

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING DECEMBER 2021, INCLUDING REVISED ABANDONMENT LIST OF WATER RIGHTS IN WATER DIVISION 2 (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)).  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications, certain amendments and Notice of Revised Abandonment List filed and/or ordered published during December 2021, 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, and notice of Revised Abandonment List are as follows:

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**CASE NO. 2021CW17; ELK VIEW, LLC and DAVID SHIFRIN, 6660 Delmonico Dr., D-463, Colorado Springs, CO 80919, (720) 252-9796**

Application Absolute Underground Water Right for an Exempt Well Pursuant to 37-92-602(4), C.R.S.

**HUERFANO COUNTY**

**2. Name(s) of well(s) and permit, registration, or denial number(s):** 248862. **3. Location of Structure:** SW1/4, NE1/4 Section 30, Township 28S, Range 66W of the 6<sup>th</sup> PM, Huerfano County. Distance from Section Lines: 2203 Feet from N and 1570 Feet from. Source of PLSS information: User supplied. Street Address: Bear Ridge Road. Subdivision: River Ridge Ranch. Lot: 120. Block: Filing 5. **4. Appropriation Date, how appropriation was initiated and Date applied for beneficial use:** March 24, 2003. **5. Source of Water:** Groundwater tributary to the Arkansas River. Depth of well: 641 ft. **6. Amount of Underground Water claimed:** Absolute 15 gpm. **7. List All Existing Uses:** Fire protection, ordinary household purposes inside one single family dwelling not yet constructed. Number of single-family dwellings served: 0. Area of lawns and gardens irrigated: 0. Domestic animals watering: No. Livestock watering on farm/ranch/pasture: No. **8. Proposed Uses:** Number of single-family dwellings served: 1 to be constructed. Area of lawns and gardens irrigated: 0. Domestic animals watering: No. Livestock watering on farm/ranch/pasture: No. **9. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** N/A **8. Remarks:** N/A

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**CASE NO. 2021CW3075; DONALA WATER AND SANITATION DISTRICT, 15850 Holbein Drive, Colorado Springs, CO, 80921** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Matthew S. Poznanovic, Eric K.

Trout, Hayes Poznanovic Korver LLC, 1999 Broadway, Suite 3200, Denver, CO, 80202 (303) 825-1980)

Application for Alternate Point of Diversion for Nontributary Groundwater

**EL PASO COUNTY**

**2. Decree Information.** Case No. 95CW111, District Court, Water Division 2, as entered on August 27, 1997. In that decree, Applicant's Well 2A (Permit No. 49356-F-R) which is decreed and permitted to withdraw 294 acre-feet per year of nontributary Arapahoe aquifer groundwater, and Applicant's Well 3A (Permit No. 49355-F) which is decreed and permitted to withdraw 272 acre-feet per year of adjudicated nontributary Arapahoe aquifer groundwater, were designated as alternate points of diversion for each other. Wells 2A and 3A are also decreed alternate points of diversion to withdraw an additional 259 acre-feet per year of adjudicated nontributary Arapahoe aquifer groundwater associated with Applicant's Well 1 (Permit No. 16140-F-R). The Case No. 95CW111 decree allows withdrawal of a total of 825 acre-feet per year of adjudicated nontributary Arapahoe aquifer groundwater through one or a combination of Wells 2A and 3A. In Case No. 03CW85, Well 4A (Permit No. 55359-F) was designated and decreed as an alternate point of diversion for Wells 2A and 3A and that decree also allows withdrawal of a total of 825 acre-feet per year of adjudicated nontributary Arapahoe groundwater through one or a combination of Wells 2A, 3A and 4A. In Case No. 04CW113, Well 9A (Permit No. 62584-F) was designated and decreed as an alternate point of diversion for Wells 2A, 3A and 4A and that decree also allows withdrawal of a total of 825 acre-feet per year of adjudicated nontributary Arapahoe groundwater through one or a combination of Wells 2A, 3A, 4A and 9A. The wells are located within the boundary of the District. The present boundaries of the District are generally in parts of Section 1, T12S, R67W; Section 6, T12S, R66W; Section 36, T11S, 67W; and Sections 29, 30, 31, and 32, T11S, R66W, of the 6<sup>th</sup> P.M., as shown on **Exhibit A** a general location 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.) **3. Proposed Alternate Point of Diversion:** Applicant requests an alternate point of diversion well in addition to Wells 2A, 3A, 4A and 9A for the previously adjudicated groundwater described above. The new alternate point of diversion well will be designated as Well 16A. Well 16A will be located within Applicant's boundary at, or within 200 feet of, the following location: SW¼ SW¼ of Section 31, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., approximately 770 feet east of the west section line and 1,062 feet north of the south section line (NAD 1983 UTM Zone 13N 514861 meters East, 4321773 meters North) as shown on **Exhibit A**. The flow rate for Well 16A will not exceed 600 gpm, and pumping from the five wells at one time will not exceed a combination of 1025 gpm. WHEREFORE, Applicant prays that this Court enter a decree granting this application and for such other relief as it deems proper in the premises.

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**CASE NO. 2021CW3076;** The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2  
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**CASE NO. 2021CW3077; COLORADO WATER CONSERVATION BOARD ("CWCB"), 1313 Sherman Street, Suite 718, Denver, Colorado, 80203** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Marc Sarmiento, Assistant Attorney General, Natural Resources & Environment Section, Office of the Colorado Attorney General, 1300 Broadway, 7<sup>th</sup> Floor, Denver, Colorado 80203. Telephone: (720) 508-6429)

Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree in East Fork Arkansas River, a Natural Stream; in the Arkansas River Headwaters Watershed

**LAKE COUNTY, COLORADO**

**2. Name of water right:** East Fork Arkansas River Instream Flow Water Right. **3. Legal Description:** The East Fork Arkansas River Instream Flow Water Right is located in the natural stream channel of the East Fork Arkansas River from its headwaters to the confluence with Chalk Creek, a distance of approximately 6.46 miles. A map depicting the approximate location of the East Fork Arkansas River Instream Flow Water Right reach is attached as **Exhibit 1** to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **A. Upstream Terminus:** The headwaters of the East Fork Arkansas River in the vicinity of: i. UTM: Northing: 4353749.78; Easting: 399540.97 (NAD 1983 Zone 13 North) ii. Lat/Long: Latitude 39° 19' 38.40"N; Longitude 106° 9' 55.87"W **B. Downstream Terminus:** The confluence with Chalk Creek at: i. UTM: Northing: 4356126.94; Easting: 394793.07 (NAD 1983 Zone 13 North) ii. Lat/Long: Latitude 39° 20' 53.46"N; Longitude 106° 13' 15.47"W C. The Universal Transverse Mercator (UTM) of the upstream and downstream termini will be used as the legal description for the decree in this matter. The Lat/Long coordinates are provided as cross-reference locations only. The UTM and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD). **4. Source:** East Fork Arkansas River, tributary to Arkansas River. **5. A. Date of appropriation:** March 10, 2021. **B. How appropriation was initiated:** Appropriation and beneficial use occurred on March 10, 2021, by the action of the CWCB pursuant to sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2021). **C. Date applied to beneficial use:** March 10, 2021. **6. Amount of water claimed:** Instream flow of 0.25 cfs (12/16 - 04/30), 7.0 cfs (05/01 - 07/31), 2.8 cfs (08/01 - 09/20), and 0.7 cfs (09/21 - 12/15), absolute. **7. Proposed Uses:** Instream flow to preserve the natural environment to a reasonable degree. **8. Names and addresses of owners or reputed owners of the land upon which any new or existing diversion structure will be located:** The notice required by section 37-92-302(2)(b), C.R.S. (2021), to the owners or reputed owners of the land upon which any new or existing diversion or storage structure is or will be constructed is not applicable in this case. This application is for instream flow water rights, exclusive to the CWCB under the provisions of section 37-92-102(3), C.R.S. (2021). As an instream flow water right, the CWCB's appropriation does not require diversion structures or storage. See *Colo. River Water Conservation Dist. V. Colo. Water Conservation Bd.*, 594 P.2d 570, 574 (Colo. 1979); § 37-92-103(4)(c), C.R.S. (2021). As a surface water right, the CWCB's appropriation of instream flow water rights does not involve construction of a well. **9. Remarks:** This appropriation by the CWCB, on behalf of the people of the State of Colorado, is made pursuant to sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2021). The purpose of the CWCB's appropriation is to preserve the natural environment to a reasonable degree. At its regular meeting on July 21, 2021, the CWCB determined, pursuant to section 37-92-102(3)(c), C.R.S. (2021), that the natural environment of East Fork Arkansas River will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that

can be preserved to a reasonable degree with the CWCB's water rights herein, if granted; and that such environment can exist without material injury to water rights.

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**CASE NO. 2021CW3078 – CONCERNING THE REVISED ABANDONMENT LIST OF WATER RIGHTS IN WATER DIVISION NO. 2 – KEVIN REIN, State Engineer, 1313 Sherman Street, Suite 821, Denver, CO 80203; (303) 866-3581; and Bill Tyner Division Engineer, Water Division 2, 310 East Abriendo, Suite B, Pueblo, CO 81004; (719) 542-3368** (Paul Benington, First Assistant Attorney General, 1300 Broadway Avenue, 7<sup>th</sup> Floor, Denver, CO 80203; (720) 508-6309)

Revised Abandonment List

**BACA, BENT, CHAFFEE, CHEYENNE, COSTILLA, CROWLEY, CUSTER, DOUGLAS, ELBERT, EL PASO, FREMONT, HUERFANO, KIOWA, LAKE, LAS ANIMAS, LINCOLN, OTERO, PARK, PROWERS, PUEBLO, SAGUACHE AND TELLER COUNTIES**

**NOTICE OF FILING OF FINAL DECENNIAL ABANDONMENT LIST FOR WATER DIVISION NO. 2:** The State Engineer and the Division Engineer for Water Division 2, by and through the Attorney General hereby provide notice of the filing with the Water Clerk of the decennial abandonment list for Water Division 2 under section 37-92-401(4)(c), C.R.S. (2021). Notice is hereby given that, pursuant to section 37-92-401(4) C.R.S. (2021), the Division Engineer, in consultation with the State Engineer, has revised and finalized the decennial abandonment list, which contains those water rights that the Division Engineer has determined to have been abandoned in whole or in part. The decennial abandonment list, when concluded by judgment and decree, shall be conclusive as to the water rights determined to have been abandoned. The initial abandonment list (published in July 2020) and the final revised abandonment list are available online at: <https://dwr.colorado.gov/services/water-administration/water-rights>. The initial and final revised decennial abandonment lists may also be inspected after December 31, 2021, at the offices of the State Engineer, Division Engineer, and Clerk of the Water Court. Contact the respective offices for information on hours and/or appointments. This decennial abandonment proceeding, including any protest proceedings, are subject to Rule 12 of the Uniform Local Rules for All State Water Court Divisions (Water Court Rules), effective as amended on December 13, 2018 and available on the Water Court's website at: <https://www.courts.state.co.us/Courts/Water>. Any person who wishes to protest the inclusion of any water right on the final decennial abandonment list shall file a written protest with the Water Clerk and the Division Engineer in accordance with the procedures set forth in section 37-92-401(5), C.R.S (2021) not later than June 30, 2022. The fee for filing such a protest with the Water Clerk is forty-five dollars (\$45.00). The protest shall set forth in detail the factual and legal basis therefor. A form for such a protest ([JDF 304W](#)) is available on the Water Court website.

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**CASE NO. 2021CW3079; TIMBER CREEK RANCH LIMITED, C/O Walt Harder, 130 W. Second, Salida, CO 81201** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David Kueter, Esq., Kent Holsinger, Esq., HOLSINGER LAW, LLC, 1800 Glenarm Place, Suite 500, Denver, Colorado 80202, (303) 722-2828)  
Application for Absolute Surface Water Right  
**CHAFFEE COUNTY**

**2. Name of structure:** Rock Cliff Ditch Enlargement. **3. Location of Structure:** The Rock Cliff Ditch was originally decreed in Civil Action 1576, with the headgate located on the westerly side of Long Gulch (a/k/a Harrington Gulch) at or near a point whence the east quarter corner of Section 35, Township 50 North, Range 8 East of the N.M.P.M. bears north 66 degrees, 41 minutes east 2,812 feet. The current location of the headgate pursuant to the Division of Water Resources is in the NW1/4 of the SE1/4, Section 35, Township 50 North, Range 8 East, N.M.P.M., 1,930 feet from the east section line and 1,940 feet from the south section line. UTM coordinates: 408539, 4266335 NAD83. See Exhibit A attached to the Application. **4. Source:** Harrington Gulch, a tributary of the South Arkansas River. **5. A. Date of appropriation:** January 1, 1964. **B. How appropriation was initiated:** By diverting the water and placing it to beneficial use. **C. Date water applied to beneficial use:** January 1, 1964. **6. Amount claimed:** 1.5 c.f.s. absolute, in addition to the 0.5 c.f.s. decreed in Civil Action 1576. **7. Uses:** Irrigation. **A. Number of acres irrigated:** Approximately 157 acres. **B. Legal description of irrigated acreage:** 21 acres in the SE1/4 of the NE1/4 of Section 35, Township 50 North, Range 8 East N.M.P.M. in Chaffee County, and 136 acres in the NW4 of Section 36 and the S1/2 of the SW1/4 Section 25, Township 50 North Range 8 East of the N.M.P.M. See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **8. Names and addresses of owners or reputed owners of the land upon which any new or existing 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. Parcel 1* Timber Creek Ranch Estates, RGY Interests LLC, c/o Nathan Young, 9996 W U.S. Highway 50 #1080, Salida, CO 81201. *b. Parcel 2* Timber Creek Ranch Estates, Joseph A. Kline, Jr. and Cori J. Kline, 47 Ridgemoor Dr., Saint Louis, MO 63105. *c. Parcel 3* Timber Creek Ranch Estates, Jim Hickey and Melanie Helton, 917 Uintah Bluffs Pl., Colorado Springs, CO 80904. WHEREFORE, Applicant requests this Application be granted as requested herein and for such other and further relief as the Court deems appropriate.

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**CASE NO. 2021CW3080; Previous Case No. 87CW174 – CITY OF CRIPPLE CREEK, P.O. Box 430, Cripple Creek, CO 80813 (“Applicant” or “Cripple Creek”)** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Chris D. Cummins, #35154, Emilie B. Polley, #51296, Monson, Cummins, Shohet, & Farr, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Finding of Reasonable Diligence

**PARK AND TELLER COUNTIES**

**II. Summary of Application.** Applicant, a political subdivision of the State of Colorado, applied for and was approved for surface water rights and appropriative rights of exchange, in Case No. 98CW174. Applicant seeks a finding of reasonable diligence for the conditional rights adjudicated in Case No. 98CW174. **III. Conditional Surface Water Rights.** **1. Name of Structure:** Oil Creek II Pipeline. **A. Legal Description of Point of Diversion:** The point of diversion for the Oil Creek II Pipeline is located in the NW¼ NE¼ Section 33, Township 14 South, Range 69 West of the 6<sup>th</sup> P.M., Teller County, Colorado, approximately 1,815 feet west of the east line and 20 feet south of the north line of said

Section 33, coincident with the Alternate Point of Diversion of the Oil Creek Pipeline subject of the decree in Case No. 96CW233, as depicted on **Exhibit A** map attached to the application. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) These distances are based on a BLM re-survey of Sections 28 and 33 dated November 7, 1987.<sup>1</sup> B. Decreed Source: The source of the Oil Creek II Pipeline is Oil Creek, Tributary to Fourmile Creek, tributary to the Arkansas River. C. Date of Original Decree: December 2, 2015, Case No. 98CW174, Water Court, Division 2. D. Date of Appropriation: December 7, 1998. E. Decreed Amount of Water: Direct flow right of 3.0 cfs, conditional. F. Uses: The water diverted through the Oil Creek Pipeline is decreed for municipal beneficial use, including without limitation, domestic, stock watering, irrigation, recreational, wildlife habitat, fish propagation, commercial, industrial, and also for exchange and augmentation. G. Remarks: The Oil Creek II Pipeline is in addition to the water rights decreed to the Alternate Point of Diversion of the Oil Creek Pipeline in Case No. 96CW233 for 4.6 c.f.s. **IV. Appropriative Rights of Exchange.** 1. Description of Exchange Reaches: The exchange reaches are from the lower terminus at the confluence of Cripple Creek and Fourmile Creek in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 9, Township 16 South, Range 70 West of the 6<sup>th</sup> P.M., Teller County, upstream to Applicant's point of diversion on West Fourmile Creek, including West Fourmile Creek Reservoir, and to Applicant's point of diversion on Oil Creek, including Oil Creek Pipeline and/or Oil Creek Pipeline II, and Oil Creek Reservoir. The upper terminus and additional upper terminus are described as follows: A. West Fourmile Creek Reservoir: The center of the dam is located in the S  $\frac{1}{2}$  SW  $\frac{1}{4}$  of Section 3, Township 15 South, Range 71 West of the 6<sup>th</sup> P.M., 390 feet north of the south line and 1,450 feet east of the west line of said Section 3. B. Oil Creek Pipeline Alternate Point of Diversion/Oil Creek Pipeline II: The point of diversion is located on the left (south) bank of Oil Creek in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 33, Township 14 South, Range 69 West of the 6<sup>th</sup> p.m., Teller County Colorado, lying 1,815 feet west of the east line and 20 feet south of the north line of said Section 33. These distances are based on a BLM re-survey of Sections 28 and 33 dated November 7, 1987.<sup>2</sup> C. Oil Creek Reservoir: The original Oil Creek Reservoir dam center location is on-channel in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 28, Township 14 South, Range 69 West of the 6<sup>th</sup> P.M., approximately 145 feet west of the east line and 1,250 feet north of the south line of said Section 28. These distances are based on a BLM re-survey of Sections 28 and 33 dated November 7, 1987.<sup>3</sup> 1. Source of Water Rights: Direct flow available under Applicant's changed Johnson Ditch water rights delivered at Cripple Creek's WWTF outflow or return flows to the Fourmile Creek Basin from Applicant's other West Beaver Creek drainage water rights, including related municipal wastewater return flows, to the extent such flows are: (a) available in priority; (b) otherwise available or derived from fully consumable or re-usable sources; or (c) augmented pursuant to a decreed plan for augmentation allowing for their exchange and

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<sup>1</sup> This legal description represents the same physical location described in the application in this matter, but rather than referencing outdated section lines which exist on USGS Quad mapping, the new legal description references updated section line locations based upon the more recent and established BLM re-survey.

