

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MARCH 2022.  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during March 2022, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CASE NO. 2021CW3085; CITY OF LAMAR, Colorado, c/o City Administrator, 102 East 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 & Farr, LLC, 13511 Northgate Estates Dr., Suite 250, Colorado Springs, CO 80921, Phone Number: (719) 471-1212)

Second 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 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.) 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 1/4 of the SE 1/4 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 1/4 of the SE 1/4 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 1/4 of the SW 1/4, 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 1/4 of the NW 1/4, 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 1/4 of the NW 1/4, 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 1/4 of the SE 1/4, 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 1/4 of the NW 1/4, 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 1/4 of the SE 1/4 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 1/4 of the NE 1/4, 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 water placed in the recharge facility in Clay Creek. 10. Ball Fields Pump. Ball Fields Pump is located in the SW 1/4 of the SE 1/4, 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 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 SW1/4 of the SW1/4 of Section 17, Township 23 South Range 46 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. See **Exhibit E AND F** attached to the application for maps showing the locations of the structures to be augmented. 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 NE1/4 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 NE1/4 of the SE 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 sewer and non-sewer 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. 2022CW2; THOMAS A and LESLIE S WALKER, 34150 N Hwy 24, Buena Vista, CO 81211, (303) 875-6951**

Application for Absolute Underground Water Right for an Exempt Well

**CHAFFEE COUNTY**

**2. Name(s) of well(s) and permit, registration, or denial number(s):** Parcel: Riverview Ranch, Permit #: 323499, Receipt # 10014304. **3. Location of Structure, Legal Description:** NW ¼ SW ¼ Section 13 Township 13 South Range 79 West Sixth P.M. Chaffee County. **UTM Coordinates:** Easting X: 398276.02895, Northing Y: 43038.98339, Zone 13, Street Address: 34150 N Hwy 24, Buena Vista, CO 81211, Subdivision: Riverview Ranch, Lot: 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.) **3. Distance from Section Lines:** 500 Feet from S and 500 Feet from E. **4. Date of appropriation:** 09/03/2021 B. How appropriation was initiated: 08/24/2021. C. Date water applied to beneficial use: TBD **5. Source of water:** Arkansas River Tributary. Depth of well: 80 Feet. **6. Amount of underground water**

**claimed:** Conditional 15 gpm. Absolute 30 gpm. **7A. Number of single-family dwellings:** 1, **B. Area of lawns and gardens irrigated:** 1 acres. **C. Domestic animals watering:** Yes **D. Livestock watering on farm/ranch/pasture:** Yes. **E. Other uses:** Fire Protection, ordinary household purposes inside not more than 3 single family dwellings, the watering of poultry, domestic animals and livestock on a farm ranch and the irrigation of not more than (1) acre of home garden and lawns. **8. Proposed Uses:** N/A **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:** Applicant

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**CASE NO. 2022CW3008; Previous Case Nos: W-1314; W-1314(77); 81CW105; 86CW3; 96CW59; 02CW170; 09CW63; and 15CW3046 – Ochs Brothers, LLP (“Ochs Brothers”), P.O. Box 603, Colorado Springs, Colorado 80903** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorney: MONSON, CUMMINS, SHOHET & FARR, LLC, Ryan W. Farr, #39394, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for a Filing of Reasonable Diligence

**EL PASO COUNTY**

**II. Name of Structure:** Ochs Brothers Well Nos. 1, 2, 3, 4, and 5. **III. Description of Conditional Water Right:** **A. Date of Original Decree:** The original decree was entered on May 11, 1973 in Case No. W-1314, District Court, Water Division No. 2. **B. Previous Diligence Findings:** There have been previous findings of diligence with the last having occurred on March 1, 2016 in Case No. 15CW3046, District Court, Water Division 2. **C. Decreed Location:** All structures are located in Township 16 South, Range 65 West of the 6<sup>th</sup> P.M., specifically as follows: i. Ochs Brothers Well No. 1: SE ¼ of the SE ¼, Section 17. ii. Ochs Brothers Well No. 2: SW ¼ of the SW ¼, Section 16, and NW ¼ of the NW ¼, Section 21. iii. Ochs Brothers Well No. 3: NW ¼ of the NW ¼, Section 21. iv. Ochs Brothers Well No. 4: NW ¼ of the NW ¼, Section 21. v. Ochs Brothers Well No. 5: NE ¼ of the NE ¼, Section 20. **D. Source:** All structures are drilled into the alluvium of Fountain Creek, tributary to Fountain Creek, tributary to the Arkansas River. **E. Appropriation Dates and Amounts:** i. Ochs Brothers Well No. 1: April 3, 1964 for 1.33 c.f.s. ii. Ochs Brothers Well No. 2: April 3, 1964 for 1.22 c.f.s. iii. Ochs Brothers Well No. 3: December 24, 1964 for 1.61 c.f.s. iv. Ochs Brothers Well No. 4: December 24, 1964 for 1.38 c.f.s. v. Ochs Brothers Well No. 5: December 24, 1964 for 0.73 c.f.s. **F. Uses:** All wells were decreed absolute for irrigation purposes and were conditionally decreed for domestic, municipal, and industrial purposes. **G. Depth:** i. Ochs Brothers Well No. 1: 55 feet. ii. Ochs Brothers Well No. 2: 55 feet. iii. Ochs Brothers Well No. 3: 57 feet. iv. Ochs Brothers Well No. 4: 54 feet. v. Ochs Brothers Well No. 5: 53 feet. **H. Ownership:** Ochs Brothers, LLP, is the owner of easements upon the property where the water rights are located. **IV. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** The Ochs Brothers Wells Nos. 1 through 5, along with the Ochs Brothers Well, as originally decreed in Case No. W-3205, District Court, Water Division 2, are structured to be part of an integrated domestic and municipal water supply system, with diligence last maintained on these additional water

rights in Case No. 15CW3046. The Ochs Brothers Wells 1 through 5, along with the Ochs Brothers Well, are currently in a position to be taken over to complete development of the wells into a condition to be utilized by the specific demands of a purchasing or other receiving entity. As such, Ochs Brothers has invested time and money to accomplish such transfer. Ochs Brothers contracted in 2016 with HRS Water Consultants, Inc., to first research and review property ownership and water quality issues. This was done at an expense of \$2,451.00. Additionally, Ochs Brothers employed HRS Water Consultants, Inc., to study and generate an appraisal and options report on the Ochs Brothers Wells Nos. 1 through 5 and the Ochs Brothers Well for transfer and donation purposes. Ochs Brothers spent \$11,261.50 for the generation of this report. Ochs Brothers sought research and assistance to determine and correct transactions and holdings in order to make sure that all title and ownership issues were resolved with well sites and easements and to make sure that Ochs Brothers was the entity in sole ownership and control of all related property and infrastructure. Such efforts included payments for legal and accounting services in the amount of \$13,748.91. Finally, principals of Ochs Brothers, Harlan Ochs and Charles Ochs, have spent time and energy determining ownership interests in the Ochs Brothers and related entities in relation to transferring the well sites and easements and have inspected and investigated the well sites and easements to maintain them in a state satisfactory for transfer. **V. Additional Remarks:** The Ochs Brothers Wells Nos. 1 through 5 have been decree absolute for irrigation uses as originally decreed in Case No. W-1314. No part of the conditional decreed uses are requested to be made absolute in this Application.

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**CASE NO. 2022CW3009; J + M INVESTMENTS, LLC, c/o Jay Stoner, 5655 Bridlespur Ridge Pl, Colorado Springs, CO 80918** (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 Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Amended Application for Adjudication of Denver Basin Groundwater Approval of Plan for Augmentation and Adjudication of Exempt Residential Well

**EL PASO COUNTY**

**II. Summary of Application.** Applicant desires to adjudicate the Denver Basin groundwater underlying its property in El Paso County and to obtain a plan for augmentation for the subdivision of the Applicant's Property into two parcels. The plan for augmentation includes a well into the Arapahoe aquifer of the Denver Basin. The Applicant also seeks to adjudicate its existing exempt residential well. These wells will provide water service to an equivalent number of single-family lots. **III. Application for**

**Underground Water Rights.** A. **Legal Description of Wells.** 1. **Property Description.** All wells are and will be located on Applicant's approximately 5.84-acre property ("Applicant's Property") anticipated to be subdivided into two lots of +/- 2.5 acres each. Applicant's property is 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.), and is more particularly described as 10245 Otero Ave, Colorado Springs, CO 80921 located in the E ½ NW ¼ of Section 28, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M. 2. **Existing Well.** There is an existing domestic well with Division of Water Resources Permit No. 172655 ("J+M Well No. 1"), permit attached as **Exhibit**

**B.** It is drilled to a total depth of 460 feet to the Denver aquifer, and located 3,997 feet from the South Section Line, and 3,153 feet from the East Section Line. Upon completion of this case and the subdivision process, the J+M Well No. 1 will remain an exempt well pursuant to SB 20-155 amending C.R.S. §37-92-602(3)(b)(IV). 3. Proposed Wells. Applicant proposes to construct an additional well on the Applicant's Property at a specific location not yet determined ("J+M Well No. 2"), to be constructed to the Arapahoe aquifer.

