

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING SEPTEMBER 2022. (This publication can be viewed in its entirety on the state court website at: [www.courts.state.co.us](http://www.courts.state.co.us)).  
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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 September 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. 2022CW3060; Previous Case No. 18CW3026 – JON P. DIDLEAUX, 7935 Forest Heights Circle, Colorado Springs, CO 80908; PHYLLIS J. DIDLEAU REVOCABLE TRUST c/o Jon P. Didleaux, 7935 Forest Heights Circle, 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. E-mail: [rwf@cowaterlaw.com](mailto:rwf@cowaterlaw.com); [ebp@cowaterlaw.com](mailto:ebp@cowaterlaw.com))  
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Application for Revision of Plan for Augmentation

**EL PASO COUNTY**

**II. Background and Summary of Application.** A. Applicants seek to revise the existing augmentation plan concerning groundwater supplies underlying two adjacent properties totaling approximately 35 acres of land located in Section 9, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., in El Paso County, Colorado, more specifically described as 12725 Herring Road, Colorado Springs, CO 80908, containing approximately 32.5 acres, and 7935 Forest Heights Circle, Colorado Springs, CO 80908, containing 2.5 acres (“Applicants’ Property”), depicted on **Exhibit A** attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) B. Underground water rights within the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers, along with a plan for augmentation, were decreed in Case No. 18CW3026 (“18CW3026 Decree”) by District Court, Water Division 2 on September 14, 2018. The 18CW3026 Decree established an augmentation plan for Applicants’ Property, for subdivision into three lots. The augmentation plan decreed that up to a combined 1.2 acre-feet of water may be withdrawn from the not-nontributary Dawson aquifer from the three individual wells on each of the lots, or 0.4 acre-fee per well, and set forth the water use as in house, irrigation of lawn and garden, stock water, and fire protection. The 18CW3026 Decree reserved a total of 327 acre-feet for replacement of post-pumping depletion obligations (a 300-year aquifer life/plan for augmentation). C. Applicants are the owners of Applicants’ Property, including the following water in the Denver Basin aquifers as quantified in the 18CW3026 Decree, attached as **Exhibit B**:

Aquifer	Total Acre-Feet	Annual Amount – 100 years (Acre-Feet)	Annual Amount – 300 years (Acre-Feet)
Dawson (NNT)	2,570 <sup>1</sup>	25.7	8.56 <sup>2</sup>
Denver (NNT)	2,130	21.3	7.1
Arapahoe (NT)	1,450	14.5	4.83
Laramie-Fox Hills (NT)	951	9.51	3.17

**III. Proposed Revision.** Applicants are the owners of the property described in paragraph II.A., above, along with the water subject to the plan for augmentation approved and decreed by the Division 2 Water Court in the 18CW3026 Decree, outlined above. By this Application, the Applicant seeks the following revisions to the plan for augmentation set forth in the 18CW3026 Decree to support the development of four lots on 32.5 acres located at 12725 Herring Road, Colorado Springs, CO 80908, as follows:

A. Removal of 7935 Forest Heights Circle from Augmentation Plan and Maintaining Status of Existing Exempt Well: Applicants’ wish to remove that portion of Applicants’ Property located at 7935 Forest Heights Circle, Colorado Springs, CO 80908, containing 2.5 acres from the augmentation plan approved for subdivision of Applicants’ Property in the 18CW3026 Decree. There is an existing domestic well with Division of Water Resources Permit No. 293425-A (“Didleaux Well No. 1), permit attached as **Exhibit C**. Applicants will reserve a portion of the Dawson aquifer water quantified in the 18cW3026 Decree for the Didleaux Well No. 1, which will remain an exempt well pursuant to SB 20-155 amending C.R.S. §37-92-602(3)(b)(IV).

B. Structures to be Augmented: The structures to be augmented are four wells (one well per lot) to be constructed to the not-nontributary Dawson aquifer (“Didleaux Wells Nos. 2 through 5), including any future replacement or substitute wells as may be constructed to the not-nontributary Dawson aquifer formation underlying that portion of Applicants’ Property located at 12725 Herring Road, Colorado Springs, CO 80908, containing 32.5 acres.

C. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the septic return flows resulting from pumping of the not-nontributary Dawson aquifer by the Didleaux Wells, as well as return flows from any replacement/substitute wells, as set forth in this plan for augmentation, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions.

D. Statement of Plan for Augmentation. Applicants wish to provide for the augmentation of stream depletions caused by pumping the not-nontributary Dawson aquifer wells as proposed for Applicant’s Property. Potential water use criteria and the consumptive use component for replacement of actual depletions for the lot is estimated as follows:

1. Uses. i. Household Use Only: Four single-family dwellings (one per lot) will each utilize 0.20 annual acre-feet with a maximum of ten percent consumptive use based on use of non-evaporative septic leach field disposal systems. The annual consumptive use for the lots will therefore be 0.08 acre-feet, with return flows of 0.72 acre-feet annually. 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

<sup>1</sup> The total appropriable amount from the Dawson aquifer will be reduced by 300 acre-feet to 2,270 total acre-feet to account for pumping from the Didleaux Well No. 1.

<sup>2</sup> This amount will be reduced to account for pumping from the Didleaux Well No. 1 from 8.56 acre-feet to 7.56 acre-feet.

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 Didleaux Wells Nos. 2 through 5 will each pump 0.77 acre-feet annually, for a maximum of 3.08 acre-feet of water being pumping from the Dawson aquifer per year (the 18CW3026 Decree provided only for 1.2 acre-feet of pumping). Such use shall be a combination of household use, irrigation of lawn and garden, watering of horses or equivalent livestock, fire protection, and augmentation. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.20 acre-feet of water per year per lot, with the additional 0.57 acre-feet per year per lot available for irrigation of lawn and garden and the watering of horses or equivalent livestock. E. Depletions. Pursuant to C.R.S. §37-90-137(9)(c.5), replacement of actual stream depletions attributable to pumping of the Didleaux Wells Nos. 2 through 5 will be required to the extent necessary to prevent injurious effect, to the extent the wells are constructed to the Dawson aquifer. The 18CW3026 Decree found that maximum stream depletions over the 300-year pumping period for the Dawson aquifer amounts to approximately 11% of pumping. Maximum annual depletions for total pumping from all lots is therefore 0.33 acre-feet. Applicants are required to replace a maximum of 0.33 acre-feet annually as a result of pumping the Didleaux Wells Nos. 2 through 5 (*i.e.* 11% of pumping). Should Applicants' pumping be less than the 3.08 total per year, as described herein, resulting depletions and required replacements will be correspondingly reduced. F. Augmentation of Depletions During Pumping. Applicants will replace depletions resulting from the pumping of the Didleaux Wells Nos. 2 through 5 during the pumping life of the well utilizing residential return flows from non-evaporative septic systems from in house uses. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.20 acre-feet per residence per year, consistent with the 18CW30326 Decree, 0.72 acre-feet is replaced to the stream system per year, utilizing the non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented thereby preventing injury to other vested water rights. G. Augmentation for Post Pumping Depletions. Applicants seek to revise the reservation of the Laramie-Fox Hills aquifer in the 18CW3026 Decree for replacement of any injurious post-pumping depletions from pumping the Didleaux Wells Nos. 2 through 5. The 18CW3026 Decree reserved 327 acre-feet of water from the nontributary Laramie Fox Hills Aquifer to cover post-pumping depletions totaling 924 acre-feet. The Applicants now reserve 943 acre-feet of the nontributary Laramie-Fox Hills Aquifer thereby adding 616 acre-feet to post-pumping augmentation supply, sufficient to replace depletions from increased pumping on Applicants' Property. 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 well permits for the Didleaux Wells Nos. 2 through 5 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. H. Other Remarks. 1. 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 wells upon the entry of a decree approving an amendment to the augmentation plan pursuant to C.R.S. §37-90-137(9)(c). 2. 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. 3. 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. **IV. Remarks.** A. The Applicants request a finding that vested water rights of others will not be materially injured by the additional use requested herein. B. Upon entry of a decree in this case, the Applicants shall be entitled to apply for and receive a new well permit in accordance with the provisions of any decree entered in this case. C. The Water Court has jurisdiction over the subject matter of this application pursuant to §§ 37-90-137(6) and 37-92-302, C.R.S. D. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. E. The wells 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. F. 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. 2022CW3061; Previous Case No. 2013CW3070 – BAR NI CORPORATION**  
**c/o Joel Dunlap, Manager, Bar NI Ranch, 6614 Highway 12, Stonewall Gap, Westin,**  
**CO 81091** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Thomas W. Korver, Hayes Poznanovic Korver LLC, 700 17<sup>th</sup> Street, Suite 1800, Denver, CO 80202, Phone: (303) 825-1980)

