E, Loveland, Colorado 80537-9711. B. North Lake, Monument Lake, Monument Lake Ditch No. 1 (A Ditch), C Ditch & Pipeline, and Cherry Creek Ditch – Applicant. C. Monument Lake Ditch No. 2 (B Ditch) – Rudy Zuech whose address is 510 W. Colorado Avenue, Trinidad, CO 81082. **WHEREFORE, Trinidad requests the Court enter a decree finding and determining that:** 1. Trinidad has made an additional portion (1.81 c.f.s.) of the Trinidad Reservoir to Monument Lake Ditch No. 1 Exchange absolute, making the total amount absolute 3.96 c.f.s.; 2. Trinidad has exercised reasonable diligence in the development of the remaining conditional water rights: the Trinidad Reservoir to Monument Lake Ditch No. 1 Exchange, Trinidad Reservoir to Monument Lake Ditch No. 2 Exchange, Trinidad Reservoir to C Ditch & Pipeline Exchange, and Trinidad Reservoir to Cherry Creek Ditch Exchange; and 3. The remaining conditional portions of the Trinidad Reservoir to Monument Lake Ditch No. 1 Exchange, Trinidad Reservoir to Monument Lake Ditch No. 2 Exchange, Trinidad Reservoir to C Ditch & Pipeline Exchange, and Trinidad Reservoir to Cherry Creek Ditch Exchange are continued for an additional six-year period.

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**CASE NO. 2024CW3053; RAO INVESTMENTS, LLC., 555 Middle Creek Parkway, #500, Colorado Springs, CO 80908** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Ryan W. Farr and Paul J. Raymond of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921 (719) 471-1212)

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

#### **EL PASO COUNTY**

Applicant is seeking to quantify the Denver Basin groundwater underlying the Applicant's Property, as defined below, adjudicate an exempt well, and approval of a plan for augmentation for the use of not-nontributary Denver aquifer wells to serve a five-lot

subdivision of the Applicant's Property. Application for Underground Water Rights. Property Information. Property Description. Applicant owns an approximately 39.58-acre property that is depicted on the **Exhibit A map** attached to the application, (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) located in the NE1/4 of Section 27, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M., El Paso County, specifically described as Lots 1 and 2 of the Ward Subdivision ("Applicant's Property"). Existing Wells. There are two existing exempt wells located on the Applicant's Property as shown on **Exhibit A** ("Current Wells"). Both wells are located in the SW1/4 of the NE1/4 of Section 27, Township 11, Range 67 West of the 6<sup>th</sup> P.M. The well located in the southern portion of the Applicant's Property is an exempt well permitted under Division of Water Resources Permit No. 114700. Applicant intends to plug and abandon this well. The well in the northern portion of the Applicant's Property, located near the current house, is also an exempt well that appears to be incorrectly located pursuant to Division of Water Resources Permit No. 130335, which has the well located further to the east on the Applicant's Property ("Rickenbacker Well No. 1"). The Rickenbacker Well No. 1 is constructed to a depth of approximately 290 feet into the Dawson aquifer for domestic purposes at 15 gpm for an annual total of 1 acre-foot. Applicant intends to continue to utilize the Rickenbacker Well No. 1 for water provision to one lot in the five-lot subdivision while remaining an exempt well pursuant to C.R.S. § 37-92-602(3)(b)(IV). Such Rickenbacker Well No. 1 will be re-permitted to correct its location to reflect its actual location. Proposed Wells. Applicant proposes the construction of up to four wells to the Denver aquifer to supply water to four of the five individual lots, including any additional or replacement wells as needed ("Rickenbacker Wells"). Water Source. Not-Nontributary. The groundwater to be withdrawn from the Dawson and Denver aquifers underlying Applicant's Property is not-nontributary. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson and Denver aquifers require the replacement of actual stream depletions. Nontributary. The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property is nontributary. Estimated Rates of Withdrawal and Groundwater Available. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. per well. The actual pumping rates for the wells will vary according to aquifer conditions and well production capabilities. Applicant requests the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of any wells to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. Estimated Average Annual Amounts of Groundwater Available. Applicant requests a vested right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying Applicant's Property. Said amounts may be withdrawn over the 300-year life of the utilized aquifer as required by El Paso County, Colorado Land Development Code § 8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year aquifer life requirement pursuant to C.R.S. § 37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)	Annual Avg. Withdrawal 300 Years (Acre Feet)