<sup>2</sup> and <sup>3</sup> This legal description represents the same physical location described in the application in this matter, but rather than referencing outdated section lines which exist on USGS Quad mapping, the new legal description references updated section line locations based upon the more recent and established BLM re-survey.

subsequent use or re-use. Said Johnson Ditch water rights are fully consumable, but are not reusable. As such, no WWTF return flows attributable the Johnson Ditch water rights changed in Case No. 92CW77 may be utilized in the exchanges described herein; however, Cripple Creek may deliver water attributable to any unused portion of Applicant's Johnson Ditch water rights to the WWTF and make a single use hereof in the Fourmile Basin, and such unused 92CW77 Johnson Ditch water is expressly available for exchange. 2. Date of Original Decree: December 2, 2015, Case No. 98CW174, Water Court, Division 2. 3. Rate and Amount of Water Exchanged: The maximum flow rate of the exchanges from the confluence of Cripple Creek and Fourmile Creek at any one time and to each of the exchange termini is 1.1 c.f.s. The maximum monthly volume of exchanges is limited to the sum of: (1) the monthly volume of any fully-consumable water delivered unused to the WWTF under the Applicant's changed Johnson Ditch water rights; plus (2) 77.2% of the reusable West Beaver Creek water rights delivered through Cripple Creek's municipal water supply system, as described in Case No. 98CW174. 4. Date of Appropriation: December 7, 1998. 5. Uses of Exchanged Water: Municipal use, including without limitation, domestic, stock watering, irrigation, recreational, wildlife habitat, fish propagation, commercial, industrial, and also for exchange and augmentation, either by direct diversion or by storage of the same in such structures as may be available to Cripple Creek, including the Oil Creek Reservoir as decreed in Case No. 96CW233, and the West Fourmile Creek Reservoir, as decreed in Case No. 96CW190. **V. Outline of Work Done Towards Completion of Appropriation and Application of Water to Beneficial Use.** In Case No. 98CW174, the Court decreed to Applicant the conditional use of the surface water rights and appropriative rights of exchange for the beneficial use of Applicant's municipal water supply system. The Oil Creek II Pipeline and the appropriative rights of exchange described in paragraph IV, above (collectively the "Conditional Water Rights"), are a part of a single integrated municipal water supply system. The Conditional Water Rights are part of Applicant's integrated water supply system. Pursuant to C.R.S. § 37-92-301(4)(b), work on one component of an integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. During this diligence period, Applicant has outlaid the following expenditures and completed the following work related to the Conditional Water Rights in their integrated water system: A. The Applicant has accumulated over \$8,500 for engineering analysis for replacement and repair of water mains for their integrated water system. A. The Applicant has expended over \$1,200,000.00 for repairs and maintenance to their integrated water system. B. The Applicant has incurred extensive legal fees associated with drafting and filing of documents pertaining to the Water Rights, including previous related applications and decrees as well as the present filing, obtaining legal advice as to the use and development of Applicant's integrated water system, and protecting its water rights in water court cases. C. Additionally, the Applicant has expended significant time and resources building and maintaining infrastructure necessary to place the Water Rights to beneficial use. Based on the expenditures and efforts described herein, and the improvement and maintenance of other water rights integrated into the use of the subject conditional surface water and storage rights, and appropriative rights of exchange, the Applicant has established that it can and will complete the development of the adjudicated conditional water rights and place them to beneficial use within a reasonable period of time. **VI. Name of the Owners of the Land**

**on Which Structure is Located Upon Which Water Is or Will Be Stored or Upon Which Water is or Will Be Placed to Beneficial Use:** The land upon which the Oil Creek II Pipeline will be constructed for conveyance of water diverted therein to Applicant's beneficial uses is owned by multiple parties, potentially including Daniel and Shelli Tezak Dr., Canon City, CO 81212, the United States of America through the United States Forest Service, c/o Pikes Peak National Forest District Office, 601 S. Weber Street, Colorado Springs, Colorado 80903, and the United States Forest Service Regional Office, P.O. Box 25127, Lakewood, Colorado 80255; and the United States of America through the Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

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**CASE NO. 2021CW3081; HEATH MILLS, 2866 Highway 9, Canon City, CO 81212**

(Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Julianne M. Woldridge, MacDougall & Woldridge, P.C., P.O. Box 7273, Woodland Park, CO 80863, (719) 520-9288)

Application for Determination of Surface Water Right

**FREMONT COUNTY**

**2. Name of Structure:** Twelve Mile Ditch No. 1. **3. Location of Structure and point of diversion:** NW1/4SW1/4 of Section 30, Township 17 South, Range 71 West, 6<sup>th</sup> P.M., Fremont County, CO. The approximate UTM coordinates are believed to be Easting 466571.0 and Northing 4265154.0, Zone 13. **4. Source:** Currant Creek. **5. A. Date of Appropriation:** December 31, 1873. B. How appropriation was initiated: By construction of the ditch and placement of the water to beneficial use. The water right is the subject of the general adjudication decree entered by the District Court, Fremont County on February 3, 1894 wherein no specific appropriation date was identified. Testimony in that proceeding reflects that the water had been used at least as early as 1873. C. Date water applied to beneficial use: December 31, 1873. **6. Amount claimed:** All available flows subject to the rotation schedule and timing established in the general adjudication entered February 3, 1894, absolute. **7. Uses:** Irrigation in the SW1/4 SW1/4 and the W1/2 SW1/4 of Section 30 and the NW1/4 NW1/4 of Section 31, T.17S., R.71W., 6<sup>th</sup> P.M. See general location map attached to the application. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **8. Name and address of owner of land on which the diversion structure was constructed:** Gordon L. Abbas and Cynthia E. Stratton-Abbas, 19209 525<sup>th</sup> St., Centerville, IA 52544-8700. **9. Remarks:** Applicant seeks confirmation of a determination of the water right decreed to the Twelve Mile Ditch No. 1 in the general adjudication entered by the Fremont District Court on February 3, 1894, which decree identified this water right but did not specify the appropriation date or location of the point of diversion. That decree numbered the various ditches and canals in District No. 12 "according to the dates of their respective and several constructions" and assigned Ditch No. 402 to the Twelve Mile Ditch No. 1. That decree did not assign an appropriation number to the Twelve Mile Ditch No. 1 water right, instead stating that water of Currant Creek "from its source down to the North line of Section twenty-nine, Tp 16 N. R. 72 West, shall belong to and be divided between the following persons and lands...", including that for the Twelve Mile Ditch No. 1, and described a rotation schedule based on a rotation agreement introduced into evidence in that proceeding. That decree states further with respect to the ditches on Currant Creek that "each of them, are subject



to any, and all, other ditches and priorities with which they, or any of them may interfere.” A copy of the rotation agreement and testimony related to the Twelve Mile Ditch No. 1 is attached to the Application as Exhibit B. Applicant seeks to confirm a priority date for this water right of December 31, 1873 as adjudged and decreed in the February 3, 1894 general adjudication without being made junior by reason of C.R.S. § 37-92-306, subject to the terms and conditions in that February 3, 1894 general adjudication including the rotation schedule for other water rights on Currant Creek described therein for so long as such rotation schedule is legally effective. See *Southern Ute Indian Tribe v. King Consolidated Ditch Co.*, 250 P.3d 1226 (Colo. 2011). **Notice pursuant to C.R.C.P. 89: The water right claimed by this application may affect in priority any water right claimed or heretofore adjudicated within this division and owners of affected water rights must appear to object and protest within the time provided by statute, or be forever barred.** In the alternative, should the Court determine that no water right was determined in that proceeding, Applicant seeks determination of the water right as described in the Application.

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**CASE NO. 2021CW3082; TRIVIEW METROPOLITAN DISTRICT, 16055 Old Forest Point, Ste. 302, Monument, CO 80132, Co-Applicant: STONEWALL WATER, LLC (“SW”), 20 Boulder Crescent, Colorado Springs, CO 80903, Co-Applicant: ARKANSAS GROUNDWATER and RESERVOIR ASSOCIATION (“AGRA”), 205 S. Main Street, Fowler, CO 81039** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorney: Attorneys for Applicant, and Co-Applicant SW: Monson Cummins, Shohet, & Farr, LLC, Chris D. Cummins, #35154, Emilie B. Polley, #51296, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80903, (719) 471-1212, Attorneys for Co-Applicant, AGRA: Davis Graham & Stubbs, LLP, James S. Witwer, # 19482, Michael M. Golz, #55271, 1550 17<sup>TH</sup> Street, Ste. 500, Denver, CO 80202, Phone: (303) 892-7478)

Application for Change of Water Rights

**PUEBLO COUNTY**

**II. Background and Summary of Application:** The Triview Metropolitan District (“Applicant”, “Triview”, or the “District”) is the owner of 1,341 shares in the Excelsior Irrigating Company (“Excelsior”) as represented by Certificate Nos. 26, 27, 28, and 29 (the “Triview Excelsior Shares”). Co-Applicant Arkansas Groundwater and Reservoir Association (“AGRA”) is the owner of 1,792 shares in Excelsior represented by Certificate Nos. 15 and 16 (“AGRA Excelsior Shares”). Co-Applicant Stonewall Water, LLC (“SW”) is the owner (via its membership) of 200 shares in Excelsior represented by Certificate Nos. 32, 33, 34, 35 and 36 (“SW Excelsior Shares”) (collectively the “Excelsior Shares”). Triview, AGRA and SW seek to change the type of use of the water rights represented by their respective Excelsior Shares, as more specifically described herein. **III. Change Application:** Applicant is the owner of 1,341 shares of the 3,333 shares outstanding (40.23%) in Excelsior, and a *pro rata* interest in the water and water rights owned by Excelsior. AGRA is the owner of 1,792 shares (53.77%) of Excelsior, and a *pro rata* interest in the water and water rights owned by Excelsior. SW is the owner of the remaining 200 shares (6%). All 3,333 shares in Excelsior were changed by decree in Case No. 04CW62, Water Division No. 2, to allow augmentation use by the Arkansas Groundwater Users Association (AGUA), AGRA’s predecessor entity, for its members.

The Triview Excelsior Shares were further changed to additional augmentation uses by decree in Case No. 16CW3094, Water Division No. 2, and all Excelsior Shares were changed to allow for storage in the Stonewall Springs Reservoir Complex ("SSRC") by decree in Case No. 16CW3093, Water Division No. 2. The Applicant and Co-Applicants now seek to change the Excelsior Ditch Water Rights from their previously decreed uses to include all municipal uses, including through direct diversion and by storage. A. Description of Water Rights: i. Legal Description of Point of Diversion: The Excelsior Ditch headgate is located on the north bank of the Arkansas river in the SE¼ SE¼ in Section 36, Township 20 South, Range 64 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado. ii. Source: Arkansas River. iii. Appropriation date and amounts: May 1, 1887 (priority No. 55) and January 6, 1890 (priority No. 60). iv. Decree Information: The Excelsior Ditch Water Rights were originally adjudicated in Case No. 2535, Pueblo County District Court, March 23, 1896; a. Case No. 9532, Pueblo County District Court, September 15, 1905 transferred the rights from the Bessemer Irrigation Company and Rocky Ford High Line Canal Company to Excelsior Irrigation Ditch (collectively, the "Excelsior Ditch Water Rights"); b. Case No. 04CW62, District Court, Water Division No. 2, June 18, 2007 changed uses of the Excelsior Ditch Water Rights from irrigation to irrigation and augmentation, including rights of recharge. c. Case No. 16CW3094, District Court, Water Division No. 2, January 21, 2020 changed uses of the Excelsior Ditch Water Rights to include additional augmentation uses. d. Case No. 16CW3093, District Court, Water Division No. 2, January 21, 2020, authorized storage of water attributable to the Excelsior Ditch Water Rights in the Stonewall Springs Reservoir Complex ("SSRC"), including for augmentation release for uses described in Case No. 16CW3094. i. Decreed Uses: Irrigation; augmentation, and rights of recharge. ii. Amount: 60 cfs total (20 cfs under May 1, 1887 priority, and 40 cfs under January 6, 1890 priority). B. Amount of Water Subject of Instant Change: Applicant and Co-Applicants seek to change their respective *pro rata* interests in the Excelsior Ditch Water Rights. The 04CW62 change of the Excelsior Ditch Water Rights included a ditch-wide analysis of historical consumptive use ("HCU"), and Applicant and Co-Applicants claim there are no changed circumstances that would require a re-quantification of HCU in the instant matter. See C.R.S. §37-92-305(3)(e). Based upon the 0.424 acre feet of average annual historical consumptive use yield previously decreed in Case No. 04CW62 to each Excelsior share, Triview's Excelsior Shares on average will yield 568.584 acre feet of historical consumptive use, the AGRA Excelsior Shares on average will yield 759.8 acre feet, and the SW Excelsior Shares will on average yield 84.8 acre feet, for a total average annual yield of 1,413.92 acre feet, though actual annual yield will vary from year to year. C. Change of Type and Manner of Use: Applicants seek to change the type of use of their Excelsior Ditch Water Rights to include, in addition to existing irrigation, augmentation, and recharge uses, all municipal uses including, without limitation, domestic, agricultural, industrial, commercial, irrigation, power generation, stock watering, fire protection, recreation, fish and wildlife preservation and propagation, wetlands maintenance and enhancement, recharge of Denver Basin aquifers, any and all replacement or relinquishment purposes, and augmentation and exchange for all municipal uses. All such uses are to be made by direct diversion, or through or following storage, and Applicant and Co-Applicants further seek the right to re-use and successively use to extinction the water rights attributable to the Excelsior Ditch Water Rights (including but not limited to lawn irrigation return flows and sewer return

flows) following the initial use(s) thereof. Such municipal uses include, without limitation, alternate use by the municipal members of AGRA (including, without limitation, the Cities of La Junta and Las Animas and the Towns of Manzanola, Fowler, Haswell, Swink, and Sugar City) following storage in Pueblo Reservoir, treatment by the Pueblo Board of Water Works, and conveyance via the Arkansas Valley Conduit (“AVC”), a project authorized and funded as part of the Fryingpan-Arkansas Project by the U.S. Bureau of Reclamation and the Southeastern Colorado Water Conservancy District. The AVC will convey a reliable municipal and industrial water supply from Pueblo Reservoir to 40 communities serving a projected future population of 50,000 in Southeastern Colorado via pipelines. The area includes water providers in Bent, Crowley, Kiowa, Otero, Prowers, and Pueblo counties. Such uses further include all of Triview’s municipal uses as a quasi-municipal special district, both within its service area in northern El Paso County, and by contract outside of said service area. D. Change in Place of Use: The Applicant and Co-Applicants seek to change the place of use of the Excelsior Ditch Water Rights to include all of Triview’s municipal service area, as it exists now and as it may exist in the future, including any areas served by Triview pursuant to extraterritorial agreement or any other contract or lease, and including for replacement of depletions on the Arkansas River and its tributaries, including but not limited to Monument Creek and Fountain Creek. Applicant and Co-Applicants seek a change in place of use to include any location within the Arkansas River Basin to which water may be delivered for augmentation, sale, or lease for such other uses as may be allowed by law, including, without limitation, within the present or future municipal boundaries of the municipal members of AGRA. A map of the current boundaries of the Triview Metropolitan District is attached to the application as **Exhibit A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) E. Plan of Operations: Water available under the Excelsior Ditch Water Rights may be diverted at the headgate of the Excelsior Ditch and released back to the Arkansas River at the Excelsior Ditch Augmentation Station Outlet Canal<sup>4</sup>, the Excelsior Ditch Recharge Ponds<sup>5</sup>, or such other augmentation station/measurement facilities as may be lawfully utilized by Excelsior, or such other augmentation station/measurement facility as Applicant or Co-Applicants may construct to which the Excelsior Ditch Water Rights may be delivered, now or in the future (including outlet works for the SSRC), or alternate augmentation stations that may be substituted or used in combination with one another as approved by the State and Division Engineer’s Offices. The consumptive use credits associated with the Excelsior Shares may also be delivered into the SSRC to storage for later release, including release for exchange to Pueblo Reservoir where Applicant and Co-Applicant AGRA each maintain Excess Storage Capacity accounts with the United States Bureau of Reclamation, with the appropriative rights of exchange decreed to AGRA’s use in Case No. 03CW119, and claimed by Triview in pending Case No. 21CW3058, Water Division No. 2, or for exchange on Fountain Creek consistent with Triview’s pending Case No. 21CW3058. Such water may, via such storage and exchange or administrative trade, then be

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<sup>4</sup> The Excelsior Ditch Augmentation Station discharges to the Arkansas River in the SW1/4 of Section 34, Township 20, Range 63 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado.

