

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

-----  
RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JANUARY 2022. (This publication can be viewed in its entirety on the state court website at: [www.courts.state.co.us](http://www.courts.state.co.us)).  
-----

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 January 2022, 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. 2022CW3000; Water Division 2 and CASE NO. 2021CW3000; Water Division 1 – 5680 BURGESS ROAD, LLC, C/O: Mary Lynch, Manager, 17550 Bar X Road, Colorado Springs, CO 80908** (Please direct all correspondence and inquiries regarding this matter to Applicant’s attorneys: Steve T. Monson, #11329, Emilie B. Polley, #51296, MONSON, CUMMINS, SHOHET & FARR, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)  
Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation

**EL PASO COUNTY**

**II. Summary of Application.** Applicant desires to adjudicate the Denver Basin groundwater underlying its 14 acre parcel of property in El Paso County (“Applicant’s Property”) and to obtain a plan for augmentation for the anticipated subdivision of the Applicant’s Property into two parcels. The plan for augmentation includes two wells into the Dawson aquifer of the Denver Basin to provide water service to an equivalent number of single-family residences. **III. Application for Underground Water Rights.** **A. Legal Description of Wells.** 1. **Property Description.** All wells are and will be located on the 14 acres of Applicant’s Property, as depicted on **Exhibit A** map attached to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Located in the E½ SE¼ of Section 13, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M., and more particularly described as 5680 Burgess Road, Colorado Springs, CO 80908, El Paso County, Colorado. 2. **Existing Well.** There is an existing exempt domestic well issued pursuant to and for the uses authorized in § 37-92-602(1)(b), C.R.S. located upon Applicant’s Property with Division of Water Resources Permit No. 175850-A (“Lynch Well No. 1”), which permit is attached as **Exhibit B**. The Lynch Well No. 1 is drilled to a total depth of approximately 240 feet into the Dawson aquifer. The well permit is located approximately 775 feet from the south line of said Section 13 and 650 feet from the east line of said Section 35. Upon completion of this case and the subdivision process, the Lynch Well No. 1 will remain an exempt well pursuant to SB 20-155 amending C.R.S. §37-92-602(3)(b)(IV). 3. **Proposed Wells.** Applicant proposes that up to one additional well will be located on the Applicant’s Property at a specific location not yet determined (“Lynch Well No. 2”), to be constructed to the Dawson aquifer, for a total of two wells on the Applicant’s Property. **B. Water Source.** 1. **Not-Nontributary.** The ground water to be withdrawn from the Dawson,

Denver, and Arapahoe aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the not-nontributary Dawson, Denver, and Arapahoe aquifers will require the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicant's Property is nontributary. C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code or the State of Colorado's 100-year life requirement pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

<b>AQUIFER</b>	<b>NET SAND (Feet)</b>	<b>Total Appropriation (Acre Feet)</b>	<b>Annual Avg. Withdrawal 100 Years (Acre Feet)</b>	<b>Annual Avg. Withdrawal 300 Years (Acre Feet)</b>
Upper Dawson (NNT)	159.30	446.04 <sup>1</sup>	4.46	1.487
Denver (NNT)	386.60	920.11	9.20	3.067
Upper Arapahoe (NNT)	261.80	623.08	6.23	2.077
Laramie Fox Hills (NT)	189.60	398.16	3.98	1.327

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. D. Requested Uses. The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, irrigation, stock water, garden and greenhouse, domestic animals, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson, Denver, and Arapahoe aquifers pursuant to

---

<sup>1</sup> The Applicant intends to reserve 1.0 annual-acre feet for the existing exempt well located on Applicant's property with permit no. 175850-A. Such reservation will reduce the total amount available for appropriation from the Dawson aquifer to 346.04 acre-feet.

a decreed augmentation plan entered by this Court, replacing the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c.5). E. Well Fields. Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicants request that these wells be treated as a well field. F. Averaging of Withdrawals. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. G. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located, as well as the underlying groundwater, is owned by the Applicant. **IV. Application for Plan for Augmentation.** A. Structure to be Augmented. The structure to be augmented is the Lynch Well No. 2, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicant's Property as requested and described herein. The Lynch Well No. 1 will continue to operate as an exempt well, as permitted under the authority of C.R.S. §37-92-602(3)(b)(IV). B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the septic return flows from the Lynch Well No. 2, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. C. Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by the Lynch Well No. 2 proposed herein for a residential lot or single-family residence. The Lynch Well No. 1 will remain an exempt well upon approval of this plan for augmentation and anticipated subdivision of Applicant's Property pursuant to SB 20-155 amending C.R.S. §37-92-602(3)(b)(IV). Potential water use criteria and their consumptive use component for replacement of actual depletions for the Lynch Well No. 2 are estimated as follows: 1. Uses. i. Household Use Only: The household use is estimated at 0.27 acre-feet annually within a single family dwelling, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal system. The annual consumptive use will therefore be 0.027 acre-feet, with return flows of 0.243 acre-feet per year. ii. Landscape Irrigation: The landscape irrigation is estimated at 0.05 acre-feet annually per 1,000 square feet (2.18 acre-feet per acre) per year, with an 85 percent assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre-feet. iii. Horses (or equivalent livestock): Livestock use is estimated at 0.011 acre-feet annually (10 gallons per day) per head with one hundred percent consumptive use component. 2. Diversions. The augmented well will pump a maximum of 0.85 acre-feet of water per year from the Dawson aquifer. Such use shall be a combination of household use, irrigation of lawn, landscaping, and garden, fire protection, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.27 acre-feet of water per year, with the additional 0.58 acre-feet per year available for irrigation of lawn, landscaping, and garden and the watering of horses or equivalent livestock and domestic animals. 3. Depletions.

Applicant's consultant has determined that maximum stream depletions over the 300-year pumping period for the Dawson aquifer amounts to approximately 27.71 percent of pumping. Maximum annual depletions from pumping the Lynch Well No. 2 are therefore 0.2355 acre-feet in year 300, being 27.71 percent of total annual pumping of 0.85 acre-feet. Should Applicant's pumping be less than the 0.85 total acre-feet per year described herein, resulting depletions and required replacements will be correspondingly reduced.

4. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the Lynch Well No. 2. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from a non-evaporative septic system. The annual consumptive use for non-evaporative septic systems is 10 percent per year. At a household use rate of 0.27 acre-feet per year, there will be 0.243 acre-feet of septic return flows that accrue to the stream system per year, utilizing a non-evaporative septic system. Thus, during pumping, maximum stream depletions of 0.2355 acre-feet will be adequately augmented by septic return flows of 0.243 acre-feet.

5. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Lynch Well No. 2, Applicant will reserve up to 225 acre-feet of the nontributary Laramie Fox Hills aquifer as necessary to replace any injurious post pumping depletions, reduced by actual stream depletions replaced during the plan pumping period. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a well permit for the Lynch Well No. 2 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. The Lynch Well No. 1 will retain its existing exempt well permit status.

**V. Remarks.** A. 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 the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the Arkansas River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter in Water Division 2 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. B. Applicant requests a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). C. 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 or wells only to the extent related to that well's actual pumping. D. The Applicant will not need to implement the plan for augmentation until the completion of the subdivision process, or drilling of the second well, providing water service to a single-family residence

generating sufficient return flows. E. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. F. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. G. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. H. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. I. There are no lienholders on Applicant's Property. In accordance with the lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), the Applicant will complete and file with the Court a Notice of No Lienholder no later than 14 days after the filing of this application.

-----  
**CASE NO. 2022CW3001; Previous Case No. 11CW13 – CITY OF LA JUNTA, c/o Tom Seaba, Director of Utilities, P.O. Box 489, La Junta, CO 81050** (Please direct all correspondence and inquiries regarding this matter to Applicant's attorney: Julianne M. Woldridge, MacDougall & Woldridge, P.C., P.O. Box 7273, Woodland Park, CO 80863, telephone: (719) 520-9288)

Application for Findings of Reasonable Diligence  
**OTERO, PUEBLO AND CROWLEY COUNTIES**

**2. Name of water right:** Case No. 11CW13 exchange. A. Date of Original Decree: Feb. 2, 2016, Case No. 11CW13, District Court, Water Division No. 2; B. Exchange Location: The lower terminus of the exchange is any one of the following three points: the Holbrook Reservoir Outlet's confluence with the Arkansas River in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 24, T.23S., R.56W., 6th P.M., the Dye Lake outlet's confluence with the Arkansas River; or the Dye Wasteway & Augmentation Facility outlet's confluence with the Arkansas River. The latter two points are upstream on the Arkansas River from the Holbrook Reservoir Outlet and downstream on the Arkansas River from the Holbrook Canal headgate. The upper terminus of the exchange is Pueblo Reservoir. Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 of T.20S., R.66W. of the 6th P.M. and Sections 1, 2, 3, 4, 5, 9, 10 and 11 of T.21S., R.66W. of the 6th P.M. and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24, and 25 of T.20S., R.67W. of the 6th P.M. all in Pueblo County, CO. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, T.20S., R.66W. of the 6th P.M., from which the Northeast corner of said Section 36 bears North 61° 21' 20" East, a distance of 2,511.05 feet, all more particularly described in the decree in Case No. B42135, District Court, Pueblo County, CO, as corrected in Case No. 02CW37. C. Source of water: The water exchanged is Applicant's pro rata share of water rights from the water rights owned or controlled by Holbrook Mutual Irrigating Company ("HMIC"). Applicant owns 883.7 or 5.4403% of the total 16,243.5 shares of capital stock in HMIC. The water rights owned or controlled by HMIC include the

