

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MAY 2025.

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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during May 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. 2025CW3021, Water Division 2 and CASE NO. 2025CW3056, Water Division 1 – TAYLOR LIVING TRUST DATED MAY 14, 2013, c/o Diana Taylor, Trustee, 6645 Shoup Road, Colorado Springs, CO 80908**

(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 Drive, Colorado Springs, CO 80921 (719) 471-1212)

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

**EL PASO COUNTY**

**II.** Taylor Living Trust dated May 14, 2013 (hereafter "Applicant") seeks to construct up to four wells, including an existing exempt well to the not-nontributary Dawson aquifer to provide water service to an equivalent number of lots, based on an anticipated subdivision of Applicant's approximately 23.5 acre parcel of land. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and approval of a plan for augmentation for the use thereof. **III. Property Description.** All wells are and will be located on Applicant's approximately 23.5 acre property ("Applicant's Property") anticipated to be subdivided into up to four lots, with current schedule number 5218000100. Applicant's Property is depicted on **Exhibit A** map attached to the application (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) located in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., and more particularly described as 6645 Shoup Rd, Colorado Springs, CO 80908. **Existing Well.** There is an existing domestic well with Division of Water Resources Permit No. 206816 ("Taylor Well No. 1"), permit attached as **Exhibit B**. It is a Dawson aquifer well drilled to a total depth of approximately 250 feet, and is located at UTM Easting: 525625; Northing: 4318103 (Zone 13, NAD83). Following issuance of the decree in this case Applicant will re-permit this well consistent with the terms of the decree in this case. **Proposed Wells.** Applicant proposes that up to three additional wells will be located on the Applicant's Property at specific locations not yet determined ("Taylor Well Nos. 2 through 4"), each to be constructed to the Dawson aquifer (one well per lot). **Land Ownership.** The land upon which the existing and proposed wells will be constructed is owned by Applicant, Taylor Living Trust dated May 14, 2013, which is managed by Diana Taylor, as the Trustee of the Taylor Living Trust dated May 14, 2013. **Exhibit C. Not-Nontributary.** The ground

water to be withdrawn from the Dawson and Denver aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson and Denver aquifers will require the replacement of actual stream depletions. Nontributary. The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property is nontributary. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. Applicant requests a vested right for the withdrawal of all legally available ground water 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:

| <b>AQUIFER</b>            | <b>NET SAND<br/>(Feet)</b> | <b>Total<br/>Appropriation<br/>(Acre Feet)</b> | <b>Annual Avg.<br/>Withdrawal<br/>100 Years<br/>(Acre Feet)</b> | <b>Annual Avg.<br/>Withdrawal<br/>300 Years<br/>(Acre Feet)</b> |
|---------------------------|----------------------------|--|---|---|
| Dawson<br>(NNT)           | 273.9                      | 1,288.43                                       | 12.88   | 4.29  |
| Denver<br>(NNT)           | 392.1                      | 1,567.77                                       | 15.68   | 5.23  |
| Arapahoe<br>(NT)          | 252.7                      | 1,010.4  | 10.1  | 3.37  |
| Laramie Fox<br>Hills (NT) | 189.8                      | 669.61   | 6.7   | 2.23  |

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. § 37-92-305(11), 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 ground water for beneficial uses upon the Applicant's Property consisting of domestic, irrigation, domestic animal and stock watering, equestrian facilities, agricultural, commercial, filling of a swimming pool and/or hot tub, fire protection, recreation, and also for storage and augmentation purposes associated with such uses. The Applicant also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson or Denver aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. § 37-90-137(9)(c.5). Well