<sup>5</sup> The Excelsior Ditch Recharge Ponds are located on the west bank of Chico Creek in the NE1/4 of Section 6, Township 21 South, Range 63 West of the 6<sup>th</sup> P.M. in Pueblo County, Colorado.

delivered to Triview's municipal service area, including but not limited to properties included within the Triview Metropolitan District in northern El Paso County, via existing or future infrastructure for the municipal uses requested herein, or may continue in its previously decreed agricultural and augmentation uses in Pueblo County, Colorado. Such water may further, via such storage, trade or administrative exchange, or direct delivery via the Arkansas River or the AVC, likewise be delivered to AGRA's municipal membership. The consumptive use credits associated with the Excelsior Ditch Water Rights will be computed as the historical depletion percentage multiplied by actual in-priority diversions under the Subject Water Rights. Such consumptive use credits will be assessed appropriate transit loss from augmentation stations or release points to the points of use. Applicants and Co-Applicants may, alone or in concert with partners, appropriate additional rights of exchange, or develop such physical infrastructure as necessary for physical delivery of the Excelsior Ditch Water Rights to legal places of use. Nothing contained in this Application requires, or seeks to require, the use by the Applicant or a Co-Applicant of Excelsior Ditch Water Rights owned by another owner of Excelsior Ditch Water Rights.

F. Historical Return Flows. Return flows from the historical irrigation use of the Excelsior Ditch Water Rights have accrued to the Arkansas River, and will be replaced by Applicant and Co-Applicants consistent with the terms and conditions of the decree in the instant matter, and/or prior Excelsior Ditch decrees, as described herein. Triview will store and deliver to Triview's service area only the historical consumptive use credit component of the historical diversion associated with the Excelsior Ditch Water Rights, ensuring that return flows associated with the historical irrigation uses continue to accrue to the Arkansas River in proper time, place and amount. The sources of water for replacement of historical return flows will be the historical return flow portion of the Excelsior Ditch Water Rights, or as an alternative, any other water owned or leased by Applicant or Co-Applicant's that is decreed for replacement and/or augmentation purposes and available at the required time, location and amount in order to prevent injury to other water rights. Historical return flows will be replaced only to calling water rights senior to the date of the filing of this Application, and the Applicant and Co-Applicant's hereby appropriate for the uses described herein any historical return flows not required to be so replaced.

G. Use and Re-Use to Extinction. Applicant and Co-Applicants claim the right to the use and re-use of the water attributable to the historical consumptive use credits associated with the Excelsior Ditch Water Rights to extinction. For example, upon municipal use in Triview's municipal water system, re-usable return flows will result both through Lawn Irrigation Return Flows (LIRFs) and through sewered effluent accruing to Monument Creek, tributary to Fountain Creek, tributary to the Arkansas River. Such re-usable return flows may be recaptured for reuse at any point of diversion legally available to Applicant or Co-Applicants, including at the Fountain Mutual Irrigation Company ("FMIC") headgate or the Chilcott Ditch headgate on Fountain Creek, or re-diversion at the Excelsior Ditch headgate on the Arkansas River, including for storage in the SSRC or in Excess Storage Capacity accounts in Pueblo Reservoir by exchange or administrative trade, subject to assessment of appropriate transit loss.

H. Name and address of the owners or reputed owners of 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 of existing storage pool. The Excelsior Irrigating Ditch headgate is located upon land owned

by Kirkland Property Holdings LLC, P.O. Box 580, Rye, CO 81069-0580. The Stonewall Springs Reservoir Complex, while located on land owned by Applicant, is owned by the Stonewall Springs Reservoir Company, 16055 Old Forest Pointe, Ste. 302, Monument, CO 80132. Pueblo Reservoir is owned by the United States Bureau of Reclamation, Denver Federal Center, 6<sup>th</sup> & Kipling, Bldg. 67, Denver, CO 80225.

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**CASE NO. 2021CW3083; CITY OF TRINIDAD, (“Trinidad”) c/o City Manager, PO Box 880, Trinidad, CO 81082** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Madoline Wallace-Gross, Anthony Basile, Lyons Gaddis, PC, P.O. Box 978, Longmont, CO 80502-0978, (303) 776-9900)

Application for Conditional Appropriative Right of Exchange

**LAS ANIMAS COUNTY**

**2. Background.** Applicant seeks a conditional appropriative right of exchange to exchange fully consumable reusable effluent from the Trinidad Wastewater Treatment Plant (“Trinidad WWTP”) outfall to Trinidad Reservoir for storage and/or release for subsequent use, reuse and successive use until extinction. **3. Name of Conditional Exchange:** The Trinidad WWTP outfall to Trinidad Reservoir Exchange (“Exchange”). A map depicting the location of the Exchange is attached to the application as **EXHIBIT A.** (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **4. Downstream Terminus:** The Trinidad WWTP outfall, located in the NE1/4 of the NE1/4 of Section 7, Township 33 South, Range 63 West of the 6<sup>th</sup> P.M, at a point 1,220 feet south of the north section line and 1,000 feet west of the east section line of said Section 7. **5. Upstream Terminus:** Trinidad Reservoir Dam, located in Section 27, Township 33 South, Range 64 West of the 6<sup>th</sup> P.M. **6. Date of Initiation of Appropriation:** December 21, 2021. **7. How Appropriation was Initiated:** Applicant initiated this appropriation by: passing a City Council resolution evidencing the appropriation and approving the filing the application; directing engineering and legal consultants to prepare supporting information; and filing the application. **8. Relevant Stream:** Purgatoire River, also known as Las Animas River **9. Date Applied to Beneficial Use:** Not applicable. **10. Rate of Exchange:** 3.87 cfs, conditional. **11. Proposed Uses:** Municipal, industrial, maintenance of the Trinidad Reservoir permanent fishery pool, recreation and fish propagation uses in addition to the existing irrigation uses. Municipal includes all municipal uses, such as, but not by way of limitation, domestic, commercial, manufacturing, industrial, agricultural, watering of parks and lawns and gardens, fire protection, generation of electric power and power generally, recreation, fish and wildlife propagation, sewage treatment, street sprinkling, maintenance of adequate storage reserves, replacement, augmentation and exchange. **12. Proposed Operation:** After use, reuse and/or successive use fully consumable historical consumptive use credits used within the City’s municipal water system pursuant the decrees entered in Case Nos. 88CW61, 06CW78, 08CW101 and 17CW3073, Water Division No. 2 described in ¶ 13, such water rights shall be discharged at the Trinidad WWTP outfall and exchanged to Trinidad Reservoir for subsequent storage and/or release for use, reuse and successive use. **13. Sources of Substitute Supply:** Fully consumable water rights discharged to the Purgatoire River at the Trinidad WWTP from the decrees entered in Case Nos. 88CW61, 06CW78, 08CW101 and 17CW3073, Water Division No. 2, as follows: **13.1. Case No. 88CW61, entered June 22, 2001.** The

historical consumptive use associated with Applicant's ownership of the Johns Flood Ditch and Model Ditch water rights quantified and changed in Case No. 88CW61. 13.1.1. Name of Structure: John Flood Ditch (John Flood and Johns Flood are used interchangeably).

<i>District 19 Priority No.</i>	<i>Appropriation Date</i>	<i>Civil Action Number* District Court, Las Animas County</i>	<i>Original Decree Date</i>	<i>Decreed Amount (cfs)</i>	<i>Trinidad Ownership in 88CW61 (cfs)</i>
5	03/20/1862	Original Adjudication	08/10/1903	4.0	2.0
9	01/01/1863	Original Adjudication	08/10/1903	1.28	0.877
15	04/10/1864	Original Adjudication	08/10/1903	5.1	2.343
20	10/07/1865	Original Adjudication	08/10/1903	7.35	3.391
27	05/31/1866	Original Adjudication	08/10/1903	2.25	1.541
145	10/20/1902	CA 6118	01/12/1925	100.0	68.5

13.1.2. Name of Structures: Model Project Water.

<i>Structure</i>	<i>Appropriation Date</i>	<i>Civil Action Number*</i>	<i>Original Decree Date</i>	<i>Decreed Amount</i>	<i>Trinidad Ownership in 88CW61</i>
Model Ditch	01/22/1908	CA 6118	01/12/1925	200 cfs	6.05 %
Model Reservoir	10/7/1865	CA 6118	1/12/1925	20,000 af	6.05 %

13.1.3. Changed Uses: Municipal, industrial, maintenance of the Trinidad Reservoir permanent fishery pool, recreation and fish propagation uses in addition to the existing irrigation uses. Municipal included all municipal uses, such as, but not by way of limitation, domestic, commercial, manufacturing, industrial, agricultural, watering of parks and lawns and gardens, fire protection, generation of electric power and power generally, recreation, fish and wildlife propagation, sewage treatment, street sprinkling, maintenance of adequate storage reserves, replacement, augmentation and exchange. 13.1.4.

Changed Place of Use: Trinidad's service area boundaries, as such boundaries may change from time to time. Trinidad also may use water to fulfill contractual obligations to other water users, including for use outside such boundaries, subject to the terms of the decree. 13.1.5. Alternate Point of Diversion and Storage: Trinidad Reservoir. See ¶ 5. 13.2. **Case No. 08CW101, entered December 26, 2014.**

The historical consumptive use associated with Applicant's ownership of the Johns Flood Ditch water rights quantified and changed in Case No. 08CW101. 13.2.1. Name of structure: Johns Flood Ditch.

<i>District 19 Priority Number</i>	<i>Appropriation Date</i>	<i>Original Decree Date</i>	<i>Civil Action Number*</i>	<i>Decreed Amount (cfs)</i>	<i>Trinidad Ownership in 08CW101 (cfs)</i>
9	01/01/1863	08/10/1903	Original	1.28	0.048

District 19 Priority Number	Appropriation Date	Original Decree Date	Civil Action Number*	Decreed Amount (cfs)	Trinidad Ownership in 08CW101 (cfs)
			Adjudication		
15	04/10/1864	08/10/1903	Original Adjudication	5.1	0.128
20	10/07/1865	08/10/1903	Original Adjudication	7.35	0.586
27	05/31/1866	08/10/1903	Original Adjudication	2.25	0.084
145	10/20/1902	01/12/1925	CA 6118	100.0	3.75

13.2.2. Changed Uses: See ¶ 13.1.3. 13.2.3. Changed Place of Use: See ¶ 13.1.4. 13.2.4. Alternate Point of Diversion and Storage: See ¶ 13.1.5. 13.3. **Case No. 06CW78, entered on November 25, 2012.** The historical consumptive use associated with Applicant's ownership of the Lewelling-McCormick Ditch (Priority 13) and Hoehne Ditch (Priority No. 20) water rights diverted at the Johns Flood Ditch quantified and changed in Case No. 06CW78. 13.3.1. Name of Structures: Johns Flood Ditch.

District 19 Priority Number	Appropriation Date	Original Decree Date	Civil Action Number*	Decreed Amount (cfs)	Trinidad Ownership in 06CW78 (cfs)
13	01/01/1864	08/10/1903	Original Adjudication	1.25	0.5375
20	10/07/1865	08/10/1903	Original Adjudication	7.35	0.86

13.3.2. Changed Uses: See ¶ 13.1.3. 13.3.3. Changed Place of Use: See ¶ 13.1.4. 13.3.4. Alternate Point of Diversion and Storage: See ¶ 13.1.5. 13.4. **Case No. 17CW3073, entered on January 21, 2021.** The historical consumptive use associated with Applicant's ownership of the Lewelling-McCormick Ditch (Priority 13) and Hoehne Ditch (Priority No. 20) water rights diverted at the Johns Flood Ditch quantified and changed in Case No. 17CW3073. 13.4.1. Name of Structures: Johns Flood Ditch.

District 19 Priority Number	Appropriation Date	Original Decree Date	Civil Action Number*	Decreed Amount (cfs)	Trinidad Ownership in 17CW3073 (cfs)
13	01/01/1864	08/10/1903	Original Adjudication	1.25	0.712
20	10/07/1865	08/10/1903	Original Adjudication	7.35	1.14

13.4.2. Changed Uses: See ¶ 13.1.3. 13.4.3. Changed Place of Use: See ¶ 13.1.4. 13.4.4. Alternate Point of Diversion and Storage: See ¶ 13.1.5. **14. Remarks:** This exchange is intended to operate in conjunction with all possible methodologies for diverting water into Applicant's municipal water distribution system. Currently, Applicant can only divert, treat and deliver the water rights described in ¶¶ 13.1 to 13.4 for municipal uses by exchanging the historical consumptive use stored in Trinidad Reservoir up the Purgatoire River and its tributaries to Applicant's water distribution system at North Lake and Monument Lake, pursuant to the decree in Case No. 09CW11, Water Division No. 2. In the future, Applicant will have the ability to divert, treat and deliver the water rights at or below Trinidad Reservoir into its municipal water distribution system. **15. Integrated Water Supply Plan.** The conditional appropriative right of exchange is one feature of Applicant's integrated

water supply system, which consists of surface water rights, storage water rights and appropriative rights of exchange. Pursuant to C.R.S. § 37-92-301(4)(B), work on one feature of the integrated system shall be considered in finding that reasonable diligence has been shown for all features of the integrated system. **16. Landowners.** Name and address of owner of land upon which any new diversion structure or storage structure, or modification to an 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. 16.1. The City owns the property at the Trinidad WWTP outfall. 16.2. Trinidad Reservoir is owned by: United States Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18E, Loveland, CO 80537. WHEREFORE, Applicant requests the Court enter a decree finding that Applicant has appropriated the conditional right of appropriative exchange as applied for herein.

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**CASE NO. 2021CW3084; HUAJATOLLA VALLEY ESTATES, INC, c/o Lonnie Brown, PO Box 644, La Veta, CO 81055** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Steven T. Monson, Ryan W. Farr, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estate Drive, Suite 250, Colorado Springs, CO. 80921, (719) 471-1212)

Second Amended Application for Change of Water Right Approving Additional Alternate Point of Diversion to Amend Plan for Augmentation Additional Appropriative Right of Exchange and for Groundwater Right.