**B. Water Source.** 1. Not-Nontributary. The ground water to be withdrawn from the Denver and Arapahoe aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation requirements for wells in these aquifers will require the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicant's Property is nontributary. **C. Estimated Rates of Withdrawal and Ground Water Available.** 1. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests the vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code § 8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to C.R.S. § 37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

<b>AQUIFER</b>	<b>NET SAND (Feet)</b>	<b>Total Appropriation (Acre Feet)</b>	<b>Annual Avg. Withdrawal 100 Years (Acre Feet)</b>	<b>Annual Avg. Withdrawal 300 Years (Acre Feet)</b>
Denver (NNT)	178.0	177	1.77	0.59
Arapahoe (NNT)	244.3	243	2.43	0.81
Laramie Fox Hills (NT)	185.3	162	1.62	0.54

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. § 37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **D. Requested Uses.** The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, irrigation, stock water, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall

only be entitled to construct wells or use water from the not-nontributary Denver or Arapahoe aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. § 37-90-137(9)(c.5). E. Well Fields. Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. F. Averaging of Withdrawals. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. G. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicant. **IV. Application for Adjudication of Exempt Well**. A. Name of Structure: J+M Well No. 1. B. Legal Description of Well: The well is located upon the Applicants' Property in the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 28, Township 12 South, Range 66 West of the 6th P.M., El Paso County, Colorado, located 3,997 feet from the South Section Line, and 3,153 feet from the East Section Line. The J+M Well No. 1 is permitted as an exempt well pursuant to Division of Water Resources Permit No. 172655. C. Source: The J+M Well No. 1 is permitted to withdraw from the not-nontributary Denver aquifer. D. Date of Initiation of Appropriation: On or before February 12, 1997. E. How Appropriation was Initiated: Completion of the construction of the well and placement into operation during the year of 1997. F. Date Water Applied to Beneficial Use: February 12, 1997. G. Amount Claimed: 15 g.p.m., absolute, or 1.0 annual acre-foot. H. Uses: Ordinary household uses in a single residence and the watering of domestic animals. I. Land Ownership: The land upon where the J+M Well No. 1 is drilled and which the water is and has been used is owned by the Applicant. J. Remarks: The J+M Well No. 1 is an exempt well issued pursuant to and for the uses authorized in § 37-92-602(1)(b), C.R.S. and a decree for the J+M Well No. 1 is sought pursuant to § 37-92-602(4), C.R.S. The Applicant seeks to maintain the exempt status of the well. **V. Application for Plan for Augmentation**. A. Structure to be Augmented. The structure to be augmented is the J+M Well No. 2, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Arapahoe aquifer of the Denver Basin underlying the Applicant's Property as requested and described herein. B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Arapahoe aquifer from the J+M Well No. 2, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. C. Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Arapahoe aquifer by one well proposed herein for a residential lot. The J+M Well No. 1 will remain an exempt well upon approval of this plan for augmentation and subdivision of Applicant's Property pursuant to SB 20-155 amending C.R.S. § 37-92-602(3)(b)(IV). Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1.

Uses. i. Household Use Only: 0.26 acre-feet annually within a single-family dwelling, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal system. The annual consumptive use will therefore be 0.026 acre-feet, with return flows of 0.234 acre-feet per year. ii. Landscape Irrigation: 0.05 acre-feet annually per 1,000 square feet (2.18 acre-feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre-feet. iii. Horses (or equivalent livestock): 0.011 acre-feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. 2. The well will pump a maximum of 0.529 acre-feet of water per year from the Arapahoe aquifer. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.26 acre-feet of water per year with the additional 0.269 acre-feet available for irrigation of lawn and garden and the watering of up to two horses or equivalent livestock on the lot annually. 3. Depletions. Maximum stream depletions over the 300-year pumping period for the Arapahoe aquifer amounts to approximately 22.3% of pumping. Maximum annual depletions from the J+M Well No. 2 are therefore 0.11 acre-feet in year 300. Should Applicant's pumping be less than the 0.529 total per year described herein, resulting depletions and required replacements will be correspondingly reduced. 4. Augmentation of Depletions During Pumping. Pursuant to C.R.S. § 37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the residential well from the Arapahoe aquifer. Depletions during pumping will be effectively replaced by residential return flows from a non-evaporative septic system. The annual consumptive use for non-evaporative septic systems is 10% per year. At a household use rate of 0.26 acre-feet per year, 0.234 acre-feet is replaced to the stream system annually, utilizing a non-evaporative septic system. Thus, during pumping, stream depletions will be more than adequately augmented. 5. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the J+M Well No. 2, Applicant will reserve up to the entirety of the nontributary Laramie Fox Hills aquifer, accounting for actual stream depletions replaced during the plan pumping period, as necessary to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the J+M Well No. 2 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. **VI. Remarks.** A. Applicant requests a finding that it has complied with C.R.S. § 37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. § 37-90-137(9)(c.5). B. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions

accrue to a particular well or wells only to the extent related to that well's actual pumping. C. The Applicant will not need to implement the plan for augmentation until the completion of the subdivision process and the sale of the lot using one of the two augmented wells. D. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. E. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. F. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required to demonstrate compliance under this plan of augmentation. G. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. H. Applicant will comply with any lienholder notice provisions set forth in C.R.S. § 37-92-302(2)(b) and § 37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

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**CASE NO. 2022CW3010; Previous Case Nos; W-2939; W-2939(78); 82CW82; 88CW76; 95CW90; 02CW24;09CW24; and 15CW3042 – TOWN OF FOWLER, (“Applicant” or “Town”) 317 Main Street Fowler, CO 81039** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Matthew Machado Anthony J. Basile Lyons Gaddis, PC P.O. Box 978 Longmont, CO 80502-0978, (303) 776-9900)

Application for Finding of Reasonable Diligence

**CROWLEY COUNTY**

**2. Name of structure:** Collection Galleries **3. Describe conditional water right:** **A. Date of original decree, case no. and court:** The Collection Galleries were originally decreed on February 14, 1974 in Case No. W-2939, Water Division 2. **B. Subsequent diligence decrees:** Case No. 2939(78), decree entered June 5, 1978; Case No. 82CW82, decree entered October 18, 1984; Case No. 88CW76, decree entered March 20, 1989; Case No. 95CW90, decree entered February 6, 1996; Case No. 02CW24, decree entered January 14, 2003; Case No. 09CW24, decree entered September 14, 2009; Case No. 15C3042, and decree entered March 3, 2016. All decrees entered by Water Division 2. **A. Legal description:** NW ¼ NW ¼ and NE ¼ NW ¼ Section 3, T22S R59W; SW ¼ SW ¼ and the SE ¼ SW ¼ of Section 33; NE ¼ SE ¼ Section 32, T21S R59W; SE ¼ SE ¼ and the NW ¼ SW ¼ Section 25, T21S R60W, all in 6<sup>th</sup> P.M. The UTM coordinates are 13S 585569.9E, 4224518.6N. The structure identification number is 1706458. 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.) **B. Source:** Groundwater tributary to the Arkansas River. **C. Appropriation:** i. Date: February 26, 1902. ii. Amount: 78 gpm remains CONDITIONAL (72 gpm previously decreed absolute) **D. Uses:** The decreed use is for municipal purposes. The water right is part of an integrated water system designed to provide a water supply to the Town's service area which will be developed to full utilization



over an extended period of time. **E. Depth:** The wells are approximately 10-15 feet deep.

**4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:**

The Collection Galleries are a component of the Town’s integrated water supply system that includes both potable and non-potable water distribution systems, a sanitary sewer collection system, and a wastewater treatment system. The Town has pumped the Collection Galleries each year during the diligence period and delivered that water to its customers through its potable and non-potable water distribution systems. The Town adopted Resolution No. 746-22 on March 14, 2022 affirming its need for the subject conditional water right. During the subject diligence period, the Town conducted the following work related to the Collection Galleries and its integrated systems:

\$1,584.00	Monthly water testing with Pueblo Department of Health.
\$2,124	Electricity to run the chlorinator.
\$840	Chlorine to run the chlorinator.
\$4,024	Parts for pump repair in 2021.
\$7,590	Engineering services in 2017 relating to the Applicant’s water system.
\$980	Gravel for road base for road to Collection Galleries in 2020.
\$37,349	Oxford Ditch water assessments from 2017-2021. Applicant intends to change the use of these shares to augmentation of Applicant’s wells.
\$14,329	Membership fees and other assessments for Applicant’s participation in the Colorado Water Protective and Development Association (“CWPDA”), now Arkansas Groundwater and Reservoir Company (“AGRA”), which provides augmentation water to allow operation of the Collection Galleries.
\$1,792	Engineering fees to the CWPDA in 2018 and 2020.
\$2,710	2016 assessment fees to the CWPDA.
\$73,322	Total

**5. Names and address of owner 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:** Applicant. **6. Miscellaneous.**

This Application does not include a claim to make the subject conditional water right absolute. WHEREFORE, Applicant, having demonstrated that it has steadily applied effort to complete the appropriation of the Collection Galleries in a reasonably expedient and efficient manner under all the facts and circumstances, respectfully requests this Court to find that the remaining portion of the conditional water right, 78 g.p.m., should be continued as a conditional water right for another six years, or such period as may otherwise be permitted by law, and make this water right absolute to the extent Applicant diverts the water right in priority and applies the water to beneficial use during the pendency of this case.