Fields. Applicant requests permission to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. Averaging of Withdrawals. Applicant requests the entitlement to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicant. **IV. Statement of Plan for Augmentation.** Applicant seeks approval of a plan for augmentation to allow it to utilize the not-nontributary Dawson aquifer underlying the property described herein, including following potential subdivision thereof. All wells to the not-nontributary Dawson aquifer will, during the pumping life of such wells, be augmented by septic return flows resulting from domestic uses, with post pumping depletions provided by pumping of the nontributary Arapahoe and Laramie-Fox Hills aquifers. Structures to be Augmented. The structures to be augmented are the Taylor Well Nos. 1 through 4, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicant's Property as requested and described herein. 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 the Taylor Well Nos. 1 through 4, together with water rights from the nontributary Arapahoe and Laramie-Fox Hills aquifers for any injurious post pumping depletions. Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by Taylor Well Nos. 1 through 4, together with water rights from the nontributary Arapahoe and Laramie-Fox Hills aquifers for any injurious post pumping depletions. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: Household Use Only: 0.26 acre-feet annually within single-family dwellings on up to all four of the lots, with a maximum of ten percent consumptive use based on non-evaporative septic leach field disposal systems. Landscape Irrigation: 0.0566 acre-feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.048 acre-feet. Horses (or equivalent livestock): 0.011 acre-feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. Amounts. Taylor Well Nos. 1 through 4 will each pump a maximum of 0.659 acre-feet per year per lot, for a maximum total of 2.636 acre-feet being withdrawn from the Dawson aquifer per year. See **Exhibit B.** Such use shall be a combination of household use, irrigation of lawn, garden, and greenhouse, and the watering of horses or equivalent livestock, and other permitted uses described in paragraph III.D., above. An example breakdown of this combination of use, utilizing the factors described above, for each lot, is in-house use of 0.26 acre-feet of water per year, with the additional 0.399 acre-feet per year available for irrigation of lawn, garden, and greenhouse, and the watering of horses

or equivalent livestock and poultry on each lot. Depletions. Applicant's consultant has determined that maximum stream depletions over the 300-year pumping period for the Dawson aquifer amounts to approximately 27.29% of pumping. *Id.* Maximum annual depletions for total pumping from all wells are therefore 0.72 acre-feet in year 300 (i.e. 27.29% of pumping). *Id.* Should Applicant's pumping be less than the 2.636 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 the up to three residential wells subject to this augmentation plan. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. Using a conservative in-house use rate of 0.2 acre-feet per lot per year, total of 0.8 acre-feet, 0.72 acre-feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Taylor Well Nos. 1 through 4, Applicant will reserve the entirety of the Laramie Fox Hills aquifer, and a portion of the Arapahoe aquifer, accounting for actual stream depletions replaced during the planned 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 groundwater, and the reserved portion of the Arapahoe aquifer 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 a new well permit for the Taylor Well Nos. 1 through 4 for the uses in accordance with this Application and otherwise in compliance with C.R.S. § 37-90-137. **V. Remarks.** A. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the not-nontributary Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the Arkansas River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter in Water Division 2 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 Arkansas River as set forth herein, and for a finding that those replacements are sufficient.

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**CASE NO. 2025CW3022; Previous Case Nos. 18CW3069, 12CW61, 02CW112 – WIGWAM MUTUAL WATER COMPANY, c/o Gary Smith, PO Box 569, Fountain, CO 80817** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Jeff Kahn and Casey Weaver, Lyons Gaddis, PO Box 978, Longmont, CO 80502-0978 (303) 776-9900)

Application to Make Conditional Water Rights Absolute and for Findings or Reasonable Diligence

