

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING September 2026. (This publication can be viewed in its entirety on the state court website at: [www.coloradojudicial.gov](http://www.coloradojudicial.gov))

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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during September 2026, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**\*\*Per Order, Resume to be published by Water Division 2 and Consolidated to Water Division 2 after publication\*\***

**CASE NO. 2026CW3041, Water Division 2 and CASE NO. 2026CW3147, Water Division 1; DOLLEY LIVING TRUST, c/o Shaun Dolley, Trustee, 6650 Burrows Road, Colorado Springs, CO 80908** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Chris D. Cummins, Sedona E. Chavez, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Suite 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 a 5-acre parcel of land, which Applicant intends to subdivide into two lots. Applicant seeks to quantify the Denver Basin groundwater underlying the property and seeks approval of a plan for augmentation for the use of two not-nontributary Dawson aquifer wells for provision of water to each anticipated lot. **III. Property Description.** Applicant's property lies in the NW1/4 SE1/4 and NE1/4 SE1/4 of Section 18, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado ("Applicant's Property"), as approximately shown on **Exhibit A** map attached to the application (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) and as more specifically described as Lot 3, Allenwood Subdivision. The street address for the Applicant's Property is 6650 Burrows Rd., Colorado Springs, CO 80908 and the El Paso County Assessor has assigned parcel ID no. 5218001019 to the Applicant's Property. **Existing Well.** There is one existing well on the Applicant's Property that is registered with Division of Water Resources Permit No. 18745 ("Dolley Well No. 1"), which is drilled to the Dawson aquifer. Upon approval of the plan for augmentation requested herein, Dolley Well No. 1 will be re-permitted accordingly. The approximate location of Dolley Well No. 1 can be seen on attached **Exhibit A. Proposed Wells.** Applicant will construct a Dawson aquifer well according to the plan for augmentation requested herein ("Dolley Well No. 2"), and any additional or replacement wells on Applicant's Property as necessary to produce its decreed entitlements. **Not-Nontributary.** The groundwater to be withdrawn from the Dawson and Denver aquifers underlying Applicant's Property is not-nontributary. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer require the replacement of actual stream depletions, and the augmentation requirements

for wells in the Denver aquifer require replacement of a total amount of water equal to 4% (four percent) of the amount of water withdrawn on an annual basis. Nontributary. The groundwater to be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers underlying Applicant's Property will be nontributary. Estimated Rates of Withdrawal. Pumping from the wells on Applicant's Property will not exceed 100 gpm. The actual pumping rate for the wells will vary according to aquifer conditions and well production capabilities. Applicant requests the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. 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 100-year life of the aquifers as required under C.R.S. § 37-90-137(4), or longer. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying the 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) |
|--------------------------------|--------------------|---------------------------------------|-------------------------------------------------------|-------------------------------------------------------|
| Upper Dawson<br>(NNT – actual) | 240.20             | 240.20                                | 2.40                                                  | 0.80                                                  |
| Denver<br>(NNT – 4%)           | 360.30             | 306.26                                | 3.06                                                  | 1.02                                                  |
| Upper Arapahoe<br>(NT)         | 256.40             | 217.94                                | 2.18                                                  | 0.73                                                  |
| Laramie-Fox Hills<br>(NT)      | 190.00             | 142.50                                | 1.43                                                  | 0.48                                                  |

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; commercial; agricultural; irrigation; watering of stock and domestic animals; fire protection; recreation; fish and wildlife; aesthetics; use of water in hot tubs, pools, and/or water features; and 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 use water from the not-nontributary Dawson and 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 aquifer in accordance with C.R.S. § 37-90-137(9)(c.5). 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 do 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. Owner of Land Upon Which Wells are to Be Located. The land and underlying groundwater upon which the wells will be located is owned by the Applicant, Dolley Living Trust. **IV. Structures to be Augmented.** The structures to be augmented are the Dolley Well Nos. 1 and 2 on or to be constructed on Applicant's Property, along with any replacement or additional wells associated therewith, which are or will be completed to the Dawson aquifer, in the NW1/4 SE1/4 and NE1/4 SE1/4 of Section 18, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado. 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 Dolley Well Nos. 1 and 2, along with any additional or replacement wells associated therewith, on Applicant's Property, together with water rights from the nontributary Arapahoe aquifer to account 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 the Dolley Well Nos. 1 and 2 on Applicant's Property 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 0.80 acre-feet of water per year total from Dolley Well Nos. 1 and 2. Such uses shall be for domestic; commercial; agricultural; irrigation; watering of stock and domestic animals; fire protection; recreation; fish and wildlife; aesthetics; use of water in hot tubs, pools, and/or water features; and for storage and augmentation purposes associated with such uses. Amounts. The Dolley Well Nos. 1 and 2 will each pump a maximum of 0.40 acre-feet, for a maximum total of 0.80 acre-feet being withdrawn from the Dawson aquifer annually, for a combination of the uses described above. 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 0.14 acre-feet per year available for the remaining uses to be permitted, described herein. Depletions. Withdrawals from the Dawson aquifer by the Dolley Well Nos. 1 and 2 require replacement of actual stream depletions, pursuant to C.R.S. § 37-90-137(9)(c.5)(I)(B). It is estimated that maximum stream depletions over the 300-year pumping period for the Dawson aquifer amounts to approximately 27.29% of pumping. Maximum annual depletions for total pumping from the Dolley Well Nos. 1 and 2 are therefore 0.218 acre-feet (i.e. 27.29% of pumping). Should Applicant's pumping be less than the 0.80 acre-feet total per year described herein, resulting depletions and required replacements will be correspondingly reduced. Augmentation of Depletions During Pumping. Pursuant to C.R.S. § 37-90-137(9)(c.5)(I)(B), Applicant is required to replace actual stream depletions caused by withdrawals of the Dawson aquifer on an annual basis. Depletions during pumping will be effectively replaced by return flows generated by a non-evaporative septic systems associated with indoor uses within two primary dwellings on each lot within the Applicant's Property. The annual consumptive use for non-evaporative septic systems is 10%. At an estimated conservative indoor

household use rate of 0.20 acre-feet per year per dwelling, 0.36 acre-feet is replaced to the stream per year, assuming the use of a non-evaporative septic system. Thus, during pumping, stream depletions (0.218 acre-feet per year) 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 Dolley Well Nos. 1 and 2, Applicant will reserve up to 240 acre-feet of the water from the underlying 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 Arapahoe groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, Applicant will be entitled to apply for and receive new well permits for Dolley Well Nos. 1 and 2 on Applicant's Property, 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 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. Applicant requests a finding that it has complied with C.R.S. § 37-90-137(4), and that the groundwater requested herein is legally available for withdrawal by the nontributary Dolley Well Nos. 1 and 2 upon the entry of a decree approving a plan for augmentation pursuant to C.R.S. § 37-90-137(9)(c.5). The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post-pumping stream depletions accrue to a particular well only to the extent related to that well's actual pumping. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of groundwater withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater and the proposed plan for augmentation. Wells shall be installed and metered as reasonably required by the State Engineer. Each well may be required to be equipped with a totalizing flow meter and Applicant may be required to submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant may also be required to provide accountings to the Division Engineer and Water Commissioner to demonstrate compliance under this plan for augmentation. The Applicant waives the 600-foot well spacing requirement, pursuant to C.R.S. § 37-90-137(2)(b), for any wells to be located on Applicant's Property in relation to one another. This waiver does not apply to wells not located on Applicant's Property and/or not owned by the Applicant. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §§ 37-92-302(2)(b)

and 37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

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**CASE NO. 2026CW3042; JOHN LITHERLAND, 146 Rainbow Place, Colorado Springs, CO 80906** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Ryan W. Farr, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921 (719) 471-1212)  
Application for Conditional Surface and Storage Water Right and Approval of Plan for Augmentation

**LAS ANIMAS COUNTY**

**II.** The Applicant seeks a conditional surface water diversion and a surface water storage right for diversion from a spring arising on Applicant's property to fill a pond located on Applicant's property, as well as a plan for augmentation to augment such use. **III. Name of Structure.** Litherland Spring. **Legal Description of Spring.** Litherland Spring is located in the NE1/4 NW1/4 of Section 25, Township 31 South, Range 69 West of the 6th P.M., at a point approximately located at NAD83 UTM, Zone 13S, 494764m East, 4130859m North, in Las Animas County, Colorado. The location of Litherland Spring is shown in **Exhibit A** attached to the application (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). **Source.** An unnamed gulch tributary to Goemmer Spring, tributary to Guajatoyah Creek, tributary to the North Fork of the Purgatoire River, tributary to the Purgatoire River, tributary to the Arkansas River. **Date of Appropriation.** September 28, 2026, the date this application was filed with the Water Court. **Amount Claimed.** 2 gallons per minute, conditional. **Uses.** Recreation, piscatorial, wetlands, wildlife habitat, and fire protection. Wetlands and wildlife habitat uses are limited to the surface of Litherland Pond and its immediate perimeter. **Name of Structure.** Litherland Pond. **Legal Description of Pond.** The center of the dam is located in the NE1/4 of the NW1/4 of Section 25, Township 31 South, Range 69 West of the 6th P.M., at a point approximately located at NAD83 UTM, Zone 13S, 494894m East, 4130833m North, in Las Animas County, Colorado. The location of Litherland Pond is shown in the attached **Exhibit A**. **Source.** Litherland Spring, an unnamed gulch tributary to Goemmer Spring, Tributary to Guajatoyah Creek, tributary to the North Fork of the Purgatoire River, tributary to the Purgatoire River, tributary to the Arkansas River. **Date of Appropriation.** September 28, 2026, the date this application was filed with the Water Court. **Amount Claimed.** 1.5 annual acre-feet, conditional. **Rate.** 2 gallons per minute, conditional. **Uses:** Recreation, piscatorial, wetlands, wildlife habitat, and fire protection. Wetlands and wildlife habitat uses are limited to the surface of Litherland Pond and its immediate perimeter. **Reservoir Specifications.** Litherland Pond has yet to be constructed, but it is intended to have a maximum surface area of 0.3 acres, a maximum dam height not more than 9.9 feet, with the dam being approximately 175 feet in length. Total volume is intended to be 1.5 acre-feet of active capacity with no dead storage. **Land Ownership.** Litherland Spring and Litherland Pond are located on land owned by the Applicant, which consists of approximately 45 acres. **IV. Structures to be Augmented.** The structures to be augmented are the Litherland Spring and Litherland Pond as described above. **Water Rights to be Used for Augmentation.** Any fully consumable water lawfully stored in the City of Trinidad's 3,000 acre-feet of storage capacity in Trinidad Reservoir. Trinidad Reservoir is an on-channel reservoir located on

the Purgatoire River. Trinidad Reservoir's dam is located in the SE1/4 of the NW1/4 of Section 27, Township 33 South, Range 64 West of the 6<sup>th</sup> PM, Las Animas County. The dam above the outlet is located at NAD83 UTM, Zone 13S, 539874.8m East, 4110634.4m North. The fully consumable water lawfully stored in Trinidad Reservoir may include the following water rights: Direct Flow Water Rights Changed to Storage in Case No. 88CW61. In Case No. 88CW61, District Court, Water Division 2, the City of Trinidad changed the following irrigation priorities adjudicated for diversion at the John Flood Ditch, owned by the City of Trinidad, to store in Trinidad Reservoir: *Appropriations*:

| District 19 Priority No. | Appropriation Date | Original Decree Date | Amount (cfs) | Trinidad Ownership (cfs) |
|--------------------------|--------------------|----------------------|--------------|--------------------------|
| 5                        | 03/20/1862         | 08/10/1903           | 4.00         | 2.00                     |
| 9                        | 01/01/1863         | 08/10/1903           | 1.28         | 0.877                    |
| 15                       | 04/10/1864         | 08/10/1903           | 5.10         | 2.343                    |
| 20                       | 10/07/1865         | 08/10/1903           | 20.00        | 3.391                    |
| 27                       | 05/31/1866         | 08/10/1903           | 2.25         | 1.541                    |
| 145                      | 10/20/1902         | 01/12/1925           | 100.00       | 68.50                    |

*Decreed Uses.* Municipal, industrial, maintenance of the Trinidad Reservoir permanent fishery pool, recreation and irrigation. Municipal includes all municipal uses, such as, but not by way of limitation, domestic, commercial, manufacturing, industrial, agricultural, watering of parks and lawns and gardens, fire protection, generation of electric power and power generally, recreation, fish and wildlife propagation, sewage treatment, street sprinkling, maintenance of adequate storage reserves, replacement, augmentation, and exchange. Direct Flow Water Rights Changed to Storage in Case No. 06CW78. In Case No. 06CW78, District Court, Water Division No. 2, the City of Trinidad changed the following irrigation priorities adjudicated for diversion at the John Flood Ditch, owned by the City of Trinidad, to store in Trinidad Reservoir: *Appropriations*

| District 19 Priority No. | Appropriation Date | Original Decree Date | Amount (cfs) | Trinidad Ownership (cfs) |
|--------------------------|--------------------|----------------------|--------------|--------------------------|
| 13                       | 01/01/1864         | 08/10/1903           | 5.00         | 0.538                    |
| 20                       | 10/07/1865         | 08/10/1903           | 20.00        | 0.86                     |

*Decreed Uses.* Municipal, industrial, maintenance of the Trinidad Reservoir permanent fishery pool, recreation and irrigation. Municipal includes all municipal uses, such as, but not by way of limitation, domestic, commercial, manufacturing, industrial, agricultural, watering of parks and lawns and gardens, fire protection, generation of electric power and power generally, recreation, fish and wildlife propagation, sewage treatment, street sprinkling, maintenance of adequate storage reserves, replacement, augmentation, and exchange. Direct Flow Water Rights Changed to Storage in Case No. 08CW101. In Case No. 08CW101, District Court, Water Division No. 2, the City of Trinidad changed the following irrigation priorities adjudicated for diversion at the John Flood Ditch, owned by the City of Trinidad, to store in Trinidad Reservoir: *Appropriations*

| District 19<br>Priority No. | Appropriation<br>Date | Original<br>Decree Date | Amount (cfs) | Trinidad<br>Ownership<br>(cfs) |
|-----------------------------|-----------------------|-------------------------|--------------|--------------------------------|
| 9                           | 01/01/1863            | 08/10/1903              | 1.28         | 0.048                          |
| 15                          | 04/10/1864            | 08/10/1903              | 5.10         | 0.128                          |
| 20                          | 10/07/1865            | 08/10/1903              | 20.00        | 0.586                          |
| 27                          | 05/31/1866            | 08/10/1903              | 2.25         | 0.084                          |
| 145                         | 10/20/1902            | 01/12/1925              | 100.00       | 68.50                          |

*Decreed Uses.* Irrigation, municipal, industrial, maintenance of the Trinidad Reservoir permanent fishery pool, recreation, fish propagation, augmentation and replacement purposes, with the right to use, reuse or successively use to extinction, either directly or by exchange. Municipal includes all municipal uses, such as, but not by way of limitation, domestic, commercial, manufacturing, industrial, fire protection, generation of electric power and power generally, recreation, fish and wildlife propagation, sewage treatment, street sprinkling, maintenance of adequate storage reserves, replacement and substitution, augmentation and exchange. *Direct Flow Water Rights Changed to Storage in Case No. 17CW3073.* In Case No. 17CW3073, District Court, Water Division No. 2, the City of Trinidad changed the following irrigation priorities adjudicated for diversion at the Johns Flood Ditch, owned by the City of Trinidad, to store in Trinidad Reservoir:

*Appropriations*

| District 19<br>Priority No. | Appropriation<br>Date | Original<br>Decree Date | Amount (cfs) | Trinidad<br>Ownership<br>(cfs) |
|-----------------------------|-----------------------|-------------------------|--------------|--------------------------------|
| 13                          | 01/01/1864            | 08/10/1903              | 5.00         | 0.712                          |
| 20                          | 10/07/1865            | 08/10/1903              | 24.0         | 1.14                           |

*Decreed Uses.* municipal, industrial, maintenance of the Trinidad Reservoir permanent fishery pool, recreation and fish propagation uses. Municipal includes all municipal uses, such as, but not by way of limitation, domestic, commercial, manufacturing, industrial, fire protection, generation of electric power and power generally, recreation, fish and wildlife propagation, sewage treatment, street sprinkling, maintenance of adequate storage reserves, maintenance and replication of historical New Johns Flood Ditch Company ditch losses, replacement and substitution, augmentation and exchange. *Transbasin Water Stored in Trinidad Reservoir.* The City of Trinidad may utilize any fully-consumable transbasin water exchanged to Trinidad Reservoir with approval of the Division Engineer pursuant to a contract or lease with a third party. *Diversions and Depletions.* *Uses.* Recreation, piscatorial, wetlands, wildlife habitat, and fire protection. Wetlands and wildlife habitat uses are limited to the surface of Litherland Pond and its immediate perimeter. *Diversions.* Applicant intends to capture the water from the Litherland Spring within the Litherland Pond for an initial fill and then to replace evaporative depletions. Once filled, water from the Litherland Spring not utilized for replacement of evaporative losses will pass through the pond and return to the unnamed gulch tributary to Guajatoyah Creek. Such pass-through water will not be consumed. *Depletions.* After the initial fill of 1.5 acre-feet, evaporative losses will amount to 1.0 acre-feet annually. The initial fill will take approximately five to six months to complete. *Location of Depletions.* Depletions will occur to the unnamed gulch tributary to Goemmer Spring, tributary to Guajatoyah

Creek, tributary to the North Fork of the Purgatoire River, tributary to the Purgatoire River, tributary to the Arkansas River at the location of the Litherland Pond. Replacement Water. The City of Trinidad will provide the replacement water described above to augment the Applicant's depletions from the initial fill and evaporative depletions. The lease with the City of Trinidad allows for an initial fill amount of 1.5 acre-feet and annual evaporative replacement of 1.0 acre-feet. The replacement water provided by the City of Trinidad shall be fully consumable and will be available to replace the Applicant's depletions by releases to the Purgatoire River at Trinidad Reservoir. After the initial fill, evaporative replacement will be pursuant to the monthly evaporative schedule as set forth in the attached **Exhibit B. V.** Applicant owns the land where Litherland Spring and Litherland Pond are located. Applicant requests a finding that vested water rights of others will not be materially injured by the diversions and replacement of depletions under the proposed plan for augmentation. Applicant will install meters and all appropriate measuring devices on any infrastructure utilized to divert and store water hereunder as required by the State and Division Engineers. 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 and Water Commissioner to demonstrate compliance under any decreed plan of augmentation. Applicant will install all necessary infrastructure to properly administer the Litherland Pond, including the ability to pass all flows if there are times that the pond cannot be augmented by Trinidad due to a local calling water right. Applicant will seek a process and 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.

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**CASE NO. 2026CW3043; Previous Case No. 17CW3009 – SILOAM WELL ASSOCIATION, 46 Glenroyal Dr., Pueblo, CO 81005** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Ryan W. Farr, W. James Tilton, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921 (719) 471-1212)

Application to Amend Plan for Augmentation to Add Covered Well

**PUEBLO COUNTY**

**2. Description of Applicant:** Applicant, Siloam Well Association ("SWA") is a Colorado Nonprofit Corporation organized exclusively for the nonprofit use of its members, a group of well users in the Siloam Road –Highway 96 area, southwest of Pueblo Reservoir ("Pueblo Complex Area") in Pueblo County. SWA was established, among other purposes, to obtain replacement water through a group lease from the Board of Water Works of Pueblo, Colorado (Pueblo Water) and pursue an Augmentation Plan Decree for SWA Member wells. **3. Prior Decree:** On July 18, 2018, in case no. 2017 CW 3009, this Court entered its Findings of Fact, Conclusions of Law, Amended Ruling of Referee, Judgment and Decree ("2017CW3009 Decree") approving a Plan for Augmentation for SWA Member wells, utilizing replacement water provided by SWA's Water Lease with Pueblo Water and establishing terms and conditions for administration of SWA Member wells and accounting of replacement water derived from the Pueblo Water Lease. **4. Purpose of Application:** Applicant has a new member whose name is Landshark Farms, LLC ("Landshark"). Landshark is the current owner of the W 1/2 of E 1/2 of SE 1/4 of

Section 2, Township 21 South, Range 68 West of the 6th P.M., in Pueblo County, at 8440 W. State Highway 96, Pueblo, CO 81005 and an existing well, known as the Menely Well. The Menely Well was originally permitted and approved on March 5, 1996, as a residential exempt well pursuant to C.R.S. 37-92-602(3)(b)(II)(A) and issued Well Permit #193140. Subsequently, the previous owner of the Menely Well, Southern Flow Property Holdings, Consulting and Management, requested Well Permit #193140 be expanded and its use changed to allow for a supply of hemp or marijuana grow operations, including beneficial use for indoor and outdoor irrigation, greenhouse operations and cooling, processing facilities, and related commercial, drinking, sanitary, domestic or residential purposes. Thereafter on April 8, 2022, Well Permit #86855-F was issued and approved pursuant to CRS 37-90-137(2) on the condition that the Menely Well aka Southern Flow Well #1 be operated in accordance with the Siloam Well Association Augmentation Plan approved by the Division 2 Water Court in case no. 2021CW3029. Well Permit #86855-F expired on April 8, 2024, as Southern Flow never completed the expansion of the Menely Well aka Southern Flow Well. Landshark has now joined the Applicant as a member and upon approval of this Application, Landshark will seek to again re-permit this well as a commercial irrigation well and agrees that thereafter the Menely Well aka Southern Flow Well shall be operated and used, and its out-of-priority depletions replaced pursuant to the terms and conditions of the 2017 CW 3009 Decree, with its lagged depletions to the Arkansas River calculated based on the parameters set forth in Table 1 of the 2017CW3009 Decree, so as to allow renewed pumping of this well under the Decree sought herein.

**5. Name of Structures to be Augmented:** Meneley Well aka Southern Flow Well #1 (previous Well Permit # 193140/86855-F & WDID: 1408324):

5.1 Meneley Well aka Southern Flow Well #1 is not decreed.

5.2 Meneley Well aka Southern Flow Well #1 is located within the W 1/2 of E 1/2 of SE 1/4 of Section 2, Township 21 South, Range 68 West of the 6th P.M.

5.3 Point of diversion of Meneley Well aka Southern Flow Well #1 is located at UTM Coordinates (Meters, Zone:13, NAD83) Easting: 503429.5, Northing: 4233413.1.

5.4 The location of Meneley Well aka Southern Flow Well #1 and the location of Use of Meneley Well aka Southern Flow Well #1 is shown on **Exhibit A** attached to the application (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

5.5 The water source for Meneley Well aka Southern Flow Well #1 is the Dakota aquifer, tributary to the Arkansas River.

**6. Quantity of Depletions for Well Sought to be Added to Augmentation Plan:** not more than 20 acre feet per year, depending upon amount of replacement water available.

**7. Water right(s) to be used for Augmentation:** Fully consumable replacement water owned or controlled by Pueblo Water and available under the Pueblo Water Lease.

7.1. Pueblo Water Lease. Applicant has entered a Water Lease Agreement dated August 18, 2025 ("Pueblo Water Lease") with Pueblo Water for supplying fully consumable replacement water for augmentation of depletions from Meneley Well aka Southern Flow Well #1 and the other SWA Member wells authorized under the 2017CW3009 Decree. Said Pueblo Water Lease and letter approving increase in allocation for Water Year 2027 is attached as **Exhibit B**.

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

amount of replacement water currently leased by SWA from Pueblo Water is 10 acre feet for Water Year 2026 through October 31, 2026. Applicant has requested an increased amount of replacement water to 39.6 acre feet for Water Year 2027, commencing November 1, 2026, and this increase has been approved by Pueblo Water, see **Exhibit B-1** attached hereto. 7.3. Legally Available Replacement Water. All replacement water to be used by Applicant in the 2017CW3009 Decree, including the Decree sought by this Application, and provided by Pueblo Water under the Pueblo Water Lease must be decreed or otherwise legally available for augmentation purposes and deliverable upstream of the point of replacement, the Pueblo Reservoir. The sources of such water are unspecified in the Pueblo Water Lease, which sources are at the option of Pueblo Water, as long as they are legally available for augmentation purposes at the point of replacement, but such sources do not currently include Fryingpan-Arkansas Project Water. Fully consumable water available for use in the 2017CW3009 Decree, including the Decree sought by this Application, may include, without limitation: 7.3.1. Water stored in Twin Lakes Reservoir in Lake County, if allowed hereafter by the Bureau of Reclamation; 7.3.2. Water stored in Turquoise Reservoir in Lake County, if allowed hereafter by the Bureau of Reclamation; 7.3.3. Water stored in Clear Creek Reservoir in Chaffee County. Currently, Pueblo Water anticipates making all deliveries of replacement water to Applicant from Clear Creek Reservoir; however, in the event Pueblo Water determines to make any deliveries of replacement water from sources other than Clear Creek Reservoir, the Division Engineer will be notified; 7.3.4. The sources of such replacement water may also include, but are not limited to, the water rights decreed in: Case Nos. 84-CW-177 & 84-CW-177(B), District Court, Water Division 2, including the reusable return flows decreed therein; Case Nos. 90-CW-340, W-1901, & 95-CW-321, District Court, Water Division 5; and Case Nos. 90-CW-55 & 04-CW-130, District Court, Water Division 2. **8. Annual Water Report.** Pursuant to the 2017CW3009 Decree, SWA files an Annual Water Report with the Water Court by October 1st of each year, which includes: 8.1. the total amount of proposed SWA Member withdrawals and depletions to occur in the following water year; 8.2. the source and quantity of replacement water available to replace these depletions (attaching a current copy of the Pueblo Water Letter demonstrating the amount of water leased by SWA for the following water year); 8.3. a current table of SWA's members showing the amount of water allocated to each SWA Member for the following water year; 8.4. the amount of allowable pumping for all SWA Members based on the quantity and source of available replacement water to replace current depletions and lagged depletions resulting from all previous pumping; and 8.5. the projected total stream depletions from projected pumping in the following water year and previously authorized pumping and identifying the entities responsible for replacement of said depletions. Pursuant to the 2017CW3009 Decree, the Division Engineer shall review the Annual Water Report during the month of October so that approval will be complete before the following water year commences. In the event the Division Engineer does not approve the Annual Notice due to a determination that injury to other water rights will occur, then SWA Members will not be allowed to withdraw water from any SWA Member Wells, including Meneley Well aka Southern Flow Well #1, during the following water year until and unless acceptable modifications have been made. **9. Applicant does not intend to change a water right to provide a source of augmentation.** **10. The plan for augmentation does not include an exchange of water right(s).** **11.**

Complete Statement of Plan for Augmentation: 11.1. Purpose: This Application seeks to add the Meneley Well as “Covered Well” under the 2017CW3009 Decree and provide for the augmentation of lagged stream depletions to the Arkansas River, in time, location and amount, as caused by the pumping of Meneley Well aka Southern Flow Well #1. 11.2. Diversions: Meneley Well aka Southern Flow Well #1 will make out-of-priority withdrawals of ground water from the Dakota aquifer which is tributary to the Arkansas River. 11.3. Uses: The entirety of the diversions from Meneley Well aka Southern Flow Well #1 will be used for supply of commercial vegetable irrigation, hemp or marijuana grow operations, including beneficial use for indoor and outdoor irrigation, greenhouse operations and cooling, processing facilities, and related commercial, drinking, sanitary, domestic or residential purposes. 11.4. Depletions: Ground water diversions from Meneley Well aka Southern Flow Well #1, and their corresponding out-of-priority depletions, are considered to be one hundred percent (100%) consumptive. 11.5. Point of Depletion: Meneley Well aka Southern Flow Well #1 is located within Zone 3 of the SWA Inclusion Area as shown on **Exhibit C**, attached hereto. The pumping of Meneley Well aka Southern Flow Well #1, will result in depletions to the Arkansas River at the Pueblo Reservoir in Section 36, Township 20 South, Range 66 West of the 6th P.M., Pueblo County, Colorado. 11.6. Timing of Depletions: Timing of all depletions caused by pumping of Meneley Well aka Southern Flow Well #1, located within Zone 3 of the SWA Inclusion Area was previously determined in Case No. 2017 CW 3009 and are based upon the following aquifer parameters: 11.6.1. Distance to Stream Depletion Point: 72,189.7 feet; 11.6.2. Distance from No-Flow Boundary to Well: 12,347.5 feet; 11.6.3. Distance from No-Flow Boundary to Stream: 84,537.2 feet; 11.6.4. Transmissivity: 1,077 gallons per day per foot; and 11.7.5. Storage Coefficient: 0.00005. Replacement timing for all lagged depletions caused by pumping of Meneley Well aka Southern Flow Well #1 was based on a Glover method analysis which was used to create a unit response function (“URF”) for the centroid of Meneley Well aka Southern Flow Well #1 is located within Zone 3 of the SWA Inclusion Area. When developing the URF, lagged depletions were determined by using the wrapped URF, which was calculated by proportionally wrapping the last 10% of depletions into the first 90% of the depletions. The resulting URF table, as approved by the Decree in Case No. 2017 CW 3009, is attached hereto as **Exhibit D**. 11.7. Replacement of Depletions: Replacement of depletions from all SWA Member Wells, including Meneley Well aka Southern Flow Well #1, during pumping and post-pumping, is achieved pursuant to the Pueblo Water Lease, as amended and supplemented from time to time and subject to the terms thereof. Replacement water is provided by fully consumable water owned or controlled by Pueblo Water that is decreed or otherwise legally available for augmentation purposes and further described in paragraph 6.3 above. 11.8. Point of Replacement: Replacement water is delivered to the Arkansas River at the Pueblo Reservoir at or above Section 36, Township 20 South, Range 66 West of the 6th P.M., Pueblo County, Colorado. 11.9. Limitation of Pumping: Withdrawals from Meneley Well aka Southern Flow Well #1, shall be limited so that monthly depletions do not exceed the replacement water delivered to the Arkansas River at or above the point of depletion, taking into account transit losses on deliveries of replacement water and that the total amount of annual depletions of all SWA Members, do not exceed the total amount of annual replacement water available to Applicant under the Pueblo Water Lease. 11.10. Transit Losses: Any replacement water that is released to the Arkansas River upstream