**CASE NO. 2022CW3011; Previous Case No: 87CW8 – ROGER and MARTINA METCALF, 1449 Bowser Drive, Colorado Springs, Colorado 80909, (“Applicants”)**

(Please address all pleadings and inquiries regarding this matter to Applicant’s attorney: Ryan W. Farr, #39394, MONSON, CUMMINS, SHOHET & FARR, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 471-1212)  
Amended Application for Amendment of Decree for Underground Water Rights

## EL PASO COUNTY

**II. Background and Summary of Application.** Applicants seek to amend the decree entered in Case No. 87CW8, District Court, Water Division 2, dated July 6, 1994 (“87CW8 Decree”) to remove their interest in the Laramie-Fox Hills aquifer water in order to supply an exempt well for their property. B. The 87CW8 Decree adjudicated water rights underlying two parcels totaling approximately 555 acres. The parcels are located in parts of Sections 19, 30, and 31 of Township 14 South, Range 64 West of the 6<sup>th</sup> P.M., El Paso County (“Decree Property”). C. The 87CW8 Decree adjudicated Laramie-Fox Hills aquifer water and Pierre Shale formation water underlying the Decree Property, and also adjudicated an augmentation plan for utilization of the Pierre Shale formation water. D. Applicants own a 35-acre parcel of land that was part of the original 555 acres of the Decree Property. This 35-acre parcel is located in S1/2 of NE 1/4 Section 30, Township 14 South, Range 64 West of the 6<sup>th</sup> P.M. and specifically described on **Exhibit A** (deed) attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) and shown on the attached **Exhibit B** topographical map (“Applicants’ Property”). E. Included with the purchase of the Applicants’ Property was the right to 2 annual acre-feet of water in the not-nontributary Laramie-Fox Hills aquifer, consistent with the Water Court Division 2 Case No. 87CW08, along with any and all related rights to produce and extract the same and construct water wells or obtain well permits for such groundwater.” See **Exhibit A. III. Proposed Revision.** Applicants seek to remove their deeded 2 annual acre-feet of water from the 87CW8 Decree in order to be able to qualify for the issuance of an exempt well permit pursuant to C.R.S. § 37-92-602(1)(b). In order for an exempt well permit to be issued, sufficient water has to be made available to supply such well. As all the water is currently locked up in the adjudication of the 87CW8 Decree, water would need to be removed from the decree to supply an exempt well. A. Removal of 2 annual acre-feet: Applicants seek the removal of their 2 annual acre-feet of Laramie-Fox Hills aquifer water from the total adjudicated amount of 104 annual acre-feet. Specifically, as the Applicants’ Property underlies the 429-acre parcel of the Decree Property, the removal of the 2 annual acre-feet will come from this portion’s 96 annual acre-feet as set forth in the 87CW8 Decree. B. No other change. Applicants seek no other amendment to the 87CW8 Decree and have and claim no interest in the Pierre Shale formation water or its accompanying augmentation plan.

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**CASE NO. 2022CW3012; UNITED STATES OF AMERICA DEPT. OF THE INTERIOR BUREAU OF LAND MANAGEMENT (BLM), Royal Gorge Field Office, 3028 E. Main St., Cañon City, CO 81212; and PARK CENTER WATER DISTRICT (PCWD), P.O. Box 1406, 1660 Reservoir Road, Cañon City, CO 81215** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Attorney for United States of America: Kristen C. Guerriero, #32663 Office of the Regional Solicitor 755 Parfet Street, Suite 151 Lakewood, Colorado 80215, (303) 231-5353, x552; and Attorneys for Park Center Water District: Alan G. Hill, #11343 Ashley Pollock-Zahedi, #39795 Hill & Pollock, LLC 1528 Wazee Street Denver, Colorado 80202, (303) 993-4452)  
Amended Application for Finding of Reasonable Diligence  
**FREMONT AND CUSTER COUNTIES**

**2. Name of structure:** Park Center Well Exchange, WDID 1203809 Type: Exchange **3. Description of conditional water right:** Date of original decree: 03/03/2016 Case No. 12CW125 Court: WD 2 Subsequent decrees: None Legal Description: Legal description of the structure from which substitute water supplies will be released (exchange from point): Park Center Well. SW ¼ SW ¼, Section 34, T17S R70W, Sixth P.M., 713 feet from the south section line and 1,080 feet from the west section line. 481280 E 4263631 N, Zone 13, NAD83. Legal descriptions of the structure where water will be stored by exchange for subsequent release for augmentation purposes (exchange to points): Mt. Pisgah Reservoir. A dam across the natural stream bed of Four Mile Creek situated in the E ½ NW ¼ of Section 31, T14S R70W, Sixth P.M. Exchange Reach: The exchange reaches are from the exchange from point to the exchange to point Water source: Up to 211 acre-feet per year of nontributary groundwater decreed to the Park Center Well in Case No. 97CW169, Water Division 2 Appropriation Date: December 23, 2014 Amount: 2.67 cfs, conditional, Use: Augmentation for depletions from the tributary pumping of the Park Center Well **4. Outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period:** PCWD obtained a decree in Case No. 15CW3005, Water Division No. 2, on April 26, 2018. This decree changed a number of water rights from irrigation to municipal and other uses, all integrated into PCWD's municipal water system. The legal and engineering work in obtaining that decree is diligence on the integrated water supply system for PCWD. PCWD incurred legal fees in excess of \$100,000, and engineering fees in excess of \$105,000 from the time of the entry of this conditional decree on March 3, 2016 through the entry of the final decree in Case No. 15CW3005 on April 26, 2018. PCWD has worked with Pisgah Reservoir and Ditch Company and Canon Heights Irrigation and Reservoir Company to establish an account at Mt. Pisgah Reservoir into which the subject water can be exchanged. PCWD has worked on identifying and planning for its long-term water supply needs, including the integration of the water to be exchanged, which will then allow additional pumping of tributary groundwater from the Park Center Well. PCWD has worked on wellhead maintenance, modifications, and repairs to enable deliveries from the Park Center Well wellhead to Fourmile Creek. BLM's has worked to obtain a discharge permit from EPA and to report on discharges from the Park Center Well under that permit. **5. If claim to make absolute in whole or in part:** N/A **6. Actual location of the structure if different from the location in paragraph 3.C. above:** N/A **7. Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.** United States of America - Department of Interior, Bureau of Land Management, Royal Gorge Field Office, 3028 E. Main St., Cañon City, CO 81212 Park Center District, P.O. Box 1406, 1660 Reservoir Road, Cañon City, CO 81215 The Deweese-Dye Ditch and Reservoir Company, Inc., 1411 Walnut Street, Cañon City, CO 81212 United States Bureau of Reclamation, Eastern Colorado Projects Office, 11056 West County Road 18E, Loveland, CO 80537 Cañon Heights Irrigation and Reservoir Company, PO Box 1456, Cañon City, CO 81215 **8. Remarks or any other pertinent information:** N/A

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**CASE NO. 2022CW3013; Previous Case No. 13CW3066 - ELK CAMP, LLC., 7009 South Jordan Road, Centennial, CO 80112** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: James Eklund, Eklund Hanlon, LLC, 645 Bellaire Street, Denver, CO 80220, (720) 280-1835)

Application for Findings of Reasonable Diligence, in East Beaver Creek, tributary to Arkansas River.