## **EL PASO COUNTY**

**2. Summary of the Application:** On November 15, 2000, Comanche Resources, LLC (“Comanche”) obtained a decree for a conditional underground water right, change of water right, and plan for augmentation in Case No. 99CW146, District Court, Water Division No. 2 (the “Original Augmentation Plan”). Comanche received additional decrees for underground water rights, change of water rights, and plans for augmentation in Case Nos. 00CW152 (the “First Supplemental Augmentation Plan”) and 02CW112 (the “Second Supplemental Augmentation Plan”) on August 29, 2001 and June 6, 2006, respectively. The conditional underground water rights decreed in the above-listed cases were adjudicated to Midway Ranches Well No. 1 (f/k/a, “POA Well No. 1”) and CR Well No. 1. Midway Ranches Well No. 1 and CR Well No. 1 are parts of a central water system to supply water to Applicant’s service area, which is generally located in Sections 7–9, 17–22, and 26–35, Township 17 South, Range 65 West, 6th P.M., El Paso County, Colorado (the “Service Area”). Pursuant to the decree entered in the Second Supplemental Augmentation Plan, Midway Ranches Well No. 1 and CR Well No. 1 are alternate points of diversion (APODs) for each other. Wigwam Mutual Water Company (“Wigwam”), a Colorado non-profit corporation and the Applicant in this case, distributes treated water to its shareholders within the Service Area. Comanche assigned an interest in the augmentation plan and conveyed the wells to Wigwam. Wigwam operates the integrated water system of which Midway Ranches Well No. 1 and CR Well No. 1 are a part. During the most recent diligence period, Wigwam withdrew water from Midway Ranches Well No. 1 and CR Well No. 1 and beneficially used the water in its Service Area. Wigwam’s withdrawal and use of the water decreed for withdrawal from Midway Ranches Well No. 1 and CR Well No. 1 as APODs in the Second Supplemental Augmentation Plan should make the annual amount of withdrawal from those wells absolute water rights. Wigwam requests a finding of reasonable diligence for any portion of the water rights conditionally decreed to Midway Ranches Well No. 1 and CR Well No. 1 in the Second Supplemental Augmentation Plan that are not made absolute in this case.

**3. Previous decrees:** The District Court, Water Division No. 2 (the “Court”) has entered the following decrees related to the conditional water rights that are the subject of this case: Case No 02CW112, entered on June 6, 2006; Case No. 12CW61, entered on November 2, 2012; and Case No. 18CW3069, entered on May 28, 2019.

**4. Description of conditional water right:** 4.1 Midway Ranches Well No. 1: 4.1.1. **Legal description:** This well is located in the NW ¼ SE ¼ of Section 9, Township 17 South, Range 65 West of the 6<sup>th</sup> P.M., approximately 2,000 feet from the south line of Section 9 and approximately 2,000 feet from the east line of Section 9. WDID 1006204. UTM 528768.0 E, 427062.0 N (NAD 83). 4.1.2. **Source:** The source of this well is the alluvium of Fountain Creek, which is tributary to the Arkansas River. 4.1.3. **Depth:** 30 feet. 4.1.4. **Appropriation date:** The additional appropriation date for the 101.5 acre-feet decreed to this structure in the Second Supplemental Augmentation Plan is April 5, 2002. 4.1.5. **Amount:** 101.5 acre-feet per year of diversions at a pumping rate of 150 gpm, conditional.

This amount is in addition to the 47 acre-feet of annual pumping allowed under Well Permit 52578-F and decreed in Case No. 95CW3 (in combination with the APOD CR Well No. 1, described below). 4.1.6. **Uses:** Water supply to the Service Area, in addition to CR Well No. 1, which uses include domestic, livestock, commercial, industrial, irrigation, and fire protection, and for use, reuse, and successive use to extinction. 4.2 CR Well No. 1: 4.2.1. **Legal description:** This well is located in the SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  of Section 26, Township 17 South, Range 65 West of the 6<sup>th</sup> P.M., approximately 2,513 feet from the north line of Section 26 and approximately 1,192 feet from the west line of Section 26. WDID 1006363. UTM 531316.3 E, 4266007.7 N (NAD 83). 4.2.2. **Source:** The source of this well is the alluvium of Fountain Creek, which is tributary to the Arkansas River. 4.2.3. **Depth:** Approximately 30 to 50 feet. 4.2.4. **Amount claimed:** 101.5 acre-feet per year of diversions at a pumping rate of 100 gpm, conditional (in combination with APOD Midway Ranches Well No. 1, described above). 4.2.5. **Uses:** Water supply to the Service Area, in addition to Midway Ranches Well No. 1, which uses include domestic, livestock, commercial, industrial, irrigation, and fire protection, and for use, reuse, and successive use to extinction. 5. **Claim to make absolute in whole or in part:** Between January 1, 2024, and December 31, 2024, Wigwam withdrew 96.86 acre-feet from Midway Ranches Well No. 1 at rates up to 120 gpm and 10.84 acre-feet from CR Well No. 1 at rates up to 250 gpm, for an annual total of 107.7 acre-feet from the two wells, and applied the water to decreed uses. 6. **Detailed outline of what has been done toward completion of the appropriations, including expenditures:** When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of the water right for all features of the entire project or system. § 37-92-301(4)(b), C.R.S. During the diligence period, Wigwam has devoted substantial efforts toward the present and future application of groundwater from Midway Ranches Well No. 1 and CR Well No. 1 for beneficial use and the development of the integrated water supply system of which the subject conditional water rights are a part, at a cost in excess of \$294,000, as described below: 6.1. Wigwam paid \$71,725 in assessments for shares owned in the Fountain Mutual Irrigation Company. 6.2. Wigwam spent \$11,635 on PFAS testing. 6.3. Wigwam spent \$93,070 for the purchase of a work truck used in connection with Wigwam's operation and maintenance of its integrated water system. 6.4. Wigwam spent \$45,017 for the purchase and installation of a generator for use in connection with Wigwam's operation of the integrated water system. 6.5. Wigwam spent \$10,381 for a meter reading license upgrade and system training and \$22,849 for daily reads of the county line meter pit upgrade. 6.6. Wigwam spent \$14,431 to fully pay off a skid loader used in connection with Wigwam's operation and maintenance of its integrated water system. 6.7. Wigwam spent \$13,048 for telemetry taken in connection with Wigwam's operation of its integrated water system. 6.8. Wigwam spent \$4,892 for the use of tank divers in the maintenance of the integrated water system. 6.9. Wigwam spent \$4,581 to Leak Locators of Montana for services performed in connection with Wigwam's maintenance of its integrated water system. 6.10. Wigwam spent \$2,481 to fully pay off an excavator used in connection with Wigwam's operation and maintenance of its

integrated water system. 6.11. In each year during the diligence period, Wigwam made withdrawals from both Midway Ranches Well No. 1 and CR Well No. 1 and put the withdrawn water to decreed uses. **7. Owner of land upon which the structures are located:** 7.1. Midway Ranches Well No. 1 is located on land owned by South 750, LLC, whose mailing address is 204 Randall St. Greer, SC 29651. 7.2. Wigwam owns the land upon which CR Well No. 1 is located. WHEREFORE, Wigwam requests the Court enter a decree finding and determining that: 1. Wigwam made the conditional water rights confirmed in the Second Supplemental Augmentation Plan absolute in the amount of 101.5 acre-feet per year at rates of 120 gpm for Midway Ranches Well No. 1 and 100 gpm for CR Well No. 1; and 2. Wigwam has exercised diligence in the development of any remaining conditional amounts of the water rights decreed in the Second Supplemental Augmentation Plan and those conditional water rights are continued for another diligence period.

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**CASE NO. 2025CW3023; Previous Case Nos. 97CW156, 05CW93, 12CW74, 18CW3068 – HIGH MOUNTAIN INSTITUTE, SAM CRICHLAW, HEAD OF SCHOOL, 531 County Road 5A, Leadville, CO 80461** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Peggy E. Montañó, William Davis Wert, 1120 Lincoln St., Suite 1600, Denver, CO 80203 (303) 861-1963)

Application to Make Conditional Water Right Absolute and for Findings of Reasonable Diligence.