Dawson (NNT)*	65	220	2.2	n/a
Denver (NNT)	358	2,410	24.1	8.03
Arapahoe (NT)	382	2,570	25.7	n/a
Laramie-Fox Hills (NT)	184	1,090	10.9	n/a

\*Applicant has reserved 300 acre-feet (1 annual acre-foot for 300 years) of the available Dawson aquifer supplies to support pumping from the existing exempt well, Rickenbacker Well No. 1. This brings the remaining available Dawson aquifer supplies to 220 acre-feet. The available amounts before this reservation were: 520 acre-feet with an allowed annual withdrawal of 5.2 acre-feet over 100 years.

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. § 37-92-305(11), Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. Requested Uses. Applicant requests the right to use the groundwater for beneficial uses upon the Applicant's Property consisting of domestic within a single-family dwelling and guest house, structure and equipment washing, water features, irrigation, commercial, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. § 37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, that Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson and Denver aquifers pursuant to a decreed plan for augmentation entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. § 37-90-137(9)(c.5). Well Fields. Applicant requests that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field and waive any 600-foot spacing requirements. Averaging of Withdrawals. Applicant requests that it be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are to be located as well as the underlying groundwater is owned by the Applicant. Application for Adjudication of Exempt Well. Name of Structure: Rickenbacker Well No. 1. Legal Description of Well: Rickenbacker Well No. 1 is located upon the Applicant's Property in the SW1/4 of the NE1/4 of Section 27, Township 11, Range 67 West of the 6<sup>th</sup> P.M., El Paso County, Colorado. The Division of Water Resources has the well located 1,360 feet from the North Section Line and 1,390 feet from the South Section Line. However, there is an incongruency in the permit location as the above distances would not place the well within the SW1/4 of the NE1/4 of Section 27, Township 11, Range 67 West of the 6<sup>th</sup> P.M. The actual location of the well is located 1,517 feet from the North Section Line and 1,989 feet from the East Section Line. The Rickenbacker Well No. 1 is permitted as an exempt well pursuant to Division of Water Resources Permit No. 130335. Source: The Rickenbacker Well No. 1 is permitted to withdraw from the not-nontributary Dawson

aquifer. Date of Initiation of Appropriation: On or before October 14, 1983. How Appropriation was Initiated: Completion of the construction of the well and placement into operation. Date Water Applied to Beneficial Use: October 14, 1983. Amount Claimed: 15 g.p.m. and 1 annual acre-foot. Uses: Domestic uses. Land Ownership: The land upon where the Rickenbacker Well No. 1 is located and where the water is used is owned by the Applicant. Remarks: The Rickenbacker Well No. 1 is an exempt well issued pursuant to and for the uses authorized in C.R.S. § 37-92-602(3)(b), C.R.S. and a decree for the Rickenbacker Well No. 1 is sought pursuant to § 37-92-602(4), C.R.S. The Applicant seeks to maintain the exempt status of the well. Application for Plan for Augmentation. Structures to be Augmented. The structures to be augmented are the Rickenbacker Wells. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Denver aquifer wells, together with water rights from the nontributary Arapahoe aquifer for any injurious post-pumping depletions. Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Denver aquifer. Uses. Pumping from the Denver aquifer will be a maximum of 4.616 acre-feet of water per year combined for the four wells, with each well pumping a maximum of 1.154 acre-feet per year. Such uses shall be for domestic within a single-family dwelling and guest house, structure and equipment washing, water features, irrigation, commercial, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. Depletions. Applicant's consultant has determined that maximum stream depletions over the 300-year pumping period for the Denver aquifer amounts to approximately 19.391% of pumping. Maximum annual depletions are therefore 0.895 acre-feet in year 300. Should annual pumping be less than the 4.616 acre-feet total described herein, resulting depletions and required replacements will be correspondingly reduced. Augmentation of Depletions During Pumping. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for a non-evaporative septic system is 10% per year. Therefore, at an in-house use rate of 0.30 acre-feet per year from a single-family dwelling and guest house, replacement amounts to 1.08 acre-feet to the stream system annually. Thus, during pumping, stream depletion replacement requirements will be met. Augmentation for Post Pumping Depletions. For the replacement of post-pumping depletions which may be associated with the use of the Rickenbacker Wells, Applicant will reserve 1,413 acre-feet of the Arapahoe aquifer, to be adjusted based on accounting for during-pumping replacement. The amount of nontributary Arapahoe aquifer groundwater reserved may be reduced as may be determined through this Court's retained jurisdiction as described in any decree. If the Court, by order, reduces the Applicant's obligation to account for and replace such post-pumping depletions for any reason, it may also reduce the amount of Arapahoe aquifer groundwater reserved for such purposes, as described herein. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. Pursuant to C.R.S. § 37-90-137(9)(b), no more than 98% of water withdrawn annually