following: 1). Holbrook Canal (a/k/a Lake Canal), original decree April 8, 1904, District Court, Bent County, appropriation date: September 25, 1889, amount: 155 c.f.s., source: Arkansas River, location: NE¼ Sec. 24, T.22S., R.58W., 6th P.M., Crowley County, CO; 2). Holbrook Canal (a/k/a Lake Canal), decreed April 8, 1905, District Court, Bent County, appropriation date: August 30, 1893, amount: 445 c.f.s., source: Arkansas River; location: NE¼, Sec. 24, T.22S., R.58W., 6th P.M., Otero County, CO; 3). Holbrook Canal/Holbrook Reservoir storage right (a/k/a Reservoir No. 1), original decree April 8, 1905, District Court, Bent County, appropriation date: March 2, 1892, amount: 600 c.f.s. and 185,001,980 cubic feet (approximately 4,247 a.f.), source: Arkansas River, location: the point of diversion is the Holbrook Canal (a.k.a. Lake Canal) in NE¼, Sec. 24, T.22S., R.58W., 6th P.M., Otero County, CO, the reservoir is located in Sec. 5, 6, 7, and 8, T.23S., R.55W. and Sec. 1 and 12, T. 23S., R.56W, 6th P.M., Otero County, CO; 4). Holbrook Canal/Holbrook Reservoir storage right (a/k/a/ Reservoir No. 1): original decree February 3, 1927, District Court, Bent County, appropriation date: September 15, 1909, amount: 600 c.f.s., 3,196 a.f., 2,000 a.f. of which was transferred to the Dye Reservoir, Case No. W-3905, decree dated September 23, 1974, source: Arkansas River, location: the point of diversion is the Holbrook Canal in NE¼, Sec. 24, T.22S., R.58W., 6th P.M., Otero County, CO, the reservoir is located in Sec. 5, 6, 7, and 8, T.23S., R.55W. and Sec. 1 and 12, T. 23S., R.56W, 6th P.M., Otero County, CO; 5). Holbrook Canal/Dye Reservoir storage right, original decree February 3, 1927, District Court, Bent County, appropriation date: October 10, 1903, amount: 600 c.f.s, 4,500 acre feet, 2,000 a.f. of which was transferred to the Holbrook Reservoir, Case No. W-3905, decree dated September 23, 1974, source: Arkansas River, location: the point of diversion is the Holbrook Canal in NE¼, Sec. 24, T.22S., R.58W., 6th P.M., Otero County, CO, reservoir is located in Sec. 4 and 5, T.23S., R.56W., and Sec. 32 and 33, T.22S., R.56W., 6th P.M., Otero County, CO; 6). Holbrook Canal/Dye Reservoir storage right, original decree dated February 3, 1927, District Court, Bent County, appropriation date: September 3, 1909, amount: 400 c.f.s., 3,486.00 acre feet, source: Arkansas River, location: the point of diversion is the Holbrook Canal in NE¼, Sec. 24, T.22S., R.58W., 6th P.M., Otero County, CO, reservoir is located in Sec. 4 and 5, T.23S., R.56W., and Sec. 32 and 33, T.22S., R.56W., 6th P.M., Otero County, CO; and 7). Holbrook exchanges, original decree dated February 3, 1927, District Court, Bent County, and decree dated August 16, 1983, Case No. 81CW39, District Court, Water Division No. 2, amount: 595 c.f.s. exchange from Dye Reservoir to Holbrook headgate and 230 c.f.s. exchange from Holbrook Reservoir to Holbrook headgate, appropriation dates: original priority dates of exchange recognized as March 2, 1891 for 4,247 a.f., September 15, 1909 for 3,196 a.f., October 10, 1903 for 4,500 a.f., and September 3, 1909 for 3,486 a.f. D. Amount: The maximum amount is Applicant's pro-rata share of the total instantaneous flow rates decreed to the water rights described above, not to exceed a maximum annual volume of 450 acre feet conditional and subject to monthly maximums. E. Appropriation date: February 28, 2011. F. Uses: municipal, irrigation, industrial, commercial, recreational, augmentation, and domestic uses within Applicant's service area as such may be amended from time to time, for augmentation and replacement of all beneficial uses by Applicant or parties contracting with Applicant for temporary use of such water to the extent such is not needed by Applicant during that temporary period, for diversion and storage pursuant to the Winter Water Storage Program and delivery through the Holbrook Canal for the changed uses,

by exchange using HMIC's decreed exchanges and storage pursuant to HMIC's storage decrees described above while under HMIC's control and later release for the changed uses in the HMIC system, by exchange pursuant to the exchange decreed herein, by exchange pursuant to administratively approved or decreed exchanges including but not limited to the appropriative rights of exchange claimed by the Southeastern Colorado Water Conservancy District in Case No. 06CW08 by agreement with SECWCD. **3. Outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use:** The appropriative right of exchange is part of Applicant's integrated water supply system. From January 2016 through November 2021, Applicant expended over \$6,000,000 to maintain, repair, and operate its integrated water supply system, including without limitation expenditures to maintain its membership in HMIC, expenditures to maintain an excess capacity contract for storage of water exchanged to Pueblo Reservoir, and including approximately \$9,970.00 in legal fees and expenses related to protection and development of its integrated water supply system including without limitation development of the exchange right that is the subject of this Application and monitoring and participating in other water court cases that could impact that integrated water supply system. Applicant has maintained agreements for leasing the exchange water for continued irrigation of the historically irrigated land until the water is needed for beneficial use in Applicant's water supply system, and has taken delivery of and caused the beneficial use of the water pursuant to those leases. Applicant has investigated land use options for the structures necessary to deliver the exchange water from the Holbrook Mutual Irrigating Company's system. Applicant has maintained and operated its other water rights used in its municipal water supply system. **4. 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:** A. Pueblo Reservoir: United States Dept. of the Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road, Loveland, CO 80537; B. Holbrook Reservoir and Dye Reservoir: Holbrook Mutual Irrigating Company, P.O. Box 34, Cheraw, CO 81030, Quarter Circle LT Inc., 3646 Lane 16, Ordway, CO 81063; and C. recharge pits – Applicant. Applicant, therefore, requests findings that it has exercised reasonable diligence toward the development of the conditional appropriative right of exchange and continuing that conditional right.

-----  
**CASE NO. 2022CW3002; Previous Case No. 07CW122 – CITY OF COLORADO SPRINGS, ACTING THROUGH COLORADO SPRINGS UTILITIES c/o Abigail Ortega, P.E., 1521 Hancock Expressway, Mail Code 1825, Colorado Springs, CO 80903**

(Please direct all correspondence and inquiries regarding this matter to Applicant's attorneys: Michael J. Gustafson, Senior Attorney, Nathan Endersbee, Attorney, City Attorney's Office-Utilities Division, 30 South Nevada Ave., MC 510, Colorado Springs, CO 80903; (719) 385-5909)

Application for Finding of Reasonable Diligence and to Make Partially Absolute Conditional Appropriative Rights of Substitution and Exchange  
**EL PASO, TELLER AND PUEBLO COUNTIES**

**2. Names of Structures and Description of Conditional Water Rights:** This Application involves the City of Colorado Springs, acting by and through its enterprise, Colorado Springs Utilities (“Applicant”) conditional appropriative rights of substitution and exchange described in paragraphs 3 and 4 that were decreed in District Court, Water Division No. 2, Case No. 07CW122.

**3. Conditional Rights of Substitution and Exchange.** A. Date of Original Decree: January 22, 2016, Case No. 07CW122, District Court, Water Division No. 2. B. Subsequent Decree Awarding Findings of Diligence: N/A. C. Appropriation Date: December 28, 2007. D. Decreed Use: Waters diverted or stored by the exchange described herein shall be (or have been) used for the same beneficial uses and purposes as those for which the waters and water rights released as substitute supply (set forth in paragraph 3(H), below) are decreed. The water diverted or stored by exchange will, if fully consumable, be used, reused, and successively reused to extinction. E. Decreed Legal Description and PLSS Description of the structures from which substitute supplies will be released (exchange-from points): I. Pueblo Reservoir (WDID: 1403526): Pueblo Reservoir is located at a point at the intersection of the Pueblo Dam axis and the Arkansas River whence the NE corner of Section 36, T20S, R66W of the 6th Principal Meridian bears north 61°21’20” east a distance of 2,511.05 feet, in Pueblo County, Colorado. Said Reservoir will inundate all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 20 South, Range 66 West; Sections, 1, 2, 3, 4, 5, 9, 10, and 11, Township 21 South, Range 66 West; and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25 Township 20 South, Range 67 West; all of the 6th Principal Meridian in Pueblo County, Colorado. Substitute supplies stored in Pueblo Reservoir will be released from Pueblo Dam to the Arkansas River. UTM coordinates for dam: (NAD83)(GPS): Easting: 524076.0, Northing: 4235362.0. II. Williams Creek Reservoir (a/k/a Lower Williams Creek Reservoir) (WDID:1003357): the proposed on-channel reservoir on Williams Creek located in Sections 12, 13, 23, 24, and 25, Township 16 South, Range 65 West and Sections 18, 19, and 30 Township 16 South, Range 64 West of the 6<sup>th</sup> Principal Meridian, in El Paso County, Colorado. UTMs (NAD83)(GPS): Easting: 534460.0, Northing: 4276450.0. F. Decreed Legal Description and PLSS Description of structures where water will be diverted or stored by exchange for substitute supplies released from the structures listed in subparagraph 3(E) (exchange-to points). I. Ruxton Creek System: a) Lake Moraine Reservoir (WDID: 1003654). Located in the Southeast quarter of Section 21 and the Southwest quarter of Section 22, the Northwest quarter of Section 27, and the Northeast quarter of Section 28, Township 14 South, Range 68 West of the 6th Principal Meridian. UTMs (NAD83)(GPS): Easting: 500620.0, Northing: 4296314.0. b) Big Tooth Reservoir (WDID: 1003668). Located in the Southwest quarter of Section 14 and the Northwest quarter of Section 23, Township 14 South, Range 68 West of the 6th Principal Meridian. UTMs (NAD83)(GPS): Easting: 502500.0, Northing: 4297864.0. II. North Slope System (Fountain Creek). a) Crystal Creek Reservoir (WDID: 1003667). Located in the Southwest quarter of Section 17, the Southeast quarter of Section 18 and the Northwest quarter of Section 19, Township 13 South, Range 68 West of the 6th Principal Meridian. UTMs (NAD83)(GPS): Easting: 497913.0, Northing: 4307929.0. b) South Catamount Reservoir (WDID: 1003644). Located in the Northwest quarter of Section 18, Township 13 South, Range 68 West of the 6th Principal Meridian and the Southeast quarter of Section 12 and the Northern half of Section 13, Township 13 South, Range 69 West of the 6th Principal