#### **LAKE COUNTY**

**2. Name of Structures:** A. High Mountain Institute Well No. 2. B. High Mountain Institute Well No. 3 (Well Permit No. 79062-F). C. High Mountain Institute Well No. 4. **3. Description of Conditional Water Rights:** A. Original Decree for Conditional Water Rights: Date of Original Decree: December 13, 1999 Case No. 97CW156 Court: Water Division No. 2 B. Subsequent Decrees Awarding Findings of Diligence: Date of Decree: June 26, 2006 Case No.: 05CW93 Court: Water Division No. 2 Date of Decree: November 2, 2012 Case No.: 12CW74 Court: Water Division No. 2 Date of Decree: May 28, 2019 Case No. 2018CW3068 Court: Water Division No.2 C. Legal Description: i. High Mountain Institute Well No. 2 is located in the NW¼ SE¼ NE¼ of Section 30, Township 9 South, Range 80 West. Well No. 2 is to be located 1,095 feet west of the east section line, 1,825 feet south of the north section line. Well No. 2 can serve as an alternate point of diversion for Well Nos. 1, 3, and 4. The amount adjudicated was fifteen (15) gpm conditional for domestic, commercial, industrial, and irrigation uses, with a November 28, 1997, appropriation date. ii. High Mountain Institute Well No. 3 is located in the NE¼ SE¼ NE¼ of Section 30, Township 9 South, Range 80 West. Well No. 3 is located 330 feet west of the east section line, 1,530 feet south of the north section line. Well No. 3 is an alternate point of diversion for Well Nos. 1, 2, and 4. The amount adjudicated was fifteen (15) gpm conditional for domestic, commercial, industrial, and irrigation uses with a November 28, 1997, appropriation date. iii. High Mountain Institute Well No. 4 is located in the SW¼ SE¼ NE¼ of Section 30, Township 9 South, Range 80 West. Well No. 4 is to be located 725 feet west of the east section line, 2,130 feet south of the north section line. Well No. 4 can serve as an alternate point of diversion for Well Nos. 1, 2, and 3. The amount adjudicated was fifteen (15) gpm conditional for domestic, commercial, industrial, and

irrigation uses at the Institute with a November 28, 1997, appropriation date. D. Source: Lake Fork Creek, which is a tributary of the Arkansas River E. Appropriation Date: November 28, 1997 Amount: 0.93 acre-feet for Well Nos. 1, 2, 3, and 4 combined F. Uses: Domestic, Commercial, Industrial, Irrigation G. Depth: Well No. 1 at 50 feet; Well No. 3 at 52 feet; Wells 2 and 4 to be developed. H. Diligence activities: Additional buildings and uses have occurred during the most recent diligence period. During that time, we have constructed the Academic Building which houses three classrooms and multiple bathrooms, additional on-campus housing which are three single family homes, and three townhouses. All of these new structures are serviced with the wells. One additional cistern for fire protection has been installed and filled from the wells. **4. Claim to Make Conditional Water Right Absolute.** A. Water Right: High Mountain Institute Well No. 3, which was assigned Well Permit No. 79062-F. B. Date Applied to Beneficial Use: Well No. 3 was first pumped and used to supply water to the Head of School's on-campus residence on approximately November 1, 2016. The use of this well to supply water to the Head of School's residence is an integral component to HMI's day-to-day operations. Since June 2018, this well has also supplied water to the irrigation system and has been used to irrigate on-campus landscaping. C. Amount: 15 gpm D. Use: Domestic, Commercial, Industrial, Irrigation E. Supporting Evidence. Water from Well No. 3 has been pumped and delivered to the Head of School's on-campus residence for domestic household use since approximately November 1, 2016, and has been used for irrigation purposes since approximately June 1, 2018. HMI maintains complete well usage data for High Mountain Institute Well No. 3. F. Description of Place of Use: Water pumped from Well No. 3 has been delivered to the Head of School's on-campus residence and for the irrigation of landscaping on campus. **5. Names and addresses of owners or reputed owners of the land upon which any new diversion 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.** All structures are located upon lands owned by the High Mountain Institute. WHEREFORE, the High Mountain Institute requests that the Court enter a decree: (1) Confirming that the conditional water right for 15 gpm decreed to High Mountain Institute Well No. 3 has been made absolute for all decreed purposes. (2) Finding that, based on the activities described herein, the High Mountain Institute has met the burden established by C.R.S. § 37-92-301(4) to exercise reasonable diligence toward completion of the appropriation for the conditional water rights described herein; (3) Continuing the conditional water rights for High Mountain Institute Well Nos. 2 and 4 as to all amounts and uses for an additional six-year diligence period; and (4) Such other and further relief as the Court deems proper. (5 pages)