Amended Application for Finding of Reasonable Diligence

**LAS ANIMAS COUNTY**

**2. Name of structures:** Lawton Pond, Rainbow Pond, Whispering Pines Pond, and Entrance Pond (collectively the "Bar NI Ponds"), the Solitario Pond, and the Bar NI Exchange, all of which were decreed by the District Court in and for Water Division No. 2 on September 8, 2016 in Case No. 2013CW3070. **3. Description of conditional water rights:** **A. Lawton Pond.** i. Location: The centerline of the dam is located in the SE1/4 SE1/4 Section 25, T. 33 S., R. 69W., 6<sup>th</sup> P.M., at a point 545 feet from the South section line and 515 feet from the east section line of said Section 25. Section lines and coordinates for the structures in paragraphs 3.A-D are estimates based on Maxwell Land Grant Co. surveys as marked P.L.S. 9645 for the NE corner and north quarter corner of Section 30, T33S, R68W, 6th PM. ii. Source: Duling Creek, tributary to the Middle Fork of the Purgatoire River. iii. Diversion: An unnamed diversion structure with a capacity of approximately 1.0 cfs. which diverts from Duling Creek in the SE1/4 SE1/4, Section 25, T. 33S., R. 69W., 6<sup>th</sup> P.M., at a point 305 feet from the south section line and 740 feet from the east section line of said Section 25 (UTM coordinates, Zone 13, NAD83, Easting

495745, Northing 4110288). iv. Appropriation Date and Uses: (a) December 31, 1954, for the absolute uses of piscatorial, recreation, stock watering, wildlife habitat, fire suppression and incidental aesthetic uses. (b) October 15, 2009 for the conditional uses of augmentation and exchange. v. Amount: 1.876 acre-feet, for the absolute and conditional uses above, together with the right of multiple refills in an amount equal to the total annual evaporation from the pond when water is available in priority, to be filled at a rate of diversion of 1.0 cfs. (a) Active Capacity: 1.876 acre-feet. (b) Dead Storage: 0.00 acre-feet. vi. Surface Area: 0.416 acres. (a) Maximum Height of Dam: 6.5 feet. (b) Length of Dam: 190 feet. **B. Rainbow Pond.** i. Location: The centerline of the dam is located in the SW1/4 SW1/4 Section 30, T. 33S., R. 68W., 6<sup>th</sup> P.M., at a point 885 feet from the south section line and 235 feet from the west section line of said Section 30. ii. Source: Abbott Creek, tributary to the Middle Fork of the Purgatoire River. iii. Diversion: An unnamed diversion structure with a capacity of approximately 1.75 cfs. which diverts from Abbott Creek in the SW1/4 SW1/4, Section 30, T. 33S., R. 68W., 6<sup>th</sup> P.M., at a point 645 feet from the south section line and 130 feet from the west section line of said Section 30 (UTM coordinates, Zone 13, NAD83, Easting 496012, Northing 4110391). iv. Appropriation Date and Uses: (a) December 31, 1966, for the absolute uses of piscatorial, recreation, stock watering, wildlife habitat, fire suppression and incidental aesthetic uses. (b) October 15, 2009 for the conditional uses of augmentation and exchange. v. Amount: 3.194 acre-feet, for the absolute and conditional uses above, together with the right of multiple refills in an amount equal to the total annual evaporation from the pond when water is available in priority, to be filled at a rate of diversion of 1.75 cfs. (a) Active Capacity: 3.194 acre-feet. (b) Dead Storage: 0.00 acre-feet. vi. Surface Area: 0.579 acres. (a) Maximum Height of Dam: 8.1 feet. (b) Length of Dam: 195 feet. **C. Whispering Pines Pond.** i. Location: The centerline of the dam is located in the SW1/4 NE1/4 Section 36, T. 33S., R. 69W., 6<sup>th</sup> P.M., at a point 1835 feet from the north section line and 1800 feet from the east section line of said Section 36. ii. Source: Abbott Creek, tributary to the Middle Fork of the Purgatoire River. iii. Diversion: An unnamed diversion structure with a capacity of approximately 1.75 cfs. which diverts from Abbott Creek in the SW1/4 NE1/4, Section 36, T. 33S., R. 69W., at a point 2100 feet from the north section line and 1940 feet from the east section line of said Section 36 (UTM coordinates, Zone 13, NAD83, Easting 495374, Northing 4109560). iv. Appropriation Date and Uses: (a) December 31, 1988, for the absolute uses of piscatorial, recreation, stock watering, wildlife habitat, fire suppression and incidental aesthetic uses. (b) October 15, 2009 for the conditional uses of augmentation and exchange. v. Amount: 1.472 acre-feet, for the absolute and conditional uses above, together with the right of multiple refills in an amount equal to the total annual evaporation from the pond when water is available in priority, to be filled at a rate of diversion of 1.75 cfs. (a) Active Capacity: 1.472 acre-feet. (b) Dead Storage: 0.00 acre-feet. vi. Surface Area: 0.314 acres. (a) Maximum Height of Dam: 6.4. (b) Length of Dam: 200 feet. **D. Entrance Pond.** i. Location: The centerline of the dam is located in the NW1/4 NW1/4 Section 30, T. 33S., R. 68W., 6<sup>th</sup> P.M., at a point 730 feet from the north section line and 1250 feet from the west section line of said Section 30. ii. Source: Middle Fork of the Purgatoire River. iii. Diversion: An unnamed diversion structure with a capacity of approximately 1.0 cfs which diverts from the Middle Fork of the Purgatoire River in the NW1/4 NW1/4 Section 30, T. 33S., R. 68W., 6<sup>th</sup> P.M., at a point 925 feet from the north section line and 1000 feet from the west section line of said

Section 30 (UTM coordinates, Zone 13, NAD83, Easting 496284, Northing 4111533). iv. Appropriation Date and Uses: (a) December 31, 1988, for the absolute uses of piscatorial, recreation, stock watering, wildlife habitat, fire suppression and incidental aesthetic uses. (b) October 15, 2009 for the conditional uses of augmentation and exchange. v. Amount: 1.450 acre-feet, for the absolute and conditional uses above, together with the right of multiple refills in an amount equal to the total annual evaporation from the pond when water is available in priority, to be filled at a rate of diversion of 1.0 cfs. (a) Active Capacity: 1.450 acre-feet. (b) Dead Storage: 0.00 acre-feet. vi. Surface Area: 0.442 acres. (a) Maximum Height of Dam: 5.6 feet. (b) Length of Dam: 200 feet. **E. Solitario Pond.** i. Location: The location as conditionally decreed in Case No. 2013CW3070 is "in the NE1/4 SW1/4 Section 19, T. 33S., R. 67W., 6<sup>th</sup> P.M., the centerline of the dam of which will be at a point approximately 3210 feet from the north section line and 2695 feet from the east section line of said Section 19." The pond is physically located in the NE1/4 SW1/4 Section 19, T33S, R67W; 2200 feet from the south section line, 1970 feet from the west section line; 506106 E, 4112274 N, UTM NAD83, Zone 13, and which as-constructed location is within 500 feet of the location of the Solitario Pond conditional water right as decreed in Case No. 2013CW3070. ii. Source: Purgatoire River. iii. Diversion: Direct diversions through the Dolores Duran Ditch, precipitation runoff, and irrigation runoff, including runoff from the Reys Montoya Ditch as transferred for diversion in the Dolores Duran Ditch on April 17, 1943, in Case No. 11637. The Reys Montoya Ditch diverts from the Purgatoire River in the NE1/4 SW1/4, Section 32, T. 33S., R. 65W., 6<sup>th</sup> P.M. (UTM coordinates, NAD83, Easting, 526829.8, Northing 4108859). The Reys Montoya Ditch was originally decreed in the amount of 3.2 cfs on August 10, 1903 as District Priority No. 10, Las Animas River Priority No. 10, with an appropriation date of February 1, 1863. iv. Appropriation Date: December 31, 2013. v. Amount: 7.0 acre-feet, conditional, together with the right of multiple refills in this amount when water is available in priority, to be filled at a rate of diversion of 7.0 cfs. (a) Active Capacity: 7.0 acre-feet, conditional. (b) Dead Storage: 0.00 acre-feet. vi. Approximate Surface Area: 2.0 acres. vii. Use: Piscatorial, irrigation, recreation, stock watering, wildlife habitat, fire suppression, augmentation, exchange and incidental aesthetic uses. viii. Remarks: If the Solitario Pond intercepts ground water it will either be lined or the ground water contributions to the pond will be accounted for and administered to the satisfaction of the Division Engineer. **F. Bar NI Exchange** ("Exchange"). a. Description of Exchange: The conditional appropriative right of exchange was adjudicated pursuant to C.R.S. §§ 37-80-120, 37-83-104 & 37-92-302(1)(a), C.R.S. (2009). Water stored in Trinidad Reservoir will be delivered to the Purgatoire River. b. Location of structures and Exchange reach: The upstream termini of the Exchange are the points of diversion for each of the structures described in paragraphs 3.A-D above, the locations of which are as follows: i. Lawton Pond. The centerline of the dam is located in the SE1/4 SE1/4 Section 25, T. 33 S., R. 69W., 6<sup>th</sup> P.M., at a point 545 feet from the South section line and 515 feet from the east section line of said Section 25. Section lines and coordinates for the structures in paragraphs 3.A-D are estimates based on Maxwell Land Grant Co. surveys as marked P.L.S. 9645 for the NE corner and north quarter corner of Section 30, T33S, R68W, 6<sup>th</sup> PM. ii. Rainbow Pond. The centerline of the dam is located in the SW1/4 SW1/4 Section 30, T. 33S., R. 68W., 6<sup>th</sup> P.M., at a point 885 feet from the south section line and 235 feet from the west section line of said Section 30. iii. Whispering Pines Pond. The centerline