from a nontributary aquifer shall be consumed.

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

**CASE NO. 2024CW3054, Water Division 2 and CASE NO. 2024CW3180, Water Division 1 – JAMES R. SHELL AND VALENS CAPITAL, LLC., 3980 WALKER ROAD, COLORADO SPRINGS, CO 80908** (Please direct all pleadings and documents to Ryan W. Farr and Paul J. Raymond of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921 (719) 471-1212)  
Application For Plan for Augmentation  
**EL PASO COUNTY**

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**CASE NO. 2024CW3055; UPPER ARKANSAS WATER CONSERVANCY DISTRICT, ACTING THROUGH THE UPPER ARKANSAS WATER ACTIVITY ENTERPRISE (“UAWCD”), P.O. Box 1090, Salida, Colorado 81201** (Please address all pleadings and

inquiries regarding this matter to Applicant’s attorney: LAW OF THE ROCKIES Kendall K. Burgemeister, Atty. Reg. #41593, 525 North Main Street, Gunnison, CO 81230, 970-641-1903, kburgemeister@lawoftherockies.com)

Application for a Change of Water Rights and Conditional Appropriative Right of Exchange

**FREMONT, CUSTER, CHAFFEE, and LAKE COUNTIES**

Summary of Application. UAWCD seeks to change a portion of the water rights decreed to the Union Ditch represented by 192 shares of stock in the Union Ditch and Water Company owned by Fremont County, more particularly described below. Pursuant to an Agreement Regarding Augmentation of Fremont County Department of Transportation Depletions between UAWCD and the Board of County Commissioners of Fremont County, Colorado, UAWCD is authorized and obligated to file this Application. UAWCD also seeks a conditional appropriative right of exchange to store the changed rights in upstream reservoirs. **Description of Changed Rights.** Name of structure: Union Ditch (WDID 1200835). Point of Diversion: The headgate was originally decreed as being on the south side of the Arkansas River, at a point North 41 Degrees and 28 Minutes West, fifteen and nine-tenths chains from the center of Section 7, Township 19 South, Range 69 West, 6th P.M. The headgate has also been described as being at the headworks of the Minnequa Canal, located on the south bank of the Arkansas River in the NW 1/4, Sec. 7, T. 19 S., R 69W. of the 6th P.M. in Fremont County (see 99CW149, 10CW63). The Division of Water Resources reports that the point of diversion of the Minnequa Canal is located at approximately 486022E, 4251810N, UTM Zone 13S, NAD 83. Decreed source: Arkansas River. Appropriation date: November 30, 1861 (Arkansas River Priority 10). Total Amounts Decreed to Structure: 48 cubic feet per second (cfs), absolute. Amount Applicant Intends to Change: A pro rata share of the water right decreed to the Union Ditch commensurate with 192 “irrigation shares” in the Union Ditch Company, which is 0.308 cfs. Prior change cases found that there are 11,612 “irrigation shares” in the Union Ditch Company, and 18.6 cfs of the total decreed 48 cfs was historically used for irrigation.  $0.308 \text{ cfs} = 18.6 \text{ cfs} * 192 \text{ shares} / 11,612 \text{ shares}$ . The portion of the Union Ditch water right that Applicant intends to change is referred to herein as the “Changed Rights.” Original and all relevant subsequent decrees: Decree dated February 3, 1894,