Meridian. UTM (NAD83)(GPS): Easting: 495917.0, Northing: 4308626.0. c) North Catamount Reservoir (WDID: 1003673). Located in Sections 11, 12, 13, and 14, Township 13 South, Range 69 West of the 6th Principal Meridian. UTM (NAD83)(GPS): Easting: 495419.0, Northing: 4309045.0. III. Northfield Collection System (West Monument Creek). a) Northfield Reservoir (WDID: 1003671). Located in the Southeast quarter of Section 25, Township 12 South, Range 68 West of the 6th Principal Meridian. UTM (NAD83)(GPS): Easting: 505085.0, Northing: 4313832.0. b) Nichols Reservoir (WDID: 1003674). Located in the Southwest quarter of Section 25 and the Southeast quarter of Section 26 and the Northwest quarter of Section 36, Township 12 South, Range 68 West of the 6th Principal Meridian. UTM (NAD83)(GPS): Easting: 504484.0, Northing: 4313413.0. c) Rampart Reservoir (WDID: 1003670). Located in Sections 22, 23, 26 and 27, Township 12 South, Range 68 West of the 6th Principal Meridian. UTM (NAD83)(GPS): Easting: 503395.0, Northing: 4313994.0. IV. Pikeview System (Monument Creek). a) Pikeview Intake (also known as Monument Creek Pipeline) (WDID: 1000506). A point on Monument Creek just upstream from the point where the Garden of the Gods Road crosses Monument Creek, in north Colorado Springs, whence the North quarter corner of Section 19, Township 13 South, Range 66 West of the 6th Principal Meridian bears North 8° 15' East a distance of 3,189.8 feet. This intake delivers water to Pikeview Reservoir. **PLSS**: In the NE¼ of the SW¼ of Section 19, T. 13S., R. 66W. of the 6th P. M. at a point 2208 feet from the West Section line and 2124 feet from the South Section line. UTM (NAD83)(GPS): Easting: 515313.0, Northing: 4305978.0. b) Pikeview Reservoir (WDID: 1003615). An off-channel reservoir located adjacent to and on the west side of Monument Creek, at a point just downstream from the point where the Garden of the Gods Road crosses Monument Creek, in north Colorado Springs, in the Northeast quarter of the Northwest quarter and in the Northwest quarter of the Northeast quarter of Section 30, Township 13 South, Range 66 West of the 6th Principal Meridian. UTM (NAD83)(GPS): Easting: 515324.0, Northing: 4305083.0. V. South Suburban System. a) South Cheyenne Creek Intake (WDID: 1000537). Located on South Cheyenne Creek at a point just west of the intersection of Mesa Avenue and South Cheyenne Canyon Road, in southwest Colorado Springs, whence the quarter corner common to Sections 34 and 35, Township 14 South, Range 67 West of the 6th Principal Meridian bears North 35° 16' East a distance of 1,329.7 feet. This intake delivers water to South Suburban Reservoir and Gold Camp Reservoir. **PLSS**: In the NE¼ of the SE¼ of Section 34, T. 14S., R. 67W. of the 6th P. M. at a point 795 feet from the East Section line and 1537 feet from the South Section line. UTM (NAD83)(GPS): Easting: 511204.0, Northing: 4292997.0. b) North Cheyenne Creek Intake (WDID: 1000608). Located on North Cheyenne Creek at a point approximately one mile west of the intersection of North and South Cheyenne Canyon Roads, in southwest Colorado Springs, whence the Northeast corner of Section 34, Township 14 South, Range 67 West of the 6th Principal Meridian bears North 7° 29' East a distance of 4,419.2 feet. This intake delivers water to South Suburban Reservoir and Gold Camp Reservoir. **PLSS**: In the SW¼ of the NW¼ of Section 34, T. 14S., R. 67W. of the 6th P. M. at a point 910 feet from the West Section line and 1460 feet from the North Section line. UTM (NAD83)(GPS): Easting: 510161.0, Northing: 4293693.0. c) South Suburban Reservoir (WDID: 1003645). An off-channel reservoir located just north of the intersection of North and South Cheyenne Canyon Roads, in southwest Colorado Springs, in Sections 26 and 35, Township 14 South, Range 67 West of the 6th Principal

Meridian. UTM (NAD83)(GPS): Easting: 511776.0, Northing: 4294040.0. d) Gold Camp Reservoir (WDID: 1003646). An off-channel reservoir located just north of the intersection of North and South Cheyenne Canyon Roads, in southwest Colorado Springs, in Sections 27 and 34, Township 14 South, Range 67 West of the 6<sup>th</sup> Principal Meridian. UTM (NAD83)(GPS): Easting: 511273.0, Northing: 4293888.0. VI. Williams Creek Reservoir (a/k/a Lower Williams Creek Reservoir) (WDID:1003357): the proposed on-channel reservoir on Williams Creek located in Sections 12, 13, 23, 24, and 25, Township 16 South, Range 65 West and Sections 18, 19, and 30 Township 16 South, Range 64 West of the 6<sup>th</sup> Principal Meridian, in El Paso County, Colorado. UTM (NAD83)(GPS): Easting: 534460.0, Northing: 4276450.0. VII. Upper Williams Creek Reservoir (a/k/a Gary M. Bostrom Reservoir) (WDID:1003355): A proposed on-channel reservoir to be located on the channel of Williams Creek, a tributary to Fountain Creek in portions of Sections 5, 6, 7, 8, 17, and 18, Township 15 South, Range 64 West of the 6<sup>th</sup> Principal Meridian, El Paso County, Colorado. A conditional storage water right for Upper Williams Creek Reservoir was decreed in Case No. 12CW31. UTM (NAD83)(GPS): Easting: 535634.6, Northing: 4289044.5. G. Exchange Reaches: I. For exchanges involving the release of substitute water supplies from the outlet of Pueblo Reservoir to the Arkansas River and delivery of the substitute supplies to the confluence of the Arkansas River and Fountain Creek: The reach of Fountain Creek from its confluence with the Arkansas River (exchange-from point) and then upstream on Fountain Creek and its tributaries to the points of diversion or storage described in subparagraph 3(F) above; and II. For exchanges involving the release of substitute water supplies from the outlet of Williams Creek Reservoir and delivery of the substitute supplies to the confluence of Williams Creek and Fountain Creek and diversion or storage at the points of diversion or storage described in subparagraphs 3(F)(I) – 3(F)(V) above: The reach of Fountain Creek from its confluence with Williams Creek (exchange-from point) and then upstream on Fountain Creek and its tributaries to the points of diversion or storage described in subparagraphs 3(F)(I) – (V) above; and III. For exchanges involving the release of substitute water supplies from the outlet of Williams Creek Reservoir and storage in Upper Williams Creek Reservoir described in subparagraph 3(F)(VII) above: The reach of Williams Creek from the confluence of Williams Creek and Fountain Creek (exchange-from point) after release from the outlet pipe described in subparagraph 3(E)(II), above, upstream to the point of storage for Upper Williams Creek Reservoir described in subparagraph 3(F)(VII), above. A map depicting each Exchange Reach is incorporated as **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.) H. Water and water rights to be used as sources of substitute supplies: The sources of substitute water supply to be provided for the exchanges described herein are the following waters owned, controlled, or available for use by Applicant that are or can be stored in Pueblo Reservoir or Williams Creek Reservoir. This Application does not seek to change any of the water rights described in this subparagraph 3(H). I. The Blue River Project which diverts water from the headwaters of the Blue River and its tributaries in Summit County. The 1929 water rights associated with this project were adjudicated by the decree in Civil Action No. 1710 (District Court, Summit County) dated October 26, 1937, and were modified by the decree in Civil Action No. 1883 (District Court, Summit County) dated June 15, 1953. These water rights have an appropriation date of August 5, 1929. The 1948 water rights

associated with this project were adjudicated by the decree in Civil Action No. 1806 (District Court, Summit County) dated May 10, 1952, the Final Decree in Consolidated Case Nos. 2782, 5016, and 5017 (U.S. District Court, District of Colorado) dated October 15, 1955, and were made absolute by the decree in Consolidated Case Nos. 2782, 5016, and 5017 (U.S. District Court, District of Colorado) dated February 26, 1968. These water rights have an appropriation date of May 13, 1948. An additional component of the Blue River Project is water diverted from the Middle Fork of the South Platte River in Park County. Water from the Middle Fork of the South Platte is stored in Montgomery Reservoir pursuant to Priority No. A-207 of appropriation dated September 5, 1930, by absolute decree dated May 16, 1966, in Civil Action No. 3286, District Court of Park County. II. The Homestake Project which 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. Applicant has the right to utilize one-half of the waters produced by the Homestake Project by virtue of the agreement dated June 18, 1962, between the City of Aurora and the City of Colorado Springs. III. The Fryingpan-Arkansas Project which 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. The amount of Project water available to Applicant is determined by Southeastern Colorado Water Conservancy District's ("Southeastern") annual allocations made pursuant to its Allocation Principles, policies, and agreements. Return flows from Project water will be utilized in the exchanges only after they are purchased from Southeastern and stored in Pueblo Reservoir or Williams Creek Reservoir. IV. The Independence Pass Transmountain Diversion System (a/k/a Twin Lakes Project) which 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. Applicant has the right to take and use its *pro rata* share of the water diverted and stored by the Twin Lakes Reservoir and Canal Company under these water rights. V. The Colorado Canal Waters. a) The Colorado Canal. The water right represented by shares of stock in the Colorado Canal Company, which owns and operates the Colorado Canal for the benefit of its shareholders. The Colorado Canal water right is decreed to divert 756.28 cubic feet of water per second of time from the Arkansas River for direct flow irrigation use with a priority date of June 9, 1890. By decree dated October 21, 1985, in Case No. 84CW62, District Court, Water Division No. 2, the use of the Colorado Canal water right was changed to include use and total consumption, either directly or by exchange or substitution, for irrigation, domestic, municipal, commercial, industrial, and all other beneficial uses at any location where the water can be put to beneficial use. Applicant has the right to take its *pro rata* share of the water diverted and stored by the Colorado Canal Company, pursuant to the decree in Case No. 84CW62, by exchange, including exchange to Pueblo Reservoir, or by pipeline for use and total consumption in