**TELLER COUNTY**

**2. Name of structure:** East Beaver Creek Reservoir. Type: Reservoir. Date of original decree: March 9, 2016; Case No. 13CW3066, Div. 2 Water Court. Subsequent diligence decrees: N/A. **3. Legal description:** Original: The East Beaver Creek Reservoir is a proposed on-channel reservoir with the originally decreed location of the SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of S 10, T 16 S, R 68 W of the 6th P.M. From the Southwest corner of S 10, T 16 S, R 68 W of the 6th P.M. bears North 1,017 feet, and East 972.3 feet. Corrected location for this diligence application: NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of S 10, T 16 S, R 68 W of the 6<sup>th</sup> P.M. From the Southwest corner of said Section, 10, 955 feet east of the west section line and 1,380 feet north of the south section line. UTM: 500731.92(x) / 4280015.28(y), Zone 13N. Source: East Beaver Creek, tributary to Arkansas River. Appropriation date: December 1, 2013. Amount: 75 acre-feet conditional, with right to continuously fill and refill up to 150 acre-feet per year. Rate: 1.5 c.f.s. Uses: Wildlife, augmentation, irrigation, and recreation. Place of use: Irrigation will be limited to 7.3 acres located in the NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of S 35, T 15 S, R 68 W of the 6th P.M., and the S $\frac{1}{4}$  of the SE $\frac{1}{4}$  of S 26, T 15 S, R 68 W of the 6th P.M.; and 24.5 acres of the E $\frac{1}{4}$  of S 34, T 15 S, R 68 W of the 6th P.M. Wildlife and recreation uses will be limited to uses at the proposed East Beaver Creek Reservoir site. Wildlife and recreation uses will include releases from the dam to East Beaver Creek to maintain streamflow on East Beaver Creek for fish and other wildlife and will be made pursuant to a water delivery agreement between the Applicant and the Colorado Water Conservation Board. Surface area of high-water line: 5.27 acres. Max dam height: 46 feet. Dam length: 291 feet. Total capacity: 75 acre-feet. See **Exhibit A** attached to the application for a map showing structure location. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **4.** A detailed outline of the work performed toward completion of the appropriation and application of water to beneficial use during the relevant diligence period, including expenditures is on file with the Court as **Exhibit B**. **5. The East Beaver Creek Reservoir is or will be located and put to use on land owned by Applicant.**

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**CASE NO. 2022CW3014; Previous Case No. 13CW3067 - ELK CAMP, LLC., 7009 South Jordan Road, Centennial, CO 80112** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: James Eklund, Eklund Hanlon, LLC, 645 Bellaire Street, Denver, CO 80220, (720) 280-1835)

Application for Findings of Reasonable Diligence, in East Beaver Creek, tributary to Arkansas River.

**TELLER COUNTY**

Name of structures: Elk Camp Ditch 1; Elk Camp Ditch 2; Elk Camp Ditch 3. Type: Ditch. Date of original decree: March 9, 2016; Case No. 13CW3067, Div. 2 Water Court. Subsequent diligence decrees: N/A. Legal description: Elk Camp Ditch 1: Originally proposed location: SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of S 26, T 15 S, R 68 W of the 6th P.M. From the

Southwest corner of S 26, T 15 S, R 68 W of the 6th P.M. bears North 151 feet, and East 2,423 feet. UTM: 502665.79(x) / 4284723.68(y). Zone 13N. Updated location for this diligence application: NE ¼ of the NW ¼ of S 35, T 15 S, R 68 W of the 6<sup>th</sup> P.M. From the Northwest corner of said S 35, 60 feet south of the north section line and 2,137 feet east of the west section line. UTM: 502575.32(x) / 4284643.47(y). Elk Camp Ditch 2: NE¼ of the NE¼ of S 34, T 15 S, R 68 W of the 6th P.M. From the Northeast corner of S 34, T 15 S, R 68 W of the 6th P.M. bears South 1,275 feet, and West 10 feet. UTM: 501929.82(x) / 4284289.34(y). Zone 13N. Elk Camp Ditch 3: NE¼ of the SE¼ of S 34, T 15 S, R 68 W of the 6th P.M. From the Southeast corner of S 34, T 15 S, R 68 W of the 6th P.M. bears North 1,665 feet, and West 1,114 feet. UTM: 501599.62(x) / 4283599.09(y). Zone 13N. Source: East Beaver Creek, tributary to the Arkansas River. Appropriation date: December 1, 2013. Amount: 0.636 c.f.s. conditional (cumulative amount for Elk Camp Ditch 1, Elk Camp Ditch 2, and Elk Camp Ditch 3). Use: Irrigation. Place of use: Irrigation will be limited to 7.3 acres located in the NW¼ of the NW¼ of S 35, T 15 S, R 68 W of the 6th P.M., and the S¼ of the SE¼ of S 26, T 15 S, R 68 W of the 6th P.M.; and 24.5 acres of the E½ of S 34, T 15 S, R 68 W of the 6th P.M. See **Exhibit A** attached to the application for a map showing structure location. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) A detailed outline of the work performed toward completion of the appropriation and application of water to beneficial use during the relevant diligence period, including expenditures is on file with the Court as **Exhibit B**. Elk Camp Ditch 1, Elk Camp Ditch 2, and Elk Camp Ditch 3 are or will be located and put to use on land owned by Applicant.

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**CASE NO. 2022CW3015, Water Division 2, and CASE NO. 2022CW3046, Water Division 1 – RANDY G. and BRENDA S. MORLEY, 4670 Arrowhead Dr., Colorado Springs, CO 80908** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Ryan W. Farr, #39394, Emilie B. Polley, #51296, MONSON, CUMMINS, SHOHET & FARR, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and Plan for Augmentation  
**EL PASO COUNTY**

**II. Summary of Application**. Randy G. Morley and Brenda S. Morley (“Applicants”) seek to quantify the Denver Basin groundwater underlying their approximately 5.04-acre property in El Paso County, Colorado, and approval of an augmentation plan associated with its use. **III. Application for Underground Water Rights**. A. Legal Description of Well. 1. Property Description. The Applicants’ 5.04-acre property (“Applicants’ Property”) is located in the S½ S½ NE¼ of Section 23, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M., in El Paso County, Colorado, more specifically described 4670 Arrowhead Dr., Colorado Springs, CO 80908, 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.) 2. Existing Well. There is an existing well on the Property. Well with Permit No. 194259 (“Morley Well”), attached as **Exhibit B**, is located approximately 780 feet from the East section line, and 2,225 feet from the North section line, and constructed to a total depth of 300 feet to the not-nontributary Dawson aquifer. Applicants intend for the well to be re-permitted for non-exempt uses

upon entry of a decree approving the plan for augmentation requested herein. B. Water Source. 1. Not-Nontributary. The ground water to be withdrawn from the Dawson, Denver, and Arapahoe aquifers underlying the Applicants' Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicants' Property is nontributary. C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for the wells will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of any well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicants request a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicants' Property. Said amounts may be withdrawn over the 100-year aquifer life pursuant to C.R.S. §37-90-137(4). Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

<b>Groundwater Quantification</b>			
<b>Denver Basin Aquifer</b>	<b>Net Sand (ft)</b>	<b>Total (AF)</b>	<b>100 Year (AF)</b>
Upper Dawson (NNT)	57.1	58	0.58
Denver (NNT – 4%)	377.3	323	3.23
Upper Arapahoe (NNT)	277.3	238	2.38
Laramie Fox Hills (NT)	189.9	144	1.44

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. D. Requested Uses. The Applicants request the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, irrigation, greenhouse, stock water, agricultural, commercial, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicants also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Applicants shall only be entitled to use water from the not-nontributary Dawson, Denver, and Arapahoe aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifer in accordance with C.R.S. §37-90-137(9)(c.5). E. Well Field. Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants request that these wells be treated as a well field. F. Averaging of Withdrawals. Applicants request

that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicants' Property, so long as the sum of the total withdrawals from all the well does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicants are entitled to withdraw from the aquifers underlying the Applicants' Property. G. Owner of Land Upon Which Wells are to Be Located. The land and underlying groundwater upon which the wells are located is owned by the Applicants. **IV. Application for Approval of Plan for Augmentation.** A. Structure to be Augmented. The structure to be augmented is the Morley Well, as is constructed to the not-nontributary Dawson aquifer underlying the Applicants' Property, and as will be re-permitted pursuant to this plan for augmentation as requested and described herein, along with any replacement or additional wells associated therewith. B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from the Morley Well, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. C. Statement of Plan for Augmentation. Applicants wish to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by the Morley Well. Water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1. Use. The Morley Well will pump a maximum total of 0.58 acre-feet of water from the Dawson aquifer annually. Such use shall be a combination of household use, irrigation of lawn and garden and greenhouse, and the watering of horses or equivalent livestock. An example breakdown of this combination of use is household use inside a single-family dwelling and additional cottage of 0.40 acre-feet, with the remaining amount available for irrigation of lawn and garden and greenhouse (0.05 annual acre-feet per 1000 sq. ft.), and the watering of horses, goats, chickens, or equivalent livestock (10 gallons/day/head or 0.011 annual acre feet per head). 2. Depletions. It is estimated that maximum stream depletions over the 100-year pumping period for the Dawson aquifer amounts to approximately 20.4% of pumping. Maximum annual depletions for total residential pumping are therefore 0.11 acre-feet in year 100. Should Applicants' pumping be less than the 0.58 acre-feet described herein, resulting depletions will be correspondingly reduced. 3. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5)(I), Applicants are required to replace actual stream depletions attributable to pumping of augmented wells to the Dawson aquifer. Depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.40 acre-feet per year, 0.36 acre-feet is replaced to the stream system per year, assuming the use of two non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented. 4. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Morley Well, Applicants will reserve water from the nontributary Laramie-Fox Hills aquifer, less the amount of actual stream depletions replaced during the plan pumping period. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the

Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to apply for and receive a new well permit for the Morley Well, for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. **V. Remarks.** A. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the Arkansas River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter in Water Division 2 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. B. Applicants request a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary well upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). C. The term of this augmentation plan is for 100 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well only to the extent related to that well's actual pumping. D. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. E. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. F. The well shall be installed and metered as reasonably required by the State Engineer. The well will be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. G. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. H. The Applicants will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

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**CASE NO. 2022CW3016; Previous Case Nos. 2015CW3041; 2007CW83; and 1999CW158 – McClAVE WATER ASSOCIATION, P.O. Box 73, McClave, Colorado 81057** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Steerman Law Offices, PLLC, Donald L. Steerman, PO Box 390, 200 West Elm Street, Lamar, CO 81052, (719) 336-4313)

Second Amended Application for a Finding of Reasonable Diligence and to Make Conditional Right Absolute in part.