District Court, Fremont County. Other portions of the Union Ditch that are not being changed in this case were the subject of Case Nos. 80CW93, 99CW149, 10CW63, 10CW96, and 11CW20, all in Water Division 2. Decreed Use: Irrigation. **Detailed description of proposed change:** UAWCD operates existing plans for augmentation that augment out-of-priority depletions from structures located within portions of UAWCD's territory (See, e.g., Decrees in Case Nos. 92CW84, 94CW5, 06CW32, 18CW3076). UAWCD also operates a Rule 14 replacement plan to replace depletions from wells located within UAWCD's boundaries. UAWCD may also obtain approval of additional plans for augmentation and/or substitute water supply plans (or similar administratively approved plans that may be authorized by statute in the future) to replace out-of-priority depletions from structures located within UAWCD's boundaries (together, the "UAWCD Plans"). In this case, UAWCD seeks to change the Changed Rights to allow their use as a source of augmentation or replacement water in all such UAWCD Plans (the "Changed Uses"). UAWCD's use of the Changed Rights for the Changed Uses may occur by applying stream depletion credits from the Changed Rights as they accrue to the stream or by storage in and subsequent release from the storage structures approved for use in the plans described in the preceding sub-paragraph, including: Pueblo Reservoir (WDID: 1403526): The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section bears North 61° 21'20" East, a distance of 2,511.05 feet, in Pueblo County (Division Engineer's reported location: 524076E, 4235362N); O'Haver Reservoir (WDID: 1103921): Near the center of Section 12, Township 48 North, Range 7 East, NMPM., in Chaffee County (Division Engineer's reported location: 399983E, 4253720N); North Fork Reservoir (WDID: 1103300): In Section 5, Township 50 North, Range 6 East, NMPM, more particularly described as: The northeasterly point of contact of the dam axis with the existing ground is at a point whence the Northwest corner of Section 21, T.50N., R.7E, NMPM, in Chaffee County, Colorado bears South 68°50' East a distance of 31,920 feet; said point being further described by bearing on the Peak of Granite Mountain of North 23°28' West and by bearing on the Peak of Calico Mountain of North 37°03' East, in Chaffee County (Division Engineer's reported location: 384999E, 4274370N); Boss Lake Reservoir (WDID: 1103920): E½ of Sec. 25 and NE¼ Sec. 29, T. 50 N., R. 6 E. NMPM, in Chaffee County (Division Engineer's reported location: 385004E, 4268662N); Cottonwood Lake (WDID: 1104005): Section 36, Township 14 South, Range 80 West, 6th P.M., in Chaffee County (Division Engineer's reported location: 388969E, 4293209N); Rainbow Lake (WDID: 1103535): S½ Section 19 and N½ Section 30, T.14S., R.79W., 6th P.M. in Chaffee County (Division Engineer's reported location: 390150E, 4296557N); DeWeese Reservoir (WDID: 1303613): The southeasterly corner of the dam of said reservoir is North 41°37' East, and is distant 758.7 feet from the Northeast Corner of Section 20, T. 21 S., R. 72 W., 6th P.M., in Custer County (Division Engineer's reported location: 460703E, 4229165N); Twin Lakes Reservoir (WDID: 1103503): Twin Lakes Reservoir is formed by a dam across Lake Creek in Lake County in Section 23, Township 11 South, Range 80 West of the 6th Principal Meridian, as described in the Decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980 (Division Engineer's reported location: 387247E, 4326098N); Conquistador Reservoir (WDID: 1303535): SE ¼ of Section 21, Township 22 South, Range 73 West of the 6th P.M., in Custer County (Division Engineer's reported