**HUERFANO COUNTY**

**III. Background and Summary of Application.** Huajatolla Valley Estates (“HVE”) is a residential development located along Wahatoya Creek, tributary to the Cucharas River, in Huerfano County, Colorado, adjacent to the eastern boundary of the Town of La Veta, Colorado. The Applicant is the homeowners’ association for HVE. In 2016, the Applicant was granted a Decree in Case No. 97CW108(C), Water Division 2 (“Original Decree”), for changes of water rights, an appropriative right of exchange, and a plan for augmentation providing a legal and physical water supply for HVE. The Applicant has recently become concerned that their single physical decreed source of water for HVE, Willis Spring No. 1, may not provide a sufficiently dependable water supply during periods of drought. To address this concern, the Applicant now seeks to include two additional points of diversion into the Original Decree for the HVE physical water supply. The Applicant is not seeking any additional replacement water or quantity of physical water supply beyond the amounts in the change of water rights, plan for augmentation, and exchange of the Original Decree. The Applicant is only seeking redundancy for its physical water supply system that will be used and augmented in the same manner as provided in the Original Decree. This Second Amended Application is made to clarify and correct legal descriptions contained in Sections VI.C. and VI.D., and VII.C.4 below. **IV. Application for Groundwater Rights.** A. Name of Structure. The names of the structures for which the new groundwater rights are sought are HVE Well No.’s 1 and 2 (collectively, “HVE Wells”). B. Legal Description. HVE Well No. 1 will be located in the SE ¼ NE ¼ of Section 22, Township 29 South, Range 68 West, 6<sup>th</sup> P.M., 250 feet from east line and 2,430 feet from north line of said section, being GPS: NAD 83 13S 501736, 4151566. HVE Well No. 2 will be located in the SE ¼ NE ¼ of Section 22, Township 29 South, Range 68 West, 6<sup>th</sup> P.M., 160 feet from east line and 2,280 feet from north line of



said section, being GPS: NAD 83 13S 501765, 4151612. The HVE Wells are to be shallow stream bed alluvial wells located immediately adjacent to Wahatoya Creek approximately 110 feet and 220 feet upstream on Wahatoya Creek of the existing Willis Spring No. 1 under the Original Decree. Amount Claimed. The amount of water claimed is 0.5 cfs, conditional, for the combined use of the HVE Wells. F. Use. The water diverted from the HVE Wells will be used to provide the water supply for HVE, including domestic, stock watering, irrigation, and fire protection G. Additional Information. Water diverted from the HVE Wells will be physically piped to HVE's existing water treatment plan for direct delivery to the residences, or alternately piped to the subdivision's nearby Haujatolla Valley Estates Lagoon ("HVE Lagoon") for storage and later augmentation releases as provided in the Original Decree and herein. Depletions associated with the domestic use of the HVE Wells are to be replaced under the plan for augmentation under the Original Decree as amended by this Application. **V. Change of Water Right Approving Additional Alternate Point of Diversion**. A. Alternate Point of Diversion Sought. Applicant owns 82 shares being 21 percent of Class A stock issued by the Snowy Range Reservoir Company ("SRRC"). As determined in the Original Decree, Applicant's ownership of SRRC stock entitles it to a pro-rata share of SRRC's 0.20864 cfs interest in the Calf Pasture Ditch water right, more specifically described below, in the amount of 0.04385 cfs being 20 gallons per minute ("Applicant's CPD Interest"). In the Original Decree, Applicant's CPD Interest was changed to an alternate point of diversion at the Willis Spring No. 1. Applicant now seeks an additional alternate point of diversion of the Applicant's CPD Interest at the HVE Wells. B. Name of Water Right to be Changed. The structure for which the change of water rights and alternate point of diversion is sought is the Calf Pasture Ditch, being Cucharas River Priority No. 2. The only portion of the Calf Pasture Ditch included in this case is the Applicant's CPD Interest, which is a 21 percent prorated interest in the 0.20864 cfs owned by SRRC. C. Original Decree for Water Right to be Changed. The Calf Pasture Ditch water right was originally adjudicated for 1.5 cfs irrigation purposes in an unnumbered decree designated as the Read Decree, entered on June 12, 1889, by the District Court in and for Huerfano County, State of Colorado. D. Original Point of Diversion. The original point of diversion for the Calf Pasture Ditch is in the NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  Section 21, Township 29 South, Range 68 West of the 6th P. M. at a point 40 feet West of the intersection of Oak Street and Ryus Avenue in the Town of La Veta, Huerfano County, Colorado. E. Source. The Source for the Calf Pasture Ditch is the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River. F. Appropriation Date. The appropriation date for the Calf Pasture Ditch is June 15, 1863. G. Subsequent Decrees for Applicant's CPD Interest to be Changed. The Calf Pasture Ditch water right was changed by this Court in Case No's. 1982CW132, 1985CW010, and the Original Decree including the Applicant's uses under the Original Decree. The decree in Case No. 1982CW132 ("82CW132 Decree") provided for three phases of use for the changed Calf Pasture Ditch water right, where the manner, type of use, and the amount of water available to the changed water right varies by phase. In the Original Decree the Applicant's CPD Interest was changed for use at the alternate point of diversion at the Willis Spring No. 1 for use as the physical water supply for the Applicant's residential development. Currently, SRRC's ownership interest in the Calf Pasture Ditch water right is in Phase I as that term is defined in the 82CW132 Decree, and Applicant's use of its CPD Interest is therefore governed by the terms in the 82CW132 Decree

applicable to Phase I, and any additional terms in the decree entered in Case No. 06CW124 ("06CW124 Decree"). Applicant's use of its CPD Interest under Phase II or Phase III pursuant to the terms of the 82CW132 Decree, the 06CW124 Decree, the Original Decree, and herein, including the quantification and use of the CPD Interest into stream credits, is not yet authorized. H. Amount. Applicant's CPD Interest as changed in the 82CW132 Decree and the Original Decree is 0.04385 cfs, being 20 gpm, limited by the Original Decree in Phase I to 0.026 cfs of consumption being 60 percent of the flow rate. I. Decreed Uses. Pursuant to the 82CW132 Decree and the Original Decree, when operating in Phase I, the Calf Pasture Ditch water right may be used year-round by direct use for irrigation, fish and wildlife enhancement, and all municipal purposes. Pursuant to the 82CW132 Decree, when operating in Phases II and III of the change decreed therein, the Calf Pasture Ditch water right may be used as consumptive use stream credits to directly replace depletions or as consumptive use stream credits that may be directly diverted to storage for subsequent replacement of depletions made under a decreed plan of augmentation. J. Historical Consumptive Use and Limitations. The SRRC 0.20864 cfs interest in the Calf Pasture Ditch water right was quantified and changed in the 1982CW132 Decree and Applicant's CPD Interest was quantified and changed in the Original Decree. Those quantifications of historical use and changed uses are not subject to reconsideration or requantification in this case, and no further quantification of historical use is required in this case. C.R.S. 37-92-305(3)(e). Applicant only seeks to make a continued use of that determined historical use at the new alternate points of diversion. Applicant's diversion and use of its CPD Interest at the HVE Wells will comply with the phased historical consumptive use limitations applicable to Applicant's CPD Interest as determined in the 1982CW132 Decree, 06CW124 Decree, and the Original Decree. K. Description of Proposed Change. Applicant seeks an alternate point of diversion for its CPD Interest of 0.04385 cfs (20 gpm) allowing diversion of that interest at the HVE Wells for use as a supplemental and redundant physical domestic water supply for the HVE subdivision. Such change shall be subject to the terms of the 1982CW132 Decree, the Original Decree, and the protective terms and conditions continued herein. So long as SRRC's interest in the Calf Pasture Ditch water right remains in Phase I under the 82CW132 Decree, Applicant's CPD Interest will be diverted at the Willis Spring No. 1 and the HVE Wells for direct domestic use in the HVE Subdivision. HVE is not pursuing any additional quantity of diversions or change in place of use from the Original Decree as decreed to Willis Spring No. 1 alternate point of diversion, and HVE is only seeking redundancy for its physical water supply system for the Willis Spring No. 1 and HVE Wells to be used together as provided in the Original Decree. L. Priority at Alternate Point of Diversion. Applicant will only divert its CPD Interest at the HVE Wells when the Calf Pasture Ditch water right is in priority and available at its original point of diversion. The HVE Wells will for administrative purposes be administered as against all water rights on Wahatoya Creek under an appropriation and priority date of January 18, 2021. Diversions of Applicant's CPD Interest at the HVE Wells shall retain its 1863 priority date as against other water rights, subject to the terms and conditions of the Original Decree and any decree entered in this case. M. Additional Information. The Applicant's seeks to use its CPD Interest at the HVE Wells under Phases II and III of the 82CW132 and Original Decree when those additional phases are allowed to be implemented. The HVE Wells will be shallow stream bed alluvial diversions

located immediately adjacent to Wahatoya Creek, approximately 35 feet from the stream, and all water diverted from the shallow alluvium will directly and contemporaneously impact the creek. As such, diversions of Applicant's CPD Interest from the Willis Spring POD are tantamount to and shall be considered as a direct diversion from the stream. Applicant may not store its CPD Interest during Phase I. However, Applicant may use its CPD Interest on a direct flow basis to offset evaporative losses from the HVE Lagoon (a/k/a TURDS Pond), subject to the division and consumptive use limits of the Original Decree. **VI. Additional Appropriative Right of Exchange.** A. Exchange Requested. The Applicant requests a new appropriative right of exchange of its 1/120<sup>th</sup> minority interest in the Coler System, as changed in the Original Decree ("HVE Coler System Rights"), that continues from the upper terminus of the prior exchange adjudicated at the Willis Spring No. 1 under the Original Decree ("Existing Exchange"). The new exchange continues upstream from the Existing Exchange an additional approximately 220 feet to deliver the HVE Coler System Rights to the point of stream depletion of the HVE Wells ("New Exchange"). B. Water to be Exchanged. The water rights to be exchanged and to constitute the substitute supply for the New Exchange are the HVE Color System Rights as described, changed, and adjudicated in the Original Decree. The Original Decree allowed the additional use of the HVE Coler System Rights for augmentation use in addition to the existing domestic, fire protection, lawn and garden irrigation, recreation uses, and other customary municipal type of uses. The Original Decree also changed the location of use and storage of the HVE Coler System Rights from its original uses and location of storage to allow that water to be diverted by exchange to the Willis Spring No 1 for the new and existing decreed uses, including augmentation of the Willis Spring No. 1 depletions, direct use by Willis Spring No. 1, and for storage in HVE Lagoon for later release to augment out of priority depletions from diversion of the Willis Spring No 1 water right in accordance with the plan for augmentation adjudicated in the Original Decree ("Existing Plan for Augmentation"). The Original Decree provided and estimated that Applicant's HVE Coler System Rights will provide an average of 9.25 annual acre feet of releases, and after applying the return flow factor 50 percent estimated that the HVE Coler System Rights will provide an annual average of 4.625 acre feet of consumptive use credit. The HVE Coler Systems water rights are limited to 92.5 acre feet of deliveries over any ten year period, with the remaining 50 percent of the Applicant s Coler System water being released to the Cucharas River and left in the river to maintain historical return flow obligations. C. Description of the Coler System. The Coler System includes as defined, established, and described by the Stipulation between the City of Walsenburg and George Habib and others Civil Action No 4468 District Court of Huerfano County Colorado dated February 5 1975 (and other agreements) the water rights described as follows: 1. Lake Miriam Ditch. The headgate of the Lake Miriam Ditch which diverts from the Cucharas River is located in the NW 1/4 of the SE 1/4 of Section 32, Township 28 South, Range 67 West of the 6th P. M., Huerfano County, Colorado. The Lake Miriam Ditch is the feeder canal for Lake Miriam Reservoir and Lake Oehm Reservoir. Lake Miriam Ditch was awarded a decree for a 20 cfs direct flow water right from the Cucharas River with an appropriation date of March 1, 1884 Priority No 61 by the District Court of the Third Judicial District Huerfano County on June 12, 1889. 2. Lake Miriam Reservoir a/k/a Horseshoe Reservoir. Lake Miriam Reservoir is located in the W 1/2 of Section 13 and the NW 1/4 of Section 24, Township 28 South, Range 67 West of the 6<sup>th</sup>, P. M.,

Huerfano County, Colorado. Lake Miriam Reservoir was awarded a storage decree for 50,000,000 cubic feet 1,148 acre feet of water from the Cucharas River with an appropriation date of April 14, 1901 by the Huerfano County District Court Water District 16 on October 3, 1921. 3. Lake Oehm Reservoir a/k/a Martin Lake. Lake Oehm Reservoir is located in the E 1/2 of Section 13, Township 28 South, Range 67 West of the 6th P. M. and the W 1/2 of Section 18, Township 28 South, Range 66 West of the 6th P. M., Huerfano County, Colorado. Lake Oehm Reservoir was awarded a storage decree for 100,000,000 cubic feet 2,296 acre feet of water from the Cucharas River with an appropriation date of April 30, 1901 by the Huerfano County District Court Water District 16 on October 3, 1921. In addition, the Lake Oehm Reservoir Enlargement was decreed for 12,070,000 cubic feet 277 acre feet with an appropriation date of November 25, 1905 by the Huerfano County District Court, Water District 16, on October 3, 1921. The Coler Reservoir System releases water to the Cucharas River from storage in the above described reservoirs and is delivered through the Coler Reservoir System Cucharas Delivery Flume which is located in the NE 1/4 of the SW 1/4 of Section 17, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado at a point approximately 1,350 feet from the West line and 2,400 feet from the South line of said Section 17 and from this point to the confluence of the Coler Reservoir System outlet channel and the Cucharas River which confluence is located in the NE 1/4 of the SW 1/4 of Section 17, Township 28 South, Range 66 West of the 6th P. M., Huerfano County, Colorado, at a point approximately 1,600 feet from the West line and 2,150 feet from the South line of said Section 17. D. Exchange Points. 1. Exchange From Point. The New Exchange will operate by the exchange of water from the point of the confluence of Wahatoya Creek and the Willis Spring No. 1 in the SE ¼ of the NE ¼ of Section 22, Township 29 South, Range 68 West, 6<sup>th</sup> P. M. from a point 150 feet from the east line of said section and 2,200 feet from the north line of said section (GPS: NAD 83 13S 501767, 4151636). 2. Exchange To Points. There are two exchange two points. The first exchange to point is the depletion point of the HVE Well No.1 to Wahatoya Creek in the SE ¼ of the NE ¼ of Section 22, Township 29 South, Range 68 West, 6<sup>th</sup> P. M. from a point 285 feet from the east line of said section and 2,430 feet from the north line of said section (GPS: NAD 83 13S 501726, 4151566). The second exchange to point is the depletion point of the HVE Well No. 2 to Wahatoya Creek in the SE ¼ of the NE ¼ of Section 22, Township 29 South, Range 68 West, 6<sup>th</sup> P. M. from a point 195 feet from the east line of said section and 2,280 feet from the north line of said section (GPS: NAD 83 13S 501755, 4151612). E. Operation of the New Exchange. The exchanges will only be operated at times and to the extent that there is a live stream between the exchange from point and the exchange to point to be used. There are no other water rights located with the reach of the New Exchange. The New Exchange will only operate at times that the exchange of the HVE Coler System Water is available at the exchange from point (confluence of Willis Spring No. 1 and Wahatoya Creek) under the terms and provisions of the Existing Exchange. F. Uses. The Applicant seeks the exchange of the Coler System Water Rights within the new exchange reach subject to the same type of terms and conditions as placed upon the Existing Exchange for the use of Coler System Water Rights. The use of the exchanged HVE Coler System Rights will be for direct use by the HVE Wells for the wells' decreed purposes for the HVE development, augmentation of the out-of-priority deletions from HVE Wells under the plan for augmentation, and for



storage in the HVE Lagoon by delivery from the HVE Wells and later release for augmentation. The HVE Lagoon or TURDS Pond lies in the SE 1/4 of the NE 1/4 of Section 22 and the SW 1/4 of the NW 1/4 of Section 23, Township 29 South, Range 68 West of the 6th P.M. at UTM coordinates NAD83 13S 0501817 easting 4151764 northing.

G. Appropriation Date. The appropriation of exchange to the wells was initiated by the Applicant by January 18, 2021, through acts at the Applicant's board meeting directing the development of a redundant physical water supply for HVE, coordinating with engineering and legal counsel, and proceeding with efforts that were eventually successful acquisition of the property where the two wells are to be located, thereby confirming, implementing and demonstrating the Applicant's intent and actions to initiate and appropriate these water rights for the beneficial uses as set forth herein.

H. Amount of Exchange. The amount of the New Exchange is the same amount as the Existing Exchange being for 0.5 cfs with an annual volume of 12 acre feet, all conditional.

**VII. Amendment to Plan for Augmentation.**

A. Amendment to Existing Augmentation Plan. The Applicants seek to amendment and supplement the Existing Augmentation Plan under the Original decree to add the HVE Wells as additional augmented structures using the same replacement sources as the Original Decree to replace the out-of-priority depletions from the HVE Wells.

B. Structures to be Augmented. The augmented structures to be added to the Existing Augmentin Plan are the HVE Wells as described herein.

