

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING FEBRUARY 2018

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 February 2018, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 2016CW17 - RANDALL L. HANCOCK and RENATE LAURIE HANCOCK, 32400 County Road 361, Buena Vista, CO 81211; (719) 395-2888

Amended Application for Conditional and Absolute Water Rights (Surface)

CHAFFEE COUNTY

Name of structure: Hancock diversion and Pipe Diversion out of stream. **Legal description of each point of diversion: UTM coordinates (NAD 83, Zone 13):** **Diversion #1:** Easting 0397594 Northing 4305150. **Diversion #2:** Easting 0397473 Northing 4305122; **Diversion #3:** Easting 0397169 Northing 4305070. **Street Address:** 32400 County Road 361, Buena Vista, CO 81211. **Source of UTM:** hand held Garmin GPS; **Accuracy of location displayed on GPS device:** Accurate to within 9 feet according to GPS machine. **PLSS Description:** **Diversion #1:** NW ¼ of the SW ¼ Section 25, Township 13 South, Range 79 West, 6th P.M., Chaffee County, Colorado, 2173 feet from the South line and 502 feet from the West line. **Diversion #2:** NW ¼ of the SW ¼ Section 25, Township 13 South, Range 79 West, 6th P.M., Chaffee County, Colorado, 2083 feet from the South line and 165 feet from the West line. **Diversion #3:** NE ¼ of the SW ¼ Section 26, Township 13 South, Range 79 West, 6th P.M., Chaffee County, Colorado, 1845 feet from the South line and 925 feet from the East line. **Source of PLSS information:** Water Commissioner for #2 (original app) and USGS maps for #1 and #3 plus the use of Google Earth for distances from section lines. **Street Address:** 32400 County Road 361, Buena Vista, CO 81211. **4. Source:** Three Elk Creek, tributary to Arkansas River. **5. A. Date of appropriation:** August 14, 2011 for diversion labeled #2 (original application). **How appropriation was initiated:** Gated pipe drawing water from creek and irrigating trees and meadow from diversion labeled #2 (original application). **Date water applied to beneficial use:** August 21, 2011 for diversion #2 (original application). **Amount claimed in cubic feet per second:** .6 cfs Conditional (amended amount); .9 cfs Absolute (original application). **Use:** Irrigation of native grasslands/meadow and irrigation of native trees. **If irrigation: Number of acres historically irrigated:** 25; **proposed to be irrigated:** 22. **Does the Applicant intend to use this water right to supplement irrigation on an area of land already irrigated under another water right?** No. **Legal description of irrigated acreage:** Parts of the NW ¼ of the SW ¼ Section 25, Township 13 South, Range 79 West, 6th P.M. and Parts of the NE ¼ of the SE ¼ Section 26, Township 13 South, Range 79 West, 6th P.M. **Name(s) and address(es) of**

owner(s) or reputed owners of the land upon which any new or existing diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Applicants. **Remarks:** In 2010 the owners of the Riverside-Allen ditch put a vinyl or rubberized liner in the ditch through our property. This liner prevented water from seeping and reaching about ¼ mile or more of 100 year old cottonwood trees that lined the ditch, but also were a part of our property that was beneficial to the wildlife and to our property value. At that time, I contacted then Deputy Water Commissioner David Kelly who told me that Three Elk Creek was a futile creek and any water that reached our property could be used by us. We are the lowest property on the creek that could possibly benefit from diversion of water out of the creek. In 2011, we purchased 3000 feet of 8 inch gated irrigation pipe with the intent of irrigating the cottonwood trees in order to keep them alive. In addition, the overflow from that irrigation goes down into a wet meadow and keeps that wetland active and alive. The effect of that is that we were irrigating not only the trees along the ditch, but also the entire meadow below the trees. Our intent from the beginning was to file for permanent water rights for the water we were using out of the creek. Our property is entered into a Conservation Easement with the Land Trust of the Upper Arkansas, and as such, we need to keep it in as environmentally pristine condition as we possibly can. Survival of the cottonwood trees is essential to that end. Riverside Ditch opposed our original application. We also opposed their application for the same water from Three Elk Creek. We eventually went to mediation and have arrived at a mutually acceptable agreement. In that agreement, both parties will apply for 1.5 cfs water in the form of futile water from Three Elk Creek. It was agreed that our original application for .9 cfs absolute would stand. We would also apply for an additional .6 cfs, which would bring our application to a total of 1.5 cfs. Riverside Ditch also has applied for 1.5 cfs, all conditional. Our agreement will put us on equal footing, and the agreement also says we will alternate weeks of use of any legally available water. Thus we will be alternately sharing up to 1.5 cfs, every other week, of any legally available water. Maps and photos filed with the original application apply to this application and are available for inspection at the Office of the Clerk of Water Division 2. The original application has all the pertinent information regarding the application for the .9 cfs absolute water right. This amendment was created to cover the additional .6 cfs that was alluded to in the mediation agreement.

CASE NO. 2018CW3008 - CITY OF SALIDA ("Salida"), c/o P.T. Wood, Mayor, 448 E. First Street, Suite 112, Salida, CO 81201 (Please direct all correspondence and inquiries regarding this matter to Applicant's attorneys: Jennifer M. DiLalla, William D. Davidson, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Boulevard, Suite 300, Boulder, Colorado 80302; (303) 443-8782)

Application For Storage Water Right And For Amendment Of Plan For Augmentation
CHAFFEE COUNTY

2. Purpose of application: Salida owns the Salida Golf Course, which includes eight unlined, excavated water-feature ponds ("Golf Course Ponds") that can be filled with water diverted from the South Arkansas River into the Briscoe Ditch. By this

Application, Salida seeks to do the following: (i) adjudicate a conditional storage water right for the Golf Course Ponds (“Golf Course Ponds Storage Right” or “Storage Right”); (ii) amend Salida’s plan for augmentation decreed on November 5, 1987, in Case No. 84CW158 and amended on June 30, 2009, in Case No. 04CW125 (“Augmentation Plan”) to include the Briscoe Ditch, as the point of diversion for filling of the Golf Course Ponds, as an augmented structure; and (iii) determine the amount, time, and location at which the return flows attributable to Salida’s exercise of the Storage Right accrue to the Arkansas River system, and amend the Augmentation Plan to include those return flows as a decreed source of augmentation supply. **Conditional Storage Water Right.**

3. Description of storage structures: The Golf Course Ponds comprise eight unlined, excavated ponds, each approximately two feet deep. The Golf Course Ponds do not expose groundwater, are not dammed, and are not designed to release water except by seepage and evaporation. **4. Location:** A map showing the general location of the Golf Course Ponds, the South Arkansas River, and the Briscoe Ditch is attached to the Application as Exhibit A. A map showing the location of the Golf Course Ponds in greater detail is attached to the Application as Exhibit B. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **4.1 Street address:** 404 N. Grant Street, Salida, CO 81201. **4.2 PLSS:** The Golf Course Ponds are located in the E ½ of the SE ¼ of Section 31, Township 50 North, Range 9 East of the New Mexico P.M. **4.3 Approximate UTM coordinates of Golf Course Pond centroids:** **4.3.1 Pond 1:** 412025.77 Easting, 4266111.51 Northing, NAD 83, Zone 13. **4.3.2 Pond 2:** 412012.15 Easting, 4265991.67 Northing, NAD 83, Zone 13. **4.3.3 Pond 3:** 411929.87 Easting, 4265925.44 Northing, NAD 83, Zone 13. **4.3.4 Pond 4:** 412102.86 Easting, 4265897.20 Northing, NAD 83, Zone 13. **4.3.5 Pond 5:** 412121.93 Easting, 4265871.26 Northing, NAD 83, Zone 13. **4.3.6 Pond 6:** 412137.36 Easting, 4265871.63 Northing, NAD 83, Zone 13. **4.3.7 Pond 7:** 411958.60 Easting, 4265733.62 Northing, NAD 83, Zone 13. **4.3.8 Pond 8:** 411939.48 Easting, 4266320.36 Northing, NAD 83, Zone 13. **5. Source:** South Arkansas River, tributary to the Arkansas River. **5.1 Point of diversion:** The Golf Course Ponds will be filled from the Briscoe Ditch, the headgate of which is located on the North bank of the South Arkansas River at a point whence the NW corner of Section 12, Township 49 North, Range 8 East of the New Mexico P.M. bears North 15° 39’ West a distance of 550 feet, and being approximately 147 feet East of the West line and 530 feet South of the North line of said Section 12, and lying in the NW ¼ of the NW ¼ of said Section 12, as shown on Exhibit A to the Application. The UTM coordinates of the Briscoe Ditch headgate are 409006 Easting, 4263830 Northing, NAD 83, Zone 13. **5.2 Use of Briscoe Ditch to fill Golf Course Ponds:** Salida owns a portion of the water rights decreed to the Briscoe Ditch on June 19, 1890, in Civil Action 1127, District Court of the Fourth Judicial District Sitting in and for the County of Chaffee. The four priorities decreed to the Briscoe Ditch authorize diversion of 11.4 c.f.s. from the South Arkansas River for irrigation purposes (“Briscoe Irrigation Rights”). By virtue of Salida’s ownership of a portion of the Briscoe Irrigation Rights, Salida is entitled to use a portion of the water-conveyance capacity of the Briscoe Ditch (“Briscoe Capacity”). Salida intends to use its Briscoe Capacity to deliver water to the Golf Course Ponds to the extent that Salida is not using such capacity to deliver water for irrigation purposes. **6.**