of the dam is located in the SW1/4 NE1/4 Section 36, T. 33S., R. 69W., 6<sup>th</sup> P.M., at a point 1835 feet from the north section line and 1800 feet from the east section line of said Section 36. iv. Entrance Pond. The centerline of the dam is located in the NW1/4 NW1/4 Section 30, T. 33S., R. 68W., 6<sup>th</sup> P.M., at a point 730 feet from the north section line and 1250 feet from the west section line of said Section 30. The downstream terminus of the Exchange is Trinidad Reservoir as described in the decree in Case No. 2013CW3070 as "Trinidad Reservoir's dam is located in the SE1/4 NW1/4 of Section 27, Township 33 South, Range 64 West of the 6th PM, 2400 feet from north and 1800 feet from east Section Lines," or the Solitario Pond described in paragraph 3.E above. The location of Solitario Pond as described in paragraph 3.E above is "as conditionally decreed in Case No. 2013CW3070 is "in the NE1/4 SW1/4 Section 19, T. 33S., R. 67W., 6<sup>th</sup> P.M., the centerline of the dam of which will be at a point approximately 3210 feet from the north section line and 2695 feet from the east section line of said Section 19. The pond is physically located in the NE1/4 SW1/4 Section 19, T33S, R67W; 2200 feet from the south section line, 1970 feet from the west section line; 506106 E, 4112274 N, UTM NAD83, Zone 13." Water will be exchanged up the Purgatoire River to the Solitario Pond or to the confluence of the Purgatoire River with the Middle Fork of the Purgatoire River in the SE1/4 NE1/4, Section 24, T. 33S., R. 68W., 6<sup>th</sup> P.M., and up the Middle Fork of the Purgatoire River to the creeks and the Lawton Pond, the Rainbow Pond, the Whispering Pines Pond, and the Entrance Pond structures described in this subparagraph 3.F.b. c. Water and water rights used for substitution/replacement: Water stored in Trinidad Reservoir, as described in the decree in Case No. 2013CW3070, to which the Applicant is entitled pursuant to a lease with the City of Trinidad. Bar Ni shall use the notice procedure specified in paragraph 11 of the decree in Case No. 2013CW3070 if the exchange provides additional or different sources of replacement water for augmentation use other than the Trinidad Replacement water, the Bar Ni Ponds or the Solitario Pond. d. Appropriation Date: October 15, 2009. e. Exchange Amount: 8.0 cfs, conditional, to fill the Bar Ni Ponds, and 0.5 cfs for replacement of evaporation in the Bar Ni Ponds. f. Use: The water diverted by exchange will be used to fill or replace evaporation loss from the Bar NI Ponds for the uses described in paragraphs 3.A-D above. **4. Detailed outline of work done to apply water to beneficial use.** During the diligence period, the Applicant has engaged in activities that demonstrate diligence toward the application of water to the decreed beneficial use. The application contains a list of the specific activities undertaken and is available for inspection at the office of the Division 2 Water Clerk or via Colorado Courts E-filing. The work performed and actions taken by Applicant during the diligence period demonstrate that Applicant fully intends to develop and utilize the subject conditional water rights to the full decreed amounts, and Applicant has demonstrated that the subject conditional water rights can and will be diverted, stored, or otherwise captured, possessed, and controlled, and will be beneficially used, and that the project can and will be completed with diligence in a reasonable time. **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 is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** The land upon which the Bar NI Ponds and the Solitario Pond are located is owned by Applicant and shown on **Exhibit A** attached to the application and available for inspection at the office of the Division 2 Water Clerk or via

Colorado Courts E-filing. The United States Army, Corps of Engineers owns the land upon which the Trinidad Reservoir diversion and storage structures are located. Its address is: United States Army, Corps of Engineers, Albuquerque District, 4101 Jefferson Plaza NE, Albuquerque NM 87109-3435. WHEREFORE, the Applicant respectfully requests that this Court enter findings of fact, conclusions of law, and a judgment and decree: (1) finding that the Applicant has been reasonably diligent in the development and use of the water rights described in paragraph 3.A-F above for all conditionally decreed uses of said water rights; (2) continuing in full force and effect the conditionally decreed uses of the water rights described in paragraph 3.A-F above; and (3) for such other and further relief as this Court deems just and proper.

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**CASE NO. 2022CW3062; SOUTHEAST PROPERTY ACQUISITIONS, 550 N. Reo St., Unit 202, Tampa, FL 33609, (“Applicant”)** (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**

**II. Summary of Application.** The Applicant seeks to construct a well to the not-nontributary Denver aquifer to provide water service to one twenty-acre lot. The 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. The

well will be located on the Applicant’s approximately twenty-acre property in the E½ NE¼ SE¼ of Section 25, Township 12 South, Range 62 West of the 6<sup>th</sup> P.M. (“Applicant’s Property”). The Applicant’s Property is depicted on the **EXHIBIT A** map attached to the application, and is more particularly described as 29770 W Hanisch Rd., Calhan, CO 80808. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 2. Proposed Wells. The Applicant proposes that one well will be located on the Applicant’s Property to be constructed to the Denver aquifer and permitted for non-exempt uses upon entry of a decree and approval of plan for augmentation requested herein (“SPA Well No. 1”).

B. Water Source. Not-Nontributary. The ground water to be withdrawn from the Denver aquifer underlying the Applicant’s Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the not-nontributary aquifer will require the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Arapahoe and 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 well(s) 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. The 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 100-year life 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 the Applicant's Property:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)
Denver (NNT)	116.4	390	3.9
Arapahoe (NT)	187.2	640	6.4
Laramie Fox Hills (NT)	206.5	620	6.2

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, greenhouse, commercial, 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. The Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, that the Applicant shall only be entitled to construct a well or use water from the not-nontributary Denver aquifer 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. The Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying the Applicant's Property through any combination of wells. The Applicant requests that these wells be treated as a well field. F. Averaging of Withdrawals. The 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 and underlying groundwater upon which the well(s) will be located is owned by the Applicant. **IV. APPLICATION FOR PLAN FOR AUGMENTATION.** A. Structure to be Augmented. The structure to be augmented is the SPA Well No. 1 to be constructed to the not-nontributary Denver aquifer, and as will be permitted pursuant to this plan for augmentation, along with any replacement or additional wells associated therewith, 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 Denver aquifer from SPA Well No. 1, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. C. Statement of Plan for

Augmentation. The Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Denver aquifer by one well proposed herein for one lot. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1. Uses. The well will pump a maximum of 1.0 acre-feet of water per year from the Denver aquifer. Such use shall be a combination of household use, irrigation of lawn, garden, and greenhouse, and the watering of horses or equivalent livestock, commercial, recreation, wildlife, fire protection, and storage associated with such uses. Household use will be used within a single-family dwelling, with a maximum of ten percent consumptive use based on one nonevaporative septic leach field disposal system. The annual consumptive use for the lot will therefore be 0.026 acre-feet, with return flows of 0.234 acre-feet annually. An example breakdown of the combination of uses, is household use of 0.26 acre-feet of water per with the additional 0.74 acre feet per year available for irrigation of lawn, garden, and greenhouse, and the watering of up to four horses or equivalent livestock on the lot. 2. Depletions. Maximum stream depletions over the 100-year pumping period for the Denver aquifer amounts to approximately 17.46% of pumping. Maximum annual depletions from the Denver well is therefore 0.175 acre-feet in year 100. Should Applicant's pumping be less than the 1.0 total from the Denver aquifer per year described herein, resulting depletions and required replacements will be correspondingly reduced. 3. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), the Applicant is required to replace actual stream depletions attributable to pumping of the well. 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 per residence. At a household use rate of 0.26 acre-feet per year, 0.234 acre feet is replaced to the stream system per year, utilizing one non-evaporative septic system. Thus, during pumping, stream depletions will be more than 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 SPA Well No. 1, the 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, to replace any injurious post pumping depletions. The 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, the 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 SPA Well No. 1 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. **V. Remarks.** A. The 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 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 or wells only to the extent related to that well's actual pumping. C. 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. D. 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. E. The well shall be installed and metered as reasonably required by the State Engineer. The well must be equipped with a totalizing flow meter and the 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. F. Applicant intends to waive the 600-foot well spacing requirement for any wells to be located upon the Applicant's Property. G. All record owners of the Subject Property not listed as Applicants herein, and every person who has a lien or mortgage on, or deed of trust to, Applicant's Property, will be notified of the filing of this Application by certified or registered mail, return receipt requested, no later than 14 days after the filing of this Application. The Applicant will complete and file with the Court a Certificate of Notice as evidence that the required notices were given, in accordance with lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I).