C. Water Rights to be Used for Augmentation. The water rights to be used to used for augmentation of stream depletions from the HVE Wells are the same water rights as now included in the Existing Augmentation Plan for the Willis Spring No. 1, and are described as follows ("Replacement Sources"):

1. Applicant's HVE Coler System Rights as previously described, either directly by releasing the water to the Cucharas River at the Coler Reservoir System Cucharas Delivery Flume, by exchange to the point of depletion of the HVE Wells, and also by subsequent release of such water after storage in the HVE Lagoon.
2. Applicant's CPD Interest in Phases II or III under the 82CW132 Decree, to be used either directly as augmentation or by releasing such stream credits for augmentation after storage in the TURDS Pond.
3. Any additional water rights decreed for augmentation or replacement use and added to this Plan, pursuant to the terms and conditions set forth at paragraph 26.5 of the Original Decree.
4. Statement of Plan for Augmentation. The HVE Wells to be augmented will in the shallow stream bed alluvium and located within approximately 35 feet from Wahatoya Creek and directly in the immediate saturated alluvium of the creek. Groundwater modeling by Applicant's engineer indicates that after continuous pumping at a constant rate for 15 days and subsequent curtailment of pumping, that at least 95 percent of the volume of water pumped has occurred as a depletion to the stream within 24 hours of any necessary curtailment. The HVE Wells stream depletions can therefore be considered as tantamount to direct depletions to the stream for purposes of the diversion of the HVE Coler System Rights by exchange and the diversion of the Applicant's CPD Interest by alternate point of diversion. The point of the HVE Well No. 1 depletion to Wahatoya Creek is 110 feet upstream of Willis Spring No. 1 and the point of depletion of the HVE Well No. 2 is approximately 220 feet upstream of Willis Spring No. 1. The depletion point of the HVE Well No.1 at Wahatoya Creek is in the SE ¼ of the NE ¼ of Section 22, Township 29 South, Range 68 West, 6<sup>th</sup> P. M. from a point 285 feet from the east line of said section and 2,430 feet from the north line of said section (GPS: NAD 83 13S 501726, 4151566). The depletion point of the HVE Well No. 2 at Wahatoya Creek is in the SE ¼ of the NE ¼ of Section 22, Township 29 South, Range

68 West, 6<sup>th</sup> P. M. from a point 195 feet from the east line of said section and 2,280 feet from the north line of said section (GPS: NAD 83 13S 501755, 4151612). D. As may be required by the Division Engineer's Office, any HVE Wells depletions not occurring directly within 24 hours of curtailment will be replaced as needed to prevent injury by use of the augmenting water rights described above. The use of the HVE Wells will not change the types of use, return flow patterns, and the HVE water demands of 36.75 annual acre feet and its total allowed depletions of 12.81 annual acre feet as detailed in the Original Decree. HVE will continue compliance with the existing terms and conditions of the existing Augmentation Plan as amended and supplemented by any decree to be entered in this case. **VIII. Names and Addresses of Owners of Land Upon Which Structures are Located.** The HVE Wells are located upon property and water used is owned by the Applicant. The structures of the storage and release of the HVE Coler System Water Rights are located upon lands owned by Colorado Parks and Wildlife (Lathrop State Park) whose address is 6060 Broadway, Denver, CO. 80216. The headgate of the Lake Meriam Ditch (County Parcel #336771) is located upon property owned by Jolene L. Noga whose address is 23191 Song Bird Hills Way, Parker, CO 80138. The Coler Delivery Flume is located on property owned by Thomas and Linda McPeak whose address is 120 Pafford Road, Lexington, TN, 38351. The structures for the HVE CPD Interest (County Parcel #32470) are located upon lands owned by Sandra I. Borthick whose address is P.O. Box 123, La Veta, CO 81055.

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**CASE NO. 2021CW3085; CITY OF LAMAR, Colorado, c/o City Administrator, 102 E. Parmenter Street, Lamar, Colorado 81052** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David M. Shohet, #36675, Emilie B. Polley, #51296, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Suite 250, Colorado Springs, CO 80921, Phone Number: (719) 471-1212)

Amended Application for Change of Water Rights Plan for Augmentation and Appropriative Right of Exchange.

**PROWERS AND BENT COUNTIES**

**II. Summary of Application.** The City of Lamar ("Lamar") is a home rule municipality that is the county seat of Prowers County, Colorado. Lamar is within the boundaries of the Southeastern District. Lamar currently provides water and sewer services to a population of about 7,800 people. Lamar's water and wastewater service areas are both within and outside its municipal boundaries. Lamar also provides non-potable water supplies for irrigation of a golf course, ball fields, cemeteries and street sweeping. Lamar obtains its water supplies from forty-three wells. Thirty-four of these wells are completed in the Clay Creek alluvium ("Clay Creek Well Field") and are currently the sole source of Lamar's potable water supply. The remaining wells are all completed to the Arkansas River Alluvium or to the Cheyenne/Dakota Aquifer and primarily provide water for the irrigation of Lamar's cemeteries, parks, golf course, and ball fields. In this Application, Lamar seeks to change 300 shares in the Lamar Canal and Irrigation Company ("Lamar Canal Company") for its municipal uses including recharge of the Clay Creek alluvium and for direct irrigation uses. Lamar also seeks to change its Lamar Canal shares for augmentation and replacement uses, including augmentation and replacement of stream depletions caused by Lamar's pre-1986 wells under the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground water in the Arkansas River Basin (the "Use Rules"), decreed in Case No. 95CW211, or any future rule or administrative

plans. Lamar also seeks to add its Lamar Canal shares as a source of replacement caused by Lamar's post-1985 wells not eligible for rule plan inclusion under the Use Rules and other structures within Lamar to the augmentation plan decreed in Lamar's Case No. 05CW107-A. The decree entered in Case No. 05CW107-A is attached to application as **Exhibit A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Lamar also seeks a new augmentation plan for structures not part of any decreed augmentation plan. Finally, Lamar seeks new appropriative rights of exchange of the 300 Lamar Canal shares to the headgate of the Fort Bent Canal and John Martin Reservoir. No exchanges are requested above John Martin Reservoir. **III. Change of Water Rights.** A. Lamar seeks to change the use of its 300 shares of the 26,127 shares outstanding of the capital stock of the Lamar Canal Company ("Lamar's Lamar Canal Water Rights"). Lamar's Lamar Canal Water Rights historically were used for agricultural irrigation purposes on the property known as the Lamar Industrial Park described as part of the S1/2 SW1/4 Section 29 and part of N1/2 NW1/4 Section 32, Township 22 South Range 46 West of the 6th P.M., and as generally depicted on **Exhibit B**. After construction of the Lamar Industrial Park, Lamar leased the 300 shares of the Lamar's Lamar Canal Water Rights to irrigators under the Lamar Canal, which farms are described below and are generally depicted on **Exhibit C** (all locations are relative to the 6<sup>th</sup> P.M. in Prowers County, Colorado): 1. Spitz Farm: Part of the SW1/4 Section 33, part of the S1/2 Section 34, and the N1/2 of the S1/2 Section 35, Township 22 South Range 46 West. 2. Duvall Farm: Part of the SE1/4 Section 34 and part of Section 35 Township 22 South Range 45 West of the 6th P.M. and part of the N1/2 of the NE1/4 Section 3 Township 23 South Range 45 West. 3. DJC Farm: Part of the E1/2 Section 36, Township 22 South Range 45 West. 4. Reese Farm: Part of the S1/2 SW1/4 Section 36, Township 22 South Range 45 West of the 6th P.M., the NW1/4, SW1/4 and N1/2 SE1/4 Section 1, Township 23 South Range 45 West of the 6th P.M., and part of Section 6, Township 23 South Range 44 West. 5. Borderland Enterprises Farm: Part of the N1/2 NE1/4 Section 6, part of the N1/2 Section 5, and the NW1/4 Section 4, Township 23 South Range 44 West. 6. Tempel/Spitzer Farm: Parts of Sections 15 and 22, Township 23 South Range 44 West. B. Lamar seeks to quantify the historical consumptive use of Lamar's Lamar Canal Water Rights used on the Lamar Industrial Park and the leased farms, and will determine the amount, timing, and location of return flows resulting from the historical use of those water rights. Historical diversions of the Lamar Canal Company water rights are shown on **Exhibit D**. Based on recorded diversion records from 1950 through 2016, the total annual average in priority river headgate diversions of the Lamar Canal Water Rights were 37,043 acre-feet for the months of April through October, and 3,816 acre-feet for the months of November through March. These diversions include water available to the Lamar Canal Water Rights under the Lamar Canal's direct flow water rights, John Martin Reservoir conservation pool water that was diverted by the Lamar Canal Company and Article II storage account water which was diverted by the Lamar Canal Company. C. Lamar's Lamar Canal Water Rights are described as follows: 1. Appropriation date, priority, and amount of the Lamar Canal Company's decreed water rights: (i) November 30, 1875, Priority No. 3 for 15.75 cfs. (ii) November 4, 1886, Priority No. 6½ for 72.09 cfs. (iii) April 16, 1887, Priority No. 7½ for 13.64 cfs. (iv) July 16, 1890, Priority No. 13 for 184.27 cfs. 2. Original decree: The Lamar Canal Company water rights were decreed in the Adjudication of Priorities to the Use of Water for Irrigation in District Number 67, dated

July 1, 1895, in the Bent County District Court (“District 67 General Adjudication”). 3. Decreed point of diversion: By decree of the Bent County District Court dated November 9, 1899, Priority Nos. 3, 6½, 7½, and 13 were decreed for diversion at the headgate of the Home Ranch ditch or the main canal, located on the south bank of the Arkansas river, in the NE ¼ of the SE ¼ of Section 29, of Township 22 South, Range 46 West of the 6th P.M., in Prowers County, Colorado or through its headgate known as the AR Black’s Lamar ditch, or Feeder No. 1, located on the south bank of the Arkansas River in the NE ¼ of the SW ¼ of Section 25, Township 22 South, Range 47 West of the 6th P.M., in Prowers County, Colorado or into both the said headgates. By this same decree, Priority No. 13 was also decreed for diversion at the headgate of Feeder No. 2 or the Lamar, Granada and State Line Land and Irrigating Company’s ditch, located on the south bank of the Arkansas River, on lot 3, of the NE ¼ of Section 33, Township 22 South, Range 47 West of the 6th P.M., in Prowers County, Colorado. The Map and Statement for the Lamar Land and Canal Company dated July 16, 1890, locates the Feeder No. 2 in the NW ¼ of Section 33. Moreover, several recent applications and decrees involving Lamar Canal shares identify Feeder No. 2 in the NW ¼ of Section 33. See, e.g., Application dated December 29, 2015, and Findings of Fact, Conclusions of Law, and Decree of the Water Court, dated February 25, 2019, Case No. 15CW3067, District Court, Water Division 2. The decree in Case No. W-1836, entered by the District Court in and for Water Division No. 2 on June 21, 1977, confirmed an alternate point of diversion for the Lamar Canal at a point where the pipeline from the steam-electric generating plant of the City of Lamar, Colorado, discharges water from said plant into the Lamar Canal, which point is located on the South bank of said Canal whence the Northwest corner of Section 31, Township 22 South, Range 46 West of the 6<sup>th</sup> P.M., bears North 10°44'26" East, 1,342.6 feet, subject to a maximum rate of diversion at said alternate point of 37.8 c.f.s., and subject to the condition that all water diverted at said alternate point be charged to the water rights of the Lamar Canal Company.4. Source: The Arkansas River and groundwater tributary to the Arkansas River. 5. Decreed use: Irrigation. 6. Pro-rata interest in the Lamar Canal Company water rights to be changed by this Application: Lamar’s Lamar Canal Water Rights represent a pro-rata interest in the Lamar Canal Company water rights as follows: (i) Priority No. 3: 0.18 cfs of the 15.75 cfs. (ii) Priority No. 6½: 0.83 cfs of the 72.09 cfs. (iii) Priority No. 7½: 0.16 cfs of the 13.64 cfs. (iv) Priority No. 13: 2.12 cfs of the 184.27 cfs. D. Description of Proposed Changes: 1. New use: In addition to their currently decreed purpose of agricultural irrigation, Lamar seeks to change Lamar’s Lamar Canal Water Rights for direct flow and storage for Lamar’s municipal uses including, without limitation, domestic and household purposes, commercial, industrial, irrigation, generation of electric power and power generally, recreation, fish and wildlife preservation and propagation, agricultural, livestock water, aqua culture, augmentation of evaporation, wetlands propagation, fire protection, groundwater recharge, augmentation, and replacement purposes. These new uses include use under plans approved under the Use Rules and any plans allowed under the Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin decreed in Case No. 09CW110, and for the replacement of historical return flows of Lamar’s Lamar Canal Water Rights, and Lamar’s Fort Bent water rights changed in Case No. 05CW107-A. Such direct uses may occur by a pump and pipeline or other diversion methods to be constructed on the Lamar Canal for direct



delivery of water to Lamar Canal or the Fort Bent Canal. Lamar further seeks to use the changed Lamar's Lamar Canal Water Rights for replacement and augmentation purposes of those structures decreed in Case No. 13CW3060, District Court, Water Division 2.

2. New places of use: Lamar seeks to change Lamar's Lamar Canal Water Rights in addition to their continuing use for irrigation purposes in their decreed and historical places of use to be used in Lamar's existing and future service areas and boundaries within Prowers County whether inside or outside the city limits of the City of Lamar and Lamar's Recharge Facilities, as defined below, and for augmentation uses in Water District No. 67 in replacement plans and substitute supply plans, all located downstream from John Martin Reservoir. Lamar's service area generally located in parts of Sections 29, 30, 31, 32, 33, Township 22 South, Range 46 West; Sections 4, 5, 6, 7, 8, 16, 17, 18, 19, 20, Township 23 South, Range 46 West; Sections 31, 32, 33, 34, 35, 36 Township 22 South Range 47 West; and Sections 1, 2, 3, 4, 5, 6, 12 Township 23 South, Range 47 West, all of the 6th P.M. Lamar's Recharge Facilities are generally located in parts of Sections 10, 15, and 22, Township 23 South, Range 46 West. Lamar's service area and Recharge Facilities are generally shown in **Exhibit E**. Lamar further seeks to change Lamar's Lamar Canal Water Rights above such that they may be used for the New Uses both directly and after storage in John Martin Reservoir and for diversion at the headgate of the Fort Bent Ditch after release from John Martin Reservoir or by exchange.

3. Historical Consumptive use: Lamar will continue to divert Lamar's Lamar Canal Water Rights at the headgate of the Lamar Canal. After return flow obligations are met, Lamar will deliver the historical consumptive use of Lamar's Lamar Canal Water Rights to the Arkansas River through a measurement device on the Lamar Canal for Lamar's uses or for exchange. Alternatively, Lamar may deliver the historical consumptive use of Lamar's Lamar Canal Water Rights directly to Lamar's service area or to the Fort Bent Ditch via a new pump, pipeline or lateral on the Lamar Canal.

4. Replacement of historical return flows: Lamar will replace to the Arkansas River above the calling water right senior to the date of this Application the historical return flows attributable to Lamar's Lamar Canal Water Rights ("Historical Return Flows"). Historical Return Flows may be replaced by turning water back to the Arkansas River at an augmentation station already constructed or to be constructed on the Lamar Canal. Lamar may also utilize Lamar's recharge accretions, Lamar's Fort Bent shares, and sewered and non-sewered return flows all quantified in Case No. 05CW107-A, as sources to replace Historical Return Flows. Lamar will not utilize Project Water or Project Water return flows to replace Historical Return Flows. These sources are described in detail in the Plan for Augmentation section below.

**IV. Plan for Augmentation.** A. Summary of Plan for Augmentation. In Case No. 05CW107-A, Lamar obtained a plan for augmentation for the depletions caused by Lamar's post-1985 wells and structures. Lamar seeks to add Lamar's Lamar Canal Water Rights as a decreed source of augmentation for Lamar's post-1985 wells and structures augmented under the decree entered in Case No. 05CW107-A. Lamar also seeks to add new structures not part of Case No. 05CW107-A or any other previous augmentation plan utilizing Lamar's Lamar Canal Water Rights as well as other decreed replacement sources.