of the point of depletion shall be subject to river transit losses on delivery to the point of depletions, as determined by the Division Engineer and assessed in accordance with the standard administrative procedures used by the Division Engineer. 11.11. Credit for Replacement Water: Applicant will only claim credit for its fully consumable replacement water at the point of depletion, after assessment of transit losses. The Division Engineer's Office and the State Engineer's Office will administer the replacement water decreed herein from the points it enters the river system to the point of depletion less the above transit losses. The replacement water will not be considered native water available for diversion by other water rights until it reaches the point of depletion. Applicant shall not seek any credits, off-sets, reductions in obligations, etc. for transit losses when Pueblo Water supplied replacement water is released from whatever source Pueblo Water determines it will release from. 11.12. Single Credit: Applicant shall only claim a single credit for the augmentation use of fully consumable replacement water made available under the 2017CW3009 Decree. 11.13. Measurement: Applicant requires all SWA Members to install and maintain totalizing flow meters on all Covered Wells, including Meneley Well aka Southern Flow Well #1,, or any additional or replacement wells associated therewith, and thereafter maintain records and provide reports to the State Engineer or Division Engineer for Water Division 2 by the 10th day of the month following the month of pumping. 11.14. Accounting: Applicant has established an on-line data base ([http://siloam-data.com/depletions\\_accounting](http://siloam-data.com/depletions_accounting)) accessible to the State and Division Engineers and Opposers, containing all required reporting information required by the 2017CW3009 Decree. Applicant will prepare and provide accounting forms subject to approval and revision at the direction of the Division Engineer. The accounting form or format will adhere to all applicable policy, guidelines, and protocol established by the State and Division Engineers for such accounting as long as consistent with the terms of the 2017CW3009 Decree and Colorado law. All accounting shall be submitted monthly, unless required more often at the request of the Division Engineer or Water Commissioner. 11.15. Administration: Applicant's use of the water provided by Pueblo Water under the Pueblo Water Lease, and any amendment(s) and supplement(s) thereto, pursuant to the 2017CW3009 Decree, including this Decree, for replacement of depletions of Meneley Well aka Southern Flow Well #1, will ensure that the Applicant has provided replacement water necessary to meet the lawful requirements of senior diverters at the time and location and to the extent that seniors would otherwise be deprived of their lawful entitlement by the Applicant. **12. 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:** Meneley Well aka Southern Flow Well #1, are each existing wells; no new diversion or storage structure or modification to existing diversion or storage structure is sought by this Application. **13.** The owner of the property on which Meneley Well aka Southern Flow Well #1, is located is: Landshark Farms, LLC, Attn: Mark Mezyneiski, Managing Member, 110 North Magee St., Southhampton, NY 11968. 9 pages. Exhibits A, B, B-1, C, & D attached.

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

**CASE NO. 2026CW3044, Water Division 2 and CASE NO. 2026CW3152, Water Division 1; DAVID D. CURRIN, 17945 Saddlewood Road, Monument, CO 80132**

(Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Chris D. Cummins, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921 (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and Plan for Augmentation

**EL PASO COUNTY**

II. Applicant is the owner of Lot 103, Canterbury East Subdivision, a parcel of land which is approximately 5.26 acres in size, and which is directly adjacent to property owned by Red Horse Living Trust, being Lot 102 of Canterbury East Subdivision, a parcel of land approximately 4.99 acres in size. Red Horse Living Trust has consented to Applicant's adjudication of the groundwater underlying Lot 102, and this Application concerns the entire 10.25 acres of land, Lots 102 and 103 Canterbury East Subdivision, El Paso County, Colorado, and the underlying groundwater associated therewith. Applicant seeks adjudication of underlying Denver Basin groundwater supplies, and approval of a plan for augmentation for the use of two not-nontributary Dawson aquifer wells for provision of water to each lot. III. Property Description. The property subject of this Application lies in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  and NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 16, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado ("Subject Property"), as approximately shown 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.) and as more specifically described as Lots 102 and 103, Canterbury East Subdivision. The street addresses for the Subject Property are 17875 Saddlewood Road, and 17945 Saddlewood Rd., Monument, CO 80132 and the El Paso County Assessor has assigned Parcel ID Nos. 6116003021 and 6116003020 to the Subject Property, respectively. Existing Well. There is one existing well on the Subject Property that is registered with Division of Water Resources Permit No. 57137 (Currin Well No. 1"), located upon Lot 103 and which is drilled to the Dawson aquifer. Upon approval of the plan for augmentation requested herein, Currin Well No. 1 will be re-permitted accordingly. The approximate location of Currin Well No. 1 can be seen on attached **Exhibit A**. Proposed Wells. Applicant will construct a Dawson aquifer well according to the plan for augmentation requested herein ("Currin Well No. 2") on the Lot 102 portion of the Subject Property, and any additional or replacement wells as necessary to produce the decreed entitlements. Not-Nontributary. The groundwater to be withdrawn from the Dawson and Denver aquifers underlying the Subject 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, and the augmentation requirements for wells in the Denver aquifer require replacement of a total amount of water equal to 4% (four percent) of the amount of water withdrawn on an annual basis. Nontributary. The groundwater to be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers underlying Applicant's Property will be nontributary. Estimated Rates of Withdrawal. Pumping from the wells on the Subject Property will not exceed 100 gpm. The actual pumping rate for the wells will vary according to aquifer conditions and well production capabilities. Applicant requests the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. 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 Subject Property. Said amounts may be withdrawn over the 100-year life of the aquifers as required under C.R.S. §37-90-137(4), or longer. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying the Subject 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) |
|--------------------------------|--------------------|---------------------------------------|-------------------------------------------------------|-------------------------------------------------------|
| Upper Dawson<br>(NNT – actual) | 240.20             | 871                                   | 8.71                                                  | 2.90                                                  |
| Denver<br>(NNT – 4%)           | 360.30             | 975                                   | 9.75                                                  | 3.25                                                  |
| Upper Arapahoe<br>(NT)         | 256.40             | 493                                   | 4.93                                                  | 1.64                                                  |
| Laramie-Fox Hills<br>(NT)      | 190.00             | 323                                   | 3.23                                                  | 1.07                                                  |

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 Subject Property consisting of domestic, commercial, agricultural, irrigation, watering of stock and domestic animals, fire protection, recreation, fish and wildlife, aesthetics, use of water in hot tubs, pools, and/or water features, and 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 Subject 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 use water from the not-nontributary Dawson and 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 aquifer in accordance with C.R.S. §37-90-137(9)(c.5). Well Fields. Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying the Subject 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 Subject Property, so long as the sum total withdrawals from all the wells in the aquifers do 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 Subject Property. Owner of Land Upon Which Wells are to Be Located. The land and underlying groundwater upon which the wells will be located is owned by the Applicant, David D. Currin, and Red Horse Living Trust. **IV. Structures to be Augmented.** The structures to be augmented are the

Currin Well Nos. 1 and 2 on or to be constructed on the Subject Property, along with any replacement or additional wells associated therewith, which are or will be completed to the Dawson aquifer, in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  and NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 16, Township 11 South, Range 66 West of the 6th P.M., El Paso County, Colorado. 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 Currin Well Nos. 1 and 2, along with any additional or replacement wells associated therewith, on the Subject Property, together with water rights from the nontributary Arapahoe and Laramie-Fox Hills aquifers to account 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 the Currin Well Nos. 1 and 2 on the Subject Property described herein. Water use criteria and their consumptive use component for replacement of actual depletions for the Subject Property are estimated as follows: Uses. Pumping from the Dawson aquifer will be a maximum of 2.76 acre-feet of water per year total from Currin Well Nos. 1 and 2. Such uses shall be for domestic, commercial, agricultural, irrigation, watering of stock and domestic animals, fire protection, recreation, fish and wildlife, aesthetics, use of water in hot tubs, pools, and/or water features, and for storage and augmentation purposes associated with such uses. Amounts. The Currin Well Nos. 1 and 2 will each pump a maximum of 1.38 acre-feet, for a maximum total of 2.76 acre-feet being withdrawn from the Dawson aquifer annually, for a combination of the uses described above. An example breakdown of this combination of use for each lot is in-house use of 0.26 acre-feet of water per year per well, with the additional 1.12 acre-feet per year available for the remaining uses to be permitted, described herein. Depletions. Withdrawals from the Dawson aquifer by the Currin Well Nos. 1 and 2 require replacement of actual stream depletions, pursuant to C.R.S. §37-90-137(9)(c.5)(I)(B). It is estimated that maximum stream depletions over the 300-year pumping period for the Dawson aquifer amounts to approximately 8.34% of pumping. Maximum annual depletions for total pumping from the Currin Well Nos. 1 and 2 are therefore 0.23 acre-feet (*i.e.* 8.34% of pumping). Should Applicant's pumping be less than the 2.76 acre-feet total per year described herein, resulting depletions and required replacements will be correspondingly reduced. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5)(I)(B), Applicant is required to replace actual stream depletions caused by withdrawals of the Dawson aquifer on an annual basis. Depletions during pumping will be effectively replaced by return flows generated by a non-evaporative septic systems associated with indoor uses within two primary dwellings on each lot within the Subject Property. The annual consumptive use for non-evaporative septic systems is 10%. At an estimated conservative indoor household use rate of 0.20 acre-feet per year per dwelling, 0.36 acre-feet is replaced to the stream per year (0.18 acre feet per lot), assuming the use of a non-evaporative septic system. Thus, during pumping, stream depletions (0.23 acre-feet per year) 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 Currin Well Nos. 1 and 2, Applicant will reserve up to 828 acre-feet of the water from the underlying Arapahoe and Laramie-Fox Hills aquifers, 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 Arapahoe and Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, Applicant will be entitled to apply for and receive new well permits for Currin Well Nos. 1 and 2 on the Subject Property, 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 River 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. Applicant requests a finding that it has complied with C.R.S. §37-90-137(4), and that the groundwater requested herein is legally available for withdrawal by the not-nontributary Currin Well Nos. 1 and 2 upon the entry of a decree approving a plan for augmentation pursuant to C.R.S. §37-90-137(9)(c.5). The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post-pumping stream depletions accrue to a particular well only to the extent related to that well's actual pumping. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of groundwater withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater and the proposed plan for augmentation. Wells shall be installed and metered as reasonably required by the State Engineer. Each well may be required to be equipped with a totalizing flow meter and Applicant may be required to submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant may also be required to provide accountings to the Division Engineer and Water Commissioner to demonstrate compliance under this plan for augmentation. The Applicant waives the 600-feet well spacing requirement, pursuant to C.R.S. §37-90-137(2)(b), for any wells to be located on the Subject Property in relation to one another. This waiver does not apply to wells not located on the Subject Property and/or not owned by the Applicant. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §§37-92-302(2)(b) and 37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

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**CASE NO. 2026CW3045; Previous Case No. 2017CW3063 – CITY OF WALSENBURG**  
**c/o City Administrator, 525 South Albert Street, Walsenburg, CO 81089-2296**  
(Please address all pleadings and inquiries regarding this matter to Applicant's attorneys:  
Jennifer M. DiLalla, Cameron J. Abatti, Moses, Wittemyer, Harrison and Woodruff, P.C.,  
2595 Canyon Boulevard, Suite 240, Boulder, CO 80302, (303) 443-8782)

Application for Finding of Reasonable Diligence and to Make Partially Absolute  
**HUERFANO COUNTY**

**2. Subject Exchanges:** The conditional water rights that are the subject of this Application are described in paragraphs 2.1 through 2.9 below ("Subject Exchanges"). All UTM coordinates given in this Application are NAD 83, Zone 13, and all described locations are within Huerfano County, Colorado. 2.1 Original decree: The Subject Exchanges were decreed on September 18, 2020, in Case No. 17CW3063 in this Court ("17CW3063 Decree"). 2.2 Subsequent decrees awarding findings of diligence: None. 2.3 Exchange-from points: 2.3.1 Walsenburg Ditch Augmentation Station (WDID TBD): Water will be released to the Cucharas River in the NE1/4 NE1/4 of Section 17, T28S, R66W of the 6th P.M., within the reach shown on **Ex. A** attached to the application (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). 2.3.2 Coler Reservoir Outlet Ditch Outfall (WDID 1600590): Water is delivered through the Coler Reservoir System Cucharas Delivery Flume, located in the NE1/4 SW1/4 of Section 17, T28S, R66W of the 6th P.M., at a point approximately 1,350 feet from the West line and 2,400 feet from the South line of said Section 17, and from this point to the confluence of the Coler Reservoir System outlet channel and the Cucharas River, located in the NE1/4 SW1/4 of said Section 17, at a point approximately 1,600 feet from the West line and 2,150 feet from the South line of said Section 17, as shown on **Ex. B.** (UTM: 516904 E, 4162387 N.) 2.3.3 Lake Miriam Ditch Outlet Outfall (WDID 1600591): Water is delivered through a flume located in the SE1/4 NW1/4 of Section 17, T28, R66W of the 6th P.M., Huerfano County. The confluence of the Lake Miriam Ditch Outlet channel and the Cucharas River is also located in the SE1/4 of the NW1/4 of Section 17, T28S, R66W of the 6th P.M., as shown on **Ex. B.** (UTM: 517240 E, 4162743 N.) 2.3.4 Gomez Ditch Augmentation Station Outfall (WDID 1600587): Water is delivered through the Gomez Ditch Augmentation Station Outfall to the Cucharas River at a point in the SW1/4 of Section 9, T28S, R66W of the 6th P.M., as shown on **Ex. B.** (UTM: 518464 E, 4163370 N.) 2.3.5 City of Walsenburg Wastewater Treatment Facility (WWTF) Outfall (WDID 1600656): Water is released to the Cucharas River in the SW1/4 of Section 2, T28S, R66W of the 6th P.M., as shown on **Ex. B.** (UTM: 521624 E, 4165051 N.) 2.3.6 Maria Stevens Reservoir Outlet (WDID 1603718): Water is released to the Cucharas River in the SW1/4 of the NW1/4 of Section 28, T27S, R65W of the 6th P.M., as shown on **Ex. B.** (UTM: 528381 E, 4168906 N.) 2.3.7 La Veta Town Lake Outlet (WDID 1603717): Water is released to the Cucharas River in the NE1/4 SE1/4 of Section 16, T29S, R68W of the 6th P.M., as shown on **Ex. C-1.** (UTM: 498537 E, 4149756 N.) 2.3.8 Bruce Canyon Reservoir Outlet (WDID 1603866): Water is released to the Cucharas River in the NW1/4 NE1/4 of Section 5, T30S, R68W of the 6th P.M., as shown on **Ex. C-1.** (UTM: 497898 E, 4147272 N.) 2.3.9 Confluence of Baker Creek and the Cucharas River: Located in the NW1/4 NE1/4 of Section 16, T31S, R69W of the 6th P.M., as shown on **Ex. C-2.** (UTM: 490690 E, 4134049 N.) 2.3.10 Confluence of White Creek and the Cucharas River: Located in the NW1/4 NE1/4 of Section 35, T30S, R69W of the 6th P.M., as shown on **Ex. C-2.** (UTM: 493220 E, 4139438 N.) 2.4 Exchange-to points: 2.4.1 Walsenburg Pipeline (WDID 1600637): Diverts water from the Cucharas River at a point in the SW1/4 of Section 28, T29S, R68W of the 6th P.M., as shown on **Ex. C-1.** (UTM: 498634 E, 4149150 N.) 2.4.2. Lake Miriam Ditch (a/k/a Coler Inlet Ditch) (WDID 1600584): Diverts water from the Cucharas River at a point in the NW1/4 SE1/4

