**DISTRICT COURT, WATER DIVISION 6, COLORADO**

**TO ALL PERSONS INTERESTED IN WATER APPLICATIONS**

**IN WATER DIVISION 6**

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following pages comprise a resume of Applications and Amended Applications filed in the office of Water Division 6, during the month of **OCTOBER, 2011.**

**11CW15, MOFFAT COUNTY, Application for Water Rights (Surface).** Applicants: William T. Jacobs or Billie A. Jacobs, P.O. Box 103, Craig, CO 81625 970-824-0339. Structure: Jacobs Pump #1. Legal description: SE/4 SW/4 Sec. 20, T7N, R89W, 6th PM; 568 ft. from S and 2068 ft. from W Sec. line. Street address: 2400 CR 29. Subdivision: Frentress Exemption, Parcel A, 5 ac. UTM – Northing 4490900, Easting 29561, Zone 13. Points were averaged. Source: tributary to Elk Head Creek, tributary to Yampa River. Date of initiation of appropriation: 7-15-02. How appropriation was initiated: by putting water to use – irrigation of hayfield. Date water applied to beneficial use: 7-15-02 (by previous land owner). Amount claimed: .083 cfs absolute. Use or proposed use: Irrigation of hayfield (4.2 ac.), livestock, water trees, fire protection. Number of acres historically irrigated: 5. Proposed to be irrigated: 4.5 ac. Legal description of acreage: Frentress exemption plat – Parcel “A”, S/2 of Sec. 20, T7N, R89W, 6th P.M. Moffat County, CO. Description of non-irrigation use: Livestock watering & fire protection. Name & address of owner of land upon which new diversion is located: Robbie Frentress, 2618 CR 29, Craig, CO 81625. The water requested in this application will be delivered by an existing surface line which will pass for 310’ thru the Frentress property (Parcel B on the enclosed map). Robbie Frentress is my daughter. Referred to maps available in Court file.