Appropriation date: February 6, 2018. 6.1 **How appropriation was initiated:** The Salida City Council appropriated the Golf Course Ponds Storage Right and approved the filing of this Application by passing a resolution on February 6, 2018, at its properly noticed public meeting. 7. **Amount claimed:** 7.1 **Storage volume:** 2.4 acre-feet with the right to refill as needed to replace evaporation and seepage losses, up to a total volume of 10 acre-feet per year, cumulative for all eight Golf Course Ponds, CONDITIONAL. 7.2 **Diversion rate:** 2.8 c.f.s., CONDITIONAL. 7.3 **Claim to make absolute:** If, during the pendency of this Application, Salida is able to exercise the Golf Course Ponds Storage Right in priority, Salida will claim as absolute that portion of the water right exercised in priority. 8. **Uses:** Salida claims the right to use, reuse, and successively use to extinction all water diverted under the Golf Course Ponds Storage Right for the purposes described in paragraphs 8.1 and 8.2 below. 8.1 **Use within Golf Course Ponds:** Within the Golf Course Ponds, Salida will use the water for recreational, aesthetic, wildlife, and seepage and evaporation replacement purposes. 8.2 **Use of return flows accruing to Arkansas River system:** Both the Briscoe Ditch and the Golf Course Ponds are unlined. Accordingly, carriage of water in the Briscoe Ditch and storage of the water in the Golf Course Ponds will result in groundwater return flows to the Arkansas River system (“Return Flows”). Salida will determine the amount, time, and location at which the Return Flows accrue to the Arkansas River system, maintain dominion over the Return Flows, and use the Return Flows directly and after storage as a source of augmentation supply in the Augmentation Plan in compliance with the terms and conditions of the decrees entered in Case Nos. 84CW158, 04CW125, and this case. 9. **Surface area at high water line:** When completely full, the Golf Course Ponds have a combined surface area of 1.2 acres. The surface area of each pond is as follows: 9.1 **Pond 1:** 0.65 acres. 9.2 **Pond 2:** 0.07 acres. 9.3 **Pond 3:** 0.03 acres. 9.4 **Pond 4:** 0.16 acres. 9.5 **Pond 5:** 0.01 acres. 9.6 **Pond 6:** 0.04 acres. 9.7 **Pond 7:** 0.15 acres. 9.8 **Pond 8:** 0.07 acres. 10. **Total capacity:** The Golf Course Ponds have a combined storage capacity of 2.4 acre-feet, with 0 acre-feet of active storage. The storage capacity of each pond is as follows: 10.1 **Pond 1:** 1.30 acre-feet. 10.2 **Pond 2:** 0.14 acre-feet. 10.3 **Pond 3:** 0.05 acre-feet. 10.4 **Pond 4:** 0.33 acre-feet. 10.5 **Pond 5:** 0.02 acre-feet. 10.6 **Pond 6:** 0.09 acre-feet. 10.7 **Pond 7:** 0.30 acre-feet. 10.8 **Pond 8:** 0.13 acre-feet. 11. **Names and addresses of owner(s) 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:** Salida. **Amendments to Plan for Augmentation.** 12. **Augmentation Plan decrees:** 12.1 Case No. 84CW158, District Court for Water Division No. 2, entered November 5, 1987 (“84CW158 Decree”). 12.2 Case No. 04CW125, District Court for Water Division No. 2, entered June 30, 2009 (“04CW125 Decree”). 13. **Amendment to add augmented structure:** 13.1 **Structure to be augmented:** The Briscoe Ditch as the point of diversion to fill the Golf Course Ponds (“Additional Augmented Structure”). 13.1.1 **Diversion rate and volume:** 2.8 c.f.s., up to 10 acre-feet per year. 13.1.2 **Other water rights diverted at the Briscoe Ditch headgate:** The Briscoe Irrigation Rights, as described in paragraph 5.2 above. 13.2 **Water rights and other sources of water to be used for augmentation:** Those water rights and other sources of water identified in paragraph 16 of the 84CW158 Decree and paragraph 11 of the 04CW125 Decree, and

any water rights and other sources of water added to the Augmentation Plan as sources of augmentation water by the decree to be entered in this case and any subsequent decree amending the Augmentation Plan. 13.3 Statement of plan for augmentation: Salida will account for and replace 100% of all out-of-priority diversions under this Application with fully consumable water in accordance with the terms and conditions of the 84CW158 Decree, the 04CW125 Decree, and the decree to be entered in this case in a manner that protects the vested or decreed conditional water rights of others from injury. **14. Amendment to add water right to be used as augmentation supply:** 14.1 Water right to be used for augmentation: The Return Flows attributable to Salida's exercise of the Golf Course Ponds Storage Right, as that Storage Right is described in paragraphs 3 through 11 above ("Additional Augmentation Supply"). 14.2 Amount, time, and location: The amount, time, and location of the Return Flows' availability for use within the Augmentation Plan will be determined by the decree to be entered in this case. 14.3 Use of Return Flows as augmentation supply: Salida will use the Return Flows as an augmentation supply in accordance with the terms and conditions of the 84CW158 Decree, the 04CW125 Decree, and the decree to be entered in this case. **15. No modification of 84CW158 Decree or 04CW125 Decree**: This Application does not seek to change any provision of the 84CW158 Decree or the 04CW125 Decree other than to include the Additional Augmented Structure and the Additional Augmentation Supply in the Augmentation Plan, does not seek a change of water right for any of the water rights identified in paragraph 16 of the 84CW158 Decree or paragraph 11 of the 04CW125 Decree, and does not seek any change to those augmented structures or augmentation supplies previously included in the Augmentation Plan. Instead, this application seeks (i) the Court's approval of Salida's inclusion of the Additional Augmented Structure and the Additional Augmentation Supply in the Augmentation Plan; (ii) the Court's confirmation that Salida will fully replace all out-of-priority depletions caused by the Additional Augmented Structure under the Augmentation Plan so as to prevent injury to the vested or decreed conditional water rights of others; and (iii) the Court's confirmation that use of the Additional Augmentation Supply in the Augmentation Plan will not cause injury to the vested or decreed conditional water rights of others. WHEREFORE, Salida respectfully requests that the Court enter a decree confirming the Golf Course Ponds Storage Right described in paragraphs 3 through 11 above, approving the amendments to the Augmentation Plan described in paragraphs 12 through 15 above, and determining that the amendments to the Augmentation Plan will not cause injury to the vested or decreed conditional water rights of others.

CASE NO. 2018CW3009; Previous Case Nos. 98CW172; 11CW38 - SAMUEL N. KNIGHT, JR., 5603 Pennock Point, Jupiter, FL 33458 (Please address all correspondence and inquiries to Applicant's attorneys: Jefferson V. Hout and Ryan M. Jarvis, Beattie, Chadwick & Hout, LLP, 932 Cooper Avenue, Glenwood Springs, CO 81601; (970) 945-8659)

Application for Findings of Reasonable Diligence.

HUERFANO COUNTY, COLORADO

Original decree entered on 03/15/04 in 98CW172; subsequent decree entered 02/07/12 in 11CW38. **Appropriation date:** 09/03/93. **Little Lake Dalton: Location:**

center point of dam is located in SE¼NE¼ Sec 7, T 30 S, R 68 W, 6th PM, 890 ft W of E Sec Line and 1,853 ft S of N Sec Line of said Sec 7. Little Lake Dalton is an off-channel reservoir filled with water diverted from the Cucharas River through the Dalton Pump & Pipeline. **Source:** Cucharas River & local surface in-flow. **Amount:** 27.3 af, conditional, with right to fill and refill in priority, and when out of priority but fully augmented. **Rate:** 2.0 cfs. **Uses:** Piscatorial, aesthetic, recreational & wildlife propagation. **Surface area:** 3.43 acres. **Maximum height:** 14 ft. **Total capacity:** 27.3 af. **Active capacity:** 26.9 af. **Dead storage:** 0.4 af. **Dalton Pump & Pipeline: Location:** SE¼NE¼ Sec 7, T 30 S, R 68 W, 6th PM, at a point 2,510 ft S of N Sec Line and 885 ft W of E Sec Line of said Sec 7. **Source:** Cucharas River. **Amount:** 2.0 cfs, conditional. **Uses:** Piscatorial, aesthetic, recreational & wildlife propagation. These water rights operate pursuant to the plan for augmentation approved in 98CW172. The Application on file with the court includes a list of activities demonstrating diligence. **Owner of land:** Applicant.

CASE NO. 2018CW3010 (Water Division 2) and CASE NO. 2018CW3026 (Water Division 1) - JOHN AND CATHY CHAPMAN, 7426 Silver Pine Drive, Springfield, VA 22153 (All pleadings and correspondence should be sent in care of attorneys Chris D. Cummins or Brian G. Sheldon of Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921, (719) 471-1212). Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation.

EL PASO COUNTY

John and Cathy Chapman (collectively “Applicant”) seek to quantify the Denver Basin groundwater underlying their approximately 5-acre property in El Paso County, Colorado, and for approval of a plan for augmentation for the use of not-nontributary supplies therefrom for household uses, as well as outdoor use to include lawn/garden irrigation, watering of stock and domestic animals, and other beneficial uses. **Application for Underground Water Rights. Legal Description of Wells. Property Description.** The Applicant’s Property, located in the SE 1/4 NE 1/4 Section 12, Township 12 South, Range 66 West of the 6th P.M., El Paso County, Colorado, which contains approximately 5 acres, more or less (“Applicant’s Property”). See Exhibit A to the Application for a more particular legal description of the Applicant’s Property, and Exhibit B to the Application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Proposed Well.** Applicant proposes that the existing exempt well (“Chapman Well No.1”), located 1,893 ft North and 475 ft East of the Property’s boundaries and constructed to the not-nontributary Dawson or Denver aquifers under Division of Water Resources Permit No. 3684306, be transferred to non-exempt status upon entry of a decree approving the plan for augmentation requested herein. **Water Source. Not-Nontributary.** The ground water to be withdrawn from the Dawson and Denver aquifers of the Denver Basin underlying the Applicant’s Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. The not-nontributary Denver aquifer is located greater than one mile from contact with any stream system, and therefore pursuant to C.R.S. §37-90-137(9)(c) the augmentation requirements for wells in the Denver aquifer will require 4% of pumping to prevent injurious effect.

Nontributary. The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers of the Denver Basin underlying the Applicant's Property is nontributary. **Estimated Rates of Withdrawal and Ground Water Available.** Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of any well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. Estimated Average Annual Amounts of Ground Water Available. Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 100-year aquifer 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 Applicant's Property:

AQUIFER	ELEVATION		NET SAND (ft)	DEPTH (ft)		Annual Average Withdrawal – 100 Years (Acre Feet)
	Bottom	Top		Bottom	Top	
Dawson (NNT)	6690	7253	281.8	695	132	2.82
Denver (NNT)	5728	6661	485.8	1657	724	4.13
Arapahoe (NT)	5173	5669	240.2	2212	1716	2.04
Laramie Fox Hills (NT)	4566	4897	188.3	2819	2488	1.41

Decreed amounts may vary based upon 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. **Requested Uses.** The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct a well or use water from the not-nontributary Dawson or Denver aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c.5). **Well Fields.** Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. **Averaging of Withdrawals.** Applicant requests that it be entitled

to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. **Owner of Land Upon Which Wells are to Be Located.** The land upon which the wells are and will be located is owned by the Applicant. **APPLICATION FOR PLAN FOR AUGMENTATION. Structures to be Augmented.** The structures to be augmented are Chapman Well No.1, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson or Denver aquifers, but not both, underlying the Applicant's Property as requested and described herein. **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 non-tributary Dawson or Denver aquifers from Chapman Well No.1, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. **Statement of Plan for Augmentation.** Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer Chapman Well No. 1, or replacements therefore to the Dawson or Denver aquifer. Potential water use criteria and their consumptive use components for replacement of actual depletions for the lots are estimated as follows: **Uses.** **Household Use Only:** 0.25 acre feet annually within a single family dwelling, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for each lot would therefore be 0.025 acre feet per well, with return flows of 0.225 acre feet. Any other type of waste water disposal shall require an amendment to this plan of augmentation. **Landscape Irrigation:** 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre feet. **Horses (or equivalent livestock):** 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. **Hot Tub Use:** 0.006 acre feet (2100 gallons) annually, based upon six fillings per year, with a 50% consumptive use rate. The annual consumptive use for each hot tub is therefore 0.003 acre feet (1050 gallons). The Chapman Well No. 1 will pump a maximum of 0.9 acre feet of water per year from the Dawson and Denver aquifer per year. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.25 acre feet of water per year per residence with the additional 0.75 acre feet per year per residence available for irrigation of approximately 4,920 square feet of lawn and garden and the watering of up to four horses or equivalent livestock on each of the two residential lots. **Depletions.** Applicant's consultant has determined that maximum stream depletions over the 300 year pumping period for the Dawson or Denver aquifers amounts to approximately 24% percent of pumping. Maximum annual depletions for total residential pumping from the Chapman Well is therefore 0.216 acre feet in year 300. Should Applicant's pumping be

less than the 0.9 acre feet per lot described herein, resulting depletions and required replacements will be correspondingly reduced. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the Chapman Well No. 1 as constructed to the Dawson aquifer¹. Applicant's depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.25 acre feet for one residence per year, total of 0.9 acre feet, 0.225 acre feet is replaced to the stream system per year, utilizing non-evaporative septic systems, while maximum depletions are 0.216 acre feet. Thus, during pumping, stream depletions will be adequately augmented. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Chapman Well No. 1, Applicant will reserve up to 67.5 acre feet of water from the nontributary Laramie Fox Hills aquifer, accounting for actual stream depletions replaced during the plan pumping period, calculated at 22.5 acre feet, or such greater amounts as necessary to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the Chapman Well No. 1 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. **Remarks.** This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson or Denver aquifers may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the Arkansas River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate this Division 1 application in Water Division 2 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. 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). 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. 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

¹ To the extent any replacement well may be constructed to the Denver aquifer where only 4% of pumping need be replaced, this plan for augmentation will provide for greater augmentation water than actually required by statute.

or test holes. 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. All wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property, as applicable. There are no lienholders on this property, so any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(l) are not applicable here.