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**CASE NO. 2025CW3024**; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.  
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**CASE NO. 2025CW3025; GIBSON LIVESTOCK LLC, a Texas limited liability company, 217 South 28<sup>th</sup> St., Waco, TX 76710** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Scott C. Miller and John M. Sittler, Patrick, Miller & Noto, P.C., 229 Midland Ave., Basalt, CO 81621 (970) 930-1030)  
Amended Application for Conditional Storage Water Right and Approval of Plan for Augmentation Including Exchange



## CHAFFEE COUNTY

2. This amendment modifies paragraph 11.B to clarify the point of diversion for the McFadden Ditch as the upper terminus of the Gibson Exchange. The decreed point of diversion for the McFadden Ditch only includes the  $\frac{1}{4}$   $\frac{1}{4}$  section. **First Claim: For Conditional Storage Water Right:** 3. **Structure:** Waupaca Reservoir No. 1. 4. **Description of conditional water right:** Legal: The Waupaca Reservoir No. 1 is located in the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 33, Township 12 South, Range 79 West of the 6th P.M. (Chaffee County). UTM NAD83 Z13: Northing – 4313325, Easting – 394057. Maps are on file with the Court as Figures 1 and 2. (All figures mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Source: McFadden Creek via native flows and the McFadden Ditch, tributary to Morrison Creek, tributary to the Arkansas River. If filled from a ditch: Name of ditch used to fill and capacity in c.f.s.: McFadden Ditch with a decreed capacity of approximately 3.2 c.f.s. Legal description of point of diversion: The headgate is on the North bank of McFadden Creek in the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 33, Township 12 South, Range 79 West of the 6th P.M. Appropriation date: October 22, 2005. How appropriation was initiated: Formulation of intent to apply water to beneficial use, construction of the reservoir, and application of water to beneficial use. Date water applied to beneficial use: October 22, 2005. Amount: 3.5 acre-feet, conditional, with the right to fill and refill in priority or as augmented. Uses: Recreation, stockwatering fire protection, aesthetic, and piscatorial. Surface area of high water line: 0.805 acre. Vertical height of dam: Less than 10 feet. Length of dam: Approximately 260 feet. 5. **Remarks:** The Division 2 Water Court originally decreed the Waupaca Reservoir No. 1 for 73.72 acre-feet, conditional, in Case No. W-3643. In Case No. W-4527 a previous owner of the reservoir transferred 13.96 acre-feet to Waupaca Reservoir No. 2. In 2019, the Division 2 Water Court cancelled the remaining 59.76 acre-feet, conditional, in the Waupaca Reservoir No. 1. Applicant will use the Waupaca Reservoir No. 1 as an irrigation control structure for its senior water rights for irrigation of historically irrigated lands. 6. Applicant owns the land on which the subject water right is located and where water is put to beneficial use. **Second Claim: For Approval of Plan for Augmentation:** 7. **Structure:** Waupaca Reservoir No. 1. 8. **Water rights to be used for augmentation:** Applicant entered into a 30-year lease on May 8, 2025 for delivery of up to 3.1 acre-feet per year of fully consumable water from the Upper Arkansas Water Conservancy District (“UAWCD”). The lease includes water supplies in Twin Lakes Reservoir, Pueblo Reservoir, and other sources owned or controlled by UAWCD. 9. **Complete statement of plan for augmentation:** Background: Applicant will store water in the Waupaca Reservoir No. 1 and divert water through the reservoir for freshening flows whenever the reservoir is in priority, and at all other times to the extent Applicant is able to replace the out-of-priority depletions from the reservoir or otherwise prevent injury to downstream senior water rights. All uses are non-consumptive, except for evaporation and stockwater, which are replaced through this plan. Applicant’s UAWCD lease includes an additional 3.5 acre-feet in the first year for the initial fill of the reservoir. Water requirements: Diversions into Waupaca Reservoir No. 1 to refill the reservoir and replace evaporative depletions are 100 percent consumptive. Applicant’s engineer calculated the annual gross free water surface evaporation as 40 inches based on NOAA Technical Report NWS 33 (isopleths of shallow lake evaporation). The total surface area of the reservoir is 0.805 acres. Gross annual evaporation is 2.68 acre-feet, as shown on