**11CW16, RIO BLANCO, Big Duck Creek, Yellow Creek, White River.** Shell Frontier Oil & Gas Inc., Attn: Mark S. Pippin, Staff Contracts Rep., 4582 South Ulster St., Rm. 503, Denver, CO 80231, (303) - 305-78011,[mark.pippin@shell.com,](mailto:mark.pippin@shell.com,) with a copy to Kirsten M. Kurath, Williams, Turner & Holmes, P.C., P.O. Box 338, Grand Junction, CO 81502, (970) 242-6262, kmkurath@wth-law.com. Application For Finding of Reasonable Diligence. Structures: M-3 Spring and Seep, M-4 Spring and Seep, M-5 Spring and Seep, Big Duck Creek Pump and Pipeline, and Cottonwood Spring (collectively the “Conditional Water Rights”). A map showing the approximate locations of the Conditional Water Rights is attached to the Application as Figure 1. M-3 Spring and Seep:, Original Decree: August 5, 1992, nunc pro tunc as of February 25, 1992, Case No. 88CW446, District Court for Water Division No. 5, Colorado; Subsequent Decrees: Case Nos. 98 CW 031, and 04CW170, District Court for Water Division No. 5, Colorado; Location: NW1/4 NE1/4 Sec. 25, T1S, R100W, 6th P.M. Spring bears South 79°34' West a distance of 1,657 feet from NE Corner of Section 25; Source: Springs tributary to Big Duck Creek, a tributary of Yellow Creek, a tributary to the White River; Appropriation: December 5, 1988; Amount: 45 g.p.m., conditional; Uses: Industrial, agriculture, domestic and firefighting. M-4 Spring and Seep: Original Decree: August 5, 1992, nunc pro tunc as of February 25, 1992, Case No. 88CW446, District Court for Water Division No. 5, Colorado; Subsequent Decrees: Case Nos. 98 CW 031, and 04CW170, District Court for Water Division No. 5, Colorado; Location: SE1/4 NE1/4 Section 25, T1S, R100W, 6th P.M. Spring bears South 18°57' West a distance of 2,463 feet from NE Corner of Section 25; Source: Springs tributary to Big Duck Creek, a tributary of Yellow Creek, a tributary to the White River; Appropriation: December 6, 1988; Amount: 25 g.p.m., conditional; Uses: Industrial, agriculture, domestic and firefighting. M-5 Spring and Seep: Original Decree: August 5, 1992, nunc pro tunc as of February 25, 1992, Case No. 88CW446, District Court for Water Division No. 5, Colorado; Subsequent Decrees: Case Nos. 98 CW 031, and 04CW170, District Court for Water Division No. 5, Colorado; Location: SE1/4 NE1/4 Section 25, T1S, R100W, 6th P.M. Spring bears South 17°18' West a distance of 2,302 feet from NE Corner of Section 25; Source: Springs tributary to Big Duck Creek, a tributary of Yellow Creek, a tributary to the White River; Appropriation: December 6, 1988; Amount: 450 g.p.m., conditional; Uses: Industrial, agriculture, domestic and firefighting. Big Duck Creek Pump and Pipeline: Original Decree: August 5, 1992, nunc pro tunc as of February 25, 1992, Case No. 88CW446, District Court for Water Division No. 5, Colorado; Subsequent Decrees: Case Nos. 98 CW 031, and 04CW170, District Court for Water Division No. 5, Colorado; Location: NW1/4 NW1/4 Section 30, T1S, R99W, 6th P.M. South 46°20' East a distance of 1,375 feet from NW Corner of Section 30; Source: A tributary of Yellow Creek, a tributary to the White River; Appropriation: December 5, 1988; Amount: 10 c.f.s., conditional; Uses: Industrial, agriculture, domestic and firefighting. Cottonwood Spring: Original Decree: August 5, 1992, nunc pro tunc as of February 25, 1992, Case No. 88CW446, District Court for Water Division No. 5, Colorado; Subsequent Decrees: Case Nos. 98 CW 031, and 04CW170, District Court for Water Division No. 5, Colorado; Location: NW1/4 SW1/4 Section 19, T1S, R99W, 6th P.M. Spring bears North 14°07' East a distance of 1,742 feet from SW Corner of Section 19; Source: Springs tributary to Big Duck Creek, a tributary of Yellow Creek, a tributary to the White; Appropriation; : December 5, 1988; Amount: 675 g.p.m., conditional; Uses: Industrial, agriculture, domestic and firefighting. Remarks: The Conditional Water Rights constitute the features of the Marathon Water System, an integrated system recognized and decreed in Case No. 88CW446. Since the Conditional Water Rights are all components of an integrated system, work performed with respect to each conditional water right constitutes diligence toward the development of all the conditional water rights. Remarks: The Conditional Water Rights constitute the features of the Marathon Water System, an integrated system recognized and decreed in Case No. 88CW446. Since the Conditional Water Rights are all components of an integrated system, work performed with respect to each conditional water right constitutes diligence toward the development of all the conditional water rights. Names and addresses of owners of the land: Applicant; Joan Savage, 201 Railroad Avenue, P.O. Box 1926, Rifle, CO 81650-1926; Frank G. Cooley, Andrew A. Cooley and Karen S. Cooley, 825 5th Street, Meeker, CO 81641 and El Paso E & P Company, L.P., 1001 Louisiana, Houston, TX 77002. The Conditional Water Rights are components of Applicant’s single unified water system that will provide water for the development of Applicant’s property in the White River and Colorado River drainages. The Application contains a detailed outline of the work performed during the diligence period. (18 pages).

**11CW17** **ROUTT AND RIO BLANCO COUNTIES.** 1.Name, mailing address, email address and telephone number of Applicant: Riverview Properties II, LLC, c/o Bob Lambert, 9023 W. 139th Terrace, Overland Park, KS 66221, [Bob.Lambert@Staples.com](mailto:Bob.Lambert@Staples.com), (915) 685-4014. Please direct all correspondence and pleadings to: Meghan N. Winokur, Esq., Holland & Hart LLP, 555 17th Street, Suite 3200, Denver, CO 80202, Telephone: (303) 295-8000. 2. Name of structures: Pinnacle Peak Spring Nos. 3 through 7 (“Springs”) and Alpha Ditch – Hydropower Enlargement (referred to collectively as the “Subject Water Rights”). 3. Date of Original Decree: October 6, 2005, Case No. 03CW73, District Court, Water Division No. 6. 4. Description of Pinnacle Peak Spring Nos. 3 through 7 Water Rights: A. Legal Description:

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| STRUCTURE NAME | AMOUNT (GPM) | LOCATION Distance from Section Line |
| Pinnacle Peak Spring No. 3 | 2.14 absolute; 20 conditional | SW¼ NE¼, Section 19, 2,519’ from North, 2,313’ from East (Rio Blanco County) |
| Pinnacle Peak Spring No. 4 | 0.5 absolute; 10 conditional | SW¼ SE¼, Section 19, 796’ from South, 1,655’ from East (Rio Blanco County) |
| Pinnacle Peak Spring No. 5 | 0.75 absolute; 15 conditional | SE¼ SE¼, Section 19, 1,328’ from South, 1,305’ from East (Rio Blanco County) |
| Pinnacle Peak Spring No. 6 | 1.5 absolute; 10 conditional | NW¼ SW¼ Section 16, 2,389’ from South, 1,388’ from West (Routt County) |
| Pinnacle Peak Spring No. 7 | 1.5 absolute; 10 conditional | SW¼ NE¼, Section 16, 2,516’ from North, 2,674’ from East (Routt County) |

All located in Township 3 North, Range 86 West, 6th P.M. The general locations of the Springs and the location of the proposed area to be irrigated, not including the area that may be irrigated with the Springs as supplemental irrigation under the Alpha Ditch, are shown on the U.S.G.S. topographic map attached as **Exhibit A** to the Application. B. Source: Springs tributary to Oak Creek, tributary to Yampa River. C. Appropriation Date: April 30, 2001 for conditional rights; December 31, 1966 for absolute rights. D. Amount: See table above. E. Use: absolute for stockwatering and wildlife watering; conditional for domestic, irrigation, aesthetics, storage in stock ponds or aesthetic ponds, and fire protection. (1) If irrigation, (i) Number of acres historically irrigated: n/a (ii) Total number of acres proposed to be irrigated: up to 11 acres (iii) Legal description of area irrigated or to be irrigated: lawn, garden and pastures in Township 3 North, Range 86 West, 6th P.M., as described more fully below: Pinnacle Peak Spring No. 3: NE¼ of Section 19 (2 acres); Pinnacle Peak Spring No. 4 and No. 5: SE¼ of Section 19 (5 acres total) Pinnacle Peak Spring No. 6: SW¼ of Section 16 (2 acres); Pinnacle Peak Spring No. 7: NE¼ and/or SE¼ of Section 16 (2 acres). The Springs may also be diverted into the Alpha Ditch and used for supplemental irrigation under the Ditch. (2) If non-irrigation, describe purpose fully: domestic, aesthetics, and fire protection. The springs may also be used to fill stock ponds or aesthetic ponds. The combined yield of the springs may serve up to 75 lots on the 2,785 acre Pinnacle Peak Ranch. The domestic water demand for the 75 lots, including in-house use and 5 acres of lawn and garden irrigation, is projected at approximately 45 acre feet per year or 27.9 gpm. The peak day demand during the irrigation season is projected to be 73,300 gallons, or 51 gpm. 4. Description of Alpha Ditch – Hydropower Enlargement Water Right: A. Legal Description: Located in the SE¼ SE¼, Section 19, at a point 750 feet from the South Section line and 1,150 feet from the East Section line, in Township 3 North, Range 86 West, 6th P.M., in Rio Blanco County. The general location of the Alpha Ditch – Hydropower Enlargement water right is shown on the U.S.G.S. topographic map attached as **Exhibit A** to the Application. B. Source: Oak Creek, tributary to Yampa River. C. Appropriation Date: May 23, 2001 D. Amount: 0.5 c.f.s., conditional E. Use: Hydropower generation F. Remarks: Applicant has appropriated a hydropower right for diversion at or within 200 feet above the existing point of diversion for the Alpha Ditch. The right will be diverted and used to generate power for the Pinnacle Peak Ranch. The point of return for the hydropower diversion to Oak Creek is at a point in the NE¼ SE¼, Section 19, Township 3 North, Range 86 West, 6th P.M., 1952 feet from the South line and 223 feet from the East line. The hydropower system will be entirely enclosed; the hydropower right is nonconsumptive. There are no intervening water rights between the diversion and discharge points of the Hydropower Enlargement. 5. Evidence of reasonable diligence: During the diligence period, Applicant and its predecessor-in-interest have taken steps to diligently develop the Subject Water Rights including, without limitation, the activities described in the list below. This list is not intended to be inclusive and may be supplemented by additional evidence. A. In 2007 Applicant acquired the Subject Water Rights as part of its acquisition of property known as the Pinnacle Peak Ranch. B. Applicant engaged an engineering consultant to conduct field investigations, calculate water demands for planned development to be served by the Subject Water Rights, analyze availability of water to be diverted under the Subject Water Rights and provide an opinion on potential pond sites on the Pinnacle Peak Ranch. C. Applicant and its predecessor-in-interest performed maintenance, repairs and improvements on the Alpha Ditch, into which the Springs may be diverted and used for supplemental irrigation, and which also will be a component of the hydropower system to be constructed for diversion of the Alpha Ditch – Hydropower Enlargement water right. D. Applicant engaged in general planning efforts regarding future development of lands within the Pinnacle Peak Ranch. E. Applicant engaged the services of attorneys to provide legal advice in connection with the above-described planning activities and associated water rights matters. F. Applicant and its predecessor-in-interest incurred professional consulting fees for its attorneys and engineering consultant during the diligence period. G. Applicant has no intention to abandon the Subject Water Rights. 6. Name and address of owner of lands on which all structures are located, and upon which water is or will be placed to beneficial use: Applicant

