

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING AUGUST
2012

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 ordered published during August 2012, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 02CW122 – CRIPPLE CREEK & VICTOR GOLD MINING COMPANY, c/o Wayne M. Chancellor, Esq., AngloGold Ashanti North America, 7400 East Orchard Road, Ste. 350, Greenwood Village, CO 80111 (Michael D. Shimmin and Gabriel Racz, Vranesh and Raisch, LLP, 1720 14th Street, Suite 200, Boulder, CO 80302; (303) 443-6151)

First Amended Application for Approval of Plan for Augmentation

TELLER AND FREMONT COUNTIES

2. Structures to be augmented: The Cripple Creek & Victor Gold Mining Company ("CC&V") operates a gold mining operation known as the "Cresson Project" in Teller County near Victor, Colorado. Operation of the Cresson Project may result in a reduction of the runoff of precipitation to streams, resulting in a potential decrease in the amount of water available to downstream users. The purpose of this application is to obtain a decreed augmentation plan to replace out-of-priority stream depletions caused by the operation of the Cresson Project. **2.1 Name of structures to be augmented.** The following structures within the Cresson Project may require augmentation: **2.1.1** Facilities or areas with an underlain impermeable liner or other impervious surface ("Lined Areas"); **2.1.2** Detention ponds that will result in evaporation of water captured out of priority ("Detention Ponds"); and **2.1.3** The underdrains and spring collection pump-back systems located within the Cresson Project ("Pump-Back Systems"). **2.2 Location of structures to be augmented.** The structures to be augmented may be located anywhere within the Cresson Project, described as property owned or acquired by CC&V, its subsidiaries, successors, or assigns, in Sections 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, and 31, Township 15 South, Range 69 West of the 6th P.M.; Section 6, Township 16 South, Range 69 West of the 6th P.M.; and Sections 13, 24, 25, and 36, Township 15 South, Range 70 West of the 6th P.M., Teller County, Colorado. The location of the Cresson Project, including existing and proposed facilities, is depicted in Exhibits 1 and 2 to the Amended Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) CC&V may change the size, location, and use of the structures to be augmented within the boundaries of the Cresson Project. **3. Water rights to be used for augmentation.** The water that will be used to replace out-of-priority depletions includes 1) water purchased by CC&V through contracts with the City of Victor; 2) water purchased by CC&V through contracts with the City of Colorado Springs; 3) water purchased by

CC&V through contracts with the City of Cripple Creek; 4) CC&V exchange water rights; and 5) other water rights legally available for replacement purposes. **3.1 Victor water rights.** CC&V has an agreement with the City of Victor that provides for delivery of up to 1,300 acre feet per year of water to the Cresson Project, and a portion of this water will be released to replace out-of-priority depletions. This water will be derived from any water right which is owned by the City of Victor and available for this use. The water rights owned by the City of Victor are summarized in Table 1.

Table 1 City of Victor Water Rights			
Name of Right	Appropriation Date	Adjudication Date	Amount
Glendale Ditch	4-15-1861	2-03-1894	
Callen Ditch	5-30-1861	2-03-1894	1.0 cfs ¹
Johnson Ditch	5-20-1864	2-03-1894	0.25 cfs
Johnson Ditch	4-01-1865	2-03-1894	0.75 cfs
Upper & Lower Pipelines	9-24-1893	2-14-1916	1.0 cfs
Upper Reservoir	9-24-1893	2-14-1916	7.97 AF
Middle Reservoir	9-24-1893	2-14-1916	1.53 AF
Lower Reservoir	9-24-1893	2-14-1916	12.28 AF
Victor Pipeline	5-06-1895	3-13-1954	4.8 cfs
Victor Reservoir No. 2	8-14-1897	3-13-1954	202.77 AF
Bison Park Reservoir	6-07-1907	3-13-1954	1,147.84 AF

3.2 Colorado Springs water rights. CC&V also has an agreement with the City of Colorado Springs to purchase water as a backup source. This water will be released to replace out-of-priority depletions if needed. This water is fully consumable raw water yielded by the Colorado Springs water rights and is available for this use. **3.3 CC&V exchange rights.** In addition, CC&V applied for conditional water rights and exchange rights in Case No. 98CW115, Water Division No. 2, and for conditional and absolute water rights and exchange rights as a co-applicant with the Town of Victor in Case No. 10CW98, Water Division No. 2. Any rights adjudicated in those cases may be used to replace out-of-priority depletions. **3.4 Other water rights.** CC&V may use any other water right lawfully available for mining, augmentation, or replacement uses, including additional water rights that CC&V may acquire. Those additional sources of replacement may be used in the plan for augmentation requested in this application without further amendment, republication or additional decrees, as long as they are adjudicated or administratively approved for purposes of mining, augmentation, or replacement. **4. Complete statement of plan for augmentation:** Operation of the Cresson Project may result in a reduction in the runoff of precipitation to streams, including West Beaver Creek and Fourmile Creek, which are tributary to the Arkansas River. The reduction in runoff may result in a decrease in the amount of water available to downstream users. The purpose of this augmentation plan is to replace out-of-priority depletions caused by operation of the Cresson Project. A general location map is attached to the Amended Application and incorporated as Exhibit 3. Much of the Cresson Project is geographically situated within the limits of a volcanic diatreme. See

¹ Victor owns 0.296 cfs in the Glendale Ditch and 0.92 cfs in the Callen Ditch. In Case No. 2637, the diversions under the two rights are limited to a total of 1.0 cfs.