of Section 32, T28S, R67W of the 6th P.M., as shown on **Ex. B**. (UTM: 508063 E, 4157930 N.) 2.4.3 City Lake Inlet (WDID 1600592): Will divert water from the north bank of the Cucharas River within a reach located in Sections 25, 26, 27, 28, 32, and 33, T28S, R67W of the 6th P.M., as shown on **Ex. B**. 2.4.4 La Veta Pipeline Inlet (WDID 1600585): Diverts water from the Cucharas River for storage in La Veta Town Lake. Located in the SW1/4 NE1/4 of Section 5, T30S, R68W of the 6th P.M., as shown on **Ex. C-1**. (UTM: 497771 E, 4146702 N.) 2.4.5 Butte Ditch (WDID 1600574): Diverts water from the Cucharas River for storage in Bruce Canyon Reservoir. Headgate located in the NW1/4 NW1/4 of Section 8, T30S, R68W of the 6th P.M., as shown on **Ex. C-1**. (UTM: 497147 E, 4145740 N.) 2.4.6 South Baker Creek Reservoir Inlet (WDID 1600708): Diverts water from Baker Creek for storage in South Baker Creek Reservoir. Located in the SW1/4 NE1/4 of Section 17, T31S, R69W of the 6th P.M., as shown on **Ex. C-2**. (UTM: 489410 E, 4133609 N.) 2.4.7 South Baker Creek Dam (WDID 1603864): Located in the SW1/4 NE1/4 of Section 16, T31S, R69W of the 6th P.M., as shown on **Ex. C-2**. (UTM: 490398 E, 4133630 N.) 2.4.8 White Creek Reservoir (WDID 1603863): Will be located on White Creek in Sections 14, 15, 22, and/or 23, T31S, R69W of the 6th P.M., as shown on **Ex. C-2**. (UTM: 492413 E, 4132589 N.) 2.4.9 Britton Reservoirs Enlargement Dam (WDID 1603865): Located in the SW1/4 NE1/4 of Section 22, T31S, R69W of the 6th P.M., as shown on **Ex. C-2**. (UTM: 491939 E, 4131986 N.) 2.4.10 Britton Reservoir No. 1 Dam (WDID 1603859): Located in the SW1/4 NE1/4 of Section 22, T31S, R69W of the 6th P.M., as shown on **Ex. C-2**. (UTM: 492110 E, 4131691 N.) 2.4.11 South Fork Feeder – Britton Reservoirs Nos. 2 and 3 (WDID 1600990): Diverts water from the South Fork of the Cucharas River for storage in Britton Reservoirs No. 2 and 3. Located in the SW1/4 NE1/4 of Section 22, T31S, R69W of the 6th P.M., as shown on **Ex. C-2**. (UTM: 492147 E, 4131670 N.) 2.4.12 Deadman Creek Feeder – Britton Reservoirs No. 2 and 3 (WDID 1600989): Diverts water from Deadman Creek for storage in Britton Reservoirs No. 2 and 3. Located in the NW1/4 SE1/4 of Section 22, T31S, R69W of the 6th P.M., as shown on **Ex. C-2**. (UTM: 491943 E, 4131621 N.) 2.5 Exchange reaches: The reaches of the Subject Exchanges are as follows: 2.5.1 2017 Exchanges: The “2017 Exchanges,” as described in Table 2 of **Ex. D**, operate through a reach of the Cucharas River between the furthest downstream terminus at the location of the City’s WWTF Outfall, as described in paragraph 2.1.5 above, and the furthest upstream terminus at the point of diversion for the Walsenburg Pipeline, as described in paragraph 2.2.1 above. 2.5.2 2018 Exchanges: The “2018 Exchanges,” as described on Table 3 of **Ex. D**, operate through reaches of the Cucharas River and its tributaries, including the South Fork of the Cucharas River, Deadman Creek, and Baker Creek. The maximum exchange reach is between the furthest downstream terminus at the Maria Stevens Reservoir Outlet, as described in paragraph 2.1.6 above, and the furthest upstream terminus at Deadman Creek Feeder – Britton Reservoirs Nos. 2 and 3, as described in paragraph 2.2.12 above. 2.6 Sources of substitute supply: 2.6.1 Walsenburg Ditch No. 4, Priority No. 5: The City owns 27,081 (57.42%) of the 47,165 shares outstanding in the Walsenburg Ditch Company. 2.6.1.1 The Walsenburg Ditch No. 4, Priority No. 5 (“Walsenburg Ditch”) water right was decreed in the amount of 5.9 cfs in the “Read Decree,” entered on June 12, 1889, in the Matter of Priority of Water Rights in Water District No. 16 in the District Court of the Sixth Judicial District of the State of Colorado. 2.6.1.2 By the decree entered in Civil Action 4025, 0.295 cfs was transferred out of the ditch, leaving a total of 5.605 cfs decreed to the Priority No.

5 water right remaining in the Walsenburg Ditch. The City's 57.42% ownership interest represents 3.22 cfs of that 5.605 cfs. 2.6.1.3 In Case No. 25CW3052 pending in this Court, the City has applied to change the use of its Walsenburg Ditch water right to include use by exchange and use, reuse, and successive use to extinction within the City's municipal system. 2.6.2 Gomez Ditch, Priorities Nos. 10 and 124: The City owns a one-sixth interest in Priorities Nos. 10 and 124 in the Gomez Ditch ( "Gomez Ditch Water Rights"), which are decreed as follows: 2.6.2.1 Priority No. 10: 3.2 cfs, originally decreed in the Read Decree. The City's 1/6th interest in the Priority No. 10 water right represents 0.5334 cfs of the 3.2 cfs. 2.6.2.2 Priority No. 124: 7.0 cfs, originally decreed in the "Killian Decree," entered on February 23, 1898, in the Matter of the Adjudication of the Priorities to the Use of Water in Water District No. 16 in the District Court of Huerfano County, State of Colorado. The City's 1/6th interest in the Priority No. 124 water right represents 1.167 cfs of the 7.0 cfs. 2.6.2.3 Subsequent decree and pending application: The City's 1/6th interest in Priorities Nos. 10 and 124 was changed for the City's uses, including use by exchange, by the decree entered in Case No. 11CW56 on December 26, 2014 ("11CW56 Decree"). In pending Case No. 25CW3052, the City has applied for a subsequent change of its 1 Ditch Water Rights to allow for reuse and successive use. 2.6.3 Reusable WWTF return flows: Reusable sewer effluent ("Reusable Return Flows") from the City's first use of the consumable portion of the Gomez Ditch Water Rights and the City's Walsenburg Ditch water right. 2.7 Appropriation dates: 2.7.1 2017 Exchanges: December 26, 2014 (0.08 cfs exchanged from the Gomez Ditch Augmentation Station Outfall to the Walsenburg Pipeline); November 7, 2017 (all other 2017 Exchanges). 2.7.2 2018 Exchanges: December 18, 2018. 2.8 Amounts: 2.8.1 2017 Exchanges: 4.8 cfs, CONDITIONAL, as the maximum cumulative rate of exchange for all 2017 Exchanges. The exchange rates for the various intermediate exchanges are itemized in Table 2 of **Ex. D**. 2.8.2 2018 Exchanges: The exchange rates are set forth in Table 3 of **Ex. D**. 2.8.3 Exchange matrices: The exchange matrices attached as **Ex. D** show all exchange-from points, exchange-to points, exchange rates, appropriation dates, and WDID numbers for each exchange. 2.9 Use: 2.9.1 When the source of substitute supply is the Gomez Ditch Water Rights, use of the water diverted by exchange will be consistent with the decreed uses under the 11CW56 Decree. 2.9.2 When the source of substitute supply is Reusable Return Flows derived from the Gomez Ditch Water Rights, use of the water diverted by exchange will be consistent with the decreed uses under the 11CW56 Decree and any decree entered in Case No. 25CW3052. 2.9.3 When the source of substitute supply is the City's Walsenburg Ditch water right or Reusable Return Flows derived therefrom, use of the water diverted by exchange will be consistent with the uses approved by any decree entered in Case No. 25CW3052 or, while that case is pending, by a substitute water supply plan approved under § 37-92-308, C.R.S. 2.9.4 From time to time, to the extent that water diverted by exchange under this Decree is in excess of the City's needs, the City may make such water available for use by others who contract with the City. 2.9.5 Water diverted by exchange may also be delivered to and stored in the following storage structures for subsequent use. The locations of the storage structures are shown on the map attached as **Ex. E**. 2.9.5.1 Lake Miriam Reservoir (a/k/a Horseshoe Reservoir) (WDID 1603715): Located in the W1/2 of Section 13, the SE1/4 of Section 14, and the NW1/4 of Section 24, T28S, R67W of the 6th P.M. (UTM of dam above outlet: 513799.4 E, 4162034 N.) 2.9.5.2 Lake Oehm Reservoir (a/k/a Martin Lake)

(WDID 1603716): Located in the E1/2 of Section 13, T28S, R67W, and the W1/2 of Section 18, T28S, R66W of the 6th P.M. (UTM of dam above outlet: 515047.1 E, 4162270.1 N.) 2.9.5.3 Walsenburg Water System Reservoir (a/k/a Walsenburg Reservoir, a/k/a City Lake) (WDID 1603724): Located in Section 23, T28S, R67W of the 6th P.M. (UTM for dam above centerline: 512975.01465 East, 4160982.92881 North.) 2.9.5.4 Wahatoya Lake Reservoir (WDID 1603723): Located in the N1/2 SW1/4 of Section 22 and in the SE1/4 NW1/4 of Section 22, T29S, R68W of the 6th P.M. (UTM of dam above outlet: 500805.3 E, 4151471.8 N.) 2.9.5.5 Daigre Reservoir (WDID 1603720): Located in the S1/2 N1/2 of Section 22, T29S, R68W of the 6th P.M. (UTM of dam above outlet: 501131 E, 4151650.3 N.) 2.9.5.6 La Veta Town Reservoir Enlargement (WDID 1603717): The center of the dam is located in the NW1/4 SE1/4 of Section 28, T29S, R68W of the 6th P.M. (UTM of dam above outlet: 499555 E, 4149552 N.) 2.9.5.7 Bruce Canyon Reservoir (WDID 1603866): The center of the dam is located in the SE1/4 NW1/4 of Section 5, T30S, R68W of the 6th P.M. (UTM of dam above outlet: 497394 E, 4147036 N.) 2.9.5.8 South Baker Creek Reservoir (WDID 1603864): The center of the dam is located in the SW1/4 NE1/4 of Section 16, T31S, R69W of the 6th P.M. (UTM of dam above outlet: 490452 E, 4133683 N.) 2.9.5.9 Britton Reservoirs Enlargement (WDID 1603865): The center of the dam is located in the SW1/4 NE1/4 of Section 22, T31S, R69W of the 6th P.M. (UTM of dam above outlet: 491983 E, 4131986 N.) 2.9.5.10 White Creek Reservoir (WDID 1603863): Located in Sections 14, 15, 22, and/or 23, T31S, R69W of the 6th P.M. (UTM of dam above outlet: 492413 E, 4132589 N.) 3. Outline of work and expenditures during the diligence period toward completion of the appropriations and application of water to beneficial use: The Subject Exchanges are part of Walsenburg's integrated municipal water system. See 17CW3063 Dec. ¶ 33. "When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of the water rights for all features of the entire project or system." C.R.S. § 37-92-301(4)(b). The diligence period for the Subject Exchanges is September 2020 through September 2026 ("Diligence Period"). During the Diligence Period, the City has worked diligently to develop the Subject Water Rights, complete the appropriations, and put the water to beneficial use, as demonstrated by the representative but non-exhaustive list of activities and expenditures below. 3.1 Case No. 25CW3052: As required by the 17CW3063 Decree for use of the substitute supplies described in paragraphs 2.6.1 and 2.6.3 above, the City conducted technical and legal analysis for and prepared and filed the change of water rights application in Case No. 25CW3052. The City is actively prosecuting that case, technical and legal consulting fees for which are included in paragraphs 6.6 and 6.7 below. 3.2 Integrated system planning: 3.2.1 From November 2025 through July 2026, the City spent \$52,640.65 to develop its updated Comprehensive Plan, which was adopted in August 2026. Chapter 8 includes the Water Component of the Comprehensive Plan. 3.2.2 City representatives met with legal counsel and technical experts at least monthly to discuss water rights and water infrastructure operations and planning. 3.3 Infrastructure development and improvements: 3.3.1 The City made repairs to Daigre Reservoir in July 2025, at a cost of \$50,405; repairs to the City's storage tank in April 2025, at a cost of \$5,000; repairs of water breaks in April 2022, November 2023, January 2024, December 2024, and July 2026, at a cost of \$105,616.25 (including equipment); and repairs to the Walsenburg Ditch

flume in April and August 2026, at a cost of \$6,123.54 (including parts and concrete).

3.3.2 The City made infrastructure improvements including installation of a sensor and staff gages at Wahatoya Reservoir in May, June, and July 2026, at a cost of \$2,171.35; acquisition and placement of a flume for the Coler Inlet Ditch in January and August 2026, at a cost of \$5,189 (including parts and labor); and overall water system improvements and installation of meters in October 2022, November 2022, February 2023, January 2025, June 2025, and July 2025, at a cost of \$59,689.68.

3.4 System cleaning and maintenance: The City performed cleaning of the Coler Ditch in December 2023, at a cost of \$15,510; cleaning of Daigre Reservoir in May 2026, at a cost of \$8,000; every-other-day inspection of reservoirs and ditch headgates, and meetings with State water officials, at a cost of \$74,263.20 from January 2023 through August 2026; and weed spraying on the reservoirs in June 2026, at a cost of \$750.

3.5 Pumping for treatment: During 2026 crisis conditions, the City pumped water to the treatment plant at a cost of \$75 per hour, with fuel costs of \$600 per day from July 6 to August 4, 2026, and \$1,000 per day from August 6, 2026 to the present, at a total cost of \$159,425.

3.6 Technical consultants: The City engaged outside technical consultants for development and protection of its water rights and infrastructure, including the Subject Exchanges and associated infrastructure. The City spent more than \$500,000 for that work.

3.7 Legal fees: The City spent more than \$379,000 to develop its integrated municipal system through legal planning work and through development and prosecution of the application in Case No. 25CW3052; and to protect its water rights, including the Subject Exchanges, from injury.

3.8 Continuing need: In Case No. 25CW3052, the City's technical consultants projected municipal water shortages based on the land use and development projections in the City's 2026 Comprehensive Plan. The Subject Exchanges remain a critical component of the City's water supply required to meet those shortages.

4. Claim to make absolute:

4.1 Subject Exchange: 2017 Exchange from the Gomez Ditch Augmentation Station Outfall to the Coler Inlet Ditch.

4.2 Source of substitute supply: Fully consumable water attributable to the City's Gomez Ditch Water Rights.

4.3 Dates of in-priority diversion by exchange: April 13 – April 16, 2019.

4.4 Evidence of in-priority diversion by exchange: Screenshots from the City's monthly water rights accounting submittal and from Colorado's Decision Support System records, attached as **Ex. F**.