**11CW18** **ROUTT AND RIO BLANCO COUNTIES**. 1.Name, mailing address, email address and telephone number of Applicant: Riverview Properties II, LLC, c/o Bob Lambert, 9023 W. 139th Terrace, Overland Park, KS 66221, [Bob.Lambert@Staples.com](mailto:Bob.Lambert@Staples.com), (915) 685-4014. Please direct all correspondence and pleadings to: Meghan N. Winokur, Esq., Holland & Hart LLP, 555 17th Street, Suite 3200, Denver, CO 80202, Telephone: (303) 295-8390 2. Name of structures: Pinnacle Peak Spring Nos. 1 and 2 (referred to together as the “Subject Water Rights”) 3. Description of conditional water rights: A. Date of Original Decree: September 14, 1998; Case No. 97CW69, District Court, Water Division 6. B. Subsequent Decree Awarding Finding of Diligence: Case No. 04CW34, District Court, Water Division 6, October 6, 2005. C. Legal Descriptions: 1.Pinnacle Peak Spring No. 1: NE ¼ of the SE ¼, Section 22, T3N, R86W, of the 6th P.M., at a point 2,450 feet from the South line and 700 feet from the East line of said Section 22. 2. Pinnacle Peak Spring No. 2: NE ¼ of the SE ¼, Section 22, T3N, R86W, of the 6th P.M., at a point 2,550 feet from the South line and 1,050 feet from the East line of said Section 22. The general locations of the Pinnacle Peak Spring Nos. 1 and 2 water rights and the location of the proposed area to be irrigated with such rights are shown on the U.S.G.S. topographic map attached as **Exhibit A** to the Application. D. Source: Springs tributary to Oak Creek, tributary to Yampa River. E. Appropriation Date: September 4, 1997. F. Amount: 1. Pinnacle Peak Spring No. 1: 0.22 cfs. 2. Pinnacle Peak Spring No. 2: 0.033 cfs. G. Use: absolute for stockwatering; conditional for domestic, irrigation, aesthetics, fire protection. 4. Evidence of reasonable diligence: During the diligence period, Applicant and its predecessor-in-interest have taken steps to diligently develop the Subject Water Rights including, without limitation, the activities described in the list below. This list is not intended to be inclusive and may be supplemented by additional evidence. A. In 2007 Applicant acquired the Subject Water Rights as part of its acquisition of property known as the Pinnacle Peak Ranch. B. Applicant engaged an engineering consultant to conduct field investigations, calculate water demands for planned development to be served by the Subject Water Rights, analyze availability of water to be diverted under the Subject Water Rights and provide an opinion on potential pond sites on the Pinnacle Peak Ranch. C. Applicant has continued to use the Subject Water Rights for stock watering, which is an absolute use decreed in Case No. 97CW69. D. Applicant engaged in general planning efforts regarding future development of lands within the Pinnacle Peak Ranch. E. Applicant engaged the services of attorneys to provide legal advice in connection with the above-described planning activities and associated water rights matters. F. Applicant and its predecessor-in-interest incurred professional consulting fees for its attorneys and engineering consultant during the diligence period. G. Applicant has no intention to abandon the Subject Water Rights.

