

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING AUGUST 2019  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during August 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:

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**CASE NO. 2019CW3013; Previous Case NO. 2012CW210 – PUEBLO WEST METROPOLITAN DISTRICT, 109 E. Industrial Boulevard, P.O. Box 7005, Pueblo West, CO 81007,** (Please address all pleadings 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)

First Amendment of Application to Add Claim to Make Absolute in Part

**PUEBLO COUNTY**

**Purpose of Amendment.** Following suggestion in the Division Engineer's Consultation Report in this case that the subject conditional right of exchange can be made absolute to the extent of 1.84 cfs, Applicant Pueblo West Metropolitan District ("Pueblo West") adds a claim to make the subject conditional water right absolute in part to that extent, pursuant to C.R.C.P. 15(a) and Water Rule 4. **3. Claim to make absolute in part: a. Date water applied to beneficial use:** December 2, 2015, Amount: 1.84 c.f.s. **b. An Exchange Summary,** showing the day of the highest rate of exchange from 2013 to date, is attached to application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Exhibit B, Summary of 2015 Daily Flows as the Above Pueblo Gauge, shows that the flow of the river on December 2, 2015 was 109 cfs, well above the 101 cfs trigger flow for curtailment. **c. The place where water was applied** to beneficial use is the service area of Pueblo West Metropolitan District which comprises all or part of the following sections: T.19 S., R.65 W. - Sections 7-11, 13-15, 17-24, 26, 27 and 29-35; T.20 S., R.65 W. - Sections 3-9, 17 and 18; T.19 S., R.66 W. - Sections 13 and 24-26; T.20 S., R.66 W. - Sections 1-25; T.20 S., R.67 W. - Sections 1, 12 and 13. A map of Pueblo West's present service area is attached hereto as Exhibit C. **d. The structures involved in the exchange** are the Pueblo West Wastewater Treatment Plant, the Pueblo West Trifurcation Point and Pueblo Reservoir. The locations of those structures were stated in the original application and are repeated here pursuant to Water Rule 4(a). **i. Pueblo Reservoir.** Pueblo Reservoir is formed by a dam across the Arkansas River in Pueblo County in Sections 25 and 36, Township 20 South, Range 66 West of the 6th Principal Meridian, and in Section 1, Township 21 South, Range 66 West of 6th Principal Meridian, as depicted on the U.S. Geological Survey 7.5' series, topographic map of the Northwest Pueblo quadrangle (1974 photo revision), and as described in the Decree in Case No. B-42135 (District Court, Pueblo County), dated June 25, 1962. **ii. Pueblo West Trifurcation Point.** The trifurcation point is at the South end of the concrete portion of the dam of Pueblo Reservoir, in the SW 1/4 of the NE 1/4 of said Section 36. Other water rights are diverted

at this and associated structures. **iii. Pueblo West Wastewater Treatment Plant**, located in Sections 7 and 16, T.20S, R.65W of the 6th P.M. in Pueblo County, whose outfall flows into a tributary of Dry Creek (also known as Wildhorse Creek) and thence into the Arkansas River. **4. Accordingly, Pueblo West requests** that the decree to be entered in this matter, in addition to finding reasonable diligence as requested in the original application, also determine that the subject water right has been made partly absolute as stated herein. **5. Other than as supplemented by this First Amendment, all matters stated** in the original Application herein, which was published in the February 2019 Water Resume for Water Division No. 2, are unchanged.

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**CASE NO. 2019CW4; SCOTT AND KARLA BROWN, 729 Open Sky Terrace, Pueblo, CO 81006, 719-240-9291**

Application for Absolute Surface Water Right, Conditional Water Storage Rights and Exempt Underground Water Right

**CUSTER COUNTY**

**2. Name of Structures:** Brown Spring (spring), Wallow Pond (pond), Trout Pond (pond), House View Pond (pond), Brown Exempt Well (well). **3. Legal Description:** Brown Spring Northing: 4216643, Easting: 487487, Wallow Pond (center of dam) Northing: 4216113, Easting: 487514, Trout Pond (center of dam) Northing: 4216158, Easting 487520, House View Pond (center of dam) Northing: 4216394, Easting: 487498, Brown Exempt Well Northing: 4216631, Easting: 487521, All coordinates, NAD 83 Zone 13S, source of UTM's from on-site hand held GPS, accuracy +/- 20 feet. Well Structure Subdivision Location Information, Brown Exempt Well, Street Address 7075 Highway 165, Wetmore CO 81235.

**4. Water Sources:** Brown Spring, Wallow Pond, Trout Pond, House View Pond: unnamed tributary of South Hardscrabble Creek, tributary to South Hardscrabble Creek, tributary to hardscrabble Creek, tributary to the Arkansas River. Brown Exempt Well: tributary groundwater. **5 Appropriation:**

Structure	Date of Appropriation	How Appropriation was Initiated	Beneficial Use Date
Brown Spring	04/01/1913	Property granted land patent, spring developed and used for domestic purposes.	04/01/1913
Wallow Pond	10/2018	Applicants purchased property and formed the intent to reconstruct Wallow and Trout Ponds and to construct the House View Pond	n/a
Trout Pond			n/a
House View Pond			n/a
Brown Exempt Well	09/16/91	Appropriation: Well permit application made. Beneficial Use: Well pump installation	07/24/1992

**6. Amount claimed:** Brown Spring: 1 gallon per minute, Absolute, Wallow Pond: 1.5 acre-feet (all active capacity), Conditional, Trout Pond: 1.1 acre-feet (all active capacity), Conditional, House View Pond: 1.3 acre-feet (all active capacity), Conditional, Brown Exempt Well: 4.4 gallons per minute, Absolute. **7. Uses:** Brown Spring, Domestic use for one residence (absolute), Wallow Pond, Trout Pond and House View Pond, Wildlife, Aesthetics, Livestock & Piscatorial (each conditional), Brown Exempt Well, Domestic

uses in one residence (absolute). Domestic uses in two residences, one acre lawn and garden irrigation, poultry, domestic animals and livestock uses, and fire protection uses (conditional). **8. Water Storage Structure Parameters:** Wallow Pond: on-channel, 0.34 acres, 8 feet, 120 feet, Trout Pond: on-channel, 0.27 acres, 8 feet, 100 feet, House View Pond: on-channel, 0.33 acres, 8 feet, 200 feet. **9. Brown Exempt Well Structure Parameters:** Permit Number 161892, area of parcel on which this well is locate: 40 acres, Depth of well: 172 feet. **10. Name(s) and address(es) of owner(s) or reputed owner(s) 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:** Applicant is owner. **11. Remarks:** Applicant will construct Wallow and Trout Ponds at the locations of previously existing ponds. All three ponds will be equipped with outlets capable maintaining selected water levels and of fully draining each pond.

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**CASE NO. 2019CW5; ALBERTA J HAGA TRUST. C/O DAVID HAGA, PO BOX 7 Westcliffe CO 81252, 719-465-6998**

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

**CUSTER COUNTY**

**Claim No 1 – Water Storage Rights:** **2. Name of Structure/Legal Description:** Oelrich Ditch No 2 Pond, Easting 460349, Northing 4210230, House Pond, Easting 460450, 4210294, Zone 13, NAD83, Hand-held GPS Device, 20-foot accuracy. **3. Source:** North Colony Creek, tributary to Colony Creek, tributary to Grape Creek, tributary to the Arkansas River. **4. If filled from a ditch:** **A.** Oelrich ditch No 2 supplies both the Oelrich Ditch No 2 Pond and the House Pond, capacity of ditch 2cfs. **B. Legal Description of each point of diversion:** Oelrich Ditch No 2, Easting 460609, Northing 4209924, Zone 13, NAD83, hand-held GPS Device, 20-foot accuracy. **6. Date of Appropriation:** 1963 for both Oelrich Ditch No 2 Pond and the House Pond. **B. How appropriation was initiated:** Construction of the ponds. **C. Date water applied to beneficial use:** 1963 **7. Amount Claimed:** **A. In Acre Feet:** Oelrich Ditch No 2 Pond, 3.0 acre-feet, absolute, House Pond, 0.28 acre-feet, absolute. **B. If filled from a ditch, rate of diversion in cubic feet per second for filling the reservoirs:** 1.25 cfs absolute. **8. List all Uses or Proposed Uses:** For both ponds: irrigation, irrigation head stabilization, livestock, wildlife, piscatorial, and aesthetic. **A. If irrigation:** Number of acres historically irrigated 80; proposed to be irrigated 80. Does the applicant intend to use this water right to supplement irrigation on an area of land already irrigated under another water right? Yes, supplemental irrigation and irrigation had stabilization for lands decreed to be irrigated under the Oelrich Ditch No 2. **Legal description of irrigated acreage:** NW/4 Section 21, Township 23 South, Range 72 West, 6<sup>th</sup> P.M. **B. If non-irrigation, describe purpose fully:** Non-irrigation uses of livestock, wildlife, piscatorial and aesthetic uses are in-pond uses and occur at the pond locations. **9. Reservoir Parameters:**

Reservoir	Surface Area	Vertical Height of Dam	Length of Dam	Capacity
House Pond	0.14 acres	0-2 feet	200 feet	0.28 of active
Oelrich Ditch No. 2 Pond	0.58 acres	2-3 feet	500 feet	1.75 af active 1.25 af inactive

**Claim No 2 – Change of Water Right: 1. Decreed water right for which change is sought:** **A. Name of Structure:** Albert Ditch, **B. Date of original and all relevant subsequent decrees:** 03/12/1896, Case No: 03/12/1896, Court: Fremont County(Custer) District Court. **C. Legal Description of structure as described in most recent decree that adjudicated the location:** Albert Ditch Decree Location (03/12/1896 decree): “Its head is located on the East bank of North Branch of Colony Creek, at a point whence the W.1/4 cor. Sec. 21, Tp 23 S. R. 72 W. bears S. 89 deg. 5 min. W. 1098 feet, and in the S.W., N.W.4, said Sec. 21”. **D. Decreed source of water:** “North Branch of Colony Creek”. **E. Appropriation Date:** June 1, 1873 (priority no. 61). **F. Total amount decreed to structure:** 2.0 cfs. **G. Decreed use:** Irrigation. **H. Amount of water that applicant intends to change:** 0.07 cfs. **2. Detailed description of proposed change: A. Complete statement of change:** Applicant proposed to change 0.07 cfs of the 1.5 cfs Albert Ditch priority no. 61 water right from irrigation use to augmentation use. Applicant also proposes to change the point of diversion of this 0.07 cfs from the Albert Ditch to the Oelrich Ditch No 2. The diversion point of these two ditches are co-located on North Colony Creek. The applicant correspondingly proposes to dry up 1.83 acres of irrigated land under the Albert Ditch. The changed water right water will be diverted through the Oelrich Ditch No. 2 and be used to augment out of priority evaporative depletions from two ponds for which water storage rights are claimed in Claim No. 1 of this application. **B. If a change in point of diversion, provide legal descriptions of decreed location and actual or new location of structure:** Oelrich Ditch No 2 Decreed Location (03/12/1896): “Its head is located on the west bank of North branch of Colony Creek, whence the W.4 cor. Sec. 21 TP. 23 S. R. 72 W. bears S.89 deg. 5 min W. 1092 feet”. Oelrich Ditch No 2 Actual Location: Easting:460609, Northing: 4209924, NAD83, Zone 13S, source of coordinates: handheld GPS unit. **Claim No. 3 – Plan for Augmentation: 1. Names of structures to be augmented:** Oelrich ditch No 2 Pond and the House Pond are subject of Claim No. 1 in this application. **2. Are structures decreed:** No. Oelrich Ditch No 2 Pond and the House Pond are subject of Claim No. 1 in this application. If the structures are not decreed, provide the legal descriptions of the structures: Oelrich Ditch No 2 Pond, Easting: 460349, Northing: 4210230, House Pond, Easting: 460450, Northing: 4210294, Zone 13, NAD83, Hand-held Device, 20 foot accuracy. **3. Water right to be used for augmentation:** Albert Ditch (Priority No. 61). **A. Date of original and all relevant subsequent decrees:** 03/12/1896, **Case No:** 03/12/1896, **Court:** Fremont (Custer) District Court. **B. Type of water right:** Surface (Ditch), **C. Legal description of each point or diversion storage structure:** Albert Ditch point of diversion location: “at a point whence the W1/4 cor.,Sec 21 Tp 23 S., R. 72 W. bears S. 89 deg. 5 min. W. 1098 feet, and in the S.W. 4, N.W. 4, said Sec 21” Oelrich Ditch No 2 Actual Location: Easting: 460609, Northing: 4209924, NAD83, Zone 13S, source of coordinates: handheld GPS unit. **D. Source of water:** North Colony Creek, tributary to Colony Creek, tributary to Grape Creek, tributary to the Arkansas River. **E. Appropriation Date:** June 1, 1873, **F. Amount decreed:** 1.5 cfs Absolute, Amount to be included in this plan for augmentation: 0.07 cfs **G. Decreed uses:** Irrigation **4. Does the Applicant intend to change a water right to provide a source of augmentation:** Yes, Claim No. 2 of this application claims this change of water right. **5. Complete statement of plan for augmentation: A. Applicant proposes** to augment 2.27 acre-feet annually of gross evaporative depletions from the Oelrich Ditch No 2 Pond