location: 452098E, 4219247N); and Wenke Pond (WDID: 1303502): SE1/4NE1/4 Section 19, Township 22 South, Range 72 West, 6th PM, in Custer County (Division Engineer's reported location: 458664E, 4219803N). The above-described uses may be accomplished directly or by exchange, including by exchange pursuant to UAWCD's exchange decreed in Case No. 04CW96 and the appropriative right of exchange requested in this case. Historical Use. The Decree in Case No. 10CW63 imposed terms and conditions regarding future changes of historical irrigation shares in the Union Ditch Company. It established Category 1 and Category 2 shares. When Category 2 shares become the subject of a future water court change case, the transferable annual historic consumptive use can be calculated in one of two ways: (1) as a fraction whose numerator is 122 times 0.2291 plus 18 times 0.1970 plus zero times the number of years that have passed since the year 1999, and the denominator is the number of years that have passed since the year 1861; (2) or, with court approval, such amount may be modified based on evidence of actual use since the year 1999, provided that the average HCU cannot exceed 0.197 acre foot per share. The 10CW63 Decree states: "resume notice for future change cases shall include a statement that the decree entered in 10CW63 at paragraph 206 (e) allows for use of two alternative methods and shall identify which method of calculating transferable annual historical consumptive use will be utilized in the change case for category 2 shares." UAWCD is using the first method. The 192 shares that comprise the Changed Rights are 105.028 Category 1 shares and 86.972 Category 2 shares. The 105.028 Category 1 shares have an average historical consumptive use of 20.69 acre-feet per year. The 86.972 Category 2 shares have an average historical consumptive use of 16.805 acre-feet per year. The total average annual historical consumptive use claimed by UAWCD for the Changed Rights is 37.495 acre-feet per year. Return flows from the historical use of the Changed Rights accrued to the Arkansas River. The return flow obligation during the historical irrigation season of March through October will be met by returning that portion of the diversions to the Arkansas River at point between the headgate and the augmentation station utilized for Case Nos. 10CW96 and 11CW20. The return flow obligation in the non-irrigation season will be met by delivering consumable water to the Arkansas River at or above the first controlling call that is below the Union Ditch point of diversion. In addition to irrigation season depletion credits diverted and stored pursuant to the Changed Rights, UAWCD requests the right to use any fully consumable water rights in its portfolio except for Fryingpan-Arkansas Project Water to comply with any obligation to maintain historical return flows from the Changed Rights in time, location, and amount. The other rights that UAWCD may use to replace return flows include fully consumable water attributable to the following water rights that are approved for augmentation use in one or more existing UAWCD Plans: Twin Lakes Water. Water available pursuant to shares of Twin Lakes Reservoir and Canal Company owned, leased, or controlled by UAWCD ("Twin Lakes Water"), which are more fully described in UAWCD's 18CW3076 Decree. North Fork Reservoir. In the amount of 595 acre-feet (495 acre-feet absolute, 100 acre-feet conditional), with an appropriation date of September 9, 1982, as more fully described in UAWCD's 18CW3076 Decree. O'Haver Reservoir. In the amount of 193 acre-feet (absolute), with an appropriation date of September 9, 1982, as more fully described in UAWCD's 18CW3076 Decree. Water Leased from Board of Water Works of Pueblo, Colorado. UAWCD has entered into a lease with the Board of Water Works of Pueblo, Colorado (BWWP), for 202 acre-feet of