Applicant's municipal water system or elsewhere. b) Lake Meredith Reservoir. The water storage right represented by shares of stock in the Lake Meredith Reservoir Company, which owns and operates Lake Meredith Reservoir for the benefit of its shareholders. Lake Meredith Reservoir has decreed water storage rights which authorize the storage of 26,028.4 acre-feet with diversions from the Arkansas River through the Colorado Canal at a rate of 756.28 C.F.S. under priority of March 9, 1898, and the release of waters stored in Lake Meredith Reservoir and the exchange of such released waters for waters diverted at the Colorado Canal headgate for irrigation purposes with an exchange priority of March 9, 1898. The active storage capacity of Lake Meredith Reservoir is 41,413 acre-feet. Each stockholder in the Lake Meredith Reservoir Company is entitled to a *pro rata* portion of the waters realized from the operation of Lake Meredith Reservoir and the use of a *pro rata* portion of Lake Meredith Reservoir storage space. By decree dated October 21, 1985, Case No. 84CW63, District Court, Water Division No. 2, the use of the Lake Meredith water storage rights was changed to include use and total consumption, either directly or by exchange or substitution, for irrigation, domestic, municipal, commercial, industrial, and all other beneficial uses at any location where the water can be put to beneficial use. Applicant has the right to take its *pro rata* share of the water diverted and stored by the Lake Meredith Reservoir Company, pursuant to the decree in Case No. 84CW63, by exchange, including exchange to Pueblo Reservoir, or by pipeline for use and total consumption in Applicant's municipal water system or elsewhere. c) Lake Henry Reservoir. The water storage rights are represented by shares of stock in the Lake Henry Reservoir Company, which owns and operates Lake Henry for the benefit of its shareholders. Lake Henry Reservoir has decreed water storage rights totaling 11,916 acre-feet with diversions from the Arkansas River through the Colorado Canal at a rate of diversion of 756 c.f.s under priorities of 1891 for 6,355 acre-feet, September 10, 1900, for 2,000 acre-feet, and May 15, 1909, for 3,561 acre-feet. By decree dated October 21, 1985, in Case No. 84CW64, District Court, Water Division No. 2, the use of the Lake Henry water rights were changed to include use and total consumption, either directly or by exchange or substitution, for irrigation, domestic, municipal, commercial, industrial, and all other beneficial uses at any location where the water can be put to beneficial use. Applicant has the right to take its *pro rata* share of the water diverted and stored by the Lake Henry Reservoir Company, pursuant to the decree in Case No. 84CW64, by exchange, including exchange to Pueblo Reservoir, or by pipeline for use and total consumption in Applicant's municipal water system or elsewhere. d) The Colorado Canal Reusable Water Return Flows. Colorado Canal Reusable Water Return Flows are the fully consumable return flows derived from Applicant's ownership interests in the sources of supply described above in paragraphs 3(H)(V)(a)-(c) and by decree dated March 15, 1993, in Case No. 86CW118(A), District Court, Water Division No. 2, and the amended decree entered on January 8, 1998, in Consolidated Cases No. 84CW202, 84CW203, 86CW118(B), and 89CW36 (Non-Sewered Phase), District Court, Water Division No. 2. VI. Sugarloaf Water Storage Rights which are diverted from Lake Fork Creek, a tributary of the Arkansas River, and were originally decreed for the use of CF&I Steel Corporation and are described in the decree dated June 16, 1994, in Case No. 86CW117, District Court, Water Division No. 2, as the "Sugarloaf Reservoir Right" and the "Colorado Gulch Right" (collectively referred to herein as the "Sugarloaf Water Storage Rights"). By decree dated June 16, 1994, in Case No. 86CW117, District Court, Water Division No. 2, the use

and place of use of the Sugarloaf Water Storage Rights were changed to include municipal use and all other beneficial uses, including use, reuse and successive use to extinction. VII. Reusable Water derived from the sources described above and in Appendix A to the amended decree entered January 8, 1998, in Consolidated Case Nos. 84CW202, 84CW203, 86CW117(B), and 89CW36, and made available for use pursuant to the terms of the decrees which have been entered in case Nos. 84CW202 (both Sewered and Non-sewered), 84CW203 (both Sewered, and Non-Sewered, and 86CW118(A)&(B), District Court, Water Division No. 2. VIII. Additional Sources. a) Denver Basin groundwater, if approved for storage in Pueblo Reservoir by future decree; b) Tributary groundwater withdrawn from wells for which the augmentation requirements have been fully replaced under the augmentation plan in Case No. 89CW36 and that is stored by exchange in Pueblo Reservoir; c) Temporary use agreement waters that are or will be lawfully available in Pueblo Reservoir or Williams Creek Reservoir for Applicant's use, reuse, or successive use that Applicant acquires by temporary use agreements including, but not limited to, substitute water supply plans pursuant to C.R.S. § 37-92-308, interruptible water supply agreements pursuant to C.R.S. § 37-92-309, and through participation in existing or future water banking programs, such as that created under C.R.S. §§ 37-80.5-101, *et seq.* (the Arkansas River Pilot Water Banking Act); and (d) Any other water or water rights owned or controlled, now or in the future, by Applicant that are physically and legally available for release from the structures identified in paragraph 3(E), above. I. The description of or reference to structures and water rights in this paragraph 3 is not intended to amend or limit the decrees for those structures and water rights in any way, and omissions in such descriptions and references shall in no way prejudice the owners of those structures and water rights. **4. Amounts of Exchanges.** Total Amounts of Exchange Decreed in 07CW122: I. Exchange to Ruxton Creek System Reservoirs: Total: 1,590 A.F.; Absolute: 0 A.F.; Conditional:1,590 A.F. II. Exchange to North Slope System Reservoirs: Total: 17,430 A.F.; Absolute: 49.02 A.F.; Conditional:17,380.98 A.F. III. Exchange to Northfield System Reservoirs: Total: 41,770 A.F.; Absolute: 33.44 A.F.; Conditional: 41,736.56 A.F. IV. Exchange to Pikeview System Intake Structures: Total: 11 C.F.S.; Absolute: 0 C.F.S.; Conditional:11 C.F.S.V. Exchange to Pikeview System Reservoirs: Total: 204.50 A.F.; Absolute: 0 A.F.; Conditional: 204.50 A.F. VI. Exchange to South Suburban System Intake Structures: Total: 25.5 C.F.S.; Absolute: 0 C.F.S.; Conditional: 25.5 C.F.S. VII. Exchange to South Suburban System Reservoirs: Total: 600 af; Absolute: 0 A.F.; Conditional: 600 A.F. VIII. Exchange to Williams Creek Reservoir: Total 4,254 A.F./1,334 C.F.S.; Absolute: 0 A.F./0 C.F.S.; Conditional: 4,254 A.F./1,334 C.F.S. IX. Exchange to Upper Williams Creek Reservoir: Total 2,248 A.F./249 C.F.S.; Absolute: 0 A.F./0 C.F.S.; Conditional: 2,248 A.F./249 C.F.S. **5. Diligence:** A. Integrated System. Applicant owns and operates an integrated system for water diversions, transmission, storage, treatment, and distribution, as well as collection and treatment of the resultant wastewater for release, exchange, and reuse. The conditional water rights described herein are a part of this integrated water system comprising all water rights decreed and used for development and operation of the City of Colorado Springs' municipal water supply system which also comprises and includes other absolute and conditional water rights, and collection, storage, and diversion and delivery systems including, but not limited to, the structures (and/or interests therein) described in paragraphs 2 and 3 above. Reasonable diligence in the development of one

component of the system comprises reasonable diligence in the development of all components. B. Diligence Activities. 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. I. During the period from January 22, 2016 (date of original decree) through January 1, 2022 (the "Diligence Period"), Applicant acquired fee interests in at least seven parcels and entered into at least two easements across other parcels that are necessary for the siting, design, construction and operation of Upper Williams Creek Reservoir. Utilities also performed asbestos abatement, hazardous waste management, demolition and removal of existing structures, removal of septic systems, and well abandonment on some of the parcels it acquired or obtained interests in during the diligence period. Additionally, Applicant conducted cultural resource and geotechnical evaluations, made modifications to agreements with Federal agencies and prepared a 30% design for Upper Williams Creek Reservoir. The Colorado Springs City Council also passed a resolution renaming Upper Williams Creek Reservoir to Gary M. Bostrom Reservoir. A drop/diversion structure in Fountain Creek was also constructed by Applicant to help mitigate potential impacts to senior water rights holders resulting from the operation of Williams Creek Reservoir in the future. In addition, Applicant has also undertaken numerous projects and activities for the improvement and enlargement of its water supply and distribution systems in order to facilitate the completion of the appropriation of the conditionally decreed rights of storage, substitution and exchange that are the subject of this Application including, but not limited to: completion of the SDS Project Phase 1; construction and establishment of certain wetlands along Fountain Creek as required per the SDS Project environmental mitigation requirements; improvements to the raw water pipeline between Pikeview Reservoir and the Tollefson (Mesa) water treatment plant, improvements to the Northfield Reservoir dam and spillway; completion of upgrades to the 33rd Street Pump Station; completion of upgrades to the Manitou Intake diversion structure on Ruxton Creek; improvements to the French Creek Intake diversion structure; improvements to Gold Camp and South Suburban Reservoirs; investigations into seepage from Rampart Reservoir dam; investigations regarding system water losses; install water quality improvements on its Northfield and Pikeview Systems, replacement of the South Catamount transfer pipeline, design for refacing of the Crystal Creek Reservoir dam; improvements to the Nichols Reservoir dam and spillway; design for refacing of the South Catamount Reservoir dam; reconstruction of dam face and outlet works for rehabilitation/maintenance of Homestake Reservoir (Homestake Project); pipeline repair and replacement of certain sections of the Homestake Pipeline; operation and development of its Arkansas River exchange program and its Colorado Canal reuse program; development and completion of the Integrated Water Resources Plan which identified a portfolio of water supply projects, policies, and processes that will be necessary to provide a reliable and sustainable supply of water for its customers for the next 50 years; continued pursuit of development of a joint project(s) as contemplated by the 1998 MOU between the cities of Aurora and Colorado Springs, Vail Associates, Upper Eagle River Regional Water Authority, Eagle River Water and Sanitation District, Cypress Climax Mining Company, and the Colorado River Water Conservation District; and pursuit of a project to maximize the yield of the Blue River System. Applicant also purchased shares in the Lower Arkansas Water Management Association. II. During the Diligence Period, Applicant also filed applications for,