and the House Pond. These ponds are located off-channel and are fed by the Oelrich Ditch No 2. Augmentation water is to be provided by changing 0.07 cfs of the Albert ditch priority No. 61 water right from irrigation use to augmentation use and by changing the point of diversion of this water right from the albert ditch headgate to the Oelrich Ditch No. 2 headgate. 1.83 acres of irrigated land under the albert Ditch is correspondingly proposed to be dried up. **B. Does the plan for augmentation include an exchange that the Applicant desires to adjudicate:** No. **6. Name(s) and address(es) of owner(s) or reputed 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, including any modification to the existing storage pool. The applicant must notify these persons that the applicant is applying for this water right and certify to the Court that the applicant has done so by no later than 14 days after filing this application. The certification form is on page 6 of this form:** Applicant is the owner for all claims. **7. Additional Comments:** The proposed change of water right and plan for augmentation for these two ponds are essentially those previously approved by the State Engineer's Office in Substitute Water Supply Plans for the last five years. It is noted that the State Engineer's Office previously required a well permit (81262-F) to be associated with the Oelrich Ditch No 2 Pond as part of a SWSP approval. As this pond is located directly on the Oelrich Ditch No 2, is fed surface water by this ditch, is used as an irrigation head stabilization structure and this pond has an active surface water storage capacity, a water storage water right has been claimed in this application for this structure. Applicant claims this application provide sufficient inquiry notice to the extent the court deems this structure to be a well and an underground water right claim more appropriate. Applicant also claims sufficient inquiry notice to the extent minor adjustments to the claimed change in water right flow rate and proposed dry up acreage are deemed appropriate by the court.

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**CASE NO. 2019CW3047;** The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.  
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**CASE NO 2019CW3048; TERRELL S. MINTON AND W. KEKUNI MINTON, 425 Collyer Street, Longmont, Colorado 80501,** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Jennifer M. DiLalla, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 300, Boulder, Colorado 80302, (303) 443-8782)  
Application for Simple change in Surface Point of Diversion Pursuant to § 37-92-305(3.5), C.R.S.

#### **FREMONT COUNTY**

**2. Decreed water right for which change is sought:** **2.1 Name of structure:** Dewitt Ditch No. 1. **2.2 Date of original and all relevant subsequent decrees:** September 9, 1904, C.A. No. 1889 in the District Court for Chaffee County, Colorado ("CA1889 Decree"). **2.3 Verbatim legal description of structure from most recent decree that adjudicated the location:** The CA1889 Decree adjudicated two points of diversion for the Dewitt Ditch No. 1 on the West side of Bear Creek in Fremont County, as follows:  
**2.3.1 Headgate No. 1:** Located at a point whence the South East corner of Section 27, Township 49, Range 9, East, N.M.M., bears South 46° East 2050.51 feet. The decreed

location of Headgate No. 1 is shown on **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). 2.3.2 Headgate No. 2: Located about thirty rods farther down the same stream. The decreed location of Headgate No. 2 is shown on **Exhibit A**. 2.3.3 Further description: Said ditch by means of said headgates draws its supply of water from the West side of Bear Creek and it thence continues in a North Easterly course for a distance of about one and a half miles. 2.4 Decreed source of water: Bear Creek, tributary to the Arkansas River. 2.5 Appropriation date: June 1, 1884. 2.6 Total amount decreed to structure: 1.5 cfs, absolute. 2.7 Decreed use: Irrigation of 14 acres. 2.8 Amount of water that Applicants intend to change: The Mintons seek to change their undivided 1/3 interest in the Dewitt Ditch No. 1, amounting to 0.5 cfs. 3. Detailed description of proposed change in surface point of diversion: As described above, Dewitt Ditch No. 1 is decreed to divert water at two surface points: an upper headgate known as “Headgate No. 1,” from which the Mintons could irrigate the southern portion of their irrigable land by gravity-feed but which is not located on their property; and a lower headgate known as “Headgate No. 2,” which is located on the Mintons’ property but from which they are unable to irrigate the southern portion of their irrigable land by gravity-feed. The Mintons’ access to Headgate No. 1 has been obstructed. Accordingly, the Mintons seek to change their interest in the surface diversion point at Headgate No. 1 to a new surface diversion point located downstream and on the Mintons’ property. The Mintons seek no other change to their decreed water right. 3.1 How the proposed change meets the definition of a simple change in surface point of diversion: Section 37-92-305(3.5)(a)(II) defines “simple change in a surface point of diversion” as “a change in the point of diversion from a decreed surface diversion point to a new surface diversion point that is not combined with and does not include any other type of change of water right and for which there is no intervening surface diversion point or inflow between the new point of diversion and the diversion point from which a change is being made,” and excludes from that definition “a change of point of diversion from below or within a stream reach for which there is an intervening surface diversion point or inflow or decreed in-stream flow right to an upstream location within or above that reach.” 3.1.1 Change from a decreed surface diversion point to a new surface diversion point: The Mintons’ requested change is from the decreed surface diversion point for Dewitt Ditch No. 1, Headgate No. 1, to the new surface diversion point shown on **Exhibit A**. 3.1.2 No combination with or inclusion of other change of water right: The Mintons seek no other change to their decreed water right in the Dewitt Ditch No. 1. 3.1.3 No intervening surface diversion point or inflow: As shown on the map attached as **Exhibit A**, there is no intervening surface diversion point and no inflow between the new point of diversion and the decreed point of diversion from which the change is being made. 3.1.4 No change to an upstream location within a decreed instream flow reach: As shown on the map attached as **Exhibit A**, the Colorado Water Conservation Board holds an instream flow reach, decreed in Case No. 80CW72, on Bear Creek (“80CW72 ISF”). The Mintons’ proposed simple change in surface point of diversion is to a downstream location rather than an upstream location within the 80CW72 ISF reach. 3.2 Applicants’ burden of proof: Applicants bear the burden of proving that the simple change in a surface point of diversion will not (i) result in diversion of a greater flow rate or amount of water than has been decreed to the water right and, without requantifying the water right, is physically

and legally available at the diversion point from which a change is being made; or (ii) injuriously affect the owner of or persons entitled to use water under a vested water right or decreed conditional water right. 3.2.1 No diversion of greater flow rate than decreed to the Dewitt Ditch No. 1, or than is physically and legally available at Headgate No. 1:

3.2.1.1 In any proposed ruling or proposed decree submitted to the Court for entry, the Mintons will include a term and condition providing that at any given time, they will divert their 0.5 cfs interest in the Dewitt Ditch No. 1 either at the new surface point of diversion sought in this Application or at Headgate No. 2; i.e., that their 0.5 cfs interest may not be diverted at those two points simultaneously. Accordingly, the requested simple change in point of diversion will not result in diversion of a greater flow rate than decreed to the Mintons' 0.5 cfs interest in the water right. 3.2.1.2 In any proposed ruling or proposed decree submitted to the Court for entry, the Mintons will include a term and condition limiting diversions of their 0.5 cfs interest in the water right at the changed point of diversion to the amount of water legally and physically available to that interest at Dewitt Ditch No. 1, Headgate No. 1. 3.2.1.3 If, for any reason, the Mintons do not obtain a final and unappealable decree approving the new surface point of diversion sought in this Application, the terms and conditions described in paragraphs 3.2.1.1 and 3.2.1.2 will not apply to the Mintons' future use of their interest in the Dewitt Ditch No. 1. 3.2.2 No injury to vested or decreed conditional water rights: As shown on the map attached as **Exhibit A**, there are no water rights decreed to divert from Bear Creek in the reach between Dewitt Ditch No. 1, Headgate No. 1, and the proposed new point of diversion downstream; there also are no tributary inflows to Bear Creek in that reach. The Mintons' in-priority diversion of their 0.5 cfs interest in the Dewitt Ditch No. 1 at the proposed new point of diversion therefore will have exactly the same impact on the stream and on other water rights as would the Mintons' in-priority diversion of that interest at Headgate No. 1 if their access to that headgate were not obstructed. Accordingly, the proposed simple change in surface point of diversion will not injure vested water rights or decreed conditional water rights. **4. Location of new surface point of diversion:** The new surface point of diversion will be located on the Mintons' property in unincorporated Fremont County, at 1716 County Road 49, Salida, Colorado, 81201, in the NW1/4 of the SE 1/4 of Section 27, T49N, R9E of the N.M.P.M., approximately 1,687 feet from the South section line and 1,346 feet from the East section line of said Section 27, as shown on **Exhibit A**. UTM coordinates: Easting 416515.939; Northing 4258138.777 (Zone 13, NAD 83 datum). Source of UTM coordinates: hand-held GPS device (smart phone). **5. Names and address of owners or reputed owners of the land on which any new diversion structure or modification to any existing diversion structure is or will be constructed:** The Applicants own the land on which the new diversion structure will be constructed. WHEREFORE, the Mintons respectfully request that the Court enter a decree (i) finding and concluding that the proposed simple change in surface point of diversion meets all statutory requirements imposed by section 37-92-305(3.5), C.R.S.; and (ii) approving the changed point of diversion for the Mintons' undivided 1/3 interest in the Dewitt Ditch No. 1 water right.

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**CASE NO. 2019CW3049 Water Division 2 and CASE NO 2019CW3158 Water Division 1; DANIEL S. ABEYTA, 1530 Columbine Hills Rd., Colorado Springs, CO 80908-3802** (Please address all pleadings and inquiries regarding this matter to

Applicants' attorneys: Chris D. Cummins, Emilie B. Polley, MONSON, CUMMINS & SHOHET, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212).

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

**II. Summary of Application:** Daniel S. Abeyta ("Applicant") seeks to quantify the Denver Basin groundwater underlying his approximately 4.6-acre property in El Paso County, Colorado. **III. Application for Underground Water Rights: A. Legal Description of Wells.** 1. Property Description. The Applicant's approximately 4.6-acre property ("Applicant's Property") is located at 11530 Columbine Hills Road, Colorado Springs, in El Paso County, Colorado. 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.). The South 664.22 feet of the West 329.10 street of the E ½ of the SW ¼ of Section 18, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., except the South 30 feet thereof, as granted to El Paso County for a public road by deed recorded June 17, 1925 in Book 692 at Page 252, County of El Paso State of Colorado. 2. Existing Wells. There is an existing well on the Property. Well with Permit No. 279087 ("Abeyta Well No. 1") is located approximately 341 feet from the south section line and 1744 feet from the west section line, UTM x being 524831.0 and UTM y being 4316727.0, based on CDSS data, and constructed to the not-nontributary Dawson aquifer. Applicant intends for the well to be re-permitted for non-exempt uses upon entry of a decree approving the plan for augmentation requested herein. **B. Water Source.** 1. Not-Nontributary. The ground water to be withdrawn from the Dawson aquifer underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property is nontributary. **C. Estimated Rates of Withdrawal and Ground Water Available.** 1. Estimated Rates of Withdrawal. Pumping from the well 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. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 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:

Groundwater Quantification			
Acres: 4.61		SE¼ SW ¼ Sec 18 T12S R65W 6th P.M.	
<b>Denver Basin Aquifer</b>	<b>Net Sand</b>	<b>Total</b>	<b>100 Year</b>



	(ft)	(AF)	(AF)
Dawson (NNT)	189.40	174.63	1.75
Denver (NNT)	360.30	282.37	2.82
Arapahoe (NT)	260.90	204.47	2.04
Laramie Fox Hills (NT)	189.90	131.32	1.31

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. **D. Requested Uses.** The Applicant requests the right to use the ground water for beneficial uses upon the Applicant’s Property consisting of domestic, irrigation, greenhouse, 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 aquifer in accordance with C.R.S. §37-90-137(9)(c.5). **E. 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. Applicant requests that these wells be treated as a well field. **F. 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. **G. Owner of Land Upon Which Wells are to Be Located.** The land and underlying groundwater upon which the wells are and will be located is owned by the Applicant. **IV. Application for Approval of Plan for Augmentation. A. Structures to be Augmented.** The structure to be augmented is the Abeyta Well No. 1 as is currently constructed to the not-nontributary Dawson aquifer underlying the Applicant’s Property, and as will be re-permitted pursuant to this plan for augmentation, as requested and described herein along with any replacement or additional wells associated therewith. **B. Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from Abeyta Well No. 1, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. **C. Statement of Plan for Augmentation.** Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by one well proposed herein. Water use criteria and their consumptive

use component for replacement of actual depletions for the lots are estimated as follows:

1. Use. Abeyta Well No. 1 will pump a maximum total of 1.7 acre feet of water from the Dawson aquifer annually. 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 is household use at 0.25 acre feet, plus outdoor use including the watering of up to 8 horses and 16 chickens or equivalent livestock with a water use of 0.30 acre feet per year (10 gallons/day/head or 0.011 annual acre feet per head); and irrigation of greenhouse, lawn, and garden of 1.15 acre feet per year (0.05 annual acre feet per 1000 sq. ft.).
2. Depletions. It is estimated that maximum stream depletions over the 100 year pumping period for the Dawson aquifer amounts to approximately 10.4% percent of pumping. Maximum annual depletions for total residential pumping from all wells are therefore 0.177 acre feet, in year 100. Should Applicant's pumping be less than the 1.7 acre feet described herein, resulting depletions will be correspondingly reduced.
3. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of augmented wells to the Dawson aquifer. Depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems, and depletions from irrigation will be adequately replaced by irrigation return flows. 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 per residence per year, 0.225 acre-feet is replaced to the stream system per year, assuming the use of a non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented.
4. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Abeyta Well No. 1, Applicant will reserve water from the nontributary Laramie-Fox Hills aquifer, less the amount of actual stream depletions replaced during the plan pumping period. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to apply for and receive a new well permit for the Abeyta Well No. 1, for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

**V. Remarks:**

**A.** This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the Arkansas River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with pending Division 2 application in Water Division 2 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient.