B. Structures to be Augmented (all locations are referenced from the 6<sup>th</sup> P.M. in Prowers County, Colorado): 1. Harold Parker Well. Harold Parker Well is located in the NW 1/4 of the NW 1/4, Section 31, Township 22 South, Range 46W, 1065 feet from North section line and 1080 feet from West section line, permitted under Well Permit No. 15270-

R, for 480 g.p.m. for irrigation purposes. The source of water for the Harold Parker Well is the Arkansas River Alluvium. 2. North Side Park Well. North Side Park Well is located in the NW ¼ of the SE ¼ Section 31, Township 22 South, Range 46W, 2600 feet from the South section line and 2050 feet from the East section line, permitted under Well Permit No. 47754-F, for 75 g.p.m. for irrigation purposes. The source of water for the North Side Park Well is the Arkansas River Alluvium. 3. McCorkle Field Well. McCorkle Field Well is located in the SW ¼ of the SW ¼, Section 31, Township 22 South, Range 46W, 220 feet from the South section line and 240 feet from the West section line, permitted under Well Permit No. 47755-F, for 50 g.p.m. for irrigation purposes. The source of water for the McCorkle Field Well is the Arkansas River Alluvium. 4. Riverside Cemetery North Well. Riverside Cemetery North Well is located in the SW ¼ of the NW ¼, Section 32, Township 22 South, Range 46W, 2245 feet from the North section line and 1185 feet from the West section line. The Riverside Cemetery North Well is currently unregistered and is used for irrigation purposes. The source of water for the Riverside Cemetery North Well is the Arkansas River Alluvium. 5. Riverside Cemetery South Well. Riverside Cemetery South Well is located in the SW ¼ of the NW ¼, Section 32, Township 22 South, Range 46W, 2260 feet from the North section line and 1190 feet from the West section line, which well is currently unregistered, for 376 g.p.m. for irrigation purposes. The source of water for the Riverside Cemetery South Well is the Arkansas River Alluvium. 6. Shop Well. Shop Well is located in the NE ¼ of the SE ¼, Section 31, Township 22 South, Range 46W, 2100 feet from the South section line and 850 feet from the East section line, permitted under Well Permit No. 61987-F, for 300 g.p.m. for cleaning of city vehicles and equipment and for street sweeping. The source of water for the Shop Well is the Arkansas River Alluvium. 7. Well No. 31 Backup. Well No. 31 Backup is located in the NW ¼ of the NW ¼, Section 20, Township 23 South, Range 46W, 325 feet from the North section line and 139 feet from the West from said section line, permitted under Well Permit No. 65748-F, for 35 g.p.m. for emergency municipal uses. The source of water for Well No. 31 Backup is the Cheyenne aquifer, tributary to North Butte Creek tributary to Two Buttes Creek, tributary to the Arkansas River. 8. Well No. 47. Well No. 47 is located in the SE ¼ of the SE ¼ Section 10, Township 23 South, Range 46W, 600 feet from the South section line and 800 feet from the East section line, permitted under Well Permit No. 66423-F, for 250 g.p.m. for municipal purposes. The source of water for the Well No. 47 is the Clay Creek Alluvium, tributary to the Arkansas River. 9. Floating Pump. Floating Pump is located in the SW ¼ of the NE ¼, Section 15, Township 23 South, Range 46W, 1960 feet from the North section line and 2635 feet from the East section line used for irrigation purposes. The source of water for the Floating Pump is the recharge facility in Clay Creek from water supplied by Fort Bent Canal. 10. Ball Fields Pump. Ball Fields Pump is located in the SW ¼ of the SE ¼, Section 6, Township 23 South, Range 46W, 1250 feet from the South section line and 2965 feet from the East section line for irrigation purposes. The source of water for the Ball Fields Pump is the recharge facility in Clay Creek from water supplied by the Fort Bent Canal. 11. Willow Creek Pond. Willow Creek Pond is an on-channel pond on Willow Creek, tributary to Clay Creek, tributary to the Arkansas River, and is located in the SW¼ of the SW¼ of Section 17, Township 23 South Range 47 West. The centroid of the Pond is approximately 430 feet from West line, 800 feet from South line of said Section 17, and used for wildlife, aesthetics, and recreation. The source of water for Willow Creek Pond

is Willow Creek, a tributary of the Arkansas River. Maps showing the locations of the structures to be augmented are attached as **Exhibits E and F**. Lamar further seeks the ability to add storage structures it becomes aware of within its water service territory as it now exists or may change in the future to this augmentation plan upon application to the Division Engineer with notice to any party entering an appearance in this matter. A map of Lamar's existing water service territory is attached as **Exhibit E. C. Water and Water Rights to be Used for Augmentation**: Depletions from out of priority diversions from the above referenced structures will be replaced with the following sources: 1. **Lamar Canal Shares**: Lamar's Lamar Canal Water Rights to be changed in this Application as described above. Replacement water associated with Lamar's Lamar Canal Water Rights shares will be returned to the Arkansas River by either an augmentation station located on the Lamar Canal or by returning water to the Arkansas River at its confluence with Clay Creek as a result of placement of water into Lamar's recharge facility located in portions of Sections 10, 15, 22, Township 23 South, Range 46 West, 6th P.M. The timing and quantification of water placed into Lamar's recharge facility was determined in Case No. 05CW107-A. 2. **Fort Bent Shares**: 2,813.6 shares of Fort Bent Ditch Company ("Ft. Bent") owned by Lamar including the associated Ft. Bent Article II storage account water stored in John Martin Reservoir. Of the 2,813.6 shares in the Ft. Bent to be used for augmentation hereunder, 923 of the shares have been changed for augmentation uses in Case No. 02CW181, District Court, Water Division 2, ("LAWMA Decree"). The remaining shares including the 923 shares have been changed to include recharge and replacement uses under Case No. 05CW107-A. Lamar will use all shares to augment depletions pursuant to the terms and conditions entered in the LAWMA Decree and Case No. 05CW107-A. The Fort Bent water rights are decreed as follows: a. **Appropriation Dates, Priority Numbers and Amounts**: i. April 1, 1886, Priority No. 6 for 27.77 c.f.s. ii. March 10, 1889, Priority No. 10 for 32.77 c.f.s. iii. September 11, 1889, Priority No. 12 for 11.7 c.f.s. iv. August 12, 1890, Priority No. 14 for 26.27 c.f.s. v. January 1, 1893, Priority No. 1918-2 for 50 c.f.s. vi. December 31, 1900, Priority No. 1918-9 for 80 c.f.s. b. **Original Decree for Priority Nos. 6, 10, 12 and 14**: i. **Case No.**: Unnumbered adjudication titled "In the matter of the Adjudication of Priorities to the use of Water for Irrigation in District Number 67." ii. **Dated entered**: July 1, 1895. iii. **Court**: Bent County District Court. c. **Original Decree for Priority Nos. 1918-2 and 1918-9**: i. **Case No.**: Unnumbered adjudication titled "In the Matter of the Adjudication of Water Rights and priorities to the use of Water in Water District Number Sixty-seven, in the State of Colorado." ii. **Date entered**: October 14, 1918. iii. **Court**: Bent County District Court. d. **Decreed Point of Diversion**: The decreed headgate location is at "a point in the South bank of the Arkansas River, which point is located as follows: at a point whence it is South 48°17' East 438 feet to the Southwest corner of Lot Four (4), in Section One (1), Township Twenty-three (23) South, Range Forty-nine (49) West of the sixth Principal Meridian, in Bent County, Colorado." e. **Source**: The Arkansas River. Replacement water associated with the Fort Bent shares will be returned to the Arkansas River by either an augmentation station located on the Fort Bent Ditch or by returning water to the Arkansas River at its confluence with Clay Creek as a result of placement of water into Lamar's recharge facility located in portions of Sections 10, 15, 22, Township 23 South, Range 46 West, 6th P.M. 3. **Fryingpan-Arkansas Project water**. Lamar is within the boundaries of the Southeastern Colorado Water Conservancy District ("Southeastern District") and is therefore entitled to

receive an annual allocation of water from the Fryingpan-Arkansas project ("Project Water"). Lamar claims the right to use, reuse, and successively use to extinction the Project Water for augmentation hereunder. The project water rights are described as follows: (a) West Slope Decrees: The Fryingpan-Arkansas project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County. The principal 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 5) dated November 27, 1979; and were supplemented by the Decree in Case No. 83CW352 (District Court, Water division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, and applied to beneficial use within Southeastern's District boundaries. Because the water is imported from another river basin, it is fully consumable in Water Division 2. (b) East Slope Decrees: The Fryingpan-Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court, Chaffee County) dated July 9, 1969; and Civil Action No. B-42135 (District Court, Pueblo County) dated June 25, 1962; and were modified and supplemented by the Decree in Case No. 80CW6 (District Court, Water Division 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for reuse and exchange for beneficial use within Southeastern's District boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir. The Southeastern District allocates Project Water annually based on its principles, policies, rules and regulations. Any and all use of Project Water therefrom will be pursuant to and subject to the above-referenced decrees for the Fryingpan-Arkansas Project, and to all lawful rules, regulations, policies, and contract obligations of the Southeastern District. Any decree entered in this case will not give Lamar any rights to use Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocations of Project Water therefrom, but will not alter the existing rights, including allocation rights, held by Lamar.

4. Wastewater treatment system. Lamar operates a wastewater treatment facility for disposal of water used for in-building purposes collected by a central wastewater collection system. The portion of the fully consumable treated wastewater delivered to the three lagoons that is not evaporated from the water surface or consumed by phreatophytes percolates into the Arkansas River alluvium and the City claims these treated wastewater return flows for augmentation purposes. The City of Lamar's wastewater disposal lagoons are located in the SW1/4 of section 27 and the SE1/4 of section 28, Township 22 South, Range 46 West of the 6th P.M., Prowers County. Lamar's sewer return flows are to be calculated and decreed in Case No. 05CW107-A. It is anticipated that Lamar will construct a new wastewater treatment plant in the next several years near the current lagoon system. The new plant will discharge to the Arkansas River in Section 29 or in Section 28, all in Township 22 South, Range 46 West, of the 6<sup>th</sup> P.M. Lamar will seek confirmation of a new point of

discharge to quantify its sewer return flows in any decree. **Exhibit E** maps the location of discharge from the future new wastewater treatment plant to the Arkansas River. 5. Lawn and landscape irrigation return flows. Potable and non-potable water is used for irrigation of residential and commercial lawns and landscape and public parks, athletic fields, golf course, cemeteries, and open space. Lamar's irrigation return flows will be calculated as decreed in Case No. 05CW107-A. 6. Water stored in John Martin Reservoir. Under the decrees entered in 05CW107-A, 05CW107-B, and the decree to be entered in this case, Lamar anticipates storing fully consumable water in John Martin Reservoir. The center point of the dam of John Martin Reservoir is located in Section 8, Township 23 South, Range 49 West of the 6th P.M. approximately 3,600 feet west from the east section line and 1,400 feet south of the north section line of said Section 8. The reservoir inundates portions of Sections 5, 6, 7, 8, 17 and 18, Township 23 South, Range 49 West; Sections 29, 31, 32, 33, 34, 35, Township 22 South, Range 50 West; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20 and 21, Township 23 South, Range 50 West; Sections 25, 34, 35 and 36, Township 22 South, Range 51 West; and Sections 1, 2, 3, 4, 9 and 10, Township 23 South, Range 51 West all of the 6th P.M., State of Colorado and any intervening reaches in between. Lamar may utilize any fully consumable sources of water stored and released from John Martin reservoir for replacement purposes. D. Statement of Plan for Augmentation. The LAWMA Decree determined the timing and location of stream depletions caused by diversions from the Harold Parker Well, North Side Park Well, McCorkle Field Well, Riverside Cemetery North Well, Riverside Cemetery South Well, and the Shop Well, and these structures shall be augmented hereunder utilizing the same timing and location of stream depletions as decreed in the LAWMA Decree. The timing and location of stream depletions caused by diversions of the Well No. 31 Backup and Well No. 47 have been decreed in Case No. 08CW18. The timing and location of stream depletions caused by the above structures are determined by using the aquifer parameters and methodology as described in the attached **Exhibit G**. Lamar also seeks approval to cover depletions caused by the Willow Creek Pond. The total surface area of Willow Creek Pond is 0.13 acres. Lamar's water resource engineers have calculated that the annual net evaporation rate of the ponds is 4.12 annual acre feet per acre of surface area exposed. Accordingly, the Willow Creek Pond will cause 0.54 annual acre-feet of depletions to the Arkansas River. As the Willow Creek Pond is on-channel, its depletions are instantaneous to the Arkansas River at the confluence of Clay Creek.

**V. Appropriative Right of Exchange.** A. Water to Be Exchanged. Lamar seeks to exchange Lamar's Lamar Canal Water Rights to be changed under this Application. B. Exchange From Points. Lamar seeks to exchange Lamar's Lamar Canal Water Rights from the following points: 1. Confluence of Clay Creek and the Arkansas River. The confluence of the Arkansas River and Clay Creek located in the NE $\frac{1}{4}$  Section 36, Township 22 South, Range 46 West of the 6th P.M., Prowers County, Colorado. 2. Center Farm Augmentation Station. Located in the SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 31, Township 22 South, Range 45 West of the 6th P.M. in Prowers County, Colorado. 3. Sewered Return Flows accruing to the Arkansas River in Sections 27, 28, and 29, all in Township 22 South, Range 46 West, of the 6<sup>th</sup> P.M. 4. West Farm Augmentation Station, located in the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 29, Township 22 South, Range 46 West of the 6th P.M. in Prowers County, Colorado. C. Exchange to Points: 1. North Gateway Park Ponds. Lamar North Gateway Park Pond No. 1 is located In the NE $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 30, Township

22 South, Range 46 West of the 6th P.M., approximately 1,840 feet north of the South Section Line and 950 feet west of the East Section Line. The UTM coordinates for this pond are: Northing (UTMy) 4220130 and Easting (UTMx) 708972. (Zone 13). Lamar North Gateway Park Pond No. 2 is located in the SW 1/4 of Section 29, Township 22 South, Range 46 West of the 6th P.M., approximately 1,900 feet north of the South Section Line and 1,535 feet east of the West Section Line. The UTM coordinates for this pond are: Northing (UTMy) 4220145 and Easting 709670 (UTMx) (Zone 13). 2. Lamar Canal Headgate. The location of the Lamar Canal headgate is described above. 3. Fort Bent Ditch headgate. The location of the Fort Bent Ditch headgate is described above. 4. John Martin Reservoir. The location of John Martin Reservoir is described above. D. Uses. Consistent with the decreed uses of the source of substitute supply, Lamar will use the exchanged water for augmentation of evaporative depletions from the North Gateway Park Ponds and for all of Lamar's municipal uses, including recharge and augmentation and replacement purposes. E. Appropriation Date. December 29, 2021. F. Amount of Exchange. The maximum exchange rate shall be 6 c.f.s., conditional. **VI. Name And Address of Owners Of Land On Which Structures Will Be Located.** A. John Martin Reservoir. United States Army Corps of Engineers, Reservoir Manager, 29955 County Road 25.75, Hasty, Colorado 81044. B. Fort Bent. Fort Bent Ditch Company, whose address is 30755 County Road HH, Lamar, CO 81052. C. Lamar Canal. Lamar Canal & Irrigation Company, whose address is PO Box 287, Lamar, Colorado 81052. D. Center Farm Augmentation Station. Rene & Salud Gonzalez, Brenda Estrada, and Avila Rosabel, whose address is PO Box 1212, Lamar, Colorado 81052; and, Kevin & Lorie Kaczmarek, whose address is PO Box 1212, Lamar, Colorado 81052. E. West Farm Augmentation Station. GP Aggregates LLC, whose address is 7991 Shaffer Parkway, Suite 200, Littleton Colorado 80127. F. Sewer Plant. The current lagoons are located on land owned by Lamar. The future wastewater treatment facility may be located on lands owned by GP Aggregates LLC, whose address is 7991 Shaffer Parkway, Suite 200, Littleton Colorado 80127. G. Wells and Recharge Facilities. Walker Land & Cattle Corporation, whose address is PO Box 64363, Colorado Springs, Colorado 80962. **VII. Additional Terms and Conditions.** A. Lamar shall install and maintain such water measuring devices as deemed essential by the State Engineer or Division Engineer and the same shall be installed and operated in accordance with the instruction of that office. Lamar will provide appropriate monthly accountings to the Division Engineer demonstrating compliance with this plan for augmentation. B. Provided that Lamar replaces historical return flows associated with Lamar's Lamar Canal Water Rights, Lamar will fully consume and use to extinction the consumptive use stream credits attributable to Lamar's Lamar Canal Water Rights. Such reuse and successive use becomes available as recharge accretions from operation of the Recharge Facilities or as sewered and non-sewered return flow credits as calculated and decreed in Case No. 05CW107-A. Non-sewered return flows include, without limitation, lawn irrigation return flows, and individual non-evaporative type wastewater disposal systems, which were also calculated and decreed in Case No. 05CW107-A. Such reuse and successive use includes use in plans under the Use Rules and for augmentation and replacement uses as decreed herein. Lamar may also use Lamar's Fort Bent Shares for maintenance of any historical return flow obligations. C. The operation of the exchange will be limited to the timing of the availability of the water rights to be exchanged within the exchange