prosecuted and completed several adjudications of water rights that comprise portions of Applicant's integrated municipal water supply system. These activities include, but are not limited to, filing of applications in Water Division 2 (Arkansas River Basin) and/or pursuit of adjudication of decrees in: Case No. 15CW3001 (Water Division No. 2) involving a change of water rights in the Chilcott Ditch Company ("Chilcott") (decree entered on September 5, 2018); Case No. 15CW3002 (Water Division No. 2) involving a change of water rights in the Fountain Mutual Irrigation Company ("FMIC") (decree entered on September 5, 2018); Case No. 16CW3050 (Water Division No. 2) involving a change of water right for Chancellor Well No. 1 (application withdrawn and water rights ultimately abandoned on April 27, 2017); Case No. 16CW3053 (Water Division No. 2) involving claims for diligence for Chancellor Well No. 1 and Chancellor Well No. 2 (application withdrawn and water rights ultimately abandoned on April 27, 2017); Case No. 16CW3054 (Water Division No. 2) involving claims for diligence for Roby Ditch and Reservoir (application withdrawn and water rights ultimately abandoned on April 27, 2017); Case No. 16CW3056 (Water Division No. 2) involving an augmentation plan, replacement plan, and appropriative right of exchange involving Applicant's FMIC and Chilcott water rights (decree entered on January 29, 2020); Case No. 16CW3072 (Water Division No. 2) involving claims for diligence related to Applicant's appropriative rights of exchange originally decreed in Consolidated Case Nos. 84CW202, 84CW203, 86CW118(B) and 89CW36 (decree entered on February 13, 2018); Case No. 18CW3042 (Water Division No. 2) regarding Applicant's claims of diligence for rights of exchange and substitution involving Lake Meredith, Pueblo Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, and Clear Creek Reservoir (Decree entered on June 19, 2019); Case No. 18CW3053 (Water Division No. 2) regarding Applicant's conditional storage Rights for Upper Sugar Loaf Reservoir and Sugar Loaf Reservoir Enlargement and Amendment (decree entered on March 8, 2019); Case No. 19CW3026 (Water Division No. 2) involving claims for diligence related to Applicant's appropriative rights of exchange originally decreed in Case No. 86CW118A (decree entered on April 29, 2020); 19CW3052 (Water Division No. 2) involving an augmentation plan, replacement plan, and appropriative rights of exchange on Fountain Creek (pending); Case No. 19CW3053 (Water Division No. 2) involving an augmentation plan, and appropriative rights of exchange (pending); Case No. 20CW3033 (Water Division No. 2) involving claims for diligence related to Applicant's appropriative rights of substitution and exchange in the Fountain Creek watershed originally decreed in Case No. 1984CW202 (decree entered on August 5, 2021); Case No. 20CW3047 (Water Division No. 2) involving claims for diligence for the Quail Lake conditional storage right decreed in Case No. 07CW122 (Water Division No. 2) (decree entered on February 17, 2021; Case No. 20CW3048 (Water Division 2) involving claims for diligence related to Applicants water rights decreed in Case No. 07CW121 for the Fountain Creek Recovery Project (pending); Case No. 20CW3056 (Water Division 2) involving a change in legal description of a portion of the Fountain Creek Recovery Project (decree entered March 22, 2021); Case No. 21CW3009 (Water Division 2) involving claims for diligence related to Applicant's Denver Basin groundwater exchange program decreed in Case No. 04CW132 (pending); Case No. 21CW3015 (Water Division 2) involving a claim for appropriative rights of exchange associated with water available under Applicant's shares in the Lower Arkansas Water Management Association (pending); and Case No. 21CW3055 (Water Division 2) involving claims for

diligence related to Applicant's water rights decreed in Case No. 12CW31 for Upper Williams Creek Reservoir (pending). III. Applicant has also acted to preserve and protect all its water rights by filing statements of opposition to, and participating in, many judicial and administrative proceedings. For example, Applicant has consistently opposed water court applications that seek approval of plans for augmentation that operate on Fountain Creek. Applicant has participated in these cases to ensure that the out-of-priority depletions are replaced in time, amount, and location, and that the Division Engineer assesses transit losses on the replacement water supply. Applicant has undertaken endeavors to improve the accuracy of the Fountain Creek Transit Loss Model, which directly affects the exchanges at issue in this Application. C. Expenditures. Applicant's total capital expenditures in connection with the activities described above on its integrated system during the Due Diligence Period have exceeded \$350,395,358. In addition to that amount, over \$81,830,374 was expended on the operation and maintenance of Applicant's local system. Applicant reserves the right to identify additional relevant efforts that may be later discovered or to make upward adjustments to amounts expended on certain projects. Applicant made diligent efforts regarding this Application to determine and quantify all efforts made toward completion of the appropriations and application of the water rights decreed in Case No. 07CW122 to beneficial use. However, it is reasonably possible that relevant efforts or expenditures may have been overlooked or need further upward adjustment. **6. Claim to make absolute in whole or in part:** Applicant has operated the decreed exchanges that are the subject of this Application to divert and beneficially use additional amounts of water beyond the amounts decreed in Case No. 07CW122 in its water system so as to make absolute additional incremental amounts of the decreed exchanges, as follows: A. Date water applied to beneficial use: Between May 6, 2009 and May 8, 2015 as documented in the attached Exhibit B. B. Amounts: As set forth in the Table below (2009-2015 Exchanges):

<b>Structure Name (Exchange-to)</b>	<b>Total Amount of Exchange Decreed in 07CW122</b>	<b>Amount Decreed Absolute in 07CW122</b>	<b>Amount Decreed Conditional in 07CW122</b>	<b>Additional Amount Claimed Absolute</b>	<b>Resulting Remaining Conditional Amount</b>	<b>Total New Amount Claimed Absolute</b>
<b><u>Ruxton Creek System</u></b> Storage Reservoirs	1,590 A.F.	0 A.F.	1,590 A.F.	6.99 A.F.	1,583.01 A.F.	6.99 A.F.
<b><u>North Slope System</u></b> Storage Reservoirs	17,430 A.F.	49.02 A.F.	17,380.98 A.F.	202.23 A.F.	17,178.75 A.F.	251.25 A.F.
<b><u>Northfield System</u></b> Storage Reservoirs	41,770 A.F.	33.44 A.F.	41,736.56 A.F.	101.63 A.F.	41,634.93 A.F.	135.07 A.F.
<b><u>Pikeview System</u></b> Intake Structures	11.00 C.F.S. 204.50 A.F.	0 C.F.S. 0 A.F.	11.00 C.F.S. 204.50 A.F.	0 A.F. 0 A.F.	11 C.F.S. 204.5 A.F.	0 C.F.S 0 A.F.



Storage Reservoirs						
<b><u>South Suburban System</u></b> Intake Structures Storage Reservoirs	25.50 C.F.S. 600 A.F.	0 C.F.S. 0 A.F.	25.50 C.F.S. 600 A.F.	0 C.F.S. 0 A.F.	25.50 C.F.S. 600 A.F.	0 C.F.S. 0 A.F.
<b><u>Williams Creek Reservoir</u></b>	1,334 C.F.S. 4,254 A.F.	0 C.F.S. 0 A.F.	1,334 C.F.S. 4,254 A.F.	0 C.F.S. 0 A.F.	1,334 C.F.S. 4,254 A.F.	0 C.F.S. 0 A.F.
<b><u>Upper Williams Creek Reservoir</u></b>	249 C.F.S. 2,248 A.F.	0 C.F.S. 0 A.F.	249 C.F.S. 2,248 A.F.	0 C.F.S. 0 A.F.	249 C.F.S. 2,248 A.F.	0 C.F.S. 0 A.F.

**7. Landowners.** Names and addresses of 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: A. City of Colorado Springs, Colorado Springs Utilities, c/o/ Abigail Ortega, P.E., 1521 Hancock Expressway, Mail Code 1825, Colorado Springs, CO 80903 (The relevant structures in this Application are the exchange to and exchange from points. The City of Colorado Springs owns the land on which all of the structures are located, except for parcels underlying the North Slope and Northfield System Sites, and Pueblo Reservoir). B. United States Forest Service, Forest Supervisor, Pike and San Isabel National Forests, Cimarron & Comanche National Grasslands, 2840 Kachina Dr., Pueblo, CO 81008 (Parcels underlying the North Slope, and Northfield System Sites). C. United States Bureau of Reclamation, Eastern Colorado Area Office, 11056 W County Rd 18E, Loveland, CO 80537-9711, Phone: (970) 461-5468 (Pueblo Reservoir). **8. Remarks or other pertinent information:** A. **PLSS Descriptions.** PLSS descriptions are included herein in compliance with Water Court forms. In the event of a discrepancy between the decreed location and the PLSS descriptions herein, the decreed location is controlling.

-----  
**CASE NO. 2022CW3003; Previous Case Nos. 15CW3029; 06CW101; 00CW28; & 87CW63 – CITY OF AURORA, COLORADO, ACTING BY AND THROUGH ITS UTILITY ENTERPRISE (“Aurora”), 15151 E. Alameda Pkwy, Suite 3600, Aurora, CO 80012-1555**

(Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: John M. Dingess, Austin Hamre, Teri L. Pettitt, Hamre, Rodriguez, Ostrander & Dingess, P.C., 3600 South Yosemite Street, Suite 500, Denver, Colorado 80237, 303-779-0200) Application to Make Conditional Water Right Absolute, for a Finding of Reasonable Diligence and to Continue Water Rights

**LAKE, CHAFFEE, FREMONT, PUEBLO, CROWLEY AND OTERO COUNTIES**

**2. NAMES OF STRUCTURES** (See **Exhibit A** attached to the application for map illustrating the structures and the exchange reach for the diligence and absolute claims sought herein). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **2.1. Pueblo Reservoir.** The Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29,

30, 31, 32, 33, 34, 35 and 36 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23 and 25, in Township 20 South, Range 67 West, all in the 6th P.M. in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section bears North 61° 21' 20" East, a distance of 2,511.05', all more particularly described in the decrees in Case No. B-42135, District Court, Pueblo County, Colorado and Case No. 80CW6, District Court, Water Division 2, Colorado.