**B.** Applicant requests a finding that 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). **C.** The term of this augmentation plan is for 100 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. **D.** The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. **E.** The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. **F.** The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. **G.** The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. **H.** Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

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**CASE NO 2019CW3050; PADULA FAMILY PARTNERSHIP, LLLP, 4202 S. Andrews Drive, Pueblo, CO 81001** (Please address all pleadings and inquiries regarding this matter to Applicants' attorney: Alyson Meyer Gould, Esq., Holsinger Law, LLC, 1800 Glenarm Place, Suite 500, Denver CO 80202, 303-722-2828).

Application for Conditional Water Right and Approval of Plan for Augmentation

**PUEBLO COUNTY**

**2. Background:** This application ("Application") is for a conditional water right for a well completed in the Fountain Creek alluvium, which is tributary to the Arkansas River. The conditional water right will be diverted from an existing well (Permit No. 92821-A), which is currently permitted as an exempt well. Diversions under the conditional water right will not qualify for an exempt well permit and therefore require adjudication. Diversions from the Well under the conditional water right may be withdrawn out-of-priority and therefore require a plan of augmentation to prevent injury to senior diverters. Accordingly, this application seeks a Decree for a conditional water right and an augmentation plan to replace water withdrawn out-of-priority under the conditional water right. **3. Structure:** The point of diversion for the conditional water right and structure to be augmented is a well located in the NE ¼ of the NE ¼ of Section 1, Township 20 South, Range 65 West, 6th P.M., 1,046 feet from the North section line and 229 feet from the East section line, with UTM coordinates 534208 Easting, and 4243928 Northing, Zone 13 ("Well"). The Well is not decreed, but is currently permitted pursuant to Permit No. 92821-A. The Well is located on land owned by Applicant. **4. Conditional Water Right:** Applicant seeks a decree for the following water right to be diverted from the Well: **a. Source:** Fountain Creek alluvium, tributary to Arkansas River. **b. Date of Appropriation:** January 18, 2019; initiated by execution of agreement with a water engineering firm. **c. Amount:** 9.88 acre-feet per year conditional. **d. Uses:** irrigation, commercial, industrial, augmentation, recreation, stock watering, fire protection, and domestic use. **e. Location of Use:** Applicant

intends use the water on a 10-acre parcel located in the NE ¼ of the NE ¼ of Section 1, Township 20 South, Range 65 West, of the 6th P.M., in Pueblo County, Colorado (“Property”). A map of the Property attached hereto as EXHIBIT A. Applicant is the owner of the Property. **f. Return Flow.** Water diverted for all uses will be considered to be one-hundred percent (100%) consumptive. Accordingly, Applicant is not claiming any return flows from diversions from the Well. However, Applicant reserves the right to claim such return flows in the future. **g. Lagged Depletions:** The Well will be entitled to pump on a year-round basis resulting in year-round lagged depletions to the Arkansas River. The maximum lagged depletions are calculated to cease within two years after the end of pumping. **5. Water Right(s) to be Used for Augmentation:** Water rights to be used for augmentation consist of water leased from the Board of Water Works of Pueblo, Colorado (“Pueblo Water”). Applicant entered into a lease for 10 acre-feet of fully consumable water with Pueblo Water (“Lease”). **a. Source.** All water to be used in this augmentation plan provided by Pueblo Water must be decreed or otherwise legally available for augmentation purposes. Applicant may also seek a term and condition in any final decree requesting the Water Court retain perpetual jurisdiction over the plan for augmentation for the sole purpose of adding new or additional sources of augmentation water pursuant to C.R.S. § 37-92-305(8)(c). **b. Type of Water Right.** The water leased from Pueblo Water may be derived from direct flow, trans mountain diversions, following storage or effluent treatment, or from any other reservoir or source from which Pueblo Water may deliver water, at the discretion of Pueblo Water, as long as such water is legally available for augmentation purposes. **c. Location of Storage:** **i. Pueblo Reservoir** dam axis and the centerline of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West, 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; **ii. Twin Lakes Reservoir** is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in Township 11 South, Range 81 West, 6th P.M., in Lake County; **iii. Turquoise Reservoir** is located on Lake Fork Creek in Sections 7, 8, 17, 18, 19, and 20, Township 9 South, Range 80 West, 6th P.M. and Sections 10, 11, 12, 13, 14, and 15, Township 9 South, Range 81 West, 6th P.M., in Lake County; and **iv. Clear Creek Reservoir** is located in Sections 7 and 8, Township 12 South, Range 79 West, and Section 12, Township 12 South, Range 80 West, 6th P.M., in Chaffee County. **6. Statement of Plan for Augmentation:** Applicant intends to make full replacement of all out-of-priority depletions caused by the water right sought in Paragraph 4, above, on a monthly basis using releases of the replacement water identified in Paragraph 5, above. Such releases will be made in manner sufficient to meet the lawful requirements of a senior diverter at the time and location and to the extent the senior diverter would be deprived of his or her lawful entitlement by Applicant's diversion including lagged depletions. Applicant does not seek to adjudicate an exchange; however, Pueblo Water may operate an exchange to effect replacement of the water pursuant to the terms of the Lease. **7. Nearby Wells:** Pursuant to C.R.S. § 37-90-137, Applicant has determined that there may be seven (7) wells within 600 feet of the Well. Applicant provided notice of this Application to said owners of such wells by U.S. certified mail return receipt requested, at least fourteen (14) days before filing this Application. **8. Remarks:** **a.** Upon entry of a decree in this case, 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. **b.** 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. c. The Well will be metered as required by the State Engineer. The Well will be equipped with a totalizing flow meter and Applicant will submit diversion records to the Division Engineer on a monthly basis or as otherwise reasonably requested by the Division Engineer. Applicant will also provide Accountings to the Division Engineer and Water Commissioner to demonstrate compliance under this plan of augmentation.

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**CASE NO. 2019CW3051; SARAH BARKER BARTELS TRUST, Attn: Sara Bartels, 3647 Tuscanna Grove, Colorado Springs, CO 80920** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Chris D. Cummins & Emilie B. Polley, Monson, Cummins & Shohet, LLC, 13511 Northgate Estate 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**

**II.** Applicant seeks to construct or utilize up to seven (7) non-exempt wells (including existing well) to the not-nontributary Dawson aquifer to provide water service to an equivalent number of single family lots, based on an anticipated subdivision of Applicant's 39.10-acre parcel into up to seven lots. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and approval of a plan for augmentation for the use thereof. **III. Application for Underground Water Rights: A. Legal Description of Wells: 1. Property Description:** All wells will be located on Applicant's approximately 39.10 acre property ("Applicant's Property") anticipated to be subdivided into seven lots of +/-5 acres each, with current schedule number 5219000059. Applicant's Property is depicted on **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.), located in the SE ¼ SW ¼ of Section 19, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., and more particularly described as follows: A tract in the Southeast Quarter (SE/4) of Section Nineteen (19), Township Twelve (12) South, Range Sixty-five (65) West of the 6<sup>th</sup> P.M., described as follows: Commencing at the southeast corner of the Southeast Quarter (SE/4) of Section Nineteen (19), Township Twelve (12) South, Range Sixty-five (65) West of the 6<sup>th</sup> P.M., thence West along the South line of said section a distance of 3300 feet; thence north parallel to the East line of said section a distance of 30 feet for the point of beginning of the tract to be described hereby; thence West and parallel with the South line of said section a distance of 660 feet; thence North and parallel with the East line of said section to a point which is 30 feet South of the East-West centerline of said section; thence East and parallel with said East-West center line, a distance of 660 feet; thence South and parallel to the East line of said section to the point of beginning, El Paso County, Colorado. Also known as 6170 Old Ranch Road, Colorado Springs, Colorado 80908. **2. Existing Well:** There is an existing domestic well with Division of Water Resources Permit No. 87527 ("Bartels Well No. 1"), permit attached as **Exhibit B**. It is drilled to a total depth of 579 feet to the Dawson aquifer, and located at 6170 Old Ranch Road, Colorado Springs, Colorado 80908, 600 feet from the South Section Line, 1600 feet from the West Section Line. The well was completed on January 12, 1978 and water placed to beneficial use on January

12, 1978. Upon approval of this plan for augmentation, this well will be re-permitted. **3. Proposed Wells:** Applicant proposes that up to six wells (one well per lot) will be located on the Applicant's Property at specific locations not yet determined ("Bartels Wells Nos. 2 through 7"), to be constructed to the Dawson aquifer, for a total of up to seven wells. **B. Water Source: 1. Not-Nontributary:** The ground water to be withdrawn from the Dawson, Denver and Arapahoe aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. **2. Nontributary:** The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicant's Property is nontributary. **C. Estimated Rates of Withdrawal and Ground Water Available: 1. Estimated Rates of Withdrawal:** Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. **2. Estimated Average Annual Amounts of Ground Water Available:** Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code §8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

AQUIFER	NEW SAND (FEET)	Total Appropriation (Acre Feet)	Annual Avg. withdrawal 100 Years (Acre Feet)	Annual Avg. withdrawal 300 Years (Acre Feet)
Dawson (NNT)	144	1126	10.82 <sup>1</sup>	3.60
Denver (NNT)	300	194	19.4	-
Arapahoe (NNT)	270	1794	17.9	-
Laramie Fox Hills (NT)	190	1114	10.92 <sup>2</sup>	-

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

<sup>1</sup> Reflects the total amount available minus the amount used for 44 years under Well Permit No. 87527

<sup>2</sup> Reflects the total amount available based on 100 years depletion minus 2%.

application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c.5).

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

**F. Averaging of Withdrawals:** Applicant requests that she be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property.

**G. Owner of Land Upon Which Wells are to Be Located:** The land upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicant.

**IV. Application for Plan for Augmentation:**

**A. Structures to be Augmented:** The structures to be augmented are Bartels Wells Nos. 1 through 7, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicant's Property as requested and described herein.

**B. Water Rights to be Used for Augmentation:** The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from Bartels Wells Nos. 1 through 7, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions.

**C. Statement of Plan for Augmentation:** Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by up to seven wells proposed herein for up to seven residential lots. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows:

**1. Uses:**

**i. Household Use Only:** 0.25 acre feet annually within single family dwellings on up to seven lots, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for each lot will therefore be 0.025 acre feet per well, with return flows of 0.225 acre feet per lot, or 1.575 acre-feet per year.

**ii. Landscape Irrigation:** 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre feet.

**iii. Horses (or equivalent livestock):** 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component.

**2.** Each well will pump a maximum of 0.514 acre feet of water per year per residence, assuming seven lots, for a maximum total of 3.6 acre feet being withdrawn from the Dawson aquifer per year. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.25 acre feet of water per year per residence with the additional 0.264 acre feet per year per residence available for irrigation of lawn and garden and the watering of up to four horses or equivalent livestock on each residential lot.

**3. Depletions:** Applicant's

consultant has determined that maximum stream depletions over the 300 year pumping period for the Dawson aquifer amounts to approximately 31.17% of pumping. Maximum annual depletions for total residential pumping from all wells are therefore 1.12 acre feet in year 300. Should Applicant's pumping be less than the 3.6 total, 0.514 acre feet per lot, per year described herein, resulting depletions and required replacements will be correspondingly reduced. Additionally, should fewer than seven lots be established on the property, pumping from each individual well on each lot actually established may be increased from the maximums described herein, provided that all out-of-priority depletions remain augmented.

**4. Augmentation of Depletions During Pumping:** Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of up to seven residential wells. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.25 acre feet per residence per year, total of 1.75 acre feet, 1.575 acre feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be more than adequately augmented.