Exhibit 4 to the Amended Application. The material inside of the diatreme is relatively porous. The diatreme is generally surrounded by comparatively lower permeability granite. Prior to mining activity, the diatreme contained groundwater that was prevented from escaping into the surface streams by the surrounding granite. Over the years, several historic drainage tunnels were created to provide drainage of water from the diatreme, the last and largest being the Carlton Tunnel, completed in 1941. Because of the relatively porous nature of the materials within the diatreme, practically all of the naturally occurring precipitation falling inside of the diatreme boundary percolates and returns to Fourmile Creek via the Carlton Tunnel. The configuration of the Cresson Project is dictated by numerous factors, including CC&V's mining permit, future discoveries, commodities prices, mine economics, and advances in technologies. Based on these factors, CC&V may change the size, location, and use of structures to be augmented in this augmentation plan within the boundaries of the Cresson Project described above. CC& V proposes to provide replacement water for the following activities or facilities:

4.1 Lined Areas. **4.1.1 Description of the Lined Areas.** Gold is recovered from ores using an extraction process in which a weak cyanide solution is applied to the mined ore and allowed to percolate down through the ore, at which point it is recaptured and cycled through a beneficiation facility. To contain the solution and protect the environment, the "leach pads" are lined with an impervious multiple liner system. These leach pads also intercept and contain naturally occurring precipitation that falls on the lined area. In addition, other areas at the Cresson Project, such as the fuel farm and an external storage pond, are underlain with an impermeable liner, and also intercept and contain naturally occurring precipitation. Accordingly, operation of these Lined Areas may cause a depletion of the natural streamflows of West Beaver Creek and Fourmile Creek that may cause injury to other water users on these tributary streams and/or the Arkansas River. The lined areas will change incrementally through construction of new areas of the leaching facilities and with reclamation of existing pads. This plan provides for annual monitoring of the size of the lined areas within the Cresson Project. When the area of the lined areas increases, the augmentation requirement may increase. In the event that lined areas are reclaimed, augmentation may no longer be required for some of these areas. The accounting forms will reflect changes in the size of the lined areas. CC&V will provide sufficient amounts of augmentation water to replace the depletions caused by the interception of the natural precipitation for these areas.

4.1.2 Determining the amount of replacement for the Lined Areas. The amount of water required for replacement under this part of the plan will equal the amount of runoff that would have historically occurred from the Lined Areas prior to their construction. This amount is determined by estimating the unit runoff that would have occurred in the pre-construction condition and multiplying that unit runoff times the acreage of the lined areas. The historic unit runoff value has been calculated to be 1.29 inches per acre annually (or 0.107 acre-foot per acre) considering historic records of stream flow in the Fourmile Creek drainage basin, and taking into account the man-caused depletions and return flows upstream of the gauging station. This historic runoff value of 0.107 acre-foot per acre also takes into account the annual precipitation patterns in the vicinity of the Cresson Project.

4.1.3 Lined Areas accounting. As noted above, CC&V will monitor the size of the Lined Areas associated with the Cresson Project and distribute replacement water as needed. Replacement

water will be used to replace the depletions to Fourmile Creek, West Beaver Creek, and the Arkansas River associated with these Lined Areas and will be measured and delivered on a monthly basis to match replacement requirements. A monthly accounting form has previously been developed and used to report to the Division of Water Resources the acreage underlain by an impermeable liner within the Cresson Project, the calculated stream depletions, and the amount of replacement water deliveries. These forms will continue to reflect changes to the configuration of Lined Areas over time.

4.2 Detention Ponds.

4.2.1 Description of the Detention Ponds. CC&V has developed a storm water management plan for the MLE 2 of the Cresson Project. The storm water management plan includes construction of structures such as sediment detention ponds, ditches, and sumps to capture runoff of precipitation and allow settling of solids. The majority of the storm water controls are either conveyances (e.g., ditches, channels, culverts, etc.) that direct water from one location to another without impoundment or are quite small in size and do not detain water for long periods of time or are not in place for extended periods. The Detention Ponds, which may hold water during larger precipitation events, are predominantly excavations with embankments of limited height. Spillways and permeable bottoms allow release and percolation of water from the sediment detention ponds. There may be short periods, however, when evaporation may occur from these ponds. The Detention Ponds are intentionally oversized to contain the runoff volume expected from two consecutive 10-year, 24-hour precipitation events as part of the Enhanced Management Practices ("EMP") in place. An event of this magnitude is very unlikely, and the ponds, therefore, will seldom approach capacity. This plan for augmentation addresses the potential need to replace water that evaporates from these structures.

