DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING APRIL 2025.
(This publication can be viewed in its entirety on the state court website at: www.coloradojudicial.gov)

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during April 2025, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 2024CW4; BRAD FLORA, 1500 CR 125 Westcliffe CO 81252, (785) 754-8041, Design@privategarden.org

3rd Amended Application for Simple Change in Surface Point of Diversion

CUSTER COUNTY

2. Decreed water right for which change is sought: A. Name of Structure: Ditch No 53-A, F. Acklebein No. 2, and Ditch No. 216-A. The Fred Acklebein Ditch No. 3. **B.** Date of original and all relevant subsequent decrees: 03-12-1896, **C.** Legal Description: **Ditch No. 53-A:** Its head is located on the S.E. bank of Macey Creek, at a point whence the w. ¼ cor. Sec. 8 Tp. 23 S. R 72 W., bears N. 87 deg. W. 3760 ft., and in the S.W. 4 N.E. 4 Section 8. It's general course it East. It's length is ¼ mile. It draws it's supply of water from the said Macey Creek. It is used for the purpose of irrigating 60 acres of land lying in the N.E. 4 Sec. 8 Tp. 23 S., R. 72 W. See **Exhibit D** 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.) **Ditch No. 216-A:** It's head is located on the N.W. bank of Macey Creek, at a point whence the w. ¼ cor. Sec 8 Tp. 23 S., R 72 W., bears W. 3765 ft. and in the S.W. 4 N.E 4 Section 8. It's general course it N.E. It's length is 2175 feet. It draws it's supply of water from said Macey Creek. It is used for the purpose of irrigating 40 acres of land lying in the N.E. 4 Sec. 8 Tp. 23 S., R. 72 W. See map **Exhibit "D". D.** Decreed source of water: Macey Creek. **E.** Appropriation Date: **Ditch No. 53-A:** 05-20-1873, **Ditch No. 216-A:** 05-31-1880. **F.** Total amount decreed to structure in gallons per minute (gpm) or cubic feet per second (cfs): **Ditch No. 53-A:** Absolute 1.25 cfs, **Ditch No. 216-A:** Absolute 0.93 cfs. **G.** Decreed use or uses: **Irrigation**. **H.** Amount of water that applicant intends to change: **Ditch No. 53-A:** Absolute: 100% (1.25cfs), **Ditch No. 216-A:** Absolute: 0.93 cfs.**3. Detailed description of proposed change in a surface point of diversion: A**. Complete statement of change: This is an amended application for a simple change in surface point of diversion. The original application was published in July 2024. It was determined that Round Mountain has a conditional storage reservoir on Macey Creek below our proposed point of diversion, so in order to meet the simple change criteria, we need to move our proposed point of diversion below their storage reservoir. This application reflects that change with new UTM coordinates for the F. Ackelbein #2. There are no intervening surface diversion points or inflows between the existing and proposed points of diversions. The proper measuring devices, per the Division Engineer, will be installed at each location to ensure that there will be no

additional water flow for either water right. The SR right will not irrigate more than the decreed 60 acres for the senior right, east of Macey Creek, and the JR right will not irrigate more that the decreed 40 acres for the junior right, west of Macey Creek. **B.** Legal Description of the corrected point of diversion: **F. Acklebein No. 2:** SE ¼ SW ¼ Section 8, Township 23 South, Range 72 West, 6th PM and **Fred Acklebein No. 3:** NW ¼ SE ¼, Section 8, Township 23 South, Range 72 West, 6th PM. **UTM Coordinates: F. Acklebein No. 2:** Easting: 459256; Northing 4212703, and **The Fred Acklebein Ditch No 3:** Easting: 459655; Northing 4212931, Zone 13, Source of UTMs: Garmin 12 XL Accuracy of location displayed on GPS device: 12.2 ft. **4. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Joseph Kropf, 6715 Galbreth Rd. Pueblo CO 81005.

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

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

CHAFFEE COUNTY

The Applicants seek a two conditional surface water rights, one for the diversion from a spring arising on their property and the other for direct diversions from the Arkansas River, both for irrigation purposes on their approximately 36-acre parcel as legally described on the attached **Exhibit A** ("Applicants' Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

This second amended application is a restatement of the request for the conditional surface water right and plan for augmentation while now including an application for an additional conditional surface water right and for such right to also be augmented. **III.** Name of Structure: Bonnie Spring. *Legal Description of Point of Diversion*: In the NW1/4 of the NW1/4 of Section 22, Township 50 North, Range 8 East of the N.M.P.M., UTM Zone 13 NAD83, Easting: 406256, Northing: 4270318, as depicted on the attached **Exhibit B** map. *Source*: Spring and seepage area tributary to the Arkansas River. *Appropriation: Date of Initiation of Appropriation*: August 30, 2023, the date of filing of the initial application. *Amount Claimed*: 3 annual acre-feet, conditional. *Rate*: 50 gallons per minute, conditional. *Uses*: Irrigation. A*mount of acreage to be irrigated:* Up to 20 acres. *Legal description of lands to be irrigated:* located in the NW1/4 of the NW1/4 and the SW1/4 of the NW1/4 of Section 22, Township 50 North, Range 8 East of the N.M.P.M., within Applicants' Property, specifically shown on the attached **Exhibit B**. Name of Structure: Bonnie Arkansas River Diversion. *Legal Description of Point of Diversion*: SW1/4 of the NW1/4 of Section 22, Township 50 North, Range 8 East of the N.M.P.M., Chaffee County, UTM Zone 13 NAD83, Easting: 406090, Northing: 4270133, as depicted in the attached **Exhibit B** map. *Source*. Arkansas River. *Appropriation: Date of Initiation of Appropriation*: April 3, 2025, the date of filing of this Second Amended Application. *Amount Claimed*: 7 annual acre-feet, conditional. *Rate*: 50 gallons per minute,

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

Bonnie Spring, which confluences with the Arkansas River in both the NE1/4 of the NW1/4 and the SW1/4 of the NE1/4 of Section 22, Township 50 N, Range 8 E of the N.M.P.M. *Replacement Water*. Pueblo Water will provide the replacement water described above to augment the Applicants' diversions. The replacement water provided by Pueblo Water shall be fully consumable and will be available to replace the Applicants' depletions at the points of depletion on the Arkansas River. **V.** Applicants own the land where the Bonnie Spring and Bonnie Arkansas River Diversion are located. The Applicants are also the owners of the land where the water will be placed to beneficial use. The Applicants request a finding that vested and conditional water rights of others will not be materially injured by the diversions and replacement of depletions under the proposed plan for augmentation. The Applicants will install meters and all appropriate measuring devices on any pumps utilized to divert water hereunder as required by the State and Division Engineers. Applicants will submit diversion records to the Division Engineer on a monthly basis or as otherwise requested by the Division Engineer. Applicants will also provide accountings to the Division Engineer and Water Commissioner to demonstrate compliance under any decreed plan of augmentation. Applicants will 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 water pursuant to § 37-92-305(8), C.R.S.

CASE NO. 2025CW3011; Previous Case Nos. 18CW3065, 12CW48, 05CW100, 95CW194 – JOHN HIGHTOWER, P.O. Box 1000, 232 F St., Salida, CO 81201 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Julianne Woldridge, MacDougall & Woldridge, P.C., 18401 Highway 24, Suite 211, P.O. Box 7273, Woodland Park, CO 80863, (719) 520-9288)

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

FREMONT COUNTY

2. Names of structure and description of conditional water right: Hightower Spring No. 1. a. Original decree: Case No. 95CW194, Water Div. No. 2, December 13, 1999. Subsequent findings of diligence were entered on May 15, 2006, Case Nos. 05CW100, on October 22, 2012, Case No. 12CW48, and on April 15, 2019, Case No. 18CW3065; b. Location: A point in the SE1/4 of Sec. 27, T.49N., R.9E., NMPM, Fremont County, CO, from which the ¼ corner of Sections 27 and 34 bears South 43° 15' West a distance of 1,457 feet. A map showing the general location is attached to the 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.) c. Source: an unnamed tributary of Bear Creek, a tributary of the Arkansas River; d. Appropriation Date: May 3, 1995; e. Amount: 0.15 c.f.s., conditional; f. Uses: livestock, irrigation, fish culture, recreation, and wildlife; e. Land irrigated: ten acres within a portion of the W1/2 of the NE1/4NE1/4, Sec. 27, T.49N., R.9E., NMPM. **3.** Applicant seeks a determination that this water right has been made absolute for livestock, fish culture, recreation, and wildlife purposes. During the prior diligence period Applicant stocked the spring channel with fish for fish culture purposes, performed earthwork and cleaned and cleared the spring of debris to develop the appropriation, livestock and wildlife drank from the spring, and Applicant enjoyed the flows of the spring for fishing and recreational purposes. Beginning on May 1, 2018, Applicant captured water originating from the spring in a pond pursuant to a substitute

water supply plan placing the water to beneficial use. Applicant obtained a water storage right for a pond fed by this spring and augments depletions from that pond pursuant to an augmentation plan approved in Case No. 18CW3014, Water Div. No. 2. Since the entry of the decree in Case No. 12CW48, Applicant has performed the work described above in development of this appropriation. Although subsequent to the ruling in Case No. 18CW3065 a wildfire killed the fish in the pond and channel, water has continued to flow from the spring through the pond. Applicant's family has enjoyed the spring for livestock, fish culture, recreation, and wildlife purposes. **4.** Applicant seeks findings that it has been reasonably diligent toward or for completion of the conditional appropriation for irrigation purposes and for any of the other decreed uses not made absolute as a result of this application. **5. Names and addresses of owners of land upon which the diversion structures has been constructed:** Applicant and his wife, Melissa Hightower. Applicant requests a determination that 0.15 c.f.s. of this water right is absolute for livestock, fish culture, recreation, and wildlife purposes and a finding that he has exercised reasonable diligence in the development and completion of the conditional water right for irrigation purposes, or in the alternative a determination that he has exercised reasonable diligence in the development and completion of the conditional water right for those purposes and continuing the water right for all remaining conditional uses.

CASE NO. 2025CW3012; TITAN AU, INC., 8480 E. Orchard Rd., Suite 4900, Greenwood Village, CO 80111 (Please address all pleadings and inquiries regarding this matter to Applicants' attorneys: John T. Howe, Hoskin, Farina & Kampf, P.C., 200 Grand Avenue, Suite 400, Post Office Box 40, Grand Junction, Colorado 81502, Telephone: (970) 986-3400, email: jhowe@hfak.com)

Application for Groundwater Right and Approval of Plan for Augmentation

LAKE COUNTY

2. Summary of Application: Applicant operates a gold placer mine known as the Box Creek Placer Mine in Lake County, Colorado, approximately 8.5 miles south-southwest of Leadville, Colorado. In addition to the current gold placer mining operations, Applicant intends to mine and export gravel from the site beginning in 2025. Corske Creek enters the site from the southwest corner, and during low flows, terminates within the central portions of the 950-acre permit area. Box Creek enters from the northwest, and terminates in the northern central most portion of the site. The Box Creek Placer Mine includes up to two gold mining areas and processing plants with secondary gravel mining and processing at any given time. There will be no ongoing groundwater depletions following completion of Applicant's placer mining and gravel mining operations. Applicant seeks: (a) an underground water right for the Box Creek Placer Mine that will deplete groundwater tributary to Box Creek and Corske Creek, tributary to the Arkansas River; and (b) approval of a plan for augmentation for depletions that result from the Box Creek Placer Mine. **3. Claim for groundwater right:** 3.1 Name of structure: Box Creek Placer Mine. An aerial photograph of the site is attached to the Application as **Exhibit A**. (All exhibits and tables mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 3.2 Permit Number: the Division of Water Resources issued Well Permit No. 89622-F for the Box Creek Placer Mine as a gravel pit well. 3.3 Location: The well permit location for the Box Creek Placer mine is in the NE¼ SW¼ of Section 4, Township 11 South, Range 80 West of the 6th P.M. UTM Coordinates:

383970.4 Easting, 4330922.5 Northing, Zone 13, NAD83. The Box Creek Placer Mine site is located in Section 33, Township 10 South, Range 80 West of the 6th P.M. and Sections 3, 4 and 5, Township 11 South, Range 80 West of the 6th P.M. A map of the location of the site is attached to the Application as **Exhibit B**. 3.4 Source of Water: groundwater tributary to Box Creek and Corske Creek, tributary to the Arkansas River. *Depth of Ponds*: approximately 20 feet. 3.5 Surface Area of Ponds: up to 9.7 acres. Note – previous placer mining severely modified the Box Creek Placer Mine permit area; ponds and exposed groundwater associated with historic mining, historical dredge piles and included as part of Box Creek are not included in this surface area amount. 3.6 Appropriation date: October 11, 2018. 3.8 How appropriation initiated: by filing an application for the Box Creek Placer Mine with the Colorado Division of Reclamation, Mining and Safety (Permit No. M-2018-053). 3.9 Date water applied to beneficial use: May 1, 2020. Applicant's north processing plant commenced operations on May 1, 2020 under an SWSP covering the period from May 1, 2020 to April 30, 2021. 3.10 Amount claimed: 7.575 c.f.s. (3,400 gpm) maximum pumping rate; 36.48 acre feet annually absolute in the amount of 32.08 acre feet annually for evaporation and industrial, including processing pond evaporation, first fill inflow, material processing and dust suppression in connection with Applicant's placer mine operation and conditional in the amount of 4.4 acre feet annually for gravel export losses in connection with Applicant's gravel operation. There will be no ongoing groundwater depletions following completion of Applicant's placer mining and gravel mining operations. 3.11 Uses: evaporation and industrial, including processing pond evaporation, first fill inflow, material processing, dust suppression and gravel export losses. 3.12 Plan for Augmentation: the Box Creek Placer Mine will be operated according to a plan for augmentation, approval for which is sought in this Application. Additional Information: the Box Creek Placer Mine has operated under a series of substitute water supply plans ("SWSP"), including sitewide SWSPs beginning in 2023, approved pursuant to C.R.S. §37-92-308(5). The current SWSP for the Box Creek Placer Mine is SWSP ID 9464 approved December 18, 2024. Applicant will seek approval of an SWSP pursuant to C.R.S. §37-92-308(4) after filing this Application and will request approval from the Division 2 Water Judge for approval to operate the Box Creek Placer Mine past the time periods specified in C.R.S. §37-92-308(4)(b). **4. Owner of Land on Which Structures are Located:** the City of Aurora, Colorado and the Colorado State Land Board is the owner of the real property on which the Box Creek Place Mine located. Applicant leases the site from the City of Aurora and the Colorado State Land Board. **5. Request for Approval of Plan for Augmentation:** 5.1 Name of Structure to be Augmented: Box Creek Placer Mine. 5.2 Water Rights to be Used for Augmentation: 37 acre-feet of fully consumable water leased from the Board of Water Works of Pueblo, Colorado ("Pueblo Water"). Applicant entered into a Water Lease Agreement dated April 16, 2025 with Pueblo Water with a term commencing May 1, 2025 and ending April 30, 2030 ("Lease"). A copy of the Lease is attached as **Exhibit C** to the Application. The water rights or sources of water that may be used for augmentation in this augmentation plan include the following: Fully consumable water owned or controlled by Pueblo Water. All water to be used in this augmentation plan provided by Pueblo Water must be decreed or otherwise legally available for augmentation purposes. The source of such water is not specifically identified in the Lease, but may include Pueblo Water's water stored in Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, or

from direct flow transmountain water or from any other reservoir or place from which Pueblo Water may deliver water, the sources of which are at the option of Pueblo Water, as long as they are legally available for augmentation purposes. Water deliveries may include, without limitation, water stored in Twin Lakes Reservoir (located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in Township 11 South, Range 80 West, 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sections 7, 8, 17, 18, 19, and 20, Township 9 South, Range 80 West, 6th P.M. and Sections 10, 11, 12, 13, 14, and 15, Township 9 South, Range 81 West, 6th P.M., in Lake County), Clear Creek Reservoir (located in Sections 7 and 8, Township 12 South, Range 79 West, and Section 12, Township 12 South, Range 80 West, 6th P.M. in Chaffee County), and reusable return flows. The sources of such water may include, but are not limited to, the water rights decreed in Case Nos. 1984CW177, District Court, Water Division 2; 1984CW177(B), District Court, Water Division 2; 1990CW340, District Court, Water Division 5; W-1901, District Court, Water Division 5; 1995CW321, District Court, Water Division 5; 1990CW55, District Court, Water Division 2; and 2004CW130, District Court, Water Division 2. Applicant requests that the Court retain perpetual jurisdiction over the plan for augmentation for the sole purpose to add new or additional sources of augmentation to this requested plan for augmentation pursuant to C.R.S. § 37-92-305(8)(c). Accordingly, Applicant may utilize other fully consumable water rights for augmentation purposes under this plan. 5.3 Statement of Plan for Augmentation. *5.3.1 Operation of Box Creek Placer Mine*: Gold bearing gravel is located roughly 20 feet immediately above the clay layer of an ancient lake bed which was formed when the Arkansas valley was dammed by moraines of the Bull Lake glaciation. This clay layer is greater than or equal to 10 feet thick onsite and is a sharp and easily observable confining layer between barren gravels below. Gold bearing gravel is topped by variably thick and sometimes sparse overburden. Overburden will be excavated and then directly placed in previously mined out areas for reclamation. Gold bearing gravel will be processed for the gold (a very small percent of the material volume) and the washed gravel replaced into mined out excavations as part of reclamation or will be processed further as construction materials. The operation will mine all the way to ‘bedrock’ clay lake beds exposing the groundwater that is roughly three feet below the surface. The pay zone will be loaded into trucks with heavy equipment and deposited adjacent to the wash plant. The trucks will dump the pay gravel on the ground and a front end loader will pick up the material and load it into a grizzly screen to separate large (typically greater than 4 inch) material. Large material will not be further processed, but will be set aside for use in backfilling or for sale. Any smaller material will continue into the hopper that feeds a trommel. A trommel is a large steel cylinder with a sequence of round holes along the side of fairly small diameter (typically less than 3/4 inch). Here, water sprays are used to wash the material and break it up. All finer material falls through the holes and ends up in the sluice box. This device is a metal trough of approximately 20 feet length and 8 feet width that is tilted downward at an angle. At the bottom of the metal sluice is a carpet-like astroturf termed “miner’s moss” that collects denser gold particles as they pass across the sluice. Approximately 2000 gallons per minute of water is used to wash the gravel over the sluice. The sluice is capable of passing 100 to 150 cubic yards per hour of gold bearing alluvium. No chemicals are used in any of the processing operation. Gravels previously processed for gold may be further processed for construction materials. Heavy equipment will be used

to transport and load gravel into a portable crushing and screening plant. Water sprays may be used, as needed, to mitigate fugitive dust during the crushing process. Crushed material will be screened and stored in stockpiles by size in preparation for export into the construction materials market. *5.3.2 Water Depletions*: Water depletions represent the amount of water that is diverted out of priority and consumptively used. The depletions associated with the operation will be the following: •Exposed groundwater evaporation; •Processing pond evaporation; •First pit inflow; •Material processing; •Dust suppression; and •Gravel export. There will be no ongoing groundwater depletions following completion of Applicant's placer mining and gravel mining operations. While material will be excavated wet for processing, at this time, none of this material is leaving the site. However, Applicant intends to export gravel material in 2025, therefore, gravel export is now included in the plan as groundwater depletion from wet material. Placer processing involves significant water recycling through a pair of ponds. This pair of settling ponds facilitates the drop out of finer sediment carried in the water from processing and allows process water to be reused. Thus, processing of placer materials only needs to pump water for processing as make-up water. All calculations show in this section are annual estimates for each source of depletion. Table 3 shows month-by-month calculations, which typically result in smaller amounts of depletion. *5.3.2.1 Evaporation*: Evaporative depletion is the product of the evaporation rate and the surface area of the exposed groundwater in a pit. During operations only a small area of groundwater will be exposed at a time. This pit will be backfilled soon after it is mined out to minimize groundwater exposure. For the purpose of calculations, it is assumed that this area is exposed over the course of a whole season. Quantification of the net monthly depletions at the pit is based on SEO Guidelines for sites with an elevation greater than 6,500 feet. This is calculated by subtracting the effective precipitation (70% of average actual measured precipitation) from the gross evaporation (from the National Oceanic and Atmospheric Administration Technical Report NWS 33) distributed according to SEO Guidelines. The Box Creek Placer Mine is located at an elevation approximately 9,300 feet above MSL. Because of its location and elevation, average precipitation measurements are from the Leadville (9,925 feet above MSL) Climate Station. Table 1 shows this data as part of the Model Inputs for the various water calculations. Climate is from the Western Regional Climate Center website. Evaporation is only applicable in the months with average temperatures above 32° F (May-Oct). There are three ponds where evaporation will cause depletions per mining and processing plant location (with up to two mining and plant locations): the groundwater exposed in the pump pit and the two plant settling ponds. These ponds and their specific depletion calculations are shown below. At the DWR's request, this plan for augmentation accounts for all groundwater ponds exposed at the site that resulted from modern mining efforts from 2018 through this filing. Therefore, the exposed groundwater calculations are far greater than what would be included in a traditional placer gold processing scenario. ●*Plant Settling Ponds*: The plant settling ponds receive sediment laden water from the output of placer processing for the purpose of settling out said sediment. As a pond, consumptive use is based on the evaporation rate, effective precipitation rate, and surface area. These calculations include depletions for the pump pits for each mining location. 1.0 acre total pond area x (40 inches/acre/year evaporation rate – 6.73 inches/acre/year effective precipitation) = 2.8 acre-feet; 2.8 acre-feet x 2 mining and processing areas = 5.6 acre-feet. ●*Exposed*

Groundwater: Groundwater exposed calculations are based on aerial drone images captured in June 2024 with adjustments made to current September 2024 conditions. Groundwater exposed as of September 26, 2024 totals 6.13 acres across the entire site. Note, ponds and exposed groundwater associated with historic mining, historical dredge piles, and that are included as part of Box Creek are not included in the exposed groundwater calculation. 6.13 acres x (40 inches/acre/year evaporation rate – 6.73 inches/acre/ye effective precipitation) = 17.0 acre-feet. ●*Pond Surface Total*: 17.0 acre-feet (exposed groundwater) + 5.6 acre-feet (settling ponds) = 22.6 acre-feet. *5.3.2.2 Dust Suppression*: Water used for dust suppression is usually 100 percent depleted with no measurable return flows to the river. Dust from the haul road and active mining areas (i.e., disturbed areas not in any phase of reclamation) will be controlled by water. Water will only be applied when needed at this elevation, since cold conditions on site for much of the year result in little evaporation. Based on experience with similar operations in Colorado, roughly 0.15 acre-feet of water will be needed per acre of disturbance for dust control. 30 acres are anticipated to be disturbed at any given time. Areas that are in the reclamation process: acres of disturbance x 0.15 acre-feet/acre = 4.5 acre-feet. *5.3.2.3 Processing*: Processing plant water consumption is detailed below. Each part of the processing operation and its individual consumptive use can be seen in detail. Due to the small size of the piles and equipment, precipitation is ignored in the following calculations. Placer processing incorporates a large flow of water; therefore, additional water will not be needed for dust suppression in placer processing equipment. ●*Grizzly overflow pile:* Material larger than 4-inches in diameter is placed in an overflow pile prior to being used to refill the pit. Consumptive uses here include evaporation of water in the overflow pile and is calculated the same way as water surface area. This keeps the calculation conservative as water within a pile of material evaporates slower than water from a pond. 706 square feet pile area x (40 inches/acre/year evaporation rate – 6.73 inches/acre/year effective precipitation) = 0.04 acre-feet. ●*Trommel:* Consumptive use within the trommel is calculated based on the surface area of the trommel (over which water flows) and the frequency of the plant operation (hours/day). This value is then doubled to account for the turbulence of the flow, the use of sprays, and to maintain a conservative estimate of the consumptive use. 64 square feet area x (40 inches/acre/year evaporation rate – 6.73 inches/acre/year effective precipitation) x (7 hours/24 hours) x 2.0 = 0.002 acre-feet. ●*Trommel overflow* pile: Material between 3/4-inch and 4-inches in diameter is placed in a trommel overflow pile prior to being used to refill the pit. Water evaporation in this pile is a consumptive use and is calculated the same way as water surface area. This keeps the calculation conservative as water within a pile of material evaporates slower than water from a pond. 706 square feet pile area x (40 inches/acre/year evaporation rate – 6.73 inches/acre/year effective precipitation) = 0.04 acre-feet. ●*Sluice*: Consumptive use within the sluice is calculated based on the surface area of the trommel (over which water flows) and the frequency of the plant operation (hours/day). This value is then doubled to account for the turbulence of the flow, and to maintain a conservative estimate of the consumptive use. 160 square feet area x (40 inches/acre/year evaporation rate – 6.73 inches/acre/year effective precipitation) x (7 hours/24 hours) x 2.0 = 0.006 acre-feet. ●*Total Processing Water Consumption*: 0.04 acre-feet (grizzly pile) + 0.002 acre-feet (trommel) + 0.04 acre-feet (trommel pile) + 0.006 acre-feet (sluice) = 0.088 acre-feet; 0.088 acre-feet x 2 mining and processing areas = 0.18 acre-feet. *5.3.2.4 First Fill Inflow*:

The first fill inflow is calculated based on the volume and porosity of material removed below the water table and occurs once annually per mining and processing location. The pump pit is the only location that will see first fill inflow at the start of the season. It has a volume of: 0.20 acres x 17 feet deep with a porosity of 0.3. 0.20 acres x 17 feet x (1-0.3) = 2.38 acre-feet; 2.38 ac-ft x 2 mining and processing areas = 4.8 acre-feet. *5.3.2.5 Gravel Export*: Gravel export consumptive use values are calculated in accordance with the Division of Water Resource's "General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits" updated July 26, 2024. As the gravel material is excavated below the groundwater table and may be washed, a 4% moisture content is used in the calculations below. Maximum gravel exports will not exceed 150,000 tons. However, in the event that additional export volumes are needed, the Lease will be amended accordingly. 150,000 tons x 2000 lbs/ton x 4% = 12,000,000 pounds of water. Then 12,000,000 divided by (62.4 lbs/cubic foot x 43560 cubic feet/ acre) = 4.4 ac-ft. *Total Consumptive Uses*: The consumptive uses from the entire operation are summarized below. See Table 3 for a monthly breakdown. All consumptive uses are supplied by groundwater; therefore, lagged depletions will be accounted for. Summary of Consumptive Uses using annual values from Tables 1-3:

Activity	Consumptive Use	Use (acre-feet/year)	Comments
Placer Mining	Pond Evaporation	22.54	Settling ponds + groundwater exposure
	Dust Suppression	4.50	
	Processing	0.18	
	First Pit Inflow	4.80	Only occurs at the start of each season
Gravel Mining	Gravel Export	4.40	Based on 150,000 annual tons exported
Total		36.42	Instantaneous Depletions

5.3.3 Lagged Depletions: Monthly groundwater lagged depletions were calculated using the Alluvial Water Accounting System (AWAS) program developed by the Integrated Decision Support (IDS) Group at Colorado State University with the following aquifer parameters. Aquifer dimensions and distance to the Arkansas River are measured from Google Earth imagery paired with geologic mapping overlay from Kellogg, et al., 2017. Aquifer hydrologic properties are from Groundwater Hydrology (David Keith Todd) and were field measured by Lewicki and Associates in July 2021. •Distance from the gravel pit centroid to the river (X) = 830 feet; •Alluvial aquifer width (W) = 3,930 feet; •Specific yield (S) = 24%; •Transmissivity (T) = 119,276 gallons per day per foot. The groundwater consumptive use totals from Table 3 were inputted to the AWAS program to calculate the lagged depletions that must be replaced in the stream system by augmentation water. The results of this analysis are shown in Table 4. 5.4 Water Supply and Augmentation Releases: Applicant has obtained a water lease from Pueblo Water in the amount of 37.0 acre feet per year to cover out-of-priority depletions to the Arkansas River. Table 5 shows the month-by-month balance of depletions, water rights and required reservoir releases. Water will be released by Pueblo Water as directed in accordance with this augmentation plan. Applicant shall be responsible for any transit losses imposed on the released

replacement water to the point of replacement, as determined by the Division Engineer. Applicant will submit diversion records to the Division Engineer on a monthly basis or as otherwise requested by the Division Engineer. Applicant will also provide accountings to the Division Engineer to demonstrate compliance under this augmentation plan. Applicant may obtain additional replacement water as needed if, under future conditions, the potential out-of-priority depletions exceed 37.0 acre feet per year. The engineering values used in this Application are those currently used by or calculated by Applicant's consultants but may be subject to change during the course of this proceeding without the need to amend or republish this application. **6. Relief Requested:** Applicant requests that the Court enter a decree for the underground water right and approve the plan for augmentation requested in this Application, and grant such other relief as the Court deems appropriate.

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

CASE NO. 2025CW3013; Water Division 2 and CASE NO. 2025CW3042, Water Division 1 – ATTICUS LAND, LLC, A COLORADO LIMITED LIABILITY COMPANY, c/o Jake Decoto, 10620 Vollmer Road, Colorado Springs, CO 80908 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Chris D. Cummins and Sedona E. Chavez, 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 and Plan for Augmentation

EL PASO COUNTY

II. Applicant owns two parcels of land totaling 120 acres and is seeking to quantify the Denver Basin groundwater underlying said property. Applicant also seeks approval of a plan for augmentation for the use of not-nontributary Dawson aquifer wells for provision of water to a subdivision anticipated for Applicant's property. **III.** Property Description. Applicant's property consists of two parcels, more specifically described below. Parcel A: The North half of the Southeast quarter of Section 13, Township 11 South, Range 66 West of the 6th P.M., County of El Paso, State of Colorado; Parcel B: The Southeast quarter of the Southeast quarter of Section 13, Township 11 South, Range 66 West of the 6th P.M., County of El Paso, State of Colorado (collectively, "Applicant's Property"). Applicant's Property is approximately shown 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.) Applicant intends to divide Applicant's Property into up to 31 parcels. It is anticipated that 30 parcels will vary in size and will be a minimum of 2.5 acres each, and the remaining parcel will be approximately 35 acres in size. Existing Wells. There are no existing wells on the Applicant's Property. Proposed Wells. Applicant proposes up to 31 wells be completed to the Dawson aquifer (one well per lot) on the Applicant's Property, at specific locations not yet determined. Of these wells, 30 will be augmented consistent with the plan for augmentation decreed pursuant to this Application ("Atticus Well Nos. 1 through 30"). The remaining well, to be completed on the approximately 35-acre parcel, will be an exempt well, pursuant to C.R.S. § 37-92-602 ("Atticus Well No. 31"), for which Applicant will reserve 300 acre-feet of Dawson aquifer groundwater, as reflected below. Not-Nontributary. The groundwater to be withdrawn from the Dawson aquifer 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 aquifer require the replacement of actual stream depletions. Nontributary. The groundwater to be withdrawn from the Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying Applicant's Property will be nontributary. Estimated Rates of Withdrawal. Pumping from any well to be drilled on Applicant's Property will not exceed 100 gpm. The actual pumping rates for each and every well 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 well 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 the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code § 8.4.7(C)(1), which is more stringent than the State of Colorado's 100-year life requirement pursuant to C.R.S. § 37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre-Feet)	Annual Avg. Withdrawal 100 Years (Acre-Feet)	Annual Avg. Withdrawal 300 Years (Acre-Feet)
Dawson (NNT)	475.5	11,022[1]	110.22	36.74
Denver (NT)	512.5	10,471	104.71	34.90
Arapahoe (NT)	250.1	5,145	51.45	17.15
Laramie-Fox Hills (NT)	209.0	3,825	38.25	12.75

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to C.R.S. § 37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. Requested Uses. The Applicant requests the right to use the groundwater for beneficial uses upon the Applicant's Property consisting of domestic (including long-term and short-term rentals), irrigation of lawn and garden, stock water, recreation (including pool and/or hot tub), landscape ponds, commercial, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S § 37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Applicant shall not be entitled to construct a non-exempt well or use water for non-exempt purposes from the not-nontributary Dawson aquifer except pursuant to an approved augmentation

[1] Applicant will reserve 300 acre-feet of Dawson aquifer water to be utilized by Atticus Well No. 31, reducing the total amount available in the Dawson aquifer to the amounts estimated above.

plan in accordance with C.R.S. § 37-90-137(9)(c.5), including as decreed herein for the authorized Dawson aquifer pumping. Well Fields. Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying the Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. Averaging of Withdrawals. Applicant requests that it be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying Applicant's Property. The land and underlying groundwater upon which the wells will be located is owned by the Applicant. **IV.** Structures to be Augmented. The structures to be augmented are Atticus Well Nos. 1 through 30, to be completed to the Dawson aquifer, along with any replacement or additional wells associated therewith, in the N½ of the SE¼ and the SE¼ of the SE¼ of Section 13, Township 11 South, Range 66 West of the 6th P.M., El Paso County, Colorado. Each of these wells will be located on one of the up to 30 lots to be subdivided on Applicant's Property, not including the one anticipated 35-acre lot, which will contain the exempt Atticus Well No. 31. 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 Dawson aquifer from Atticus Well Nos. 1 through 30 to be drilled on Applicant's Property, together with water rights from the nontributary Laramie-Fox Hills and Arapahoe aquifers for any injurious post-pumping depletions. Statement of Plan for Augmentation. Applicant seeks to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by Atticus Well Nos. 1 through 30 described herein. Water use criteria and their consumptive use component for replacement of actual depletions for the Applicant's Property are estimated as follows: Uses. Pumping from the Dawson aquifer will be a maximum of 24.086 acre-feet of water per year. Such uses shall be for domestic (including long-term and short-term rentals), irrigation of lawn and garden, stock water, recreation (including pool and/or hot tub), landscape ponds, commercial, fire protection, and also for storage and augmentation purposes associated with such uses. Amounts. Atticus Well Nos. 1 through 30 will each pump a maximum total of 0.8029 acre-feet, for a maximum total of 24.086 acre-feet being withdrawn from the Dawson aquifer annually. Such use shall be a combination of domestic (including long-term and short-term rentals), irrigation of lawn and garden, stock water, recreation (including pool and/or hot tub), landscape ponds, commercial, fire protection, and also for storage and augmentation purposes associated with such uses. An example breakdown of this combination of use for each lot is in-house use of 0.26 acre-feet of water per year, with the additional 0.5429 acre-feet per year available for the remaining uses to be permitted, described herein. Depletions. It is estimated that maximum stream depletions over the 300-year pumping period for the Dawson aquifer amounts to approximately 22.42% of pumping. Maximum annual depletions for total pumping from all wells are therefore 5.40 acre-feet in year 300 (*i.e*. 22.42% of pumping). Should Applicant's pumping be less than the 24.086 acre-feet total per year described herein, resulting depletions and required replacements will be correspondingly reduced, so long as depletions resulting from pumping are adequately

replaced. Augmentation of Depletions During Pumping. Pursuant to C.R.S. § 37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of a well completed to the Dawson aquifer. Depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10%. At a household use rate of 0.20 acre-feet per residence per year, 0.18 acre-feet is replaced to the stream system per year from each residence, assuming the use of non-evaporative septic systems, or 5.40 acre-feet combined from 30 residences. Thus, during pumping, stream depletions will be adequately augmented. Augmentation for Post-Pumping Depletions. For the replacement of any injurious post-pumping depletions that may be associated with the use of Atticus Well Nos. 1 through 30, Applicant will reserve up to the entirety of the water from the nontributary Laramie-Fox Hills aquifer and 1,780.8 acre-feet from the nontributary Arapahoe aquifer, accounting for actual stream depletions replaced during the pumping period, as necessary to replace any injurious post-pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post-pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post-pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills and Arapahoe groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive well permits for the Atticus Well Nos. 1 through 30, and any replacement or additional wells, for the uses in accordance with this Application and otherwise in compliance with C.R.S. § 37-90-137. **V.** This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and Arkansas River systems. The return flows set forth herein will accrue to tributaries of the South Platte system, where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter in Water Division 1 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient.

CASE NO. 2025CW3014; STEVEN GENE ERICKSON TRUST DATED 10.31.24, 2443 Highway 82, Twin Lakes, CO 81251 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: c/o Scott Grosscup & Blake Peterson, Balcomb & Green, P.C.; P.O. Drawer 790, Glenwood Springs, CO 81602; (970) 945-6546; balcombgreen.com)

Application for Conditional Underground Water Right and Approval of Plan for Augmentation

LAKE COUNTY

2. Applicant owns approx. 38.3 acres of real property located at 2443 Highway 82, Twin Lakes, CO 81251, also described as Lake Cty. Parcel No. 2901-151-00-001 (the "Property") and is developing the Property into a subdivision with up to 13 individual lots. Each subdivided lot will be approx. 3 acres in size. A map of the Property as Exh. A is on file with the Ct. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Ct.) Applicant requests a conditional

underground water right for the Ross III-A Wellfield to provide water supplies for dom. use within the subdivision. Applicant further requests approval of a plan for aug. to replace the out-of-priority depletions resulting from the operation of this new wellfield to prevent injury to other vested water rights. **First Claim for Conditional Underground Water Right. Name of Structure: 3.** Ross III-A Wellfield. Legal Description: The Ross III-A Wellfield will consist of up to 13 wells located within the Applicant's Property as depicted on the plat map as Exh. B and further described as within a 1,270 foot radius circle with its center located in Sec. 15, T. 11 S., R. 80 W., of the 6th P.M., and being 2,160 ft from the E. Sec. line and 1,600 ft. from the N. Sec. line of said Sec. 15. UTM Zone 13, NAD 83, Easting 385955 m and Northing 4328184 m.The existing Ross III-A exempt well under Well Permit No. 270337 is located in the SW1/4 NE1/4, Sec. 15, T. 11 S., R. 80 W., 6th P.M. Also described as UTM Zone 13, NAD83, Easting 386058 m and Northing 4328074 m. A map depicting the wellfield's boundary and the current exempt well's location as shown on Exh. C. Source: Groundwater tributary to Twin Lakes, tributary to Lake Creek, tributary to Arkansas River. Depth: Up to 400 ft. Date of Approp.: 4/25/2025. How Approp. was Initiated: Filing of the application. Amt. Claimed: 0.434 c.f.s. (195 g.p.m), conditional, with cumulative max. annual withdrawals of up to 6.15 AF. Uses: Dom. uses for up to 13 primary residences and 13 accessory dwelling units ("ADU"), and residential irr. of up to 5,200 sq. ft. (approx. 400 sq. ft. per lot). Remarks: Ross III-A Wellfield currently has an existing well under exempt Well Permit No. 270337. Applicant will obtain a new well permit to operate the Ross III-A Wellfield before commencing operations. Out-of-priority depletions will be augmented pursuant to the Second Claim for relief via the dedication of Applicant's one share of the Twin Lakes Reservoir and Canal Company ("TLRCC") Cert. No. 8985 ("Applicant's Share"). Applicant's Share provides a firm yield of 0.73 AF of transmountain water decreed for fully consumptive aug. purposes annually. Applicant's Share and will be dedicated to the requested plan for aug. and will fully augment 0.73 AF of depletions per year. **4.** 600' Spacing Statement: Notifications were made to well owners within 600 ft of the Ross III-A Wellfield's boundary, as shown in the notice as Exh. D. **5. Owner of Land Upon Which the Wells Are or Will Be Located:** Applicant. **SECOND CLAIM FOR APPROVAL OF PLAN FOR AUG. 6.** Name of structure to be augmented: Ross III-A Wellfield, as described above. **7.** Applicant will replace the out-of-priority lagged depletions from the Ross III-A Wellfield by dedicating Applicant's Share to this plan for aug. Prior to the entry of a ruling or decree, Applicant will provide evidence to the Ct. that Applicant's Share has been properly dedicated to this plan for aug. Twin Lakes Reservoir: Water available from Applicant's Share provides both transmountain water from the CO River drainage and native water in the Arkansas River. The transmountain water component is decreed for fully consumptive aug. purposes; the native water component is not decreed for aug. purposes. The water rights producing Applicant's Share's interest. Arkansas River Water Rights: Twin Lakes Reservoir and Twin Lakes Reservoir Enlargement: Original Decree: CA 2346, Dist. Ct., Chaffee Cty., 7/14/1913. Subsequent Decree: W-3965, Dist. Ct., Chaffee Cty., 4/19/1974. Approp. Dates and Amts.: 12/15/1896 (Priority 3): 20,645.3 AF. 3/29/1897 (Priority 4): 33,806.7 AF. POD: Twin Lakes Reservoir is situated wholly upon Secs. 15, 16, 17, 18, 19, 20, 21, 22, and 23 in T. 11 S., R. 80 W of the 6th P.M., in Lake Cty., CO. Source: Lake Creek, tributary to Arkansas River. Decreed Uses: Storage for irr., dom., commercial, industrial, and muni. purposes. CO River Water Rights: Independence Pass Transmountain Diversion System:

Original Decree: CA 3082, Dist. Ct., Garfield Cty., 8/25/1936. Subsequent Decree: W-1901, Dist. Ct., Water Div. 5, 5/12/1976. Approp. Date: 8/23/1930. PODs: The PODs are set forth in the CA-3082 Decree and W-1901 Decree. Twin Lakes Reservoir is formed by a dam across Lake Creek in Lake Cty. in Sec. 23, T. 11 S., R. 80 W., 6th P.M. Source: The Roaring Fork and its tributaries, all tributaries of the CO River in Water Div. 5, as more fully set forth in the CA-3082 and W-1901 decrees. Amt.: Direct flow amt. for diversions through transmountain tunnels of 625 c.f.s. with an annual limit of 68,000 AF, a running ten-year limit of 570,000 AF, and other limitations set forth in the CA-3082 and W-1901 decrees. Decreed Uses: Direct flow and storage for irr., dom., commercial, industrial, muni., and all other beneficial uses. **8. Diversions and Depletions:** Applicant is developing a subdivision on the Property consisting of up to 13 individual residential lots, each approx.. 3 acres in size. The Ross III-A Wellfield will be used for in-home use within up to 13 primary residences and 13 ADUs, and residential irr. for each lot. Wastewater treatment is proposed to be by individual on-lot non-evaporative septic systems. The physical water supply for these lots will be from individual on-lot wells. Ross III-A Wellfield's total annual diversions are estimated to be 6.15 AF, and max annual depletions from pumping are estimated to be 0.73 AF. These amts. are described in the engineering report as Exh. E, and further described as Primary Residence: For 13 lots on the Property with one primary residence on each lot, an estimated 3.5 persons per residence, and a rate of 75 gallons of water per person, per day. In-home use is estimated to be 10% consumptive. Applicant's primary residence demands will total 3.8 AF annually, and depletions from consumptive use will total 0.38 AF annually. ADU: For 13 lots on the Property with one ADU on each lot, an estimated 2 persons per ADU, and a rate of 75 gallons of water per person, per day. In-home use is estimated to be 10% consumptive. Applicant's ADU demands will total 2.2 AF annually, and depletions from consumptive use will total 0.22 AF annually. Irr. for 13 lots, limited to a total of 400 sq ft per lot, for a collective total of 0.12 acre within the Property. Irr. water will be used for miscellaneous trees, bushes, small grass areas, flower beds, flowerpots, etc. The Property's elevation is 9,300 ft, limiting the use of irr. water due to the short growing season. Per the Modified Blandy-Criddle method with 50% of the irrigated area presumed to be "orchard with cover" and 50% presumed to be blue grass areas, 1.05 AF per acre will be required. Thus, total annual irr. water requirements for the Property are 0.13 AF. The irr. efficiency for this use is estimated to be 85% for sprinkler and hose applications. Applicant's irr. demands will total 0.15 AF annually, and depletions from consumptive use will total 0.13 AF annually. Under the proposed plan, total annual water diversions are estimated to be 6.15 AF (0.47 AF per lot), and total water depletions are estimated to be 0.73 AF annually (0.06 AF per lot). **9. Statement of Plan for Aug.:** Applicant will replace out-of-priority depletions by dedicating Applicant's Share to this plan for aug. TLRCC's water rights include water rights for waters originating in the CO River drainage. Only this transmountain component of share yield is proposed to be utilized as a source of aug. under this plan. Applicant may utilize the native component for direct irr. or dom. use, and/or seek to lease the native component to other water users, to prevent Twin Lakes Reservoir from being filled by the native waters, thus limiting its dedicated yield of transmountain waters. TLRCC's transmountain water right yields per share over the 2001-2020 period indicate an average yield of 0.9 AF per share. The DE's Office for Water Div. 2 has, for purposes of Twin Lakes Reservoir, determined in previously accepted plans for aug. a firm yield value for

these CO River basin transmountain water rights to be 0.73 AF per share. Based upon this firm yield value, Applicant's Share will be dedicated to this plan for aug. to fully augment the determined 0.73 AF of annual plan depletions.

CASE NO. 2025CW3015; CITY OF COLORADO SPRINGS, ACTING BY AND THROUGH ITS ENTERPRISE, COLORADO SPRINGS UTILITIES ("UTILITIES"), c/o Kim Gortz, Water Resources Manager, 1521 Hancock Expressway, MC 1813, Colorado Springs, CO 80903 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Michael Gustafson, Nathan Endersbee, City Attorney's Office – Utilities Division, P.O. Box 1575, Mail Code 510, 30 South Nevada Avenue, Suite 501, Colorado Springs, CO 80903, (719) 385-5535 and Co-counsel David Robbins, Matthew Montgomery, Hill & Robbins, P.C. 3401 Quebec Street, Suite 3400, Denver 80207, (303) 296-8100)

Application For Change Of Water Rights

BENT, CHAFFEE, CROWLEY, EL PASO, FREMONT, KIOWA, LAKE, OTERO, PUEBLO AND TELLER COUNTIES

2. Summary of Application: Utilities is an enterprise of the City of Colorado Springs and is a four-service public municipal utility that provides, among other things, municipal and industrial water service to the City of Colorado Springs, Colorado ("Colorado Springs"), and several areas within the vicinity of Colorado Springs. Areas served by Colorado Springs are referred to as the "Service Area" as it exists now and or as it may exist in the future. Utilities is the owner of 3,292 shares of stock in the Fort Lyon Canal Company ("FLCC") which are represented by FLCC Share Certificates Nos. 11020, 11023, 11077, 11079, 11080, 11081, 11082, 11083, 11084, 11085, 11086, 11087, 11088, 11089, 11090, 11091, 11092, 11093, 11094, 11096, 11098, 11100, 11102, 11104, 11106, 11108, 11110, 11112, 11114, 11116, 11118, 11120, 11122, 11124, 11125, 11127, 11129, 11140, and 11175 attached to the application as **Exhibit A** ("Utilities' FLCC Shares"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Through this Application, Utilities seeks to change the type and place of use of 2,810 of these shares (the "Subject Shares") so that they may be used in Colorado Springs' municipal system and/or leased back to irrigators in the Lower Arkansas Valley. Utilities' FLCC Shares were part of a combined 9,957 FLCC shares (the "Irrigation Shares") that were used historically to irrigate approximately 33 parcels near the Town of Las Animas, Colorado, with a maximum historically irrigated area of approximately 6,400 acres. Of the historically irrigated area, approximately 4,366 acres will remain in irrigation through center pivot sprinkler installation and approximately 1,738 acres will be removed from irrigation. In addition, approximately 131 acres of historically irrigated lands that will no longer receive irrigation water from the FLCC will continue to be irrigated by augmented groundwater. As this point in time, the remaining 482 of Utilities' FLCC Shares that are not Subject Shares being changed in this case will remain in irrigation under new center pivot sprinklers (the "482 Unchanged Shares"). Utilities has long-term plans to construct a water storage facility (known as the "Fish Hatchery Storage Facility") and is currently evaluating the feasibility of this facility. Once the feasibility of the Fish Hatchery Storage Facility is confirmed, and the plans are complete, Utilities will file a separate application with the Division 2 Water Court to change the type and place of use of the 482 Unchanged Shares. In 2022, Utilities entered into an intergovernmental agreement with

Bent County (the "Bent County IGA") that authorizes Utilities to develop up to fifteen thousand (15,000) acre-feet of fully consumable annual water supplies through one or more "Authorized Water Development Projects." Authorized Water Development Projects are part of Utilities' Collaborative Water Sharing Program and aim to help farmers maintain productivity and economic vitality with less irrigated acreage while also providing water supply for Colorado Springs. Utilities acquired Utilities' FLCC Shares as part of an Authorized Water Development Project to assist farmers under the FLCC in their transition from flood irrigation to more efficient center pivot irrigation. Unirrigated corner acreage created by the installation of center pivot sprinklers (termed "Authorized Parcel Corner Dry-Up" under the Bent County IGA) constitutes 1,373.88 acres to be dried up and permanently removed from irrigation under this Decree. Unirrigated acres that could not support a center pivot sprinkler due to their irregular shape (termed "Authorized Permanent Dry-Up" under the Bent County IGA) constitute 364.30 acres to be dried up and permanently removed from irrigation under this Decree. The Bent County IGA is attached hereto as **Exhibit B**. As required by the FLCC Bylaws, on June 9, 2023, Utilities filed a request for approval of a change in type and place of use of Utilities' FLCC Shares with the FLCC Board of Directors. The request was approved by the FLCC Board of Directors on June 12, 2024. A copy of the approval is attached hereto as **Exhibit C**. This approval authorized Utilities, *inter alia*, to change the type and place of use of the 2,810 Subject Shares and the 482 Unchanged Shares. As required by the Bent County IGA, on November 6, 2024, Utilities filed a "Notice of Authorized Water Development Project" concerning the Subject Shares as required by the Bent County IGA. Bent County issued an Authorized Water Development Project Certification concerning the Subject Shares on December 19, 2024. A copy of the certification is attached hereto as **Exhibit D**. The future change of the 482 Unchanged Shares was beyond the scope of this certification. On December 20, 2023, Utilities filed an application with the Water Court, Water Division 2, in Case No. 23CW3052 seeking judicial confirmation, pursuant to C.R.S. §§ 37-80-120, 37-82-106, 37-83-104, and 37-92-302, of conditional appropriative rights of substitution and exchange, under which water attributable to Utilities' FLCC Shares will be delivered to the Arkansas River or its tributaries at, or upstream, of John Martin Dam and an equivalent amount of water will be diverted and stored upstream in the Colorado Canal System, including a new reservoir to be built on, or near, Haynes Creek, or Pueblo Reservoir; or diverted and directly delivered to the intake to the Fountain Valley Conduit ("FVC") and the intake to the Southern Delivery System ("SDS"), either directly, or by stepped, intermediate exchange(s), to the headgate of the Colorado Canal, the headgate of the Fort Lyon Canal, or the headgate of the Fort Lyon Storage Canal. This water will be subsequently delivered to Utilities' municipal system, where it will be stored, used, reused, successively used and/or reused to extinction, directly, after storage, and/or by exchange for Utilities' New Uses (as defined below) in any structure now existing or hereafter constructed that is lawfully available for use by Colorado Springs. Water attributable to the Subject Shares is or will be a "Temporary Use Agreement Water" or "TU Water" and may be exchanged or used as a "Class I Temporary Use Water" under any existing or future decree or administrative approval that provides for the exchange of TU Water, subject to the terms and conditions of the appropriate decree, including, but not limited to, the Decrees entered in Case Nos. 05CW96, 07CW122, 16CW3056, 19CW3052 and 19CW3053 (Water Div. 2). Water stored in Lake Henry and Lake