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**CASE NO. 2022CW3063; TOWN OF MONUMENT, 645 Beacon Lite Road, Monument, CO 80132** (Please address all correspondence and inquiries regarding this matter to Applicant's attorney: Robert F. T. Krassa, Krassa & Miller, LLC, 2300 Canyon Blvd., Suite 2, Boulder, CO 80302, 303-442-2156)

Application for Approval of Plan for Augmentation for Not Nontributary Areas of Monument's Well Fields

**EL PASO COUNTY**

Purpose of Application: To augment withdrawals of groundwater from the Dawson, Denver and Arapahoe aquifers in the not nontributary areas of the Town of Monument ("Monument") well fields as decreed in Cases 08CW45 and 08CW63 (Exhibits A and B respectively). Withdrawal of groundwater from the Dawson aquifer through Monument Wells 1, 2 and 3 has been approved in the decree in Case 19CW3009, dated April 13, 2020, and those wells are not the subject of the present application. 3. Descriptions of Water Rights to be Augmented: All ground water in the not nontributary areas of the Dawson, Denver and Arapahoe aquifers adjudicated pursuant to the following decrees. All decrees, exhibits, and applications mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of the Water Court, and all recorded documents mentioned herein may be inspected at the office of the El Paso County Clerk and Recorder. a. Case 82CW211, decree entered August 13, 1987, recorded August 24, 1987 at Book 5412, page 801, rec. no. 01611040 (Exhibit C). b. Case 83CW9, decree entered August 13, 1987, recorded August 24, 1987 at Book 541, page 788, rec. no. 01611039 (Exhibit D). c. Case 08CW45, decree entered January 20, 2015 and recorded in the records of El Paso County on February 2, 2015 at rec. no. 215010041 (Exhibit A). d. Case 08CW63, decree entered September 30, 2014, recorded October 23, 2014 at rec. no. 214097619 (Exhibit B). 4. Dawson Aquifer - Location, Decreed Source and

Decreed Uses of Not Nontributary Groundwater Whose Withdrawals Are to be Augmented. The not nontributary groundwater in the Dawson aquifer which is the subject of this case was adjudicated in said Decree in Case 08CW45. a. Said groundwater is generally located within parts of Sections 10, 11, 14, 15, 22, 23, 26, 27 and 35, T. 11 S., R. 67 W. in El Paso County. The location is described in complete detail on the map Exhibit F. b. Source. Adjudicated as not nontributary per paragraph 22 of said 08CW45 decree. c. The uses of said groundwater are to be sources of supply in a unified water system to serve the present and future service area of Monument. All of the groundwater may be used, reused and successively used, and otherwise disposed of for municipal, domestic, industrial, agricultural, commercial, irrigation, stock watering, recreation, fish and wildlife, fire protection and other beneficial uses including augmentation, substitution and exchange. Such water may be withdrawn for immediate application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for all other augmentation purposes including taking credit for all return flows as augmentation for or as offsets against out-of-priority tributary depletions as provided in augmentation plan decrees of this Court. d. Amount of Withdrawals of Water to be Augmented. The amount of such Dawson aquifer not-nontributary groundwater was determined to be an average of 490.1 acre feet per year (para. 30.b of said 08CW45 Decree.) 5. Denver Aquifer - Location, Decreed Source and Decreed Uses of Not Nontributary Groundwater Whose Withdrawals Are to be Augmented. The not nontributary groundwater in the Denver aquifer which is the subject of this case was adjudicated in said Decrees in Cases 08CW45 and 08CW63. a. Said groundwater is generally located within parts of Sections 10, 11, 15, 22, 23, 26, 27, 28, 29, 32, and 33, T. 11 S., R. 67 W. in El Paso County. The location is described in complete detail on the map Exhibit G. b. Source. Adjudicated as not nontributary per paragraph 22 of said 08CW45 decree and paragraph 19 of the 08CW63 decree. c. The uses of said groundwater are to be sources of supply in a unified water system to serve the present and future service area of Monument. All of the groundwater may be used, reused and successively used, and otherwise disposed of for municipal, domestic, industrial, agricultural, commercial, irrigation, stock watering, recreation, fish and wildlife, fire protection and other beneficial uses including augmentation, substitution and exchange. Such water may be withdrawn for immediate application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for all other augmentation purposes including taking credit for all return flows as augmentation for or as offsets against out-of-priority tributary depletions as provided in augmentation plan decrees of this Court. d. Amount of Withdrawals of Water to be Augmented. The amount of such Denver aquifer not-nontributary groundwater was determined to be an average of 542.3 acre feet per year from Case 08CW45 plus 127 acre feet per year from Case 08CW63. 6. Arapahoe Aquifer - Location, Decreed Source and Decreed Uses of Not Nontributary Groundwater Whose Withdrawals Are to be Augmented. The not nontributary groundwater in the Arapahoe aquifer which is the subject of this case was adjudicated in said Decree in Case 08CW45. a. Said groundwater is generally located within parts of Section 26, T. 11 S., R. 67 W. in El Paso County. The location is described in complete detail on the map Exhibit H. b. Source. Adjudicated as not nontributary per paragraph 22 of said 08CW45 decree. c. The uses of said

groundwater are to be sources of supply in a unified water system to serve the present and future service area of Monument. All of the groundwater may be used, reused and successively used, and otherwise disposed of for municipal, domestic, industrial, agricultural, commercial, irrigation, stock watering, recreation, fish and wildlife, fire protection and other beneficial uses including augmentation, substitution and exchange. Such water may be withdrawn for immediate application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for all other augmentation purposes including taking credit for all return flows as augmentation for or as offsets against out-of-priority tributary depletions as provided in augmentation plan decrees of this Court. d. Amount of Withdrawals of Water to be Augmented. The amount of such Arapahoe aquifer not-nontributary groundwater was determined to be an average of 68.2 acre feet per year (para. 30.b of said 08CW45 Decree.) 7. Water rights which may be used for augmentation. a. Monument's direct flow rights on Beaver Creek as described in the decree of this Court in Case 83CW10 entered April 5, 1985 and recorded April 10, 1985 at rec. no. 01235240, Book 3993, page 1301, records of El Paso County (Exhibit I hereof). b. Water in the Laramie-Fox Hills and Arapahoe aquifers generally located in all or portions of Sections 26, 27, 28, 29, 32 and 33, as decreed in Monument's Case 83CW9 on August 13, 1987, which decree was recorded August 24, 1987 at rec. no. 01611039, Book 5412, page 788, records of El Paso County (Exhibit D hereof). c. Water from the Denver aquifer from Monument Wells Nos. 2 and 3 as decreed nontributary, and produced pursuant to, the decree in Cases W-627 and W-4103 on June 13, 1980 (Decree is Exhibit J, locations shown on Exhibit E). d. Water from the Arapahoe and Laramie-Fox Hills aquifers, located in Sections 10, 11, 14, 15 and 22, as decreed in Monument's Case 82CW211 on August 13, 1987 as recorded August 24, 1987 at rec. no. 01611040, Book 5412, page 801, records of El Paso County (Exhibit C hereof). e. Fully augmented water from the not nontributary areas of the Dawson, Denver and Arapahoe aquifers, and from the nontributary areas of the Arapahoe and Laramie-Fox Hills aquifers, generally located in Sections 10, 11, 14, 15, 22, 23, 26, 27 and 35, as decreed in Monument's Case 08CW45 on January 20, 2015, recorded February 2, 2015 at rec. no. 215010041 (Exhibit A hereof). f. Fully augmented water from the not nontributary areas of the Dawson, Denver and Arapahoe aquifers, and from the nontributary areas of the Arapahoe and Laramie-Fox Hills aquifers, generally located in all or portions of Sections 26, 27, 28, 29, 32 and 33, as decreed in Monument's Case 08CW63 on September 30, 2014, recorded October 23, 2014 at rec. no. 214097619 (Exhibit B hereof). g. Fully augmented water and water stored in-priority in Monument Lake Reservoir as decreed in Monument's Case 0CW146 on July 10, 2015 as recorded March 3, 2016 at rec. no. 216022070 (Exhibit K hereof). h. Reusable water owned by Monument that is discharged from the Tri-Lakes Wastewater Treatment Facility located in the NW/4NE/4 Sec. 27. i. Any other reusable water that is lawfully stored in and released from Monument Lake Reservoir. 8. Statement of plan for augmentation, covering all applicable matters under §37-90-137(9)(c.5), §37-92-103(9), 302(1) and 305(8), C.R.S. a. Dawson Aquifer. As to wells completed in the Dawson aquifer pursuant to the decree in said case 08CW45, Monument will replace actual out of priority stream depletions caused by such withdrawals during the pumping period, to the extent necessary to prevent any injurious effect, using any of the augmentation sources listed in foregoing paragraph 6. The amount of replacement shall