**5. Augmentation for Post Pumping Depletions:** For the replacement of any injurious post-pumping depletions which may be associated with the use of the Bartels Wells Nos. 1 through 7, Applicant will reserve up to the entirety of the nontributary Laramie Fox Hills aquifer, accounting for actual stream depletions replaced during the plan pumping period, as necessary to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the Bartels Wells Nos. 1 through 7 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

**V. Remarks:**

**A.** This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the Arkansas River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with pending Division 2 application in Water Division 2 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient.

**B.** Applicant requests a finding that 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).

**C.** The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping.

**D.** The Court will retain jurisdiction



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

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**CASE NO. 2019CW3052; CITY OF COLORADO SPRINGS, COLORADO SPRINGS UTILITIES, c/o ABBY ORTEGA, Water Supply Resources Manager, P.O. Box 1103, MC 1825, Colorado Springs, CO 80947-1815,** (Please address all pleadings and

inquiries regarding this matter to Applicant's attorney: 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 Plan for Augmentation

**EL PASO COUNTY**

**2. Summary of Application:** Applicant, the City of Colorado Springs, acting by and through its enterprise Colorado Springs Utilities, has constructed wetlands in order to mitigate existing and future impacts to existing wetlands caused by construction of the Southern Delivery System Project ("SDS Project"). A Section 404 Permit was obtained from the United States Army Corps of Engineers ("USACE") for the SDS Project. The Compensatory Mitigation Plan, which was approved by the USACE as part of the 404 Permit, included construction of the mitigation wetlands and surrounding riparian areas at Clear Spring Ranch and Pinello Ranch along Fountain Creek. Applicant constructed the mitigation wetlands in three phases. The first and second phases of the mitigation wetlands are located on Clear Spring Ranch, a property owned by Applicant that is located south of Colorado Springs. The initial phase of wetlands construction involved 0.45 acres of wetlands, including a 0.23 acre jurisdictional portion, and was completed in September 2011 ("Phase 1 Wetlands"). The next phase of wetland construction involved a realignment of Fountain Creek and construction of an additional approximately 11 acres of non-jurisdictional wetlands and was completed in July 2014. ("Phase 2 Wetlands"). The third phase of the mitigation wetlands are located on Pinello Ranch, a property owned by Applicant located south of Colorado Springs. ("Phase 3 Wetlands"). The Phase 3 Wetlands were completed in 2017 with three mitigation areas totaling 9.8 acres of jurisdictional wetlands. The purpose of the augmentation plan requested herein is to replace out-of-priority depletions associated with the evapotranspiration of groundwater from vegetation and the evaporation resulting from ponding of water within the three phases of wetlands. **II. Application for Plan for Augmentation.** **3. Name and Relevant Information Regarding Augmented Structures:** 3.1 Name of structure: Phase 1 Wetlands.

3.1.1 Date, case number and court of original and all relevant subsequent decrees: N/A.

3.1.2 Structure Location: UTM Coordinates: Easting: 527471, Northing: 4275777, Zone: 13. Legal Description: Located in El Paso County, Colorado in the SE 1/4 of the NE 1/4 of Section 29, T. 16 S, R. 65 W of the 6th P.M. See **Exhibit 1** attached to the application for a general location map of Phase 1 Wetlands. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.).

3.1.3 Source: Precipitation, groundwater and surface water tributary to Fountain Creek.

3.1.4 Appropriation dates: N/A. 3.1.5 Decreed use or uses: N/A. 3.1.6 Amount: N/A.

3.2 Name of structure: Phase 2 Wetlands. 3.2.1 Date, case number and court of original and all relevant subsequent decrees: N/A. 3.2.2 Structure Location: UTM Coordinates: Easting 528382, Northing: 4272712, Zone: 13. Legal Description: Located in El Paso County, Colorado in the NE 1/4 and SE 1/4 of the NW 1/4 and the NW 1/4 and SW 1/4 of the NE 1/4 of Section 4, T. 17 S, R. 65 W of the 6th P.M. A map depicting the general location of Phase 2 Wetlands is attached as Exhibit 1. 3.2.3 Source: Precipitation, groundwater and surface water tributary to Fountain Creek. 3.2.4 Appropriation dates: N/A. 3.2.5 Decreed use or uses: N/A. 3.2.6. Amount: N/A.

3.3 Name of structure: Phase 3 Wetlands. 3.3.1 Date, case number and court of original and all relevant subsequent decrees: N/A. 3.3.2 Structure Location: UTM Coordinates: Easting 528382 Northing: 4272712, Zone: 13. Legal Description: Located in El Paso County, Colorado in the NE 1/4 of Section 10, and the SW 1/4 of the NW 1/4 of Section 11, T. 15 S, R. 66 W of the 6th P.M. A map depicting the general location of Phase 3 Wetlands is attached as Exhibit 2. 3.3.3 Source: Precipitation, groundwater and surface water tributary to Fountain Creek. 3.3.4 Appropriation dates: N/A. 3.3.5 Decreed use or uses: N/A. 3.3.6 Amount: N/A.

4. Water and Water Rights to be Used for Augmentation: Depletions resulting from the Phase 1 Wetlands, Phase 2 Wetlands, and Phase 3 Wetlands will be replaced through the use of sewerred and non-sewerred return flows from the reusable waters described in paragraphs 4.1-4.8, below and/or through direct deliveries of fully consumable water available under the source described in paragraph 4.7 through 4.8.

4.1 The Blue River Project: The Blue River Project diverts water from the headwaters of the Blue River and its tributaries in Summit County. The 1929 water rights associated with this project were adjudicated by the decree in Civil Action No. 1710 (District Court, Summit County) dated October 26, 1937, and modified by the decree in Civil Action No. 1883 (District Court, Summit County) dated June 15, 1953. These water rights have an appropriation date of August 5, 1929. The 1948 water rights associated with this project were adjudicated by the decree in Civil Action No. 1806 (District Court, Summit County) dated May 10, 1952, the final decree in Consolidated Case Nos. 2782, 5016 and 5017 (U.S. District Court, District of Colorado) dated October 15, 1955, and were made absolute by the decree in Consolidated Case Nos. 2782, 5016 and 5017 (U.S. District Court, District of Colorado) dated February 26, 1968. These water rights have an appropriation date of May 13, 1948. An additional component of the Blue River Project is water diverted from the Middle Fork of the South Platte River in Park County. Water from the Middle Fork of the South Platte is stored in Montgomery Reservoir pursuant to Priority No. A-207 of an appropriation dated September 5, 1930, by absolute decree dated May 16, 1966, in Civil Action No. 3286, District Court of Park County.

4.2 The Homestake Project: The Homestake Project diverts water from the headwaters of tributaries of the Eagle River in Eagle County. The water rights were conditionally adjudicated by the decree in Civil Action No. 1193 (District

Court, Eagle County) dated June 8, 1962. These water rights have an appropriation date of September 22, 1952. Applicant has the right to utilize one-half of the waters produced by the Homestake Project by virtue of the agreement dated June 18, 1962, between the City of Aurora and the City of Colorado Springs.

4.3 The Independence Pass Transmountain Diversion System (a/k/a Twin Lakes Project): The Twin Lakes Project diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County. The water rights were adjudicated by a decree in Civil Action No. 3082 (District Court, Garfield County) dated August 25, 1936, and modified by the decree in Case No. W-1901 (District Court, Water Division No. 5) dated May 12, 1976. These water rights have an appropriation date of August 23, 1930. Applicant has the right to take and use its *pro rata* share of the water diverted and stored by the Twin Lakes Reservoir and Canal Company under these water rights.

4.4 Colorado Canal Company: Applicant owns the water rights associated with 28,012.76 shares of the Colorado Canal Company, 21,084.75 shares in the Lake Meredith Reservoir Company, and 6,923.15 shares in the Lake Henry Reservoir Company (“Colorado Canal Waters”) which were quantified and changed to include use and total consumption for municipal, commercial, industrial, and all other beneficial uses at any location in Case Nos. 84CW62, 84CW63 and 84CW64. Pursuant to those decrees, Applicant has the right to take its *pro rata* share of the water diverted and stored through the Colorado Canal in Lake Meredith Reservoir and Lake Henry Reservoir, by exchange or by pipeline for use and total consumption in Applicant's municipal water system or elsewhere. The Colorado Canal water right is described as follows: Arkansas River Priority No. 62 for 756.28 c.f.s. for irrigation, with an appropriation date of June 9, 1890, as described in the decree in Case No. CA-2535, District Court, Pueblo County, Colorado, former Water District 14 entered on March 23, 1896. Applicant's *pro rata* share of Priority No. 62 is as specified in the decree in Consolidated Case Nos. 84CW62, 84CW63, and 84CW64. The Lake Meredith Reservoir water storage right is described as follows: Storage Priority No. 11 for 26,028.40 A.F. by diversions from the Arkansas River through the Colorado Canal at a rate of 756.28 c.f.s. for irrigation with an appropriation date of March 9, 1898, as described in the decree in Case No. CA-13693, District Court, Pueblo County, Colorado, former Water District 14, entered on November 25, 1916. Applicant's *pro rata* share of Storage Priority No. 11 is as specified in the decree in Consolidated Case Nos. 84CW62, 84CW63, and 84CW64. The Lake Henry Reservoir water storage rights are described as follows: Storage Priority No. 10 for 6,355 A.F. by diversions from the Arkansas River through the Colorado Canal at a rate of 756 c.f.s. for irrigation with an appropriation date of December 31, 1891, as described in the decree in Case No. CA-13693, District Court, Pueblo County, Colorado, former Water District 14, entered on entered on November 25, 1916, and Storage Priority No. 17.5 for 3,561 A.F. by diversions from the Arkansas River through the Colorado Canal at a rate of 756 c.f.s. with an appropriation date of May 15, 1909, as described in the decree in Case No. CA-13693, District Court, Pueblo County, Colorado, former Water District 14, entered on April 14, 1927. Applicant's *pro rata* share of Storage Priority No. 10 and Storage Priority No. 17.5 is as specified in the decree in Consolidated Case Nos. 84CW62, 84CW63, and 84CW64.

4.5 Sugarloaf Water Storage Rights: These rights are diverted from Lake Fork Creek, a tributary of the Arkansas River, and were originally decreed for the use of CF&I Steel Corporation, are now owned by Applicant, and are described in the decree dated June 16, 1994, in Case No. 86CW117, District Court, Water

Division No. 2, as the “Sugarloaf Reservoir Right” and the “Colorado Gulch Right” (collectively referred to herein as the “Sugarloaf Water Storage Rights”). By decree dated June 16, 1994, in Case No. 86CW117, District Court, Water Division No. 2, the use and place of use of the Sugarloaf Water Storage Rights were changed to include municipal use and all other beneficial uses, including use, reuse, and successive use to extinction.

4.6 Denver Basin Reusable Water: Reusable Denver Basin Ground Water derived from nontributary, or fully augmented non-tributary, ground water from the Denver, Arapahoe, and Laramie-Fox Hills Aquifers controlled by Applicant. The sources of the Denver Basin Groundwater controlled by Applicant are described in paragraph 13 of the Findings of Fact, Conclusions of Law, Judgment and Decree entered on February 3, 2015, in Case No. 04CW132, District Court, Water Division No. 2.

4.7 Fountain Mutual Irrigation Company Water: Applicant is the owner of 144 of the 5,793 currently issued outstanding shares of the Fountain Mutual Irrigation Company (“FMIC”) which were quantified and changed in Case No. 15CW3002 from irrigation use to all municipal uses including augmentation, exchange, and storage for later use. The FMIC water rights are described as follows: 5.38 c.f.s. for irrigation under Fountain Creek Priority No. 4, 1.125 c.f.s. for irrigation under Fountain Creek Priority No. 7, 16.69 c.f.s. for irrigation under Fountain Creek Priority No. 11, 2.125 c.f.s. for irrigation under Fountain Creek Priority No. 17, 4.65 c.f.s. for irrigation under Fountain Creek Priority No. 21, 8.48 c.f.s. for irrigation under Fountain Creek Priority No. 28, 9.68 c.f.s. for irrigation under Fountain Creek Priority No. 29, 17.05 c.f.s. for irrigation under Fountain Creek Priority No. 41, and 343.2 c.f.s. for irrigation under Fountain Creek Priority No. 168. Applicant’s *pro rata* share of the FMIC water rights is as specified in the decree in Case No. 15CW3002.

4.8 Additional Sources: Applicant requests the right to use water from additional sources in the augmentation plan decreed herein, including, but not limited to, any such waters that are or will be available in Applicant’s system pursuant to the *Findings of Fact, Conclusions of Law, Judgment and Decree*, in Case No. 05CW96, Water Court, Water Division 2, Colorado, if such sources are decreed for augmentation use or are otherwise available for use as an augmentation source by Applicant. These sources include, but are not limited to, water acquired through short and long-term leases or subleases and/or available under decrees, substitute water supply plans pursuant to C.R.S. § 37-92-308, interruptible supply agreements pursuant to C.R.S. § 37-92-309, and the Lease-Fallow Project Statute pursuant to C.R.S. § 37-60-115(8) or waters acquired through participation in existing or future water banking programs, such as that created under C.R.S. § 37-80.5-101, *et seq.*, and the sewered and non-sewered return flows derived therefrom that are legally available for use by Applicant.