reach. The exchanges may only be operated to the extent that other vested water rights senior to this exchange within the exchange reaches are not deprived of water to which they would have been entitled in the absence of such exchanges. The exchanges shall not exceed the rate and volume of Lamar's available stream credits, including accretions to the Arkansas River pursuant to the operation of the recharge plan decreed in Case No. 05CW107-A. The operation of the exchange will be limited in time to periods when the water rights to be exchanged are available at the exchange-from point, and further limited to the rate and volume of the source of substitute supply legally and physically available for Lamar's use at the exchange-from point. The exchanges may be operated only when there is a continuous live stream maintained between the points of the initiation of the exchanges and the upstream terminus of the exchange. Prior to the operation of this exchange, Lamar shall coordinate with and receive the approval of the water commissioner or Division Engineer. The exchange will occur contemporaneous with exchange potential. Exchange potential shall be determined by the water commissioner or Division Engineer in a timely manner as part of Lamar's required coordination with the water commissioner or Division Engineer. D. The historical consumptive use findings decreed in the LAWMA Decree and 05CW107-A are binding as a matter of *res judicata*. *Williams v. Midway Ranches Property Owners Association, Inc.*, 938 P.2d 515 (Colo. 1997). There have been no material changed circumstances since the entry of the decrees in Case Nos. 02CW181 and 05CW107-A to modify the historical consumptive use determinations and they continue to hold true to the date of the filing of this Application. Lamar's use of its Fort Bent shares to augment depletions hereunder shall be pursuant to the terms and conditions of the decrees entered in the LAWMA Decree and 05CW107-A. Lamar does not seek to alter any other element, provision, finding, obligation, term, or condition of the decrees entered in the LAWMA Decree and 05CW107-A. E. Lamar's use of sewered and non-sewered return flows and recharge accretions for augmentation purposes under this Decree shall be in accordance with the terms and conditions decreed in Case No. 05CW107-A. F. Lamar requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater and replacement of lagged depletions under the proposed augmentation plan. G. Pursuant to C.R.S. § 37-92-305(8), Lamar may seek terms and conditions to add additional and alternative sources for replacement in this plan for augmentation after entry of a decree in this case if such sources are decreed or have been administratively approved for such use. Accordingly, Lamar may seek a term and condition requesting the Water Court to retain perpetual jurisdiction over the plan for augmentation to allow Lamar to utilize other fully consumable water rights for augmentation purposes under the requested plan for augmentation. H. The Division Engineer shall assess appropriate transit losses, if any.

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**CASE NO. 2021CW3086; Town of Poncha Springs c/o Brian Berger, Town Administrator, P.O. Box 190, Poncha Springs, CO 81242** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: David M. Shohet, #36675, Emilie B. Polley, #51296, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Suite 250, Colorado Springs, CO 80921, Phone Number: (719) 471-1212)  
Amended Application for Change of Water Right, Plan for Augmentation and Appropriate Rights of Exchange

## **CHAFFEE, SAGUACHE, AND PUEBLO COUNTIES**

**II. Summary of Application.** The Town of Poncha Springs (“Town”) owns the entirety of the Poncha Springs Acequia water right. All historically irrigated lands under the Poncha Springs Acequia have either been annexed or will be annexed in the Town’s limits in the near future. The Town seeks to change the historical consumptive use of a portion of the Poncha Springs Acequia water right from irrigation use to municipal and augmentation uses for the Town’s existing and future service areas and to supplement the Town’s existing augmentation plans and exchanges decreed in Case Nos. 82CW104, 99CW183, & 07CW111 District Court, Water Division 2, for the replacement of the Town’s depletions to the South Arkansas River. **III. Change of Water Right.** A. The Town seeks to change the following water right: 1. Name of Structure: The Poncha Springs Acequia. a. Appropriation Dates: March 23, 1881. b. Adjudication Dates: June 19, 1890, in Case No. CA 1127 by the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. c. Decreed Rate and Use: 5.82 c.f.s., for irrigation. d. Source: The South Arkansas River, tributary to the Arkansas River. e. Decreed Point of Diversion: The north bank of South Arkansas River, 335 feet nearly due N.E. of the center of Section 9, Township 49 North, Range 8 East of the N.M.P.M., Chaffee County, Colorado. The location of the headgate is shown on the map attached to application as **Exhibit A.** (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) B. Description of Proposed Changes: The Town seeks to change the use of 2.75 c.f.s. of the Poncha Springs Acequia water right with the appropriation date of March 23, 1881 (“Subject Water Right”) historically used to irrigate lands in the South ½ of the Northeast ¼ of Section 10, and the North ½ of Section 11, all in Township 49 North, Range 8 East of the N.M.P.M., Chaffee County, Colorado. The historically irrigated lands are depicted in the Exhibit A map. The Town seeks to quantify the historical consumptive use of Subject Water Right used on the above identified irrigated acreage, and will determine the amount, timing, and location of return flows resulting from the historical use of Subject Water Right. Historical diversions of the Subject Water Right are shown on Exhibit B. C. Change in Type of Use: The Town seeks to change the Subject Water Right for direct flow and storage for the Town’s municipal uses including, without limitation, domestic and household purposes, commercial, industrial, irrigation, generation of electric power and power generally, fire protection, recreation, fish and wildlife preservation and propagation, agricultural, livestock water augmentation of evaporation, wetlands propagation, fire protection, groundwater recharge, augmentation, exchange and replacement purposes. The consumptive use component of the Subject Water Right is for reuse, successive use, and reuse to extinction for the above purposes. Storage may be in reservoirs on Town property, the Friend Ranch, and also in Boss Lake Reservoir, North Fork Reservoir, O’Haver Reservoir, or Pueblo Reservoir. Under this proposed change, the consumptive use from the Subject Water Right may also be changed for use as senior bypass water rights on the South Arkansas River under the Town’s existing augmentation and exchange decrees in Case Nos. 82CW104, 99CW183, and 07CW111. D. New places of use: The Subject Water Right is already decreed for use within the Town’s limits. Accordingly, no new place of use is requested for the direct application of the Subject Water Right. The Applicant,



however, requests that the Subject Water Right be changed from its decreed and historical place of use to be used as consumptive credit to the South Arkansas River and Arkansas River as augmentation and for bypass water, including placement into and releases from storage at O'Haver Reservoir, North Fork Reservoir, Boss Lake, and storage on the Friend Ranch and in Pueblo Reservoir. The Subject Water Right may be used for the benefit of the Town's service area whether within existing town boundaries, future annexation or extraterritorial areas served with water from the Town. The Town's service area is likely to change from time to time in the future. E. Historical Consumptive use. The Town will continue to divert the Subject Water Right at the headgate of the Poncha Springs Acequia. After return flow obligations are met, the Town will deliver the historical consumptive use of the Subject Water Right to the South Arkansas River through a measurement device/augmentation station to be constructed on the Poncha Springs Acequia. Alternatively, the Town may deliver the historical consumptive use component of the Subject Water Right directly to the Town's service area. The Town will use, divert and exchange the Subject Water Right, as changed, when water is physically available and legally in priority at the headgate of the Poncha Springs Acequia. F. Replacement of historical return flows: The Town will replace to the South Arkansas River and/or Arkansas River, above the calling water right senior to the date of this Application the historical return flows attributable to Subject Water Right ("Historical Return Flows"). Historical Return Flows may be replaced by turning water back to the South Arkansas River at an augmentation station to be constructed on the Poncha Springs Acequia at the time of diversion of the Subject Water Right, by fully consumable supplies of water controlled by the Town including, but not limited to, the Friend Ranch and the McPherson Ditch water rights, as well as the release of any fully consumable water from storage. At certain times, the Town may replace the Historical Return Flows by delivering water the Town has stored in Pueblo Reservoir to account holders in Pueblo Reservoir. **IV. Plan for Augmentation.** A. Summary of Existing Plans for Augmentation. The Town currently has a decreed plan for augmentation and exchange in Case No. 82CW104, District Court, Water Division 2, as supplemented by Case Nos. 99CW183 & 07CW111, District Court, Water Division 2 ("Existing Plans for Augmentation"). The Decrees entered in Case Nos. 82CW104, 99CW183, and 07CW111 are attached as Exhibits C, D and E. The Town's Existing Plans for Augmentation allow for the pumping from the Town's wells for the Town's physical water supply, which wells divert water from the alluvium of the South Arkansas River. Depletions to the South Arkansas River and Arkansas mainstem from groundwater diversions are then augmented. The existing augmentation sources are Frying-Pan Arkansas project water purchased from the Southeastern Colorado Water Conservancy District under the terms of Case No. 82CW104, the McPherson Ditch water right as changed in Case No. 99CW183, and the Friend Ranch water rights changed in Case No. 07CW111. The original plan for augmentation decreed in Case No. 82CW104 provides for the annual purchase of 45 acre feet of Frying-Pan Arkansas project water or such greater amount as the growth of the Town's water demands requires, and the exchange of part of that project water to storage in Boss Lake Reservoir, North Fork Reservoir and O'Haver Reservoir in the headwaters of the South Arkansas River. When there is a valid call from the South Fork of the Arkansas River during the irrigation season, releases from these upstream reservoirs are made under the plan as necessary to replace depletions from the Town's wells to the South Arkansas River and mainstem of

the Arkansas River. At times when there is not a valid call on the South Fork, releases of project water are made only to the mainstem of the Arkansas River. As the Town's domestic return flows are currently treated and returned to the Arkansas River through the Salida sewage treatment plant, the original plan recognizes that depletions to the South Arkansas River are therefore equal to the amount of water pumped minus return flows from irrigation. In order to prevent injury to the senior South Arkansas diverters during times of a call in the irrigation season, the Existing Plans for Augmentation require the replacement of these bypassed water rights to the South Arkansas River ("Bypass Water"). Under the terms of the Existing Plans for Augmentation, this Bypass Water protects all other diverters on the South Fork of the Arkansas River. This augmentation plan provides additional augmentation water for the Town's municipal depletions. B. Structures to be Augmented: The structures to be augmented are as follows: 1. Poncha Springs Well No. 1. Poncha Springs Well No. 1 is located in the SE1/4 SW1/4, Section 10, Township 49 North, Range 8 East, N.M.P.M., at a point 1,280 feet from the south line of said Section 10, and 1,332 feet from the west line of Section 10. Said well was permitted under No. 26588-FR and was decreed in Case Nos. 82CW206 and 88CW5, District Court, Water Division 2. This well is tributary to the South Arkansas River and is included in the Applicant's existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case Nos. 99CW183 and 07CW111. 2. Poncha Springs Well No. 2. Poncha Springs Well No. 2 is located in the SE1/4 SW1/4, Section 10, Township 49 North, Range 8 East, N.M.P.M., at a point 1,090 feet from the south line of said Section 10, and 1,328 feet from the west line of Section 10. Said well was permitted under No. 26589-F and was decreed in Case Nos. 82CW206 and 88CW5, District Court, Water Division 2. This well is tributary to the South Arkansas River and is included in the Applicant's existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case No. 99CW183 and 07CW111. 3. Poncha Springs Well No. 3. Poncha Springs Well No. 3 is located in the NE1/4 NE1/4, Section 10, Township 49 North, Range 8 East, N.M.P.M., at a point 100 feet from the north line of said Section 10, and 850 feet from the east line of Section 10. Said well was permitted under No. 15127-R-R. This well is tributary to the South Arkansas River and is augmented under the Applicant's existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case No. 99CW183 and 07CW111. 4. Poncha Springs Well No. 4. Poncha Springs Well No. 4 is located in the NW1/4 NE1/4, Section 10, Township 49 North, Range 8 East, N.M.P.M., at a point 1245 feet from the north line of said Section 10, and 1,428 feet from the east line of Section 10. Said well was permitted under No. 62784-F. This well is tributary to the South Arkansas River and is augmented under the Applicant's existing plan for augmentation and exchange in Case No. 82CW104 and its augmentation plan in Case No. 99CW183 and 07CW111. 5. Poncha Springs Well No. 5. Poncha Springs Well No. 5 is located in the NW1/4, NE 1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M., at a point 563 feet from the north line of said Section 7, and 1441 feet from the east line of Section 7. Said well has been permitted under Well Permit No. 66925-F. This well is tributary to the South Arkansas River and will be augmented under the Applicant's existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case No. 99CW183 and 07CW111. 6. Poncha Springs Well No. 8. Poncha Springs Well No. 8 is a well to be constructed within a park owned by the Town commonly known as Hoover Ranch Park.

Poncha Springs Well No. 8 will be located in the SE 1/4 NE 1/4, Section 9, Township 49 North, Range 8 East, N.M.P.M. Said well has not yet been permitted. This well will be tributary to the South Arkansas River and will be augmented under the Applicant's existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case No. 99CW183 and 07CW111. 7. Poncha Springs Well No. 9. Poncha Springs Well No. 9 will be located within a park to be constructed on land currently being developed and owned by Tailwind Group, LLC. Poncha Springs Well No. 9 will be located in the SW ¼ NW ¼ or the SE 1/4 NW 1/4, Section 11, Township 49 North, Range 8 East, N.M.P.M., Said well has not yet been permitted. This well will be tributary to the South Arkansas River and will be augmented under the Applicant's existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case No. 99CW183 and 07CW111. 8. Poncha Springs Well No. 10. Poncha Springs Well No. 10 is a well to be constructed on land currently owned by Jls2, LLC, and will be located along a main water line owned by the Town, in the NW 1/4 SW 1/4, Section 3, Township 49 North, Range 8 East, N.M.P.M., Said well has not yet been permitted. This well will be tributary to the South Arkansas River and will be augmented under the Applicant's existing plan for augmentation and exchange in Case No. 82CW104 and in its augmentation plan in Case No. 99CW183 and 07CW111. A map of the structures to be augmented is set forth in the attached Exhibit F. C. Water and Water Rights to be Used for Augmentation: The Town seeks to utilize the Subject Water Right to be changed in this Application as an augmentation source for all structures listed herein. In addition, the Town seeks to utilize the following water rights decreed in the Existing Plans for Augmentation to replace depletions associated with Poncha Springs Well Nos. 8, 9, & 10, identified above, with the following additional augmentation sources: 1. Project Water. The Town's annual allocation of Project Water and non-sewered return flows after the Town's use of Project Water, which are already available as augmentation sources to replace depletions associated with the Poncha Springs Well Nos. 8, 9, & 10 under the terms and conditions of Case No. 82CW104, are described as follows: a. West Slope Decrees: The Fryingpan Arkansas Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County. The principal 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; and were supplemented by the Decree in Case No. 83CW352 (District Court, Water Division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travel under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, and applied to beneficial use within Southeastern's District boundaries. Because the water is imported from another river basin, it is fully consumable in Water Division 2. b. East Slope Decrees: The Fryingpan Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court, Chaffee County) dated July 9, 1969; and Civil Action No. B 42135 (District Court, Pueblo County) dated June 25, 1962; and were modified and supplemented by the Decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. These

water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for reuse and exchange for beneficial use within Southeastern's District boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir. The Town is eligible to receive annual allocations of Project Water from the Southeastern District. The Town is also eligible, and has the first right of refusal, to purchase any return flows generated from its use of Project Water therefrom. The Southeastern District allocates Project Water annually based on its principles, policies, rules and regulations. Any and all use of Project Water and return flows will be pursuant to and subject to the above referenced decrees for the Fryingpan Arkansas Project, and to all lawful rules, regulations, policies, and contract obligations of the Southeastern District. Any decree entered in this case will not give Applicant any rights to use Fryingpan Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocations of Project Water or return flows therefrom, but will not alter the existing rights, including allocation rights, held by Applicant. Applicant will use Project Water and return flows therefrom only if, and when, and to the extent they have purchased Project Water after it is allocated to them by the Southeastern District.