CASE NO. 2018CW3011 - HEALING HOUSE LAKEWOOD, LLC, A COLORADO LIMITED LIABILITY COMPANY, 10712 W. Alameda Avenue, Lakewood, CO 80226

(All pleadings and correspondence should be addressed to counsel, David M. Shoheit and Ryan W. Farr of Monson, Cummins & Shoheit, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921 (719) 471-1212).

Application to Amend Plan for Augmentation

PUEBLO COUNTY

Background and Summary of Plan for Augmentation. Applicant is the owner of approximately 39.17 acres located in the SE 1/4 Section 34, Township 20 South, Range 67 West of the 6th P.M., Pueblo County, Colorado ("Property"). The Property is shown on the Exhibit A map attached to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Property's address is 7420 Rex Road, Pueblo Colorado 81005 and is known as Lot 4 of Lakeview Prairie. On January 18, 2018, the Court awarded the Applicant a plan for augmentation in Case No. 16CW3073. The decree entered in Case No. 16CW3073 is attached to this Application as Exhibit B ("16CW3073 Decree"). The 16CW3073 Decree allows the Applicant to divert (and deplete) up to 10 annual acre feet. The Applicant files this Application to allow for six additional annual acre feet of diversions and depletions under the 16CW3073 Decree. **Application for Amendment of Plan for Augmentation. Structures to be Augmented.** The structures to be augmented consist of up to two wells completed in the Dakota Aquifer on Applicant's Property as decreed in Case No. 16CW3073. One well, Healing House Well No. 1 (WDID: 1405186), already exists on the property and is located in the NE ¼ of the SE ¼ of Section 34, Township 20 South, Range 67 West of the 6th P.M., 1826 feet north from the south Section line and 1255 feet west from the east Section line (UTM E 511272 N4235033). **Water Rights to be Used for Augmentation.** Water rights to be used for augmentation consist of fully consumable water leased from the Board of Water Works of Pueblo, Colorado ("Pueblo Water"). Applicant may seek to transfer this plan for augmentation to a well users group in the future. Applicant may also seek a term and condition requesting the Water Court to retain perpetual jurisdiction over the plan for augmentation for the sole purpose to add new or additional sources of augmentation to this requested plan for augmentation. **Lease with Pueblo Board of Water Works.**

Applicant has entered into a lease for 16 acre-feet of fully consumable water with Pueblo Water. Applicant's lease with Pueblo Water is attached to the Application as Exhibit C ("Lease"). The water rights or sources of water that may be used for augmentation in this augmentation plan include the following: Fully consumable water owned or controlled by the Pueblo Water. All water to be used in this augmentation plan provided by Pueblo Water must be decreed or otherwise legally available for augmentation purposes. The source of such water is unspecified in the lease, but may include Pueblo Water's water stored in Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, from direct flow transmountain water or from any other reservoir or place from which Pueblo Water may deliver water, the sources of which are at the option of Pueblo Water, as long as they are legally available for augmentation purposes. Water deliveries may include, without limitation, water stored in Twin Lakes Reservoir (located in all or portions of Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T.11S., R.81W., 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19, and 20, T.9S., R.80W., 6th P.M. and Sec. 10, 11, 12, 13, 14, and 15, T.9S., R.81W., 6th P.M., in Lake County), Clear Creek Reservoir (located in Sec. 7 and 8, T.12S., R.79W, and Sec. 12, T.12S., R.80W., 6th P.M. in Chaffee County, and reusable return flows. The sources of such water may include, but are not limited to, the water rights decreed in Case Nos. 84CW177, District Court, Water Div. No. 2; 84CW177(B), District Court, Water Div. No. 2; 90CW340, District Court, Water Div. No. 5; W-1901, District Court, Water Div. No. 5; 95CW321, District Court, Water Div. No. 5; 90CW55, District Court, Water Div. No. 2; and 04CW130, District Court, Water Div. No. 2.

2. Statement of Plan for Augmentation. Diversions and Depletions. Uses. Indoor and outdoor cultivation and irrigation of a crop, including cannabis (hemp and marijuana), and the associated commercial, industrial, domestic, drinking and sanitary needs for the grow facility, including water treatment and storage for such uses. **Diversions.** Applicant's grow facility will operate year-round, with all uses generally increasing during the summer months. The anticipated maximum well diversion under this plan is 16 annual acre feet. **Depletions.** Water diverted for all uses will be considered to be one-hundred percent consumptive. **Return Flows.** As all uses are being considered one hundred percent consumptive Applicant is not claiming any return flows from diversions from the wells. However, Applicant reserves the right to claim such return flows in the future through amendment of the decree. **Location and Timing of Depletions.** Well pumping by all wells on Applicant's Property will be entitled to occur on a year-round basis, resulting in year-round lagged depletions to the Arkansas River. As decreed in the 16CW3073 Decree, groundwater diversions from the Applicant's wells affect the Arkansas River at the base of the Pueblo Reservoir Dam in Section 36, Township 20 South, Range 66 West of the 6th P.M. All out-of-priority stream depletions caused by the Applicants' will be replaced at or above Pueblo Reservoir. A Unit Response Function (URF) was generated for the Healing House Wells using the Glover Method with IDS' AWAS software (Glover and Balmer, 1954) and decreed in the 16CW3073 Decree. A transmissivity (T) of 1,346 GPD/ft, storage coefficient (S) of 5×10^{-5} (dimensionless), distance to the depletion point (X) of 40,780 ft, and the distance from river to the Dakota Outcrop (W) of 88,325 ft, was used in this calculation. The 16CW3073 Decree truncates lagged depletions once cumulative monthly depletions

have reached ninety percent (90%) with the remaining ten percent (10%) included in the prior month's lagged depletion to achieve one-hundred percent (100%) replacement. The timing and amount of monthly well depletions will be determined in accordance with Table 1 attached to the 16CW3073 Decree. **Name and Address of Owners of Land Upon Which Structures are Located.** All structures, wells, and operations covered by this Application occur on property owned by the Applicant. Upon entry of a decree in this case, the Applicant shall be entitled to apply for and receive well permits and all subsequent replacement or additional wells for use in accordance with any decree entered in this case. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater and replacement of lagged depletions under the proposed augmentation plan. There are no changed circumstances since the entry of the 16CW3073 Decree. Applicant intends to waive the 600 foot well spacing requirement for the wells to be located on the Applicant's Property. The wells shall be installed and metered as required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on a monthly basis or as otherwise requested by the Division Engineer. The Applicant shall also provide Accountings to the Division Engineer and Water Commissioner to demonstrate compliance under this plan of augmentation.

CASE NO. 2018CW3012; Previous Case No 2009CW150 - HUMBOLDT PEAK PARTNERS, LLC, c/o Buck Blessing, 370 17th Street, Suite 4950, Denver, CO 80202. (Please direct all pleadings to Applicant's attorneys: Charles B. White, Thomas W. Korver, Petros & White, LLC, 1999 Broadway, Suite 3200, Denver, CO 80202, Phone: (303) 825-1980)

Application for Finding of Reasonable Diligence

CUSTER COUNTY, COLORADO

Claim for Finding of Reasonable Diligence. **Name of conditional water right:** Humboldt Peak Pond (the "Pond"). **Description of the conditional water right:** **A. Date of original decree:** The original decree for the Pond was issued on February 8, 2012 in Case No. 09CW150, District Court, Water Division No. 2. **B. Subsequent diligence decree:** n/a. **C. Legal description:** The Pond is located in the SW1/4 SW1/4 NE1/4 and the NW1/4 NW1/4 SE1/4 of Section 13, T. 23 S., R. 73 W., of the 6th P.M. in Custer County, Colorado, and is depicted 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. A point on the centerline of the dam at the location of the outlet is approximately 2,785 feet from the North line and 1,980 feet from the East line of said Section 13. **D. Source:** Macey Creek, tributary to Grape Creek, which is tributary to the Arkansas River; and precipitation and runoff in the watershed tributary to the Pond, which is tributary to Stanton Creek, tributary to Grape Creek, tributary to the Arkansas River. **E. Appropriation Date:** August 28, 2009. **F. Rate of Diversion:** 1.09 c.f.s, conditional. **G. Amount:** 10.5 acre-feet, conditional. **H. Use:** Aesthetic, piscatorial, recreation, wildlife habitat, and fire suppression. **Evidence of Reasonable Diligence:** The Pond is part of an integrated system for supplying the water demands of the Humboldt Peak Ranch. Other elements of the integrated system include the

William Conradts Ditch No. 1 and the Humboldt Peak Cookhouse Well as described in the decree in Case No. 09CW150. The application contains a summary of specific projects and work undertaken during the diligence period (from February, 2012 to February, 2018) and is available for inspection at the office of the Division 2 Water Clerk or via Colorado Courts E-Filing. This list is not intended to be all inclusive and may be supplemented by additional evidence at any hearing in this matter. **Can and will.** The conditional water right for the Pond can and will be diverted, stored, or otherwise captured, possessed, and controlled, and will be beneficially used, with diligence in a reasonable time. C.R.S. § 37-92-305(9)(b). **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:** Applicant. WHEREFORE, Applicant respectfully requests that this Court enter Findings of Fact, Conclusions of Law, and a Judgment and Decree: (1) finding that Humboldt Peak Partners, LLC has been reasonably diligent in the development of the conditional water right decreed to the Humboldt Peak Pond in Case No. 09CW150, as described in the preceding paragraphs; (2) continuing said conditional water right in full force and effect; and (3) granting such other relief as may be appropriate.

CASE NO. 2018CW3013 - THE STATE OF COLORADO, Acting by and through the COLORADO STATE BOARD OF LAND COMMISSIONERS, Attn: Phillip Courtney, 1127 Sherman Street, Suite 300, Denver, CO 80203 (Please direct all correspondence and inquiries regarding this matter to Applicant's attorneys: Heather A. Warren and Eva La, Assistant Attorneys General, Colorado Department of Law, 1300 Broadway, 7th Floor, Denver, CO 80203; (970) 508-6266; heather.warren@coag.gov; (720) 508-6303; eva.la@coag.gov.