fully consumable water per year, for a term of 40 years. The leased water is to be derived from BWWP's shares in the Twin Lakes Reservoir and Canal Co. but if unavailable, BWWP may deliver water from other sources of fully consumable water available to it. UAWCD's interest in the Alfred Katzenstein Ditch No. 1 (aka A. Katzenstein Ditch No. 1) (Priority Nos. 51 and 207(B)), as changed in Case Nos. 10CW30 and 18CW3076. UAWCD's interest in Conquistador Reservoir No. 1, as changed in Case Nos. 10CW30 and 18CW3076. Friend Ranch Water Rights. Pursuant to agreement with the Town of Poncha Springs, and as changed in 17CW3037, District Court, Water Division 2 (March 22, 2019): Name of structure: Huntzicker Ditch (WDID: 1100600). Amount changed in 07CW111 and 17CW3037: 0.5 cfs. Name of structure: Hensie Ditch No. 1 (WDID: 1100602). Amount changed in 07CW111 and 17CW3037: 0.3 cfs. Name of structure: Boon Ditch No. 2 (WDID: 1100608). Amount changed in 07CW111 and 17CW3037: 1.4 cfs. Name of structure: Hensie Ditch No. 2 (WDID: 1100609). Amount changed in 07CW111 and 17CW3037: 0.2 cfs. Name of structure: Mundlein Ditch No. 2 (WDID: 1100597). Amount changed in 07CW111 and 17CW3037: 0.58 cfs. Decreed uses. In addition to the uses made by Poncha Springs under Case No. 07CW111, in Case No. 17CW3037, UAWCD changed the Friend Ranch Water Rights to allow their use as a source of augmentation or replacement water in all existing and future plans for augmentation, Rule 14 replacement plan, substitute water supply plans, and other statutorily authorized plans, including but not limited to, such approval as authorized by C.R.S. §§ 37-92-308, 37-92-309, 37-60-115(8), or 37-83-101 et seq., operated by UAWCD to replace out-of-priority depletions from structures located within UAWCD's boundaries. Cottonwood Irrigating Ditch. UAWCD's interest in the Cottonwood Irrigating Ditch, changed in 19CW3089 for use in the UAWCD Plans. Silver Creek-Ronk Ditch. Any interest in the Silver Creek-Ronk Ditch owned by or leased to UAWCD as changed in 18CW3048 for use in the UAWCD Plans. A map showing the point of diversion and dry-up parcels for Category 1 shares is attached to application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) A map showing the location of UAWCD's boundaries, and places of storage, is attached as Exhibit B. **Conditional Appropriative Right of Exchange.** Lower Terminus: Headgate of Minnequa Canal, as described above. Upper Termini: O'Haver Reservoir, as described above, the exchange reach running from the Lower Terminus on the Arkansas River to the South Arkansas River, Poncha Creek, and Grays Creek to the O'Haver feeder ditch; North Fork Reservoir, as described above, the exchange reach running from the Lower Terminus on the Arkansas River to the South Arkansas River, and the North Fork South Arkansas River to this terminus; Boss Lake Reservoir, as described above, the exchange reach running from the Lower Terminus on the Arkansas River to the South Arkansas River, and the Middle Fork South Arkansas River, and the Lake Fork of the South Arkansas River to this terminus; Cottonwood Lake, as described above, the exchange reach running from the Lower Terminus on the Arkansas River to Cottonwood Creek, and South Cottonwood Creek to this terminus; Rainbow Lake, as described above, the exchange reach running from the Lower Terminus on the Arkansas River to Cottonwood Creek, and Middle Cottonwood Creek to this terminus; Twin Lakes Reservoir, as described above, the exchange reach running from the Lower Terminus on the Arkansas River and Lake Creek to this terminus; DeWeese Reservoir, as described above, the exchange reach running from the Lower Terminus on the Arkansas River and