**2011CW20 (2005CW016) ROUTT COUNTY** APPLICATION TO MAKE ABSOLUTE CONDITIONAL WATER RIGHT OR FOR FINDING OF REASONABLE DILIGENCE, 1. Name, mailing address, telephone number, and email address of Applicant: Dakota Ridge Homeowners Association (“Dakota Ridge HOA”), c/o Medora Fralick, 3001 S. Lincoln, Suite E

Steamboat Springs, CO 80477, (970) 879-1402, [medora@cpgsteamboat.com](mailto:medora@cpgsteamboat.com), direct all pleadings to Richard J. Mehren, Jennifer M. DiLalla, Moses, Wittemyer, Harrison and Woodruff, P.C., P. O. Box 1440, Boulder, CO 80306-1440, (303) 443.8782, [rmehren@mwhw.com](mailto:rmehren@mwhw.com); [jdilalla@mwhw.com](mailto:jdilalla@mwhw.com). 2. Name of conditional water right: Dakota Ridge Water Supply Well, First Enlargement. 3. Description of conditional water right: a. Date of original decree: October 6, 2005, in Case No. 2005CW016, District Court for Water Division No. 6, State of Colorado. b. Subsequent decrees awarding findings of diligence: Not applicable. c. Legal description of structure: The Dakota Ridge Water Supply Well is an infiltration gallery located in the NE¼ of the NE¼ of Section 29, Township 6 North, Range 84 West, 6th P.M. at a distance of 630 feet west of the east section line and 1,320 feet south of the north section line of said Section 29, in Routt County, Colorado. A map showing the location of the Dakota Ridge Water Supply Well is attached as **Exhibit A** and incorporated herein by this reference. d. Source: Yampa River alluvium. e. Appropriation date: April 27, 1999. f. Amount: 15 gpm, CONDITIONAL. g. Use: The Dakota Ridge Water Supply Well, First Enlargement is used to provide a year-round supply of water for domestic, irrigation, livestock, and fire protection uses, and all other uses customarily associated with a subdivision, to a single lot added to the Dakota Ridge Subdivision on April 27, 1999 (the “Lonesome Saddle Lot” or “74th Lot”). The Dakota Ridge Subdivision includes 74 lots on approximately 437 acres in Sections 29 and 32, Township 6 North, Range 84 West, 6th P.M., in Routt County, Colorado. h. Depth of Well: 25 feet. 4. Detailed outline of work and expenditures toward completion of the appropriation and application of the water to beneficial use: Dakota Ridge HOA’s water system is a single “project or integrated system” within the meaning of C.R.S. § 37-92-301(4)(b) for the purpose of determining reasonable diligence. The water system was installed at the time the Dakota Ridge Subdivision was platted. Accordingly, all of the water mains and other structures for providing water service for the entire Dakota Ridge Subdivision have already been installed. As additional houses are built within the Dakota Ridge Subdivision, connector lines must be installed between the new homes and the Dakota Ridge Subdivision’s existing water mains. During this diligence period (October 2005 through October 2011), five new homes were built within the Dakota Ridge Subdivision, resulting in the installation of five new water main connections. One of these new homes was constructed on the Lonesome Saddle Lot. During this diligence period, Dakota Ridge HOA has spent more than $59,600 on repairs to its water system. This repair work included the installation of connector lines between the water mains and five new homes, including the new home on the Lonesome Saddle Lot; pump replacement; upgrades to tank controls; and repairs to the pressure-reducing valve. Also during this diligence period, Dakota Ridge HOA has spent more than $86,400 to operate and maintain its water system. These operations and maintenance costs included costs for labor to operate and maintain the water supply system, as well as costs for electricity and chemicals and for routine maintenance such as tank cleaning, quality testing, road maintenance, and hydrant-flushing. In 2011 alone, Dakota Ridge has spent an additional $24,000 to upgrade the computer system, software, and signaling equipment necessary to operate its water system. Each year during this diligence period, to augment out-of-priority diversions from the Dakota Ridge Water Supply Well in accordance with the augmentation plan decreed in Case No. 90CW165, and as amended in Case No. 2005CW016, Dakota Ridge HOA also has purchased 50 acre-feet of augmentation water from the Upper Yampa Valley Water Conservancy District out of its Stagecoach Reservoir supply. This augmentation water covers both the absolute and the conditional portions of the Dakota Ridge Water Supply Well. The annual cost of this augmentation water from Stagecoach Reservoir is $1,750. 5. Claim to make absolute: a. Date water applied to beneficial use: October 2010. b. Amount: 15 gpm. c. Use: Domestic, irrigation, livestock, and fire protection uses, and all other uses customarily associated with a subdivision. d. Description of place of use where water is applied to beneficial use: The Lonesome Saddle Lot, which is the 74th Lot in the Dakota Ridge Subdivision, as more fully described in Paragraph 3.g. above. A new home was constructed on the Lonesome Saddle Lot and connected to the Dakota Ridge Water Supply Well water distribution system in 2010. 6. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Not applicable.. WHEREFORE, Dakota Ridge HOA respectfully requests that the Court grant its application to make ABSOLUTE the Dakota Ridge Water Supply Well, First Enlargement water right in its entirety. In the alternative, Dakota Ridge HOA seeks a finding of reasonable diligence and an order continuing the conditional Dakota Ridge Water Supply Well, First Enlargement water right and granting such other relief as the Court deems appropriate. (6 pages including exhibits)

**11CW 21 . APPLICATION FOR FINDING OF REASONABLE DILIGENCE IN ROUTT COUNTY.** 1. Name, Mailing Address, Email Address, and Telephone Number of Applicant: Twentymile Coal, LLC, 29515 Routt County Road No. 27, Oak Creek, CO 80467, Attention: Jerry Nettleton, Email Address: [JNettleton@peabodyenergy.com](mailto:JNettleton@peabodyenergy.com), Telephone: (970) 870-2712. Please direct all correspondence and pleadings to: William H. Caile, Esq., Meghan N. Winokur, Esq., Holland & Hart LLP, 555 17th Street, Suite 3200, Denver, CO 80202, Telephone: (303) 295-8000. 2,  Name of Structures: Appropriative rights of exchange as described in paragraph 9.e of the Decree dated December 20, 1991 in Case No. 90CW99 (Water Div. 6) (“Subject Exchanges”). 3. Date of Original Decree: December 20, 1991, Case No. 90CW99, District Court, Water Division No. 6. 4. Description of Conditional Water Rights: a. Legal Descriptions: The Subject Exchanges allow Applicant to store water for augmentation purposes in any one or a combination of the Storage Rights listed on Exhibit A attached to the Application in exchange for water introduced into the Trout Creek System from any one or a combination of the Ditch Rights listed on Exhibit B attached to the Application. The various water rights on Exhibits A and B are located in Townships 3, 4, 5 and 6 North, Ranges 85, 86, and 87 West, of the Sixth P.M., Routt County, Colorado. The general locations of the Storage Rights and the Ditch Rights are shown on the U.S.G.S. topographic map attached as Exhibit C to the Application. b. Source: Foidel, Trout, Middle, and Fish Creeks, all tributary to the Yampa River. c. Appropriation Date: August 8, 1990. d. Amount: The decreed rates of flow for the Ditch Rights are listed on Exhibit B that are being stored in the Storage Rights listed on Exhibit A. e. Use: Storage of water for augmentation purposes pursuant to the plan approved in Case No. 90CW99. 5. Detailed outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed: a. The Subject Exchanges are integral parts of Applicant’s augmentation plan described in Case No. 90CW99, as originally decreed in Case No. W-1502-78, Water Div. 6 (“Augmentation Plan”). The original decree for the Augmentation Plan provides in part as follows: All of the water rights and all of the structures described herein, including those to be constructed at any alternate points of diversion or places of storage, are part of one water system, so that for purposes of showings of reasonable diligence with respect to the conditional water rights included herein, work performed and expenses incurred by [Applicant] in connection with any of the water rights, structures and alternate points of diversion or places of storage shall be considered to be in furtherance of the application of each of the conditional water rights to beneficial use. *See also* Paragraph 6.a. of Decree in Case No. 05CW12. b. There has not been a call enforced on the Yampa River System at a point downstream of any of the various exchange reaches for the Subject Exchanges since the Augmentation Plan was decreed in 1991. Therefore, it has not been necessary to implement the augmentation plan or Subject Exchanges. The decree in Case No. 90CW99 provides as follows concerning reasonable diligence in connection with the Subject Exchanges: It is recognized that the exchanges are intended to operate only if there are calls by senior water rights on the Trout Creek stream system which require operation of this plan for augmentation. Therefore, any failure by applicant to operate these exchanges based on a lack of calls on Trout Creek shall not be evidence of any lack of diligence in the development and implementation of the described exchanges. c. Applicant continues to operate the Foidel Creek Mine, for which the Augmentation Plan was approved, and has continued to secure and maintain all required mining and reclamation and related permits, and has maintained all ownership and lease rights required for continued operation. The primary Mining and Reclamation Permit was renewed in June 2010 for an additional five-year permit term. It is necessary to maintain the Augmentation Plan, including the Subject Exchanges, for continued mining operations in order to assure the ability to meet any downstream call on the Yampa River system or the tributaries of Trout, Fish, Middle, or Foidel Creeks. The Subject Exchanges are an integral part of the Augmentation Plan. Applicant has taken all steps necessary to assure that the Augmentation Plan can be implemented if and when required. d. Applicant has continued to cooperate with federal and state agencies in the operation, maintenance, and collection of data from gauging and surface monitoring stations on Trout, Fish, Middle, and Foidel Creeks. These activities have been conducted solely by, and at the expense of Applicant, or related entities. Data from the ongoing monitoring program has been submitted, and is publicly available in the permit files maintained by both the Colorado Division of Reclamation, Mining, and Safety (“CDRMS”), and the Colorado Department of Public Health and Environment – Water Quality Control Division (“CDPHE”). The monitoring data may be used to determine the quantities of water available for use or storage, including use or storage by exchange, and for assessment of flood frequency, and the discharge parameters required for reservoir, dam, and spillway design. The data are also used for initial and ongoing evaluations of potential mining-related hydrologic impacts by the CDRMS and CDPHE. e. Applicant has diligently complied with monitoring and regulatory requirements for the water structures and systems forming a part of the Augmentation Plan. Diversions of water under the various Ditch Rights have been made, and the water has been utilized for stock watering, irrigation, and other uses, as designated under the individual water rights, since use of these rights has not been required under the Augmentation Plan. Applicant has diligently maintained existing storage reservoirs, with ongoing efforts including regular inspection of reservoir structures and maintenance of reservoir embankments and water conveyance systems, as required. In 2009, Applicant replaced the discharge structures for Pond D, which is one of the structures included on Exhibit A. Applicant continues to work diligently toward development of additional water storage rights included in the Storage Rights listed on Exhibit A, as evidenced by Applicant’s ongoing prosecution of associated diligence applications. f. During the diligence period, Applicant has filed and continues to prosecute applications for findings of reasonable diligence in the Division 6 Water Court for the following conditional water storage rights: i. Energy Fuels Reservoir No. 2, pending Case No. 08CW77. ii. Twenty Mile Reservoir, pending Case No. 09CW19. g. In 2006, Applicant completed a comprehensive inventory and assessment of all existing irrigation ditches and structures, including certain of the Storage Rights and Ditch Rights. This work included the following: i. Review of online records available through the Division of Water Resources (“DWR”) and physical records available at the Office of the State Engineer concerning Applicant’s existing irrigation ditches and structures; ii. Completion of a GPS survey of the existing irrigation ditches and structures; iii. Assessment of existing conditions and maintenance requirements and documentation on field report forms for such rights; iv. Completion of photographic documentation of identified maintenance issues; v. Input of data to Applicant’s GIS system of all field data; vi. Development of data plots for each ditch and associated structures, showing location, alignment, features, and maintenance requirements on aerial photograph image; vii. Assembly and organization of inventory and assessment data for quick reference and use in prioritizing and implementing ongoing ditch maintenance program; viii. Completion of supplemental field assessment and maintenance evaluation for the Connell Ditch in June 2011. h. Applicant initiated an ongoing ditch maintenance program in 2007, focusing on prioritized ditch maintenance needs, consistent with available funding for maintenance activities, including the following: i. Completion of identified ditch repair and maintenance items for the Jefferson Ditch, including main ditch and enlargements; ii. Completion of identified ditch repair and maintenance items for Jones, Kleckner, and Thompson Ditches, including main ditch and enlargements; iii. In 2011, Applicant coordinated with the DWR and other water rights holders for the Last Chance Ditch on development and permitting of plans for installation of irrigation control structures to address co-mingling of surface flows from Little Trout Creek (a/k/a Whitney Creek) with ditch flows. i. During the diligence period Applicant, together with its parent company Peabody Energy Corporation (“Peabody”), has undertaken design, permitting, and project development activities for the construction of Energy Fuels Reservoir No. 2 (a/k/a Trout Creek Reservoir). Energy Fuels Reservoir No. 2 is a central component of the Augmentation Plan including the Subject Exchanges, as well as an integral part of long-term reclamation and land-use plans at the mine. Applicant and Peabody have devoted significant resources during the diligence period to the evaluation, planning, and land acquisitions necessary for development of the proposed reservoir. Activities conducted or contracted for during the diligence period include, but are not limited to: i. Site investigations, including geotechnical, borrow, and embankment fill studies; ii. Civil engineering and completion of preliminary designs and cost estimates; iii. Survey topography and aerial photography; iv. Environmental studies and testing, including wetlands delineation, ground water monitoring, aquatic resources, endangered species and cultural resource evaluations; v. Approximately 3000 acres owned by Applicant and surrounding the reservoir site have been master planned for low impact residential development. j. In 2007 Applicant acquired the conditional water rights for the Twenty Mile Reservoir. Twenty Mile Reservoir is a component of the Augmentation Plan and the Subject Exchanges. In 2011, Applicant completed acquisition of 6,335 acres in Routt County, including a majority of lands within the future footprint of the Twenty Mile Reservoir. k. Applicant, through its attorneys, has monitored the monthly resumes of water rights applications in Water Division 6, and has submitted Statements of Opposition where deemed necessary or advisable for full protection of its water rights, including the Subject Exchanges. l. Total expenditures in time and money for all of the above during the diligence period is difficult to determine, but is conservatively estimated to be more than $700,000, exclusive of amounts paid for land and water rights acquisition. 6. Names and Addresses of Owners ofLand Upon Which any New Diversion or Storage Structure or Modification to 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:

|  |  |
| --- | --- |
| Name of Owner | Address |
| Michael and Rebecca Ludlow | 34115 County Road 33, Steamboat Springs, CO 80487 |
| Paul and Susan Orton | P.O. Box 880856, Steamboat Springs, CO 80488 |
| Friedrich Family Trust | 1267 Bernardo Ridge Place, Escondido, CA 92029 |
| Barbara Fredrickson | P.O. Box 6A, Oak Creek, CO 80467 |
| Elk Pass Ranch, LLC | 5 Rosebank Lane, Hilton Head, S.C. 29928 |
| United States of America | BLM 455 Emerson St., Craig, CO 81625 |

You are hereby notified that you will have until the last day of **DECEMBER, 2011** to file with the Water Court a Verified Statement of Opposition, setting forth facts as to why a certain Application should not be granted or why it should be granted only in part or on certain conditions. A copy of such Statement of Opposition must be served on the Applicant or the Applicant’s Attorney, with an affidavit or certificate of such service being filed with the Water Court, as prescribed by Rule 5, C.R.C.P. The filing fee for the Statement of Opposition is $158.00, and should be sent to the Clerk of the Water Court, Division 6, P.O. Box 773117, Steamboat Springs, CO 80477.

ROUTT COUNTY COMBINED COURT

WATER DIVISION 6

By: /s/ M. Rene Mattone

Court Judicial Assistant