4.5 Amount made absolute: 0.798 cfs.

4.6 Use: Municipal.

4.7 Place of use: City of Walsenburg.

5. Names and address of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:

5.1 Lake Miriam Reservoir (a/k/a Horseshoe Reservoir): Game and Fish Commission [no longer existing], c/o Colorado Parks and Wildlife Headquarters, 6060 Broadway, Denver, CO 80216.

5.2 Lake Oehm (a/k/a Martin Lake): State of Colorado, Parks and Recreation [no longer existing], c/o Colorado Parks and Wildlife Headquarters, 6060 Broadway, Denver, CO 80216; Applicant.

5.3 Walsenburg Reservoir: Applicant.

5.4 Wahatoya Lake Reservoir: BK Ranches, LLC & Tammy and My Three Sons, LLC, 3324 County Road 450, La Veta, CO 81005.

5.5 Daigre Reservoir: Applicant.

5.6 Maria Stevens Reservoir: Maria Lake Grazing Association, LLC, 7343 South Alton Way, Suite 100, Centennial, CO 80112.

5.7 La Veta Town Reservoir: Town of La Veta, P.O. Box 174, La Veta, CO 81055.

5.8 Bruce Canyon Reservoir and White Creek Reservoir: William Peter Goemmer, P.O. Box 185, La Veta,

CO 81055. 5.9 South Baker Creek Reservoir: Cuchara Investments, LLC – ATTN Marshall Moore, 2722 Wagonwheel Dr., Carrollton, TX 75006. 5.10 Britton Reservoirs: Cucharas Sanitation and Water District, 16925 Highway 12, Cuchara, CO 81055; and Crossvine Properties LLC, 2405 Kell Blvd., Suite 200, Wichita Falls, TX 76308. Based on the foregoing, Walsenburg requests that the Court enter a decree (i) granting this Application; (ii) finding that Walsenburg exercised reasonable diligence in developing the appropriations of the Subject Exchanges during the Diligence Period; (iii) making the 2017 Exchange partially absolute as described in paragraph 4 above; and (iv) continuing in full force and effect for an additional diligence period those portions of the Subject Exchanges that are not made absolute in this case.

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**CASE NO. 2026CW3046; Previous Case Nos. 01CW160, 12CW39, 20CW3009 – CITY OF PUEBLO, COLORADO, c/o Ms. Beritt Odom, Planning & Community Development Director, 101 W. Riverwalk, Pueblo, CO 81003** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Christopher L. Thorne and Courtney M. Shephard, Greenberg Traurig, LLP, 1144 15th Street, Suite 3000. Denver, CO 80202 (303) 572-6500)

Application for Finding of Reasonable Diligence with Respect to Recreational In-Channel Diversion Water Right

**PUEBLO COUNTY**

**2. Background:** In Case No. 01CW160, the Water Court issued a decree granting and approving a conditional recreational in-channel diversion water right (“RICD Water Right”) associated with each of the nine diversion structures comprising Applicant’s Arkansas River Legacy Whitewater Park (the “Whitewater Park”) in Pueblo, Colorado. In Case No. 12CW39, the Water Court issued a decree making the RICD Water Right associated with Structures 1 through 8 of the Whitewater Park, absolute, and continuing the conditional status of the Structure 9 water right (aka the “Moffat Street Chute”). The conditional status of the Structure 9 water right was continued by decree of the Water Court in Case No. 20CW3009. In this application, Applicant seeks a finding of reasonable diligence with respect to the RICD Water Right associated with Structure 9. **3. Description of Water Right:** A. Original Decree: Case No. 01CW160, dated April 5, 2006. B. Subsequent Decrees: Case No. 12CW39, dated March 21, 2014; Case No. 20CW3009, dated September 16, 2020. C. Description of Structures: The nine control structures comprising the Whitewater Park are numbered consecutively from the upstream structure (Structure 1) to the furthest downstream structure (Structure 9). Construction of Structures 1 through 8 was completed in 2005. Structure 9 will be constructed in the future. The nine structures comprise a whitewater and recreational boating course, which enjoys regular and frequent use by local boaters and boaters who travel to Pueblo from many other places. Structure 1 of the Whitewater Park includes a permanent boat chute/fish ladder to allow kayaks, boats, and other recreational watercraft, as well as native and sport fish, to pass over an existing 13-foot-high diversion structure in the river known as the Southern Colorado Power Plant or Aquila Energy diversion dam (the “Power Plant Diversion”). A series of seven smaller, permanent control structures (Structures 2 through 8) have been constructed in the river between the Power Plant Diversion and the Union Street bridge to create self-scouring pools and to divert and control the flow of the river at specific points to generate various wave forms desirable for whitewater kayaking and recreational

boating. The Whitewater Park will extend downstream to Structure 9, a permanent boat chute or chutes in the Arkansas River at the location of the existing St. Charles Mesa Water District diversion structure, located just downstream from the Santa Fe Street bridge in Pueblo, near Moffat Street, to allow passage over the existing diversion structure. Structure 9 has not yet been completed due to financial constraints, but is planned for construction as described in more detail below. The Whitewater Park structures were designed to control, concentrate, and direct the flow of the Arkansas River for use by kayaks, canoes, rafts and other types of recreational watercrafts, and to establish and maintain fish habitat for piscatorial and other purposes. The structures are of the type and nature described in the letter report dated December 24, 2001, by Gary M. Lacy, submitted as Pueblo's Exhibit D in the hearing before the Colorado Water Conservation Board on July 22-23, 2002, and have generally been constructed in conformity with that report. D. Legal Descriptions of Structures: The Whitewater Park was constructed in the Arkansas River channel, beginning with the boat chute/fish ladder (Structure 1) over and through the Power Plant Diversion. Seven other control structures (Structures 2 through 8) are located in the river between Structure 1 and the Union Street Bridge. Structures 2 through 8 are located in a reach of the river that is approximately 2,000 feet in length. Structure 9 will be constructed consistent with the decree in Case No. 01CW160, at the location described below. The Power Plant Diversion, the Union Street bridge, and Structure 9 are generally located as follows: i. Power Plant Diversion (Structure 1): A water control structure located in the Arkansas River channel in the SW1/4 of the NW1/4, Section 36, T. 20 S., R. 65 W., of the 6th P.M., at a point approximately 2,326 feet South of the North Section line and 810 feet East of the West Section line of said Section 36. ii. Union Street Bridge: The Union Street bridge crosses the Arkansas River in Pueblo in the SE1/4 of the SW1/4, Section 36, T. 20 S., R. 65 W., of the 6th P.M., at points approximately 968 feet North of the South Section line and 2,320 feet East of the West Section line of said Section 36. iii. Structure 9/Moffat Street Chute: The Moffat Street Chute is a structure in the Arkansas River channel located in the SW1/4 of the NW1/4, Section 6, T. 21 S., R. 64 W., of the 6th P.M., at a point approximately 1,684 feet South of the North Section line and 287 feet East of the West Section line of said Section 6. The U.S. Geological Survey topographic map attached to and incorporated in this 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.) identifies the general location of the Whitewater Park and the control structures as described above and in the decree in Case No. 01CW160. The Applicant constructed Structures 1 through 8 consistent with the decrees. E. Source: The source of the RICD Water Right for the Whitewater Park is the Arkansas River and its tributaries. F. Appropriation Date: May 15, 2000. G. Amounts Claimed: The following amounts were decreed in Case No. 01CW160 as a conditional RICD water right for each of the specified time periods for each of the structures that comprise the Whitewater Park. In the decree entered in Case No. 12CW39, the Water Court determined the decreed amounts and uses associated with Structures 1 through 8 had been made absolute.

| Period            | Average Year (c.f.s.) | Drier Year (c.f.s.) |
|-------------------|-----------------------|---------------------|
| Oct. 1 - Oct. 15  | 250                   | 150                 |
| Oct. 16 - Nov. 14 | 200                   | 150                 |
| Nov. 15 - Mar. 15 | 100                   | 100                 |

|                   |     |     |
|-------------------|-----|-----|
| Mar. 16 - Mar. 31 | 250 | 200 |
| Apr. 1 - Apr. 15  | 350 | 250 |
| Apr. 16 - Apr. 30 | 400 | 300 |
| May 1 - May 22    | 450 | 350 |
| May 23 - July 31  | 500 | 500 |
| Aug. 1 - Aug. 15  | 450 | 350 |
| Aug. 16 - Sep. 7  | 300 | 300 |
| Sep. 8 - Sep. 30  | 240 | 150 |

The U.S. Natural Resources Conservation Service regularly releases a “Water Supply Outlook Report” for Colorado. This report includes a “most probable” forecast (50% chance of exceedance) for flows on the Arkansas River at Salida (the “Forecast”). The “Average Year” flows in the table above shall apply when the most recently released Forecast is 100% or more. The “Drier Year” flows shall apply when the most recently released Forecast is less than 100% and greater than or equal to 70%. If the Forecast ceases to be provided by the Natural Resources Conservation Service, the Applicant shall notify the Court and all parties to the case in writing of a proposed alternative measure for fair implementation of this paragraph. The other parties shall have 30 days in which to provide comments to the Court concerning Applicant’s proposal, after which the Court shall decide upon the alternative measure to be used. H. Uses: Boating, including but not limited to kayaking, rafting, and canoeing. The RICD Water Right is also used for incidental fishing, wildlife habitat, and piscatorial uses. However, no water right for fishing, wildlife habitat, or piscatorial uses was confirmed by the decree in Case No. 01CW160.

2. Evidence in Support of Claim for Finding of Reasonable Diligence: The activities described below, which occurred during the most recent diligence period, support Applicant’s claim to continue the conditional RICD Water Right for Structure 9 in full force and effect for an additional six-year diligence period. This list is not intended to be exclusive and may be supplemented by additional and more detailed evidence. A. In the previous diligence application in Case No. 20CW3009, Applicant described planned improvements to the Whitewater Park identified in the 2018 Arkansas River Levee Park Master Plan. During this diligence period, Applicant completed approximately 80 percent of those improvements, including: (i) new boater parking and a paved parking lot; (ii) a concrete pathway to the trail along the Whitewater Park and a pedestrian bridge; and (iii) installation of lighting at the trailhead and along the pathway. The cost of these improvements totaled approximately \$1 million. The Applicant predicts the new features and improvements will increase the usage of the Whitewater Park and, in turn, increase the need to complete the Moffat Street Chute to facilitate safe watercraft passage. B. In 2025, Applicant and the Pueblo Conservancy District completed the Pueblo City Park and Arkansas River Corridor Master Plan (the “2025 Plan”), an extensive planning effort that cost approximately \$154,000. The 2025 Plan provides a ten to fifteen-year vision for, among other things, enhancements and potential capital improvement projects for the Arkansas River Corridor through the City. The planned completion of the Moffat Street Chute is identified as an important safety and recreational improvement to be designed and constructed by the City within “two to three years.” The Moffat Street Chute is referenced throughout the 2025 Plan at pages 6, 9, 15, 16, 43, 45 and 53. C. In addition, during the most recent diligence period, Applicant expended in excess of \$25,000 for legal fees and water rights consulting work to assist Applicant’s efforts to protect the RICD

Water Right and flows for the Whitewater Park, through participation as an opposer in numerous water court applications, and as a member of the Arkansas River Flow Management Committee. D. As confirmed above and in the referenced reports, design and construction of the Moffat Street Chute, along with a boat takeout location below the chute on the south bank of the river, is planned for the near future. Both improvements would be accessible by a proposed new parking area off Moffat Street. In 2025, the Pueblo Board of Water Works built the Waterworks Park north of the Moffat Dam in the Arkansas River near Pueblo City Park. The Waterworks Park attracts many recreational boaters who float the river south, enjoy and use the river features through the Whitewater Park, and continue toward the location of the Moffat Street Chute. The upstream Waterworks Park has significantly increased demand for use of the river for recreational users. With more boaters using the river, completion of the Moffat Street Chute is a priority for the City to allow for safe passage through the existing dam and a final recreational water feature above the new boat takeout for the Whitewater Park. 3. Terms and Conditions to Prevent Injury: The terms and conditions set forth in Paragraph 7 of the final decree in Case No. 01CW160 will continue to apply to the RICD Water Right. 4. Names and Address of Owner of Land on Which Points of Diversion and Places of Use are Located: A. Applicant, at the address listed in Paragraph 1. B. The Pueblo Conservancy District, P.O. Box 234, Pueblo, CO 81002. WHEREFORE, the Applicant requests that the Court enter a decree: A. Finding that Applicant has exercised reasonable diligence toward controlling and placing to beneficial use the remaining conditional portion of the RICD Water Right associated with Structure 9, and that such portion of the RICD Water Right should be continued in full force and effect for all decreed amounts and uses; and B. Granting such other relief as the Court deems just and proper.

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**CASE NO. 2026CW3047; Previous Case Nos. 20CW3004, 13CW3043, 01CW80, 84CW177(B) (Non-Sewered Phase) and 86CW111(B) (Non-Sewered Phase) – BOARD OF WATER WORKS OF PUEBLO, COLORADO, Attention: Executive Director, 319 West Fourth Street, Pueblo, Colorado 81003** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Karl D. Ohlsen, Beth Ann J. Parsons, Carlson, Hammond & Paddock, L.L.C., 1900 Grant Street, Suite 1200, Denver, Colorado 80203, (303) 861-9000)