4.9 Reusable Return Flows: Reusable Non-Sewered Return Flows derived from the sources described in paragraphs 4.1-4.6 and described in Appendix A to the amended decree entered January 8, 1998, in Consolidated Case Nos. 84CW202, 84CW203, 86CW118(B), and 89CW36, Water Division 2, which shall be quantified pursuant to the terms of that decree. Reusable Sewered Return Flows derived from the sources described in paragraphs 4.1-4.6, shall be quantified pursuant to the terms of the decrees entered in Case Nos. W-4376 (Sewered), 84CW202 (Sewered), 84CW203 (Sewered), and 86CW118(A) (Sewered), District Court, Water Division No. 2. Reusable Sewered and Non-Sewered Return Flows derived from the source described in paragraphs 4.7 above, shall be quantified pursuant to the terms of the final decree to be entered in pending Case No. 16CW3056, District

Court, Water Division 2. Reusable Sewered and Non-Sewered Return Flows derived from the sources described in paragraph 4.8 above, shall be quantified pursuant to the terms of the applicable decree or administrative approval. 5. Statement of Plan for Augmentation: 5.1 Description of Augmented Structures. The structures for which out-of-priority depletions will be replaced under the requested plan for augmentation are as follows: 5.1.1 Phase 1 Wetlands: The area of the Phase 1 Wetlands currently totals approximately 0.45 acres. The surface gradient for the Phase 1 Wetlands was designed to prevent ponding of ground and/or surface water and Applicant has monitored the Phase 1 Wetlands and determined that long term ponding is not occurring at the site. As such, Applicant will only replace the out of priority depletions resulting from evapotranspiration of groundwater from vegetation within the Phase 1 Wetlands, which are estimated to total a maximum of 1.80 acre-feet annually. 5.1.2 Phase 2 Wetlands: The area of the Phase 2 Wetlands is currently approximately 11.44 acres. The surface gradient for the Phase 2 Wetlands was designed to prevent ponding of ground and/or surface water, however Applicant has monitored the Phase 2 Wetlands and determined that long term ponding is occurring at the site with a surface area of 0.44 acres. Applicant therefore will replace out of priority depletions resulting from evapotranspiration of groundwater from vegetation within the Phase 2 Wetlands and evaporative depletions from the ponded water. The maximum annual depletions from evapotranspiration are estimated to total 45.71 acre-feet and maximum annual depletions from ponded water evaporation are estimated to total 1.38 acre feet, resulting in total depletions of approximately 47.09 acre-feet for the Phase 2 Wetlands. 5.1.3 Phase 3 Wetlands: The area of the Phase 3 Wetlands is currently approximately 9.8 acres. Applicant has also monitored the Phase 3 Wetlands for long-term ponding and has determined that Area 3 of the site includes an oxbow pond with a surface area of 0.42 acres that contains free-standing water year-round. Applicant needs to replace out of priority depletions resulting from evapotranspiration of groundwater from vegetation within the Phase 3 Wetlands and evaporative depletions from the pond. The maximum annual depletions from evapotranspiration are estimated to total 39.58 acre-feet and maximum annual depletions from pond evaporation are estimated total 1.32 acre feet, resulting in total depletions of approximately 40.90 acre-feet for the Phase 3 Wetlands. 5.2. Determination of Depletions: The estimated annual depletions from the evapotranspiration of groundwater from vegetation within the Phase 1 Wetlands, Phase 2 Wetlands and the Phase 3 Wetlands were determined utilizing suggested SEO assumptions in the Modified Blaney-Criddle Method. Parameters for evaporation from the Phase 2 Wetlands and Phase 3 Wetlands were obtained from the interpolation between the isopleths for a free water surface from NOAA Technical Report NWS 33. In total, the depletions resulting from the consumptive use of the Phase 1 Wetlands, Phase 2 Wetlands and Phase 3 Wetlands and evaporation from the ponded water are estimated to be 89.79 acre-feet per year made up of 87.09 acre feet of evapotranspiration depletions and 2.70 acre feet of evaporative depletions. These depletions are summarized in Exhibit 3 as acre feet per month. However, the total of each type of depletion may be revised upward or downward based on further engineering analysis. 5.3 Augmentation Sources: 5.3.1 Sewered Return Flows: The sewered return flows derived from the sources described in subparagraphs 4.1-4.8 will be measured and returned to the Fountain Creek basin at the following locations, which are depicted on Exhibit 4. 5.3.1.1 The Las Vegas Street Waste

Water Treatment Plant Outfall: Located in El Paso County, Colorado in the SE 1/4 of the SW 1/4 of Section 20, T. 14 S, R. 66 W of the 6th P.M. Said outfall discharges to the Fountain Creek system. 5.3.1.2 The Northern Water Reclamation Facility Outfall (a/k/a the J.D. Phillips Water Reclamation Facility): Located in El Paso County, Colorado in the SE 1/4 of the NW 1/4 of Section 30, T. 13 S, R. 66 W of the 6th P.M. Said outfall discharges to Monument Creek. 5.3.1.3 The Air Force Academy Waste Water Treatment Facility Outfall: Located in El Paso County, Colorado in the SW 1/4 of the SW 1/4 of Section 19, T. 12 S, R. 66 W of the 6th P.M. Said outfall discharges to Monument Creek. 5.3.1.4 Fort Carson Military Reservation Waste Water Treatment Facility Outfall: Located in El Paso County, Colorado in the SE 1/4 of Section 23, T. 15 S, R. 66 W of the 6th P.M. Said outfall discharges to the Clover Ditch, which discharges to Fountain Creek. 5.3.1.5 Fountain Regional Wastewater Treatment Plant: Located in SW 1/4 of the NW 1/4 of Section 34, T. 16 S, R. 65 W of the 6th P.M. in El Paso County. Said outfall discharges to Fountain Creek. 5.3.1.6 Additional Replacement Locations: 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 the city's wastewater facility discharges. 5.3.2 Direct Use of FMIC Consumptive Use: Water available for first use under Applicant's 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 or the McRae Reservoir augmentation station to replace depletions from the three phases of the wetlands. The Fountain Mutual Ditch Headgate is located in the SW 1/4 of Section 20, T. 14 S, R. 66 W of the 6<sup>th</sup> P.M., El Paso County, Colorado. The Spring Creek augmentation station is located along Spring Creek in the NE 1/4 of Section 29, T. 14 S, R 66 W of the 6<sup>th</sup> P.M., El Paso County, Colorado. The McRae Reservoir augmentation station is located along Crews Gulch at McRae Reservoir in the SW 1/4 SE 1/4 of Section 18, T. 15 S, R. 65 W of the 6<sup>th</sup> P.M. The locations of these structures and Big Johnson Reservoir are shown on the map attached hereto as Exhibit 5. Subject to entry into a written agreement with the owner or owners, Applicant may also use augmentation stations other than Spring Creek and McRae Reservoir, whether currently existing or to be built in the future. The replacement credits at the FMIC augmentation stations will be assessed a transit loss from the respective augmentation stations to the point of depletion for the wetlands as deemed necessary by the Division Engineer. Applicant's *pro rata* share of water attributable to its FMIC shares may be placed into storage in Big Johnson Reservoir (Fountain Valley Reservoir No. 2), together with any excess consumptive use credits from FMIC shares put through FMIC's augmentation stations. Applicant's *pro rata* share of water attributable to its FMIC shares stored in Big Johnson Reservoir maybe used as an augmentation source and may be delivered to the Spring Creek augmentation station by means of an intraditch exchange. 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, T. 15 S, R. 65 W of the 6<sup>th</sup> P.M., up the Fountain Mutual Ditch to the location of the Spring Creek augmentation station in the NE 1/4 of Section 29, T. 14 S, R. 66 W of the 6<sup>th</sup> 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 Reservoir augmentation station, in addition to the intraditch exchange. As another alternative to the delivery of water to the Spring Creek augmentation station, if FMIC constructs a new augmentation station on the Fountain Mutual Ditch down gradient from Big Johnson Reservoir, Applicant's replacements may also be made by releasing water from Big Johnson Reservoir and returning it to Fountain Creek through the new augmentation station, in addition to the intraditch exchange. Applicant also requests the right to operate an exchange of the consumptive use of its FMIC shares from the McRae Reservoir augmentation station or any new augmentation stations down gradient from Big Johnson Reservoir, upstream on Fountain Creek to the points of depletion for the Phase 3 Wetlands as necessary. The augmentation water available under Applicant's FMIC shares will be computed as the historical depletion percentage multiplied by actual in-priority diversions under Applicant's shares.

**5.3.3 Available Replacement Supplies:** On average, Applicant's water system generates 31,400 acre-feet of reusable sewer and non-sewered return flows annually. Of that amount, 4,600 annual acre-feet are committed to replace depletions under Applicant's existing augmentation plans, substitute water supply plans or other administrative approvals on average, with 26,800 average annual acre-feet of reusable return flows available for use as a replacement source under the requested augmentation plan. The sewer and non-sewered return flows will be assessed a transit loss from those structures to the point of depletions as deemed necessary by the Division Engineer. Applicant's FMIC shares generate an average of 100.8 annual acre-feet per year of consumptive use water that is legally available to Applicant for augmentation use.

**5.3.4 Reduction in Augmentation Obligations:** The mitigation wetlands described herein were constructed prior to there being impacts to the wetlands for which impacts are being mitigated and are larger than the original wetlands. If any phase of the mitigation wetlands is reduced in size, the decrease will result in reduced impacts to the stream. Applicant reserves the right to reduce its augmentation obligations hereunder if the wetlands are reduced in size.

**5.3.5 Accounting:** Applicant will account for out-of-priority depletions for each Augmented Structure as well as replacements made, taking into account appropriate transit losses, on a daily basis with monthly reporting or as otherwise required by the State or Division Engineers.

**III. Name and Address of Owner of Land Upon Which Structures are Located.**

6. The Phase 1, Phase 2, and Phase 3 Wetlands are located on land owned by Applicant. Applicant owns the structures identified in subparagraphs 5.3.1.1 and 5.3.1.2. The Air Force Academy Waste Water Treatment Facility Outfall is located on land owned by the United States Air Force, c/o Air Force Academy; Attn: Real Estate Office, 8120 Edgerton Drive, Suite 40, USAF Academy, CO 80840. The Fort Carson Military Reservation Waste Water Treatment Facility Outfall is located on land owned by the United States Army, c/o Fort Carson Military Reservation, 1626 Evans St., Bldg. 1219, Fort Carson, CO 80913. The Fountain Regional Wastewater Treatment Plant is located on land or easements owned by the Lower Fountain Metropolitan Sewage Disposal District, 901 S. Santa Fe Ave., Fountain, CO 80817. The Fountain Mutual Ditch headgate and Spring Creek augmentation station, McRae Reservoir augmentation station, and Big Johnson Reservoir are located upon land owned by the Fountain Mutual Irrigation Company, c/o Gary Steen, 487 Anaconda Dr., Colorado Springs, CO, 80919.

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**CASE NO. 2019CW3053; CITY OF COLORADO SPRINGS, COLORADO SPRINGS UTILITIES, c/o ABBY ORTEGA, Water Supply Resources P.O. Box 1103, MC 1825, Colorado Springs, CO 80947-1815,** (Please address all pleadings and inquiries

regarding this matter to Applicant's attorney: 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 Plan for augmentation

**EL PASO COUNTY**

2. Summary of Application: The purpose of the requested augmentation plan is to replace the depletions resulting from out-of-priority storage in and evaporation from surface water ponds within the Colorado Springs Utilities ("Utilities") service area ("Service Area"). The Division of Water Resources has identified the need to augment the depletions from several historic and other storage structures currently located within the Service Area and Utilities has the ability to augment the depletions from both the currently identified ponds and those that may be identified in the future. The following ponds are located on land owned by the City of Colorado Springs ("City" or "Applicant"): Northgate Pond, Sinton Pond, Red Rock Canyon Upper Pond, Red Rock Canyon Lower Pond, and Quail Lake ("Parks Ponds"). The Parks Ponds are fed in whole or in part by surface flows, springs, Applicant's municipal water distribution system, and/or stormwater runoff. The purpose of the requested augmentation plan is to replace the depletions resulting from out-of-priority storage in and evaporation from the Parks Ponds and any additional storage structures added to the requested augmentation plan in the future. All structures that will be augmented under the requested plan are individually referred to as an "Augmented Structure" and collectively referred to as the "Augmented Structures" in the remainder of this application. **II. Application for Plan for Augmentation.**

3. Name and Relevant Information Regarding Augmented Structures: 3.1 Name of structure: Northgate Pond.

3.1.1 Date, case number and court of original and all relevant subsequent decrees:

N/A. 3.1.2 Structure Location: UTM Coordinates: Easting: 515820, Northing: 4320610, Zone: 13.

Legal Description: Northgate Pond is located on Smith Creek between Northgate Road and Gleneagle Drive, specifically in E 1/2 of Section 6, T. 12 S, R. 66 W of the 6th P.M. A map depicting the general location of the Northgate Pond is attached as Exhibit 1. 3.1.3 Source: Smith Creek, tributary to Monument Creek, tributary to Fountain Creek, tributary to the Arkansas River. 3.1.4 Appropriation dates: N/A. 3.1.5 Decreed use or uses: N/A. 3.1.6 Amount: N/A. 3.2 Name of structure: Sinton Pond, a/k/a Holland Reservoir No. 1 (WDID 1003689).

3.2.1 Date, case number and court of original and all relevant subsequent decrees: June 2, 1919, El Paso County District Court Case No. CA10146.

3.2.2 Structure Location: UTM Coordinates: Easting: 514520, Northing: 4303880, Zone: 13. Legal Description: Sinton Pond is located adjacent to the Douglas Creek Open Space between Sinton Road and Gossage Park, specifically in the SE 1/4 of the SE 1/4 of Section 25, T. 13 S, R. 67 W of the 6th P.M. A map depicting the general location of Sinton Pond is attached as Exhibit 1. 3.2.3 Source: Springs tributary to Douglas Creek, tributary to Monument Creek, tributary to Fountain Creek, tributary to the Arkansas River. 3.2.4 Appropriation dates: November 1, 1890. 3.2.5 Decreed use or uses: Storage and Irrigation. 3.2.6 Amount: 8.27 acre-feet. 3.3 Name of structure: Red Rock Canyon Upper Pond. 3.3.1 Date, case number and court of



original and all relevant subsequent decrees: N/A. 3.3.2 Structure Location: UTM Coordinates: Easting: 510340, Northing: 4299970, Zone:13. Legal Description: Red Rock Canyon Upper Pond is located in Red Rock Canyon Open Space on a normally dry channel, specifically in the SE 1/4 of the NW 1/4 of Section 10, T. 14 S, R. 67 W of the 6th P.M. A map depicting the general location of Red Rock Canyon Upper Pond is attached as Exhibit 1. 3.3.3 Source: Precipitation draining the 440 acre sub-basin to the southeast of the pond, tributary to Fountain Creek, tributary to the Arkansas River. 3.3.4 Appropriation dates: N/A. 3.3.5 Decreed use or uses: N/A. 3.3.6 Amount: N/A. 3.4 Name of structure: Red Rock Canyon Lower Pond. 3.4.1 Date, case number and court of original and all relevant subsequent decrees: N/A. 3.4.2 Structure Location: UTM Coordinates: Easting: 510350, Northing: 4300050, Zone:13. Legal Description: Red Rock Canyon Lower Pond is located in Red Rock Canyon Open Space on a normally dry channel, specifically in the SE 1/4 of the NW 1/4 of Section 10, T. 14 S, R. 67 W, of the 6th p.m. A map depicting the general location of Red Rock Canyon Lower Pond is attached as Exhibit 1. 3.4.3 Source: Precipitation draining an 85 acre sub-basin to the southeast of the pond as well as any water that flows over the Red Rock Canyon Upper Pond dam, tributary to Fountain Creek, tributary to the Arkansas River. 3.4.4 Appropriation dates: N/A. 3.4.5 Decreed use or uses: N/A. 3.4.6 Amount: N/A. 3.5 Name of structure: Quail Lake (WDID 1003352). 3.5.1 Date, case number and court of original and all relevant subsequent decrees: August 24, 2014, District Court, Water Division 2, Case No. 07CW120. 3.5.2 Structure Location: UTM Coordinates: Easting: 516780, Northing: 4293000, Zone: 13. Legal Description: Quail Lake is located on a drainage tributary to Fountain Creek in the SW 1/4 Section 32, T. 14 S, R. 66 W, of the 6th P.M., 1405 feet from the south section line and 2070 feet from the west section line. A map depicting the general location of Quail Lake is attached as Exhibit 1. 3.5.3 Source: Municipal water distribution system, stormwater and runoff from an unnamed tributary to Fountain Creek at or upstream of Quail Lake Dam. 3.5.4 Appropriation dates: February 2, 1971. 3.5.5 Decreed use or uses: Storage in the available unfilled capacity of Quail Lake, for recreation, fish and wildlife habitat, and aesthetic purposes. 3.5.6 Amount: Up to 72 acre-feet storage, with right to refill up to 72 acre-feet, for a total of 144 acre-feet annually. 3.6 Additional Augmented Structures: Applicant seeks the ability to add storage structures it becomes aware of within its water service territory to this augmentation plan upon application to the Division Engineer with notice to any party entering an appearance in this matter. A map of Applicant's existing water service territory is attached as Exhibit 1. 4. Water and Water Rights to be Used for Augmentation: Depletions from out-of-priority storage in and evaporation from the above referenced structures will be replaced through the use of sewered and non-sewered return flows from the reusable waters described in paragraphs 4.1 - 4.8, below and/or through direct deliveries of fully consumable water available under the sources described in paragraph 4.7 through 4.8. 4.1 The Blue River Project: The Blue River Project diverts water from the headwaters of the Blue River and its tributaries in Summit County. The 1929 water rights associated with this project were adjudicated by the decree in Civil Action No. 1710 (District Court, Summit County) dated October 26, 1937, and modified by the decree in Civil Action No. 1883 (District Court, Summit County) dated June 15, 1953. These water rights have an appropriation date of August 5, 1929. The 1948 water rights associated with this project were adjudicated by the decree in Civil Action No. 1806 (District Court, Summit County)

dated May 10, 1952, the final decree in Consolidated Case Nos. 2782, 5016 and 5017 (U.S. District Court, District of Colorado) dated October 15, 1955, and were made absolute by the decree in Consolidated Case Nos. 2782, 5016 and 5017 (U.S. District Court, District of Colorado) dated February 26, 1968. These water rights have an appropriation date of May 13, 1948. An additional component of the Blue River Project is water diverted from the Middle Fork of the South Platte River in Park County. Water from the Middle Fork of the South Platte is stored in Montgomery Reservoir pursuant to Priority No. A-207 of an appropriation dated September 5, 1930, by absolute decree dated May 16, 1966, in Civil Action No. 3286, District Court of Park County.

4.2 The Homestake Project: The Homestake Project diverts water from the headwaters of tributaries of the Eagle River in Eagle County. The water rights were conditionally adjudicated by the decree in Civil Action No. 1193 (District Court, Eagle County) dated June 8, 1962. These water rights have an appropriation date of September 22, 1952. Applicant has the right to utilize one-half of the waters produced by the Homestake Project by virtue of the agreement dated June 18, 1962, between the City of Aurora and the City.

4.3 The Independence Pass Transmountain Diversion System (a/k/a Twin Lakes Project): The Twin Lakes Project diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County. The water rights were adjudicated by a decree in Civil Action No. 3082 (District Court, Garfield County) dated August 25, 1936, and modified by the decree in Case No. W-1901 (District Court, Water Division No. 5) dated May 12, 1976. These water rights have an appropriation date of August 23, 1930. Applicant has the right to take and use its *pro rata* share of the water diverted and stored by the Twin Lakes Reservoir and Canal Company under these water rights.

4.4 Colorado Canal Company: Applicant owns the water rights associated with 28,012.76 shares of the Colorado Canal Company, 21,084.75 shares in the Lake Meredith Reservoir Company, and 6,923.15 shares in the Lake Henry Reservoir Company (“Colorado Canal Waters”) which were quantified and changed to include use and total consumption for municipal, commercial, industrial, and all other beneficial uses at any location in Case Nos. 84CW62, 84CW63 and 84CW64. Pursuant to those decrees, Applicant has the right to take its *pro rata* share of the water diverted and stored through the Colorado Canal in Lake Meredith Reservoir and Lake Henry Reservoir, by exchange or by pipeline for use and total consumption in Applicant's municipal water system or elsewhere. The Colorado Canal water right is described as follows: Arkansas River Priority No. 62 for 756.28 c.f.s. for irrigation, with an appropriation date of June 9, 1890, as described in the decree in Case No. CA-2535, District Court, Pueblo County, Colorado, former Water District 14 entered on March 23, 1896. Applicant's *pro rata* share of Priority No. 62 is as specified in the decree in Consolidated Case Nos. 84CW62, 84CW63, and 84CW64. The Lake Meredith Reservoir water storage right is described as follows: Storage Priority No. 11 for 26,028.40 A.F. by diversions from the Arkansas River through the Colorado Canal at a rate of 756.28 c.f.s. for irrigation with an appropriation date of March 9, 1898, as described in the decree in Case No. CA-13693, District Court, Pueblo County, Colorado, former Water District 14, entered on November 25, 1916. Applicant's *pro rata* share of Storage Priority No. 11 is as specified in the decree in Consolidated Case Nos. 84CW62, 84CW63, and 84CW64. The Lake Henry Reservoir water storage rights are described as follows: (i) Storage Priority No. 10 for 6,355 A.F. by diversions from the Arkansas River through the Colorado Canal at a rate of 756 c.f.s. for irrigation with an appropriation date of December 31, 1891,

as described in the decree in Case No. CA-13693, District Court, Pueblo County, Colorado, former Water District 14, entered on entered on November 25, 1916; and (ii) Storage Priority No. 17.5 for 3,561 A.F. by diversions from the Arkansas River through the Colorado Canal at a rate of 756 c.f.s. with an appropriation date of May 15, 1909, as described in the decree in Case No. CA-13693, District Court, Pueblo County, Colorado, former Water District 14, entered on April 14, 1927. Applicant's *pro rata* share of Storage Priority No. 10 and Storage Priority No. 17.5 is as specified in the decree in Consolidated Case Nos. 84CW62, 84CW63, and 84CW64.

**4.5 Sugarloaf Water Storage Rights:** These waters are diverted from Lake Fork Creek, a tributary of the Arkansas River, and were originally decreed for the use of CF&I Steel Corporation, are now owned by Applicant, and are described in the decree dated June 16, 1994, in Case No. 86CW117, District Court, Water Division No. 2, as the "Sugarloaf Reservoir Right" and the "Colorado Gulch Right" (collectively referred to herein as the "Sugarloaf Water Storage Rights"). By decree dated June 16, 1994, in Case No. 86CW117, District Court, Water Division No. 2, the use and place of use of the Sugarloaf Water Storage Rights were changed to include municipal use and all other beneficial uses, including use, reuse, and successive use to extinction.

**4.6 Denver Basin Reusable Water:** Reusable Denver Basin Ground Water derived from nontributary, or fully augmented not-nontributary, ground water from the Denver, Arapahoe, and Laramie-Fox Hills Aquifers controlled by Applicant. The sources of the Denver Basin Groundwater controlled by Applicant are described in paragraph 13 of the Findings of Fact, Conclusions of Law, Judgment and Decree entered on February 3, 2015, in Case No. 04CW132, District Court, Water Division No. 2.

**4.7 Fountain Mutual Irrigation Company Water:** Applicant is the owner of 144 of the 5,793 currently issued outstanding shares of the Fountain Mutual Irrigation Company ("FMIC") which were quantified and changed in Case No. 15CW3002 from irrigation use to all municipal uses including augmentation, exchange, and storage for later use. The FMIC water rights are described as follows: 5.38 c.f.s. for irrigation under Fountain Creek Priority No. 4, 1.125 c.f.s. for irrigation under Fountain Creek Priority No. 7, 16.69 c.f.s. for irrigation under Fountain Creek Priority No. 11, 2.125 c.f.s. for irrigation under Fountain Creek Priority No. 17, 4.65 c.f.s. for irrigation under Fountain Creek Priority No. 21, 8.48 c.f.s. for irrigation under Fountain Creek Priority No. 28, 9.68 c.f.s. for irrigation under Fountain Creek Priority No. 29, 17.05 c.f.s. for irrigation under Fountain Creek Priority No. 41, and 343.2 c.f.s. for irrigation under Fountain Creek Priority No. 168. Applicant's *pro rata* share of the FMIC water rights is as specified in the decree in Case No. 15CW3002.

**4.8 Additional Sources:** Applicant requests the right to use water from additional sources in the augmentation plan decreed herein, including, but not limited to, any such waters that are or will be available in Applicant's system pursuant to the *Findings of Fact, Conclusions of Law, Judgment and Decree*, in Case No. 05CW96, Water Court, Water Division 2, Colorado if such sources are decreed for augmentation use or are otherwise available for use as an augmentation source by Applicant. These sources include, but are not limited to, water acquired through short and long-term leases or subleases and/or available under decrees, substitute water supply plans pursuant to C.R.S. § 37-92-308, interruptible supply agreements pursuant to C.R.S. § 37-92-309, and the Lease-Fallow Project Statute pursuant to C.R.S. § 37-60-115(8) or waters acquired through participation in existing or future water banking programs, such as that created under C.R.S. § 37-80.5-101, *et seq.*, and the sewered and non-sewered return flows derived therefrom that are

legally available for use by Applicant. 4.9 Reusable Return Flow: Reusable Non-Sewered Return Flows derived from the sources described in paragraphs 4.1-4.6 and described in Appendix A to the amended decree entered January 8, 1998, in Consolidated Case Nos. 84CW202, 84CW203, 86CW118(B), and 89CW36, Water Division 2, which shall be quantified pursuant to the terms of that decree. Reusable Sewered Return Flows derived from the sources described in paragraphs 4.1-4.6, shall be quantified pursuant to the terms of the decrees entered in Case Nos. W-4376 (Sewered), 84CW202 (Sewered), 84CW203 (Sewered), and 86CW118 (A) (Sewered), District Court, Water Division No. 2. Reusable Sewered and Non-Sewered Return Flows derived from the source described in paragraph 4.7 above, shall be quantified pursuant to the terms of the final decree to be entered in pending Case No. 16CW3056, District Court, and Water Division 2. Reusable Sewered and Non-Sewered Return Flows derived from the sources described in paragraph 4.8 above, shall be quantified pursuant to the terms of the applicable decree or administrative approval.

5. Statement of Plan for Augmentation: 5.1 Description of Augmented Structures: The structures for which out-of-priority depletions will be replaced under the requested plan for augmentation are as follows: 5.1.1 Northgate Pond: Northgate Pond was formed by construction of an earth dam with clay core across the Smith Creek channel. The source water feeding Northgate Pond is from Smith Creek which flows year-round presumably from lawn irrigation return flows, septic returns, and possibly Dawson Aquifer outcroppings. Observations made by Applicant indicate that Smith Creek streamflows continuously spill out of Northgate Pond proceeding down Smith Creek. Therefore, the water surface area and volume of Northgate Pond are assumed not to change. As such, Applicant will replace out-of-priority depletions associated with evaporation from the pond, minus historic phreatophyte consumption of precipitation for the inundated area, unless otherwise determined by the Division Engineer. The maximum annual depletions from the Northgate Pond are estimated to be 4.67 acre-feet.

5.1.2 Sinton Pond: Sinton Pond was created by construction of an earthen berm that forms the southern and eastern edges of the pond. The source of water feeding the pond is springs that percolate up in an area to the northwest of the pond and flow directly into the pond. The springs are active throughout the year, and water continuously spills out of Sinton Pond through an outlet leading to Douglas Creek. As such, Applicant will replace out-of-priority depletions associated with evaporation from the pond, minus historic phreatophyte consumption of precipitation for the inundated area, unless otherwise determined by the Division Engineer. If the Sinton Pond storage right is in priority, Applicant reserves the right to claim that storage is occurring under the decree in El Paso County District Court Case No. CA-10146. The maximum annual depletions from the Sinton Pond are estimated to be 6.60 acre-feet.

5.1.3 Red Rock Canyon Upper Pond: The Red Rock Canyon Upper Pond was created by construction of a concrete dam between sandstone rock formations. The source water feeding Red Rock Canyon Upper Pond is from precipitation draining the 440 acre sub-basin to the southeast. Evaporation from the Rock Canyon Upper Pond is considered to result in instantaneous stream depletions when the pond is full and spilling. Otherwise, evaporation works to increase available storage at those locations. As such, Applicant must replace depletions associated with evaporation from the pond minus historic phreatophyte consumption of precipitation for the inundated area in addition to any out-of-priority storage in the pond. Applicant's accounting for the plan for augmentation will show that those pond elevations

are decreasing at the assumed rate for evaporation. If storage levels are greater than what would be expected by calculating the reduction in stage for evaporation and comparing that to the actual stage, then the surplus storage is deemed to be out-of-priority and will be augmented accordingly. The maximum annual evaporative depletions from the Red Rock Canyon Upper Pond are estimated to be 2.59 acre-feet and the maximum annual depletions from out-of-priority storage are estimated to be 6.38 acre-feet per year.

5.1.4 Red Rock Canyon Lower Pond: The Red Rock Canyon Lower Pond was created by placement of earth backfill between sandstone rock formations. The source water feeding Red Rock Canyon Lower Pond is from precipitation draining an 85 acre sub-basin to the southeast as well as any water that flows over the Red Rock Canyon Upper Pond dam. Evaporation from the Red Rock Canyon Lower Pond is considered to result in instantaneous stream depletions when the pond is full and spilling. Otherwise, evaporation works to increase available storage at those locations. As such, Applicant must replace depletions associated with evaporation from the pond minus historic phreatophyte consumption of precipitation for the inundated area in addition to any out-of-priority storage in the pond. Applicant's accounting for the plan for augmentation will show that those pond elevations are decreasing at the assumed rate for evaporation. If storage levels are greater than what would be expected by calculating the reduction in stage for evaporation and comparing that to the actual stage, then the surplus storage is deemed to be out-of-priority and will be augmented accordingly. The maximum annual evaporative depletions from the Red Rock Canyon Lower Pond are estimated to be 10.70 acre-feet and the maximum annual depletions from out-of-priority storage are estimated to be 55.12 acre-feet per year.

5.1.5 Quail Lake: Quail Lake was constructed by the Gates Land Company using a dam across an unnamed tributary to Fountain Creek. The sources of water feeding the lake are potable water provided by Applicant and precipitation that drains from the surrounding neighborhood with an area of about 173 acres. Evaporation from Quail Lake is considered to result in instantaneous stream depletions when the lake is full and spilling. Otherwise, evaporation works to increase available storage at those locations. As such, Applicant must ensure that the Quail Lake water elevation is reducing by an amount equal to the depletions associated with evaporation from the free water surface area minus historic phreatophyte consumption of precipitation for the inundated area in addition to releasing any out-of-priority storage in the pond. If storage levels are greater than what would be expected by calculating the reduction in stage for evaporation and comparing that to the actual stage, then the surplus storage is deemed to be out-of-priority and will be augmented accordingly. If the Quail Lake storage right is in priority, then storage will be made according to the decree in Case No. 07CW120. Quail Lake also has the capability of making releases for out-of-priority inflows through its outlet. The maximum annual evaporative depletions from Quail Lake are estimated to be 49.81 acre-feet and the maximum annual depletions from out-of-priority storage are estimated to be 72-acre-feet per year.

5.1.6 Additional Augmented Structures: Applicant requests the ability to add surface water ponds not specifically identified herein that are located within Applicant's water service territory, as exists now and in the future, to this augmentation plan upon application to the Division Engineer and/or State Engineer with notice to any party entering an appearance in this matter and after an opportunity to object by those entities. The augmentation demand for any structure added to the requested plan for augmentation will be determined in the same

manner as described in paragraph 5.2 below, subject to terms and conditions determined necessary by the Division Engineer. 5.2. Determination of Depletions: The computation of the net depletion from each Augmented Structure is based on the operation of the pond and whether the out-of-priority storage is used to replace evaporation losses or store native runoff and stormwater. Where evaporation loss represents the out-of-priority storage, it is adjusted by allowable precipitation and vegetation credits to account for historic consumptive uses prior to the construction of the ponds. The calculated annual and monthly augmentation requirements for each of the Parks Ponds are set forth in Exhibit 2. The augmentation requirement for each of the Parks Ponds is based on the operation of the pond and whether native flows to the ponds are channelized and spilled. The total maximum annual augmentation demand for the Parks Ponds is estimated to be 207.88 acre-feet per year. 5.2.1 Evaporative Depletions: The effective precipitation credit is estimated to be 70%. Parameters for evaporation from each of the ponds were obtained from the interpolation between the isopleths for a free water surface from NOAA Technical Report NWS 33. Average precipitation rates were evaluated based on the most recent 50 year record for measurements at NOAA's Colorado Springs Airport climate station. Ice cover may eliminate evaporative depletions during the months of December and January where the average monthly temperature is below 32 degrees Fahrenheit. If estimated temperatures do not materialize and ice cover does not occur, Applicant shall be responsible for replacing all evaporative depletions from the Ponds. 5.2.2. Depletions from Out-Of-Priority Storage: Depletions from out-of-priority storage in the Augmented Structures will be determined utilizing telemetry, staff gauges or other measuring devices approved by the Division Engineer taking into account evaporative losses as described above. 5.3 Augmentation Sources: 5.3.1 Sewered Return Flows: The sewered return flows derived from the sources described in subparagraphs 4.1 - 4.9 will be measured and returned to the Fountain Creek basin at the following locations, which are depicted on Exhibit 3: 5.3.1.1 The Las Vegas Street Waste Water Treatment Plant Outfall: Located in El Paso County, Colorado in the SE 1/4 of the SW 1/4 of Section 20, T. 14 S, R. 66 W of the 6th P.M. Said outfall discharges to the Fountain Creek system. 5.3.1.2 The Northern Water Reclamation Facility Outfall (a/k/a the J.D. Phillips Water Reclamation Facility): Located in El Paso County, Colorado in the SE 1/4 of the NW 1/4 of Section 30, T. 13 S, R. 66 W of the 6th P.M. Said outfall discharges to Monument Creek. 5.3.1.3 The Air Force Academy Waste Water Treatment Facility Outfall: Located in El Paso County, Colorado in the SW 1/4 of the SW 1/4 of Section 19, T. 12 S, R. 66 W of the 6th P.M. Said outfall discharges to Monument Creek. 5.3.1.4 Fort Carson Military Reservation Waste Water Treatment Facility Outfall: Located in El Paso County, Colorado in the SE 1/4 of Section 23, T. 15 S, R. 66 W of the 6th P.M. Said outfall discharges to the Clover Ditch, which discharges to Fountain Creek. 5.3.1.5 Fountain Regional Wastewater Treatment Plant: Located in the SW 1/4 of the NW 1/4 of Section 34, T. 16 S, R. 65 W of the 6th P.M. in El Paso County. Said outfall discharges to Fountain Creek. 5.3.1.6 Additional Replacement Locations: 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 the City's wastewater facility discharges. 5.3.2 Direct Use of FMIC Consumptive Use: Water available under Applicant's 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 or the McRae Reservoir augmentation station to replace depletions from the ponds. The Fountain Mutual Ditch Headgate is located in the SW 1/4 of Section 20, T. 14 S, R. 66 W of the 6<sup>th</sup> P.M., El Paso County, Colorado. The Spring Creek augmentation station is located along Spring Creek in the NE 1/4 of Section 29, T. 14 S, R 66 W of the 6<sup>th</sup> P.M., El Paso County, Colorado. The McRae Reservoir augmentation station is located along Crews Gulch at McRae Reservoir in the SW 1/4 SE 1/4 of Section 18, T. 15 S, R. 65 W of the 6<sup>th</sup> P.M. The locations of these structures and Big Johnson Reservoir are shown on the map attached hereto as Exhibit 4. Applicant requests the right to operate an exchange of the consumptive use of its FMIC shares from the Spring Creek and McRae Reservoir augmentation stations upstream on Fountain Creek to the points of depletion for the ponds. Subject to entry into a written agreement with the owner or owners, Applicant may also use augmentation stations other than Spring Creek and McRae Reservoir, whether currently existing or to be built in the future. Applicant also requests exchanges from any additional augmentation stations upstream as necessary to the point of depletion of the ponds. Applicant's *pro rata* share of water attributable to its FMIC shares may be placed into storage in Big Johnson Reservoir (Fountain Valley Reservoir No. 2), together with any excess consumptive use credits from FMIC shares put through FMIC's augmentation stations. Applicant's *pro rata* share of water attributable to its FMIC shares stored in Big Johnson Reservoir maybe used as an augmentation source and may be delivered to the Spring Creek augmentation station by means of an intraditch exchange. 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, T. 15 S, R. 65 W of the 6<sup>th</sup> P.M., up the Fountain Mutual Ditch to the location of the Spring Creek augmentation station in the NE 1/4 of Section 29, T. 14 S, R. 66 W of the 6<sup>th</sup> P.M. The location of Big Johnson Reservoir is depicted on Exhibit 4. 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 Reservoir augmentation station, in addition to the intraditch exchange. As another alternative to the delivery of water to the Spring Creek augmentation station, if FMIC constructs a new augmentation station on the Fountain Mutual Ditch down gradient from Big Johnson Reservoir, Applicant's replacements may also be made by releasing water from Big Johnson Reservoir and returning it to Fountain Creek through the new augmentation station, in addition to the intraditch exchange. Applicant also requests the right to operate an exchange of the consumptive use of its FMIC shares from any new augmentation stations down gradient from Big Johnson Reservoir, upstream on Fountain Creek to the points of depletion for the Phase 3 Wetlands as necessary. The augmentation water available under Applicant's FMIC shares will be computed as the historical depletion percentage multiplied by actual in-priority diversions under Applicant's shares.