be determined using the assumption that the hydrostatic pressure level in said aquifer has been lowered at least to the top of that aquifer through that aquifer. b. As to wells in the not nontributary areas of the Denver and Arapahoe aquifers described in paragraphs 4 and 5 hereof that are more than one mile from any point of contact between any natural stream including its alluvium on which there are any water rights which could be injured by production of water from such aquifers, Monument shall replace to the stream system of Monument Creek a total amount of water equal to four (4) per cent of the water withdrawn on an annual basis, so long as water is withdrawn. c. As to wells in the not nontributary area of the Denver aquifer closer than one mile to any contact of such aquifer with any natural stream including its alluvium on which water rights would be injuriously affected by any stream depletion, the amount of replacement shall be determined using the assumption that the hydrostatic pressure level in said aquifer has been lowered at least to the top of that aquifer through that aquifer. Monument will replace actual out-of-priority stream depletions caused by such withdrawals during the pumping period, to the extent necessary to prevent any injurious effect, using any of the augmentation sources listed in foregoing paragraph 6. (There are no such areas in the Arapahoe aquifer in this case.) d. After withdrawal of water ceases, (the "post-pumping depletion period"), Monument shall replace water to the affected streams as required by law. e. Relative to the pumping period analysis and the post-pumping depletion analysis, Monument's engineers shall use the State's AUG3 model to simulate the pumping of wells as required by law. f. It is anticipated that the primary sources of post-pumping augmentation water for this plan will be the senior Beaver Creek direct flow rights described in foregoing para. 7.a backed up by water in the Laramie Fox-Hills aquifer described in foregoing para. 7.b (herein "the said LFH water"). Some of the yield of the said Beaver Creek direct flow rights was allocated by contract to the Triview plan for augmentation in case 14CW3053. In that case, Denver and Arapahoe not nontributary pumping was being augmented, and the maximum Denver aquifer depletion is 57.4 ac-ft in the 95th year after cessation of pumping (195th year) and, with the additional Arapahoe aquifer depletion, the maximum Triview post-pumping depletion is 59.9 ac-ft in the 105th year after cessation of pumping (205th year). In addition, the Beaver Creek rights are the primary augmentation supply for the plan for augmentation decreed in Monument Case 19CW3009. g. As such, while it is proposed that the Beaver Creek rights be the primary source of water to replace the post-pumping depletions in this case, Monument may reserve some of the said LFH water to cover the maximum depletive effects. h. In any event, post-pumping obligations shall accrue only to the extent of a particular well's actual pumping. i. If Monument elects not to produce any water from the Laramie Fox Hills aquifer, all of the water adjudicated in said aquifer under the decrees or pending case listed in foregoing paragraph 2 shall be considered to be reserved for the purpose of making up post-pumping depletions. If Monument has produced any water from the Laramie Fox-Hills aquifer by the time withdrawal of water from the other aquifers ceases, the amount of water considered to be reserved for post-pumping depletion in the Laramie Fox Hills aquifer shall be considered to be the amount of water adjudicated in said aquifer under the decrees listed in foregoing paragraph 2, times a fraction the numerator of which shall be the total amount of water adjudicated to the Laramie Fox Hills aquifer less the amount of water withdrawn therefrom by that date, and the denominator shall be the total amount of water adjudicated to the Laramie Fox Hills aquifer. j. Monument shall have complete discretion to select the source

of water to make up any post pumping depletion obligations from any of the other sources mentioned. k. Monument reserves the right to substitute other legally available augmentation sources for replacement of such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, Monument claims that post-pumping depletions will be noninjurious and do not need to be replaced, or only need to be replaced in smaller amounts than predicted by currently used models. Monument reserves the right in the future to prove that said post-pumping depletions will be noninjurious, or less injurious than predicted under currently accepted models, and requests that the Court retain jurisdiction for that purpose in addition to the retained jurisdiction otherwise required by statute. 9. Water Service Entitlements. Nothing herein is intended to create any implication that the granting of the present application will affect the entitlement of any person to receive water service from Monument. Rights to water service will continue to be governed by the applicable Annexation Agreements, other Contracts and Agreements, and Monument's Ordinances. 10. Ownership and Notice. Monument owns or has the right to use the sites upon which all structures associated with this matter are or will be located. Also, Monument is the record title owner of all of the water and water rights which are the subject of this Application. This application does not require construction of water storage facilities. Accordingly, no notice under C.R.S. 37-92-302(2)(b) is required. 11. Records. Monument will maintain such records and accounting, and make such measurements of water, as may be reasonably required by the Division Engineer. 12. Previous Terms and Conditions. Monument does not request any change in the terms and conditions of the existing Decrees mentioned herein except as requested herein or as necessary to allow the requested augmentation operations. 13. Well Construction. This is not an application which will require the construction of a well within the meaning of §37-92-302(2), C.R.S. 14. Well Permits. Monument anticipates that amended well permits will be required before the plan for augmentation described herein can be operated. Monument requests the Court to order that in considering any applications for new or amended well permits, the State Engineer shall be governed by the Findings of Fact, Conclusions of Law, and Decree herein which may result from this Application and shall issue said permits in accordance with the provisions of such decree and 37-90-137(10) C.R.S., and that Monument shall not be required to submit any additional proof or evidence of matters finally determined in such decree when making application for wells to withdraw the water rights confirmed therein. Monument further requests the Court to order that any failure to construct a well necessary to produce groundwater hereunder within the period of time specified in any well permit not be deemed to extinguish the underlying right to water. 15. Non-Injury. No legal injury will occur to the owner of any vested or conditionally decreed water right from the granting of this application. 16. Jurisdiction. This Court has jurisdiction over the subject matter of this Application pursuant Sections 37-92-203(1), 37-92-302 and 37-90-137(9), C.R.S.

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**CASE NO. 2022CW3064; ARKANSAS GROUNDWATER AND RESERVOIR ASSOCIATION ("AGRA") 205 South Main Street, Fowler, Colorado 81039** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: For Arkansas Groundwater and Reservoir Association: James S. Witwer, Andrea M. Bronson, Davis Graham & Stubbs LLP; 1550 Seventeenth Street, Suite 500, Denver, Colorado

80202; Telephone: (303) 892-9400; E-mail: james.witwer@dgslaw.com, andrea.bronson@dgslaw.com)

Amended Application to Add Structures to Decreed Plan for Augmentation.

### **LINCOLN, PROWERS, AND PUEBLO COUNTIES**

This Amended Application is filed to correct the legal location for the Point of Depletion described in Paragraph 5.B.iv of the original Application. This Amended Application relates back to the original Application filed in this case. All other information contained in the original Application, including exhibits, remain the same. 1. Name, Address, and Telephone Number of Applicant: (see above). 2. Description of Application: AGRA, formerly known as the Colorado Water Protective and Development Association, is a non-profit corporation organized in part to provide a means for its members to replace out-of-priority depletions from their wells and other structures in need of augmentation. In this Application, AGRA seeks to add additional augmented structures to its plan for augmentation decreed in Case No. 07CW128 on June 7, 2018 ("07CW128 Plan"), pursuant to section 13.20 of the Findings of Fact, Conclusions of Law, Judgment and Decree entered in Case No. 07CW128 ("07CW128 Decree"). 3. Additional Structures to be Augmented: AGRA proposes to replace out-of-priority depletions from: (1) irrigation use and evaporative loss from the Wezel Pond, WDID 6715728, owned by AGRA member, Kyle Wezel, and (2) evaporative losses from the Walking Winds Farm Ponds, WDID Nos. 1414519, 1414520, 1413336, owned by AGRA Members Mahlon and Maylan White of Walking Winds Farm, under its 07CW128 Plan. A. Wezel Pond: i. Location of Structure: NW1/4 of the NW1/4, Section 32, Township 14 South, Range 54 West, 6<sup>th</sup> PM, Lincoln County, CO, 125' from North Section Line, 340' from West Section Line. The well is located outside of the Southeastern Colorado Water Conservancy District ("SECWCD") boundaries. ii. Source of Water: Groundwater tributary to South Rush Creek, a tributary of the Arkansas River. B. The Walking Winds Farm Ponds: i. Location of Structures: The ponds are located within the SECWCD boundaries. 1. Walking Winds Farm Pond No. 2: NW1/4 of the NE1/4, Section 3, Township 21 South, Range 64 West, 6<sup>th</sup> PM, Pueblo County, CO, 450' from North Section Line, 1,740' from East Section Line. 2. Walking Winds Farm Pond No. 3: NE1/4 of the NE1/4, Section 3, Township 21 South, Range 64 West, 6<sup>th</sup> PM, Pueblo County, CO, 470' from North Section Line, 1,035' from East Section Line. 3. Walking Winds Farm Pond No. 4: NE1/4 of the NE1/4, Section 3, Township 21 South, Range 64 West, 6<sup>th</sup> PM, Pueblo County, CO, 380' from North Section Line, 320' from East Section Line. ii. Source of Water: Groundwater tributary to the Arkansas River. The approximate locations of the Wezel Pond and the Walking Winds Farm Ponds are depicted in **Exhibit 1**, 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.) All depletions from these structures shall be replaced and accounted for in accordance with the 07CW128 Decree. This Application does not change any provisions of the 07CW128 Decree other than as stated in this Application. AGRA, Mr. Wezel and Walking Winds Farm, will contemporaneously file a Substitute Water Supply Plan and apply for new well permits to authorize uses and cover depletions from these structures. 4. Source of Augmentation Water: AGRA shall account for and replace all out-of-priority depletions resulting from use of the structures with fully consumable water in accordance with the terms and conditions of the 07CW128 Decree, and such other water as may become available to AGRA pursuant to the terms of the 07CW128 Decree. The existing



augmentation water sources in the 07CW128 Decree will be sufficient to replace the depletions from the well and the other structures augmented therein in amount, time, and location, and will prevent injury to the owners of or persons entitled to use vested water rights and to Stateline flows. 5. Statement of Augmentation Plan: A. Wezel Pond: i. Summary: This Application does not seek to change any provisions of the 07CW128 Decree other than as stated in this Application. The amount, timing, and location of the depletions to be augmented will be determined according to the methodologies approved in the 07CW128 Plan. The Wezel Pond is not located in, and the anticipated use, shall not occur inside of the boundaries of the Southeastern Colorado Water Conservancy District. AGRA will not use Project Water or Project Water Return Flows to replace depletions from the Wezel Pond. ii. Projected Pumping and Evaporation: AGRA shall project and augment well pumping, depletions, and augmentation deliveries pursuant to the methodologies provided in and the terms and conditions of the 07CW128 Decree. Wezel Pond - Estimated Pumping Schedule for Irrigation Upon Buildout of the Vineyard (value in acre-feet)

Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
0.53	1.09	1.63	1.99	1.61	0.98	0.17	0	0	0	0	0	8