**BENT COUNTY**



Applicant seeks a finding of reasonable diligence for the following conditional water well right: **Name of Structure:** McClave-Gill Farms Well No. 1. **Original Decree:** Case No. 1999CW158, Water Division 2, dated August 22, 2001. **Subsequent Decrees:** In Case No. 2007CW83, Water Division 2, dated August 19, 2009, Case No. 2015CW3041, Water Division 2, dated March 16, 2016. **Legal Description:** Location NE ¼ NW ¼ Section 24, Township 22 South, Range 50 West of the 6th P.M., Bent County, Colorado, 240 feet from the North section line and 3,134 feet from the East section line. UTM: 13S 677958.6E, 4221968.1N **Source of water:** Cheyenne Aquifer. **Appropriation Date:** September 19, 1997 as to 150 gpm not to exceed 50 acre-feet in any one calendar year, **Amount:** 150 gpm not to exceed 50 acre-feet in any one calendar year. **Uses:** domestic, industrial, commercial, irrigation, stock watering, recreation and fire protection for applicant's community water system. **Detailed outline of what has been done toward completion of the appropriation.** During the current diligence period which began in March 2015, the McClave Water Association produced water from this Well as follows:

<b>Water Year:</b>	<b>Amount:</b>
2021	20.164 acre feet
2019	23.930 acre feet
2018	16.051 acre feet
2017	14.096 acre feet
2016	15.066 acre feet
2015	16.061 acre feet

Production from this Well has been used together with other wells owned by Applicant to provide water to approximately 175 water taps serving 400 to 500 persons. Applicant has incurred expenses for pumping equipment, water quality testing, engineering, legal fees and other expenses in the amount of \$19,539.07 during the diligence period. Annual reports of water production have been furnished to the Division 2 Water Engineer's Office. Water for augmentation is obtained from the Southeastern Colorado Water Conservancy District. The foregoing activities and expenditures do not reflect each and every activity undertaken by Applicants to place the conditional water rights described herein to beneficial use but are illustrative of Applicants' reasonable diligence in applying such water rights to a beneficial use in accordance with the standards set forth in C.R.S. § 37-92-301(4). Additional work may be performed, and additional expenses may be incurred between the date this Application is filed and the entry of any decree in this matter. **Claim to make absolute in whole or in part:** Applicant requests that the conditional water rights decreed for the McClave -Gill Farms Well No. 1 be made absolute for 25 gpm, in the amount of 23.93 acre feet, and that the remaining conditional water rights of 124 gpm and 33.14 acre feet decreed for the McClave -Gill Farms Well No. 1 remain in full force and effect. The uses of the water diverted by the McClave Water Association wells are Domestic, industrial, commercial, irrigation, stock watering, recreation and fire protection for Applicant's community water supply system pursuant to the terms and conditions of the 1999CW158, 2007CW83, 2015CW3041 decrees. The 99CW158 approved a plan for augmentation providing for replacement water purchased from the Southeastern Water Conservancy District. **Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification**

**to the existing storage pool:** Land is owned by Gill Farms Partnership, c/o Lynden E. Gill, 34705 County Road 24, McClave, CO 81057

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**CASE NO. 2022CW3017; Previous Case No. 10CW66 – JOHN H. ADAMS and MATTHEW C. COLLINS (Successors in Interest to Joint Venture 105, LLC), PO Box 268, Westcliffe, CO 81252** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: John Henderson, 308 East Simpson St., Suite 103, Lafayette, CO 80026, (720) 971-7063)

Amended Application for Finding of Reasonable Diligence

**CUSTER COUNTY**

**2. Name of Structure:** Joint Venture 105 LLC Pond No. 1 Type: Reservoir **3. Describe conditional water right:** **A. Date of Original Decree:** March 16, 2016 **Case No:** 2010CW66 **Court:** Water Division No. 2 **B. List all subsequent decrees:** This is the initial request for a sexennial finding of reasonable diligence. **C. Legal description:** Joint Venture 105 LLC Pond No. 1 is located on an ephemeral stream in the S ½ SW ¼ SE 1/4 Section 14, Township 21 South, Range 72 West, 6<sup>th</sup> PM with its outlet at a point 306 feet north from the South line and 2020 feet west from the East Section Line of Section 14, approximately 2400 feet upstream of the intersection of the un-named ephemeral tributary to Grape Creek. See **Exhibit A** and **EXHIBIT B** 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.) **D. Source of water:** Ephemeral stream tributary to Grape Creek, a tributary of the Arkansas River, and decreed augmented flows from JV 105 LLC Well No 1. **E. Appropriation Date:** October 14, 2005 Amount: 0.79 Acre Feet. **F. Use:** Storage for fire protection, piscatorial use and incidental wildlife watering. **G. Depth:** N/A **4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed:** Joint Venture 105 LLC Pond No. 1 is fully constructed and prepared to receive in-priority flows in addition to decreed augmentation water, which it has. Detailed monthly total flows are measured and provided to the engineer for the preparation of required accounting. During the diligence period a new aerator was installed to improve piscatorial conditions. The structure was prepared at all times to intercept any in-priority flows pursuant to its decree. In addition, Work was performed for replacement and repair of piping from the well water source, bentonite was added to avoid leakage of the pond; reservoir edges were cleared of plant life to avoid damage to the pond; hoses and reservoir pipes were cleaned and debris was removed from the incoming ephemeral stream wash area to prevent loss of capacity; inspection and maintenance of the pump system was performed by Rick's Pump Service of Canon City. In addition to cash expenditures, approximately one hundred hours of manual labor was performed in diligence activities. In addition to the labor performed, cash expenditures were approximately \$1350.00 including aerator, bentonite, contracted pump repair work and pipe and pipe repair. **5. Claim to make absolute in whole or in part:** N/A. **6. If actual location of the structure is different from the location in paragraph 3.C. above, provide actual description:** S ½ SW ¼ SE ¼ Section 14 Township 21South, Range 72 West 6<sup>th</sup> P.M. Custer County. **UTM Coordinates:** Easting 465102.56m, Northing 4230061.51m, 3330 Shy Circle, Westcliffe, CO 81252, Subdivision: 105 Deeded Acres adjacent to Bull Domingo Estates. Source of UTM's: DWR Well Permit Viewer; Google

Earth and Topo Maps. **7. 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:** Applicants **8. Remarks:** Amended application filed to correct UTM coordinates which may have been incorrect by approximately 150 feet.

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**CASE NO. 2022CW3018; TIFFANY W. LOVETT c/o Timothy C Sanford, MFO Management Co., 111 E. Court St. Suite 3D, Flint, MI 48502** (Please address all

pleadings and inquiries regarding this matter to Applicant's attorney: Joseph B. Dischinger, Beth Ann J. Parsons, FAIRFIELD AND WOODS, P.C., 1801 California Street, Suite 2600, Denver, Colorado 80202, Phone (303) 830-2400)

Application for Finding of Reasonable Diligence

**CHAFFEE COUNTY**

**2. Name of Structure:** Olson Ditch (WDID 1100589). **3. Description of conditional water right:** A. Date of Original Decree: January 20, 2000, Case No. 96CW193, District Court, Water Division 2, State of Colorado. B. List of Subsequent Diligence Decrees: August 19, 2009, Case No. 06CW2, and March 18, 2016, Case No. 15CW16, District Court, Water Division No. 2, State of Colorado. C. Location: A point on the north bank of Powell Creek in the NE ¼ of the NW ¼ of Section 35, Township 13 South, Range 79 West, 6<sup>th</sup> P.M., Chaffee County, Colorado, being approximately 1,050 feet from the north section line and 1,550 feet from the west section line of said Section 35. Applicant provides the following coordinates to help further identify the approximate relevant location utilizing the Universal Transverse Mercator (UTM) grid system projection: 13S 396234E, 4304200N. D. Source: Powell Creek, an intermittent tributary of the Arkansas River. E. Appropriation Date: March 29, 1996. F. Amount: 0.4 c.f.s. G. Use: Stock watering and irrigation of 20 acres land west of County Road 361 in the S ½ of the SE ¼ Section 26, Township 13 South, Range 79 West, 6<sup>th</sup> P.M., Chaffee County, Colorado. **4. Detailed outline of what has been done toward completion of the appropriation and application to a beneficial use as conditionally decreed.** Applicant purchased the Olson Ditch conditional water right and the associated relevant land interests ("Property") on January 10, 2019. Applicant's evaluation of the Property, including the condition of the ditch and relevant structures associated with the Olson Ditch conditional right, and prospective uses of the Property and conditional water rights, is ongoing. Further, Applicant has engaged counsel as an exercise of reasonable diligence for development of the right. **5. Water applied to beneficial use:** N/A. **6. 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. WHEREFORE, Applicant requests the Court to enter its decree and ruling as follows: 1. To make a finding of reasonable diligence with respect to the Olson Ditch that was conditionally decreed in Case No. 96CW193, and continued in effect in Case Nos. 06CW2 and 15CW16, and providing that a subsequent showing of diligence on the right be made six years from the date of entry of a decree of diligence; 2. Any other ruling the Court deems appropriate in the above-captioned matter.