**2.2. Twin Lakes Reservoir.** The Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in Township 11 South, Ranges 80 and 81 West of the 6th P.M., in Lake County, Colorado. Twin Lakes Dam axis and center line of Lake Creek intersect at a point whence the SE corner of Section 23, Township 11 South, Range 80 West of the 6th P.M. bears South 54° 13' 8" East, a distance of 3,803.10 feet as more particularly described in the decrees in Civil Action No. 5141, District Court, Chaffee County, Colorado and Case No. 80CW6, District Court, Water Division 2, Colorado.

**2.3. Turquoise Reservoir.** Turquoise Reservoir is located in all or portions of Sections 7, 8, 17, 18, 19 and 20, Township 9 South, Range 80 West, and Sections 10, 11, 12, 13, 14, and 15, Township 9 South, Range 81 West, all from the 6th P.M., in Lake County, Colorado. The Turquoise Reservoir Dam axis and the centerline of Lake Fork Creek intersect 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 of a distance of 10,344.35 feet, all as more particularly described in the decrees in Civil Action No. 5141, District Court, Chaffee County and Case No. 80CW6, District Court, Water Division 2, Colorado.

**2.4. Clear Creek Reservoir.** Clear Creek Reservoir is located on Clear Creek in all or part of 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, Colorado. The Clear Creek Reservoir Dam axis and the centerline of Clear Creek intersect at a point whence the South quarter corner of Section 8, Township 12 South, Range 79 West of the 6th P.M. bears South 27° West a distance of 2,255 feet.

**2.5. Otero Pump Station.** The Otero Pump Station diverts water from the Arkansas River in Chaffee County, Colorado approximately at a point that bears North 30° West, a distance of 6,180 feet to the Northeast corner of Section 6, Township 12 South, Range 79 West of the 6th P.M.

**3. DESCRIPTION OF CONDITIONAL WATER RIGHT.**

**3.1. Date of Original Decree.** March 22, 1994, Case No. 87CW63, District Court Water Division 2, Colorado.

**3.2. Subsequent Decrees.** In Case No. 00CW28, District Court, Water Division 2, Colorado (decree entered November 13, 2000), the Division 2 Water Court entered a decree making absolute portions of the conditional right and finding reasonable diligence for the remaining portions. In Case No. 06CW101, District Court, Water Division 2, Colorado (decree entered June 8, 2009), the Division 2 Water Court entered a decree finding reasonable diligence for the portion of the subject water right which remained conditional. In Case No. 15CW3029, District Court, Water Division 2, Colorado (decree entered January 5, 2016), the Division 2 Water Court entered a decree making absolute portions of the remaining conditional right and finding reasonable diligence for the remaining portions.

**3.3. Sources of Exchange Water.** Historic consumptive use water stored in Pueblo Reservoir under Applicant's 466.48 shares of the Rocky Ford Ditch Company. The water rights represented by these shares that are available under this

subject exchange were originally decreed as Priority No. 1 in the original adjudication of former Water District No. 17 on April 8, 1905, for 111.76 c.f.s., with an appropriation date of May 15, 1874. The water represented by these shares was transferred by the District Court Water Division 2 pursuant to the Decree of this Court issued in Case No. 83CW18 on November 3, 1986. Since entry of the Decree, Case No. 83CW18, the use of this water has been the subject of various Stipulations and Orders. This Court issued a Completion Order dated March 23, 2001 under which it found that Aurora satisfied the revegetation requirements set forth in the decree and stipulations in that matter and could take its full entitlement of water under the 83CW18 Decree. **3.4. Exchange Reaches and Amounts.** Applicant's Rocky Ford Ditch Company water, described in paragraph 3.3 above, stored in Pueblo Reservoir, described in paragraph 2.1 above, was decreed for exchange to one or more of the receiving facilities, described in paragraphs 2.2 through 2.5 above, at a rate of flow into the receiving facilities of up to 500 c.f.s. in total. The current conditionally decreed rates of exchange and the amounts previously made absolute for each of the specific receiving reservoirs or facilities are as follows:

<b>Structure</b>	<b>Originally Decreed Rate (cfs) 87CW63</b>	<b>Rate (cfs) Made Absolute in 00CW28</b>	<b>Additional Rate (cfs) Made Absolute in 06CW101</b>	<b>Additional Rate (cfs) Made Absolute in 15CW3029</b>	<b>Amount Remaining Conditional</b>
Turquoise Reservoir	350	100	0	250	0
Twin Lakes Reservoir	500	500	0	0	0
Clear Creek Reservoir	250	250	0	0	0
Otero Pump Station	165	0	0	0	165

**3.5. Appropriation Date.** December 21, 1987. **3.6. Uses.** Direct diversion and storage for subsequent use for irrigation, all municipal and domestic purposes, industrial use and exchange, and initial and successive use and reuse outside the Arkansas River Basin.

**4. INTEGRATED WATER SUPPLY SYSTEM.** The conditionally decreed water rights described above constitute a feature of an integrated water system for gathering, treatment and distribution of water operated by Aurora. "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 water rights for all features of the entire project or system." C.R.S. § 37-92-301(4)(b). **5. DETAILED OUTLINE OF WHAT HAS BEEN DONE TOWARD COMPLETION OR FOR COMPLETION OF THE APPROPRIATIONS AND APPLICATION OF WATER TO A BENEFICIAL USE AS CONDITIONALLY DECREED.** The water rights that are the subject of this application are part of Aurora's trans-basin municipal water supply system that is an integrated system of water rights and structures under C.R.S. § 37-92-301(4)(b). During the diligence period Aurora performed the

following work and made the following expenditures toward completion of the appropriations and application of the water rights decreed in the Original Decree to beneficial use (expenditure numbers are rounded to the nearest \$1,000). 5.1. **Project Specific Efforts.** During the diligence period, Aurora has done at least the following project specific work toward completion of the appropriations and application of the conditional water rights decreed in Case No. 15CW3029 to beneficial use: 5.1.1. Payments to Otero County. Aurora and Otero County entered into an Intergovernmental Agreement on February 22, 1994, and amended that Agreement on October 29, 2001 under which Amendment Aurora agreed to make annual payments to Otero County concerning lands formerly irrigated by the Rocky Ford Ditch shares that are the source of exchange water for the subject conditional water rights. During this diligence period, Aurora made payments of approximately \$267,000. 5.1.2. Pueblo Reservoir Storage. During this diligence period, Aurora paid the Bureau of Reclamation approximately \$7,185,000 for storage use of Pueblo Reservoir, as well as for consultants and legal fees for the long-term storage contract. 5.1.3. Legal Activities. During the subject diligence period, Aurora spent in excess of \$2,600 on legal activities directly related to the conditional exchanges at issue herein. 5.2. **System-Wide Efforts.** During the diligence period, Aurora has accomplished at least the following systemwide efforts that will be used to operate or benefit the conditional rights. 5.2.1. South Platte River Basin. Aurora made the following diligent efforts with regard its water supply system components in the South Platte River Basin which are necessary for continuation of its reusable supplies from the South Platte River Basin which are the source of the water for the exchanges sought herein. 5.2.1.1. Spinney Mountain Reservoir. Aurora expended substantial sums for facility upgrades during the diligence period, including internal outlet works inspections, applications of protective coatings on outlet pipes, assessment, design and extension of the storm drainage systems below the dam, installation of filter trench drains, measurement devices, and installation of heater jackets over valve operators. 5.2.1.2. Metro Wastewater Reclamation District Charges. Aurora expended approximately \$157,092,000 during this diligence period for fees for wastewater treatment of its water at the Metro Wastewater Reclamation facility. Such treatment is necessary for reuse of the water that is the subject of the exchanges herein within the South Platte River Basin and to comply with water reuse requirements. 5.2.1.3. Griswold Water Treatment Plant Renovations. This facility treats a portion of the raw water exchanged under the Original Decree before it is delivered to Aurora's customers. Approximately \$29,530,000 was spent by Aurora for improvements to this facility necessary to accommodate the water that is the subject of the exchanges herein. This includes expenditures directly by Aurora for renovation of the facility. 5.2.1.4. Wemlinger Water Treatment Plant Expansion. Aurora spent approximately \$55,094,000 for expansion of the Wemlinger Water Treatment Plant. This facility treats a portion of the raw water exchanged under the Original Decree before it is delivered to Aurora's customers. 5.2.1.5. Improvements to Extend and Improve Water Service in and to Aurora. Approximately \$155,210,000 was spent by Aurora for extension and upgrade of its water transmission system necessary to deliver the water that is the subject of the exchange herein to Aurora's customers. 5.2.1.6. Automated Meter Reading System. Aurora spent approximately \$6,052,000 for updates to its automated utility reading system. This is needed for efficient operation of Aurora's water supply and delivery system, including use of the water that is the subject of the