Meredith will be subsequently exchanged into Utilities' municipal system under the Decree entered in Consolidated Case Nos. 84CW62, 84CW63, and 84CW64 (Water Div. 2), subject to the terms and conditions of that decree. This Application seeks to change the type and place of use of the Subject Shares so that water attributable to these shares may be used by exchange, directly, and after storage for all beneficial uses. Utilities' beneficial uses will include, without limitation, municipal, domestic, agricultural, industrial, commercial, irrigation, stock watering, fire protection, recreation, in-reservoir fish and wildlife preservation and propagation, recharge of aquifers, exchange, replacement of historical return flows, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to §37-90-137(9)(b), C.R.S., and all augmentation purposes, including under substitute water supply plans approved pursuant to §37-92-308(4) (collectively, "Utilities' New Uses"). Utilities' New Uses will also include, without limitation, the leaseback of the portion of Utilities' Shares that are fully consumable to irrigators in the Lower Arkansas Valley, as well as leaseback for environmental, recreational, and municipal uses. **3. Water rights to be changed**: Utilities seeks to change the type and place of use of its *pro rata* share of water rights associated with the Subject Shares. The Subject Shares are a *pro rata* portion of those water rights owned or controlled by the FLCC, including without limitation those described in paragraphs 3.1 through 3.6 below. The FLCC is a mutual ditch company with approximately 93,989.4166 shares of capital stock issued and outstanding. The Subject Shares represent approximately 2.99% of the total outstanding capital stock in the FLCC. The 482 Unchanged Shares represent approximately 0.51% of the total outstanding capital stock in the FLCC. Utilities' FLCC Shares combined represent approximately 3.50% of the total outstanding capital stock in the FLCC. The Irrigation Shares represent approximately 10.59% of the total outstanding capital stock in the FLCC. 3.1 **Decreed points of diversion**: The FLCC has decreed points of diversion or rights of use at the following structures. An area map is attached hereto as **Exhibit E**. 3.1.1. Fort Lyon Canal (WDID 1700553). The decreed point of diversion of the Fort Lyon Canal is located in the NE 1/4 of Section 32, Township 23 South, Range 55 West of the 6th P.M. in Otero County, Colorado. Whereas, the current physical point of diversion is located the SW 1/4 of the SE 1/4 of Section 29, Township 23 South, Range 55 West of the 6th P.M. in Otero County, Colorado. 3.1.2. Fort Lyon Storage Canal (WDID 1700648). The diversion dam straddles the Crowley/Otero county line. The point of diversion is located on the north bank of the Arkansas River, at a point in the NW 1/4 of the SE 1/4 of Section 20, Township 22 South, Range 57 West of the 6th P.M., in Crowley County, Colorado. 3.1.3. Horse Creek Reservoir (WDID 1703545). Horse Creek Reservoir is located in portions of Sections 29, 30, 31, and 32 of Township 21 South, Range 53 West, and Sections 6 and 7 of Township 22 South, Range 53 West, and in portions of Sections 25, and 36 of Township 21 South, Range 54 West, and Sections 1, 2, and 12 of Township 22 South Range 54 West of the 6th P.M., in Otero County, Colorado. The dam for the reservoir is located in Sections 6 and 7, Township 22 South, Range 53 West, and in Sections 1 and 12, Township 22 South, Range 54 West of the 6th P.M., all in Bent and Otero Counties, Colorado. 3.1.4. Horse Creek Supply Ditch (WDID 1700673). The decreed point of diversion of the Horse Creek Supply Ditch is located in the SW 1/4 of the SE 1/4 of Section 6, Township 22 South, Range 54 West of the 6th P.M., in Otero County, Colorado. 3.1.5. Adobe Creek Reservoir (WDID 1703546). Adobe Creek Reservoir is located in portions of Sections 27, 28, 29,

32, 33, and 34 of Township 20 South, Range 52 West, and in portions of Sections 3, 4, 5, 6, 7, 8, 9, 17, and 18, of Township 21 South, Range 52 West of the 6th P.M., in Kiowa and Bent Counties, Colorado. The dam for the reservoir is located in Sections 7, 17, and 18 of Township 21 South, Range 52 West of the 6th P.M., in Bent County, Colorado. 3.1.6. Adobe Creek Supply Ditch (WDID 1700674). The point of diversion of the Adobe Creek Supply Ditch is located in the NE 1/4 of the SW 1/4 of Section 26, Township 20 South, Range 53 West of the 6th P.M. in Kiowa County, Colorado. 3.1.7. Thurston Reservoir, originally decreed as Prince Reservoir (WDID 6703882). Thurston Reservoir is located in portions of Section 18 of Township 21 South, Range 46 West and Section 13 of Township 21 South, Range 47 West of the 6th P.M., in Prowers County, Colorado. The points of diversion for the Thurston Pipeline are located in/at the Thurston Reservoir. 3.1.8. Thurston Pipeline (WDID 6702500). The point of diversion for the Thurston Pipeline is located at a point whence the section corner common to Sections 7 and 18, Township 21 South, Range 46 and Sections 12 and 13, Township 21 South, Range 47, all West of the 6th P.M., Prowers County, Colorado, bears North 0 degrees 41 minutes West a distance of 1680 feet. There is an alternate point of diversion located at a point whence the S 1/4 corner of Section 18, Township 21 South, Range 46 West of the 6th P.M., Prowers County, Colorado, bears South 10 degrees East, 10 minutes East a distance of 2297 feet. 3.1.9. Pueblo Reservoir (WDID 1403526). Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 20 South, Range 66 West, Sections 1, 2, 3, 4, 5, 9, 10, and 11, Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, Township 20 South, Range 67 West of the 6th P.M., in Pueblo County, Colorado. The dam for the reservoir is located in Sections 25 and 36 of Township 20 South, Range 66 West of the 6th P.M., and Section 1, Township 21 South, Range 66 West of the 6th P.M., in Pueblo County, Colorado. 3.1.10. John Martin Reservoir (WDID 6703512). John Martin Reservoir is located in all or portions of Sections 24, 25, 26, 27, 33, 34, 35, and 36, Township 22 South, Range 51 West, Sections 28, 29, 30, 31, 32, 33, 34, and 35, Township 22 South, Range 50 West, Sections 5, 6, 7, 8, 17, and 18, Township 23 South, Range 49 West, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, and 30, Township 23 South, Range 50 West, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, and 18, Township 23 South, Range 51 West of the 6th P.M., in Bent County, Colorado. The dam for the reservoir is located in Sections 5, 8, and 17 of Township 23 South, Range 49 West of the 6th P.M., in Bent County, Colorado. 3.1.11. Neeskah Reservoir, also known as Nee Skah, Neeshaw, Nee Shaw, Great Plains, and/or Queens Reservoir (WDID 6703513). Queens Reservoir is located in Township 20 South, Ranges 46 and 47 West of the 6th P.M. in Kiowa County, Colorado. 3.2 **Direct flow water rights**: The FLCC was originally decreed three direct flow water rights in the Adjudication of Priorities of Right to the Use of Water for Irrigation in Water District Number 17, dated April 8, 1905, in the District Court for Bent County, Colorado (the "District 17 Original Adjudication"). The first water right is for 164.64 cubic feet per second ("cfs") with an appropriation date of April 15, 1884. The second right is for 597.16 cfs with an appropriation date of March 1, 1887. The third is for 171.20 cfs with an appropriation date of August 31, 1893. These water rights total 933

cfs and are summarized in Table 1 below. **Table 1 Fort Lyon Canal Company – Direct Flow Water Rights**

Identification of Water Right	Amount (cfs)	Source	Appropriation Date
Fort Lyon Canal	164.64	Arkansas River	Apr. 15, 1884
Fort Lyon Canal	597.16	Arkansas River	Mar. 1, 1887
Fort Lyon Canal	171.20	Arkansas River	Aug. 31, 1893

3.3. **Storage rights (Horse Creek Reservoir and Adobe Creek Reservoir)**: The FLCC also owns several water rights to divert and store water in Horse Creek and Adobe Creek Reservoirs. The FLCC may divert from both the Arkansas River (via the Fort Lyon Storage Canal) and from Horse Creek (via the Horse Creek Feeder Ditch, or Supply Canal) to store up to 28,000 acre-feet ("AF") in the Horse Creek Reservoir. The FLCC may divert from the Arkansas River (via the Fort Lyon Storage Canal) and Adobe Creek (via the Adobe Creek Feeder Ditch, or Supply Canal) to store up to 87,000 AF in Adobe Creek Reservoir. These water rights were decreed by the District Court of Bent County, Colorado in the Matter of the Adjudication of Priorities of Right to the Use of Water for Domestic and Irrigation Purposes in Water District No. 17, Colorado, dated November 8, 1928 and are summarized in Table 2 below. **Table 2 Storage Rights – Horse Creek Reservoir and Adobe Creek Reservoir**

Identification of Water Right	Amount (cfs)	Source	Appropriation Date
Horse Creek Reservoir	2,000	Horse Creek	Aug. 15, 1900
Original Construction	840	Arkansas River	Jan. 25, 1906
(11,400 AF)	1,466	Arkansas River	Mar. 1, 1910
Horse Creek Reservoir	840	Arkansas River	Jan. 25, 1906
First Enlargement	5,000	Horse Creek	Dec. 20, 1907
(15,487 AF)	1,466	Arkansas River	Mar. 1, 1910
Horse Creek Reservoir	5,000	Horse Creek	Jun. 12, 1908
Second Enlargement	840	Arkansas River	Jun 12, 1908
(1,113 AF)	1,466	Arkansas River	Mar. 1, 1910
Adobe Creek Reservoir	8,631	Adobe Creek	Jan. 25, 1906
Original Construction	840	Arkansas River	Jan. 25, 1906
(61,575 AF)	1,466	Arkansas River	Mar. 1, 1910
Adobe Creek Reservoir	8,631	Adobe Creek	Dec. 29, 1908
Enlargement	840	Arkansas River	Dec. 29, 1908

(25,425 AF)	1,466	Arkansas River	Mar. 1, 1910

3.4. **Storage rights (Thurston Reservoir (formerly known as Prince Reservoir) and Pipeline)**: Additionally, the FLCC owns a right to store 1,515 AF of water in Thurston Reservoir via the Main Canal at up to 355.20 cfs. The right was originally decreed for Prince Reservoir in the District 17 Original Adjudication, but was conditionally transferred to Thurston Reservoir in 1972 in Case No. W-27, Water Division 2, and made absolute in 1979 in Case No. 79CW085, Water Division 2. The Thurston Pipeline, from Thurston Reservoir, was constructed to allow the FLCC to pump nontributary water back into the Main Canal. The source of water for the Thurston Pipeline is Thurston Lake, whose water is accumulated from springs in said lake, seepage flowing into the lake, waste water from a canal of the FLCC, rainfall and waste water flowing into the lake from land of owners adjoining the lake. The right associated with this pipeline is for 25 cfs, was conditionally decreed in 1972 in Case No. W-27, and was made fully absolute in 2011 in Case No. 10CW069, Water Division 2. These water rights are summarized in Table 3 below. **Table 3 Storage Rights – Thruston Reservoir and Pipeline**

Identification of Water Right	Amount (cfs)	Source	Appropriation Date
"Prince Reservoir" (1,515 AF)	355.20	Arkansas River	Aug. 12, 1889
"Prince Reservoir" Transfer to Thruston Pipeline (1,515 AF)	355.20	Arkansas River	Aug. 12, 1889
Thurston Pipeline	25	Thurston Lake (Not Tributary)	July 15, 1969

3.5. **Other water rights**: In addition to its original direct flow and storage rights discussed above, the FLCC owns and/or operates several additional water rights and water supply agreements, summarized in Table 4 below. **Table 4 Other Water Rights and Water Supply Agreements**

Identification of Water Right	Case No.	Amount	Storage/Source
Amity Mutual Irrigation Company – Queen Reservoir	80CW019 89CW076	5,483 AF	Queens Reservoir Horse Creek Reservoir Adobe Creek Res. John Martin Reservoir
John Martin Reservoir Change	79CW160 79CW161	Cumulative 5,000 AF	Horse Creek Reservoir

	80CW051		Adobe Creek Res. Queen Reservoir
Change in Diversion Point	79CW178	933 cfs	Horse Creek Reservoir Adobe Creek Res. John Martin Reservoir
Winter Water Storage Program	84CW179	38,160 AF of the first 100,000 AF and 38.16% of all water over 103,106 cfs	Horse Creek Reservoir Adobe Creek Res. Thurston Reservoir
John Martin Reservoir Exchange[2]	90CW047	Absolute flow rate 544 cfs, annual limit 15,288.95 AF Conditional: 606 cfs	John Martin Reservoir
John Martin Operating Plan 1980[1]	Ark. Riv. Compact Admin, Apr. 24, 1980	20,000 AF	John Martin Reservoir
Fryingpan-Arkansas Project[1]		Varies depending on hydrological conditions	
Informal Basis[1]	Periodically the FLCC works with other area canals to increase water availability to shareholders		

4. <u>Historical use and detailed description of proposed change</u>: The 9,957 Irrigation Shares were used historically to irrigate approximately 6,400 acres on 33 parcels on five farms known as the Fish Hatchery Farm, the Big R Farm, the Dairy Farm, the Wertz Farms, and the Mathis Golden Farm (collectively, the "Five Farms"). The Five Farms are shown on **Exhibit F**. The historically irrigated acreage on the Five Farms is referred to collectively, herein, as the "Historically Irrigated Acreage." The Five Farms (and the Historically Irrigated Acreage) are located near the City of Las Animas in Bent County, Colorado, north of the Arkansas River and upstream of the John Martin Reservoir Dam. Utilities will implement a Collaborative Water Sharing Program on the Five Farms. To this end, Utilities and the owners and/or operators of the Five Farms have or will install center pivot sprinklers on the Five Farms and the parcel corners (or other irregularly shaped fields) will be dried up or irrigated with other sources of water. Utilities is the owner of the Fish Hatchery Farm and all 759 FLCC shares historically used to irrigate the Fish Hatchery Farm. Utilities will install center pivot sprinklers on the Fish Hatchery Farm and will continue to use the 482 Unchanged Shares for irrigation on the Fish Hatchery Farm. Utilities seeks to change the type and place of use of its other 277 FLCC shares used historically to irrigate the Fish Hatchery Farm. Utilities is not the owner of the Big R Farm, the Dairy Farm, the Wertz Farms, or the Mathis Golden Farm. Utilities has entered into