2. McPherson Ditch Water Right. The McPherson Ditch water right was decreed on June 19, 1890, District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. The decreed point of diversion in the original decree for the McPherson Ditch water right is on the north bank of the South Arkansas River, a tributary to the Arkansas River, 400 feet due south of the quarter corner between Sections 9 and 10, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. The source of water for the McPherson Ditch water right is out of the South Arkansas River, a tributary of the Arkansas River, Chaffee County, Colorado. By Decree Changing Point of Diversion dated July 5, 1956, in Case No. 4502, Chaffee County District Court, State of Colorado, the point of diversion for the entire 1.0 c.f.s. of water decreed to the McPherson Ditch water right, was changed from the original decreed point of diversion, as set forth above, to the headgate of the Murray Ditch. The headgate of the Murray Ditch as fixed by decree dated February 1, 1902, Case No. 1735, in Chaffee County District Court, is described at a point located on the north bank of the South Arkansas River, a tributary to the Arkansas River, at a point whence the northeast corner of Section 10, Township 49 North, Range 8 East, of the N.M.P.M. bears north 39 degrees east, a distance of 5,200 feet in Chaffee County, Colorado. The Town, under Case No. 99CW183, changed the McPherson Ditch water right for dedication and use under the Town's existing plan for augmentation and exchange as previously decreed in Case No. 82CW104, District Court, Water Division 2, State of Colorado, for all municipal uses. The Court in Case No. 99CW183 found that the total consumptive use of the McPherson Ditch water right was 35.2 annual acre feet. The consumptive use from the McPherson Ditch water right was also changed for storage at O'Haver Reservoir for use under and in accordance under Case No. 82CW104. The Town has a storage contract with the Upper Arkansas Water Conservancy District for the use of up to 50 acre feet of storage in O'Haver Reservoir and other South Arkansas River reservoirs. The McPherson Ditch water right is already available as an augmentation

source to replace depletions associated with the Poncha Springs Well Nos. 8, 9, & 10 under the terms and conditions of Case No. 82CW104 and Case No. 99CW183. 3. Friend Ranch Pass Creek Water Rights. The Town's Friend Ranch Water Rights, which the Town changed for augmentation and all municipal uses under Case No. 07CW111 (collectively referred to as the "Friend Ranch Water Rights"). All use of the Friend Ranch Water Rights shall be in accordance with the terms and conditions set forth in the Decree entered in Case No. 07CW111. The Friend Ranch Water Rights are described as follows: a. Little Cochetopa Creek Water Rights. Town's interest in the Huntzicker Ditch, and the Hensie Ditch No. 1 (collectively referred to as the "Little Cochetopa Creek Water Rights"). The Little Cochetopa Creek Water Rights were decreed on June 19, 1890, in Case No. CA 1127 by the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. The source of water for the Little Cochetopa Creek Water Rights is Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. The decrees for the Little Cochetopa Creek Water Rights describe the locations of their respective headgates as follows: i. Huntzicker Ditch: About one-half mile from the junction of Cochetopa Creek with the South Arkansas River in Section 8, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is the NE1/4 SE1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M., at a point 2,500 feet from the south line of said Section 7, and 100 feet from the east line of Section 7. ii. Hensie Ditch No. 1: About 20 rods below the mouth of Pass Creek in Section 7, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is the SW1/4 SE1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M., at a point 90 feet from the south line of said Section 7, and 2,280 feet from the east line of Section 7. The appropriation dates and decreed amounts for Little Cochetopa Creek Water Rights are as follows:

Water Right Name	Adjudication Date	Appropriation Date	Local Priority No.	Full Water Right (c.f.s.)	Water Right Subject to change (c.f.s.)
Huntzicker Ditch	June 19, 1890	December 31, 1870	31	0.7	0.5
Hensie Ditch No. 1	June 19, 1890	December 31, 1873	49	0.3	0.3

The Little Cochetopa Creek Water Rights, were consolidated by Case No. W-294, District Court, Water Division 2, decreed conditionally on January 23, 1974, and decreed absolute on October 18, 1978. Case No. W-294 allows all of the water decreed to the Little Cochetopa Creek Water Rights to be combined and taken through the headgate of either the Hensie Ditch No. 1 or the Henry Ditch, which was located on the west bank of Cochetopa Creek, at a point from whence the South Quarter corner of Section 18, in Township 49 North, Range 8 East, N.M.P.M., in Chaffee County, Colorado, bears South 49 degrees and 10' East, 590 feet. ("Consolidated Decree"). b. Pass Creek Water Rights. Town's interest in the Boon Ditch No. 2, and Hensie Ditch No. 2 (collectively referred to

as the “Pass Creek Water Rights”). The original adjudication for the Pass Creek Water rights are as follows: i. The Pass Creek Water Rights were decreed on June 19, 1890 in Case No. CA1127 in the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. An additional decree was entered for the Boon Ditch No.2 on September 13, 1917, in the District Court of Chaffee County, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11, Case No. CA 2559. The decrees for the Pass Creek Water Rights describe the locations of their respective headgates as follows: ii. Boon Ditch No. 2: North Bank of Pass Creek, about 200 feet from the junction of Pass Creek with Cochetopa Creek, Chaffee County, Colorado. A more modern description of the actual location of the headgate is the NW1/4 NE1/4, Section 18, Township 49 North, Range 8 East, N.M.P.M., at a point 200 feet from the north line of said Section 18, and 2,450 feet from the east line of Section 18. iii. Hensie Ditch No. 2: About one-half mile from Pass Creek’s junction with Cochetopa, in Section 7, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is the SE1/4 NE1/4, Section 13, Township 49 North, Range 7 East, N.M.P.M., at a point 1,680 feet from the north line of said Section 13, and 90 feet from the east line of Section 13. The source of water for the Pass Creek Water Rights is Pass Creek, tributary to Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. The appropriation dates and decreed amounts for Pass Creek Water Rights are as follows:

Water Right Name	Adjudication Date	Appropriation Date	Local Priority No.	Full Water Right (c.f.s.)	Water Right Subject to change (c.f.s.)
Boon Ditch No. 2	June 19, 1890	Nov 30, 1871	33	1.4	All
Hensie Ditch No. 2	June 19, 1890	December 31, 1873	50	0.2	All

The water rights comprising the Pass Creek Water Rights, have also been consolidated by the Consolidated Decree. Case No. W-294 allows all of the water decreed to the Pass Creek Ditches to be combined and taken through the headgate of either the Hensie Ditch No. 2 or Velotta Ditch No. 1, which is located at a point on the north bank of Pass Creek, whence the East Quarter Corner of Section 13, Township 49 North, Range 7 East, of the N.M.P.M., bears South 74° 45' East, 1760 feet. c. Green Creek Water Right. Town’s interest in the Mundlein Ditch No. 2 water right (“Mundlein Ditch No. 2 Water Right”). The Mundlein Ditch No. 2 Water Right was originally adjudicated on June 19, 1890, in Case No. CA 1127, by the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. An additional decree for the Mundlein Ditch No. 2 was entered on July 9, 1969, by the District Court of Chaffee County, State of Colorado, In the Matter of Adjudication of Priorities of the Rights to the Use of Water for Irrigation and Non-Irrigation Uses in Water District 11, Case No. CA 5141. The original decree for the

Mundlein Ditch No. 2 Water Right describes the location of its headgate at a point on the East bank of Green Creek, whence the South Quarter Corner of Section 1, Township 49 North, Range 8 [sic] East of the N.M.P.M., bears South 67° 46' East, 3784 feet. The correct Range is 7 East. The source of water for the Mundlein Ditch No. 2 is Green Creek, tributary to the South Arkansas River, tributary to the Arkansas River. The appropriation dates and decreed amounts for Mundlein Ditch No. 2 Water Right are as follows:

Water Right Name	Adjudication Date	Appropriation Date	Local Priority No.	Full Water Right (c.f.s.)	Water Right Subject to change (c.f.s.)
Mundlein Ditch No. 2	June 19, 1890	March 1, 1873	44	1.74	0.58

D. Statement of Plan for Augmentation. The consumptive use attributable to the Subject Water Right shall be committed to the plan for augmentation to replace the out of priority depletions associated with diversions from the Poncha Springs Wells, as previously described. Depletions from the Poncha Springs Wells are to be calculated in the same manner as under the existing augmentation decree in Case Nos. 82CW104, 99CW183, and 07CW111 considering the system wide municipal depletion percentages and the lagged aquifer depletions, as applicable, from the Town's wells. The release or dedication of the Subject Water Right will be used as replacement of the out of priority well depletions to be made in accordance with the terms of the Town's Existing Plans for Augmentation and to be provided in any final decree entered in this Application. **V. Appropriative Right of Exchange.** A. Water to Be Exchanged. The Town seeks to exchange the Subject Water Right to be changed under this Application. B. Exchange From Points. The Town seeks to exchange the Subject Water Right from the following points: 1. A turn back structure to be built by the Town on the Poncha Springs Acequia. The turn back structure will either be located near the headgate of the Poncha Springs Acequia in SW 1/4 NE 1/4 of Section 9, Township 49 North, Range 8 East, of the N.M.P.M., or in the Town's limits including the SE 1/4 NE 1/4, NE 1/4 SE 1/4 of Section 9, , or the N 1/2 SW 1/4 of Section 10, all in Township 49 North, Range 8 East, of the N.M.P.M. C. Exchange to Points: 1. O'Haver Reservoir. O'Haver Reservoir, decreed in Case No. 82CW205, District Court, Water Division No. 2, is an off-channel reservoir fed by O'Haver Filler Ditch, whose headgate is in the NW1/4 SW1/4 of said Section 12, approximately 5,000 feet from the east line of said Section 12 and 1,400 feet from the south line of said Section 12, which draws its waters from Grays Creek, tributary to Poncha Creek, tributary to the South Fork of the Arkansas River, tributary to the Arkansas River, and is located near the center of Section 12, Township 48 North, Range 7 East, N.M.P.M., and is decreed for 193 acre feet of storage for irrigation, municipal, industrial, recreational and augmentation uses. The Subject Water Right will be carried down the South Arkansas River to the confluence with Poncha Creek located in Section 10, Township 49 North, Range 8 East of the N.M.P.M., and exchanged from this point up Poncha Creek to the confluence with Grays' Creek, and from this point up Grays' Creek to the terminus of the exchange at O'Haver Reservoir. 2. North Fork Reservoir. Decreed in Case No. 82CW204, District Court, Water Division No. 2, North Fork Reservoir's source is the North Fork of the South Arkansas River is located as follows: Beginning at the Northeasterly point of contact of the dam axis with the existing ground said point being situated whence the Northwest corner of Section

21, T.50N, R.7E, N.M.P.M., in Chaffee, County, Colorado bears South 68°50' East a distance of 31,920 feet; said point being further described by bearing on the Peak of Granite Mountain of North 23°28' West and by bearing on the Peak of Calico Mountain of North 37°03' East, thence South 15°30' West a distance of 500 feet to the Southwesterly point of contact of the dam axis with existing ground, Chaffee County decreed for 1,095 acre feet of storage for irrigation, municipal, irrigation, augmentation and recreational uses. The exchange of the Subject Water Right will go up the South Arkansas River to the confluence with North Fork of the South Arkansas River located in North 1/2 of Section 3, Township 49 North, Range 7 East of the N.M.P.M., and from this point up the North Fork of the South Arkansas River to the terminus of the exchange at North Fork Reservoir.

3. Boss Lake. Boss Lake, also known as Donnell Reservoir Nos. 1 & 2, decreed on June 19, 1890, in Case No. CA 1127 by the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11, is an on-channel reservoir fed by the Lake Fork, tributary to the Middle Fork of the South Arkansas River and is generally located in the Northeast 1/4 East 1/2 of Section 29, Township 50 North, Range 6 East, N.M.P.M. The exchange of the Subject Water Right will go up the South Arkansas River to the confluence with the Middle Fork of the South Arkansas River located near the Town of Garfield, located in the South 1/2 of Section 27, Township 50 North, Range 6 East of the N.M.P.M., and from this point up the Middle Fork of the South Arkansas River to the confluence with the Lake Fork of the South Arkansas River and from this point up to the terminus of the exchange at Boss Lake.

4. Friend Ranch. The Town has annexed the real property located in Sections 7, 8, and 18 in Township 49 North, Range 8 East of the N.M.P.M., commonly known as the "Friend Ranch." A legal description of the Friend Ranch is attached as Exhibit G. The exchange of the Subject Water Right will go up the South Arkansas River to the confluence of the South Arkansas River and Little Cochetopa Creek, and from this point up Little Cochetopa Creek to the confluence of Little Cochetopa Creek and Pass Creek, then up Pass Creek to the headgate of the Velotta Ditch No. 1 described above. Alternatively, the exchange of the Subject Water Right will go up the South Arkansas River to the confluence of the South Arkansas River and Green Creek, and from this point up Green Creek to the headgate of the Mundlein Ditch No. 2 described above. A map of the exchange to and from points is attached as Exhibit H. D.

Uses of Exchanged Water. The Town seeks to use the exchanged water for municipal purposes, including use as bypass water and augmentation for the Town's well depletions as set forth in the plan for augmentation.

E. Appropriation Date. December 29, 2021.

F. Amount of Exchange. The maximum exchange rate shall be 1.70 c.f.s., conditional.

**VI. Name And Address Of Owners Of Land On Which Structures Will Be Located.**

A. Poncha Springs Acequia and Turnback Structure. The headgate for the Poncha Springs Acequia and one of the locations for a possible measurement/augmentation station is located upon property owned by Post Office Ranch LLC, whose address is PO Box 208, Poncha Springs, CO 81242.

B. Poncha Springs Wells. Poncha Springs Well Nos. 1, 2, 3, 4, & 8 are located upon property owned by the Town. Poncha Springs Well No. 5 is located upon property owned Ths Investments LLC, whose address is 11968 W 119th St., Overland Park, KS 66213. Poncha Springs Well No. 9 will be located upon property currently owned by Tailwind Group LLC, whose address is 7625 W. US Highway 50,



Salida, CO 81201. Poncha Springs Well No. 10 will be located upon property currently owned by Jls2 LLC, whose address is 7693 US Highway 285, Salida, CO 81201. C. Reservoirs. O'Haver Reservoir, Boss Lake and North Fork Reservoir are all located upon land owned by the US Forest Service, whose address is 740 Simms, P.O. Box 25127, Lakewood, CO 80225, and operated by the Upper Arkansas Water Conservancy District, 339 E. Highway 50, Salida, CO 81201. Pueblo Reservoir is located on land owned by the United States of America, Bureau of Reclamation. The Bureau of Reclamation's address is Attn: Jeff Rieker, Area Manager, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, Colorado 80537-9711. The Friend Ranch Reservoir and any future reservoirs to be built on Friend Ranch are located on land owned by The Investments LLC, whose address is listed above. D. Ditches. The Velotta Ditch No. 1 is on land owned by the Bureau of Land Management, whose address is 3028 E. Main St. Canon City, CO 81212. The Mundlein Ditch No. 2 is located on lands owned by Frankie Ann Spicer, whose address is 14670 County Road 220, Salida, CO 81201. **VII. Additional Terms and Conditions.** A. The Town shall install and maintain such water measuring devices as deemed essential by the State Engineer or Division Engineer and the same shall be installed and operated in accordance with the instruction of that office. The Town will provide appropriate monthly accountings to the Division Engineer demonstrating compliance with this plan for augmentation. B. Provided that the Town replaces historical return flows associated with the Subject Water Right, the Town will fully consume and use to extinction the consumptive use stream credits attributable to the Subject Water Right. C. The operation of any exchange will be limited to the timing of the availability of the Subject Water Right within the exchange reach. The exchanges may only be operated to the extent that other vested water rights senior to this exchange within the exchange reaches are not deprived of water to which they would have been entitled in the absence of such exchanges. The operation of the exchange will be limited in time to periods when the water rights to be exchanged are available at the exchange-from point, and further limited to the rate and volume of the source of substitute supply legally and physically available for the Town's use at the exchange from point. The exchange may be operated only when there is a continuous live stream maintained between the point of the initiation of the exchange and the upstream terminus of the exchange. Prior to the operation of this exchange, the Town will coordinate with, and receive the approval of, the water commissioner or Division. D. Pursuant to C.R.S. § 37-92-305(8), Town may seek terms and conditions to add additional and alternative sources for replacement in this plan for augmentation after entry of this Decree if such sources are decreed or have been administratively approved for such use. E. The Division Engineer shall assess appropriate transit losses, if any.

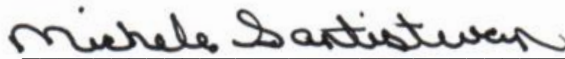
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THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE,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

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition

setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of February 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.

YOU ARE FURTHER NOTIFIED that any person who wishes to protest the inclusion of any water rights on the revised abandonment list shall file a written protest with the Water Clerk for the Division 2 Water Court and provide a copy to the Division Engineer in accordance with the procedures set forth in section 37-92-401(5), C.R.S (2021). A form for such protest is available at: <http://www.courts.state.co.us/Forms>. All such protests shall be filed no later than June 30, 2022. The fee for filing such a protest with the Water Clerk shall be thirty-five dollars (\$45.00), payable to the Water Clerk.

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Witness my hand and the seal of this Court this 14<sup>th</sup> day of January 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)  
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