Table 1 attached to the application. (All tables mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The pond will likely be ice-covered during the winter months, however Applicant's engineer conservatively assumed year-round evaporative depletions. Applicant will also use the pond for stockwater for 4 horses, year round. Applicant's engineer calculated stockwatering use at 12 gallons per day per horse, for a total of 0.054 acre-feet per year, as shown on Table 2. Thus, total out-of-priority depletions are estimated at 2.74 acre-feet per year. Call operation: Applicant will augment out-of-priority evaporative depletions using water rights owned or controlled by UAWCD, as described above. Table 2 shows a sample augmentation schedule. Applicant's total replacement obligation, including 10 percent transit loss, is 3.04 acre-feet per year. Applicant executed a 30-year lease with UACWD for 3.1 acre-feet of water, annually, which fully covers evaporative and stockwatering depletions from the reservoir. The augmentation will be administered through the Gibson Appropriative Exchange, applied for below. Applicant's engineer assumed an Arkansas River mainstem call year-round. If a call occurs on McFadden Creek below Waupaca Reservoir No. 1, Applicant will curtail all out of priority storage inflows to the reservoir and water levels will drop commensurate with evaporation. However, Applicant may still use Waupaca Reservoir No. 1 as an irrigation control structure for its senior irrigation water rights. **Third Claim: For Conditional Appropriative Right of Exchange: 10. Structure:** Gibson Exchange. **11. Description of water right: Location of downstream terminus:** T The confluence of Morrison Creek and the Arkansas River, located in the NW ¼ SW ¼ of Section 35, Township 12 South, Range 79 West of the 6<sup>th</sup> P.M, at a point approximately 1,500 feet from the South section line and 800 feet from the West section line (Chaffee County). UTM NAD83 Z13: Northing - 4313016, Easting - 396131. Location of upstream terminus: The point of depletion to McFadden Creek from Waupaca Reservoir at the McFadden Ditch headgate, located in the SW ¼ NE ¼ of Section 33, Township 12 South, Range 79 West of the 6<sup>th</sup> P.M., at a point approximately 2,700 feet from the South section line and 1,500 feet from the East section line (Chaffee County). UTM NAD83 Z13: Northing - 4313394, Easting - 393808. A map is on file with the Court as Figure 3. Source: Water rights owned or controlled by UAWCD, as described above. Appropriation date: May 30, 2025. How appropriation was initiated: Formulation of intent to apply water to beneficial use, execution of a water lease with UAWCD, and filing of this application. Date water applied to beneficial use: N/A. Amount: 0.0071 c.f.s., up to 3.04 acre-feet per year. Use: Exchange to implement the plan for augmentation applied for above.

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**CASE NO. 2025CW3026; ELK RIDGE DEVELOPMENTS, LLC, c/o Joseph Haver, Managing Member, 10548 Odin Drive, Colorado Springs, CO 80924** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Ryan W. Farr of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921 (719) 471-1212)

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

## **EL PASO COUNTY**

**II.** This Amended Application is a restatement of the initial Application with the inclusion of a number "3" that was left out of El Paso County's Schedule Number in the initial application and the inclusion of El Paso County's claimed address for the property.

Applicant seeks to utilize up to six wells to the not-nontributary Denver aquifer to provide water service to an equivalent number of lots, based on an anticipated subdivision of Applicant's approximately 17.05-acre parcel of land. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant's Property (as defined below), and approval of a plan for augmentation for the use thereof. **III. Property Description.** All wells are and will be located on Applicant's approximately 17.05-acre property ("Applicant's Property") anticipated to be subdivided into six lots, with current El Paso County Schedule Number 6233000044 with property address of Old Ranch Road. Applicant's Property is depicted on the attached **Exhibit A** map (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) located in the E1/2 of the SW1/4 of the SE1/4 of Section 23, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M., and more particularly described as the E1/2 of the SE1/4 of the SW1/4 of the SE1/4 except the South 30 feet, the SW1/4 of the SE1/4 of the SW1/4 of the SE1/4 except for the South 30 feet, and the NE1/4 of the SW1/4 of the SE1/4 of Section 23, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M. **Proposed Wells.** Applicant proposes that up to six wells will be located on the Applicant's Property at specific locations not yet determined, along with any supplemental or replacement wells ("Elk Ridge Wells"), each to be constructed to the Denver aquifer (one well per lot). **Land Ownership.** The land upon which the existing and proposed wells will be constructed is owned by Applicant. **Water Source. Not-Nontributary.** The groundwater to be withdrawn from the Dawson, Denver, and Arapahoe aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson and Denver aquifers will require the replacement of actual stream depletions and augmentation requirements for the Arapahoe aquifer require the replacement of four percent (4%) of the water withdrawn annually. **Nontributary.** The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicant's Property is nontributary. **Estimated Rates of Withdrawal.** Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. **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 300 years commensurate with water supply requirements of the El Paso County, Colorado Land Development Code § 8.4.7(C)(1), which is ostensibly more stringent than the State of Colorado's 100-year aquifer life requirement pursuant to C.R.S. § 37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