[2] Utilities is not changing any interest in these rights.

agreements with the owners of these farms, pursuant to which, the owners have installed center pivot sprinklers and Utilities has acquired the portion of the FLCC shares associated with the lands that will no longer be irrigated under the center pivot sprinklers. The Big R Farm was historically irrigated with 1,963 FLCC shares. Utilities seeks to change the type and place of use of 493 FLCC shares used historically to irrigate the Big R Farm. The Dairy Farm was historically irrigated with 5,790 FLCC shares. Utilities seeks to change the type and place of use of 1,667 FLCC shares used historically to irrigate the Dairy Farm. The Wertz Farms were historically irrigated with 707 FLCC shares. Utilities seeks to change the type and place of use of 293 FLCC shares used historically to irrigate the Wertz Farms. The Mathis Golden Farm was historically irrigated with 465 FLCC shares. Utilities seeks to change the type and place of use of 80 FLCC shares used historically to irrigate the Mathis Golden Farm. No change in point of diversion is requested. 4.1. **Change in type of use**: The Subject Shares may be used, reused, successively used, and used to extinction by Utilities directly, after storage, and/or by exchange, using any structure now existing or hereafter constructed that is lawfully available for use by Utilities, for all beneficial uses, including without limitation municipal, industrial, domestic, agricultural, commercial, irrigation, stock watering, fire protection, recreation, in-reservoir fish and wildlife preservation and propagation, recharge of aquifers, replacement of historical return flows, replacement of depletions resulting from the use of water from other sources, as a source of water for relinquishment pursuant to C.R.S. § 37-90-137(9)(b), and all augmentation purposes ("Utilities' New Uses"). In addition to Utilities' new uses, Utilities may lease the water attributable to the Subject Shares to irrigators in the Lower Arkansas Valley, as well as leaseback for environmental, recreational, and municipal uses. Utilities may store water attributable to the Subject Shares in or exchange such water to the structures identified in **Exhibit G**, and any other point of storage or diversion now existing or hereafter constructed and available for use by Utilities. Any such exchange will be made pursuant to existing or future administratively or judicially approved plans for substitution and exchange that allow for the exchange of water attributable to the Subject Shares. The water attributable to the Subject Shares will be usable as Temporary Use Agreement Water under the decrees entered in Division 2 Case Nos. 05CW96, 07CW122, 16CW3056, 19CW3052 and 19CW3053 provided that Utilities complies with the applicable terms and conditions of those decrees. Similarly, the Subject Shares will be usable as Temporary Use Agreement Water under any future decree that authorizes the use of Temporary Use Agreement Waters, provided that Utilities complies with the applicable terms and conditions of those future decrees. 4.2. **Change in place of use**: The Subject Shares may be used for Utilities' New Uses within Utilities' service area as it exists now and as it may exist in the future, including any areas served by Utilities by extraterritorial agreement or other contract; for replacement of depletions on Fountain Creek accruing between the City of Colorado Springs and the confluence of Fountain Creek and the Arkansas River; and in any location within the Arkansas River Basin for which water may be delivered by Utilities for augmentation, sale, lease, or other uses allowed by law. 4.3. **Use, reuse, and successive use to extinction**: Provided that Utilities replaces the historical return flows in accordance with the decree to be entered in this case, Utilities will use, reuse, and successively use to extinction the fully consumable portion of water attributable to the Subject Shares. 4.4. **Location of the historical use and diversion records**: In

accordance with § 37-92-302(2)(a), C.R.S., **Exhibit F** shows the approximate location of the Five Farms. **Exhibit H** summarizes records of the actual diversions of the water rights owned or controlled by the FLCC described in paragraphs 3.1 through 3.5 above to the extent such records exist. 4.5. **No change in point of diversion**: Utilities does not seek any change in the point of diversion of the Subject Shares. **5. Future operations and replacement of historical return flows**: Utilities will replace to the Arkansas River system in amounts, times, and locations necessary to prevent injury to Colorado water rights and violations of the Arkansas River Compact, the historical return flows associated with the Subject Shares. Utilities will replace the historical return flows with water available to the Subject Shares or with any other fully consumable water available to Utilities for that purpose, including, but not limited to, those sources of fully consumable water shown in **Exhibit I**, which includes, but is not limited to, any sewered and non-sewered reusable return flows described in Case Nos. W-4376, 84CW202, 84CW203, 86CW118, 89CW36, 05CW96, 15CW3001, 15CW3002 and 16CW3056 (Water Div. 2). To the extent that Utilities uses these other sources of water to replace lagged groundwater return flows, Utilities may retain and fully consume an equal amount of water attributable to the Subject Shares, subject to evaporation and transit losses as assessed by the Division Engineer. 5.1. **Share delivery from FLCC rotation**: Utilities shall continue to take delivery of direct flow water and storage water, including Winter Water Storage Program deliveries, associated with the Subject Shares in rotation in the same manner as other FLCC shareholders; provided that, when the FLCC is diverting water at a high flow rate, the FLCC may request that Utilities take delivery of its *pro-rata* deliveries on a continuous basis and that this water will be accounted for as part of Utilities' *pro-rata* deliveries. Utilities deliveries shall be in accord with the June 12, 2024, FLCC Board of Directors' Approval. 5.2. **Places of delivery**: Utilities may take delivery of water attributable to the Subject Shares at the following locations, and upon such delivery, may store such water under the FLCC, deliver such water to the Arkansas River for subsequent exchange, or store such water in John Martin Reservoir (subject to the approval of the Arkansas River Compact Administration): 5.2.1. Fish Hatchery Augmentation Station: To be constructed generally in all or portions of Sections 23, 24, 25, and 26 of T22S, R53W of the 6th P.M. in Bent County, CO. 5.2.2. County Road 8 Augmentation Station: To be constructed generally in the NE1/4 of the NW1/4 of Section 5, T23S, R52W of the 6th P.M. in Bent County, CO. 5.2.3. Gageby Creek Farm 36 Augmentation Station (WDID 6701006) (Station ID ARF125CO): Located in the SE1/4 of the SW1/4 of Section 14, T22S, R51W of the 6th P.M., in Bent County, Colorado. UTM Coordinates: 666578m E, 4221815m N (GPS) in NAD 1983 UTM Zone 13N. 5.2.4. Gageby Creek Farm 27 Augmentation Station (WDID 6701002) (Station ID ARF126CO): Located in the NW1/4 of the SE1/4 of Section 26, T22S, R51W of the 6th P.M., in Bent County, Colorado. UTM Coordinates: 666870m E, 4219168m N (GPS) in NAD 1983 UTM Zone 13N. 5.2.5. Springs Utilities Gageby Creek Augmentation Station: To be constructed generally in the NW1/4 of the SW1/4 of Section 1, T22S, R51W of the 6th P.M in Bent County, CO. 5.2.6. Adobe Creek Reservoir (WDID 1703546): Located in portions of Sections 27, 28, 29, 32, 33, and 34 of T20S, R52W, and in portions of Sections 3, 4, 5, 6, 7, 8, 9, 17, and 18 of T21S, R52W of the 6th P.M., in Kiowa and Bent Counties, Colorado. UTM Coordinates for dam: 650655.6m E, 4233245.9m N (GPS) in NAD 1983 UTM Zone 13N. 5.2.7. Fish Hatchery Storage Facility: To be constructed generally in all or portions

of Sections 23, 24, 25, and 26 of the T22S, R53W of the 6th P.M., in Bent County, CO. 5.2.8. Supplemental Delivery Locations: Any other location on the main stem of the Arkansas River or its tributaries at or above John Martin Dam and below the headgate of the FLCC Main Canal where the FLCC is capable of delivering water. **6. Revegetation and weed management**: Utilities requests that the revegetation and noxious weed management procedures prescribed by the Bent County IGA and the Authorized Water Development Project Certification issued by Bent County for this change of water rights be incorporated into the decree to be entered in this case. **7. Names and addresses of owners or reputed owners of 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**: 7.1. Fish Hatchery Farm: The City of Colorado Springs, acting by and through its enterprise, Colorado Springs Utilities, 121 South Tejon St., Colorado Springs, Colorado 80903. 7.2. Big R Farm: Big R. Properties, LLC., 100 Big R St., Pueblo, Colorado 81001. 7.3. Dairy Farm: NAF Dairy Manifold, LLC, c/o C&A Companies, 385 Inverness Parkway, Suite 140, Englewood, Colorado 80112 7.4. Wertz Farm: Caleb Wertz & Zaiden Wertz, 25093 County Rd. LL, McClave, Colorado 81057 7.5. Wertz Farm: Thaddeus Wertz & Sierra Wertz, 15030 US HWY 50, Las Animas, Colorado 81054. 7.6. Mathis Golden Farm: Mathis Golden Farm, LLC, 1820 Ghost Dance Cir., Castle Rock, Colorado 80108. 7.7. Fish Hatchery Augmentation Station: The City of Colorado Springs, acting by and through its enterprise, Colorado Springs Utilities, 121 South Tejon St., Colorado Springs, Colorado 80903. 7.8. County Road 8 Augmentation Station: Big R. Properties, LLC., 100 Big R St., Pueblo, Colorado 81001. 7.9. Gageby Creek Farm 36 Augmentation Station: Arkansas River Farms, LLC, 1400 16th Street, Suite 320, Denver, CO 80202; 7.10. Gageby Creek Farm 27 Augmentation Station: Arkansas River Farms, LLC, 1400 16th Street, Suite 320, Denver, CO 80202; 7.11. Springs Utilities Gageby Creek Augmentation Station: Karney Land & Cattle, Inc., 34808 Road 17, Las Animas, Colorado 81054.7.12. Adobe Creek Reservoir: 7.12.1. U.S. Department of Interior, Bureau of Land Management, Colorado State Office, 2850 Youngfield St., Lakewood, CO 80215. 7.12.2. Colorado State Land Board, 1127 Sherman St., STE. 300, Denver, CO 80203. 7.12.3. Wyckoff Land & Cattle, 9990 Hwy. 96, Arlington, Colorado 81021. 7.12.4. Beverly D. Spady, 517 Belleview, La Junta, Colorado 81050. 7.12.5. CW Loveridge, 710 Vandehei Ave., Cheyenne, Wyoming 82009. 7.12.6. Elda E. Stavely, 200 Main St., Haswell, Colorado 81045. 7.12.7. VB Ballard/Southern Family LLC, 2001 North Madison, Hutchinson, Kansas 67502. 7.12.8. Leonard Ballard Schiff Trust & Ellen M. Schiff, P.O. Box 913, Hutchinson, Kansas 67504. 7.12.9. Jeris A. Danielson, 517 Belleview Ave., La Junta, Colorado 81050. 7.12.10. Michael Spady, 14265 Hwy. 50, Las Animas, Colorado 81054. 7.12.11. William R. Dunlap, 1002 N Lyon, Sanda Ana, California 92701. 7.12.12. J.B. Dean et al, c/o Mary Dean, 2 Westwood Rd., Santa Cruz, California 95060. 7.12.13. Bryan Borgus, 5659 S Scarlet Oak Ter., Homosassa Springs, Florida 34446. 7.12.14. Eldon Borgus, 203 Portageville Rd., Hunt, New York 14846 7.12.15. Mark R. Borgus, 970 Savage Rd., Churchville, New York 14428. 7.12.16. Craig R. Borgus, 337 6th Way, Interlachen, Florida 32148. 7.12.17. Todd Borgus, 67 Stone Hill Ln., North Ferris Burgh, Vermont 05473. 7.12.18. Glenda Chemelli, P.O. Box 418, Homosassa Springs, Florida 34447. 7.12.19. Charlotte Terrell et al, c/o Cheryl A. Griffith, 3506 Cardinal Dr. SW, Warren, Ohio 44481. 7.13. Fish Hatchery Storage Facility: The City of Colorado Springs,