exchange herein. 5.2.1.7. Improvements to Sanitary Sewer System. Approximately \$61,155,000 was spent by Aurora for extension and upgrade of its sanitary sewer system necessary for wastewater treatment and reuse within the South Platte River Basin of the water that is the subject of the exchange herein. 5.2.1.8. Prairie Waters Project. The Prairie Waters Project is a large comprehensive water supply, storage and treatment project in which return flows to the South Platte River from Aurora's water sources, including the water that is the subject of the exchange herein, may be rediverted for subsequent reuse. To facilitate this project Aurora obtained various decrees in Case Nos. 06CW104, 03CW414, and 03CW415, Water Division 1. This project allows further reuse of much of the water decreed to Aurora. During the diligence period, Aurora obtained a decree in Case No. 15CW3064, finding reasonable diligence for the water rights originally decreed in Case No. 06CW104 (decreed December 1, 2017). On November 23, 2021 in Case No. 21CW3006 Aurora obtained a decree finding reasonable diligence for the Aurora-Everist No. 2 water rights originally decreed in Case No. 03CW414. On November 4, 2020, Aurora was granted a decree in Case No. 20CW3058 for findings of reasonable diligence for conditional storage rights for the Aquifer Recharge and Recovery Facility B (ARR-B) and the Tucson South Reservoir, originally decreed in Case No. 03CW414. On March 27, 2021, Aurora filed an application in Case No. 21CW3028 seeking diligence on the conditional rights originally decreed in 03CW415. On May 28, 2021 in Case No. 21CW3077 Aurora filed an application for a finding of diligence for the PWP InFill Wells originally decreed in Case No. 13CW3042, Water Division 1. Aurora has expended at least \$2,301,000 on several elements of the Prairie Waters Project during this diligence period. 5.2.1.9. Lawn Irrigation Return Flows (LIRFs) Credits. Aurora obtained a decree in Case No. 02CW341, Water Division 1, on September 25, 2008, quantifying LIRFs from its municipal system (and subsequent requantifications as required by the Decree in 02CW341), generated as a result of use of transmountain water rights, fully consumable in-basin water rights, decreed and permitted non-tributary sources and any other fully consumable water available to Aurora. Aurora also installed seventeen new monitoring wells and expends manpower to monitor these wells every three months. Water that is transported under the exchanges herein and used in Aurora's service area can be reused under the decree in Case No. 02CW341. On April 15, 2018 the Court granted an Aurora motion to approve revised deep percolation percentages, revised unit response factors, and revised accounting forms. During this diligence period, Aurora has expended significant sums for engineering and legal costs required to requantify the LIRFs adjudicated in Case No. 02CW341 available for reuse. 5.2.1.10. Rampart Reservoir and Delivery System. Approximately \$12,516,000 was spent by Aurora during this diligence period for improvements to the Rampart Reservoir delivery system. This reservoir is used to store the water that is the subject of the exchanges herein before it is transported through parallel 54" and 40" pipelines to Aurora. Rampart Reservoir is important for regulation of the flow through these parallel pipelines. 5.2.1.11. Binney Water Purification Facility. This state-of-the-art water purification and recycling plant owned and operated by Aurora treats water for use throughout the City. Approximately \$17,260,000 was spent by Aurora during the diligence period for improvements to this facility. 5.2.1.12. Aurora Know Your Flow Program. During the diligence period, Aurora Water Conservation developed its voluntary *Know Your Flow Program* designed to help customers understand how efficiently they are using water. Through the program, Aurora

Water Conservation estimates what a customer's water use could be for a given billing cycle if the customer were using water efficiently. The customer receives a monthly e-mail from Aurora Water Conservation showing the property's actual water use versus the customized recommended indoor and outdoor water use. Customers also receive weekly watering recommendations and tips during the irrigation season. The *Know Your Flow Program* was designed by Aurora to encourage more efficient use of the water that is the subject of this application.

5.2.2. Arkansas River Basin. Aurora made the following diligent efforts with regard to maintaining and enlarging its water supply system components in the Arkansas River Basin which are necessary for continuation of its reuseable supplies from the Arkansas River Basin and are the source of the water for the exchanges sought herein.

5.2.2.1. Payment for purchase and lease of Rocky Ford Ditch shares. During this diligence period, Aurora spent approximately \$796,000 for repayment of bonds and payments to note sellers, including principal and interest, that were issued or refunded for the purchase of original Rocky Ford Ditch shares changed in Case No. 83CW18, Water Division 2.

5.2.2.2. Assessments Paid for Use of Twin Lakes, Lake Henry/Lake Meredith, Rocky Ford Ditch. During this diligence period, Aurora paid approximately the following in annual assessments: approximately \$492,000 for Twin Lakes Company (necessary for storage); at least \$810,000 for the Colorado Canal/Lake Henry/Lake Meredith (necessary for storage); and approximately \$1,449,000 for the Rocky Ford Ditch for the shares attributable to the Subject Rocky Ford Ditch Water Right.

5.2.2.3. Intergovernmental Agreement with SECWCD. On October 3, 2003, Aurora entered into an Intergovernmental Agreement with the Southeastern Colorado Water Conservancy District ("SECWCD"), replacing an agreement between the parties dated December 7, 2001. Under this new IGA, Aurora and SECWCD agree to support proposed federal legislation relating to the Fryingpan-Arkansas Project to include, among other things, re-operations of the existing water storage facilities, studies for enlargements to Pueblo and Turquoise Reservoirs, and confirming the authority of the Bureau of Reclamation to enter into contracts with Aurora for use of the facilities including long-term contracts. Aurora's ability to use Fryingpan-Arkansas facilities is expanded under this IGA and Aurora is obligated to make certain payments to SECWCD in consideration for the expanded use. Under this IGA, SECWCD also agrees not to oppose Aurora's attempts to contract with the Bureau of Reclamation for use of the Fryingpan-Arkansas Project facilities, to facilitate delivery of Aurora's water, and to settle opposition to each other's water court applications, including this case. During this diligence period, Aurora made payments of approximately \$913,000 to SECWCD under this IGA.

5.2.2.4. Intergovernmental Agreement with LAVWCD. Pursuant to an Intergovernmental Agreement with the Lower Arkansas Valley Water Conservation District ("LAVWCD"), Aurora paid approximately \$1,000,000 to LAVWCD for the identification and implementation of infrastructure improvements, research, and investigations designed to assist in the permitting or implementation of water leasing programs in the Lower Arkansas Valley, as well as remediation and restoration efforts in the Fountain Creek Corridor.

5.2.2.5. Agreements for Use of the Holbrook System Facilities. On March 1, 2005, Aurora entered into two agreements pertaining to the use of the diversion, conveyance and storage facilities of the Holbrook Mutual Irrigating Company ("Holbrook"). Aurora and Holbrook extended this agreement on February 2, 2010. These agreements implement a program to recapture and store yield from foregone diversions of senior water rights. Aurora completed

structural modifications to the Holbrook system facilities and filed a Substitute Water Supply Plan necessary to implement the program. An Amended Agreement was entered into on April 21, 2016. Further, Aurora initiated a study to examine enlargement of the Holbrook Reservoir to further facilitate operations. During this diligence period, Aurora made payments of approximately \$401,000 to Holbrook under this agreement. 5.2.2.6. Recovery of Yield (“ROY”). On August 17, 2016, Aurora, along with Colorado Springs, the Pueblo Board of Water Works, the City of Fountain, and the Southeastern Colorado Water Conservancy District, obtained a decree in WD-2, Case No. 06CW120 adjudicating exchanges necessary as a result of the 2004 Regional Intergovernmental Agreement (“IGA”) between the various water providers and the City of Pueblo, whereby the water providers agreed to allow certain of their senior flows to pass through Pueblo’s RICD reaches on the condition those flows could be removed downstream and exchanged back upstream. In addition, the ROY participants, including Aurora, have made significant efforts to secure the Arkansas Gravel Pit Reservoir (“AGPR”) or a comparable facility. During December 2021 the ROY participants purchased the so-called Fossil property for potential use as a reservoir site. Aurora has expended approximately \$22,000 on these efforts during the diligence period. 5.2.2.7. Revegetation. Aurora has expended approximately \$1,955,000 during this diligence period for revegetation, including expenditures for expert revegetation classifications and reports, actual revegetation and weed control costs, as well as farm equipment purchases, office overhead and personnel costs, under Case No. 83CW18. Aurora also expended additional sums for revegetation and continued farming of historically irrigated lands pursuant to the decree in Case No. 99CW169(A). On June 3, 2014, Aurora entered into an Intergovernmental Agreement with Otero County to clarify between the parties certain terms contained in the 99CW169(A) decree regarding revegetation. 5.2.3. Protection Efforts: During this diligence period, Aurora spent approximately \$640,000 for legal services for participation in Water Divisions 1 and 2 cases to protect the rights and interests of Aurora with regard to its water supply system, including the subject conditional water right. **6. CLAIM TO MAKE ABSOLUTE.** 6.1. **Name of Water Right.** The Rocky Ford–I Exchange from Pueblo Reservoir to the Otero Pump Station, as more fully described in paragraph 3 above. 6.2. **Date of application to beneficial use.** August 24-25, 2020. 6.3. **Amount.** 10.4 cfs. 6.4. **Type of use.** Direct diversion and storage for subsequent use for irrigation, all municipal and domestic purposes, industrial use and exchange, and initial and successive use and reuse outside the Arkansas River Basin. 6.5. **Evidence that diversion was made in priority.** See Exhibit B, attached hereto. Applicant’s Excel spreadsheet accounting is available upon request. **7. 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 OR EXISTING STORAGE POOL IS OR WILL BE CONSTRUCTED OR UPON WHICH WATER IS OR WILL BE STORED.** 7.1. **Clear Creek Reservoir.** Pueblo Board of Water Works, PO Box 400, Pueblo, CO 81002. 7.2. **Pueblo, Twin Lakes and Turquoise Reservoirs.** US Bureau of Reclamation, Great Plains Region, PO Box 36900, Billings, MT 59107-6900. 7.3. **Otero Pump Station (Jointly owned by Aurora and Colorado Spring Utilities).** Colorado Springs Utilities, PO Box 1103, Colorado Springs, CO 80947.