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**CASE NO. 2022CW3019; LUCAS ESCH FARMS, INC., PATRICK ESCH FARMS, INC., and CLOCK LAND CORPORATION C/O: Patrick Esch, 932 Hill St. Springfield, CO 81073**

(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

**LINCOLN COUNTY**

**II. Summary of Application.** Lucas Esch Farms, Inc., Patrick Esch Farms, Inc., and Clock Land Corporation (collectively "Applicant") seek a finding of reasonable diligence regarding the conditional water rights decreed in Case No. 14CW3048, District Court, Water Division 2. **III. Surface Water Rights.** A. Name of Structure: Esch Pond No. 1. 1. *Legal Description:* In the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 20, Township 17 South, Range 58 West, of the 6<sup>th</sup> P.M. UTM Coordinates being Northing: 42\_69112.072 N, Easting: 0594856.178 E, Zone 13, NAD83, 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.), WDID No. 1703313. 2. *Source of Water:* Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. 3. *Date and Case Number of Original Decree:* March 30, 2016; decreed in Case No. 14CW3048. 4. *Date of Appropriation:* October 21, 2014. 5. *Amount:* 22.2 annual acre-feet, conditional. 6. *Uses:* Stockwater, wildlife, wetlands, recreation, and piscatorial, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants. Wetland uses include maintenance, enhancement, and development purposes, including re-fill, for replacement of evaporation losses, increased evapotranspiration, and increased bank storage. 7. *Remarks:* Storage capacity is 6.6 acre-feet and no point of the dam/berm shall be higher than 10 feet. Total diversions and beneficial use for the Esch Pond No. 10 will be for 22.2 annual acre-feet. The Esch Pond No. 10 will be located, and the waters therefrom used, exclusively upon the lands of the Applicants, with the exception of potential fire protection uses. B. Name of Structure: Esch Pond No. 1. *Legal Description:* In the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 20, Township 17 South, Range 58 West, of the 6<sup>th</sup> P.M. UTM Coordinates being Northing: 42\_68862.980 N, Easting: 0595060.323 E, Zone 13, NAD83, as depicted on attached **Exhibit A**, WDID No. 1703314. 2. *Source of Water:* Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. 3. *Date and Case Number of Original Decree:* March 30, 2016; decreed in Case No. 14CW3048. 4. *Date of Appropriation:* October 21, 2014. 5. *Amount:* 11.7 annual acre-feet, conditional. 6. *Uses:* Stockwater, wildlife, wetlands, recreation, and piscatorial, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants. Wetland uses include maintenance, enhancement, and development purposes, including re-fill, for replacement of evaporation losses, increased evapotranspiration, and increased bank storage. 7. *Remarks:* Storage capacity is 3.6 acre-feet and no point of the dam/berm shall

be higher than 10 feet. Total diversions and beneficial use for the Esch Pond No. 11 will be for 11.7 annual acre-feet. The Esch Pond No. 11 will be located, and the waters therefrom used, exclusively upon the lands of the Applicants, with the exception of potential fire protection uses. C. Name of Structure: Esch Pond No. 12. 1. *Legal Description*: In the SE $\frac{1}{4}$  NE  $\frac{1}{4}$  of Section 20, Township 17 South, Range 58 West of the 6th P.M., approximately 50 feet from the south line and approximately 1,650 feet from the east line of said Section 17. UTM Coordinates being Northing: 42\_68749.436 N, Easting: 0595191.774 E, Zone 13, NAD83, as depicted on attached **Exhibit A**, WDID No. 1703315. 2. *Source of Water*: Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. 3. *Date and Case Number of Original Decree*: March 30, 2016; decreed in Case No. 14CW3048. 4. *Date of Appropriation*: October 21, 2014. 5. *Amount*: 14.5 annual acre-feet, conditional. 6. *Uses*: Stockwater, wildlife, wetlands, recreation, and piscatorial, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants. Wetland uses include maintenance, enhancement, and development purposes, including re-fill, for replacement of evaporation losses, increased evapotranspiration, and increased bank storage. 7. *Remarks*: Storage capacity is 4.2 acre-feet and no point of the dam/berm shall be higher than 10 feet. Total diversions and beneficial use for the Esch Pond No. 12 will be for 14.5 annual acre-feet. The Esch Pond No. 12 will be located, and the waters therefrom used, exclusively upon the lands of the Applicants, with the exception of potential fire protection uses. D. Name of Structure: Esch Pond No. 13. 1. *Legal Description*: In the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 21, Township 17 South, Range 58 West of the 6th P.M. UTM coordinates being Northing: 42\_68582.168 N, Easting: 0595351.422 E, Zone 13, NAD 83 as depicted on attached **Exhibit A**. WDID No. 1703316. 2. *Source of Water*: Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. 2. *Date and Case Number of Original Decree*: March 30, 2016; decreed in Case No. 14CW3048. 3. *Date of Appropriation*: October 21, 2014. 4. *Amount*: 25.8 annual acre-feet, conditional. 5. *Uses*: Stockwater, wildlife, wetlands, recreation, and piscatorial, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants. Wetland uses include maintenance, enhancement, and development purposes, including re-fill, for replacement of evaporation losses, increased evapotranspiration, and increased bank storage. 6. *Remarks*: Storage capacity is 7.8 acre-feet and no point of the dam/berm shall be higher than 10 feet. Total diversions and beneficial use for the Esch Pond No. 13 will be for 25.8 annual acre-feet. The Esch Pond No. 13 will be located, and the waters therefrom used, exclusively upon the lands of the Applicants, with the exception of potential fire protection uses. E. Name of Structure: Esch Pond No. 14. 1. *Legal Description*: In the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 21, Township 17 South, Range 58 West of the 6th P.M. UTM coordinates being Northing: 42\_68516.251 N, Easting: 0595487.446 E, Zone 13, NAD83, as depicted on attached **Exhibit A**, WDID No. 1703317. 2. *Source of Water*: Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. 3. *Date and Case Number of*

*Original Decree:* March 30, 2016; decreed in Case No. 14CW3048. 4. *Date of Appropriation:* October 21, 2014. 5. *Amount:* 10.6 annual acre-feet, conditional. 6. *Uses:* Stockwater, wildlife, wetlands, recreation, and piscatorial, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants. Wetland uses include maintenance, enhancement, and development purposes, including re-fill, for replacement of evaporation losses, increased evapotranspiration, and increased bank storage. 7. *Remarks:* Storage capacity is 3.2 acre-feet and no point of the dam/berm shall be higher than 10 feet. Total diversions and beneficial use for the Esch Pond No. 14 will be for 10.6 annual acre-feet. The Esch Pond No. 13 will be located, and the waters therefrom used, exclusively upon the lands of the Applicants, with the exception of potential fire protection uses. F. Name of Structure: Esch Pond No. 15. 1. *Legal Description:* In the NW¼ SW¼ of Section 21, Township 17 South, Range 58 West of the 6th P.M. UTM coordinates being Northing: 42\_68347.3910 N, Easting: 0595639.260 E, Zone 13, NAD83, as depicted on attached **Exhibit A**, WDID No. 1703318. 2. *Source of Water:* Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. 3. *Date and Case Number of Original Decree:* March 30, 2016; decreed in Case No. 14CW3048. 4. *Date of Appropriation:* October 21, 2014. 5. *Amount:* 9.2 annual acre-feet, conditional. 6. *Uses:* Stockwater, wildlife, wetlands, recreation, and piscatorial, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants. Wetland uses include maintenance, enhancement, and development purposes, including re-fill, for replacement of evaporation losses, increased evapotranspiration, and increased bank storage. 7. *Remarks:* Storage capacity is 2.7 acre-feet and no point of the dam/berm shall be higher than 10 feet. Total diversions and beneficial use for the Esch Pond No. 15 will be for 9.2 annual acre-feet. The Esch Pond No. 13 will be located, and the waters therefrom used, exclusively upon the lands of the Applicants, with the exception of potential fire protection uses. **IV. Detailed Outline of Diligence.** Per the decree entered in 14CW3048, the above-described Esch Pond No. 10, Esch Pond No. 11, Esch Pond No. 12, Esch Pond No. 13, Esch Pond No. 14, and Esch Pond No. 15, are conditional water rights awarded to the Applicant for various purposes outlined above. 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. The conditional water rights described in Case No. 14CW3048 are part of such an integrated system, along with absolute and conditional water rights decreed in Case Nos. 08CW91 (diligence granted in 17CW3028), 11CW47 (diligence granted in 19CW3066), and 13CW3040 (diligence granted in 20CW3000). During the subject diligence period, Applicant has outlaid the following expenditures or completed the following work related to the Esch Ponds Nos. 10 through 15: A. Expenditures for design, engineering, surveys, and construction plans for the Esch Ponds Nos. 10 through 15, and related mitigation credits plan. B. Attended meetings and maintained ongoing communication with the Army Corp of Engineers for the development and approval of a mitigation plan, including the construction of a mitigation bank, on Cramer Creek. C. The Applicant has incurred extensive legal fees associated with drafting and filing of