Application for Correction for an Established but Erroneously Described Point of Diversion Pursuant to 37-92-305(3.6), C.R.S.

PUEBLO COUNTY

The State of Colorado, acting by and through the Colorado State Board of Land Commissioners ("Land Board"), by and through its counsel, hereby submits the following Application for Correction for an Established but Erroneously Described Point of Diversion Pursuant to § 37-92-305(3.6), C.R.S. **Decreed water right for which change is sought: Name of Structure:** Knight-Autry Well No. 5; **Date of original and all relevant subsequent decrees:** May 17, 1974. **Case No.:** W-1924; **Court:** District Court, Water Division No. 2, Pueblo County. **Legal description of structure:** SW 1/4 of SW 1/4 of Sec. 2, T23S., R. 61W. of the 6th P.M., in Pueblo County, Colorado, as marked 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.) **Source:** Arkansas River. **Appropriation Date:** December 31, 1952. **Total amount decreed to structure:** Absolute: 0.0133 cfs. **Uses:** Stock water. **Amount of water decreed:** Absolute: .0101 cfs for Knight-Autry Wells No. 1 through 5. This Application only pertains to Knight-Autry Well No. 5. **Statement of proposed correction:** This Application is to correct an established but erroneously described point of diversion of

groundwater. The Knight-Autry Well No. 5 is not located at the location specified in the May 17, 1974 decree. Upon information and belief, the Knight-Autry Well No. 5 has been at the same physical location since before the decree confirmed the water right and there is no evidence that the Knight-Autry Well No. 5 was ever in a different physical location, including the location specified in the decree. The water from Knight-Autry Well No. 5 was first applied to a beneficial use in 1952. Since 1974, the Land Board has diverted water from the Knight-Autry Well No. 5 with the intent to divert and use the water pursuant to the decree. **The legal description of the corrected point of diversion:** SW 1/4 of NW 1/4 of Sec. 11, T23S, R61W of the 6th P.M., at a point 1763 feet from the North section line and 722 feet from the West section line. UTM (NAD83, Zone 13, units in meters, handheld GPS Trimble Juno 5): Easting 569889, Northing 4213162 **Name and addresses of owner or reputed owner of the land upon which structure is located:** Applicant. WHEREFORE, the Applicant respectfully requests that the Court grant this Application for Correction for an Established but Erroneously Described Point of Diversion Pursuant to § 37-92-305(3.6), C.R.S., as set forth above.

CASE NO. 2018CW3014 - JOHN HIGHTOWER AND MELISSA HIGHTOWER, 232 F St., Salida, CO 81201 (Please direct all correspondence and inquiries regarding this matter to Applicants' attorney: MacDougall & Woldridge, P.C., Julianne M. Woldridge, 1586 So. 21st St., Suite 200, Colorado Springs, CO 80904, (719) 520-9288)

Application for Water Storage Rights, for Change of Water Right, and for Approval of Plan for Augmentation

FREMONT COUNTY

2. Application for Water Storage Rights: **a. Name of structures:** Hightower Cabin Pond and Hightower Barn Pond. **b. Legal description:** both ponds are located in the SE1/4 of Section 27, R.9E., T.49N., N.M.P.M., in Fremont County. The Hightower Barn Pond is located in the NW1/4 SE1/4 of Section 27 at UTM coordinates Easting 0416466 m, Northing 4258120 m, Zone 13 S, which is approximately 1562' from the South line and 1,428' from the east line. The Hightower Cabin Pond is located in the SW1/4 SE1/4 of Section 27 at UTM coordinates Easting 0416429 m, Northing 4257950 m, Zone 13 S, which is approximately 1,009' from the south line and 1,500' from the east line, as shown on the map attached to the Application as Exhibit 1. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **c. Source:** Hightower Cabin Pond – unnamed creek fed by a spring that is tributary to Bear Creek, a tributary of the Arkansas River; Hightower Barn Pond – Bear Creek via a feeder ditch that diverts from Bear Creek in the SW1/4SE1/4 of Section 27, R.9E., T.49N., N.M.P.M. **d. Date of Appropriation:** August 31, 1997. The appropriations were initiated by the construction of the ponds by this date. Water was applied to beneficial use by the filling of these ponds on this date. **e. Amount claimed:** Hightower Cabin Pond – 0.153 a.f. absolute with the right to fill and refill; Hightower Barn Pond – 0.717 a.f. absolute with the right to fill and refill. **f. Uses:** fish culture, recreation, and piscatorial on land owned by Applicants in Section 27, T.49N. R.9E, N.M.P.M., depicted on the map attached to the Application as Exhibit 1. **g. Surface area of high water line:** Hightower Cabin Pond – 0.0386 acres; Hightower Barn Pond – 0.1137 acres. Hightower Cabin Pond dam is approximately 4 feet high and 60 feet in

length. Hightower Barn Pond dam is approximately 4 feet high and 140 feet in length. **Total capacity:** Hightower Cabin Pond – 0.153 a.f., all of which is active storage; Hightower Barn Pond – 0.717 a.f. all of which is active storage either via outlets or pumps. **3. Application for change of water right:** **a. Name of structure:** Smith Ditch No. 1. **b. Previous decree:** May 29, 1900, District Court. **c. Legal description from previous decree:** West Bear Creek, a/k/a Bear Creek, Sec. 34, T.49N., R. 9E., N.M.P.M. The location of the headgate was confirmed by decree dated June 23, 2000, Case No. 95CW192, District Court, Water Division No. 2, on the west bank of the West Fork of Bear Creek at a point where the ¼ corner of Sec. 27 and 34 bears N. 4°48'W, 679 feet, as shown on Exhibit 1 attached to the Application. **d. Source:** West Bear Creek a/k/a Bear Creek. **e. Appropriation date:** June 15, 1879. **f. Amount:** 1.0 c.f.s. absolute. **g. Use:** Irrigation. **h. Proposed change:** Applicants own a 2/3 interest in the Smith Ditch No. 1 water right and propose to change the entire 2/3 interest or approximately .66 c.f.s. of the 1.0 c.f.s. of the water right. Applicants propose to change the use of the water right to add augmentation and replacement uses in addition to the existing authorized irrigation uses. The changed portion will be used to replace out-of-priority depletions associated with the filling, refilling, and evaporation from the Hightower Cabin Pond and the Hightower Barn Pond described above. The point of diversion for the Smith Ditch No. 1 water right is not being changed. This water right historically has been used for irrigation of approximately 11.25 acres as shown on Exhibit 2 attached to the Application. Historic diversions of Applicants' share of the water right average 81.2 a.f.y. The estimated stream depletions or consumptive use associated with Applicants' share of the water right is approximately 0.716 a.f.y. per 0.5 acre of irrigated land. These numbers are estimates and may change. Applicant will remove historically irrigated land from irrigation temporarily in an amount necessary to replace out-of-priority depletions for the initial refill of the ponds. Applicants will remove 0.5 acre of historically irrigated land from irrigation permanently resulting in a consumptive use credit of 0.716 a.f.y. to cover out-of-priority evaporation depletions from the ponds. Applicants will remove additional acreage of historically irrigated land from irrigation in the future as needed to replace out-of-priority depletions from refills of the ponds in the future. Applicants will continue to divert the water right at the current headgate to a bypass turnout, pipeline, and measuring device to be constructed on Applicants' property. Consumptive use credits and return flows will be delivered back to Bear Creek at this structure. The feeder ditch for the Hightower Barn Pond is also known as the DeWitt Ditch No. 1 that also diverts the DeWitt Ditch No. 1 water right. Applicants are not requesting a change of the DeWitt Ditch No. 1 water right. **4. Application for approval of plan for augmentation:** **a. Structures to be augmented:** Hightower Cabin Pond and Hightower Barn Pond as described above. **b. Water to be used for augmentation:** Smith Ditch No. 1 described above, to be changed as described above. **c. Plan for augmentation:** Applicants plan to replace out-of-priority depletions associated with the initial refill of the ponds which are currently drawn down, and future refill and evaporation losses for the augmented structures. The replacement will be made at a location, time, and in amounts to prevent injury to other water rights. Consumptive use credits associated with the Smith Ditch No. 1 water right will be measured and delivered to Bear Creek at a bypass structure located on Bear

Creek just upstream of the ponds to replace out-of-priority depletions. Evaporation from the ponds combined is estimated to be 0.495 a.f.y. This number may change. This estimate assumes 0% ice cover throughout the year. Applicants will calculate evaporation losses on a monthly basis and provide the augmentation water to Bear Creek as described above on a monthly basis. The ponds may intercept ground water, but due to the location of the ponds there will be no delayed impact to the stream. Replacement will be made in the same month as depletions. The ponds will be administered to allow for draw down due to evaporation when there is not sufficient consumptive use credit available for augmentation. Staff gages will be installed on the ponds to measure such drawdown. **5. Names and addresses of owners of land upon which the ponds are located:** Applicants.

CASE NO. 2018CW3015 - MICHAEL JARDON, VICTORIA JARDON, 12660 HOLMES ROAD, COLORADO SPRINGS, COLORADO 80908 (Please address all

correspondence and inquiries regarding this matter to Applicants' attorneys: Zach Miller, Andrea M. Bronson; Davis Graham & Stubbs LLP; 1550 Seventeenth Street, Suite 500, Denver, Colorado 80202; Telephone: (303) 892-9400; E-mail: zach.miller@dgsllaw.com, andrea.bronson@dgsllaw.com)

Application for Adjudication of Denver Basin Groundwater, Underground Water Rights, and for Approval of Plan for Augmentation

EL PASO COUNTY

1. Name, address, email address, and telephone number of Applicants: (see above). **2. Application for Adjudication of Denver Basin Wells:** **A. Parcel Description.** Applicants seek to adjudicate the Denver Basin groundwater underlying their property, consisting of 9.71 acres, more or less, located in the SE1/4 of the SE1/4 of Section 12, T12S, R66W of the 6th P.M., El Paso County, Colorado (the "Property"). The address of the Property is 12660 Holmes Road, Colorado Springs, Colorado 80908, and is generally shown on the map 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. Location of Wells.** There currently is an exempt well located on the Property, as described in paragraph 3 below. Because that well will no longer be the sole well on the Property, it is proposed to be adjudicated and augmented in this Application. The new Denver Basin well that is also the subject of this Application will be located approximately 930 feet from the east section line and 885 feet from the south section line in the SE1/4 of the SE1/4 of Section 12, T12S, R66W of the 6th P.M. **C. Estimated Rates of Withdrawal and Groundwater Available:** i. **Estimated Rates of Withdrawal.** The actual pumping rates for the well will vary according to aquifer conditions and well production capabilities. The Applicants request the right to withdraw groundwater 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. ii. **Estimated Average Annual Amounts of Groundwater Available.** Applicants request an absolute water right for withdrawal of all legally available nontributary and not nontributary groundwater in the Denver Basin aquifers underlying the Property. Said amounts may be withdrawn as set forth in C.R.S. § 37-90-137(4). The following values, aquifer characteristics, and

average annual amounts are based on and derived from the State Engineer's Denver Basin Rules, 2 CCR 402-6, are presumptively correct, and are representative of the Denver Basin aquifers underlying the Property:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Aquifer Top Depth (Feet)</u>	<u>Aquifer Bottom Depth (Feet)</u>	<u>Total Storage in Aquifer (Acre-Feet)</u>	<u>Annual Average Withdrawal (Acre-Feet)</u>
Dawson	252.4	36	541	490	4.90
Denver	462.0	572	1508	763	7.63
Arapahoe	245.6	1566	2060	405	4.05
Laramie-Fox Hills	188.7	2336	2663	275	2.75