Grape Creek to this terminus; Conquistador Reservoir, as described above, the exchange reach running from the Lower Terminus on the Arkansas River to Grape Creek, Taylor Creek, and Middle Taylor Creek to the points of diversion for the A. Katzenstein Ditch No. 1; and Amount: 0.308 cfs (conditional). Appropriation Date: November 12, 2020, based on UAWCD Board approval of the agreement with Fremont County described in paragraph 2, above, to be administered with an adjudication date of 2024. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool, based on assessor records for the applicable county:** Minnequa Canal diversion structures is on land owned by CF&I STEEL L P, P.O. Box 316, Pueblo, CO 81002-0316. Pueblo Reservoir, Twin Lakes Reservoir: U.S. Dep't of Interior, Bureau of Reclamation, 11056 West County Rd., 18-E, Loveland, CO, 80537-9711 ("Bureau of Reclamation"). O'Haver Reservoir, North Fork Reservoir, Cottonwood Lake: United States Department of Agricultural, Forest Service, 5575 Cleora Road, Salida, CO 81201 ("Forest Service"). Boss Lake Reservoir: The Forest Service, and a portion may be located on land owned by SALCO ASSOCIATES, L.L.P., 225 G Street, Salida, CO 81201. Rainbow Lake: Rainbow Lake Resort, Inc., P.O. Box 17450, Oklahoma City, OK, 73136. DeWeese Reservoir: DeWeese-Dye Ditch and Reservoir Company, c/o Dorothy Ormsby, PO Box 759, Canon City, CO, 81215. UAWCD holds the right to store water in the lower bay of Conquistador Reservoir, which is on land owned by CJ Zeller Trust, Carol J Zeller & Penny K Button, Trustees, PO Box 25, Westcliffe, CO 81252. Wenke Pond: Paul C Wenke and Hope N Wenke, PO Box 1193, Westcliffe CO 81252-1193.

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

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of February 2025, (forms available at Clerk's office or at [www.coloradojudicial.gov](http://www.coloradojudicial.gov), after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this 10<sup>th</sup> day of January 2025.

Michele Santistevan



Michele M. Santistevan, Clerk  
District Court, Water Div. 2  
Pueblo Judicial Building  
501 N. Elizabeth Street, Suite 116  
Pueblo, CO 81003; (719) 404-8832

(Court seal)  
Published:

## **SUBSTITUTE WATER SUPPLY PLAN AND PRODUCED NONTRIBUTARY GROUNDWATER NOTIFICATION LIST**

Section 37-92-308(6), C.R.S. directs the State Engineer to establish a notification list for each water division for the purpose of notifying interested parties of requests for the State Engineer's approval of substitute water supply plans ("SWSPs") filed in that water division pursuant to section 37-92-308, C.R.S. The SWSP Notification List is also used to provide notice of proposed water right loans to the Colorado Water Conservation Board for use as instream flows under section 37-83-105(2)(b)(II), C.R.S., notice of applications for the State Engineer's approval of interruptible water supply agreements under section 37-92-309(3)(a), C.R.S., notice of applications for fallowing and leasing pilot projects under section 37-60-115(8)(e)(II), C.R.S., notice of fire suppression ponds under section 37-80-124(10)(a)(II)(E), C.R.S., and notice of storm water detention and infiltration facilities under section 37-92-602(8)(d), C.R.S.

Pursuant to Rule 17.5(B)(2) of the Rules and Regulations for the Determination of the Nontributary Nature of Ground Water Produced Through Wells in Conjunction with the Mining of Minerals, at 2 CCR 402-17 ("Rules"), the State Engineer is publishing this invitation to persons to be included on the Produced Nontributary Ground Water Notification List. According to Rule 17.5(B)(2) of the Rules, the State Engineer must establish a Produced Nontributary Ground Water Notification List for each water division within the State of Colorado for the purposes of ensuring that water users within each water division receive adequate notice of proceedings held pursuant to the Rules. In order to establish such notification list, the State Engineer is directed, in January of each year, to cause to have published in the water court resume for each water division this invitation to be included on the Produced Nontributary Ground Water Notification List for the applicable water division.

This notice is an invitation to be included on the SWSP and/or Produced Nontributary Groundwater Notification Lists. Sign up for these or other notification lists maintained by the State Engineer at: <https://dwr.colorado.gov/public-information/notification-lists>. Additional information is available on the Division of Water Resources' website at: <https://dwr.colorado.gov/>.