| AQUIFER         | NET SAND<br>(Feet) | Total<br>Appropriation<br>(Acre Feet) | Annual Avg.<br>Withdrawal<br>100 Years<br>(Acre Feet) | Annual Avg.<br>Withdrawal<br>300 Years<br>(Acre Feet) |
|-----------------|--------------------|---------------------------------------|---|---|
| Dawson<br>(NNT) | 43                 | 146.63                                | 1.47  | N/A   |

|                        |     |         |       |      |
|------------------------|-----|---------|-------|------|
| Denver (NNT)           | 349 | 1011.00 | 10.11 | 3.37 |
| Arapahoe (NT)          | 279 | 809.55  | 8.10  | N/A  |
| Laramie Fox Hills (NT) | 189 | 483.11  | 4.83  | 1.61 |

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. § 37-92-305(11), 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, irrigation, domestic animal and stock watering, agricultural, 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. Provided, however, Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson, Denver, or Arapahoe aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. § 37-90-137(9)(c.5). Well Fields. Applicant requests permission to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. Averaging of Withdrawals. Applicant requests the entitlement to withdraw an amount of groundwater in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicant. **IV. Statement of Plan for Augmentation.** Applicant seeks approval of a plan for augmentation to allow it to utilize the not-nontributary Denver aquifer underlying the property described herein, including following potential subdivision thereof. All wells to the not-nontributary Denver aquifer will, during the pumping life of such wells, be augmented by septic return flows resulting from domestic uses, with post pumping depletions provided by pumping of the nontributary Laramie-Fox Hills aquifer. Structures to be Augmented. The structures to be augmented are the Elk Ridge Wells, as may be constructed to the Denver aquifer of the Denver Basin underlying the Applicant's Property as requested and described herein. 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 Elk Ridge Wells, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions

caused by pumping of the not-nontributary Denver aquifer by the Elk Ridge Wells, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. Amounts. Elk Ridge Wells will each pump a maximum of 0.26 acre-feet per year per lot, for a maximum total of 1.56 acre-feet being withdrawn from the Denver aquifer per year. Such use shall be a combination of domestic, irrigation, domestic animal and stock watering, agricultural, commercial, fire protection, and also for storage and augmentation purposes associated with such uses. Depletions. Applicant's consultant has determined that maximum stream depletions over the 300-year pumping period for the Denver aquifer amounts to approximately 13.84% of pumping. Maximum annual depletions for total pumping from all wells are therefore 0.216 acre-feet in year 300 (i.e. 13.84% of pumping). Should Applicant's pumping be less than the 1.56 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 the Elk Ridge Wells subject of this augmentation plan. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. Using a conservative in-house use rate of 0.2 acre-feet per lot per year, a total of 1.08 acre-feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Elk Ridge Wells, Applicant will reserve the entirety of the Laramie Fox Hills aquifer, accounting for actual stream depletions replaced during the planned 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 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 a new well permit for the Elk Ridge Wells for the uses in accordance with this Application and otherwise in compliance with C.R.S. § 37-90-137.

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

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed

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

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Witness my hand and the seal of this Court this 6<sup>th</sup> day of June 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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