The Dawson and Denver aquifers underlying the Property are not nontributary, and each is respectively located less than one mile and more than one mile from any surface stream, including its alluvium. Water in the Arapahoe and Laramie Hills aquifers underlying the Property is nontributary. **D. Requested Uses.** Applicants request the right to use the groundwater for all beneficial uses upon the Property, including domestic, irrigation, fire protection, domestic animal watering, filling of one hot tub, and augmentation purposes. **E. Well Diversions.** Applicants request that they be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed from the Denver Basin aquifers underlying the Property, so long as the sum of the total withdrawals from all wells 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 occurs first, multiplied by the average annual volume of water which Applicants are entitled to withdraw from the aquifers underlying the Property. **F. Name and Address of Owner of Land Upon Which Wells are to be Located.** Applicants. **3. Application for Adjudication of Existing, Formerly Exempt Well. A. Well Permit Number:** 274219-A. This well was a replacement well for the relocation of the original well designated with Well Permit No. 274219. The original well designated with Well Permit No. 274219 was plugged and abandoned on July 19, 2007, and the replacement well, designated with Well Permit No. 274219-A was drilled on July 13, 2007. **B. Location of Wells.** The existing exempt well on the Property is located 350 feet from the east section line and 915 feet from the south section line in the SE1/4 of the SE1/4 of Section 12, T12S, R66W of the 6th P.M. UTM coordinates: 0524182 Easting, 4318521, Northing. The legal description of the existing well location in Replacement Well Permit No. 274219-A described above contains an inadvertent error, incorrectly describes a site not located on the Property, and will be corrected with an amended well permit applied for in conjunction with this Application. **C. Appropriation of Well.** i. Date of Appropriation: December 31, 1965. ii. How appropriation was initiated: Drilling of original well. iii. Date water applied to beneficial use: December 31, 1965. **D. Source of Water.** The well is drilled to the base of the Dawson Aquifer. **E. Depth of Well:** 580 feet. **F. Amount of Underground Water Claimed.** See Paragraph 2.C above. **G. Existing Uses.** Domestic for one single-family home; irrigation of not more than 5,000 square feet of lawn and garden on the Property; domestic animal watering. **H. Proposed Uses.** All beneficial uses on the Property, including domestic, irrigation,

domestic animal watering, fire protection, filling of one hot tub, and augmentation purposes. Because this existing well will no longer be the sole well on the Property, it is proposed to be adjudicated and augmented in this Application. **I. Name and Address of Owner of Land Upon Which Wells are Located.** Applicants. **4. Application for Approval of Plan for Augmentation.** **A. Structures to be Augmented.** The structures to be augmented consist of two wells described in paragraphs 2 and 3 herein, including any replacement wells. **B. Water Right to be Used for Augmentation.** The water rights to be used for augmentation during pumping are septic return flows. Water rights from the nontributary Arapahoe aquifer or Laramie-Fox Hills aquifer will be used to replace post-pumping depletions. **C. Statement of Plan for Augmentation.** i. **Diversions.** One exempt well, described in paragraph 3 above, currently serves the Property and the existing house located on the Property. Applicants seek to construct a second house on the Property. The augmented wells will be used for domestic purposes and for the purposes stated herein upon the Property for the existing and new houses, including but not limited to, in-house uses, irrigation of up to 10,000 square feet of lawn and garden, and filling of and evaporation losses from up to two hot tubs. The annual pumping from both wells for these uses will be approximately 1.655 acre-feet. The diversion and depletion numbers are approximate and may vary based on final water availability. ii. **Depletions.** The maximum annual 100-year depletion is 0.149 acre feet. The total annual return flow less the total maximum annual depletion is 0.906 acre-feet. **D. Replacement During Pumping.** Applicant's augmentation water during the plan pumping will consist of septic return flows from in-house uses and lawn irrigation return flows. Applicant's total demand for all uses on the Property is 1.655 acre-feet per year. Wastewater from in-house residential uses will be disposed of through a non-evaporative septic system. The wastewater and irrigation return flows to the tributary stream system total 1.055 acre-feet per year. The total delayed depletions are estimated to be 0.149 acre-feet after 100 years. The total annual return flow less the total maximum annual depletion is 0.906 acre-feet. These return flows are sufficient to replace actual depletions while the subject groundwater is being pumped. Therefore, Applicant's return flows prevent material injury to other vested water rights during plan pumping. **E. Post-Pumping Depletions.** For the replacement of post-pumping depletions, Applicants will reserve 161.54 acre-feet of water from the non-tributary Laramie-Fox Hills aquifer underlying the Property. This amount accounts for the 2% relinquishment requirement amount from that aquifer. 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, including but not limited to the nontributary groundwater from the Arapahoe aquifer underlying the Property, as decreed herein. Applicants further claim that post-pumping depletions will be noninjurious and do not need to be replaced. The reserved nontributary water will be used, if and as necessary, to replace any injurious post-pumping depletions. Upon entry of a decreed augmentation plan in this case, the Applicants will be entitled to file for and receive well permits for the uses in accordance with this Application. **5. Additional Remarks.** A. Applicants request a finding that they have complied with C.R.S. § 37-90-137(4) and that the groundwater requested herein is legally available for withdrawal by the requested nontributary and not nontributary wells upon the entry of a decree

approving an augmentation plan pursuant to C.R.S. § 37-90-137(9)(c). B. The term of this augmentation plan may be for 200 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 will be determined as the average annual withdrawals for all wells through cessation of pumping and accrue only to the extent of actual pumping. C. Applicants will comply with C.R.S. § 37-90-137(9)(b) for the withdrawal of nontributary groundwater. D. The Court will retain jurisdiction over this matter for those who object to the application to provide for the adjustment of the annual amount of groundwater withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. E. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater and the proposed plan for augmentation. F. 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 shall be sent within 14 days of the filing of this application.

CASE NO. 2018CW3016 - TRIVIEW METROPOLITAN DISTRICT, 16055 Old Forest Point, Ste. 300, FOUNTAIN MUTUAL IRRIGATION COMPANY (Co-Applicant) 487 Anaconda Drive, Colorado Springs, CO 80919. (Please address all pleadings and correspondence to Chris D. Cummins and Brian G. Sheldon of Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921, (719) 471-1212.)

Application for Change of Water Rights and For Approval of Plan for Augmentation

EL PASO COUNTY

Background and Summary of Application: The Triview Metropolitan District (“Applicant”, “Triview”, or the “District”) is the owner of 500 shares in the Fountain Mutual Irrigation Company (“FMIC”) as represented by Certificate No. 1679 (the “Triview-Owned Shares”). Triview has contractual interests in an additional 15 FMIC shares previously decreed to augmentation use in Case Nos. 99CW146, 00CW152, and/or 02CW112, and pending removal from such existing plan(s) in pending Division 2 Case No. 16CW3010 (the “Contract Shares”). Combined, Triview therefore owns or controls a total of 515 FMIC shares (the “Triview FMIC Shares”) subject of this change application. Triview has decreed plans for augmentation in Case Nos. 88CW23(A), 88CW23(B), 95CW153, 98CW134, 14CW3053, and 15CW3076, Water Division 2 (“Existing Augmentation Plans”), which replace depletions to Monument Creek, Fountain Creek and the Arkansas River resulting from Triview’s municipal well pumping from not-nontributary Denver Basin aquifers in northern El Paso County, as well as alluvial well sources to be constructed on Monument Creek. Triview seeks to change the type, manner, and place of use of the water rights represented by the Triview FMIC Shares, and to add such FMIC water rights as a source of augmentation supply to the Existing Augmentation Plans, as more specifically described herein. **Structures to be Augmented:** Structures to be augmented include all augmented structures, wells and well fields previously decreed in the Existing Augmentation Plans, specifically including but not limited to wells and well fields to the not-nontributary Denver and Arapahoe aquifers, and pumping from alluvial well sites decreed in Case No. 87CW74, to the

extent augmentation of any such structures may be required. All such structures and related water rights are tributary to Monument Creek, and are located within the District's boundaries, or in the vicinity thereof, and are generally 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.) **Water Rights to be used for Augmentation:** Augmentation water is to be provided by the 515 Triview FMIC Shares as represented by Certificate No. 1679, and as pending change in Case No. 16CW3010. None of the Triview-Owned FMIC Shares have previously been changed to municipal purposes, to include augmentation, and all such shares are sought to be so changed in this Application. While the Contract Shares have been previously changed to augmentation use, and the pending Case No. 16CW3010 seeks to maintain such change, by application herein Triview likewise seeks to change the Contract Shares to Triview's municipal purposes, including augmentation. The Triview FMIC Shares may be collectively used to augment depletions from Triview's municipal well field diversions under Triview's Existing Augmentation Plans, and this case, as well as for all other municipal purposes. FMIC diverts its water to the Fountain Mutual Ditch from Fountain Creek tributary to the Arkansas River, at its headgate located in the SW¼ of Section 20, Township 14 South, Range 66 West, 6th P.M. FMIC's water rights were originally decreed for irrigation purposes. FMIC water rights were originally decreed as follows:

DIRECT FLOW

Fountain Creek

<u>Priority No.</u>	<u>Priority Date</u>	<u>Decree Date</u>	<u>Total Decree (cfs)</u>
4	9/21/1861	3/6/1882	9.84(5.38) ²
7	4/1/1862	3/6/1882	1.125
11	2/1/1863	3/6/1882	16.69
17	12/31/1863	3/6/1882	4.25 (2.125) ³
21	12/31/1864	3/6/1882	4.65
28	12/31/1866	3/6/1882	8.48
29	12/31/1867	3/6/1882	9.68
41	9/21/1874	3/6/1882	17.05
168	1/31/1903	6/2/1919	343.2

STORAGE

Fountain Creek

<u>Priority No.</u>	<u>Priority Date</u>	<u>Decree Date</u>	<u>Total Decree (AF)</u>
Fountain	3/18/1903	6/2/1919	10,000

²FMIC's interest in Priority No. 4 is 5.38 cfs. The amount of 1.73 cfs was changed on application of Security Water District in Case No. 90CW28. In addition to the 5.38 cfs, FMIC claims the right to divert any of the remaining 2.73 cfs decreed to this priority which is not used by the other owner.

³Priority No. 17 is referred to as the Janitell's right and FMIC has used one-half of the water, or 2.125 cfs, in return for the carriage of the other 2.125 cfs to its owner through the FMIC ditch. By Decree Authorizing Change in Point of Diversion in Civil Action No. 38180, entered July 29, 1959, the point of diversion for this 4.25 cfs of Priority No. 17 of the Laughlin Ditch was changed to the headgate of the Fountain Mutual Ditch.