Application for Sexennial Finding of Reasonable Diligence

**LAKE, CHAFFEE, AND PUEBLO COUNTIES**

This is an Application for a Sexennial Finding of Reasonable Diligence involving certain exchange and reuse rights of the Board Water Works of Pueblo, Colorado ("Pueblo Water") originally decreed on August 3, 1995, in Consolidated Cases No. 84CW177(B) (Non-Sewered Phase), and 86CW111(B) (Non-Sewered Phase), District Court, Water Division No. 2 (the "Consolidated Decree"). **2. Name of Structures (Utilized for Exchange and Reuse)** (Maps depicting the locations of the Structures are attached to the application as **Exhibits 1-14**) (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 2.1. Diversion Facilities: 2.1.1. Pueblo Reservoir. The point of diversion of Pueblo Reservoir is at a point at the intersection of the Pueblo Dam axis and the Arkansas River whence the Northeast corner of Section 36, Township 20 South, Range 66 West of the 6th P.M., bears North 61°21'20" East a distance of 2,511.05 feet. Said reservoir inundates 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 of the 6th P.M., Sections 1, 2, 3, 4, 5, 9, 10, and 11, Township 21 South, Range 66 West of the 6th P.M.; and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, Township 20 South, Range 67 West of the 6th P.M. 2.1.2. Clear Creek Reservoir. Clear Creek Reservoir is located on Clear Creek in Sections 7 and 8, Township 12 South, Range 79 West of the 6th P.M., and Section 12, Township 12 South, Range 80 West of the 6th P.M., in Chaffee County. 2.1.3. Twin Lakes Reservoir. Twin Lakes Reservoir is formed by a dam across Lake Creek in Lake County in Section 23, Township 11 South, Range 80 West of the 6th P.M., as described in the decree in Case No. 80CW6, District Court, Water Division No. 2, dated October 23, 1980. 2.1.4. Turquoise Lake. Turquoise Lake is formed by a dam across Lake Fork Creek in Lake County in Section 19, Township 9 South, Range 80 West of the 6th P.M., as described in the decree in Case No. 80CW6. 2.1.5. Northside Intake. Pueblo Water's Northside Intake headgate is situated on the North bank of the Arkansas River in Pueblo County, Colorado, in the Northwest quarter of the Northeast quarter of Section 33, Township 20 South, Range 65 West of the 6th P.M., at or near a point which lies South 74°14'30" West, 2,673.9 feet from the Northeast corner of said Section 33. 2.1.6. Southside Intake. Pueblo Water's Southside Intake headgate is located on the right bank of the Arkansas River at a point whence the west quarter corner of Section 34, Township 20 South, Range 65 West of the 6th P.M. bears south 69°35' West 1,478 feet. 2.1.7. Comanche Pump Station. Comanche Pump Station is located as follows: Considering the south line of the SE 1/4 of Section 31, Township 20 South, Range 65 West of the 6th P.M., to bear N. 89°24'53" E with all bearings contained herein being relative thereto: Beginning at a point on the northerly right-of-way line of the Denver and Rio Grande Western Railroad from which the Southwest 1/4 corner of the Southeast 1/4 of said Section 31 bears S 00°39'25" E. a distance of 660.62 feet; thence N 47°12'21" E, a distance of 58.61 feet; thence N 02°29'30" W, a distance of 80.47 feet; thence N 87°30'30" E, a distance of 132.5 feet; thence N 02°29'30" W, a distance of 92.5 feet to the point of diversion. **3. Describe Conditional Exchange and Reuse Water Rights as decreed in the Consolidated Decree:** 3.1. Date of Original Decree: Consolidated Cases No. 84CW177(B) and 86CW111(B), August 3, 1995, District Court, Water Division No. 2, State of Colorado. Date of Subsequent Decrees: Case No. 01CW81, District Court, Water Division No. 2, September 10, 2007; Case No. 13CW3043, District Court, Water Division No. 2, February 21, 2014; 20CW3004, District Court, Water Division No. 2, September 1, 2020. 3.2. Exchange Priority Date: Case No. 84CW177(B), May 18, 1976. Case No. 86CW111(B), July 1, 1985. 3.3. Use: All beneficial uses for which the waters to be exchanged and reused are decreed, including the uses set forth in the decree in the Consolidated Decree. 3.4. Source of Water for Exchange and Reuse: The water rights that are to be utilized in the exchange and reuse programs described herein are return flows derived from sources of supply that are not native or tributary to the Arkansas River. Said waters include return flows after use in Pueblo Water's municipal water system and return flows from other water users supplied by Pueblo Water and derived from Pueblo Water's ownership interests in or rights to use water derived from the following sources of supply: 3.4.1. Ewing Placer Ditch. The Ewing Placer Ditch diverts water from Piney Creek, a tributary of the Eagle River, and carries the water across the Continental Divide into Tennessee Creek for delivery to the Arkansas River. The Ewing Placer Ditch was decreed on November 13, 1911, with appropriation date of June 1, 1906, by the District

Court, Eagle County, Civil Action No. 507. 3.4.2. Columbine Ditch. The Columbine Ditch diverts water from three branches of the East Fork of the Eagle River and carries such water across the Continental Divide for delivery into the West Branch of Chalk Creek, into the East Fork of the Arkansas River, and then into the Arkansas River. The Columbine Ditch was decreed on October 3, 1936, with an appropriation date of June 21, 1930, by the District Court, Eagle County, Civil Action No. 963. Pueblo Water controls the right to utilize a portion of the waters described herein by virtue of an agreement with the owner. 3.4.3. Warren E. Wurtz Ditch (also known as the Warren E. Wurts Ditch). The Warren E. Wurtz Ditch diverts water from Bennett Creek, Mitchell Creek, and side tributaries of those creeks, all of which are tributaries of the Eagle River. The ditch carries water across the Continental Divide into West Tennessee Creek for delivery to the Arkansas River. The Warren E. Wurtz Ditch was decreed on October 3, 1936, with an appropriation date of June 8, 1929, by the District Court, Eagle County, Civil Action No. 963. 3.4.4. Wurtz Extension Ditch. The Wurtz Extension Ditch diverts water from Yoder Creek, East Fork of Yoder Creek, and Rule Creek, tributaries of the Eagle River. The ditch connects to the Warren E. Wurtz Ditch, which then carries water across the Continental Divide into West Tennessee Creek for delivery to the Arkansas River. The Wurtz Extension Ditch was decreed on October 21, 1982, with an appropriation date of October 26, 1953, by the District Court, Water Division No. 5, Case No. 80CW505. 3.4.5. Busk-Ivanhoe System. The Busk-Ivanhoe System diverts water from Hidden Lake Creek, Pan Creek, Lyle Creek, and Ivanhoe Creek, all tributaries of the Frying Pan and Roaring Fork Rivers, and carries such water through the Continental Divide for delivery into Busk Creek on the headwaters of the Arkansas River. The System was decreed by absolute decree of the District Court, Garfield County, in Case No. 2621 dated January 9, 1928, with appropriation dates differing for various components of the system as more fully set forth in the referenced decree. Other absolute decrees were entered in Civil Actions No. 3082 and 4033. The decrees were entered by the District Court, Garfield County. Pueblo Water owns an undivided one-half interest in these water rights. 3.4.6. Homestake Project. The Homestake Project diverts water from the headwaters of tributaries of the Eagle River in Eagle County. The water rights were conditionally adjudicated by the decree in Civil Action No. 1193 (District Court, Eagle County) dated June 8, 1962. These water rights have an appropriation date of September 22, 1952. By an assignment of interest from the City of Aurora, Pueblo Water has the annual right to receive 2,500 acre-feet of Homestake Project Water delivered at Turquoise Lake. 3.4.7. Independence Pass Transmountain Diversion System. The Independence Pass Transmountain Diversion System diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County. The water rights were adjudicated by a decree in Civil Action No. 3082, District Court, Garfield County, dated August 25, 1936, and were modified by a decree in Case No. W-1901, District Court, Water Division No. 5, dated May 12, 1976. These water rights have an appropriation date of August 23, 1930. Pueblo Water has the right to utilize a portion of such waters and the return flows therefrom by virtue of its ownership of shares of the Twin Lakes Reservoir and Canal Company. 3.4.8. Fryingpan-Arkansas Project. The Fryingpan-Arkansas Project diverts water from the headwaters of Hunter Creek and the Fryingpan River and its tributaries in Pitkin County. The water rights were adjudicated by the decrees in Civil Action No. 4613, District Court, Garfield County, dated June 20, 1958, and August 3, 1959, and were modified by the decree in Case No. W-829-76, District

Court, Water Division No. 5, dated November 27, 1979. These water rights have an appropriation date of July 29, 1957. By this Application, Pueblo Water does not seek any rights of use of Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocation of Fryingpan-Arkansas Project water or return flows from Fryingpan-Arkansas Project water, but this does not alter any existing rights Pueblo Water may otherwise have. Return flows from the Fryingpan-Arkansas Project will be utilized for exchanges and reuse only after they are purchased from the Southeastern Colorado Water Conservancy District. 3.4.9. All the sources of supply described in Paragraph No. 3.4 are waters not native and not naturally tributary to the Arkansas River Basin and are referred to as "the Transmountain Sources." All Transmountain Sources have been decreed to include municipal purposes. 3.5. Location and Amounts of Decreed Exchange Reaches: 3.5.1. The return flows resulting from use of the water derived from the Transmountain Sources are quantified and accounted for pursuant to the Consolidated Decree and accrue to the Arkansas River or its tributaries above the Avondale Gage and then are exchanged upstream to the Diversion Facilities identified in Paragraph 2.1, pursuant to the terms and conditions of the decrees entered in Cases No. 84CW177, 86CW111, and the Consolidated Decree. In addition, Pueblo Water can exchange the return flows stored by exchange in the Diversion Facilities identified in Paragraph 2.1.1-4 into storage in a different Diversion Facility identified in Paragraph 2.1.1-4. 3.5.2. The Non-Sewered Transmountain Return Flow is part of the same appropriative rights of exchange and reuse program decreed in the sewered phases of Cases No. 84CW177 and 86CW111. The Non-Sewered Transmountain Return Flow provides up to 5.30 c.f.s. of water in addition to the measured discharges decreed in Cases No. 84CW177 and 86CW111. This additional quantity of water is included within, but does not limit or reduce, the exchanges decreed in the amount of 60.0 c.f.s. in each Case No. 84CW177 and Case No. 86CW111. The Non-Sewered Transmountain Return Flow is exchanged under the priority of the appropriative right of exchange with appropriation date of May 18, 1976, decreed in Case No. 84CW177 and/or under the appropriative right of exchange with appropriation date of July 1, 1985, as decreed in Case No. 86CW111. The Non-Sewered Transmountain Return Flow accrues to the Arkansas River above the Avondale Gage and is exchanged upstream to the same facilities and same points of diversion and storage as identified in the decrees in Cases No. 84CW177 and 86CW111. 3.5.3. In Cases No. 01CW80 and 13CW3043, the Water Court made the following exchanges absolute in the amounts set forth below: 3.5.3.1. 84CW177(B) Exchanges: 1.58 c.f.s. from the Arkansas River at or above the Avondale Gage upstream to Pueblo Reservoir and 0.28 c.f.s. from the Arkansas River at or above the Avondale Gage upstream to Clear Creek Reservoir. 3.5.3.2. 86CW111(B) Exchanges: 0.75 c.f.s. from the Arkansas River at or above the Avondale Gage upstream to the Northside Intake; 0.17 c.f.s. from the Arkansas River at or above the Avondale Gage upstream to the Southside Intake; and 0.25 c.f.s. from the Arkansas River at or above the Avondale Gage upstream to the Comanche Pump Station. **4. Provide a Detailed Outline of What Has Been Done Toward Completion or for Completion of the Appropriation and Application of Water to Beneficial Use as Conditionally Decree, Including Expenditures:** 4.1. Pueblo Water operates a unified and integrated municipal water supply system consisting of numerous individual components. Those components include, but are not limited to, the many individual water rights, sources of supply and points of diversion described in

this Application, and the absolute and conditional exchange and reuse rights that are the subject of this Application. 4.2. During the period from February 28, 2020 (the date the Application was filed in Case No. 20CW3004), through September 30, 2026 (the “Diligence Period”), Pueblo Water carried out exchanges as contemplated and authorized by the Consolidated Decree. 4.3. Pueblo Water spent substantial sums of money and devoted many thousands of man hours to operation, maintenance, development, and protection of its unified and integrated municipal water supply and treatment system, including work by engineering consultants and attorneys. During the Diligence Period, the total amount spent by Pueblo Water for all of these purposes exceeded \$317,000,000. 4.4. The principal activities undertaken by Pueblo Water during the Diligence Period related to the operation of the exchange and reuse rights approved in the Consolidated Decree included the following: 4.4.1. For Pueblo Reservoir, Pueblo Water made annual payments to the United States Bureau of Reclamation (“Reclamation”) for its storage contract and renegotiated the contract to extend the term through 2075; 4.4.2. For Clear Creek Reservoir, Pueblo Water planned, contracted for, and is currently installing two filter berms at the toe of Clear Creek Dam at an expected cost of about \$5 million. Pueblo Water also performed routine maintenance, operation, and monitoring. Pueblo Water also negotiated with stakeholders related to the enlargement of the reservoir decreed in Case No. 04CW130, District Court, Water Division No. 2, and adjudicated a finding of reasonable diligence for the enlargement in Case No. 22CW3028, District Court, Water Division No. 2, entered on June 2, 2023. Finally, Pueblo Water purchased land necessary for the enlargement of Clear Creek Reservoir. 4.4.3. For Twin Lakes Reservoir, Pueblo Water paid annual assessments to the Twin Lakes Reservoir and Canal Company; 4.4.4. For Turquoise Lake, Pueblo Water made annual payments to Reclamation for its storage contract; 4.4.5. For the Northside Intake, Pueblo Water performed routine maintenance, operation, and monitoring; 4.4.6. For the Southside Intake, Pueblo Water spent approximately \$11 million rebuilding the diversion dam to accommodate boat and fish passage; and 4.4.7. For the Comanche Pump Station, Pueblo Water performed routine maintenance, operation, and monitoring. 4.5. During the Diligence Period, Pueblo Water performed the following actions related to the sources of water utilized in the exchange: 4.5.1. For the Ewing Ditch, Pueblo Water performed routine maintenance, operation, and monitoring, and participated in a Forbearance of Water Agreement with the Colorado Water Conservation Board during the 2026 water year; 4.5.2. For the Columbine Ditch, Pueblo Water retained the right to receive water from the ditch under specific circumstances and continued to operate pursuant to that agreement; 4.5.3. For the Warren E. Wurtz Ditch, Pueblo Water performed routine maintenance, operation, and monitoring; 4.5.4. For the Wurtz Extension Ditch, Pueblo Water performed routine maintenance, operation, and monitoring, hired a consultant to inspect the pipeline section of the ditch, and prepare a condition assessment report to guide future capital improvements. Pueblo Water also obtained a decree finding reasonable diligence in Case No. 20CW3037, District Court, Water Division No. 5, December 15, 2020; 4.5.5. For the Busk-Ivanhoe System, Pueblo Water paid annual assessments to the Busk-Ivanhoe Water System Authority including special capital improvement assessments in the amount of \$9.3 million for rehabilitation of the Ivanhoe Tunnel; 4.5.6. For the Homestake Project, Pueblo Water made annual payments to City of Aurora pursuant to the 1967 Agreement; 4.5.7. For the Independence Pass Transmountain Diversion System, Pueblo