documents pertaining to the Applicant's integrated water system, previous related applications and decrees as well as the present filing. **V. Name and address of the owners of land on which structures are located.** Applicant owns the land where the Esch Pond No. 10, Esch Pond No. 11, Esch Pond No. 12, Esch Pond No. 13, Esch Pond No. 14, and Esch Pond No. 15 are located and the beneficial use of the water from this source will be upon the Applicant's land.

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**CASE NO. 2022CW3020, Water Division 2, and CASE NO. 2022CW3036, Water Division 1 – NABULSI-ABUSHABAN FAMILY TRUST, C/O: Taher Nabulsi, 14384 Whispering Ridge Rd., San Diego, CA 92131** (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 Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation

EL PASO COUNTY

**EL PASO COUNTY**

**II. Summary of Application.** Applicant seeks to construct or utilize up to four (4) non-exempt wells (including three existing wells) to the not-nontributary Dawson aquifer to provide water service to an equivalent number of single-family lots, based on an anticipated subdivision of Applicant's 25-acre parcel into up to four lots. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and approval of a plan for augmentation for the use thereof. **III. Application for Underground Water Rights.** A. Legal Description of Wells. 1. Property Description. All wells are and will be located on Applicant's approximately 25-acre property ("Applicant's Property") anticipated to be subdivided into four lots. Applicant's property is 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.), located in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 19, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., and more particularly described as 10650 Black Forest Rd., Colorado Springs, Colorado 80908. 2. Existing Well. There are three existing exempt wells located on Applicant's Property ("N-A Trust Wells Nos. 1 through 3) described as follows: i. N-A Trust Well No. 1. The well with Division of Water Resources Permit No. 85841-A, permit attached as **Exhibit B**, was completed on March 12, 1986 to the Dawson Aquifer, and is located on Applicant's property in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 19, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., The well permit states that the well will be located 1185 feet from the South section line, and 1000 feet from the East section line of Section 35. N-A Trust Well No. 1 location is incorrectly described in the well permit and is actually located approximately 541 feet from the East Section line and 1,081 feet from South Section line. The well location in the well permit will be corrected to the actual location upon approval of the plan for augmentation. ii. N-A Trust Well No. 2. The well with Division of Water Resources Permit No. 137196, permit attached as **Exhibit C**, was completed on October 3, 1985 to the Dawson aquifer, and is located on Applicant's property in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 19, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., approximately 148 feet from East Section line, 890 feet from South Section line. iii. N-A Trust Well No. 3. The well with Division of Water Resources Permit No. 23585, permit attached as **Exhibit D**, was constructed to the Dawson aquifer in May 1965. The well

permit states that the well will be located in the SE¼ SW¼ of Section 35. The N-A Trust Well No. 3 location is incorrectly described in the well permit and is actually located on Applicant's property in the SE¼ SE¼ of Section 19, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., approximately 826 feet from the East Section line and 683 feet from South Section line. The well location in the well permit will be corrected to the actual location upon approval of the plan for augmentation. 2. Upon approval of this plan for augmentation, the N-A Trust Wells Nos. 1 through 3 will be re-permitted. 3. Proposed Well. Applicant proposes that one additional well will be located on the Applicant's Property at a specific location not yet determined ("N-A Trust Well No. 4"), to be constructed to the Dawson aquifer. B. Water Source. 1. Not-Nontributary. The ground water to be withdrawn from the Dawson, Denver and Arapahoe aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicant's Property is nontributary. C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code §8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

<b>AQUIFER</b>	<b>NET SAND (Feet)</b>	<b>Total Appropriation (Acre Feet)</b>	<b>Annual Avg. Withdrawal 100 Years (Acre Feet)</b>	<b>Annual Avg. Withdrawal 300 Years (Acre Feet)</b>
Dawson (NNT)	158.1	784	7.84	2.61
Denver (NNT)	294.8	1243	12.43	4.14
Arapahoe (NNT)	267.3	1127	11.27	3.75
Laramie Fox Hills (NT)	189.8	706	7.06	2.35

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. D. Requested Uses. The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, irrigation, stock water, recreation, wildlife, fire protection, and also for storage



and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson, Denver, and Arapahoe aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c.5). E. Well Fields. Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. F. Averaging of Withdrawals. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. G. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicant. **IV. APPLICATION FOR PLAN FOR AUGMENTATION.** A. Structures to be Augmented. The structures to be augmented are the N-A Trust Wells Nos. 1 through 4, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicant's Property as requested and described herein. B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from N-A Trust Wells Nos. 1 through 4, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. C. Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by up to four wells proposed herein for up to four residential lots. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1. Uses. i. Household Use Only: 0.26 acre-feet annually within single family dwellings on up to four lots, with a maximum of ten percent consumptive use based on nonevaporative septic leach field disposal systems. The annual consumptive use for each lot will therefore be 0.026 acre-feet per well, with return flows of 0.234 acre-feet per lot, or 0.936 acre-feet per year. ii. Landscape Irrigation: 0.05 acre-feet annually per 1,000 square feet (2.18 acre-feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre-feet. iii. Horses (or equivalent livestock): 0.011 acre-feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. 2. Each well will pump a maximum of 0.57 acre-feet of water per year per residence, assuming four lots, for a maximum total of 2.28 acre-feet being withdrawn from the Dawson aquifer per year. Such use shall be a combination

of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.26 acre-feet of water per year per residence with the additional 0.31 acre-feet per year per residence available for irrigation of lawn and garden and the watering of up to four horses or equivalent livestock on each residential lot.

3. Depletions. Applicant has determined that maximum stream depletions over the 300-year pumping period for the Dawson aquifer amounts to approximately 31.1% of pumping. Maximum annual depletions for total residential pumping from all wells are therefore 0.71 acre-feet in year 300. Should Applicant's pumping be less than the 2.28 total annual acre-feet, 0.57 acre-feet per lot per year described herein, resulting depletions and required replacements will be correspondingly reduced. Additionally, should only three lots be established on the property, pumping from each individual well on each lot actually established may be increased from the maximums described herein, provided that all out-of-priority depletions remain augmented at all times.

4. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of up to four residential wells. Applicant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.26 acre-feet per residence per year, total of 1.04 acre-feet, 0.93 acre-feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be more than adequately augmented.

5. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the N-A Trust Wells Nos. 1 through 4, Applicant will reserve up to the entirety of the nontributary Laramie Fox Hills aquifer, accounting for actual stream depletions replaced during the plan pumping period, as necessary to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive new well permits for the N-A Trust Wells Nos. 1 through 4 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

**V. Remarks.** A. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the Arkansas River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with pending Division 2 application in Water Division 2 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. B. Applicant requests a finding that it has complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-

nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). C. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. D. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. E. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. F. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. G. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. H. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

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**CASE NO. 2022CW3021; Previous Case Nos. 86CW11; 94CW57; 01CW105; 08CW87; and 15CW3040 – TOWN OF MONUMENT, 645 Beacon Lite Road, Monument, CO 80132** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Robert F. T. Krassa, Krassa & Miller, LLC, 2300 Canyon Blvd., Ste. 2, Boulder, CO 80302, 303-442-2156)

Application for Finding of Reasonable Diligence

**EL PASO COUNTY**

**2. Name of Structures:** The conditional water rights which are the subject of this Application, are the following wells: Monument Wells QAL-3, QAL-4, QAL-5, QAL-6, QAL-7, QAL-8, QAL-3(ALT), QAL-4(ALT), QAL-5(ALT), QAL-6(ALT), QAL-7(ALT), and QAL-8(ALT). **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **a. Date of Original Decree:** September 2, 1988, Case 86CW11, Water Division No. 2, which was recorded January 17, 1989 at Reception Number 01786436, Book 5596, Page 625, records of El Paso County. **b List all subsequent decrees** awarding findings of diligence (all in this Court): 94CW57 entered Apr. 4, 1995, 01CW105 entered Nov. 19, 2002, 08CW87 entered Aug. 19, 2009 and 15CW3040 entered March 3, 2016. **c. Location of structures:** The above referenced wells are located in Sections 15, and 16, Township 11 South, Range 67 West of the 6th P.M. in El Paso County, at the following locations described in paragraph 10 of the said Decree in Case 86CW11, and shown on map attached as Exhibit A. QAL-3. In the NE 1/4 NE 1/4 section 16 at a point 50 feet from the North line and 500 feet from the East line of said section 16. QAL-4. In the NE 1/4 NE 1/4 Section 16 at a point 400 feet from the North line and 300 feet from the East line of said section 16. QAL-5. In the NW 1/4 NW 1/4 section 15 at a point 400 feet from the North line and 70 feet from the west line of said Section 15. QAL-6. In the NE 1/4 NE 1/4 Section 16 at a point 750 feet from the North

line and 100 feet from the East line of said Section 16. QAL-7. In the NW 1/4 NW 1/4 Section 15 at a point 850 feet from the North line and 300 feet from the West line of said Section 15. QAL-8. In the NW 1/4 NW 1/4 Section 15 at a point 1,250 feet from the North line and 300 feet from the West line of said Section 15. QAL-3(ALT.). In the SW 1/4 NW 1/4 Section 15, at a point 2,200 feet from the North line and 750 feet from the West line of said Section 15. QAL-4(ALT.). In the SW 1/4 NW 1/4 Section 15, at a point 2,350 feet from the North line and 500 feet from the west line of said Section 15. QAL-5(ALT.). In the SW 1/4 NW 1/4 Section 15, at a point 2,550 feet from the North line and 1,250 feet from the West line of said Section 15. QAL-6(ALT.). In the NE 1/4 SW 1/4 Section 15, at a point 2,800 feet from the North line and 1,500 feet from the west line of said Section 15. QAL-7(ALT.). In the SW 1/4 NW 1/4 Section 15 at a point 2,050 feet from the North line and 1,000 feet from the West line of said Section 15. QAL-8(ALT.). In the SE 1/4 NW 1/4 Section 15 at a point 2,250 feet from the North line and 1,350 feet from the West line of said Section 15. **d. Source:** groundwater tributary to Monument Creek. **e. Date of Appropriation:** December 11, 1985. Amount: 150 gallons per minute for each well, conditional. **f. Use:** Paragraph 14 of the Decree in Case 86CW11 provides, "The water produced from these wells will be used by Monument for municipal purposes, including domestic, industrial, commercial, irrigation, fire protection, stock water, recreation and all other beneficial uses. The lands to be served and irrigated include all lands within the boundaries or service area of Monument and any enlargements or extensions thereof." Map of Monument service area is attached as Exhibit B. **4. Provide a detailed outline of what has been done** toward completion or for completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: **a. Monument owns and operates** a single, unified and integrated municipal water supply system that contains numerous components. Those components include, but are not limited to the appropriative rights of exchange that are the subject of this application. **b. During the diligence period**, a major Water Treatment Plant (WTP) upgrade was completed on WTP #4/5; water distribution lines in various locations around Town were upgraded; security and camera systems at all WTP Facilities were upgraded; SCADA Radio System for WTPs was upgraded; drilled and outfitted a new Well #10; designed and installed a new Radium Removal System at WTP #3/9; installed a new water meter transponder system for the entire system; and legal and engineering expenses were incurred in protecting the Town's water rights. During the diligence period the Town has spent over \$4,000,000 on these and other water system projects, all of which were necessary to fully place the subject conditional water rights into service. The Town of Monument has in all respects diligently worked toward placing these conditional water rights to beneficial use. **c. The work performed**, and actions taken by Monument during the Diligence Period demonstrate Monument's continuing intent to develop the conditional rights described in this case. Monument has shown that it can and will divert, possess or control and beneficially use the subject rights and that the subject rights can and will be completed with diligence and within a reasonable time. The Town of Monument has in all respects diligently worked toward placing these conditional water rights to beneficial use. **5. Names and addresses of owners** or reputed owners of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure necessary for the subject rights of exchange is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Monument

owns or has the right to use the sites upon which all structures associated with this matter will be located.

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**CASE NO. 2022CW3022; Previous Case Nos. 15CW3063; 09CW98; 02CW126; 95CW147; 89CW8; and 82CW210 – TOWN OF MONUMENT, 645 Beacon Lite Road, Monument, CO 80132** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Robert F. T. Krassa, Krassa & Miller, LLC, Krassa & Miller, LLC, 2300 Canyon Blvd., Ste. 2, Boulder, CO 80302, 303-442-2156)

Application for Finding of Reasonable Diligence and to Make Absolute

**EL PASO COUNTY**

**2. Name of Structures:** The conditional water rights which are the subject of this Application are the following wells): Monument Well No. 4 (WDID 1005606) and Monument Well No. 5 (WDID 1005605) **3. Describe conditional water right (as to each structure) giving the following from the Referee's Ruling and Judgment and Decree:** **a. Date of Original Decree:** February 8, 1985, Case No.: 82CW210, Court: District Court, Water Division No. 2. **b. List all subsequent decrees awarding findings of diligence** (all in this Court): 89CW8 entered June 29, 1989; 95CW147 entered September 25, 1996; 02CW126 entered July 30, 2003; 09CW98 entered November 24, 2009 and 15CW3063 entered March 3, 2016. **c. Location of structures:** both Wells in SW/4 NW/4, Sec. 15, T. 11S. R67 W of the 6<sup>th</sup> P.M. in El Paso County. No. 4 is 2020 feet from north line and 790 feet from west line said section; No. 5 is 2100 feet from north line and 600 feet from west line said section. See map attached as Exhibit A showing wells and Monument Water Service Area. **d. Source:** Monument Creek Alluvium **e. Appropriation Date:** December 8, 1982 for each well. Amount: No. 4 - 100 g.p.m., No. 5 - 60 g.p.m. **f. Use:** Municipal, including domestic, industrial, commercial, irrigation, fire protection, stock water, recreation and any other beneficial use. **g. Depth:** (if well) Each well is 28 feet deep. **4. Provide a detailed outline of what has been done** toward completion or for completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: **a. Monument owns and operates** a single, unified and integrated municipal water supply system that contains numerous components. Those components include, but are not limited to the structures and water rights that are the subject of this application. **b. During the diligence period,** a major Water Treatment Plant (WTP) upgrade was completed on WTP #4/5; water distribution lines in various locations around Town were upgraded; security and camera systems at all WTP Facilities were upgraded; SCADA Radio System for WTPs was upgraded; drilled and outfitted a new Well #10; designed and installed a new Radium Removal System at WTP #3/9; installed a new water meter transponder system for the entire system; and legal and engineering expenses were incurred in protecting the Town's water rights. During the diligence period the Town has spent over \$4,000,000 on these and other water system projects, all of which were necessary to fully place the subject conditional water rights into service. The Town of Monument has in all respects diligently worked toward placing these conditional water rights to beneficial use. **c. The work performed and actions taken by Monument** during the Diligence Period demonstrate Monument's continuing intent to develop the conditional rights described in this case. Monument has shown that it can and will divert, possess or control and beneficially use the subject rights and that the subject rights can and will be completed with diligence and within a

reasonable time. The Town of Monument has in all respects diligently worked toward placing these conditional water rights to beneficial use. **5. Claim to make absolute: a. On March 28, 2020, the two subject wells were simultaneously operated** at their full respective decreed rates of 100 g.p.m for Well No. 4 and 60 g.p.m. for Well No 5, for a total volume pumped of 0.72 acre feet on that date, and the water produced was treated and delivered into the Town's water system and applied to beneficial use under that system in the service area shown on map attached hereto as Exhibit A, under the plan for augmentation decreed by this Court in Case 82CW212 entered June 7, 1988. **b. The State Engineer in the exercise of his administrative authority has issued** Written Instruction 2020-01 that water produced by a conditional water right pursuant to a plan for augmentation makes the water right absolute. The reasoning, as well as the supporting opinion of the Attorney General's Office, is fully explained in said Written Instruction which is attached as Exhibit B and is incorporated by this reference. **6. Names and addresses of owners** or reputed owners of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure necessary for the subject rights of exchange is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Monument owns or has the right to use the sites upon which all structures associated with this matter will be located.

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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 May 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.

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Witness my hand and the seal of this Court this 8<sup>th</sup> day of April 2022.

*Michele Santistevan*

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



(Court seal)  
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