Wezel Pond – Gross Evaporation Schedule (value in acre-feet)

Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
0.15	0.24	0.24	0.25	0.23	0.17	0.12	0.07	0.05	0.05	0.06	0.09	1.68

Total Estimated Pumping and Evaporation Volume (value in acre-feet)

Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
0.68	1.29	1.87	2.24	1.84	1.15	0.29	0.07	0.05	0.05	0.06	0.09	9.68

iii. Presumptive Depletion Factor: The presumptive depletion factor for drip irrigation system uses for the Wezel Pond will be 1.00, as defined in Exhibit 9.A, Item 10.d of the Case No. 07CW128 Decree. The presumptive depletion factor attributable to water surface evaporation on the Wezel Pond will be 1.00, as defined in Exhibit 9.A, Item 12 of the Case No. 07CW128 Decree. Stream depletions shall amount to four percent of the presumptive depletion factor. iv. Projected Depletion Patterns, URF's, and Point of Depletion: Lagged impact to the Arkansas River is assumed to be instantaneous based on Glover analysis for estimating depletions attributable to flood flows on intermittent streams. The URF's for the structure will be 1.0 in Month 1. The Glover methodology indicates stream depletions shall amount to four percent of the presumptive depletion factor. The projected stream depletion pattern is as follows:

Wezel Pond – Total Estimated Stream Depletions Attributable to Irrigation and Evaporation (value in acre-feet)

Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
0.03	0.05	0.07	0.09	0.07	0.05	0.01	0.00	0.00	0.00	0.00	0.00	0.37

v. Point of Depletion: Confluence of Big Sandy Creek and the Arkansas River, in the NW ¼ of the NW ¼, Section 28, Township 22 South, Range 45 West, 6<sup>th</sup> P.M., in Prowers County, CO. B. Walking Winds Farm Ponds: This Application does not seek to change any provisions of the 07CW128 Decree other than as stated in this Application. The amount, timing, and location of the depletions to be augmented will be determined according to the methodologies approved in the 07CW128 Plan. The Walking Winds Farms Ponds are located inside the boundaries of the Southeastern Colorado Water

Conservancy District. However, AGRA will not use Project Water or Project Water Return Flows to replace depletions from the Walking Winds Farms Ponds. i. Projected Evaporation: AGRA shall project and augment well pumping, depletions, and augmentation deliveries pursuant to the methodologies provided in and the terms and conditions of the 07CW128 Decree.

Walking Winds Farm Ponds - Gross Evaporation Schedule (values in acre-feet)

Structure	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Pond 2	0.62	0.83	1.00	1.03	0.93	0.69	0.48	0.28	0.21	0.21	0.24	0.38	6.90
Pond 3	0.30	0.40	0.48	0.50	0.45	0.33	0.23	0.13	0.10	0.10	0.12	0.18	3.32
Pond 4*	0.66	0.88	1.06	1.09	0.98	0.73	0.51	0.29	0.22	0.22	0.26	0.40	7.30
Total	1.58	2.11	2.54	2.62	2.36	1.75	1.22	0.70	0.53	0.53	0.62	0.96	17.52

\*Per letter from the Division Engineer’s Office for Division 2 dated May 20, 2021, 0.35 acres of surface area of Pond 4 is exempt from evaporative depletions pursuant to § 37-90-137(11)(b), C.R.S. Therefore, AGRA is not seeking to augment such exempt amount under the herein requested augmentation plan. ii. Presumptive Depletion Factor: The presumptive depletion factor attributable to water surface evaporation on the Walking Wind Farm Ponds will be 1.00, as defined in Exhibit 9.A, Item 12 of the Case No. 07CW128 Decree. iii. Projected Depletion Patterns, URF’s, and Point of Depletion: The projected depletion patterns and proposed unit response functions to be used are:

Month	URF
1	44%
2	46%
3	10%
Total	100%

The depletions are defined using the Glover method based on the following Glover input parameters.

Specific Yield	Transmissivity (gal/day-foot)	X – Distance between Pond and Creek (feet)	W – Width of the Alluvial Aquifer (feet)
0.15	89,290	1,820	1,820

The projected stream depletion pattern is as follows: Walking Winds Farm Ponds – Total Estimated Stream Depletions Attributable to Evaporation (value in acre-feet)

Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
1.20	1.75	2.25	2.53	2.50	2.11	1.57	1.04	0.68	0.55	0.57	0.76	17.52

iv. Point of Depletion: Arkansas River in the NE ¼ of the SE ¼, Section 34, Township 20 South, Range 64 West, 6<sup>th</sup> P.M., in Pueblo County, CO. 6. Replacement Water: The most likely source of replacement shall be shares owned by AGRA in the Bessemer Ditch and lease supplies secured from Pueblo Board of Water Works and currently available for augmentation use under 07CW128 Decree. As required by the 07CW128 Decree’s accounting protocol, AGRA shall call for the replacement supply plus an allowance to account for transit loss to be released from the replacement source and delivered down the Arkansas River to the point of depletion for the structure. 7. Name and Address of Owner of Land Where Structures are Located: A. Wezel Pond: Kyle Wezel, 32088 County Road W, Karval, CO 80823 B. Walking Winds Farm Ponds: Mahlon T White, Maylan T White, 26067 Everett Road, Pueblo, CO 81006. WHEREFORE, Applicant requests that

this Court enter Findings of Fact, Conclusions of Law, and a Judgment and Decree to add the above-described structures and uses to the 07CW128 Decree.

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**CASE NO. 2022CW3065; Previous Case Nos. W2738(78); 82CW41; 86CW13, 90CW20; 96CW173; 03CW45; 09CW125; 16CW3024 – VESTOGE PUEBLO, CO, LLC, c/o Krishna Gopu, Managing Member, 1942 Broadway, Suite 314C, Boulder, CO 80302** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: MONSON, CUMMINS, SHOHET & FARR, LLC. Ryan W. Farr, #39394, W. James Tilton, #50213, 13511 Northgate Estates Dr., STE 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Finding of Reasonable Diligence

**PUEBLO COUNTY**

**II. Summary of Application.** Applicant is seeking a finding of reasonable diligence for the remaining conditional water right of the Holloran Well. **III. Description of Conditional Water Right.** A. Name of Structure. Holloran Well, Division of Water Resources Permit No. 60040-F (prior Permit No. 30380-F) (WDID No. 1406434). B. Date of Original Decree and Subsequent Findings of Diligence. The original decree was entered April 19, 1974 in Case No. W-2738, District Court, Water Division 2. Subsequent diligence findings occurred in Case Nos. W-2738(78), 82CW41, 86CW13, 90CW20, 96CW173, 03CW45, 09CW125, and 16CW3024, District Court, Water Division 2. C. Decreed Location. The Holloran Well is located SE1/4 of the NE1/4, Section 17, Township 21 South, Range 65 West of the 6<sup>th</sup> P.M. in Pueblo County, Colorado, 1588 feet from the north section line and 483 feet from the east section line. UTM Coordinates, NAD83, Zone 13, Easting: 527769, Northing: 4230805. D. Source. The source of the water for Holloran Well is the Dakota aquifer, tributary to the Arkansas River. E. Appropriation. The appropriation date for Holloran Well is June 29, 1972. F. Amounts. Irrigation: 111 g.p.m., conditional; 39 g.p.m. absolute (per decree in Case No. 09CW125). 2. Stock Watering: 50 g.p.m., absolute. G. Uses. Irrigation and stock watering. The conditional use of municipal was previously declared abandoned in Case No. W-2738(78). The conditional use of domestic was declared abandoned in Case No. 09CW125. H. Depth. Total depth of Holloran Well is 579 feet. I. Ownership. Applicant is the owner of the Holloran Well and the property upon which the Holloran Well is 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.** Applicant purchased the Holloran Well and its related property in March 2022 from Sunshine Investments Holding, LLC, whom had recently acquired the property from Ventana Investors, LLC. Ridgeway at Pueblo, LLC ("Ridgeway") transferred ownership of the subject well property to its affiliate Ventana Investors, LLC to effectuate the property transfer. Ridgeway acquired the Holloran Well in March, 2002. Ridgeway intended to utilize the Holloran Well as a water source for irrigation and domestic uses within the Ventana Subdivision. The Ventana Subdivision includes Filing No. 1, which is the eastern and completed portion of the subdivision ("Filing No. 1"), and Filing No. 2, which is the western and soon-to-be developed portion of the subdivision ("Filing No. 2"). After acquiring the Holloran Well, Ridgeway subsequently abandoned Holloran Well's conditional water right for domestic use in Case No. 09CW125. During the diligence period subject of Case No. 09CW125, Ridgeway utilized 39 g.p.m. of the Holloran Well

water right to irrigate non-native landscaping within Filing No. 1. This landscaping irrigation of non-native vegetation by the Holloran Well was ultimately unsuccessful due to the levels of iron and salt in the water. Therefore, Ridgegate constructed a pipeline in order to use the Holloran Well water for irrigation of native vegetation located on an open space that will be located in between the residences of Filing No. 1 and the residences of Filing No. 2 (“Open Space”). However, the Open Space itself is located within Filing No. 2. The Open Space is to be constructed for the benefit of and use by the residents of Filing No. 1 and Filing No. 2. Attached to the application as **Exhibit A** is a map of Filing No. 1 and Filing No. 2. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) During the diligence period, Ridgegate and its affiliates completed the following work and outlaid the following expenditures related to the development of the property that will make use of the Holloran Well. A. From 2016 through 2021 Ridgegate sold all of the lots within Filing No. 1. B. From 2016 through February 2021 all of Filing No. 1 was built out, but for six lots. It is Applicant’s understanding some of the vacant lots are owned by adjacent landowners who intend to keep them vacant. C. Throughout a majority of the diligence period and leading up to the present, Ventana has leased out Filing No. 2 to a cattle rancher to graze his cattle while also providing stock water to the cattle from the Holloran Well. D. In September 2017 Ventana began the process of conveying an “Open Space” in Filing No. 2 via a Warranty Deed. Total in fees for this conveyance was \$2,799.00. E. In the years since 2016 Ventana hired Jim Musso, Inc. to import and export fill dirt from the Open Space and to clean up areas on the property. The natural drainage galleys in the Open Space are primarily shale and required manipulation by moving and removing dirt in locations to enhance the effectiveness of the drainage. This was completed at a cost of \$13,557. F. Ridgegate had to purchase two floats for the well, replaced in 2017 and 2021. Two new pumps also were purchased and installed in 2018 and 2021. Ridgegate hired Pearson Well Drilling to handle the work necessary. Total for labor costs was \$4,234.19. G. Starting in August 2017 Green Earth Enterprises was hired to regularly mow and tend to weeds on the tract of land on Ventana Circle where the well is located. Green Earth Enterprises did the same for approximately twenty acres of the Open Space where native grasses and weeds grow, right up to the fence lines of homes in Filing No. 1. Total costs from 2017 until October, 2021 were \$5,515.00. H. Northstar Engineering and Surveying was hired in August, 2017 to make sketches for revised layouts of Filing No. 2. The revisions included the subject property. Ridgegate’s affiliate, Ventana Investors, LLC, paid \$4,600 for this service. I. In March, 2022 Applicant purchased the property and water rights decreed by this Court. Applicant purchased multiple properties from Sunshine Investments Holdings, LLC for the sum of \$1.25 million. That purchase included this well. Sunshine Investments Holdings, LLC purchased the property from Ridgegate at Pueblo in December, 2021.

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**CASE NO. 2022CW3066; Previous Case Nos. 16CW3027; 09CW6 – CEDAR LANE INVESTMENT, LLC, (“Applicant”), c/o Barry Martin, 111 S. Tejon Street, Suite 222, Colorado Springs, Colorado 80903** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: MONSON, CUMMINS, SHOHET & FARR, LLC. Ryan W. Farr, #39394, W. James Tilton, #50213, 13511 Northgate Estates Dr. #250, Colorado Springs, CO 80921, (719) 471-1212)

Application for Finding of Reasonable Diligence.

## **EL PASO COUNTY**

**II. Summary of Application.** Applicant is seeking a finding of reasonable diligence for Cedar Lane Well. **III. Description of Conditional Water Right.** A. Name of Structure. Cedar Lane Well, not yet constructed. B. Date of Original Decree. The original decree was entered April 19, 2010 in Case No. 09CW6, District Court, Water Division 2. C. Legal Description. Pursuant to the decree in Case No. 09CW6, Cedar Lane Well is to be located on Applicant's property in the SE1/4 of Section 33, Township 14 South, Range 66 West of the 6<sup>th</sup> P.M. The specific location where the Cedar Lane Well will be constructed is 901 feet from the south section line and 571 feet from the east section line, UTM coordinates NAD83 Zone 13S, Easting: 519293, Northing: 4292844. D. Source. The source of the water for the Cedar Lane Well is the alluvium of Fountain Creek, tributary to Fountain Creek, tributary to the Arkansas River. E. Appropriation Date and Amounts. The appropriation date for Cedar Lane Well is January 12, 2009 for 100 gallons per minute with maximum annual diversions totaling 9 acre-feet, conditional. F. Uses. Cedar Lane Well was decreed for the conditional uses in-building drinking and sanitation, commercial, industrial, and landscape irrigation uses. The commercial and industrial use may include reuse of the water supply. G. Ownership. Applicant is the owner of the land upon which Cedar Lane Well is 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.** Applicant adjudicated a conditional water right and augmentation plan for Cedar Lane Well in Case No. 09CW6. Replacement water for the augmentation plan is provided by two shares of stock in the Fountain Mutual Irrigation Company. Applicant is in the process of developing its property located in the E1/2 of the SE1/4 of Section 33, Township 14 South, Range 66 West of the 6<sup>th</sup> P.M. in order to provide for commercial and industrial uses of which the Cedar Lane Well will provide the water supply. Work on the site began in July, 1999. During this diligence period, Applicant has completed the following work and outlaid the following expenditures for Cedar Lane Well and the property to be served by Cedar Lane Well: 1. Applicant has continued to seek out tenants to use the property. 2. Applicant has continued to pay Fountain Mutual Irrigation Company for six (6) shares of water to meet the augmentation requirements. a) In 2017 Applicant paid \$450. b) In 2018 Applicant paid \$510. c) In 2019 Applicant paid \$540. d) In 2020 Applicant paid \$540. e) In 2021 Applicant paid \$558. f) In 2022 Applicant paid \$558. 3. Applicant has inquired with El Paso County about getting water to the property via water source pipelines, but been told a supply line would not be approved because it would have to run underneath Fountain Creek. 4. Providing the property with sewer lines would cost more than the value of the property due to the property lying below the sewer lines running East of the property. Attaching to the existing sewer line would require about a half-mile of new line be put in, along with a new sewer pumping station. 5. Due to the unavailability of water or sewer lines the property requires this well and septic system be built. Applicant has been told these are acceptable for the property and both have been approved. This is a system just like a neighboring property have had in place for many years. 6. Applicant has communicated with El Paso County officials discussing drainage requirements at the property. Applicant has been informed of a need to install Sand Creek Drainage System structures in Sand Creek. This process has been delayed by the projected costs exceed

the value of the property. Applicant and the County are in ongoing discussions about these imposed developments.

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**CASE NO. 2022CW3067; Previous Case Nos. 16CW3019, 09CW132 – COLORADO OUTDOOR EDUCATION CENTER, Elizabeth Marable, PO Box 167, Florissant, CO 80816** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorney: James Eklund, Sherman & Howard LLC, jeklund@shermanhoward.com (720) 280-1835.)

Application for Finding of Reasonable Diligence; Raspberry Creek, tributary to the Arkansas River.

**CHAFFEE COUNTY**

Name of structure: Raspberry Creek Diversion. Date of original decree: May 24, 2010; Case No. 09CW132, Division 2 Water Court. Subsequent diligence decrees: September 6, 2016; Case No. 16CW3019, Division 2 Water Court. Legal description: SE ¼, SW ¼, Section 10, Township 51 North, Range 7 East, N.M. Prime Meridian, 162 feet from the South section line and 2686 feet from the East section line. Source: Raspberry Creek, tributary to the Arkansas River. Appropriation date: October 1, 2009. Amount: 25 g.p.m. Uses: Irrigation, livestock, domestic, fire protection, and fish and wildlife. Place of irrigation use: SW ¼, SE ¼, Section 10, Township 51 North, Range 7 East, N.M. Prime Meridian. Map showing point of diversion and place of use is on file with the Court as **Exhibit A**. (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**. The Raspberry Creek Diversion is located and put to use on land owned by Applicant.

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**CASE NO. 2022CW3068; Previous Case No. 13CW3060 – CITY OF LAMAR. COLORADO c/o City Administrator, 102 E. Parmenter Street, Lamar, Colorado 81052** (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: David M. Shohet, #36675, Emilie B. Polley, #51296, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212, [dms@cowaterlaw.com](mailto:dms@cowaterlaw.com); [ebp@cowaterlaw.com](mailto:ebp@cowaterlaw.com))

Application for Finding of Reasonable Diligence.

**PROWERS COUNTY**

II. **Summary of Application.** In Case No. 13CW3060, the City of Lamar (“Lamar”) was decreed a plan for augmentation and an appropriative right of exchange for the available recharge accretions decreed in Case No. 05CW107-A that accrue to the Arkansas River to the Lamar North Gateway Park Ponds’ furthest upstream point of depletion to the Arkansas River. Lamar seeks a finding of reasonable diligence for the conditional appropriative right of exchange. III. **Description of Conditional Appropriative Right of Exchange.** A. Description of Location: 1. *Exchange From Point:* The confluence of Clay Creek and the Arkansas River located in the NE¼ of Section 36, Township 22 South, Range 46 West of the 6th P.M., Prowers County, Colorado. 2. *Exchange To Point:* The Lamar North Gateway Park Pond No. 1’s furthest upstream point of depletion to the Arkansas River located in the NE¼ SE¼ of Section 30, Township 22 South, Range 46 West of the 6th P.M. The UTM coordinates for this point are: Northing (UTMy) 4220230

and Easting (UTMx) 708855 (Zone 13). A map of the exchange to and from points is attached to the application as **Exhibit A**. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) B. Source of Substitute Water: Lamar's 2,813.6 Fort Bent shares and Project water delivered to Lamar's recharge facilities that accrues to the Arkansas River and available to Lamar pursuant to the terms and conditions of the decree entered in Case No. 05CW107-A. The water rights and recharge facilities are described more particularly as: 1. *Lamar's Shares in the Fort Bench Ditch Company*. The water rights to be used for exchange include Lamar's Fort Bent Shares including the associated Ft. Bent Article II storage account water stored in John Martin Reservoir. The Fort Bent water rights are decreed as follows: i. Appropriation Dates, Priority Numbers, and Amounts: a. April 1, 1886, Priority No. 6 for 27.77 c.f.s.; b. March 10, 1889, Priority No. 10 for 32.77 c.f.s.; c. September 11, 1889, Priority No. 12 for 11.7 c.f.s.; d. August 12, 1890, Priority No. 14 for 26.27 c.f.s.; e. January 1, 1893, Priority No. 1918-2 for 50 c.f.s.; f. December 31, 1900, Priority No. 1918-9 for 80 c.f.s.; ii. Original Decree for Priority Nos. 6, 10, 12, and 14. An unnumbered adjudication titled "In the matter of the Adjudication of Priorities to the use of Water for Irrigation in District Number 67" decreed on July 1, 1895, by the Bent County District Court. iii. Original Decree for Priority Nos. 1918-2 and 1918-9. An unnumbered adjudication titled "In the matter of the Adjudication of Priorities to the use of Water for Irrigation in District Number Sixty-seven, in the State of Colorado" decreed on October 14, 1918, by the Bent County District Court. iv. Case Nos. 02CW181 and 05CW107-A. In Case Nos. 02CW118 and 05CW107-A, Lamar's Fort Bent Shares were changed to new uses for Lamar's augmentation and replacement uses. 2. *Fryingpan-Arkansas Project Water*. Project Water is the subject of numerous decrees entered in Water Divisions 2 and 5. As a constituent of Southeastern District, Lamar is entitled to make annual requests for both municipal first-use and return flows from Southeastern District for delivery of Project Water. Subject to the terms and conditions in the 13CW3060 Decree, Project Water and return flows therefrom may be used as an augmentation source. The Project water rights are described as follows: i. 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. ii. 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. 3. *Recharge Facilities*. Lamar has constructed and operates off-channel recharge facilities, which includes recharge areas, pumps, pipelines, diversion structures, and measuring devices, all located in portions of Sections 10, 15, and 22, Township 23 South, Range 46 West of the 6<sup>th</sup> P.M., Prowers County, Colorado ("Recharge Facilities"). The amount of accretions from Lamar's 2,813.6 Fort Bent Shares and Project Water delivered to the Recharge Facilities available for exchange are calculated in accordance with terms and conditions of the 05CW107-A decree. C. Exchange Rate: The maximum exchange is 0.261 c.f.s., conditional, which is the maximum daily rate of depletion of the Lamar North Gateway Park Ponds. D. Date and Case No. of Original Decree: September 28, 2016, District Court, Water Division 2, Case No. 13CW3060. E. Appropriation Date: April 30, 2013. F. Use of Exchange Water. Consistent with the decreed uses of the source of substitute supply, the exchanged water is decreed for augmentation of evaporative depletions from the Lamar North Gateway Park Ponds. IV. **Outline of Work Done Towards Completion of Appropriation and Application of Water to Beneficial Use**: In Case No. 13CW3060, the Court decreed to Lamar the conditional use of the appropriative right of exchange described in paragraph III, above ("Exchange Right"). The Exchange Right is a part of Lamar's integrated municipal water supply system. Pursuant to C.R.S. § 37-92-301(4)(b), work on one component of an integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. During this diligence period, Lamar has outlaid the following expenditures and completed the following work related to the Exchange Right in its integrated water system: A. Lamar has worked with the Division Engineer to update its accounting sheet to track and account for all of its exchanges, including the sources of substitute supply. B. Lamar has incurred over \$151,242.00 in engineering fees, analysis, and operations for its water system. C. Lamar has paid average yearly fees of \$21,330.00 for its interest in Ft. Bent Ditch in addition to paying an average annual fee of \$44,900.00 for water storage. D. Lamar accumulated Ft. Bent ditch maintenance fees of approximately \$120,000.00 and improvements in its water delivery system at a cost of nearly \$5,568,038.00. E. Lamar has incurred extensive legal fees associated with drafting and filing of documents pertaining to the Exchange Right, obtaining legal advice as to the use and development of Lamar's integrated water system, and participating and filing of water court cases to protect and develop its water rights. F. Additionally, Lamar has expended significant time and resources building and maintaining infrastructure necessary to place the Exchange Right to beneficial use. Based on the expenditures and efforts described herein, and the improvement and maintenance of other water rights integrated into the use of the subject conditional appropriative right of exchange, Lamar has established that it can and will complete the development of the Exchange Right and place it to beneficial use within a reasonable period of time. V. **Claims to Make Absolute**: None. VI. **Name and address of the owners of land on which structure is located, upon which water is or will be**



**stored, or upon which water is or will be placed to beneficial use:** Lamar owns the land on which the North Gateway Park Ponds are located.

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**CASE NO. 2022CW3069; Previous Case Nos. 84CW068, 89CW10, 94CW146, 2002CW91, 2009CW97, 2015CW3066 – PAUL M. CAMPBELL, P.O. Box 806, Salida CO 81201** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Cynthia F. Covell, Andrea L. Benson and Gilbert Y. Marchand, Alperstein & Covell P.C., 1391 Speer Boulevard, Suite 730, Denver, CO 80204.)

Application for Finding of Reasonable Diligence

**CHAFFEE COUNTY**

**2. Names of structures:** Campbell Well No. 1 (Permit No. 128483) WDID 1105267. Campbell Well No. 2 (Permit No. 128482) WDID 1105456. **3. Describe conditional water right (as to each structure) including the following information from previous decree:** **3a. Date of Original Decree:** April 1, 1985, Case No.: 84CW068, Court: Water Court, Water Division 2. **3b. Subsequent decrees awarding findings of diligence:** Case No. 89CW10, decreed June 29, 1989; Case No. 94CW146, decreed June 4, 1996; Case No. 2002CW91, decreed July 7, 2003; Case No. 2015CW3066, decreed September 22, 2016, all in Water Court, Water Division No. 2. **3c. Legal description: Decreed locations:** Campbell Well No. 1: NW 1/4, SE 1/4, Section 9, Township 48 North, Range 8 East of the N.M.P.M. in Chaffee County, Colorado, 2000 feet from the South section line and 1420 feet from the East section line of said Section 9. Campbell Well No. 2: NE 1/4, SE 1/4, Section 9, Township 48 North, Range 8 East of the N.M.P.M. in Chaffee County, Colorado, 2000 feet from the South section line and 1220 feet from the East section line of said Section 9. Actual locations: Campbell Well No. 1: UTMs: NAD 83 13S 0405241E, 4253857N (from water commissioner). This location is approximately 140 feet from the decreed location. Since it is less than 200 feet from the decreed location, Applicant need not obtain a new well permit or correct the decreed location for this well. Campbell Well No. 2: A decree approving correction of an established but erroneously described point of diversion was entered pursuant to § 37-92-305(3.6) in Case No. 2017CW3013 on August 22, 2017, correcting the legal description of Campbell Well No. 2 as follows: UTMs: NAD 83 13S 0405377E, 4253891N. The PLSS description is as follows: 2,212 feet from the South Section Line and 920 feet from the East Section line, in the NE ¼ of the SE ¼ of Section 9, Township 48 North, Range 8 East, NMPM. See map attached to the application as **Exhibit A**, which shows the corrected location of Campbell Well No. 2. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **3d. Source of water:** Campbell Well No. 1: Groundwater tributary to Poncha Creek, Campbell Well No. 2: Groundwater tributary to Poncha Creek. **3e. Appropriation Date:** Campbell Well No. 1: September 14, 1982, Campbell Well No. 2: September 14, 1982. Amount: Campbell Well No. 1: 0.33 cfs (15 gpm), CONDITIONAL, but not to exceed one acre-foot in any one calendar year. Campbell Well No. 2: 0.33 cfs (15 gpm), CONDITIONAL, but not to exceed one acre-foot in any one calendar year. Amounts Previously Decreed Absolute: These are decreed exempt wells. In Case No. 95CW146, the Campbell Well No. 1 was decreed absolute for 4 gpm for irrigation of up to one-half acre, and diligence was found as to the remaining 11 gpm for irrigation uses. Diligence was also found for the Campbell Well No. 1 for the 15 gpm flow rate decreed for domestic purposes. In the same case, the Campbell Well No. 2 was decreed absolute

for 7 gpm for irrigation of up to one-half acre, and diligence was found as to the remaining 8 gpm for irrigation uses. Diligence was also found for the Campbell Well No. 2 for the 15 gpm flow rate decreed for domestic purposes. **3f. Use:** Each well is decreed for domestic use and irrigation of one-half acre. **3g. Depth:** Campbell Well No. 1: 180 feet, Campbell Well No. 2: 167 feet. **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, during the previous diligence period:** During this diligence period, Applicant filed certain applications and obtained decrees from the Water Court pertaining to use of the subject water rights, has operated the water rights subject to their decrees, has expended funds to repair and maintain infrastructure related to the subject water rights and attorney fees for water court applications, and has undertaken other activities more specifically described in the Application filed in this case. **5. 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.** Applicant. WHEREFORE, Applicant requests the Court to enter a decree continuing the conditional decrees for another six years, or such period as may otherwise be permitted by law.

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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 November 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 4<sup>th</sup> day of October 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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