Historical Use. FMIC water rights have been decreed for use in numerous other changes of water rights and plans of augmentation. In those previous cases, this Court has determined that each share of FMIC has historically yielded on the average the equivalent of 0.7 acre foot of net replacement or consumptive use water each year, which number represents a portion of the farm headgate delivery. The replacement or augmentation credit allowed to FMIC water rights, as also determined in previous cases, is a percentage of the FMIC actual delivery to its shareholders computed on the basis of the following table.

<u>FMIC REPLACEMENT CREDIT</u>	
<u>Month</u>	<u>Replacement Credit as a Percentage of Farm Headgate Delivery</u>
January	47
February	58
March	70
April	70
May	70
June	70
July	72
August	72
September	74
October	66
November	40
December	49

This historic consumptive use of FMIC shares determined in Case No. 95CW3 was affirmed by the Colorado Supreme Court, which findings are binding as a matter of *res judicata*. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997). This same historic consumptive use was most recently affirmed in Case No. 12CW99. There have been no material changed circumstances since the last decree to modify these historical consumptive use determinations. Recent diversion records are therefore not relied upon or supplied with this Application. Triview requests that the Court find that each of the 515 Triview FMIC Shares have historically yielded on the average the equivalent of 0.7 acre foot of net replacement or consumptive use water each year, which number represents a portion of farm headgate delivery. For the 515 Triview FMIC Shares, this represents an average consumptive use of 360.5 annual acre feet which may be used for Triview’s municipal uses, including augmentation. The total amount of consumptive use pursuant to the FMIC water rights varies from year to year based upon the amount of water available for diversion under those rights. Therefore, the actual consumptive use available from such shares shall be based on actual in-priority diversions applied to the above monthly replacement credit schedule. Augmentation credits will be limited to a maximum of one acre foot per share per year, and to an average of 0.7 acre foot per year over a 20 year running average. **Statement of Plan for Augmentation.** The consumptive use attributable to the Triview FMIC Shares shall be committed to this plan for augmentation to replace the out-of-priority depletions as an alternate source of augmentation water to that previously decreed in the Existing Augmentation Plans. Should Triview utilize other sources of replacement

water as decreed in the Existing Augmentation Plans, all water attributable to the Triview FMIC Shares shall be available to Triview's use for other municipal purposes, including augmentation, as well as for continued lease to other water users. Water available under the Triview FMIC Shares will be diverted at the headgate of the Fountain Mutual Ditch and released back to Fountain Creek at the Spring Creek Augmentation Station, and Triview will contract with FMIC for the use of the augmentation station for these 515 shares. The replacement credits under this plan for FMIC shares will be computed as the historical depletion percentage multiplied by actual in-priority diversions under Triview's FMIC water rights. These FMIC replacement credits at the FMIC augmentation station will be assessed a transit loss from the FMIC augmentation station to the point of depletion based upon the current Fountain Creek Transit Loss Model, if such point of depletion or diversion is located downstream on Fountain Creek. In the alternative, Triview may exchange such replacement credits upstream on Fountain Creek and Monument Creek under an appropriative right of exchange, as may be separately applied for, decreed, or administratively approved, or may deliver such replacement credits through pipeline infrastructure, whether independently, or as may be shared with other water users, or water authorities, for direct use and or augmentation replacement in northern El Paso County. Absent such exchange, Triview shall not utilize the Triview FMIC Shares for augmentation of depletions accruing to Fountain Creek and its tributaries upstream of the FMIC headgate at such times as the FMIC water rights are subject to a valid senior call. Triview may also trade the water and water rights available under the Triview FMIC Shares with other water users for water rights otherwise available through Triview's existing or anticipated infrastructure for use in Triview's municipal system, or utilize such infrastructure for direct use of water and water rights attributable to Triview's FMIC Shares. Depletions from Triview's municipal well fields in the not-nontributary Denver and Arapahoe aquifers are already calculated under Triview's Existing Augmentation Plan decrees on a monthly basis including any lagged depletions from Triview's wells within the not-nontributary Denver and Arapahoe aquifers, and sewered and non-sewered return flows. The release of replacement water from the FMIC water rights will be made to replace those monthly depletions, and/or any depletions resulting from out-of-priority pumping of Triview's alluvial wells, as decreed in 87CW74. Triview's pro rata share of water attributable to its FMIC shares may be placed into storage in FMIC's decreed storage in Big Johnson Reservoir (Fountain Valley Reservoir No. 2), together with any excess consumptive use credits from FMIC shares put through the augmentation station. Such storage and use shall be in accordance with FMIC rules and regulations. The water so stored in Big Johnson Reservoir may be used as augmentation water, or for any other changed purpose, and may be delivered to the Spring Creek augmentation station by means of an intraditch exchange during any month in which Applicant's deliveries of water under its direct flow rights to the Spring Creek augmentation station may be inadequate. The intraditch exchange from Big Johnson Reservoir to the Spring Creek augmentation station will operate at any time FMIC is diverting water, except when both (a) Big Johnson Reservoir is full, and (b) the date is between November 15 and March 15. This intraditch exchange will operate from Big Johnson Reservoir, which is located in Sections 8, 17 and 18, Township 15 South, Range 65 West, 6th P.M., up the Fountain Mutual Ditch to the location of the Spring

Creek augmentation station in the NE¼ of Section 29, Township 14 South, Range 66 West, 6th P.M. As an alternative to the delivery of water to the Spring Creek augmentation station, Applicant's replacements may also be made by releasing water from Big Johnson Reservoir and returning it to Fountain Creek through the McRae augmentation station or any other station below Big Johnson, in addition to the intraditch exchange. Such releases can be made at any time to the extent that Applicant owns a pro rata portion of the water stored in Big Johnson Reservoir. Further, if Triview constructs or participates in the construction of pipelines or other infrastructure for the delivery of Triview's FMIC Shares water rights to northern El Paso County, such releases may be made and measured through such new augmentation structures/stations at points on Monument Creek, or its tributaries. Triview's FMIC water rights related to the 515 shares are to be changed herein for all municipal purposes, including but not limited to augmentation purposes, and will be permanently removed from their historical use for irrigation at such time as these shares are committed to meet depletions under this plan of augmentation, or otherwise placed to municipal use. Until so used, including in existing or pending plans of augmentation, such FMIC shares may be continued to be used through the Fountain Mutual Ditch in accordance with the terms of its decrees. Once shares have been municipally used, including as may be dedicated to existing or pending augmentation plans for replacement purposes, those shares will not be used for other purposes absent a new water court application. The Fountain Mutual system is a water short system, and the withdrawal of water deliveries under the Fountain Mutual Ditch to lands under the FMIC system results in naturally reduced irrigation and the dry up of property. No dry up covenant for Fountain Mutual lands is therefore required for shares committed to this plan of augmentation. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997); and Case Nos. 07CW54, 07CW47, and 09CW119. **Change of Water Rights:** As implicit in the description of the plan for augmentation, above, Triview seeks to change its 515 FMIC Shares from their decreed irrigation uses, to municipal uses, including augmentation use. Triview for efficiency purposes incorporates all descriptions of the FMIC water rights, above, in this Change of Water Rights section of the Application. **Amount of water subject of instant change:** Triview seeks to change its pro rata interest in the Fountain Mutual Ditch water rights associated with its 515 FMIC Shares. Based upon the historical 0.7 average annual acre feet of historical consumptive use yield previously decreed to each FMIC share, Triview's FMIC Shares on average will yield 360.5 acre feet of historical consumptive use, though actual annual yield will vary from year to year. **Change of Type and Manner of Use:** Triview seeks to change the type of use of the Triview FMIC Shares to include, in addition to existing irrigation uses, all municipal uses including, without limitation, domestic, agricultural, industrial, commercial, irrigation, power generation, stock watering, fire protection, recreation, fish and wildlife preservation and propagation, wetlands maintenance and enhancement, recharge of Denver Basin aquifers, any and all replacement or relinquishment purposes, and augmentation and exchange for all municipal uses. All such uses are to be made by direct diversion, or through storage, and Triview further seeks the right to re-use and successively use to extinction the water rights attributable to the Triview FMIC Shares (including but not limited to lawn irrigation return flows and sewerage return flows) following the initial use(s) thereof.

Change in Place of Use: Triview seeks to change the place of use of the Subject Water Rights, including after release from the Spring Creek augmentation station, McRae Reservoir augmentation station, Big Johnson Reservoir, or such other facilities utilized by FMIC, to include all of Triview's municipal service area, as it exists now and as it may exist in the future, including any areas served by Triview pursuant to extraterritorial agreement or any other contract or lease, and including for replacement of depletions on the Arkansas River and its tributaries, including but not limited to Monument Creek and Fountain Creek. Triview seeks a change in place of use to include any location within the Arkansas River Basin to which water may be delivered for augmentation, sale, or lease for such other uses as may be allowed by law. A map of the current boundaries/service area of the Triview Metropolitan District is attached to the Application as Exhibit A. **Plan of Operations:** Water available under the Triview FMIC Shares may be diverted at the headgate of the FMIC Ditch and released back to Fountain Creek at the Spring Creek augmentation station, McRae Reservoir augmentation station, Big Johnson Reservoir, or such other augmentation station/measurement facilities as may be lawfully utilized by FMIC, or such other augmentation station/measurement facility as Triview may construct to which the FMIC water rights may be delivered, now or in the future, and Triview has and will continue to contract with FMIC for the use of such facilities for the Triview FMIC Shares, to the extent such water is to be utilized for augmentation purposes through such FMIC facilities. The consumptive use credits associated with the Triview FMIC Shares will be computed as the historical depletion percentage multiplied by actual in-priority diversions under the Subject Water Rights. Triview may also utilize augmentation stations/measurement facilities other than those referenced in Paragraph 4, above, whether currently in use or developed in the future, and such alternate augmentation stations may be used in substitution or combination with one another. Triview's use of such alternate augmentation and measurement facilities shall be approved by the State and Division Engineer's offices prior to such use, unless otherwise decreed. The consumptive use credits associated with the Triview FMIC Shares may be exchanged up Fountain Creek, and up Monument Creek, to Triview's service area for the changed uses, or left in Fountain Creek for downstream use for the changed uses within the Arkansas Basin after measurement and release from the augmentation stations, subject to future or existing leases for such supplies, or subject to future water rights decrees including future decrees for such appropriative rights of exchange. Such consumptive use credits will be assessed appropriate transit loss from the augmentation stations to the point of use, including as may be calculated based upon the current Fountain Creek Transit Loss Model. Triview may, alone or in concert with partners, appropriate additional rights of exchange, or develop such physical infrastructure, as necessary for physical delivery of the Subject Water Rights to Triview's service area, or other legal places of use. Triview's pro rata share of water attributable to the Triview FMIC Shares may be placed into storage in FMIC's decreed storage vessel, Big Johnson Reservoir (a/k/a Fountain Valley Reservoir No. 2), together with any excess consumptive use credits from FMIC shares put through the augmentation stations. Such storage and use shall be in accordance with FMIC rules and regulations. The water so stored in Big Johnson Reservoir may be used for the augmentation purposes described herein, and may be delivered to any of the augmentation stations discussed herein, including the

Spring Creek augmentation station by means of an intraditch exchange during any month in which Triview's deliveries of water under its direct flow water rights under the Triview FMIC Shares to the Spring Creek augmentation station, or other augmentation station, may be inadequate. **Return Flows.** Return flows from the historical use of the Subject Water Rights have accrued to Fountain Creek, and will be replaced by Triview consistent with the terms and conditions of the prior FMIC change decrees, as described herein. The sources of water for replacement of historical return flows will be the historical return flow portion of the Subject Water Rights, or as an alternative, any other water owned or leased by Triview that is decreed for replacement and/or augmentation purposes and available at the required time, location and amount in order to prevent injury to other water rights. Historical return flows will be replaced only to calling water rights senior to the date of the filing of this Application, and Triview hereby appropriates for the uses described herein, any historical return flows not required to be so replaced. **Name and address of the owners or reputed owners of land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed, or upon which water is or will be stored, including any modification of existing storage pool.** The FMIC Ditch headgate, the Spring Creek augmentation station, and Big Johnson Reservoir, are all located upon land or easements owned by co-Applicant FMIC, c/o Gary Steen, Manager, 487 Anaconda Drive, Colorado Springs, CO 80919.