-----

**CASE NO. 2022CW3004; TRIVIEW METROPOLITAN DISTRICT Acting by and through its Water and Wastewater Enterprise (“Applicant or Triview”), 16055 Old Forest Point, Ste. 300 Monument, CO 80132.** (Please address all pleadings and inquiries in this matter to Applicant’s Attorneys: Steven O. Sims, Reg. No. 9961, Andrew L. Meyers, Reg. No. 34739, and Dulcinea Z. Hanuschak, Reg. No. 44342 of Brownstein Hyatt Farber Schreck, LLP at 410 Seventeenth Street, Suite 2200, Denver, CO 80202-4432, Phone: 303.223.1100)

Amended Application for Change of Water Rights

**CHAFFEE COUNTY**

Applicant, Triview Metropolitan District Acting by and through its Water and Wastewater Enterprise (“Applicant or Triview”) at the request of the Water Referee and prior to the time any statement of opposition or any other responsive pleading was filed to the original application filed January 31, 2022, pursuant to CRCP 15(a) states this amended application: **3. Name of Water Rights.** Bale Ditch No. 1 and Bale Ditch No. 2. **4. Name of Structure and WDID** a. Bale Ditch No. 1 (1100563) b. Bale Ditch No. 2 (1100564)**5. Decree Information.** The water rights have two priorities that were decreed in CA 1724 and CA 5141. Information from the decrees is as follows: a. CA 1724 i. Bale Ditch No. 1 1. Adjudication Date 07/21/1902 2. Appropriation Date 04/30/1875 3. Decreed Amount 1.33 cfs 4. Administration Number 9251.00000 ii. Bale Ditch No. 2 1. Adjudication Date 07/21/1902 2. Appropriation Date 04/30/1875 3. Decreed Amount 1.00 cfs 4. Administration Number 9251.00000 b. CA 5141 i. Bale Ditch No. 1 1. Adjudication Date 07/09/1969 2. Appropriation Date 12/31/1898 3. Decreed Amount 1.00 cfs 4. Administration Number 33950.17897 ii. Bale Ditch No. 2 1. Adjudication Date 07/09/1969 2. Appropriation Date 12/31/1898 3. Decreed Amount 1.00 cfs 4. Administration Number 33950.17897 **6. Point of Diversion:** The point of diversion for the water rights is depicted on **Appendix A** 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 more particularly described as: a. The decreed headgate of the Bale Ditch No. 1 is located on north bank of the South Arkansas River, a tributary of the Arkansas River, whence the Southwest Corner of Section 4, T49N, R. 9E of the New Mexico Principal Meridian bears South 0 degrees 30 minutes West, 624.3 feet. i. PLSS location on DWR Website: the SE/4 of the SE/4 of Section 5, T49N, R. 9E of the New Mexico Principal Meridian. ii. UTM Location: UTM Zone 13, NAD83, X 413894.0; Y 42642000.0; Latitude 38.522034, Longitude -105.987778. b. The decreed headgate of the Bale Ditch No. 2 is located on south bank of the South Arkansas River, a tributary of the Arkansas River, at a point whence the Southwest Corner of Section 4, T49N, R. 9E of the New Mexico Principal Meridian bears South 39 degrees 39 minutes West, 491.6 feet. i. PLSS location on DWR Website: the SE/4 of the SE/4 of T49N, R. 9E of the New Mexico Principal Meridian. ii. UTM Location: UTM Zone 13, NAD83, X 413881.0; Y 4264195.0, Latitude 38.521988, Longitude -105.987927. **7. Source.** South Arkansas River a tributary of the Arkansas River, in Chaffee County, Colorado. **8. Decreed Uses.** Irrigation and Domestic. **9. Amount of Water Rights to be changed.** All of the Bale Ditch No. 1 or a total of 2.33 c.f.s. and fifty percent (50%) of both priorities of the Bale Ditch No. 2. for a total of 1 c.f.s. (“Subject Water Rights”). **10. Historical Use.** The Subject Water Rights historically irrigated 23 acres under the Bale Ditch No. 1 and 20.8 acres under the Bale Ditch Number 2, those lands are located within the city limits of the City of Salida except 5.6 of the acres



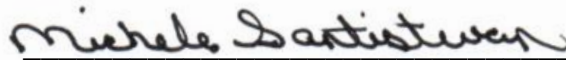
under the Bale Ditch No. 1 which are in unincorporated Chaffee County. **11. Augmentation Stations.** Return flows, replacements and/or water representing the historical consumptive use of the Subject Water Rights shall be measured and returned to the South Arkansas River through one of more augmentation stations at locations to be described in the proposed decree that are designed to prevent injury to other vested water rights. **12. Diversion Records, Map of Historically Irrigated Lands, Method of Analysis.** The map of Historically Irrigated Lands is attached as **Appendix A**. A summary of records of the diversions of the Bale Ditches No. 1 and No. 2 are attached as **Appendix B**. Applicant will perform a ditch-wide analysis to evaluate the water rights using a modified Blaney-Criddle ET method over a representative study period beginning in 1955 and including years of wet, dry and average hydrology within that study period in which water was used. **13. Proposed Change:** Triview seeks approval of the following changes of type and place of use for the Subject Water Rights: a. Types of Use. Municipal, domestic, agricultural, energy production, manufacturing, mechanical and industrial purposes including, but not limited to: fire protection, irrigation, commercial, recreation, fish and wildlife propagation, reservoir evaporation replacement, creation and maintenance and/or enhancement of wetlands, maintenance of storage reserves, recharge of Denver Basin aquifers, stock watering, reclamation, revegetation, dust suppression, water treatment and supply, wastewater treatment, storage for such uses, and use as a supply or substitute supply for augmentation, replacement of return flow obligations, exchanges decreed or to be decreed, and substitute supply plans. All uses include reuse and successive reuse to extinction for the above purposes, or disposition of effluent for the above purposes. b. Places of Use. Triview seeks to change the place of use for the Subject Water Rights to Triview's current and future service areas served by its municipal water supply and water reuse systems, including areas served by its connections with other systems, and by any current or future water supply contracts or obligations of Triview. Triview may also use the Subject Water Rights to meet its return flow replacement or delivery obligations in Water Division 2 including the Arkansas River and its tributaries, including but not limited to Monument Creek, Fountain Creek, and the South Arkansas River. Triview's service area has changed from time to time and will continue to do so. c. Stored Water. After diversion and prior to initial use by Triview, water diverted pursuant to the Subject Water Rights may be stored at any of the locations set forth below in paragraph 13. d. Such water may be delivered to storage by use of natural stream channels, component facilities of Triview's future Fountain Creek and Arkansas River diversion and conveyance system and/or any points of diversion authorized in the respective decrees for the storage structures Triview is authorized to use. Reusable effluent or return flows resulting from the initial use for the changed types and places of use of the Subject Water Rights may be stored in any reservoir Triview is authorized to use. e. Places of Storage. i. Big Johnson Reservoir a 10,000 AF reservoir located under the Fountain Mutual Canal in Sections 8, 17 and 18, T 15S, R 65W 6<sup>th</sup> P.M in El Paso County, Colorado. ii. Stonewall Springs Reservoir Complex ("SSRC"), a 19,537 acre foot complex of reservoirs, filled by the Excelsior Ditch in Pueblo County, Colorado in Sections 35 and 36, T 20S, R 63 W 6<sup>th</sup> P.M. iii. Pueblo Reservoir, as operated as part of the Fryingpan-Arkansas project by the United States Bureau of Reclamation and the Southeastern Colorado Water Conservancy District, located on-channel on the Arkansas River in Pueblo County, Colorado located in Section 24, T20S, R 67W, Sections 19, 25,

29, 33, 34, 35 and 36 T 20S, R 66W, Sections 1, 2, 3, 10 and 11 T 21S, R 66W in the 6<sup>th</sup> P.M. Triview has a long-term Excess Storage Capacity contract for the storage of 999 acre feet in Pueblo Reservoir. **14. Return Flow Replacement.** In connection with the change of the Subject Water Rights, Triview will have return flow replacement obligations resulting from the historical use of the Subject Water Rights. Triview will replace return flows at times when there is a call senior to January 31, 2022 in a location that could result in the curtailment of the Bale Ditch No. 1 and/or Bale Ditch No. 2. In addition to water diverted pursuant to the priorities identified in Paragraph 5, Triview may use the fully consumable water described in **Appendix C** to this application to meet its return flow obligations (“Replacement Sources”). Triview may also use water rights in addition to those set forth in Appendix C provided those water rights are fully consumable, and provided Triview has given notice of its intent to use such water to the Division Engineer and other parties to this case as required in the decree entered in this case. **15. Lack of Injury.** Triview will propose terms and conditions in the final decree so that the change of water right it seeks in this application does not injuriously affect the owner of or persons entitled to use of water under a vested water right or a decreed conditional water right. **16. Names and Addresses of Owners of Structures.** a. Triview has a right to use the headgate and ditch works that diverts and conveys the Bale Ditch No. 1 and Bale Ditch No, 2. b. The headgate of the Bale Ditch No. 1 is located on land owned by Snyder Revocable Trust 1141 E. Hwy 50, Salida, CO. c. The Bale Ditch No. 1 is located on lands owned by Lornie Lowry, 5585 E. Hwy 50, Salida, CO. d. The headgate of the Bale Ditch No. 2 is located on land owned by Snyder Revocable Trust 1141 E. Hwy 50, Salida, CO. e. The Bale Ditch No. 2 is located on lands owned by James M. and Diane L. Treat, 7021 County Road 104, Salida, CO. f. The Excelsior Irrigating Company owns the Excelsior Ditch of which Triview owns an approximately 40% share in said ditch, allowing diversion of water to the SSRC. The address of the Excelsior Irrigating Company is P.O. Box 11446 Pueblo, CO 81001 g. The headgate of the Excelsior Ditch is located on land owned by Kirkland Property Holdings LLC, P.O. Box 580, Rye, CO 81069-0580. h. Triview owns the land upon which the storage facilities known as the SSRC are/will be constructed, and the storage structures and rights in the SSRC are owned by the Stonewall Springs Reservoir Company. i. The Bureau of Reclamation owns Pueblo Reservoir. The Bureau of Reclamation Eastern Colorado Office is 11056 W. County Rd 18E; Loveland, CO 80537-9711. j. The Fountain Mutual Irrigation Company (“FMIC”) owns the Big Johnson Reservoir and the Fountain Mutual Ditch through which water may be delivered to Big Johnson Reservoir. Triview owns approximately 17.6% of the shares in FMIC. FMIC’s address is P.O. Box 75292, Colorado Springs, CO 80970. WHEREFORE, the Applicant requests that the Court approve this Application for Change of Water Rights as requested herein and for such other relief and conditions that the Court deems appropriate.

-----  
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 March 2022, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

-----  
Witness my hand and the seal of this Court this 10<sup>th</sup> day of February 2022.



Michele M. Santistevan, Clerk  
District Court, Water Div. 2  
Pueblo Judicial Building  
501 N. Elizabeth Street, Suite 116  
Pueblo, CO 81003; (719) 404-8749



(Court seal)  
Published: