

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING APRIL 2019

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 April 2019, 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. 2019CW3023; Previous Case Nos. 2002CW186 and 2012CW114 – ROUND MOUNTAIN WATER AND SANITATION DISTRICT, P.O. Box 86 Westcliffe, CO 81252

(Please address all correspondence and inquiries regarding this matter to Applicant's attorney: Robert F.T. Krassa, Krassa & Miller, LLC 2300 Canyon Blvd., Suite 2 Boulder, CO 80302, 303-442-2156)

Application for Finding of Reasonable Diligence

PUEBLO COUNTY

Name of Structures: Benoni-Jarvis Reservoir and Round Mountain DeWeese-Jarvis Exchange. **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **a. Date of original decree:** November 28, 2006, District Court Water Division No. 2 Case 02CW186. **b. Location of Benoni-Jarvis Reservoir:** Benoni-Jarvis Reservoir Alternate Location # 1- the axis of the dam will cross the thread of Macey Creek at a point in the SE 1/4 SW 1/4 Section 8, T.23S, R.72W in Custer County at a point which is 1500 feet east of the west line, and 900 feet north of the south line, of said section 8. Alternate Location #2: the reservoir will be an offstream structure located northwest of Macey Creek, with the outlet of the dam at a point in the SE 1/4 SW 1/4 of said Section 8 at a point 1600 feet east of the west line, and 1200 feet north of the south line, of said section 8, filled by the Benoni Jarvis Reservoir Filler Ditch, with a capacity of 25 cfs, whose point of diversion will be on the North bank of Macey Creek in the SW 1/4 SW 1/4 of said Section 8, approximately 50 feet north of the south line, and 200 feet east of the west line, of said Section 8. Said decree in case 02CW186 provides that due to the thickness of the dams and the need for geotechnical work before a final location can be determined, Applicant may place the dams anywhere within 600 feet of the described locations. **c. Location of exchange reach of DeWeese-Jarvis Exchange:** Grape Creek from the dam of below described DeWeese Reservoir (the exchange-from location) upstream along Grape Creek to the confluence with Macey Creek, thence upstream to the above described location of the Benoni-Jarvis Reservoir Filler Ditch or to the above described on-stream location of Benoni-Jarvis Reservoir, as follows. DeWeese Reservoir is located within Sections 20, 29 and 30, Township 21 South, Range 72 West of the 6th P.M., the axis of the dam of which intersects the thread of Grape Creek at a point in the NE 1/4 SE 1/4 Section 20, Township 21 South, Range 72 West of the 6th P.M. in Custer County, at a point whence the SE corner of said Section 20 bears South 12 degrees East 2350 feet. **d. Source of water for Benoni-Jarvis Reservoir:** Macey Creek, tributary to Grape Creek, tributary to Arkansas River. **e. Source of water for DeWeese-Jarvis Exchange:** the said Decree in Case 02CW186 provides that

the source of water to be exchanged will be any water lawfully stored by Round Mountain in DeWeese Reservoir, including by way of example and not limitation, the water rights described in foregoing paragraph 3, any return flows from Round Mountain's first or successive uses thereof which are lawfully storable or reusable, and any water purchased from others provided that such water may be legally used as an exchange source. **f. Appropriation date for Benoni Jarvis Reservoir:** May 19, 2000. **Amount:** 150 acre feet, conditional, fill rate for off-stream reservoir alternative limited to 25 cfs. **g. Appropriation date for DeWeese-Jarvis Exchange:** January 28, 1999. **Amount:** 25 cfs, conditional. **h. Use (for reservoir and Exchange).** Irrigation, and all municipal purposes including domestic, industrial, commercial, manufacturing, agricultural, irrigation, stock watering, recreational, piscatorial, fish and wildlife, fire protection, street washing, road construction including maintenance, compaction and dust control, hydroelectric power production, for immediate application to said uses, for storage and subsequent application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of out of priority depletions resulting from use of water from other sources, for replacement of reservoir evaporation, for all augmentation purposes and for all other beneficial purposes. Such use shall include the right to use, re-use and successively dispose such water. **4. Provide a detailed outline of what has been done toward completion or for completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** The decree in said case 02CW186 provides that, "Round Mountain's water rights and each of the water rights and structures which now and in the future will provide augmentation, substitution replacement and exchange supplies under this decree collectively comprise an integrated system of water rights and structures under Sec. 37-92-301(4) (b), C.R.S. Work performed and effort or costs expended by Round Mountain on any water rights or structures which are part of its integrated water system shall, for the purposes of demonstrating reasonable diligence in future proceedings involving all water rights described herein, be considered to be diligence on all features of Round Mountain's entire integrated water supply system." During the period from April, 2013 through April 30, 2019 (the "Diligence Period"), Round Mountain has conducted the following activities. **a. Round Mountain completed** its application for an appropriative right of exchange into DeWeese Reservoir, which was decreed by this Court on June 20, 2014 in Case 06CW115. This exchange will provide assurance of additional source water for the subject conditional DeWeese Jarvis exchange and for storage in said Benoni-Jarvis Reservoir. **b. In order to protect** the water rights which are the source of water for the subject conditional water rights, Round Mountain participated as an Opposer in a number of Water Court cases. **c. Round Mountain is currently** in the process of drying up the SE half of the ranch and installing monitoring wells in the NE section as part of the process to obtain the benefits of the decree in said Case 02CW186. **d. Round Mountain rehabilitated** and upgraded the two water storage tanks on the District's water system. **e. Round Mountain maintained,** repaired and upgraded booster station, headgates, flumes, data loggers, water mains, and valve clusters. **f. The total amount spent** by Round Mountain on activities related to the conditional storage, exchange and reuse rights decreed in Case 85CW134(A) during the Diligence Period exceeds \$200,000. The work performed and actions taken by Round Mountain during the Diligence Period demonstrate Round Mountain's continuing intent to develop the conditional storage rights and appropriative rights of exchange and

reuse described in this application. Round Mountain has shown that it can and will divert, store or otherwise capture, possess or control and beneficially use the subject rights and that the rights can and will be completed with diligence and within a reasonable time. **5. Names and addresses of owners or reputed owners of the land** upon which any new diversion or storage structure or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Round Mountain owns the site for Benoni-Jarvis Reservoir and the site of the diversion structure and ditch of the Benoni Jarvis Reservoir Filler Ditch. Round Mountain also owns storage space in DeWeese Reservoir. The land on which DeWeese Reservoir is located is owned by the DeWeese-Dye Ditch and Reservoir Company, 1411 Walnut Street, Canon City, CO 81212.

CASE NO. 2019CW3024; Previous Case Nos. 1985CW21 (W-4802), 89CW3 (W-4802), 95CW186 (W-4802), 06CW3 (W-4802) and 2012CW116 - THE UTILITIES BOARD OF THE CITY OF LAMAR, COLORADO, 100 N. 2nd, Lamar, Colorado 81052 (Please send all pleadings and correspondence to Applicant's counsel: Steerman Law Offices, PLLC, Donald L. Steerman, PO Box 390, 200 West Elm Street, Lamar, CO 81052, (719) 336-4313)

Application for a Finding of Reasonable Diligence

PROWERS COUNTY

Applicant seeks a finding of reasonable diligence for the following conditional water well right: **Name of Structure**: Connecticut General Well #2. **Original Decree**: Case No. W-4802, Water Division 2, dated March 30, 1981. **Subsequent Decrees**: Case No. 85CW21, Water Division 2, dated August 28, 1985, Case No. 95CW186, Water Division 2, dated January 26, 2000, Case No. 06CW3, Water Division 2, dated November 16, 2006, and Case No. 2012CW116, Water Division 2, April 2, 2013. **Legal Description**: Located in the NE ¼ NW ¼ Section 32, Township 22 South, Range 46 West, 6th P.M., Prowers County, Colorado. See Map of Well Location filed with the application. (General Map location mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Source of water**: Arkansas River. **Appropriation Date**: April 18, 1965. **Amount**: 2.22 c.f.s. Not to exceed 710 acre-feet per calendar year. **Uses**: Municipal purposes, including temperature adjustment at Applicant's power plant. **Detailed outline of what has been done toward completion of the appropriation**. The Division 2 Water Court found by Decree entered April 2, 2013, that Applicant had exercised reasonable diligence in the development of the subject conditional water right. Well No. 2 was tied into the water system of Applicant's power generating plant in April 1995, and water produced by said well can be pumped into Applicant's system. Applicant purchased the subject well on October 19, 2006. Applicant's water supply system consists of 18 wells including Well No. 2, and the use of water for these wells is for municipal purposes including but not limited to cooling turbines which produce electricity for a municipal electric generating plant owned by Applicant. These wells are interconnected and operate as one system. 8. Applicant obtained a Judgment and Decree from the Division 2 Water Court dated May 24, 2004 in Case No. 02CW89(A) adjudicating Applicant's 18 wells as being interconnected and operating as one system with the use of water to be for municipal purposes including but not limited to cooling turbines for the production of electricity. The Court also found that water produced from these wells and

used in Applicant's municipal power plant was a non-consumptive use of water. The Court further approved an exchange where after use of water in Applicant's power plant, said water is discharged into the Lamar Canal as an alternate point of diversion for the Lamar Canal and Irrigation Company, subject to a maximum rate of diversion at said alternate point of 37.8 c.f.s. 9. During the current diligence period, there was no need to pump water from this well in as much as the power plant is not currently in operation. For this reason, water from Well No. 2 was not diverted to Applicant's power plant. The Lamar Utilities Board, which manages Applicant's utility operation, has determined that water from Well No. 2 is needed primarily as a back-up supply of water for power generation when Applicant is again capable of producing power. **Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** G.P. Ranches, LLC, 1777 South Harrison Street, Suite 808, Denver, CO 80210

CASE NO. 2019CW3025; Previous Case Nos. 2012CW115, 2006CW39, and 2003CW15 - MAY VALLEY WATER ASSOCIATION, P.O. Box 310, Wliey, Colorado 81092 (Please send all pleadings and correspondence to Applicant's counsel: Steerman Law Offices, PLLC, Donald L. Steerman, PO Box 390, 200 West Elm Street, Lamar, CO 81052, (719) 336-4313)

Application for a Finding of Reasonable Diligence

PROWERS COUNTY

Applicant seeks a finding of reasonable diligence for the following conditional water well right: **Name of Structure:** Springer Well. **Original Decree:** Case No. 2003CW15, Water Division 2, dated November 6, 2003. **Subsequent Decrees:** In Case No. 2006CW39, Water Division 2, dated October 26, 2006, the court granted an additional 150 gpm not to exceed 239 acre-feet. in any one calendar year as an additional conditional decree in addition to the conditional 100 gpm and not to exceed 161 a.f. in any one calendar year granted in the original decree The Court found that applicant had proven diligence in its April 2, 2013 decree. **Legal Description:** Located in the Southeast Quarter of the Southeast Quarter (SE1/4SE1/4) of Section Thirty-Three (33), Township Twenty-One (21) South, Range Forty-Six (46) West of the 6th P.M., 65 feet from the South Section line and 1,320 feet from the East Section line.) See Springer Well Location Map filed with the application. (General Map location mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **UTM:** Zone 13, 711817.0 Easting and 4227738.0 Northing. **Source of water:** Cheyenne Aquifer. **Appropriation Date:** October 28, 2003 as to 100 gpm not to exceed 161 acre-feet in any one calendar year, February 20, 2004 as to 150 gpm not to exceed 239 acre-feet in any one calendar year. **Amount:** 400 acre-feet. **Uses:** domestic, industrial, commercial, irrigation, stock watering, recreation and fire protection for applicant's community water system. **Detailed outline of what has been done toward completion of the appropriation.** May Valley currently provides treated water supplies which are obtained from 11 existing Dakota and Cheyenne Aquifer wells to its service area north of Lamar, Colorado. The existing wells are permitted by the State Engineer and decreed by the Division 2 water court. Applicant has incorporated this well into its long-term plan to continue to supply water to its

community water system. Applicant maintains the well and has repaired damage to the pump panel and motor base in the amount of \$255.05; Purchased and installed a soft start motor controller in the amount of \$1,875.39; replaced a bearing assembly in the well meter at a cost of \$432,78; a discharge hose in the amount of \$38.96; Installed a low pressure drain valve and pressure relief valve and installed 4" perforated pipe in the amount of \$350.09; contracted and paid engineering fees to Hilton & Williamsen to calculate stream depletions. In addition, Applicant has continued to purchase Fry/Ark shares for Augmentation for the years 2013, 2014, 2015, 2016, 2017 and 2018 for \$613.17. It has also paid Southeastern Colorado Power Association who is the electrical provider for said well payments for power and reserve payments to operate said well each period between July, 2012 to January, 2019 in the amount of \$13,328.25 for total expenses paid between August 14, 2012 to March 27, 2019 of \$18,007.51. The foregoing activities and expenditures do not reflect each and every activity undertaken by Applicants to place the conditional water rights described herein to beneficial use, but are illustrative of Applicants' reasonable diligence in applying such water rights to a beneficial use in accordance with the standards set forth in C.R.S. § 37-92-301(4). Additional work may be performed, and additional expenses may be incurred between the date this Application is filed and the entry of any decree in this matter. **Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Land is owned by Applicant, May Valley Water Association.

CASE NO. 19CW3026; Previous Case Nos. 86CW118(A), 99CW62 and 11CW62 – CITY OF COLORADO SPRINGS, COLORADO SPRINGS UTILITIES, c/o Abigail Ortega, PE, Water Supply Resources Manager, 1521 Hancock Expressway, MC 1825, Colorado Springs, CO 80903. (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Michael J. Gustafson, Senior Attorney, City Attorney's Office – Utilities Division, 30 South Nevada Avenue, MC 510, Colorado Springs, CO 80903, phone: (719) 385-5909).

Application for a Finding of Reasonable Diligence

LAKE, CHAFFEE, FREMONT, PUEBLO, TELLER AND EL PASO COUNTIES

2. Name of Conditional Water Right and Structures Involved: Colorado Springs Utilities' Reusable Sewered Return Flows Exchange, involving the structures described in paragraph 3, below. **3. Description of Conditional Water Rights:** A. Date of Original Decree: March 15, 1993, Case No. 86CW118(A) ("Decree"), Court: Water Division No. 2. B. Subsequent decrees awarding findings of diligence: Water Court, Division 2, Case Nos. 99CW062, entered September 9, 2005, and 11CW62, entered April, 22, 2013. C. Decreed legal description and PLSS Description (structures involved in exchange): **1. Structures used to deliver Reusable Sewered Return Flows:** **a.** Las Vegas Street Wastewater Treatment Facility Outfall, located on Fountain Creek in the SE¼ of the SW¼ of Section 20, Township 14 South, Range 66 West of the 6th Principal Meridian in El Paso County. **PLSS:** In the SE¼ of the SW¼ of Section 20, T. 14 S., R. 66 W. of the 6th P. M. at a point 583 feet from the South Section line and 2176 feet from the West Section line. **b.** Air Force Academy Wastewater Treatment Facility Outfall, located on Monument Creek in the SW¼ of the SW¼ of Section 19, Township 12 South, Range 66 West of the

6th Principal Meridian in El Paso County. **PLSS:** In the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 19, T. 12S., R. 66W. of the 6th P. M. at a point 10 feet from the South Section line and 775 feet from the West Section line. **c.** Any other supplemental or replacement wastewater treatment facility outfall located within the drainages of Fountain Creek or the Arkansas River above its confluence with Fountain Creek and hereafter utilized by Applicant, including any terminal storage facilities hereafter constructed and located to receive Applicant's wastewater facility discharges. See Exchange Maps filed with the application. (General Map location or Exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **2. Structures Used to Divert, Store, and/or Subsequently Release Exchanged Reusable Sewered Return Flows:**

a. Ruxton Creek System. **(1)** Sheep Creek Intake: A point on the South bank of Sheep Creek whence the Southwest corner of Section 11, Township 14 South, Range 68 West of the 6th Principal Meridian bears South 21° West a distance of 600 feet. **PLSS:** In the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 11, T. 14S., R. 68W. of the 6th P. M. at a point 205 feet from the West Section line and 573 feet from the South Section line. **(2)** South Ruxton Creek Intake No. 1: A point on the West bank of South Ruxton Creek whence the Northwest corner of Section 14, Township 14 South, Range 68 West of the 6th Principal Meridian bears North 49° West a distance of 2,555 feet. **PLSS:** In the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 14, T. 14S., R. 68W. of the 6th P. M. at a point 1938 feet from the West Section line and 1557 feet from the North Section line. **(3)** South Ruxton Creek Intake No. 2: A point on the West bank of South Ruxton Creek whence the Northwest corner of Section 14, Township 14 South, Range 68 West of the 6th Principal Meridian bears North 51° 40' West a distance of 2,385 feet. **PLSS:** In the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 14, T. 14S., R. 68W. of the 6th P. M. at a point 1880 feet from the West Section line and 1363 feet from the North Section line. **(4)** Cabin Creek Intake: A point on the North bank of Cabin Creek whence the Southwest corner of Section 11, Township 14 South, Range 68 West of the 6th Principal Meridian bears South 7° 55' West a distance of 3,020 feet. **PLSS:** In the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 11, T. 14S., R. 68W. of the 6th P. M. at a point 421 feet from the West Section line and 1919 feet from the North Section line. **(5)** Ruxton Creek Intake at Lake Moraine: A point on the East bank of Ruxton Creek at Lake Moraine Reservoir whence the Southwest corner of Section 22, Township 14 South, Range 68 West of the 6th Principal Meridian bears South 27° 10' West a distance of 1,070 feet. **PLSS:** In the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 22, T. 14S., R. 68W. of the 6th P. M. at a point 954 feet from the South Section line and 495 feet from the West Section line. **(6)** Dark Canyon Intake: A point on South Ruxton Creek whence the Northwest corner of Section 14, Township 14 South, Range 68 West of the 6th Principal Meridian bears North 23° 50' West a distance of 4,330 feet. **PLSS:** In the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 14, T. 14S., R. 68W. of the 6th P. M. at a point 1776 feet from the West Section line and 1214 feet from the South Section line. **(7)** Lion Creek Intake: A point at the junction of Ruxton and Lion Creeks whence the Northeast corner of Section 15, Township 14 South, Range 68 West of the 6th Principal Meridian bears North 9° 50' East a distance of 1,600 feet. **PLSS:** In the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 15, T. 14S., R. 68W. of the 6th P. M. at a point 264 feet from the East Section line and 1595 feet from the North Section line. **(8)** Lake Moraine Reservoir: Located in the Southeast quarter of Section 21 and the Southwest quarter of Section 22, the Northwest quarter of Section 27, and the Northeast quarter of Section 28, Township 14 South, Range 68 West of the 6th Principal Meridian. **(9)** Big Tooth Reservoir: Located

in the Southwest quarter of Section 14 and the Northwest quarter of Section 23, Township 14 South, Range 68 West of the 6th Principal Meridian. b. North Slope System (Fountain Creek). **(1)** French Creek Intake: A point on French Creek whence the Southeast corner of Section 26, Township 13 South, Range 68 West of the 6th Principal Meridian bears South 80° 43' East a distance of 1,953 feet. **PLSS:** In the SE¼ of the SE¼ of Section 26, T. 13S., R. 68W. of the 6th P. M. at a point 140 feet from the South Section line and 1948 feet from the East Section line. **(2)** Cascade Creek Intake: A point on Cascade Creek whence the Northwest corner of Section 27, Township 13 South, Range 68 West of the 6th Principal Meridian bears North 70° 11' West a distance of 1,322 feet. **PLSS:** In the NE¼ of the NW¼ of Section 27, T. 13S., R. 68W. of the 6th P. M. at a point 412 feet from the North Section line and 1279 feet from the West Section line. **(3)** Crystal Creek Intake: A point on Crystal Creek whence the Northwest corner of Section 17, Township 13 South, Range 68 West of the 6th Principal Meridian bears North 23° 12' West a distance of 2,735 feet. **PLSS:** In the SW¼ of the NW¼ of Section 17, T. 13S., R. 68W. of the 6th P. M. at a point 2549 feet from the North Section line and 1148 feet from the West Section line. **(4)** South Catamount Creek Intake: A point on South Catamount Creek whence the Southeast corner of Section 12, Township 13 South, Range 69 West of the 6th Principal Meridian bears South 37° East a distance of 645 feet. **PLSS:** In the SE¼ of the SE¼ of Section 12, T. 13S., R. 68W. of the 6th P. M. at a point 387 feet from the East Section line and 480 feet from the South Section line. **(5)** North Catamount Creek Intake: A point on North Catamount Creek whence the South quarter corner of Section 12, Township 13 South, Range 69 West of the 6th Principal Meridian bears South 47° 45' West a distance of 1,535 feet. **PLSS:** In the SW¼ of the SE¼ of Section 12, T. 13S., R. 68W. of the 6th P. M. at a point 1524 feet from the East Section line and 1135 feet from the South Section line. **(6)** Crystal Reservoir: Located in the Southwest quarter of Section 17, the Southeast quarter of Section 18 and the Northwest quarter of Section 19, Township 13 South, Range 68 West of the 6th Principal Meridian. **(7)** South Catamount Reservoir: Located in the Northwest quarter of Section 18, Township 13 South, Range 68 West of the 6th Principal Meridian and the Southeast quarter of Section 12 and the Northern half of Section 13, Township 13 South, Range 69 West of the 6th Principal Meridian. **(8)** North Catamount Reservoir: Located in Sections 11, 12, 13, and 14, Township 13 South, Range 69 West of the 6th Principal Meridian. c. Northfield Collection System (West Monument Creek). **(1)** Intake No. 1: A point on West Monument Creek whence the South quarter corner of Section 28, Township 12 South, Range 67 West of the 6th Principal Meridian bears South 80° 23' East a distance of 2,060 feet. **PLSS:** In the SW¼ of the SW¼ of Section 28, T. 12., R. 67W. of the 6th P. M. at a point 234 feet from the West Section line and 418 feet from the South Section line. **(2)** Intake No. 2: A point on West Monument Creek whence the South quarter corner of Section 28, Township 12 South, Range 67 West of the 6th Principal Meridian bears South 49° 50' East a distance of 1,255 feet. **PLSS:** In the SE¼ of the SW¼ of Section 28, T. 12S., R. 68W. of the 6th P. M. at a point 1351 feet from the West Section line and 844 feet from the South Section line. **(3)** Intake No. 3: A point on the North Fork of West Monument Creek whence the South quarter corner of Section 28, Township 12 South, Range 67 West of the 6th Principal Meridian bears South 9° 10' West a distance of 4,288 feet. **PLSS:** In the NW¼ of the NE¼ of Section 28, T. 12S., R. 68W. of the 6th P. M. at a point 1036 feet from the North Section line and 1914 feet from the East Section line. **(4)** Northfield Reservoir: Located in the Southeast quarter of Section

25, Township 12 South, Range 68 West of the 6th Principal Meridian. **(5) Nichols Reservoir:** Located in the Southwest quarter of Section 25 and the Southeast quarter of Section 26 and the Northwest quarter of Section 36, Township 12 South, Range 68 West of the 6th Principal Meridian. **(6) Rampart Reservoir:** Located in Sections 22, 23, 26 and 27, Township 12 South, Range 68 West of the 6th Principal Meridian. **d. Pikeview System (Monument Creek).** **(1) Pikeview Intake (also known as Monument Creek Pipeline):** A point on Monument Creek just upstream from the point where the Garden of the Gods Road crosses Monument Creek, in north Colorado Springs, whence the North quarter corner of Section 19, Township 13 South, Range 66 West of the 6th Principal Meridian bears North 8° 15' East a distance of 3,189.8 feet. This intake delivers water to Pikeview Reservoir and Pikeview Reservoir No. 2. **PLSS:** In the NE¼ of the SW¼ of Section 19, T. 13S., R. 66W. of the 6th P. M. at a point 2208 feet from the West Section line and 2124 feet from the South Section line. **(2) Pikeview Reservoir:** An off-channel reservoir located adjacent to and on the west side of Monument Creek, at a point just downstream from the point where the Garden of the Gods Road crosses Monument Creek, in north Colorado Springs, in the Northeast quarter of the Northwest quarter and in the Northwest quarter of the Northeast quarter of Section 30, Township 13 South, Range 66 West of the 6th Principal Meridian. **e. 33rd Street Diversion Intake (Fountain Creek).** **(1)** The 33rd Street Intake is located on Fountain Creek at 33rd Street in west Colorado Springs, whence the South quarter corner of Section 3, Township 14 South, Range 67 West of the 6th Principal Meridian bears South 12° East a distance of 535 feet. **PLSS:** In the SW¼ of the SE¼ of Section 3, T. 14 S., R. 67 W. of the 6th P. M. at a point 523 feet from the South Section line and 2535 feet from the East Section line. **(2)** An alternate point of diversion for the 33rd Street Intake is located at a point on the North bank of Fountain Creek in the Southwest quarter of Section 3, Township 14 South, Range 67 West of the 6th Principal Meridian, approximately 153 feet upstream of the original point of diversion. The alternate point of diversion was adjudicated on February 21, 1991, in Case No. 90CW29, Water Division No. 2. **PLSS:** In the SE¼ of the SW¼ of Section 3, T. 14 S., R. 67 W. of the 6th P. M. at a point 570 feet from the South Section line and 2612 feet from the West Section line. **f. Bear Creek System (Bear Creek).** **(1)** The Bear Creek Intake was originally located on Bear Creek just south of the intersection of Gold Camp Road and Bear Creek Canyon Road, in El Paso County, at a point whence the Southwest corner of Section 15, Township 14 South, Range 67 West of the 6th Principal Meridian bears North 43° 14' East a distance of 2,280 feet. **PLSS:** In the SW¼ of the NE¼ of Section 21, T. 14S., R. 67W. of the 6th P. M. at a point 1484 feet from the East Section line and 1656 feet from the North Section line. **(2)** In Case No. 15CW3008, District Court, Water Division 2 the point of diversion for the Bear Creek System was changed to the NE¼ of the NE¼ of Section 23, T. 14S., R. 67W. of the 6th P.M., 1,019 feet from the North section line and 694 feet from the East section line. The GPS location in UTM coordinates of the new point of diversion for the Bear Creek Rights is 512832E, 4297009N. **g. South Suburban System (Cheyenne Creek).** **(1)** South Cheyenne Creek Intake: Located on South Cheyenne Creek at a point just west of the intersection of Mesa Avenue and South Cheyenne Canyon Road, in southwest Colorado Springs, whence the quarter corner common to Sections 34 and 35, Township 14 South, Range 67 West of the 6th Principal Meridian bears North 35° 16' East a distance of 1,329.7 feet. This intake

delivers water to South Suburban Reservoir and Gold Camp Reservoir. **PLSS:** In the NE¼ of the SE¼ of Section 34, T. 14S., R. 67W. of the 6th P. M. at a point 795 feet from the East Section line and 1537 feet from the South Section line. **(2) North Cheyenne Creek Intake:** Located on North Cheyenne Creek at a point approximately one mile west of the intersection of North and South Cheyenne Canyon Roads, in southwest Colorado Springs, whence the Northeast corner of Section 34, Township 14 South, Range 67 West of the 6th Principal Meridian bears North 70°29' East a distance of 4,419.2 feet. This intake delivers water to South Suburban Reservoir and Gold Camp Reservoir. **PLSS:** In the SW¼ of the NW¼ of Section 34, T. 14S., R. 67W. of the 6th P.M. at a point 910 feet from the West Section line and 1460 feet from the North Section line. **(3) South Suburban Reservoir:** An off-channel reservoir located just north of the intersection of North and South Cheyenne Canyon Roads, in southwest Colorado Springs, in Sections 26 and 35, Township 14 South, Range 67 West of the 6th Principal Meridian. **(4) Gold Camp Reservoir:** An off-channel reservoir located just north of the intersection of North and South Cheyenne Canyon Roads, in southwest Colorado Springs, in Sections 27 and 34, Township 14 South, Range 67 West of the 6th Principal Meridian. h. Pueblo Reservoir. The point of diversion of Pueblo Reservoir is at a point at the intersection of Pueblo Dam axis and the Arkansas River whence the Northeast corner of Section 36, Township 20 South, Range 66 West of the 6th Principal Meridian, bears North 61° 21' 20" East a distance of 2,511.05 feet. Said reservoir inundates all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 20 South, Range 66 West of the 6th Principal Meridian, Sections 1, 2, 3, 4, 5, 9, 10, and 11, Township 21 South Range 66 West of the 6th Principal Meridian, and Section 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, Township 20 South, Range 67 West of the 6th Principal Meridian. i. Twin Lakes Reservoir. Twin Lakes Reservoir is formed by a dam across Lake Creek in Lake County in Section 23, Township 11 South, Range 80 West of the 6th Principal Meridian, as described in the decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. j. Turquoise Reservoir. Turquoise Reservoir is formed by a dam across Lake Fork Creek in Lake County in Section 19, Township 9 South, Range 80 West of the 6th Principal Meridian as described in the decree in Case No. 80CW6 (District Court, Water Division No. 2), as dated October 23, 1980. k. Clear Creek Reservoir. Clear Creek Reservoir is located on Clear Creek in Sections 7 and 8, Township 12 South, Range 79 West, and Section 12, Township 12 South, Range 80 West of the 6th Principal Meridian, Chaffee County. l. Fountain Valley Conduit. The Fountain Valley Conduit is a series of pipelines, pumping stations and other water-conveyance facilities in Pueblo and El Paso Counties that together convey water from the outlet works of Pueblo Reservoir to the Fountain Valley Authority's water users, including the City of Colorado Springs. The Fountain Valley Conduit is a part of the Fryingpan-Arkansas Project which is described in more detail in Paragraphs 3 and 5, and Exhibit 2, of Contract Number 9-07-70-W0315, dated July 10, 1979, between the United States and the Southeastern Colorado Water Conservancy District. Colorado Springs is authorized to utilize a portion of the capacity of the Fountain Valley Conduit to transport water, pursuant to a Subcontract dated July 10, 1979, between the Southeastern Colorado Water Conservancy District, the Fountain Valley Authority, the City of Colorado Springs, and various other parties. m. Otero Pump Station (a.k.a. Otero Diversion Structure). The Otero Pump Station diverts water

from the Arkansas River in Chaffee County, approximately at the point that bears North 30° West a distance of 6,180 feet to the Northeast corner of Section 6, Township 12 South, Range 79 West of the 6th Principal Meridian. **PLSS:** In the SW¼ of the SE¼ of Section 5, T. 12 S., R. 79 W. of the 6th P. M. at a point 35 feet from the South Section line and 2256 feet from the East Section line. n. Pikes Peak Collection System - South Slope. The Pikes Peak Collection System-South Slope is a system of five reservoirs and connected diversion structures, pipelines and tunnels in Teller and El Paso Counties consisting of the following: **(1)** Big Horn Reservoir (Reservoir Number 7). Located on a branch of the East Fork of West Beaver Creek in the Southeast quarter of Section 13 and the Northeast quarter of Section 24, Township 14 South, Range 69 West of the 6th Principal Meridian. A point located at the intersection of the creek and the dam axis bears South 19 West 2,896 feet to a point, thence South 66° West 1,598 feet to the Northwest corner of Section 26, Township 14 South, Range 69 West of the 6th Principal Meridian. **(2)** Wilson Reservoir (Reservoir Number 8). Located on the East Fork of West Beaver Creek in the Southeast quarter and the Southeast quarter of the Northeast quarter of Section 23, the West half of the Southwest quarter and the Southwest quarter of the Northwest quarter of Section 24, Township 14 South, Range 69 West of the 6th Principal Meridian. Station 65 near the dam bears South 53° East a distance of 19,280 feet to the Southeast corner of Section 32, Township 14 South, Range 68 West of the 6th Principal Meridian. **(3)** Boehmer Reservoir (Reservoir Number 2). Located on the Main Fork of Middle Beaver (Boehmer) Creek in the South half of Section 19 and the North half of Section 30, Township 14 South, Range 68 West of the 6th Principal Meridian. **(4)** Mason Reservoir (Reservoir Number 4). Located on Middle Beaver Creek in Sections 32 and 33 of Township 14 South, Range 68 West of the 6th Principal Meridian, and Sections 4 and 5 of Township 15 South, Range 68 West of the 6th Principal Meridian in Teller County. Station 0 of the dam bears North 6° 49' West a distance of 950.62 feet to the Southeast Corner of Section 32, Township 14 South, Range 68 West of the 6th Principal Meridian. **(5)** McReynolds Reservoir (Reservoir Number 5). Located on a tributary of Middle Beaver Creek in Section 4, Township 15 South, Range 68 West of the 6th Principal Meridian in Teller County. Station 0 of the dam bears North 34° 35' West a distance of 2,166.2 feet to the Southeast corner of Section 32, Township 14 South, Range 69 West of the 6th Principal Meridian. o. Rosemont Collection System. The Rosemont Collection System consists of Rosemont Reservoir and connected diversion structures, pipelines and tunnels in Teller and El Paso Counties. The reservoir is located on East Beaver Creek in the Southeast quarter and the Southeast quarter of the Northeast quarter of Section 23, Township 15 South, Range 68 West of the 6th Principal Meridian, and the system diverts waters from East Beaver Creek and its tributaries, as described in the decree in Case No. 6193, District Court of Fremont County. p. Brush Hollow Reservoir. Brush Hollow Reservoir is located on Brush Hollow Creek in Sections 24, 25, Township 18 South, Range 69 West of the 6th Principal Meridian and Sections 19, 30, Township 18 South, Range 68 West of the 6th Principal Meridian. The dam is located in the Northeast quarter of Section 25, Township 18 South, Range 69 West of the 6th Principal Meridian, and the Northwest quarter of Section 30, Township 18 South, Range 68 West of the 6th Principal Meridian. The structures described in Paragraphs 3.C.2.a through 3.C.2.g above are located in the Fountain Creek Basin, while the structures described in Paragraphs 3.C.2.h through 3.C.2.p above are located in the Arkansas River Basin, but

outside the Fountain Creek Basin. **D. Source of water:** The sources of water for the appropriative rights of exchange herein are: reusable sewerer return flows; and the reuse and successive use of such return flows, derived from the Applicant's use of its ownership interest in the Colorado Canal Companies, as follows: 1. The Colorado Canal. The Colorado Canal water rights are the right to divert 756.28 cubic feet of water per second of time from the Arkansas River for direct flow irrigation use with a priority date of June 9, 1890. By decree dated October 21, 1985, in Case No. 84CW62, District Court, Water Division No. 2, the use of the Colorado Canal water rights was changed to include use and total consumption for municipal, commercial, industrial, and all other beneficial uses at any location. Applicant has the right to take its pro rata share of the water diverted and stored by the Colorado Canal Company, pursuant to the decree in Case No. 84CW62, by exchange or by pipeline for use and total consumption in Applicant's municipal water system or elsewhere. 2. Lake Meredith Reservoir. Lake Meredith Reservoir's decreed water rights authorize the storage of 26,028.4 acre-feet with diversions from the Arkansas River through the Colorado Canal at a rate of 756.28 c.f.s. under priority of March 9, 1898, and authorize the release of waters stored in Lake Meredith Reservoir and the exchange of such released waters for waters diverted at the Colorado Canal headgate for irrigation purposes with an exchange priority of March 9, 1898. The active storage capacity of Lake Meredith Reservoir is 41,413 acre-feet. Each stockholder in the Lake Meredith Reservoir Company is entitled to a pro rata portion of the waters realized from the operation of Lake Meredith Reservoir and the use of a pro rata portion of Lake Meredith Reservoir storage space. By decree dated October 21, 1985, Case No. 84CW63, District Court, Water Division No. 2, the use of Lake Meredith water rights was changed to include use and total consumption for municipal, commercial, industrial, and all other beneficial uses at any location. Applicant has the right to take its pro rata share of the water diverted and stored by the Lake Meredith Reservoir Company, pursuant to the decree in Case No. 84CW63, by exchange or by pipeline for use and total consumption in Applicant's municipal water system or elsewhere. 3. Lake Henry Reservoir. Lake Henry Reservoir has decreed water storage rights of 11,916 acre-feet and a decreed rate of diversion of 756.28 c.f.s. through the Colorado Canal. By decree dated October 21, 1985, in Case No. 84CW64, District Court, Water Division No. 2, the use of Lake Henry water rights was changed to include use and total consumption for municipal, commercial, industrial, and all other beneficial uses at any location. Applicant has the right to take its pro rata share of the water diverted and stored by the Lake Henry Reservoir Company, pursuant to the decree in Case No. 84CW64, by exchange or by pipeline for use and total consumption in Applicant's municipal water system or elsewhere. The description of or reference to structures and water rights herein is not intended to amend or limit the decrees for those structures and water rights in any way, and omissions in such descriptions and references shall in no way prejudice the owners of those structures and water rights. **E. Priority Date:** March 20, 1985, Amounts: see Paragraph 3.H. below. **F. Decreed Use:** All beneficial uses for which the waters to be exchanged and reused are decreed, including those uses set forth in the Decree in Case No. 86CW118(A) (hereinafter the "Decree"). **G. Description of Appropriative Rights of Exchange:** Pursuant to the conditions of the Decree, Applicant may exchange its Reusable Sewered Return Flows that accrue to Fountain Creek to points upstream within the Fountain Creek Basin ("Local Exchange"). In addition, Applicant may exchange its Reusable Sewered Return Flows, after transport

to the Arkansas River, to points upstream in the Arkansas River Basin for diversion, storage, or subsequent exchange ("Arkansas River Exchange"). Applicant may also choose to use its Reusable Sewered Return Flows directly in its municipal water system for all municipal purposes, including irrigation and industrial uses; in plans for augmentation; by sale to other water users; or in such other ways as may be allowed by law.

1. Local Exchange: Subject to the conditions of the Decree, Applicant may divert or store an amount of water equivalent to the amount of Reusable Sewered Return Flows then reaching Fountain Creek in excess of its augmentation requirements at one or more of the structures described in Paragraphs 3.C.2.a through 3C.2.g above.

2. Arkansas River Exchange: Subject to the conditions of the Decree, Applicant may divert or store an amount of water equivalent to the Reusable Sewered Return Flows then reaching the Arkansas River at one of the following structures, described in more detail in Paragraphs 3.C.2.h through 3.C.2.p above.

3. Inter-Facility Exchanges: Applicant may also release previously stored Reusable Sewered Return Flows from one of the reservoirs described in Paragraph 3.C.2 and an equivalent amount may be stored or diverted by exchange in one or more of the structures described in Paragraph 3.C.2.

4. Reaches of Exchange: The facilities described in Paragraph 3.C. above define the stream reaches within which Applicant may conduct exchanges. Pursuant to the Decree, Applicant may operate these exchanges from other yet-to-be-constructed facilities as described in Paragraph 8(c) of the Decree, within these defined stream reaches.

5. River Flow Exchanges and Contract Exchanges Compared: Pursuant to the Decree, Applicant's exchanges of water may be accomplished in several ways. An actual upstream flow may be diverted while Reusable Return Flows are discharged or Reusable Return Flows already reduced to storage in another reservoir are released (a "River Flow Exchange"); or, a volume of water already in storage in an upstream reservoir that would otherwise be conveyed downstream, may be traded, with the consent of the owners of that stored water, for Applicant's Reusable Return Flows then returning to the stream or already reduced to storage in another reservoir (a "Contract Exchange").

H. The exchanges are a part of Applicant's integrated water supply system, including these exchanges and conditional water rights as well as other absolutely decreed water rights, and various other collection, storage, transmission, and related facilities necessary to divert and deliver water to the City of Colorado Springs for beneficial use. Diligence as to one portion of the integrated system constitutes diligence as to all portions thereof.

I. Amounts: The amounts Applicant has previously made absolute, including the quantities made absolute since entry of the decree in Case No. 86CW118(A), (e.g., by the decrees in Case Nos. 99CW062 and 11CW62) and the remaining conditional appropriative rights of exchange are as set forth in the Table included in paragraph 6.B below.

4. Integrated System: The Applicant owns and operates an integrated system for water diversion, transmission, storage, treatment and distribution, as well as collection and treatment of the resultant wastewater for release, exchange, or reuse. The conditional water rights herein are a part of this integrated water system comprising all water rights decreed and used for development and operation of the City of Colorado Springs municipal water supply system. Reasonable diligence in the development of one component of the system comprises reasonable diligence in the development of all components.

5. 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:

A. Applicant owns and

operates the municipal water supply system serving the City of Colorado Springs. The conditional water rights herein are a part of that municipal water supply system, which also comprises and includes other absolute and conditional water rights, and collection, storage, and diversion and delivery systems, including the structures (and/or interests therein) described in paragraphs 3.C. and D. above, except for Brush Hollow Reservoir and Clear Creek Reservoir; the Continental-Hoosier Diversion System; interests in the Homestake Diversion Project; and interests in the Independence Pass Transmountain Diversion System of the Twin Lakes Reservoir and Canal Company. **B.** During the period from September 30, 2011 (date of prior diligence application) through March 31, 2019 (the "Diligence Period"), Applicant has operated the decreed exchanges that are the subject of this application to divert and beneficially use additional amounts of water so as to make absolute additional incremental amounts of the decreed exchanges. **C.** During the Diligence Period, Applicant has also spent substantial sums of money and devoted many thousands of man hours to the operation, maintenance, improvement, and development of its water resources and its municipal water supply, distribution, and wastewater treatment systems, including work related to collection system facilities, storage reservoirs, water transmission pipelines, water treatment plants, and distribution system mains, meters, and reservoirs. The water delivered through the Applicant's municipal water systems includes the water made available to Applicant by the rights of exchange that are the subject of this Application. These expenditures on Applicant's municipal water supply system are necessary for further development of Applicant's exchanges and reuse program. As part of this overall effort, Applicant retained engineering consultants and attorneys to assist it in the acquisition, operation, maintenance, improvement, and protection of its water resources and its municipal water supply, distribution, and wastewater treatment systems. **D.** During the Diligence Period, the Applicant has undertaken numerous projects and activities for the improvement and enlargement of its water supply and distribution systems in order to facilitate the completion of the appropriation of the conditionally decreed water rights that are the subject of this application including, but not limited to: completion of the Southern Delivery System project; rehabilitation of the dam face and outlet works of Montgomery Reservoir (Continental-Hoosier Diversion System); reconstruction of dam face and outlet works for rehabilitation/maintenance of Homestake Reservoir (Homestake Project); extensive participation in the Arkansas River Exchange Program; continued development of the Colorado Canal Reuse Program; development and completions of Integrated Water Resources Plan ("IWRP"), which identified a portfolio of water supply projects, policies, and processes that will be necessary to provide a reliable and sustainable supply of water for its customers for the next 50 years; continued pursuit of development of a joint project(s) as contemplated by the 1998 MOU with Vail Associates, Upper Eagle River Regional Water Authority, Eagle River Water and Sanitation District, Cypress Climax Mining Company, and the Colorado River Water Conservation District. **E.** During the Diligence Period, Applicant also filed applications for, prosecuted and completed a number of adjudications of, water rights that comprise portions of Applicant's integrated municipal water supply system. These activities include, but are not limited to: filing of applications in Water Division 2 (Arkansas River Basin), and Water Division 5 (Colorado River Basin) including, but not limited to, pursuit of adjudication of decrees in: Case No. 16CW3054 (Water Division No. 2) involving claims for diligence for Roby Ditch and

Reservoir; Case 13CW20 (Water Division No. 2) for Applicant's Local System Exchange originally decreed in Case No. 84CW202; Case No. 13CW9 (Water Division No. 2) involving claims for diligence for Applicant's Arkansas River Exchange originally decreed in Case No. 84CW203; Case No. 16CW3053 (Water Division No. 2) involving claims for diligence for Chancellor Well No. 1 and Chancellor Well No. 2; Case No. 18CW3041 (Water Division No. 5) regarding a Colorado River-Blue River Exchange; Case No. 18CW3053 (Water Division No. 2) regarding Applicant's conditional storage Rights for Upper Sugar Loaf Reservoir and Sugar Loaf Reservoir Enlargement and Amendment; Case No. 03CW320 (Water Division No. 5) for so-called "substitution operations" pursuant to the Blue River Decree (Consolidated Cases Nos. 2782, 5016 and 5017); Case No. 04CW132 (Water Division No. 2) regarding exchange of Denver Basin groundwater return flows; Case No. 05CW96 (Water Division No. 2) regarding the exchange of Temporary Use Waters (a.k.a. ATM or leased water) in the Upper Arkansas River Basin; Case No. 06CW120 (Water Division No. 2) for exchange regarding Restoration of Yield; Case No. 15CW3019 (Water Division No. 5) involving claims for diligence for Lower Blue Reservoir; Spruce Lake Reservoir, and Mayflower Reservoir; Case Nos. 16CW3072 (Water Division No. 2) involving claims for diligence related to Applicant's appropriative rights of exchange originally decreed in Consolidated Case Nos. 84CW202, 84CW203, 86CW118(B) and 89CW36; Case No. 07CW120 (Water Division No. 2) for Quail Lake conditional storage right; Case No. 07CW121 (Water Division No. 2) regarding exchange of Fountain Creek Recovery Project waters; Case No. 07CW122 (Water Division No. 2) involving rights of exchange to the Local System from Pueblo Reservoir and Williams Creek Reservoir; Case No. 13CW3077 (Water Division No. 5) regarding the proposed administration of Green Mountain Reservoir pursuant to the Blue River Decree; Case No. 12CW31 (Water Division No. 2) for a conditional storage right for Upper Williams Creek Reservoir and associated appropriative rights of exchange for Upper Williams Creek Reservoir and Williams Creek Reservoir; Case No. 15CW3001 (Water Division No. 2) involving a change of water rights in the Chilcott Ditch Company ("Chilcott"); Case No. 15CW3002 (Water Division No. 2) involving a change of water rights in the Fountain Mutual Irrigation Company ("FMIC"); Case No. 16CW3050 (Water Division No. 2) involving a change of water right for Chancellor Well No. 1; and Case No. 16CW3056 (Water Division No. 2) involving an augmentation plan, replacement plan, and appropriative right of exchange involving Applicant's FMIC and Chilcott water rights; and numerous diligence filings. **F.** Applicant has also acted to preserve and protect all of its water rights by filing statements of opposition to, and participating in, many judicial and administrative proceedings. For example, Applicant has consistently opposed water court applications that seek approval of plans for augmentation that operate on Fountain Creek. Applicant has participated in these cases to ensure that the out-of-priority depletions are replaced in time, amount, and location, and that the Division Engineer assesses transit losses on the replacement water supply. Applicant has undertaken these endeavors to improve the accuracy of the Fountain Creek Transit Loss Model, which directly affects the exchanges at issue in this Application. Applicant's total capital expenditures in connection with the activities described above on its integrated system during the Due Diligence Period have exceeded \$887,795,440. In addition to that amount, over \$6,634,876 was expended on the operation of the Arkansas River Exchange Program, and \$4,444,099 was expended on the operation of the Colorado Canal Reuse Program.

Applicant reserves the right to identify additional relevant efforts that may be later discovered or to make upward adjustments to amounts expended on certain projects. Applicant made diligent efforts with regard to this Application to determine and quantify all efforts made toward completion of the appropriations and application of the water rights decreed in Case No. 86CW118(A) to beneficial use. However, it is reasonably possible that relevant efforts or expenditures may have been overlooked or need further upward adjustment. **6.** Claim to make absolute: The Applicant has operated the decreed exchanges that are the subject of this application to divert and beneficially use additional amounts of water beyond the amounts previously made absolute so as to make absolute additional incremental amounts of the decreed exchanges, as follows: A. Date water applied to beneficial use: During the Due Diligence Period as documented on the attached Exhibit 1 (CS-U Data Sheets-Sewered Return Flow Exchanges). B. Amounts claimed absolute: As set forth in the Table below based upon exchanges of Reusable Sewered Return Flows between 2011-2019:

ABSOLUTE AND CONDITIONAL EXCHANGES OF REUSABLE SEWERED RETURN FLOWS

Point of Delivery of Return Flow	For Exchange to:	Remaining Conditional Amount	Total Amount Previously Made Absolute	Additional Amount Claimed Absolute	New Total Amount Claimed Absolute
Sewered Return Flows to Fountain Creek	Ruxton Creek System: A. Intake Structures B. Storage Reservoirs	25.19 cfs 1,564.20 a/f	9.51 cfs 25.80 a/f		
	North Slope System: A. Intake Structures B. Storage Reservoirs	37.28 cfs 17,275.00 a/f	19.52 cfs 155.00 a/f		
	Northfield System: A. Intake Structures B. Storage Reservoirs	8.90 cfs 41,729.96 a/f	0.00 cfs 40.04 a/f		
	Pikeview System: A. Intake Structures B. Storage Reservoirs	11.00 cfs 190.85 a/f	0.00 cfs 13.65 a/f		
	33 rd Street System	13.90 cfs	0.00 cfs		
	Bear Creek System	3.10 cfs	0.00 cfs		
	South Suburban System: A. Intake Structures B. Storage Reservoirs	21.13 cfs 481.81 a/f	4.37 cfs 118.19 a/f		

Fountain Creek (Direct Municipal Effluent)	Pueblo Reservoir Twin Lakes Reservoir Fountain Valley Conduit Otero Pump Station South Slope System Brush Hollow Reservoir Turquoise Reservoir Clear Creek Reservoir Rosemont System	122.88 cfs 164.00 cfs 164.00 cfs 164.00 cfs 164.00 cfs 164.00 cfs 164.00 cfs 164.00 cfs 164.00 cfs	41.12 cfs 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00	13.88 cfs	55.00 cfs
Fountain Creek (Storage in Terminal Storage Reservoir, <i>i.e.</i> , effluent storage)	Pueblo Reservoir Twin Lakes Reservoir Fountain Valley Conduit Otero Pump Station South Slope System Brush Hollow Reservoir Turquoise Reservoir Clear Creek Reservoir Rosemont System	1,000.00 cfs 1,000.00 cfs 1,000.00 cfs 1,000.00 cfs 1,000.00 cfs 1,000.00 cfs 1,000.00 cfs 1,000.00 cfs 1,000.00 cfs	0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00		
Pueblo Reservoir	Twin Lakes Reservoir Otero Pump Station Brush Hollow Reservoir South Slope System Turquoise Reservoir Clear Creek Reservoir Rosemont System	Flow** 	425.00 cfs 0.00 0.00 0.00 0.00 50.00 cfs 0.00	50.43 cfs 5.51 cfs	475.43 cfs 5.51 cfs
Rosemont System	Twin Lakes Reservoir Turquoise Reservoir Otero Pump Station South Slope System Clear Creek Reservoir Brush Hollow Reservoir	Flow** 	0.00 0.00 0.00 0.00 0.00 0.00		
Brush Hollow Reservoir	South Slope System Rosemont System Twin Lakes Reservoir Turquoise Reservoir Otero Pump Station Clear Creek Reservoir	Flow** 	0.00 0.00 0.00 0.00 0.00 0.00		
South Slope System	Twin Lakes Reservoir Turquoise Reservoir Otero Pump Station Clear Creek Reservoir Rosemont System Brush Hollow Reservoir	Flow** 	0.00 0.00 0.00 0.00 0.00 0.00		
Turquoise Reservoir	Twin Lakes Reservoir Clear Creek Reservoir South Slope System Rosemont System Brush Hollow Reservoir	Flow** 	0.00 0.00 0.00 0.00 0.00		

Twin Lakes Reservoir	Turquoise Reservoir Clear Creek Reservoir South Slope System Rosemont System Brush Hollow Reservoir	Flow**	80.00 cfs 0.00 0.00 0.00 0.00		
Clear Creek Reservoir	Turquoise Reservoir Twin Lakes Reservoir Clear Creek Reservoir South Slope System Rosemont System Brush Hollow Reservoir	Flow**	0.00 50.00 cfs 0.00 0.00 0.00 0.00		

** The maximum rate of flow that would have been released from the receiving storage reservoir had no exchange been made (including inadvertent storage) and had no storage right junior to the exchange been exercised to store water in the receiving reservoir, except that Contract Exchanges shall have no rate of flow limitation and direct flow exchanges shall be limited to the physical capacity of the existing or future diversion system.

C. Uses: Municipal purposes within the Colorado Springs’ municipal water supply service area, including replacement/augmentation of evaporation on Colorado Springs Utilities’ Reservoirs. **D. Description of place of use where water is applied to beneficial use:** The service area of the Colorado Springs’ municipal water supply utility, and Colorado Springs Utilities’ Reservoirs. **7. Names and addresses** of owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool (you must notify these persons that you are applying for this water right, and certify to the Court that you have done so by no later than ten days after filing the Application): **A.** City of Colorado Springs, Colorado Springs Utilities, c/o City Attorney’s Office, 30 S. Nevada Ave., Ste. 501, Colorado Springs, CO 80903 (Las Vegas Street Wastewater Treatment Facility Outfall; Ruxton Creek System; North Slope System; Intake No. 1, Intake No. 2, Northfield Reservoir, Stanley Canyon Reservoir, Nichols Reservoir, and Rampart Reservoir, of the Northfield Collection System; Pikeview Reservoir of the Pikeview System; 33rd Street Diversion Intake and Alternate Point of Diversion; Bear Creek System Intake; North Cheyenne Creek Intake, South Suburban Reservoir, and Gold Camp Reservoir of the South Suburban System; Pikes Peak Collection System; and Rosemont Collection System). **B.** Air Force Academy, Attn: Real Estate Office, 8120 Edgerton Drive, Suite 40, USAF Academy, CO 80840 (Air Force Academy Wastewater Treatment Facility Outfall; Intake No. 3 of the Northfield Collection System). **C.** Pike National Forest, 2840 Kachina Drive, Pueblo, CO 81008 (Crystal Reservoir, South Catamount Reservoir, and North Catamount Reservoir of the North Slope System (with Applicant); Nichols Reservoir, Rampart Reservoir of the Northfield Collection System (with Applicant)). **D.** Crestline MHC LLC, c/o Continental Communities, 2015 Spring Road, Suite 600, Oak Brook, IL 60523 (South Cheyenne Creek Intake). **E.** United States of America, Department of Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County 18-E, Loveland, CO 80537 (Pueblo Reservoir; Twin Lakes Reservoir; Turquoise Reservoir; Fountain Valley Conduit). **F.** Board of Water Works of Pueblo, c/o Alan Hamel, P.O. Box 400, Pueblo, CO 81002-0400 (Clear Creek Reservoir). **G.** Homestake Partners (Cities of Colorado Springs and

Aurora, acting through the Homestake Steering Committee), Otero Pump Station, 37200 North Highway 24, P.O. Box 1821, Buena Vista, CO 81211 (Otero Pump Station). **H.** Beaver Park Water, Inc., Box 286, Penrose, CO 81240-0286 (Brush Hollow Reservoir). **I. Remarks or other pertinent information:** a. **PLSS Descriptions.** PLSS descriptions are included herein in compliance with Water Court forms. In the event of a discrepancy between the decreed location and the PLSS descriptions herein, the decreed location is controlling. Any person reading this application should rely on the terms of the decree in Case No. 86CW118(A) adjudicating the conditional water rights herein.

CASE NO. 2019CW3027; F. ARLEN BURNEY AND KAREN E. BURNEY, 6115 Sengbeil Road, Yoder, CO 80864. (Please address all pleadings and inquiries regarding this matter to Applicants' attorneys: Ryan W. Farr and Emilie B. Polley, 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

Applicant seeks to quantify all Denver Basin groundwater underlying Applicant's approximately 160 acre property in El Paso County, Colorado, and to obtain a plan for augmentation for the use of not-nontributary Arapahoe aquifer wells thereon to provide water service to up to two single family dwellings, including domestic, landscape and garden irrigation, stock watering, greenhouse irrigation, year-round cultivation and irrigation of a crop including cannabis (hemp and marijuana), and the associated commercial, domestic, industrial, drinking and sanitary needs for the grow facility. **Property Description.** Applicant's property is located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, Township 13 South, Range 61 West of the 6th P.M., El Paso County, Colorado, specifically described as 6115 Sengbeil Road, Yoder, CO with Parcel Nos. 1300000619 and 1300000618, containing approximately 160 acres, more or less ("Applicant's Property"). See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Existing Well Permit.** There is currently a well permit for an existing exempt well to the Denver aquifer located on the Applicant's Property, approximately 1,564 feet from the north section line and 1,260 feet from the west section line of said Section 13, El Paso County, Colorado permitted as Division of Water Resources Permit No. 91511. **Water Source. Not-Nontributary.** The groundwater to be withdrawn from the Denver and Arapahoe aquifers underlying Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c) at this location, the augmentation requirements for wells in the Denver aquifer require the replacement of actual stream depletions and the augmentation requirements for wells in the Arapahoe aquifer, being greater than one mile from contact with surface streams, will require replacement of 4% of pumping. **Nontributary.** The groundwater that will be withdrawn from the Laramie-Fox Hills aquifers of the Denver Basin underlying the Applicant's Property is nontributary. **Estimated Rates of Withdrawal.** Pumping from any well on Applicant's Property will not exceed 100 g.p.m. The actual pumping rate for any well will vary according to aquifer conditions and well production capabilities. Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to

be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 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. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

Aquifer	Net Sand (ft)	Total (AF)	100 Year (AF)
Denver (NNT)	41.55	1,130.16	11.3
Arapahoe (NNT)	137.15	3,730.48	37.3
Laramie-Fox Hills (NT)	211.2	5,068.8	50.69

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 domestic, landscape and garden irrigation, stock watering, greenhouse irrigation, year-round cultivation and irrigation of a crop including cannabis (hemp and marijuana), and the associated commercial, domestic, industrial, drinking and sanitary needs for the grow facility, and also for storage and augmentation purposes associated with such uses. Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct wells or use water from the not-nontributary Arapahoe 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). Well Fields. Applicant requests that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells, should additional wells be approved in the future. Applicant request 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 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 Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. Name and Address of 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. Structures to be Augmented. The structure to be augmented will be a yet-to-be constructed well to the Arapahoe aquifer ("Burney Well No.

1”), along with any supplemental or replacement wells that may subsequently be constructed to the Arapahoe aquifer (collectively “Burney Wells”). Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Arapahoe aquifer from the Burney wells 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 Arapahoe aquifer proposed herein. Water use criteria and their consumptive use component for replacement of actual depletions for the lot is estimated as follows: Use. The wells will pump a maximum of 11.25 acre-feet of water per year from the Arapahoe aquifer for up to 100 years. Such use shall be a combination of household use, irrigation of lawn and garden, greenhouse irrigation, year-round cultivation and irrigation of a crop including cannabis (hemp and marijuana), and the associated commercial, domestic, industrial, drinking and sanitary needs for the grow facility. Depletions. Based on the location of Applicant’s Property being greater than one mile from any point of contact between any natural surface stream, including its alluvium, and the Arapahoe aquifer, Applicant is required to replace an amount equal to four (4) percent of the amount withdrawn annually. Total stream depletions to be augmented annually will therefore be a maximum of approximately 0.45 acre-feet. Should Applicant’s pumping be less than the 11.25 acre-feet described herein, resulting depletions will be correspondingly reduced thereby maintaining proper replacement by non-evaporative septic return flows from household use as described below. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace a total amount of water equal to four (4) percent of the amount of water withdrawn on an annual basis. Wastewater from in-house uses will be treated via a non-evaporative septic system. As such, depletions during pumping will be effectively replaced by residential return flows from two non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is ten (10) percent per residence per year. At a household use rate of 0.25 acre-feet per residence per year for a total of two residences, 0.45 acre-feet is replaced to the stream system per year. 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 Burney Wells, Applicant will reserve water from the Laramie-Fox Hills aquifer underlying the Applicant’s Property as a replacement source, less the amount replaced during the plan pumping period. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Applicant reserves the right in the future under the Court’s retained jurisdiction to prove that post pumping depletions will be noninjurious. Upon entry of a decree in this case, Applicant will be entitled to apply for and receive a non-exempt well permit for Burney Well No. 1, along with additional permits for the Burney Wells for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

CASE NO. 2019CW3028; Previous Case Nos. 10CW19; 02CW128 (W-29); W-29 C/R W-628; W-628 (74); W-628 (78); 80CW89 (W-29); 84CW114 (W-29); 88CW46 (W-29); and 94CW65 (W-29) – HUERFANO AND CUCHARAS IRRIGATION COMPANY, Two

Rivers Water & Farming, 3025 South Parker Rd., Ste. 140, Aurora, CO 80014 (Please send all pleadings and correspondence to Applicant's counsel: c/o Jonathan King, Squire Patton Boggs, 1801 California Street, Ste. 4900, Denver Colorado, 80202; (303) 894 6126).

Application for Finding of Reasonable Diligence

HUERFANO COUNTY

Names of structures: Cucharas Valley Reservoir No. 5, Appropriation Priority No. 354C, Reservoir Priority No. 66C. **Date of original decree:** 3 October 1921, Case No. 1414, Court: Huerfano County District Court, State of Colorado. **Legal description:** Huerfano County Cucharas Valley Reservoir No. 5, and the dam across the Cucharas River creating said reservoir, all located on Sections 25, 26, 35, and 36, T. 26S, R. 65 W, Sections 30 and 31, T. 26 S., R. 64 W, Sections 6 and 7, T. 27 S. R. 64 W., and Sections 1, 2, 3, 10, 11, 12, 14 and 15, T. 27 S., R. 64 W., in the County of Huerfano, State of Colorado. **Source of water:** Cucharas River **Appropriation Date:** March 14, 1906. **Amount:** 34,404 acre feet. **Use:** Irrigation **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:** Applicant has performed work and spent a considerable sum of money since April 11, 2013 to determine the best way to resolve dam safety issues surrounding Cucharas Dam in order to develop the full extent of its water rights associated with Cucharas dam, including the conditional right that is subject to this application. Applicant incurred costs of roughly \$70,000 between March 30, 2015 and August 21, 2017 with Lytle Water Solutions, LLC on engineering and hydrology services costs related to Cucharas Dam. Two Rivers also hired Wenck Associates, Inc. ("Wenck") and agreed to a professional services agreement dated June 9, 2016 for a project titled the Two Rivers Consent Decree Compliance Project. The scope of this project contemplated **(1)** meetings with the State Engineer and Lytle Water to define project objectives and requirements; **(2)** review of the Decree Compliance Plan with key stakeholders; **(3)** rigorous research of Cucharas Dam and all its project reports and data; **(4)** modeling; and **(5)** a breach channel compliance plan; **(6)** a compliance plans; and **(7)** permitting recommendations. The total cost of Wenck's services associated with this effort was roughly \$130,000 between July 1, 2016 and March 16, 2017. With the engineering and hydrology work performed by Wenck for the Two Rivers Consent Decree Compliance Project and the work by Lytle, Applicant has spent a considerable sum of money during the diligence period. In connection with these expenditures, and others, Applicant intends to develop the full capacity of Cucharas Reservoir, which includes the 34,404 acre-feet for the conditional water right subject to this application. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant; Pierce Investment Corporation, P.O. Box 218, Craig, CO 81626-0218; Apishapa Canyon Ranch, LP, 17001 County Rd. 1400, Wolfforth, TX 79381; Driscoll, David & Cindy, 902 Rink Lane, Savannah, TN 38372; Driscoll, David & Cindy, 4430 CO. Rd. 121, Walsenburg, CO 81089; James L. Pace & Brandi McCarthy, 603 Calle de Cabellos Dr., Pueblo West, CO 81007; Gerald Fitzgerald B & Jovonne P, PO Box 18243, Denver, CO 80218; Cucharas Ranch, Ltd., A Texas Limited Partnership C/O Mr. Tom McKenna So-Lo Gas Inc., PO

Box 468, Ft. Sumner, NM 88119; Stroh, Marjie J & David M, Randilyn & Neesha S, 3241 Hwy 10, Walsenburg, CO 81089; BLM Colorado State Office, 2850 Youngfield St., Lakewood, CO 80215; Colorado State Land Board, 1127 Sherman St., Denver, CO 80203.

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 June 2019, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 8th day of May 2019.

Michele Santistevan



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

(Court seal)
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