CASE NO. 2018CW3017; Previous Case No. 2009CW11 - THE CITY OF TRINIDAD, c/o Mike Valentine, 135 N. Animas Street, Trinidad, CO 81082 (Please direct all correspondence and inquiries regarding this matter to Applicant's attorneys: Jeffrey J. Kahn, Madoline Wallace-Gross, Kara N. Godbehre, Lyons Gaddis Kahn Hall Jeffers Dworak & Grant, PC, PO Box 978, Longmont, CO 80502-0978, (303) 776-9900)
Application for Finding of Reasonable Diligence

LAS ANIMAS COUNTY

2. Previous decrees for exchanges: The District Court, Water Division No. 2 entered a decree in Case No. 2009CW11 on February 21, 2012. **3. Trinidad Reservoir to Monument Lake Ditch No. 1 Exchange.** The exchange will operate on the Purgatoire River and the North Fork of the Purgatoire River. Applicant will use this exchange to divert water at Monument Lake Ditch No. 1 for storage in Monument Lake and/or to divert water at North Lake Inlet for storage in North Lake. **3.1. Downstream terminus.** Trinidad Reservoir dam, which is located in § 27, T33S, R64W of the 6th P.M., Las Animas County, Colorado. **3.2. Upstream terminus.** Headgate of the Monument Lake Ditch No. 1 (aka "A" Ditch), which is located in the SE ¼ SW ¼ § 24, T32S, R69W of the 6th P.M. on the right bank of the North Fork of the Purgatoire River whence the SW corner of § 24 bears S67° W 2470 feet. **4. Trinidad Reservoir to Monument Lake Ditch No. 2 Exchange.** The exchange will operate on the Purgatoire River, the North Fork of the Purgatoire River and Brown Creek. Applicant will use this exchange to fill Monument Lake. **4.1. Downstream terminus.** Trinidad Reservoir dam, see ¶ 3.1. **4.2. Upstream terminus.** Headgate of the Monument Lake Ditch No. 2 (aka "B" Ditch), which is located in the NE ¼ SE ¼ §25, T32S, R69W of the 6th P.M. on the south bank of Brown Creek whence the SE corner of § 25 bears S 18° E 2200 feet. **5. Trinidad Reservoir to C Ditch & Pipeline Exchange.** The exchange will operate on the

Purgatoire River, the North Fork of the Purgatoire River and Whiskey Creek. Applicant will use this exchange to fill Monument Lake. **5.1. Downstream terminus.** Trinidad Reservoir dam, see ¶ 3.1 **5.2. Upstream terminus.** Headgate of the “C” Ditch & Pipeline, which is located in the SW ¼ NE ¼ §1, T33S, R69W of the 6th P.M. on the south bank of Whiskey Creek, whence the NE corner of §11, bears N54°27'E 3044.7 feet. **6. Trinidad Reservoir to Cherry Creek Ditch Exchange.** The exchange will operate on the Purgatoire River, the North Fork of the Purgatoire River, Brown Creek and Cherry Creek. Applicant will use this exchange to fill Monument Lake. **6.1. Downstream terminus.** Trinidad Reservoir dam, see ¶ 3.1 **6.2. Upstream terminus.** Headgate of the Cherry Creek Ditch, which is located at a point on Cherry Creek in the NE ¼ NE ¼ of § 1, T33S, R69W of the 6th P.M. whence the NE corner of § 1 bears N62°E 410.3 feet. **7. Water to be used for exchanges:** Any water stored in Applicant’s account in Trinidad Reservoir. Such water includes, but is not limited to, water stored pursuant to decrees entered in Case Nos. 88CW61, 06CW78 and 08CW101, District Court, Water Division No. 2. **8. Rates of exchange for each exchange:** The cumulative rate of exchange for all exchanges is 19.97 cfs. **8.1. Trinidad Reservoir to Monument Lake Ditch No. 1 Exchange:** 8.17 cfs, conditional. **8.2. Trinidad Reservoir to Monument Lake Ditch No. 2 Exchange:** 2.0 cfs, conditional. **8.3. Trinidad Reservoir to C Ditch & Pipeline Exchange:** 5.0 cfs, conditional. **8.4. Trinidad Reservoir to Cherry Creek Ditch Exchange:** 4.8 cfs, conditional. **9. Cumulative volumetric limitation for all exchanges:** 3,476 af. **10. Appropriation dates for all exchanges:** January 26, 2008. **10.1. How appropriations were initiated:** By forming the requisite intent to appropriate, adopting a resolution to make these appropriations, and by filing the application in this case. **10.2. If a claim to make absolute, date water applied to beneficial use:** Not applicable. **11. Decreed uses for all exchanges:** Water diverted by exchange will be used directly or stored in and subsequently released from Monument Lake or North Lake for all municipal uses, including, but not limited to, domestic, commercial, manufacturing, industrial, fire protection, generation of electric power and power generally, recreation, fish and wildlife propagation, sewage treatment, street sprinkling, replacement, substitution and augmentation (including augmentation of domestic, commercial and industrial wells). **12. Detailed outline of what has been done toward completion of the appropriations, including expenditures:** The appropriations decreed herein are portions of Applicant’s integrated water system, as that term is used in C.R.S. § 37-92-301(4)(b). During the subject diligence period, Applicant conducted the following work in furtherance of the conditional exchanges, and on its integrated water system, at a cost in excess of \$3.3 million. **12.1.** Paid RJH approximately \$1 million for design and inspection costs associated with North Lake. **12.2.** Rehabilitated the dam at North Lake, at a total cost of approximately \$1.8 million. **12.3.** Conducted an inspection of the outlet and a seismic evaluation for Monument Lake, at a cost of approximately \$33,000. **12.4.** Replaced the aqueduct from the North Fork to North Lake at a cost of approximately \$126,000. **12.5.** Stored water rights in Trinidad Reservoir annually that are the sources of substitute supply for the conditional appropriations. **12.6.** Paid ditch company assessments and fees for the water rights that are the sources of substitute supply for the conditional appropriations at a cost of approximately \$166,000. **12.7.** Paid approximately \$229,000 to the Purgatoire River

Water Conservancy District associated with the Applicant's Trinidad Reservoir storage capacity. 12.8. Obtained approval of the change of water rights in Case Nos. 06CW78 and 08CW101, which are sources of substitute supply for the conditional appropriations. 12.9. Opposed water rights filed by other water users to protect the conditional appropriations, including 09CW90, 09CW113, 09CW114, 10CW97, 10CW02, 12CW127, 13CW3000, 13CW3070 and 14CW3009. **13. Owner of land upon which the structures are located:** 13.1. Trinidad Reservoir - U.S. Corps of Engineers, Reservoir Control Branch (Trinidad Reservoir), Albuquerque District, 4101 Jefferson Plaza NE Albuquerque, NM 87109, with a copy to the United States Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18E, Loveland, Colorado 80537-9711. 13.2. North Lake, Monument Lake, Monument Lake Ditch No. 1 (A Ditch), C Ditch & Pipeline, and Cherry Creek Ditch – Applicant. 13.3. Monument Lake Ditch No. 2 (B Ditch) – Rudy Zuech whose address is 510 W. Colorado Avenue, Trinidad, CO 81082. WHEREFORE, Applicant respectfully requests the Court enter a decree finding that Applicant has maintained diligence on the conditional exchanges described herein.

CASE NO. 2018CW3018; Previous Case No. 2003CW119 – ARKANSAS GROUNDWATER USERS ASSOCIATION (“AGUA”) c/o Manager, PO Box 11446, 212 36th Lane, Pueblo, CO 81001 (Please direct all correspondence and inquiries regarding this matter to Applicant's attorneys: Jeffrey J. Kahn, Matthew Machado, Lyons Gaddis Kahn Hall Jeffers Dworak & Grant, PC, PO Box 978, Longmont, CO 80502-0978, (303) 776-9900)

Application for Findings of Reasonable Diligence and to Make Conditional Water Rights Absolute

PUEBLO COUNTY, COLORADO

2. Describe conditional water right giving the following from the previous decree:

2.1. Date of original decree, case no. and Court: The original decree was entered by the District Court for Water Division No. 2 on February 23, 2012, in Case No. 03CW119 (“03CW119 Decree”). **2.2 Subsequent decrees awarding findings of diligence:** Not applicable. **2.3. Source of Water to be exchanged:** The source of replacement water for the exchanged decreed herein is the Excelsior Ditch Water Rights (“Excelsior Ditch Water Rights”) changed pursuant to the amended decree entered in Case No. 04CW62, Water Division No. 2, on June 18, 2007 (“04CW62 Decree”). The Excelsior Ditch Water Rights include 20 cfs with an appropriation date of May 1, 1887 (Priority No. 55) and 40 cfs with an appropriation date of January 6, 1890 (Priority No. 60). AGUA currently owns 1,792 shares of 3,333 total shares outstanding in the Excelsior Irrigating Company, or a 53.765 percent interest. The remaining 1,541 shares are owned by Stonewall Water, LLC and were included in the 03CW119 Decree with Stonewall's consent. **2.3.1. Location.** The Excelsior Ditch headgate is located on the north bank of the Arkansas River in the SE 1/4, SE 1/4, Section 36, Township 20 South, Range 64 West of the 6th PM in Pueblo County, Colorado (headgate location). **2.3.2. Source.** The source of the water for the Excelsior Ditch Water Rights is the Arkansas River. **2.3.3. Decreed uses.** Pursuant to the 04CW62 Decree, the use of the Excelsior Ditch Water Rights include irrigation and augmentation of depletions associated with wells owned by AGUA members pursuant to a separate decree or approved substitute water