4.2.2 Calculating evaporative losses from Detention Ponds. CC&V has developed a methodology for calculating evaporation losses from the Detention Ponds which will be applied for calculating evaporative losses if water is observed in the Detention Ponds for longer than three consecutive days, pursuant to the State Engineer's policy that if ponds that capture precipitation runoff contain water for more than three days after a precipitation event, water is being stored and evaporation losses must be replaced. Unit monthly and daily evaporation rates were determined using NOAA Technical Report NWS 33, Evaporation Atlas for the Contiguous 48 United States, June 1982. This is the procedure adopted by the State Engineer in the General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits. Annually, at the Cresson Project, the Free Water Surface evaporation is 35.9 inches, effective precipitation is 11.7 inches, and net evaporation is 24.2 inches per unit area. A Pond Evaporation table showing the monthly and daily evaporation rates is shown in Table 1.

Table 1
Monthly Net Pond Evaporation Rates (inches)

	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC
Monthly	0	0	1.4	2.6	3.3	4.5	3.9	2.6	2.9	2.0	1.0	0
Daily Values	0	0	.045	.087	.106	.150	.126	.083	.096	.066	.034	0

4.2.3 Measuring and reporting evaporation from the Detention Ponds. The following methodology is proposed for determining evaporation from the Detention

Ponds and replacing the water lost:

- a. CC&V will measure precipitation. This information will be included in the monthly report to the Division of Water Resources.
- b. On the fourth day after a precipitation event of greater than one inch, the ponds will be observed. CC&V will identify any ponds that contain water and perform the following:
 - Ponds with water: Evaporation losses will be calculated as total maximum surface area of the pond times the average daily net evaporation rate for the month (from Table 1). Observations will continue until water within the ponds has infiltrated and the calculations made accordingly. Alternatively, in lieu of continual monitoring until dry, CC&V may replace the maximum monthly evaporation value for each pond that contains water for more than three consecutive days.
 - Ponds with no measurable water: No additional monitoring required.
- c. Evaporation losses will be calculated and replaced during the following month. The sources and locations for delivery of replacement water are set forth below.

4.3 Pump-Back System. A water quality management activity at the Cresson Project that may necessitate delivery of replacement water is the pump-back system for water collected by the underdrains and spring collection system. The pump-back system was installed in 2001 and is located at the terminus of the original underdrains and spring collection system. The pump-back system can collect ground water collected from the underdrains and spring collection system, and then deliver that ground water to one of several Cresson Project facilities. This pump-back system is likely to be operated on an as needed basis. The system will have a flow meter with a totalizer on it for measurement of the quantity of pump-back water. Underdrain and spring collection pump-back system flows are dependent upon the timing and amount of precipitation received at the Cresson Project. Based upon monitoring by CC&V, pump-back would typically only be necessary after significant precipitation events. The water pumped back will be used in the mining operations and CC&V will replace all water pumped back.

4.4 Sources of replacement water. The sources of replacement water are the water rights described in Paragraph 3 above. These sources currently provide the CC&V Cresson Project with a total of up to 1,900 acre-feet of water annually, to be used for both direct supply for operations and for replacement water for this augmentation plan. The water available for replacement purposes will be more than sufficient in amount and quality to replace the out of priority stream depletions for the Cresson Project.

4.5 Delivery of replacement water. Replacements will be made in the appropriate time, location, and amount to prevent injury to water users on Fourmile Creek, West Beaver Creek, and the Arkansas River.

4.5.1 Fourmile Creek. Water used to replace depletions to Fourmile Creek will be measured and delivered to Arequa Gulch, Wilson Creek, and Fourmile Creek. Deliveries will be made on a monthly basis to match replacement requirements. Deliveries will be made at the following locations to match the location of the depletions as set forth below: Arequa Gulch augmentation station, Bull Hill augmentation station, Wilson Creek augmentation station, City of Victor bleeder valves, and City of Victor wastewater treatment plant augmentation station. CC&V may also deliver water at Wright's Reservoir. These delivery locations are depicted on Exhibits 3 and 4 to the Amended Application. The Arequa Gulch augmentation station is located outside of the diatreme boundary in Arequa Gulch, which is tributary to Cripple Creek and flows into Fourmile Creek upstream of the Carlton Tunnel terminus. See Exhibit 4 to the Amended Application. At times when the Colorado Water Conservation Board ("CWCB") instream