Water paid annual assessments to the Twin Lakes Reservoir and Canal Company; and 4.5.8. For the Fryingpan-Arkansas Project, Pueblo Water purchased Project water and return flow from Project water. 4.6. During the Diligence Period Pueblo Water has monitored and recorded ground water levels in its network of groundwater monitoring wells located throughout its service area. 4.7. During the Diligence Period Pueblo Water annually compared irrigation vs. non-irrigation season use and adjusted its calculations of non-sewered return flow accordingly. 4.8. Pueblo Water continued its practice of making improvements related to collection system facilities, storage reservoirs, water transmission pipelines, water treatment plants and distribution system mains, meters, and reservoirs. The water delivered through these systems includes the water made available to Pueblo Water by the exchange rights that are the subject of this Application. Pueblo Water also continued its long-standing partnership with the Pueblo Economic Development Corporation to attract new business and industry to the City of Pueblo and Pueblo Water's service area. The transmountain component of the water treated by those facilities and supplied to Pueblo Water's customers becomes available to Pueblo Water for exchange as contemplated by the Consolidated Decree. 4.9. In addition, during the Diligence Period Pueblo Water filed applications for and completed several adjudications of water rights that are part of Pueblo Water's unified and integrated water supply system. This includes, but is not limited to: (1) obtaining a finding of reasonable diligence in Case No. 23CW3055(formerly Cases No. 93CW86, 04CW14, 10CW79, and 17CW3020) (HARP), District Court, Water Division No. 2; (2) obtaining a finding of reasonable diligence in the non-sewered portion of the exchange and reuse plans in Case No. 20CW3004 (formerly Consolidated Cases No. 84CW177(B) and 86CW111(B) and Case No. 13CW3043), District Court, Water Division No. 2; (3) filing an application for and obtaining a finding of reasonable diligence in the sewerred portion of the exchange and reuse plans in Case No. 25CW3045 (formerly Cases No. 19CW3005, 12CW87 and 86CW111A), District Court, Water Division No. 2; (4) obtaining a decree finding diligence for the enlargement of Clear Creek Reservoir in Case No. 22CW3028 (formerly Case No. 04CW130), District Court, Water Division No. 2; (5) obtaining a finding of reasonable diligence in Case No. 20CW3054, (formerly Case No. 84CW177, 01CW67 and 14CW3022), District Court, Water Division No. 2; and (6) obtaining a decree for a finding of reasonable diligence for the Wurtz Extension Ditch in Case No. 20CW3037 (formerly Cases No. 13CW3042, 06CW211, 99CW271, 93CW159, 86CW275, and 80CW505), District Court, Water Division No. 5. Pueblo Water also has acted to preserve and protect all of its water rights by filing statements of opposition to and participating in a number of other judicial proceedings in Water Division 2 and Water Division No. 5, including participating as a opposer in Case No. 25CW3177, District Court, Water Division No. 5, the application for a change of the Shoshone Power water rights. 4.10. Finally, during the Diligence Period, in Case No. 25CW3073 (formerly Case No. 16CW3103), District Court, Water Division No. 2, Pueblo Water filed an application for a finding of reasonable diligence for its conditional exchanges related to its shares of Bessemer Irrigating Ditch Company changed in Case No. 17CW3050, Water Division No. 2, which water rights Pueblo Water intends to include in Pueblo Water's unified and integrated water supply system. 4.11. The work performed and actions taken by Pueblo Water during the Diligence Period demonstrate Pueblo Water's continuing intent to develop the conditional exchange and reuse rights that are the subject of this Application and further demonstrate

that the subject water can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time. 4.12. Pueblo Water seeks a Finding of Reasonable Diligence for the full amount of all remaining conditional exchange and reuse rights decreed in Consolidated Cases No. 84CW177(B) and 86CW111(B). **WHEREFORE**, Pueblo Water requests the Court to enter a decree: 1. Confirming that Pueblo Water maintains a single unified and integrated water system and that diligence on any feature of that system shall be considered in finding reasonable diligence in the development of all conditional features of the system, including the conditional exchange and reuse rights that are the subject of this Application; 2. Finding that nothing herein shall preclude Pueblo Water in the future from seeking an absolute water right based on exchanges and substitutions Pueblo Water has carried out after the date of filing the Application in this case and on or before the entry of this Ruling. Likewise, nothing herein shall preclude Pueblo Water from relying upon actions taken in furtherance of the development of the conditional rights of exchange and substitution between the dates of filing the Application herein and the entry of a decree to demonstrate reasonable diligence in the perfection of conditional water rights in any subsequent diligence proceeding; and 3. Finding that Pueblo Water has exercised reasonable diligence and met all applicable standards on all the conditional exchange and reuse rights decreed in Consolidated Cases No. 84CW177(B) and 86CW111(B), to the extent not made absolute, continuing those conditional rights in good standing, and fixing a date when a further application for a finding of reasonable diligence is required.

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**CASE NO. 2026CW3048; Previous Case Nos. 20CW3005, 13CW3044, 01CW68 and 84CW178 – BOARD OF WATER WORKS OF PUEBLO, COLORADO, Attention: Executive Director, 319 West Fourth Street, Pueblo, Colorado 81003** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Karl D. Ohlsen and Beth Ann Parsons, Carlson, Hammond & Paddock, LLC, 1900 N. Grant Street, Suite 1200, Denver, CO 80203; (303) 861-9000)

Application to Make Conditional Water Rights Absolute and for Sexennial Finding of Reasonable Diligence

**LAKE AND CHAFFEE COUNTIES**

This is an Application to Make Conditional Water Rights Absolute and for a Sexennial Finding of Reasonable Diligence involving the conditional exchange rights of Pueblo Water of Water Works of Pueblo, Colorado ("Pueblo Water" or "Applicant") originally decreed on February 19, 1988, in Case No. 84CW178, Water Division No. 2. The exchange rights that are the subject of this action involve both water rights diverted from transmountain sources of supply that are not native or tributary to the Arkansas River, and water rights diverted and stored from sources native to the Arkansas River. **II. Name of Diversion (Storage) Facilities to Which and Between Which Water is Exchanged.** A. Clear Creek Reservoir. Clear Creek Reservoir is located on Clear Creek in Sections 7 and 8, Township 12 South, Range 79 West of the 6th Principal Meridian, and Section 12, Township 12 South, Range 80 West of the Principal Meridian, in Chaffee County. B. Twin Lakes Reservoir. Twin Lakes Reservoir is formed by a dam across Lake Creek in Lake County in Section 23, Township 11 South, Range 80 West of the 6th Principal Meridian, as described in the decree in Case No. 80CW6 (District Court, Water Division No. 2),

dated October 23, 1980. C. Turquoise Lake. Turquoise Lake is formed by a dam across Lake Fork Creek in Lake County in Section 19, Township 9 South, Range 80 West of the 6th Principal Meridian as described in the decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. III. Source of Water for Exchanges: A. The Ewing Placer Ditch. Ewing Placer Ditch diverts water from Piney Creek, a tributary of the Eagle River, and carries the water across the Continental Divide into Tennessee Creek for delivery to the Arkansas River. The Ewing Placer Ditch was decreed 18.5 c.f.s. of water by decree dated November 13, 1911, with an appropriation date of June 1, 1906, by the District Court, Eagle County, Civil Action No. 507. B. The Warren E. Wurtz Ditch (also known as the Warren E. Wurts Ditch). Warren E. Wurtz Ditch diverts water from Bennett Creek, Mitchell Creek, and side tributaries of those creeks, all of which are tributaries of the Eagle River. The ditch carries water across the Continental Divide into West Tennessee Creek for delivery to the Arkansas River. The Warren E. Wurtz Ditch was decreed 85 c.f.s. of water by decree dated October 3, 1936, with an appropriation date of June 8, 1929, by the District Court, Eagle County, Civil Action No. 963. C. The Wurtz Extension Ditch. Wurtz Extension Ditch diverts water from Yoder Creek, East Fork of Yoder Creek, and Rule Creek, tributaries of the Eagle River. The ditch connects to the Warren E. Wurtz Ditch, which then carries water across the Continental Divide into West Tennessee Creek for delivery to the Arkansas River. The Wurtz Extension Ditch was decreed 24 c.f.s. absolute and 76 c.f.s. conditional by decree dated October 21, 1982, with an appropriation date of October 26, 1953, by the District Court, Water Division No. 5, Case No. 80CW505. The Wurtz Extension Ditch was made absolute in the additional amount of 20 c.f.s. by decree dated July 7, 1987, in Case No. 86CW275 for a total of 44 c.f.s. absolute and 56 c.f.s. conditional. Pueblo Water owns the entirety of water rights (A) through (C). D. The Columbine Ditch. Columbine Ditch diverts water from three branches of the East Fork of the Eagle River, and carries such water across the Continental Divide for delivery into the West Branch of Chalk Creek, a tributary of the Arkansas River. The Columbine Ditch was decreed 60 c.f.s. of water by decree dated October 3, 1936, with an appropriation date of June 21, 1930, by the District Court, Eagle County, Civil Action No. 963. Pueblo Water controls the right to utilize a portion of the waters described herein by virtue of an agreement with the owner. E. The Busk-Ivanhoe System. Busk-Ivanhoe System diverts water from Hidden Lake Creek, Pan Creek, Lyle Creek, and Ivanhoe Creek, all tributaries of the Fryingpan and Roaring Fork Rivers, and carries such water through the Continental Divide for delivery into Busk Creek on the headwaters of the Arkansas River. The System was decreed 85 c.f.s. of water absolute by decree of the District Court, Garfield County in Case No. 2621, dated January 9, 1928, with appropriation dates differing for various components of the system as more fully set forth in the referenced decree. Several additional amounts were decreed conditional by the same decree. Other absolute decrees in the amounts of 25 c.f.s. and 70 c.f.s. of water were entered in Civil Action Nos. 3082 and 4033 by the District Court, Garfield County. Pueblo Water owns an undivided one-half interest in these water rights. F. The Homestake Project diverts water from the headwaters of tributaries of the Eagle River in Eagle County. The water rights were conditionally adjudicated by the decree in Civil Action No. 1193 (District Court, Eagle County), dated June 8, 1962. These water rights have an appropriation date of September 22, 1952. By an assignment of interest from the City of Aurora, Pueblo Water has the annual right to receive 2,500 acre-feet of Homestake

Project Water delivered at Turquoise Lake. G. The Independence Pass Transmountain Diversion System diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County. The water rights were adjudicated by a decree in Civil Action No. 3082 (District Court, Garfield County), dated August 25, 1936, and were modified by a decree in Case No. W-1901 (District Court, Water Division No. 5), dated May 12, 1976. These water rights have an appropriation date of August 23, 1930. Pueblo Water has the right to utilize a portion of such waters by virtue of its ownership of shares of the Twin Lakes Reservoir and Canal Company. H. The Fryingpan-Arkansas Project diverts water from the headwaters of Hunter Creek and the Fryingpan River and its tributaries in Pitkin County. The water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County), dated June 20, 1958, and August 3, 1959, and were modified by the decree in Case No. W-829-76 (District Court, Garfield County), dated June 20, 1958, and August 3, 1959, and were modified by the decree in Case No. W-829-76 (District Court, Water Division No. 5), dated November 27, 1979. These water rights have an appropriation date of July 29, 1957. Pueblo Water has the right to purchase a portion of such waters by virtue of the Allocation Principles adopted by the Southeastern Colorado Water Conservancy District on November 29, 1979. The decree in this case does not, however, give Pueblo Water any rights of use of Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocation of Fryingpan-Arkansas Project water, but does not alter any existing rights Pueblo Water may otherwise have. The above water rights, (A) through (H), are referred to as “the Transmountain Sources.” I. The Twin Lakes Reservoir impounds water from Lake Creek, a tributary of the Arkansas River, as well as from the Independence Pass Transmountain Diversion System. The Lake Creek decrees for native water were adjudicated in Civil Action No. 2346 (District Court, Chaffee County) on July 14, 1913, with an appropriation date of December 15, 1896, for 20,645.3 acre-feet, and March 29, 1897, for 33,806.7 acre-feet. Pueblo Water has the right to utilize a portion of these water rights by virtue of ownership of shares of the Twin Lakes Reservoir and Canal Company. J. Clear Creek Reservoir impounds water from Clear Creek, a tributary of the Arkansas River. The reservoir’s water rights were adjudicated on July 14, 1913, in Civil Action No. 2346 (District Court, Chaffee County), with an appropriation date of June 12, 1902, for 9,401 acre-feet, and with an August 20, 1910, appropriation date for 2,038 acre-feet. Pueblo Water owns the entirety of these water rights. The above water rights (I) and (J) are referred to as the “Arkansas River Sources.” All of the Transmountain Sources and all of the Arkansas River Sources have been decreed to include municipal uses. Maps of the structures described in Parts II and III, above, are attached to the application as Exhibits 1 through 11 (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **IV. Describe Conditional Water Rights of Exchange as Decreed in Case No. 84CW178, and subsequent diligence proceedings. A.** Date of Original Decree and Uses: February 19, 1988, Case No. 84CW178, District Court, Water Division No. 2, Colorado. All beneficial uses for which the water to be exchanged is decreed, including the uses set forth in the decree in Case No. 84CW178. Date of Subsequent Decrees: September 10, 2007, Case No. 01CW68, District Court, Water Division No. 2, Colorado, finding application of reasonable diligence and making exchanges absolute, in part; February 24, 2014, Case No. 13CW3044, District Court, Water Division No. 2, Colorado, finding application of reasonable diligence and making

exchanges absolute, in part; September 1, 2020, Case No. 20CW3005, District Court, Water Division No. 2, Colorado, finding application of reasonable diligence and making exchanges absolute, in part. B. Location and Description of Exchange Reaches: 1. Ewing Ditch Exchanges: From the discharge of the Ewing Ditch into Tennessee Creek, then into the Arkansas River, downstream in the Arkansas River and then (a) upstream in Lake Fork Creek into Turquoise Reservoir; (b) upstream in Lake Creek into Twin Lakes Reservoir; and (c) upstream in Clear Creek into Clear Creek Reservoir. 2. Wurtz and Wurtz Extension Ditch Exchanges: From the combined discharge point of the Wurtz Ditch and the Wurtz Extension Ditch into West Tennessee Creek then into Tennessee Creek, then into the Arkansas River, downstream in the Arkansas River and then (a) upstream in Lake Fork Creek into Turquoise Reservoir; (b) upstream on Lake Creek into Twin Lakes Reservoir; and (c) upstream in Clear Creek into Clear Creek Reservoir. 3. Columbine Ditch Exchanges: From the discharge of the Columbine Ditch into Chalk Creek, then into the East Fork of the Arkansas River, then into the Arkansas River, downstream in the Arkansas River and then (a) upstream in Lake Fork Creek into Turquoise Reservoir; (b) upstream in Lake Creek into Twin Lakes Reservoir; and (c) upstream in Clear Creek into Clear Creek Reservoir. 4. Busk-Ivanhoe System Exchanges: From the discharge of the Busk-Ivanhoe System into Busk Creek, downstream in Lake Fork Creek to the Arkansas River, then downstream in the Arkansas River and then (a) upstream in Lake Creek into Twin Lakes Reservoir; and (b) upstream in Clear Creek into Clear Creek Reservoir. 5. Independence Pass Diversion System Exchanges: From the outlet of Twin Lakes Tunnel, downstream in Lake Creek to its confluence with the Arkansas River, then (a) upstream in the Arkansas River to its confluence with Lake Fork Creek, and then upstream in Lake Fork Creek into Turquoise Reservoir; and (b) downstream in the Arkansas River to its confluence with Clear Creek and then upstream in Clear Creek into Clear Creek Reservoir. 6. Homestake Project Exchange: From the discharge of the Homestake Project Tunnel into Lake Fork Creek, then downstream in Lake Fork Creek to the Arkansas River, then (a) downstream in the Arkansas River to Lake Creek, then upstream in Lake Creek into Twin Lakes Reservoir; and (b) downstream in the Arkansas River to Clear Creek, then upstream in Clear Creek into Clear Creek Reservoir. 7. Fryingpan-Arkansas Project Exchanges: From the discharge of the Boustead Tunnel into Lake Fork Creek, then (a) downstream in the Arkansas River to Clear Creek, then upstream in Clear Creek into Clear Creek Reservoir. 8. Twin Lakes Reservoir Exchanges: From the outlet of Twin Lakes Reservoir into Lake Creek then downstream in Lake Creek to the Arkansas River, then (a) upstream in the Arkansas River to Lake Fork Creek, then upstream in Lake Fork Creek into Turquoise Reservoir; and (b) downstream in the Arkansas River to Clear Creek then upstream in Clear Creek into Clear Creek Reservoir. 9. Turquoise Reservoir Exchanges: From the outlet of Turquoise Reservoir into Lake Fork Creek, then downstream in Lake Fork Creek to the Arkansas River, then (a) downstream in the Arkansas River into Lake Creek, then upstream in Lake Creek into Twin Lakes Reservoir; and (b) downstream in the Arkansas River to Clear Creek, then upstream in Clear Creek into Clear Creek Reservoir. 10. Clear Creek Reservoir Exchanges: From the outlet of Clear Creek Reservoir into Clear Creek, then downstream to the Arkansas River, then (a) upstream in the Arkansas River into Lake Creek then upstream in Lake Creek into Twin Lakes Reservoir; and (b) upstream in the Arkansas River to Lake Fork Creek, then upstream in Lake Fork Creek into Turquoise Reservoir. 11. The Turquoise Reservoir