acting by and through its enterprise, Colorado Springs Utilities, 121 South Tejon St., Colorado Springs, Colorado 80903. 7.14. Horse Creek Reservoir: 7.14.1. U.S. Department of Interior, Bureau of Land Management, Colorado State Office, 2850 Youngfield St., Lakewood, CO 80215. 7.14.2. Colorado State Land Board, 1127 Sherman St., STE. 300, Denver, CO 80203. 7.14.3. Timberlake Grazing Association, P.O. Box 151 Cheraw, Colorado 81030. 7.14.4. Fort Lyon Canal Company, 750 Bent Ave., Las Animas, Colorado 81054. 7.14.5. Minnie Glasnapp et al, c/o John F. Knipp, 709 St. Andrews, Witchita, Kansas 67230 7.15. Adobe Creek Reservoir: Fort Lyon Canal Company, 750 Bent Ave., Las Animas, Colorado 81054. 7.16. Thurston Reservoir: Fort Lyon Canal Company, 750 Bent Ave., Las Animas, Colorado 81054. 7.17. Pueblo Reservoir: U.S. Department of Interior, Bureau of Reclamation, Great Plains Region, P.O. Box 36900, Billings, MT 59107-6900. 7.18. John Martin Reservoir: U.S. Army Corps of Engineers, Reservoir Manager, 29955 County Road 25.75, Hasty, Colorado 81044; Caddoa Sands LLC, 2010 Fox Mountain Point, Colorado Springs Colorado 80906. 7.19. Queens (Neeskah) Reservoir: 7.19.1. U.S. Department of Interior, Bureau of Land Management, Colorado State Office, 2850 Youngfield St., Lakewood, CO 80215. 7.19.2. Colorado Parks and Wildlife, 1313 Sherman St., 6th Floor, Denver, Colorado 80203 7.19.3. Colorado State Land Board, 1127 Sherman St., STE. 300, Denver, CO 80203. 7.19.4. Ellenberger Limited Partnership LLLP, 36106 CR 11.5, Lamar, Colorado 81052. 7.19.5. Gagnon Family Limited Partnership, 325 Ivanhoe St., Denver, Colorado 80220. 7.19.6. Greg S. Spitzer, P.O. Box 246, Wiley, Colorado 81092. 7.19.7. Wootten Investments LTD, P.O. Box 1258, Lamar, Colorado 81052. 7.20. Lake Meredith: Lake Meredith Reservoir Company, 331 Main St., Ordway, Colorado 81063. 7.21. Lake Henry: Lake Henry Reservoir Company, 331 Main St., Ordway, 81063. 7.22. Haynes Creek Reservoir: 7.22.1. The City of Pueblo, Colorado, a municipal corporation, acting by and through the Board of Water Works of Pueblo, Colorado, 319 West Fourth St., Pueblo, Colorado 81003. 7.22.2. The City of Aurora, Colorado, acting by and through its Utility Enterprise, 15151 East Alameda Pkwy., Aurora, Colorado 80012. 7.22.3. The City of Colorado Springs, acting by and through its enterprise, Colorado Springs Utilities, 121 South Tejon St., Colorado Springs, Colorado 80903. 7.22.4. The City of Fountain Water, Wastewater, and Utility Enterprise, 116 South Main St., Fountain, Colorado 80817. 7.22.5. The Pueblo West Metropolitan District, 356 South McCulloch Blv., Pueblo West, Colorado 81007. 7.22.6. Southeastern Colorado Water Activity Enterprise, 31717 United Ave., Pueblo, Colorado 81001. **8. Significant water development activity**: Pursuant to § 37-92-302(3.5), Applicant shall give notice of the contents of this Application by mail within ten days after filing to the: 8.1. Bent County Board of County Commissioners, 725 Bent Ave., P.O. Box 350, Las Animas, CO 81054; 8.2. Las Animas School District, 1021 2nd St., Las Animas, Colorado 81054; 8.3. Bent Conservation District, 760 Bent Ave., Las Animas, Colorado 81054; 8.4. Southeastern Colorado Water Conservancy District, 31717 United Ave., Pueblo, Colorado 81001. 8.5. Lower Arkansas Valley Water Conservancy District, 801 Swink Ave., Rocky Ford, Colorado 81067; and 8.6. The Secretary of the Fort Lyon Canal Company, 750 Bent Ave., Las Animas, CO 81054. **WHEREFORE**, the City of Colorado Springs, acting by and through its enterprise, Colorado Springs Utilities respectfully requests that the Court enter a decree approving this Application for Change of Water Rights and granting all such other and further relief, whether in law or in equity, as the Court may determine necessary of desirable.

CASE NO. 2025CW3016; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.

CASE NO. 2025CW3017; JAMES C. OZBURN AND DELIA L. OZBURN, 11150 E. Hwy 24, Falcon, CO 80831 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Chris D. Cummins and W. James Tilton of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921 (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and Plan for Augmentation

EL PASO COUNTY

II. James C. Ozburn and Dalia L. Ozburn (hereafter "Applicants") seek to quantify the Denver Basin groundwater underlying the Applicants' property, as defined below, and approval of a plan for augmentation for the use of a not-nontributary Denver aquifer well for commercial uses at Applicants' property, which is the Falcon Meadow Campground. **III.** Property Description: Applicants' property is located at 11150 US Highway 24, Falcon, CO 80831, located in the NE¼ NW¼ of Section 13, Township 13 South, Range 65 West of the 6th P.M., in El Paso County, Colorado, also known as the Falcon Meadow Campground ("Applicants' Property"). See **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.) Applicants' Property is approximately 16.91 acres in size. Applicants' Property includes two adjacent properties, with one bisected by property owned by a railroad company that cuts through a portion of the northern property, shown on **Exhibit B**. Existing Well: There is one well currently constructed on Applicants' Property with Division of Water Resources Permit No. 330829, UTM being Easting 532985, Northing 4308448, whose location is indicated on **Exhibits A and B**. This well is permitted for drinking and sanitary purposes for a commercial business, pursuant to § 37-92-602(1)(c), C.R.S. The well is currently permitted to pump up to one (1) acre foot annually for the permitted uses on the property. This well will be re-permitted following this issuance of the decree in this case to allow additional water from this well for the uses described above, and for the addition of residential indoor use. Water Source: Not-nontributary. The groundwater to be withdrawn from the Denver aquifer underlying Applicants' Property is not-nontributary. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation requirements for wells in the Denver aquifer require the replacement of actual stream depletions and the requirement for wells in the Arapahoe aquifer require replacement of four percent of the amount of water withdrawn on an annual basis. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying Applicants' Property is nontributary. **IV.** Statement of Plan for Augmentation: Applicants seek approval of a plan for augmentation to permit using the not-nontributary Denver aquifer underlying Applicants' Property to supply water for drinking, sanitary, and domestic type uses associated with their business, the Falcon Meadow Campground. These domestic type uses include use in multiple bathrooms and showers, washing machines, sinks for cleaning, and for drinking water. These domestic type uses would occur on site at established facilities and via recreational vehicle (RV) hookups at designated RV sites. The established facilities on the property include multiple bathroom and shower sites within the campground to be used by patrons, a store with a public

bathroom, and an adjoining space that could serve as an employee residence. The majority of these commercial uses are akin to in-house uses and so are similarly treated. Such use of the not-nontributary Denver aquifer well, during the pumping life of the well, will be augmented by septic return flow credits from Woodmen Hills Metropolitan District, which handles all of the Falcon Meadow Campground's waste and wastewater needs. Post-pumping depletions being provided by pumping from the nontributary Laramie-Fox Hills aquifer for any injurious post-pumping depletions. Augmented Structures. The structures to be augmented under this plan for augmentation are the single existing well on Applicants' Property, or any replacement wells. The existing well is constructed to the not-nontributary Denver aquifer, with a permit to pump up to one (1) annual acre-foot. This well will be re-permitted following the issuance of the Decree in this case to allow pumping of up to 4.903 acre feet annually, maximizing the potential annual commercial uses on Applicants' Property based on the results of Applicants' preliminary engineering report. **Exhibit C**. Applicant will be entering into a lease for wastewater return flow credits from Woodmen Hills Metropolitan District. During the anticipated 100-year pumping term of this augmentation plan, depletions resulting from the pumping of the Applicants' well will be replaced by septic return flows resulting from the commercial uses of water by patrons of the Falcon Meadow Campground, which have traditionally and will continue to be received and treated by Woodmen Hills Metropolitan District ("Woodmen Hills"). Woodmen Hills has agreed to lease to Applicants 1.6 annual acre feet of return flows from the discharge of reusable effluent from their treatment plant each year. This annual 1.6 acre feet leased will cover Applicant's annual return flow obligations. Depletions. Applicants' consultant has determined that maximum stream depletions over the 100-year pumping period for the not-nontributary Denver aquifer amounts to approximately 31.94% of pumping. **Exhibit C**. Maximum annual depletions from the pumping of 4.903 acre feet annually are therefore 1.57 acre feet in year 100. *Id*. Should pumping be less than 4.903 acre-feet annually, resulting depletions and required replacements will be correspondingly reduced. Augmentation of Depletions During Pumping. The calculated total depletions during pumping will be replaced by return flows from Woodmen Hills via leased return flows. The breakdown of the requested 4.903 annual acre feet includes 0.299 acre feet for laundry and restroom facilities open to customers, and 0.898 acre feet for showers and additional restrooms on site. *See* **Exhibit C**. There is an additional 0.3 acre feet for the indoor use for the on-site residence, management office, and store. *Id*. There are 57 RV sites at the Falcon Meadow Campground, and 14 tent sites. The RV sites may use up to 2.708 acre-feet a year, and the tent sites an estimated 0.698 acre-feet annually. *Id*. Regardless of actual annual uses at the Falcon Meadow Campground, and wastewater delivered to Woodmen Hills, Applicants will lease credit for 1.6 annual acre feet of return flows, in excess of the 1.57 acre feet necessary to replace the calculated maximum depletions. *See* **Exhibit C**. Thus, during pumping, stream depletion replacement requirements will be met by leased return flows from Woodmen Hills. Augmentation of Post Pumping Depletions For the replacement of post-pumping depletions which may be associated with pumping of not-nontributary water on Applicants' Property the Applicants will reserve the entirety of the Laramie-Fox Hills aquifer. The amount of nontributary Laramie-Fox Hills aquifer groundwater reserved may be reduced as may be determined through this Court's retained jurisdiction as described in this decree. If the Court, by order, reduces the Applicants' obligation to account for

and replace such post-pumping depletions for any reason, it may also reduce the amount of Laramie-Fox Hills aquifer groundwater reserved for such purposes, as described herein. Applicants also reserve 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, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. Pursuant to C.R.S. § 37-90-137(9)(b), no more than 98% of water withdrawn annually from a nontributary aquifer shall be consumed.

CASE NO. 202025CW3018; Previous Case No. 15CW3068 – CITY OF FOUNTAIN, COLORADO, c/o Dan Blankenship, Utilities Director, 116 South Main Street, Fountain CO 80817 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Andrea L. Benson and Gilbert Y. Marchand, Jr., Alperstein & Covell P.C., 2299 Pearl Street, Suite 400-C, Boulder, CO 80304, (303) 894-8191)
Application for Finding of Reasonable Diligence
EL PASO AND PUEBLO COUNTIES

2. Name of Water Rights: A. Fountain Creek Exchange to Wells and Reservoir; B. Exchange to Pueblo Reservoir. **3.** Description of conditional water rights, with required information from prior decree. Date of original decree: April 2, 2019; Case No: 2015CW3068 ("Original Decree"); Court: Water Court, Water Division No. 2. This is the first diligence Application for these Exchanges. **4.** Fountain Creek Exchange to Wells and Reservoir: A. Sources of Exchange Water. The sources of water for the Fountain Creek exchanges described herein are Dr. Rogers Ditch Water Right depletion credits delivered directly to Fountain Creek through the Augmentation Station to be located on the Dr. Rogers Ditch at or near its headgate, in the N1/2 of Section 23 or 24, Township 17 South, Range 65 West of the 6th P.M., in El Paso County ("Augmentation Station"), reusable return flows from use of the depletion credits in Fountain's treated water distribution system delivered at the exchange-from locations described herein, and releases of depletion credits and reusable return flows from Fountain Creek Reservoir, which reservoir will be located along Fountain Creek generally in portions of Sections 7, 18 and 19, Township 16 South, Range 65 West of the 6th P.M. in El Paso County. B. Description of Exchanges. Depletion credits and reusable return flows may be exchanged to the points of depletion of the Wells, and to Fountain Creek Reservoir. C. Appropriation Date. December 29, 2015. D. Amount: The maximum rate of exchange is 11 cfs, conditional, provided, however that this exchange rate of Dr. Rogers Ditch Water Right depletion credits and reusable return flows is included within the 11 cfs exchange rate decreed in Case Nos. 2001CW146 and 85CW110. Dr. Rogers Ditch Water Right depletion credits and reusable return flows, including those released from storage, will be exchanged to the exchange-to locations on Fountain Creek decreed in the Original Decree at the lesser of the rate at which such depletion credits and reusable return flows are delivered to Fountain Creek for exchange or 11 cfs. E. Exchange reach and exchange-from and exchange-to points. i. Downstream Terminus. The downstream terminus is the Augmentation Station, described above in paragraph 4(A). ii. Upstream Terminus. The upstream terminus is a point located on Fountain Creek in the NE1/4 of Section 25, Township 15 South, Range 66 West of the 6th P.M., in El Paso County at the point where the Widefield Aquifer depletes or discharges to Fountain Creek. iii. Jimmy Camp Creek.