flow right, decreed in Case No. 00CW103 in the amount of 9.4 cfs from April 15 through October 14 and 4.5 cfs from October 15 through April 14 ("ISF Right") in the reach of Fourmile Creek that extends downstream from the confluence with Cripple Creek to the Carlton Tunnel on Fourmile Creek ("Cripple Creek ISF Reach"), is not satisfied by available stream flow, replacement of depletions associated with facilities located outside of the diatreme will be made upstream at the Arequa Gulch augmentation station or to Fourmile Creek at Wright's Reservoir. Under this plan, releases from the Arequa Gulch augmentation station and Wright's Reservoir will be made to cover the replacement water attributable to Lined Areas outside of the diatreme when the ISF right is not satisfied. At all other times, replacement can be made at any of the augmentation stations in the Fourmile Creek drainage basin. The Bull Hill augmentation station is located within the diatreme boundary in the Fourmile Creek drainage basin. See Exhibit 4 to the Amended Application. The beginning of the Carlton Tunnel lies within the same portion of the diatreme and approximately 3,000 feet in elevation below the Bull Hill augmentation station. Water released at the Bull Hill augmentation station percolates into the regional ground water system within the diatreme on a year-round basis. After percolating into the regional ground water system, such replacement water is subsequently intercepted by the historical drainage tunnels in the area. After the water passes through the underground tunnel system, it then flows directly into Fourmile Creek at a location which is near the Carlton Tunnel terminus. See Exhibit 4 to the amended Application. This water flow into Fourmile Creek occurs on a generally constant year-round basis and has historically provided a near constant source of flow since before 1993. The Wilson Creek augmentation station, City of Victor bleeder valves, and City of Victor wastewater treatment plant augmentation stations are located outside of the diatreme boundary near Wilson Creek, which is tributary to Fourmile Creek. See Exhibit 4 to the Amended Application.

4.5.2 West Beaver Creek. Replacements of depletions in the West Beaver Creek drainage located outside the diatreme will be made by releases from the Grassy Creek augmentation station into Grassy Creek, a tributary of West Beaver Creek. See Exhibit 4 to the amended Application. Water will be released at the Grassy Creek augmentation station on a monthly basis to match replacement requirements to Beaver Creek. Any potential depletions on or outside of the diatreme boundary area and in the Beaver Creek drainage basin occur in upland situations where there are no live streams. With the exception of short-duration flows in response to unusually heavy precipitation events, depletions to ground water associated with these areas are relatively minor and result in a year-round lagged depletion.

4.5.3 Other locations. In addition to the locations specifically identified in this application, CC&V may replace depletions at additional augmentation stations and locations, so long as the replacements occur upstream of the calling water right and in the appropriate time, location, and amount to prevent injury to downstream water rights.

4.6 Accounting and releases. As described above, the actual configuration of Cresson Project facilities is subject to change, and as a result, the amount of annual replacement water may also change. The types of activities associated with the Cresson Project requiring replacement (Lined Areas, Detention Ponds, and Pump-Back Systems), should not change. However, the specific location and size of the area affected by these activities will change from time to time. CC&V, therefore, proposes to provide through accounting the current amount of replacement

water needed using the methodologies described above. The methodology for each type of facility will remain the same, but the Lined Area acreage or the location, size, and number of Detention Ponds, for example, may change, thus altering the amount of replacement water needed to comply with the terms of this augmentation plan. Such changes in configuration are anticipated and included in this plan, and no modification or amendment of this plan will be required for such changes. Changes to the configuration and resulting changes in replacement requirements, will be accounted for using forms similar to those used in the past with the approval of the Division Engineer. Due to the changing configuration of the Cresson Project and the relatively small amounts of water involved, CC&V requests that the water commissioner be given discretion to vary the timing and aggregate the releases of replacement water so that they occur in amounts and at times when they will effectively reach downstream senior water rights, and as part of this aggregation, if there is a shortage of replacement water in one month, it may be made up in the following month, or at such other time as the water commissioner determines is appropriate to protect senior water rights from material injury. CC&V will keep records of the calculated stream depletions and the associated replacement deliveries on forms similar to those used in the past and in a format acceptable to the Division Engineer. Thus, this augmentation plan is sufficient to prevent injury to downstream water rights in the Fourmile Creek, West Beaver Creek, and Arkansas River basins.