supply plan and any other uses decreed for the Excelsior Ditch Water Rights pursuant to the 04CW62 Decree. The use of Excelsior Ditch Water Rights for the exchanges herein is subject to the terms and conditions contained in the 04CW62 Decree and the 03CW119 Decree. **2.4. Legal description of point of diversion:** The appropriative right of exchange will operate between the structures identified below. A map of these structures is attached to the Application as Exhibit A and available for inspection at the Office of the Clerk for Water Division 2: 2.4.1. Exchange from points: The Excelsior Ditch Water Rights are delivered to the Arkansas River at the following “exchange-from” points of diversion. The amount, timing and location of the Excelsior Ditch Water Rights delivered from these points shall be determined pursuant to the decree in Case No. 04CW62: 2.4.1.1. Excelsior Ditch Augmentation Station Outlet Canal: The Excelsior Ditch Augmentation Station Outlet Canal discharges into the Arkansas River in the SW 1/4, Section 34, Township 20 South, Range 63 West of the 6th Principal Meridian, Pueblo County, Colorado. The Excelsior Ditch Augmentation Station Outlet Canal is used to convey water diverted into the Excelsior Ditch back to the Arkansas River. Flows through this canal are measured, recorded, and reported to the State of Colorado Division of Water Resources. 2.4.1.2. Chico Creek Confluence with the Arkansas River: The confluence of Chico Creek (an ephemeral stream) and the Arkansas River is located in the NW 1/4, Section 8, Township 21 South, Range 62 West of the 6th Principal Meridian, Pueblo County, Colorado. Water will be delivered from a future augmentation station under the Excelsior Ditch to the Arkansas River at or above the confluence with Chico Creek. 2.4.2. Exchange to point: Water will be exchanged upstream to Pueblo Reservoir as the “exchange-to” point of diversion. Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 of Township 20 South, Range 66 West of the 6th P.M. and Sections 1, 2, 3, 4, 5, 9, 10 and 11 of Township 21 South, Range 66 West of the 6th P.M. and Sections 8, 9, 13, 14, 15, 16, 22, 23 and 25 of Township 20 South, Range 67 West of the P.M. P.M. all in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section 36 bears North 61° 21' 20" East, a distance of 2,511.05 feet, all more particularly described in the decree in Case No. B42135, District Court, Pueblo County, Colorado. Pueblo Reservoir is owned by the United State Department of Interior Bureau of Reclamation. **2.5. Date of the appropriation for the exchange:** December 31, 2003. **2.6. Amount of appropriation:** 50.7 cfs, CONDITIONAL. **2.7 Use of water exchanged:** Same as paragraph 2.3.3 above. **3. Provide a 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 diligence period, AGUA: (1) maintained and used a storage account in Pueblo Reservoir to store the exchanged water, including payments to the US Bureau of Reclamation totaling \$453,468; (2) paid Deere and Ault to design possible improvements for the Excelsior Ditch to facilitate the exchange at a cost of \$5,141; (3) paid assessments to the Excelsior Ditch Irrigating Company in the amount of \$226,500, which payed for among things maintenance and repairs of the Excelsior Ditch river headgate, the ditch, the augmentation gate, and the recharge gate at a cost of \$61,955; (4) participated as an opposer in several water court cases involving exchanges in the

same reach as AGUA's exchange to protect AGUA's exchange; and (5) operated the exchange each year during the diligence period and used the exchanged water for the replacement and augmentation of members' well depletions. **4. Claim to make absolute in whole or in part:** 4.1. Date water applied to beneficial use: On June 2, 2010, AGUA operated the exchange at a rate of 34.8 cfs, and seeks to make this amount absolute. Diversion records are attached to the Application as Exhibit B. 4.2. Description of place of use where water is applied to beneficial use: The water exchanged was delivered to and stored into Pueblo Reservoir, and subsequently delivered from storage to the Arkansas River when required for augmentation and replacement of depletions from wells owned by AGUA members and subscribers. **5. Name and address of owner of land upon which any new diversion structure or storage structure, or modification to an existing diversion or storage structure is or will be constructed, or upon which water is or will be stored, including any modification to the existing storage pool.**

Site Name	Name & Address of Owners
Pueblo Reservoir	United States Department of Interior Bureau of Reclamation 11056 W. County Rd. 18E Loveland, CO 80537-9711
Excelsior Ditch Headgate	Kirkland Property Holdings, LLC P.O. Box 580 Rye, CO 81069
Excelsior Ditch Augmentation Station Outlet Canal	Martin Marietta Materials, Inc. P.O. Box 8040 Fort Wayne, IN 46898 Colorado Interstate Gas Co. P.O. Box 4372 Houston, TX 77210
Excelsior Ditch Recharge Ponds 1-3	Stonewall Springs Quarry, LLC 3707 Parkmoor Village Dr Suite 103 Colorado Springs, CO 80917

6. Applicant reserves the right to base its absolute claim on any diversions and use occurring after the filing of this Application and prior to the entry of a decree in this case. WHEREFORE, AGUA requests the Court to enter a decree finding and determining that AGUA exercised reasonable diligence in the development of the subject appropriative right of exchange, that the subject right was perfected and made absolute in the amount of 36 cfs, and that any remaining conditional portion of the subject water right be continued in full force and effect for an additional diligence period.

CASE NO. 2018CW3019 (Water Division 2) and CASE NO. 2018CW3040 (Water Division 2) - SISTERS OF THE BENET HILL MONASTERY, c/o VINCENT CROWDER, 3190 BENET LANE, COLORADO SPRINGS, CO 80921 (Please send all

pleadings and correspondence to Chris D. Cummins and Brian G. Sheldon of Monson, Cummins & Shohet, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921 (719) 471-1212)

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

EL PASO COUNTY

Summary of Application

Applicant seeks to construct a non-exempt well to the not-nontributary Dawson aquifer that will serve as the communal water source for up to 26 residential units and one community building as part of a planned contemplative village /integrated community on a 50.36-acre parcel near the Applicant's existing monastery. The not-nontributary Dawson aquifer water will provide water service for up to 13 duplexes and for variable use within the community building with a resulting density of one multi-family unit per approximately 2 acres, though clustered. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and for approval of a plan for augmentation for the use thereof. **Application for Underground Water Rights. Legal Description of Wells. Property Description.**

All wells will be located on Applicant's Property, which contains approximately 50.36 acres, more or less ("Applicant's Property"). As more particularly described on Exhibit A, and depicted in the Exhibit B map attached to the Application, Applicant's Property is located in: The W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, and the S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, Township 11 South, Range 66 West of the 6th P.M., El Paso County, Colorado. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Proposed Well.**

Applicant proposes that one communal well will be located on the Applicant's Property at a specific location not yet determined ("Benet Well No. 1"), to be constructed to the Dawson aquifer. **Water Source. Not-Nontributary.** The ground water to be withdrawn from the Dawson and Denver aquifers of the Denver Basin underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. **Nontributary.** The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers of the Denver Basin underlying the Applicant's Property is nontributary. **Estimated Rates of Withdrawal and Ground Water Available.**

Estimated Rates of Withdrawal. Pumping from the well will not exceed 100 g.p.m. The actual pumping rates for the 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 the well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. **Estimated Average Annual Amounts of Ground Water Available.** Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as

required by El Paso County, Colorado Land Development Code §8.4.7(C)(1), which is more stringent than the State of Colorado’s 100-year life requirement pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant’s Property:

AQUIFER	ELEVATION		NET SAND (ft)	DEPTH (ft)		TOTAL (AF)	Annual Average Withdrawal (Acre Feet)	
	Bottom	Top		Bottom	Top		100 Years	300 Years
Dawson (NNT)	6595	7329	367	905	171	4311	43.1	14.34
Denver (NNT)	5777	6604	545	1723	896	4666	46.7	-
Arapahoe (NT)	5237	5720	226	2263	2263	1934	19.3	-
Laramie Fox Hills (NT)	4484	4799	191	3016	2701	1443	14.4	-

Decreed amounts may vary based upon 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. **Requested Uses.** The Applicant requests the right to use the ground water for beneficial uses upon the Applicant’s Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant’s Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct a well or use water from the not-nontributary Dawson 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). Specifically, the Applicant proposes the following quantification of uses:

Water Use Calculations			
Use	Size	Amount per Use (AF/Yr)	Total Water (AF/Yr)
Indoor			
Residences	26	0.20	5.2
Community Building	1 with varied use ¹	See FN1	0.13
Outdoor			
Landscape area per Residence	1000 sq feet	0.05	1.30
Community Building	2000 sq feet	0.05	0.10
Common Garden	0.75 acre	2.18	1.64
		Total	8.37
¹ 30 ppl/10 gal/person 2X a week = 0.1af/yr ¹ ; Overnight lodging 20 % capacity for 3 people =0.034 af/yr; 2000 sq ft landscape = .10AF (ref: gws-61)			

Well Fields. Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field.

Averaging of Withdrawals. Applicant requests that they 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.

Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located is owned by the Applicant.

APPLICATION FOR PLAN FOR AUGMENTATION. Structures to be Augmented. The structures to be augmented are Benet Well No. 1, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicant's Property as requested and described herein.

Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from Benet Well No. 1, together with water rights from the nontributary Arapahoe and Laramie-Fox Hills aquifers for any injurious post pumping depletions.

Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by Benet Well No. 1 proposed herein for twenty-six residential units and one multi-use community building. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows:

Uses. Household Use Only: 0.20 acre feet annually within up to 26 attached single family dwellings and 0.10 average acre feet annually within the community building, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal system(s). The annual consumptive use for all indoor use would therefore be 0.5 acre feet, with total return flows of 4.7 acre feet. Any other type of waste water disposal shall require an amendment to this plan of augmentation.

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 all lawn and landscape irrigated is therefore 1.19 acre feet. Community Building (inside use): As set forth in footnote 1 in the table above, the varying inside uses of water within the Community Building are anticipated to require pumping of approximately 0.13 acre feet on average, which being 10% consumptive will result in consumptive use of 0.013 acre feet annually, and return flows of 0.117 acre feet annually. Common Garden: At an application rate of 2.18 acre feet annually per irrigated acre and an 85% assumed consumptive use rate, based 0.75 acre of garden to be irrigated, consumptive use will be approximately 1.38 acre feet. The Benet Well No. 1 will pump a maximum of 8.37 acre feet from the Dawson aquifer per year. Such use shall be a combination of household use, irrigation of lawn and garden. **Depletions**. Applicant's consultant has determined that maximum stream depletions over the 300 year pumping period for the Dawson aquifer amounts to approximately 23% percent of pumping. Maximum annual depletions for total pumping is therefore 1.93 acre feet. Should Applicant's pumping be less than the 8.37 acre feet described herein, resulting depletions and required replacements will be correspondingly reduced. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the twenty-six residential wells. Applicant's consultant has determined that depletions during pumping will be effectively replaced by return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a use rate of 0.20 acre feet per residence per year and a community building use rate of 0.10 average acre feet per year, a total of 5.30 acre feet will be pumped for indoor uses, with 4.77 acre feet replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Benet Well No. 1, Applicant will reserve 1,414 acre feet of water from the nontributary Laramie Fox Hills aquifer and 1,097 acre feet of water from the nontributary Arapahoe aquifer, representing maximum pumping of 2,511 acre feet less stream depletions replaced during the plan pumping period, or such greater amounts from the nontributary Laramie-Fox Hills aquifer and/or Arapahoe aquifer as necessary to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary 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 Benet Well No. 1 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. **Remarks**. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the Arkansas River system where the majority of such depletions will occur and where replacement supplies will accrue, and it

is Applicant's intent to consolidate the instant matter with pending Division 1 application in Water Division 2 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. Applicant requests a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). 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. 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. 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. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. There are no lienholders on this property, so any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I) are not applicable here.

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 April 2018, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 7th day of March, 2018.

Mardell R. DiDomenico



Mardell R. DiDomenico, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8832

(Court seal)

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