The exchange reach includes Jimmy Camp Creek from an upstream terminus point on Jimmy Camp Creek located in the SW1/4 of Section 33, Township 15 South, Range 65 West of the 6th P.M., and downstream therefrom to the confluence of Jimmy Camp Creek and Fountain Creek in the NW1/4 of Section 8, Township 16 South, Range 65 West of the 6th P.M. iv. Wells Located within Exchange Reach. The points at which certain Fountain wells deplete Fountain Creek and Jimmy Camp Creek, which are located within the exchange reach at the locations described in Table 8 of the Original Decree and attached hereto. Replacement wells for one or more wells may also be constructed in the future, and this exchange may be operated to the point of depletion of such replacement Wells within the Exchange Reach. v. Storage Reservoir Within the Exchange Reach. The Fountain Creek Reservoir described in paragraph 4(A) is within the Exchange Reach, and this exchange may be operated to exchange to the surface diversion facility for Fountain Creek Reservoir. vi. Wastewater Plants Within the Exchange Reach. The LFMSDD wastewater treatment plant, the outfall of which is located in Section 4, Township 17 South, Range 65 West of the 6th P.M. in El Paso County, is within the Exchange Reach. The Fountain Sanitation District Wastewater Treatment Plant, the outfall of which is located in the NW1/4 of Section 17, T. 16 S., R. 65 W. of the 6th P.M. in El Paso County, is also within the Exchange Reach. This exchange may be operated to exchange sewered reusable return flows from such wastewater plants to the Wells or to Fountain Creek Reservoir. Table 9 of the Original Decree and attached hereto identifies the Exchange-From and Exchange-To locations. F. Uses. Water may be exchanged from the exchange-from points to the exchange-to points identified in Table 9. Depletion credits and reusable return flows exchanged to Fountain Creek Reservoir will retain their "fully consumptive" character and may be used for all municipal purposes, including augmentation, replacement and exchange, and further reuse and exchange to extinction, pursuant to and in accordance with the terms of the Original Decree. **5.** Exchange to Pueblo Reservoir. A. Sources of Exchange Water. The sources of water for the Pueblo Reservoir exchange described herein are Dr. Rogers Ditch Water Right depletion credits delivered directly to Fountain Creek through the Augmentation Station described in paragraph 4(A), reusable return flows from use of the depletion credits in Fountain's treated water distribution system delivered at the exchange-from locations described herein, and releases of depletion credits and reusable return flows from Fountain Creek Reservoir. B. Description of Exchange. When and to the extent that depletion credits and reusable return flows are available in Fountain Creek and are not exchanged under the Fountain Creek exchange or used for augmentation when delivered to Fountain Creek, or when such depletion credits and reusable return flows are released from storage in Fountain Creek Reservoir, the water may be exchanged to storage in Pueblo Reservoir after delivery to the confluence of Fountain Creek with the Arkansas River subject to the terms and conditions of the Original Decree. Water from the depletion credits will be delivered to Fountain Creek through the Augmentation Station described in paragraph 4(A). In addition, depletion credits that are stored in Fountain Creek Reservoir may be released from that reservoir and exchanged to Pueblo Reservoir. Reusable return flows will accrue to Fountain Creek as non-sewered return flows or will be delivered as sewered return flows, or releases from Fountain Creek Reservoir. C. Appropriation Date. December 29, 2015. D. Exchange Rate.The maximum exchange rate to Pueblo Reservoir for the depletion credits and reusable return flows is

19 cfs, conditional, provided, however, that this exchange rate of Dr. Rogers Ditch Water Right depletion credits and reusable return flows is included within the 19 cfs exchange rate decreed in Case No. 2001CW108. Dr. Rogers Ditch Water Right depletion credits and reusable return flows, including those released from storage, will be exchanged to Pueblo Reservoir at the lesser of the rate at which such credits and return flows are delivered to the confluence of Fountain Creek and the Arkansas River for exchange or 19 cfs. E. Exchange Reach. i. Downstream Terminus. The downstream terminus of the exchange reach is the confluence of Fountain Creek and the Arkansas River, in the NE 1/4 of Section 6, Township 21 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. ii. Upstream Terminus. The upstream terminus of the exchange reach is located on the Arkansas River at Pueblo Reservoir in the S1/2 of Section 36, Township 20 South, Range 66 West of the 6th P.M. in Pueblo County, Colorado. F. Uses. Dr. Rogers Ditch Water Right depletion credits and reusable return flows that are exchanged to storage in Pueblo Reservoir may be released if required for augmentation to the Arkansas River, or delivered from storage in Pueblo Reservoir back to Fountain via the Fountain Valley Conduit and/or the Southern Delivery Pipeline system, and/or other pipeline system. Dr. Rogers Ditch Water Right depletion credits and reusable return flows exchanged to storage in Pueblo Reservoir will retain their "fully consumptive" character and may be used for all municipal purposes, including augmentation, replacement and exchange, and further reuse and exchange to extinction, pursuant to and in accordance with the terms of the Original Decree. **6.** Detailed outline of what has been done toward completion or for completion of the appropriations and application of water to beneficial use as conditionally decreed, including expenditures: A. During this diligence period, Fountain has continued to improve, operate and maintain its integrated water supply system, of which the exchanges described herein are a part. To enable Fountain to more effectively provide water service to its existing and future customers, it has expended over $40,000,000 during this diligence period for capital infrastructure investment to construct, repair and improve its wells, water system infrastructure and related infrastructure and projects that are part of the efficiency, operation and maintenance of its integrated water supply system. Among other things, during this diligence period, Fountain has undertaken costly and extensive efforts to decontaminate wells that were found to contain perfluoralkyl and polyfluoroalkyl substances (PFAS) and has actively participated in legislative hearings regarding regulation of PFAS. These efforts have allowed Fountain to continue to provide reliable water service to its existing customers and to plan for anticipated future demand. B. The exchanges decreed in the Original Decree are important components of Fountain's integrated water supply system. Fountain has in place infrastructure as well as measuring, accounting, recordkeeping and reporting systems required to operate the exchanges subject to the terms and conditions of the Original Decree. During this last diligence period in the summer of 2023, flooding destroyed the Dr. Rogers ditch and related structures. Fountain has been investigating reconstruction and replacement of the structures, including the Augmentation Station, to allow it to continue to measure and operate these exchanges. Fountain met with Division 2 staff and landowners to ensure approval of location and type of structures and protections they will want to see for the rebuild. Those discussions are ongoing. C. Fountain has defended its water rights, including the exchanges decreed in the Original Decree, against applications filed by others in cases in which Fountain

determined that injury to its water rights could occur in the absence of appropriate protective terms and conditions. Fountain has also prosecuted applications for new water rights that will be used in conjunction with the exchanges decreed in the Original Decree. During this diligence period, Fountain has expended approximately $230,946.38 for costs and attorney fees in applications for water rights used in Fountain's integrated water supply system and for opposition to water court applications filed by others, in order to protect and defend its water rights, and in other matters related to the development and utilization of Fountain's water rights and water system infrastructure. During this diligence period, Fountain has also expended approximately $549,360.75 in water resource engineering fees. **7.** Names and addresses of owners of the land upon which any new diversion structure or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored. Fountain intends to construct a new Augmentation Station at the location described in paragraph 4(A) above. The landowners on which that Augmentation Station will or may be constructed are: Aggregate Industries Land Company, 6211 Ann Arbor Road, Dundee, MI 48131 and Frost Livestock Co., 18350 Hanover Road, Fountain, CO 80817-9548. WHEREFORE, Applicant City of Fountain, having demonstrated that it has steadily applied effort to complete the appropriation of the conditional exchanges decreed in the Original Decree in a reasonably expedient and efficient manner under all the facts and circumstances, respectfully requests that this Court find that it has exercised reasonable diligence in completing the appropriations and putting to beneficial use the conditional exchanges decreed in the Original Decree, and that said conditional decree for these exchanges should be continued for another six years, or such period as may otherwise be permitted by law.

CASE NO. 2025CW3019; Ross II Community Well Association Inc., 12103 Aronel, San Antonio, TX 78231 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Ryan Jarvis and Laurel Quinto of JVAM PLLC, 305 Gold Rivers Ct, Ste 200, Basalt CO 81621, (970) 922-2122)

Application to Add Supplemental Augmented Structure Under Plan for Augmentation

LAKE COUNTY

Summary of Application: In Case No. 98CW176, Applicant's predecessor in interest adjudicated a plan for augmentation to augment depletions from a central well known as Ross II Well, which was intended to serve 16 residential tracts. Applicant is now the owner of Ross II Well, the plan for augmentation decreed in Case No. 98CW176, and the Twin Lake Reservoir and Canal Company share pursuant to which replacement water is provided under the plan for augmentation. Ross II Well is the only source of water for the tracts within the Ross II Subdivision and it is no longer producing sufficient water to serve the subdivision. Applicant must drill one or more additional wells in order to provide sufficient water to the tracts within the subdivision. This application seeks approval to add one or more wells as augmented structures under the plan for augmentation, without changing any terms or conditions of the plan, including the augmentation source, and diversion, depletion and use limitations. Claim for relief: Name of structure to be augmented: Ross II Well Field. Is structure decreed: No. Location: One or more wells may be located anywhere within the Ross II Subdivision and the Ross I, Part A Recreation Area, all within the NE1/4 of Sec 15 T11S R80W 6th PM, more particularly depicted and

described on **Exhibit A.1** and **Exhibit A.2** 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.) Owner of land: All persons identified on Exhibit B on file with the Court. Remarks: Applicant does not claim a water right for the Ross II Well Field nor does it seek to change any terms of the plan for augmentation decreed in Case No. 98CW176. The Ross II Well and Ross II Well Field shall continue operating under all terms and conditions of plan for augmentation decreed in Case No. 98CW176, including the source of augmentation water and diversion, depletion and use limitations. All terms and conditions contained in the plan for augmentation shall remain unchanged and cumulative use of Ross II Well and Ross II Well Field shall be within the limits set forth in the plan for augmentation decreed in Case. No. 98CW176.

CASE NO. 2025CW3020; (Prior Case Nos. 1997CW162, 2005CW92, 2012CW86, 2018CW12) TIFFANY W. LOVETT c/o Timothy C. Sanford, MFO Management Co., 111 E. Court St., Ste. 3D, Fint, MI 48502 Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Karl D. Ohlsen and Beth Ann J. Parsons, Carlson, Hammond & Paddock, LLC, 1900 N. Grant Street, Suite 1200, Denver, Colorado 80203, Phone (303) 861-9000)

Amended Application For Finding Of Reasonable Diligence

CHAFFEE COUNTY

2. **Name of Structures:** A. Olson Pond No. 1 (WDID 1103208). B. Olson Pond No. 2 (WDID 1103209). **3. Description of conditional water rights:** A. Date of Original Decree: December 13, 1999, Case No. 1997CW162, District Court, Water Division No. 2. B. List of Subsequent Diligence Decrees: Case Nos. 2005CW92, 2012CW86, 2018CW12, District Court, Water Division No. 2. C. Location: Maps depicting the location of Olson Pond No. 1 and Olson Pond No. 2 are attached to application as **Exhibit 1**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) i. Olson Pond No. 1 Dam: In the SW1/4 of the SE1/4 of Section 26, Township 13 South, Range 79 West, 6th P.M., Chaffee County, Colorado, the outlet of which is located approximately 2,450 feet from the east section line and 600 feet from the south section lone of said Section 26. UTM Location: 396669E, 4304620 N. ii. Olson Pond No. 2 Dam: In the SW1/4 of the SE1/4 of Section 26, Township 13 South, Ranch 79 West, 6th P.M., Chaffee County, Colorado, the outlet of which is located approximately 2,400 feet from the east section line and 1,150 feet from the south section line of said Section 26. iii. Point of Diversion: Olson Pond No. 1 and Olson Pond No. 2 are filled via the Olson Ditch, which diverts water from a point on the north bank of Powell Creek in the NE1/4 of the NW1/4 of Section 35, Township 13 South, Range 79 West, 6th P.M., Chaffee County, Colorado, being approximately 1,550 feet from the west section line and 1,050 feet from the north section line of said Section 35. UTM Location: 396234 E, 4304300 N. D. Source: Powell Creek, an intermittent tributary of the Arkansas River. E. Appropriation Date: December 7, 1997. F. Amount: i. Olson Pond No. 1: 4 acre-feet. ii. Olson Pond No. 2: 5 acre-feet. G. Use: Stock watering and irrigation of 20 acres within the S ½ of the SE ¼ Section 26, Township 13 South, Range 79 West, 6th P.M., Chaffee County, Colorado. **4. Detailed outline of what has been done toward completion of the appropriation and application to a beneficial use as conditionally decreed.** During the time between December 31, 2018, and April 30, 2025 (the "Diligence Period"),

Applicant performed the following diligence activities: A. Applicant purchased the conditional water rights and the associated relevant land interests ("Property") on January 10, 2019. B. After purchase of the Property, Applicant evaluated the Property, including the condition of the ditch and relevant structures associated with Olson Pond No. 1 and Olson Pond No. 2, and prospective uses of the Property and conditional water rights. C. Applicant performed maintenance and work on the ponds and the Olson Ditch. D. Further, Applicant has engaged counsel to advise it on the use of the water rights on the Property the steps necessary to complete the appropriation. **5. Water applied to beneficial use:** N/A. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which 6. 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 **WHEREFORE,** Applicant requests the Court to enter its decree and ruling as follows: 1. To make a finding of reasonable diligence with respect to the Olson Pond No. 1 and Olson Pond No. 2 that were conditionally decreed in Case No. 1997CW162, and continued in effect in Case Nos. 2005CW92, 2012CW86, and 2018CW12, and providing that a subsequent showing of diligence on the right be made six years from the date of entry of a decree of diligence; 2. Any other ruling the Court deems appropriate in the above-captioned matter.

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 June 2025, (forms available at Clerk's office or at www.coloradojudicial.gov, after serving parties and attaching a certificate of mailing, filing fee $192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 13th day of May 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)
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