**CASE NO. 12CW88 (Water Division 2) and CASE NO. 12CW194 (Water Division 1)
– REX DOWNING, P. O. Box 26306, Colorado Springs, CO 80936** (Henry D. Worley,

Worley Law Firm, LLC, Attorney for Applicant, 611 North Weber Street, Suite 104, Colorado Springs, CO 80903; (719) 634-8330)

Application for Underground Water Rights and for Approval of Plan for Augmentation

EL PASO COUNTY

I. APPLICATION FOR UNDERGROUND WATER RIGHTS. 2. Background. A.

Parcel information: Applicant's property is Tract 2, Colorado Estates Subdivision 1, street address 19625 Aries Drive (originally platted as Polaris Drive), Monument, CO 80132. The property consists of 5.0 acres and the adjacent portion of Aries Drive, to the center thereof, consists of an additional 0.16 acres. Applicant claims the water to the center of the adjacent portion of Aries Drive. The property is located in the SE1/4 Section 3, T. 11 S., R. 67 W., 6th P.M. A portion of the plat map showing the configuration of the Subject Property is attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **B. Parcel Ownership:** The claim of Applicant to the water underlying the parcel described in 2A is based on ownership of the parcel. **C.**

Amount claimed: Applicant claims all of the water in the Dawson (447 AF), Denver (329 AF), Arapahoe (347 AF), and Laramie-Fox Hills (146 AF) aquifers. **D.**

Encumbrances: Applicant owns the Subject Property free and clear of all liens and encumbrances and states that no other person or entity has a financial interest in the Subject Property. Accordingly, Applicant certifies compliance with the notice requirements of § 37-92-302(2) C.R.S. **E. Wells.** There is currently no well on the Property, but Applicant has applied for an indoor use only well permit. **3. A. Claimed pumping rates:** 15 gpm. **B. Amount claimed in acre feet annually:** Dawson, 4.47

AF; Denver, 3.29 AF; Arapahoe, 3.47 AF; Laramie-Fox Hills, 1.46 AF.

4. Proposed uses: All beneficial uses except municipal uses.

II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.

5. Name of structures to be augmented: One yet-to-be constructed Dawson aquifer well. No other water rights will be diverted from that well.

6. Previous decrees for water rights to be used for augmentation: None.

7. Historic use: Not applicable.

8. Statement of plan for augmentation: Applicant seeks approval of a plan for augmentation which will allow multiple uses from the yet-to-be constructed Dawson aquifer well, including without limitation indoor residential uses, commercial uses (sanitary and drinking purposes only), livestock water, a detached home office or guest house, landscape and garden irrigation, hot tub and/or swimming pool. Annual pumping will be limited to 1.1 acre feet. Indoor use for the existing house is expected to equal 0.30 acre foot annually. Treatment of waste water from indoor uses will be achieved using a nonevaporative individual septic tank and leach field system ("ISDS"); consumption of water so treated will not exceed 10 percent of uses, with 90 percent, or 0.27 acre foot annually, returning to the nearest stream. Depletions in the 300th year are modeled to equal approximately 24 percent of annual pumping, or 0.264 acre foot based on the maximum allowable annual pumping rate of 1.1 acre feet. So long as a single family dwelling is located on the lot, ISDS return flows alone will equal or exceed maximum stream depletions each year during pumping. Change of the type of wastewater treatment to a central sewage treatment with direct discharge to any tributary of Monument Creek shall not require an amendment to this plan for augmentation, but change to any other type of waste water disposal shall require an amendment. Applicant proposes to replace depletions during pumping with return flows from the ISDS, and to replace post-pumping depletions with the nontributary Denver aquifer water decreed herein, 296 acre feet of which will be reserved for that purpose. Applicant will reserve the right to replace such depletions with any other judicially acceptable source of augmentation water, upon judicial approval after appropriate notice.

12. Miscellaneous provisions. (1) This application is being filed in Water Divisions 1 and 2. After the period for filing statements of opposition has expired, Applicant will seek to consolidate the two cases in Water Division 2, where the Subject Property is located. (2) Because the Applicant claims the water underlying Aries Drive adjacent to the Subject Property, a copy of this application is being sent to the El Paso Board of County Commissioners by certified mail, return receipt requested. A copy of that letter is attached to the Application as Exhibit B. (3) Applicant reserves the right to submit a proposed ruling, the terms of which vary modestly from those contained in the application, to be consistent with the Consultation Report's indication of depletions in the 300th year.

CASE NO. 12CW89 – JOSEPH WALTER STEVENS. An order has been entered by the Water Judge directing that this case not be published until an amended application is filed.