Exchanges, the Twin Lakes Reservoir Exchanges, and the Clear Creek Reservoir Exchanges may involve the release of either water from the Transmountain Sources or the Arkansas River Sources stored in one of the reservoirs, and an equivalent amount of such water may be stored or diverted by exchange in one or more of the other reservoirs, subject to the conditions of the decree in Case No. 84CW178. 12. The above-described exchanges of water may be accomplished in several ways. An actual upstream flow may be diverted while the water to be exchanged is discharged or, if already reduced to storage in another reservoir, released therefrom (a "River Flow Exchange"). Or, a volume of water already in storage in an upstream reservoir, which would otherwise be conveyed downstream, may be exchanged, with the consent of the owners of that stored water, for Pueblo Water's water then being discharged or already reduced to storage in another reservoir (a "Contract Exchange"). 13. The exchanges that are the subject of this Application use water derived from the Transmountain Sources and the Arkansas River Sources and are all located in the reaches of the Arkansas River drainage at or above the confluence of Clear Creek and the Arkansas River. C. Priority Dates and Currently-Decreed Amounts of Exchanges:

| <u>From</u>                        | <u>To</u>             | <u>Type of Decree</u> | <u>Approp. Date</u> | <u>Amount (c.f.s.)</u> |
|------------------------------------|-----------------------|-----------------------|---------------------|------------------------|
| Ewing Placer Ditch                 | Clear Creek Reservoir | Absolute              | 5/21/26             | 18.5                   |
| Wurtz Ditch                        | Clear Creek Reservoir | Absolute              | 1/14/55             | 59.61                  |
|                                    |                       | Conditional           | 1/14/55             | 25.39                  |
| Wurtz Extension Ditch              | Clear Creek Reservoir | Absolute              | 1/14/55             | 24.0                   |
|                                    |                       | Conditional           | 1/14/55             | 76.0                   |
| Independence Pass Diversion System | Clear Creek Reservoir | Absolute              | 3/12/57             | 200.0                  |
| Busk-Ivanhoe System                | Clear Creek Reservoir | Absolute              | 5/21/26             | 70.51                  |
|                                    |                       | Conditional           | 5/21/26             | 19.49                  |
| Columbine Ditch                    | Clear Creek Reservoir | Absolute              | 12/3/53             | 58.75                  |
|                                    |                       | Conditional           | 12/3/53             | 1.25                   |
| Homestake Project                  | Clear Creek Reservoir | Absolute              | 3/19/73             | 49.17                  |
|                                    |                       | Conditional           | 3/19/73             | 150.83                 |
| Fryingpan-Arkansas Project         | Clear Creek Reservoir | Conditional           | 11/27/79            | Flow <sup>1</sup>      |
| Ewing Placer Ditch                 | Twin Lakes Reservoir  | Absolute              | 4/6/65              | 8.3                    |
|                                    |                       | Conditional           | 4/6/65              | 10.2                   |
| Wurtz Ditch                        | Twin Lakes Reservoir  | Absolute              | 4/6/65              | 13.7                   |
|                                    |                       | Conditional           | 4/6/65              | 71.3                   |

|                                    |                       |             |          |                   |
|------------------------------------|-----------------------|-------------|----------|-------------------|
| Wurtz Extension Ditch              | Twin Lakes Reservoir  | Absolute    | 4/6/65   | 5.1               |
|                                    |                       | Conditional | 4/6/65   | 94.9              |
| Busk-Ivanhoe System                | Twin Lakes Reservoir  | Absolute    | 4/6/65   | 54.31             |
|                                    |                       | Conditional | 4/6/65   | 35.69             |
| Columbine Ditch                    | Twin Lakes Reservoir  | Absolute    | 4/6/65   | 23.0              |
|                                    |                       | Conditional | 4/6/65   | 37.0              |
| Homestake Project                  | Twin Lakes Reservoir  | Absolute    | 4/6/65   | 10.1              |
|                                    |                       | Conditional | 4/6/65   | 189.9             |
| Ewing Placer Ditch                 | Turquoise Lake        | Absolute    | 6/28/54  | 18.5              |
|                                    |                       | Conditional | 6/28/54  | 0.0               |
| Wurtz Ditch                        | Turquoise Lake        | Absolute    | 6/28/54  | 50.24             |
|                                    |                       | Conditional | 6/28/54  | 34.76.            |
| Wurtz Extension Ditch              | Turquoise Lake        | Absolute    | 6/28/54  | 22.0              |
|                                    |                       | Conditional | 6/28/54  | 78.0              |
| Columbine Ditch                    | Turquoise Lake        | Absolute    | 6/28/54  | 37.92             |
|                                    |                       | Conditional | 6/28/54  | 22.08             |
| Independence Pass Diversion System | Turquoise Lake        | Absolute    | 6/28/54  | 200.0             |
| Clear Creek Reservoir              | Twin Lakes Reservoir  | Absolute    | 11/22/54 | 302.5             |
|                                    |                       | Conditional | 11/22/54 | Flow <sup>1</sup> |
| Clear Creek Reservoir              | Turquoise Lake        | Absolute    | 11/22/54 | 135.75            |
|                                    |                       | Conditional | 11/22/54 | Flow <sup>1</sup> |
| Twin Lakes Reservoir               | Clear Creek Reservoir | Absolute    | 11/22/54 | 250.87            |
|                                    |                       | Conditional | 11/22/54 | Flow <sup>1</sup> |
| Twin Lakes Reservoir               | Turquoise Lake        | Absolute    | 11/22/54 | 200.0             |
|                                    |                       | Conditional | 11/22/54 | Flow <sup>1</sup> |
| Turquoise Lake                     | Twin Lakes Reservoir  | Absolute    | 11/22/54 | 200.0             |
|                                    |                       | Conditional | 11/22/54 | Flow <sup>1</sup> |
| Turquoise Lake                     | Clear Creek Reservoir | Absolute    | 11/22/54 | 197.25            |
|                                    |                       | Conditional | 11/22/54 | Flow <sup>1</sup> |

<sup>1</sup> For exchanges against the inflow to the receiving reservoir, the maximum rate of such inflow and for exchanges against releases of water previously reduced to storage in the receiving reservoir, the maximum rate of flow of such releases. Contract Exchanges shall have no rate of flow limitation.

**V. Provide a Detailed Outline of What Has Been Done Toward Completion or for Completion of the Appropriation and Application of Water to Beneficial Use as**

Conditionally Decreed, Including Expenditures: The Applicant operates a unified and integrated municipal water supply system consisting of numerous individual components. Those components include, but are not limited to, the many individual water rights, sources of supply and points of diversion described in this Application, and the absolute and conditional exchange and reuse rights that are the subject of this Application. During the period from February 28, 2020 (the date the Application in Case No. 20CW3005 was filed), through September 30, 2026 (the "Diligence Period"), Pueblo Water carried out exchanges as contemplated and authorized by the decree in Case No. 84CW178. In addition, Pueblo Water spent substantial sums of money and devoted many thousands of man hours to the operation, maintenance, and development of its unified and integrated municipal water supply and treatment system. As a part of this overall effort, Pueblo Water found it necessary to retain engineering consultants and attorneys to assist it in the acquisition, operation, maintenance, and protection of this system. During the Diligence Period, the total costs for all of these efforts exceeded \$317 million. The principal activities undertaken by Pueblo Water during the Diligence Period related to the operation of the exchange rights decreed in Case No. 84CW178 included the following: (1) refinement and operation of accounting programs to track the operation of the exchanges; (2) water quality monitoring; and (3) exercise and operation of the exchanges decreed herein, including exercising the exchanges of water available from the Wurtz Ditch and the Wurtz Extension Ditch into West Tennessee Creek then into Tennessee Creek, then into the Arkansas River, downstream in the Arkansas River and then upstream on Lake Creek into Twin Lakes Reservoir in amounts greater than previously decreed absolute, as further described below. Further, Pueblo Water performed the following actions related to the diversion and storage facilities utilized for the exchanges decreed in Case No. 84CW178: (1) for Clear Creek Reservoir, Pueblo Water planned, contracted for, and is currently installing two filter berms at the toe of Clear Creek Dam at an expected cost of about \$5 million, and performed routine maintenance, operation and monitoring. Pueblo Water also negotiated with stakeholders related to the enlargement of the reservoir decreed in Case No. 04CW130, District Court, Water Division No. 2, and adjudicated a finding of reasonable diligence for the enlargement in Case No. 22CW3028, entered on June 2, 2023; (2) for Twin Lakes Reservoir, Pueblo Water paid annual assessments to the Twin Lakes Reservoir and Canal Company; and (3) for Turquoise Lake, Pueblo Water made annual payments to the United States Bureau of Reclamation for its storage contract. Pueblo Water performed the following actions related to the sources of water utilized in the exchange: (1) For the Ewing Ditch, Pueblo Water performed routine maintenance, operation and monitoring, and participated in a Forbearance of Water Agreement with the Colorado Water Conservation Board during the 2026 water year; (2) for the Columbine Ditch, Pueblo Water retained the right to receive water from the ditch under specific circumstances and continued to operate pursuant to that agreement; (3) for the Warren E. Wurtz Ditch, Pueblo Water performed routine maintenance, operation and monitoring; (4) for the Wurtz Extension Ditch, Pueblo Water performed routine maintenance, operation and monitoring, hired a consultant to inspect the pipeline section of the ditch and prepare a condition assessment report to guide future capital improvements, and obtained a decree finding reasonable diligence in Case No. 20CW3037 (December 15, 2020; Water Division No. 5); (5) for the Busk-Ivanhoe System, Pueblo Water paid annual assessments to the Busk-Ivanhoe Water System Authority

including special capital improvement assessments in the amount of \$9.3 million during the diligence period for rehabilitation of the Ivanhoe Tunnel; (6) for the Homestake Project, Pueblo Water made annual payments to City of Aurora pursuant to the 1967 Agreement; (7) for the Independence Pass Transmountain Diversion System, Pueblo Water paid annual assessments to the Twin Lakes Reservoir and Canal Company; and (8) for the Fryngpan-Arkansas Project, Pueblo Water purchased Project water and return flow from Project water. Pueblo Water continued its practice of making improvements related to collection system facilities, storage reservoirs, water transmission pipelines, water treatment plants and distribution system mains, meters, and reservoirs. The water delivered through these systems includes the water made available to Pueblo Water by the exchange rights that are the subject of this Application. Pueblo Water also continued its long-standing partnership with the Pueblo Economic Development Corporation to attract new business and industry to the City of Pueblo and Pueblo Water's service area. During the Diligence Period, Pueblo Water filed applications for and completed a number of adjudications of water rights that are part of Pueblo Water's unified and integrated water supply system. This includes, but is not limited to: (1) obtaining a finding of reasonable diligence in Case No. 23CW3055(formerly Cases No. 93CW86, 04CW14, 10CW79, and 17CW3020) (HARP), Water Division No. 2; (2) obtaining a finding of reasonable diligence in the non-sewered portion of the exchange and reuse plans in Case No. 20CW3004 (formerly Consolidated Cases No. 84CW177(B) and 86CW111(B) and Case No. 13CW3043), Water Division No. 2; (3) filing an application for and obtaining a finding of reasonable diligence in the sewerred portion of the exchange and reuse plans in Case No. 25CW3045 (formerly Cases No. 19CW3005, 12CW87 and 86CW111A), Water Division No. 2; (4) obtaining a decree finding diligence for the enlargement of Clear Creek Reservoir in Case No. 22CW3028 (formerly Case No. 04CW130), Water Division No. 2; (5) obtaining a finding of reasonable diligence in Case No. 20CW3054, (formerly Case No. 84CW177, 01CW67 and 14CW3022), Water Division No. 2; and (6) obtaining a decree for a finding of reasonable diligence for the Wurtz Extension Ditch in Case No. 20CW3037 (formerly Cases No. 13CW3042, 06CW211, 99CW271, 93CW159, 86CW275, and 80CW505), Water Division No. 5. Pueblo Water also has acted to preserve and protect all of its water rights by filing statements of opposition to and participating in a number of other judicial proceedings in Water Division 2 and Water Division No. 5, including participating as a opposer in Case No. 25CW3177, Water Division No. 5, the application for a change of the Shoshone Power water rights. Finally, during the Diligence Period, in Case No. 25CW3073 (formerly Case No. 16CW3103), Water Division No. 2, Pueblo Water filed an application for a finding of reasonable diligence for its conditional exchanges related to its shares of Bessemer Irrigating Ditch Company changed in Case No. 17CW3050, Water Division No. 2, which water rights Pueblo Water intends to include in Pueblo Water's unified and integrated water supply system. The work performed and actions taken by Pueblo Water during the Diligence Period demonstrate Pueblo Water's continuing intent to develop the conditional exchange rights that are the subject of this Application and further demonstrate that the subject water can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time. Except to the extent the exchange rights are claimed to be and are made absolute in this proceeding, Pueblo Water seeks a Finding

of Reasonable Diligence for the full amount of all remaining conditional exchange rights decreed in Case No. 84CW178. **VI. If Claim to Make Absolute, Water Applied to Beneficial Use:** Pueblo Water has exchanged, placed to beneficial use, requests and is entitled to have made absolute over and above the amounts previously decreed absolute the following exchanges: A. An additional 11.45 c.f.s. absolute from the Wurtz Ditch into West Tennessee Creek then into Tennessee Creek, then into the Arkansas River, downstream in the Arkansas River and then upstream on Lake Creek into Twin Lakes Reservoir, for a total of 25.15 c.f.s. absolute, 59.85 c.f.s. remaining conditional. The maximum rate of flow for the exchange of 25.15 c.f.s. occurred on June 3, 2020. B. An additional 1.86 c.f.s. absolute from the Wurtz Extension Ditch into West Tennessee Creek then into Tennessee Creek, then into the Arkansas River, downstream in the Arkansas River and then upstream on Lake Creek into Twin Lakes Reservoir, for a total of 6.93 c.f.s. absolute, 93.07 c.f.s. remaining conditional. The maximum rate of flow for the exchange of 6.93 c.f.s. occurred on June 3, 2020. C. The accounting information showing operation of the exchanges claimed as absolute is attached as Exhibit 12. **WHEREFORE**, Pueblo Water requests the Court to enter a decree: A. Making absolute the conditional exchange rights to the extent requested in this Application; B. Confirming that Pueblo Water maintains a single unified and integrated water system and that diligence on any feature of that system shall be considered in finding reasonable diligence in the development of all conditional features of the system, including the exchange rights that are the subject of this Application; and C. Determining that Pueblo Water has demonstrated reasonable diligence in the development of the remaining conditional exchange rights decreed in Case No. 84CW178, continuing those rights in good standing, and fixing a date when a further application for a finding of reasonable diligence is required.

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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 November 2026, (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 13<sup>th</sup> day of October 2026.

*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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