**CASE NO. 12CW90 – WILLIAM J. and M. REBECCA MAZUREK, 701 CR 159,
Westcliffe, CO 81252; (719) 783-2151**

Application to Make Absolute in Whole or In Part

CUSTER COUNTY

Name of structure: Bear Spring; **Describe conditional water right:** Date of Original Decree: 10/19/2011; **Case No.:** 11CW26; **Court:** District Court Water Div. 2. **Legal description:** SW ¼ of the NW ¼ Section 20, Township 22 South, Range 73 West, 6th P.M., Custer County, Colorado, 1688 feet from the north section line and 974 feet from the west section line of Section 20. **Source of water:** Natural spring tributary to Middle Taylor Creek. **Appropriation Date:** 10/19/2011; **Amount:** 15 gpm. **Use:** Livestock watering and irrigation of one acre of hay. **Detailed out of what has been done for completion of the appropriation and application of water to a beneficial use as conditionally decree:** A catch basin approximately 6 feet in diameter was formed. Drainage is collected and overspills into a generally level ditch which flows laterally across the northerly line of the irrigated area marked on the map on file with the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The water flows to the east end of the ditch to fill a 100 gallon stock tank. Water spillover flows downhill across the irrigated area. When the tank is full it is capped and water seeps from the ditch across the irrigated area. **If claim to make absolute in whole or in part:** Date water applied to beneficial use: 7/3/2012; **Amount:** 15 gpm. **Use:** Livestock watering and irrigation of one acre of hay. Place of use is shown on map on file with the application. **Owners:** Applicants.

CASE NO. 12CW91; Previous Case No. 04CW126 - RICHARD B. CASCHETTE, MARTHA CASCHETTE, 602 Shadycroft Lane, Littleton, CO 80120 (Charles B. White, Esq. Petros & White, LLC, 1999 Broadway, Suite 3200, Denver, CO 80202, (303) 825-1980)

Application For Finding Of Reasonable Diligence

IN HUERFANO COUNTY, COLORADO

2. Description of Direct-Flow Water Right. **a. Name of structure:** Caschette Pipeline. **b. Legal description of point of diversion:** NW1/4 NE1/4, Section 12, T. 29 S., R. 70 W., 6th P.M., 300 feet from the North Section line and 2,110 feet from the East Section line, in Huerfano County, Colorado. GPS location information in UTM format: Northing: 4,155,552.6; Easting: 485,178.9. Settings: Zone 13, Meters; NAD 83; set to true north. **c. Appropriation date:** August 31, 2004. **d. Amount:** 0.016 c.f.s., conditional. **e. Source:** Unnamed tributary of North Middle Creek, tributary of the Cucharas River. **f. Use:** piscatorial, aesthetic, recreational, wildlife propagation. **3. Description of Water Storage Right.** **a. Name of structure:** Rainbow Pond. **b. Legal description of location of dam:** NE1/4 NE1/4 Section 12, T. 29 S., R. 70 W., 6th P.M., 260 feet from the North Section line and 1,200 feet from the East Section line, in Huerfano County, Colorado. GPS location information in UTM format: Northing: 4,155,581.7; Easting: 485,454.0. Settings: Zone 13, Meters; NAD 83; set to true north.

c. Appropriation date: August 31, 2004. **d. Amount:** (1) 3.58 acre-feet, conditional, with the right to fill and refill continuously to maintain the Pond at its maximum water level, and when out of priority but fully augmented in accordance with paragraph 9 of the decree in Case No. 04CW126. (2) If off-channel reservoir, rate of diversion in c.f.s. for filling the reservoir: 0.16 c.f.s. conditional. **e. Source:** Unnamed tributary of North Middle Creek, tributary of the Cucharas River. **f. Use:** piscatorial, aesthetic, recreational, wildlife propagation. **g. Surface area at high water line:**

0.588 acres.

4. Description of Appropriative Right of Exchange: a. The downstream terminus of the exchange reach is the confluence of Middle Creek and the Cucharas River in Section 21, T. 29 S., R. 68 W., 6th P.M. The upstream terminus is the point of diversion of the Caschette Pipeline described herein. b. The maximum rate of the exchange is 0.0095 c.f.s., conditional. c. The maximum volume of the exchange is 1.9 acre-feet per year, conditional. d. The date of appropriation of the exchange is December 31, 2004.

5. Evidence of Reasonable Diligence: The application contains a detailed outline of the work performed during the diligence period and is available via Lexis-Nexis or at the office of the Water Court Clerk.

Names(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: Applicants.

Remarks. In accordance with a stipulation between the Applicants and the Snowy Range Reservoir Company in Case No. 06CW124, Water Division No. 2, Applicants hereby give notice that Priority Nos. 9, 12 and 59, as described in paragraphs 7.B, 7.C, and 7.D of the decree in Case No. 04CW126, are removed as sources of augmentation, replacement, and exchange under that Decree. The change of water rights, plan for augmentation, and exchange decreed in that case will continue to operate with Applicants' interest in the Priority No. 2 Calf Pasture Ditch water right as described in paragraph 7.A of that Decree.

WHEREFORE, Applicants respectfully request that this Court find that the Applicants have exercised reasonable diligence in the development and use of the conditional water rights for the Rainbow Pond, Caschette Pipeline, and right of exchange decreed in Case No. 04CW126, enter a judgment and decree continuing such conditional water rights in full force and effect, and grant such other and further relief as the Court deems proper.

CASE NO. 12CW92; Previous Case No. 02CW180 – THE CITY OF SALIDA (“Salida”), c/o Dara MacDonald, City Administrator, 448 E. First Street, Suite 112, Salida, CO 81201 (James R. Montgomery and Patricia M. DeChristopher, Moses, Wittemyer, Harrison & Woodruff, P.C., Attorneys for Applicant, P. O. Box 1440, Boulder, CO 80306; (303) 443-8782)

Application for Finding of Reasonable Diligence

PUEBLO, FREMONT, CHAFFEE AND LAKE COUNTIES

2) Description of conditional appropriative rights of exchange: The conditional appropriative rights of exchange that are the subject of this application will enable Salida to store water by exchange in storage space that is or will be available to Salida in the Fryingpan-Arkansas Project facilities, including, but not limited to, space that will be made available to Salida pursuant to agreements with the Southeastern Colorado Water Conservancy District (“Southeastern District”) to participate in its Preferred Storage Option Plan (“PSOP”) or pursuant to a long-term excess capacity storage contract. Salida has provided funding to the Southeastern District for participation in PSOP and in support of the Southeastern District’s negotiation of a long-term excess capacity storage contract with the United States Bureau of Reclamation. Salida has continued its support of the long-term contract negotiations in order to obtain a contract for storage of up to 2,000 acre-feet of water under water rights owned by Salida (“Non-

Project Water") in storage facilities that are part of the Fryingpan-Arkansas Project. An Environmental Impact Statement under the National Environmental Policy Act is being prepared in connection with those negotiations. Additionally, Salida leases storage space in North Fork Reservoir, located on the North Fork of the South Arkansas River, pursuant to an agreement with the Upper Arkansas Water Conservancy District. Salida has a conditional appropriative right of exchange decreed in Case No. 87CW61 and made partially absolute in Case No. 94CW58, which permits Salida to store its water rights in North Fork Reservoir by exchange. The rights of exchange that are the subject of this application are vital to Salida's plans to store water by exchange in the Fryingpan-Arkansas Project reservoirs as an alternative to, or in addition to, storage in North Fork Reservoir pursuant to the decree entered in Case No. 87CW91. **A. Original Decree:** Case No. 02CW180, entered August 10, 2006, in the District Court for Water Division No. 2, Colorado. **B. Date of Initiation of Appropriation:** December 16, 2002. **C. Amount:** The maximum rate of exchange in any reach shall not exceed 30 cfs, CONDITIONAL. **D. Use of Water Stored By Exchange:** Use by substitution and exchange for all municipal purposes, including, without limitation, incidental irrigation and augmentation purposes. **E. Legal descriptions of the exchanges:** The components of the exchanges and the river reaches that will be affected thereby are shown on Figure 1 attached to the Application and described as follows (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court): **(i) Exchange-From Points:** Confluence of the Arkansas River and the South Arkansas River, which is located near the point where the south section line of Section 4, Township 49 North, Range 9 East of the N.M.P.M. crosses the Arkansas River. (a) Pueblo Reservoir, the dam of which is located at is at a point 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 in Pueblo County, Colorado, as described in the decree in Case No. B-42135, District Court of Pueblo County, State of Colorado. **(ii) Exchange-To Points:** (a) Turquoise Reservoir, the dam of which is located across Lake Fork Creek in Section 19, Township 9 South, Range 80 West of the 6th P.M., at a point whence the northwest corner of Section 16, Township 9 South, Range 80 West of the 6th P.M. bears North 44°46'18" East a distance of 10,344.35 feet in Lake County, Colorado, as described in the decree in Case No. 80CW6 (District Court, Water Division No. 2, State of Colorado), dated October 23, 1980. (b) Twin Lakes Reservoir, the dam of which is located across Lake Creek in Section 23, Township 11 South, Range 80 West of the 6th P.M., at a point whence the southeast corner of said Section 23 bears South 54°13'08" East a distance of 3,803.10 feet in Lake County, Colorado, as described in the decree in Case No. 80CW6 (District Court, Water Division No. 2, State of Colorado), dated October 23, 1980. (c) North Fork Reservoir, which is located on the North Fork of the South Arkansas River in the SE1/4 of Section 5, Township 50 North, Range 6 East of the N.M.P.M., at the headwaters of the South Arkansas River. **F. Sources of water to be exchanged into storage: i Non-Project Water:** (a) Salida operates its municipal water system pursuant to a plan for augmentation approved in the decree entered on November 5, 1987 by the District Court for Water Division No. 2, State of Colorado, in Case No. 84CW158. That decree quantified historic depletions from certain water rights that had previously been used for irrigation and approved the use of those water rights as sources of

augmentation water. At certain times during certain years, the depletion credits available to Salida under the decree in Case No. 84CW158 exceed Salida's augmentation requirements under that decree. Salida may store by exchange such excess augmentation credits as those credits accrue under existing water rights or other water rights that may be acquired in the future by Salida and included in that augmentation plan, including, without limitation, the Tennessee Ditch water right which was quantified and changed in the decree entered in Case No. 04CW125, District Court for Water Division No. 2, State of Colorado. Salida may also exchange Non-Project Water that has been previously stored in North Fork Reservoir. (b) Salida's excess augmentation credits may be exchanged from the point where they accrue to the Arkansas River at or near the confluence of the Arkansas River and South Arkansas River up the Arkansas River to the Lake Fork of the Arkansas River, thence up the Lake Fork of the Arkansas River to storage in Turquoise Reservoir and/or up the Arkansas River to Lake Creek, thence up Lake Creek to storage in Twin Lakes Reservoir. (c) Salida's Non-Project Water previously stored in North Fork Reservoir may be released from North Fork Reservoir down the North Fork of the South Arkansas River and down the South Arkansas River to its confluence with the Arkansas River, from which it will be exchanged up the Arkansas River to the Lake Fork of the Arkansas River, thence up the Lake Fork of the Arkansas River to storage in Turquoise Reservoir and/or up the Arkansas River to Lake Creek, thence up Lake Creek to storage in Twin Lakes Reservoir.

ii. **Project Water:** Salida may use Project Water pursuant to allocation by the Southeastern District, which water may be stored in any or all of the Fryingpan-Arkansas Project reservoirs described in paragraphs 2.E.i.(b), 2.E.ii.(a), and 2.E.ii.(b) above, or stored in North Fork Reservoir, described in paragraph 2.E.ii.(c) above, pursuant to Salida's exchange decreed in Case No. 87CW61. The Project Water that may be part of the exchanges is described as follows:

(a) **Project Water allocations and limitations:** Salida is eligible to receive annual allocations of Project Water, which it may purchase and use after it is allocated to Salida by the Southeastern District. The Southeastern District allocates Project Water annually based upon its principles, policies, rules and regulations, as they currently exist or may be amended in the future. Any and all use of Project Water by Salida in the exchanges proposed herein will be pursuant to and subject to the decrees for the Fryingpan-Arkansas Project described below, and to all lawful rules, regulations, policies and contract obligations of the Southeastern District. The decree for the subject exchanges does not give Salida any rights to use Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocations of Project Water or return flows therefrom, but also does not alter any existing rights, including but not limited to any such existing allocation rights, that Salida may otherwise have. Salida will use and exchange Project Water only if, when and to the extent that it has purchased such water after it is allocated to Salida by the Southeastern District, and consistent with any applicable contract(s) for storage space under PSOP.

(b) **West Slope decrees:** The Fryingpan-Arkansas Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County, Colorado. The principal water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court of Garfield County, State of Colorado), dated June 20, 1958 and August 3, 1959, respectively; were modified by the decree in Case No. W-829-76 (District Court, Water Division No. 5, State of Colorado), dated

November 27, 1979; and were supplemented by the decree in Case No. 83CW352 (District Court, Water Division No. 5, State of Colorado), dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted pursuant to the above-referenced decrees travels under the Continental Divide through the Bousted Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, and applied to beneficial use within the Southeastern District's boundaries. Because the water is imported from another river basin, it is fully consumable within the Southeastern District's boundaries in Water Division No. 2. (c) East Slope decrees: The Fryingpan-Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties, Colorado. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court of Chaffee County, State of Colorado), dated July 9, 1969; and Civil Action No. B-42135 (District Court of Pueblo County, State of Colorado), dated June 25, 1962; and were modified and supplemented by the decree in Case No. 80CW6 (District Court, Water Division No. 2, State of Colorado), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for reuse and exchange for beneficial use within the Southeastern District's boundaries in Water Division No. 2. Under the above-referenced decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir. 3) The Application contains a detailed description of work done toward completing the conditional water rights. 4) Applicant does not seek to make any part of the conditional water rights absolute at this time. 5) The land on which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or on which water is or will be stored is owned by: A. Pueblo Reservoir, Twin Lakes Reservoir, and Turquoise Reservoir: U.S. Department of Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18-E, Loveland, CO 80537-9711; and B. North Fork Reservoir: U.S. Forest Service, P.O. Box 25127, Lakewood, CO 80225.

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 October 2012, (forms available at Clerk's office or at www.courts.state.co.us, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$130.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each

case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 10th day of September, 2012.



Mardell R. DiDomenico

Mardell R. DiDomenico, Clerk
District Court, Water Div. 2
Pueblo County Judicial Building
320 W. 10th Street
Pueblo, CO 81003; (719) 583-7048

(Court seal)

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