**5.3.3 Available Replacement Supplies:** On average, Applicant's water system generates 31,400 acre-feet of reusable sewerred and non-sewerred return flows annually. Of that amount, 4,600 annual acre-feet are committed to replace depletions under Applicant's existing augmentation plans, substitute water supply plans or other administrative approvals on

average, with 26,800 average annual acre-feet of reusable return flows available for use as a replacement source under the requested augmentation plan. The sewer and non-sewered return flows will be assessed a transit loss from those structures to the point of depletions as deemed necessary by the Division Engineer. Applicant's FMIC shares generate an average of 100.8 annual acre-feet per year of consumptive use water that is legally available to Applicant for augmentation use. 5.3.4 Accounting: Applicant will account for out-of-priority depletions for each Augmented Structure as well as replacements made, taking into account appropriate transit losses, on a daily basis with monthly reporting or as otherwise required by the State or Division Engineers. **III.**

**Name and Address of Owner of Land Upon Which Structures are Located.** 6. Applicant owns the structures identified in subparagraphs 5.3.1.1 and 5.3.1.2. The Air Force Academy Waste Water Treatment Facility Outfall is located on land owned by the United States Air Force, c/o Air Force Academy; Attn: Real Estate Office, 8120 Edgerton Drive, Suite 40, USAF Academy, CO 80840. The Fort Carson Military Reservation Waste Water Treatment Facility Outfall is located on land owned by the United States Army, c/o Fort Carson Military Reservation, 1626 Evans St., Bldg. 1219, Fort Carson, CO 80913. The Fountain Regional Wastewater Treatment Plant is located on land or easements owned by the Lower Fountain Metropolitan Sewage Disposal District, 901 S. Santa Fe Ave., Fountain, CO 80817. The Fountain Mutual Ditch headgate and Spring Creek augmentation station, McRae Reservoir augmentation station, and Big Johnson Reservoir are located upon land owned by the Fountain Mutual Irrigation Company, c/o Gary Steen, 487 Anaconda Dr., Colorado Springs, CO, 80919.

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**CASE NO. 2019CW3054; Previous Case No. 10CW35 – TTRES VALLES WEST OWNERS ASSOCIATION, Attn: Stacey Masarotti, 109 W. Main Street, Trinidad, CO 81082,** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: William H. Caile, Esq., and Kylie J. Crandall, Esq., Holland & Hart LLP, 555 17th Street, Suite 3200, Denver CO 80202, telephone: (303) 295-8403).

Application for Finding of Reasonable Diligence

**HUERFANO COUNTY**

**2. Name of Structures:** **A.** Tres Valles Pond Nos. 2-1, 3-1, 3-2, and 3-3 (collectively, the "Tres Valles Ponds"). **B.** Tres Valles Coler System Exchange. **3. Date of Original Decree:** August 6, 2013, in Case No. 10CW35. **4. Description – Tres Valles Ponds:** **A. Tres Valles Pond No. 2-1 (i) Legal description:** NE 1/4 of NE 1/4 of Section 4, Township 29 South, Rang 69 West of 6th P.M., at a distance of 1070 feet from the North section line and 875 feet from the East section line (37°33'33.68"N, 105°6'37.62"W). See Exhibit A attached to the application for a general location map OF THE Tres Valles Ponds. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). **(ii) Source:** Tres Valles Spring No. 2, tributary to South Abeyta Creek, tributary to Cucharas River. **(iii) Appropriation date:** May 28, 2010 **(iv) Date water applied to beneficial use:** N/A **(v) Amount claimed:** 6.86 acre feet, CONDITIONAL. **(vi) Use:** Recreation, piscatorial, aesthetic, fire protection, stock watering and wildlife. **(vii) Surface area at high water line:** 1.28 acres. **(viii) Approximate vertical height of dam:** 38.5 feet. **(ix) Length of dam:** 393 feet. **(x) Total capacity of reservoir:** 6.86 acre feet. **(xi) Active storage:** 6.86 acre feet. **(xii) Dead storage:** 0.0 acre feet. **B. Tres Valles Pond No. 3-1 (i) Legal description:** SW 1/4 of NW 1/4 of Section



34, Township 28 South, Range 69 West of 6th P.M., at a distance of 2,276 feet from the North section line and 100 feet from the West section line (37°34'14.78"N, 105°6'25.41"W). **(ii) Source:** Tres Valles Spring No. 3, tributary to South Abeyta Creek, tributary to Cucharas River. **(iii) Appropriation date:** May 28, 2010. **(iv) Date water applied to beneficial use:** N/A **(v) Amount:** 2.33 acre feet, CONDITIONAL **(vi) Use:** Recreation, piscatorial, aesthetic, fire protection, stock watering and wildlife. **(vii) Surface area at high water line:** 0.56 acres. **(viii) Approximate vertical height of dam:** 20 feet. **(ix) Length of dam:** 240 feet. **(x) Total capacity of reservoir:** 2.33 acre-feet. **(xi) Active storage:** 2.33 acre feet. **(xii) Dead storage:** 0.0 acre feet. **C. Tres Valles Pond No. 3-2** **(i) Legal description:** NE 1/4 of the NW 1/4 of Section 3, Township 29 South, Range 69 West of the 6th P.M., at a distance of 920 feet from the North Section Line and 2,150 feet from the West section line (37°33'35.44"N, 105°5'59.97"W). **(ii) Source:** Tres Valles Spring No. 3, tributary to South Abeyta Creek, tributary to Cucharas River. **(iii) Appropriation date:** May 28, 2010. **(iv) Date water applied to beneficial use:** N/A **(v) Amount:** 1.19 acre feet, CONDITIONAL **(vi) Use:** Recreation, piscatorial, aesthetic, fire protection, stock watering and wildlife. **(vii) Surface area at high water line:** 0.64 acres. **(viii) Approximate vertical height of dam:** 14 feet. **(ix) Length of dam:** 260 feet. **(x) Total capacity of reservoir:** 1.19 acre feet. **(xi) Active storage:** 1.19 acre feet. **(xii) Dead storage:** 0.0 acre feet. **D. Tres Valles Pond No. 3-3** **(i) Legal description:** SE 1/4 of the NW 1/4 of Section 3, Township 29 South, Range 69 West of the 6th P.M., at a distance of 1,590 feet from the North section line and 2,070 feet from the West section line (37°33'29.18"N, 105°6'0.89"W). **(ii) Source:** Tres Valles Spring No. 3, tributary to South Abeyta Creek, tributary to Cucharas River. **(iii) Appropriation date:** May 28, 2010. **(iv) Date water applied to beneficial use:** N/A **(v) Amount claimed:** 2.54 acre feet, CONDITIONAL. **(vi) Use:** Recreation, piscatorial, aesthetic, fire protection, stock watering and wildlife. **(vii) Surface area at high water line:** 0.56 acres. **(viii) Approximate vertical height of dam:** 15.0 feet. **(ix) Length of dam:** 340 feet. **(x) Total capacity of reservoir:** 2.54 acre feet. **(xi) Active storage:** 2.54 acre feet. **(xii) Dead storage:** 0.0 acre feet.

**5. Description of Conditional Water Right – Tres Valles Coler System Exchange:** **A. Description of Exchange:** A conditional appropriative right of exchange to augment depletions associated with the Tres Valles Ponds by exchange from the downstream location where water is introduced to the Cucharas River system from the Coler Ditch and Reservoir System ("Coler System"). Tres Valles owns a 1/60th interest in the Coler System, which was changed in Case No. 10CW35, Water Division 2. **B. Exchange reach:** **(i) Upstream points:** Tres Valles Ponds Nos. 2-1 and 3-1, as described in paragraph 4 above, located on unnamed tributaries to South Abeyta Creek. **(ii) Downstream point:** The location of the Coler System Cucharas Delivery Flume, which is located in the NE 1/4 of the SW 1/4 of Section 17, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado at a point approximately 1,600 feet from the West line and 2,150 feet from the South line of said Section 17. **(iii)** A map depicting the approximate extent of the exchange reach is on file with the Court as Exhibit 2. **C. Appropriation date:** May 28, 2010. **D. Date water applied to beneficial use:** N/A. **E. Rate of exchange:** 1.0 cubic feet per second, CONDITIONAL, not to exceed 92.5 acre feet in any consecutive ten year period. **F. Use:** Augmentation in the plan for augmentation decreed in Case No. 10CW35, Water Division 2. **6. Outline of activities performed towards completion of the conditional appropriations and application of**

**water to beneficial use:** Applicant has submitted a detailed outline of activities taken towards completion of the appropriation and application of water to beneficial uses. This outline of activities and expenditures is not intended to be exhaustive, and Applicant reserves the right to present additional evidence of reasonable diligence as necessary or appropriate. **7. Names and addresses of 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 where water is or will be stored:** A. The Tres Valles Ponds are located on land owned by Applicant. B. Upon information and belief, the Coler System Cucharas Delivery Flume is located on land owned by the City of Walsenburg, 525 South Albert Avenue, Walsenburg, Colorado 81089.

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**CASE NO. 2019CW3055; Previous Case No. 05CW70 – COLORADO DIVISION OF PARKS AND WILDLIFE AND THE PARKS AND WILDLIFE COMMISSION (“CPW”), Attn: Ed, Perkins, Water Rights Administrator, 6060 Broadway, Denver, CO 80216,**

(Please address all pleadings and inquiries regarding this matter to Applicant’s attorney: Joseph Phillips and Heather Warren, 1300 Broadway, 7<sup>th</sup> Floor, Denver, CO 80203. Telephone: 720-508-6265 (Phillips); 720-508-6266 (Warren).

Application to Make Conditional Water Right Absolute, or in the Alternative for Finding of Reasonable Diligence

**CHAFFEE COUNTY**

**2. Name of structures:** Mt. Shavano Supplemental Spring Collection System (“Mt Shavano SSCS”). **3. Description of conditional water rights to make absolute: A. Original decree:** August 5, 2013 Decree; Case No. 05CW70, District Court, Water Division 2. **B. Legal description:** The Mt Shavano SSCS is located in the southeast quarter of the northwest quarter of Section 31, Township 50 North, Range 9 East of the New Mexico P.M., Chaffee County, Colorado. The Mt Shavano SSCS is a 300’-long horizontal drain that begins at a point 1,840 feet from the west section line and 1,900 feet from the north section line of said Section and runs generally northeast. Water is collected underground and delivered to the surface at a point 1,640 feet from the north section line and 1,860 feet from the west section line of said Section. A map of the Mt Shavano SSCS is attached as Exhibit 1. **C. Source:** Spring and seepage area tributary to the Arkansas River. **D. Appropriation date:** September 30, 2005. **E. Amount:** 10 cfs conditional, 5.71 cfs of which to be decreed absolute. **F. Uses:** Piscatorial and fish propagation. **4. Description of claim to make 5.71 cfs absolute, and of efforts toward completion of the appropriation and application to beneficial use:** Through this Application, CPW requests that this Court determine and decree that the Mt. Shavano SSCS water right has been made absolute for piscatorial and fish propagation uses in an amount of 5.71 cfs. As described in the Application in Case No. 05CW70, during the diligence period CPW built the Mt. Shavano SSCS to provide water to the Mt. Shavano fish hatchery. The project included burying two sections of perforated collection pipe—a 280-foot section of 15-inch pipe, and a 305-foot section of 18-inch pipe—more than 21 feet underground. Those collection pipes feed into a solid 16-inch PVC pipe that directs collected water to the hatchery facility. The final cost of the project was \$543,722.50. Since June 2011, CPW has maintained, and measured and used flows, from the Mt. Shavano SSCS to raise fish in the ponds and raceways at the Mt. Shavano Hatchery (i.e., piscatorial and fish propagation uses). CPW is covered by augmentation certificates purchased from the

Upper Arkansas Water Conservancy District for augmentation of out of priority depletions associated with the use of the SSCS. Records show peak flows from the Mt. Shavano SSCS of 5.71 cfs on July 19, 2017. Those records are attached as Exhibit 2. CPW used that water for piscatorial and fish propagation purposes at the Mt. Shavano Hatchery. **5. Name of owners of land upon which structures are located:** Colorado Division of Wildlife and the Wildlife Commission, 1313 Sherman St., Denver, CO 802031 **6. Additional Remarks:** Upon a ruling that the 5.71 cfs portion of the water right is made absolute, CPW will relinquish the remaining balance (4.29 cfs) of the 10 cfs conditionally decreed in Case No. 05CW70. WHEREFORE, CPW respectfully requests that this Court enter a decree finding that the subject water rights have been made absolute in the amount of 5.71 cfs, or in the alternative finding that CPW has exercised reasonable diligence in the development of the 10-cfs water right decreed in Case No. 05CW70.

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**CASE NO. 2019CW3056; MICHAEL AND CASEY COUTURE, 6901 Edmondstown Drive Colorado Springs, CO 80923,** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: James J. Petrock, Petrock & Fendel, 700 17<sup>th</sup> Street, #1800, Denver, CO 80202).

Application for Underground Water Rights from Nontributary and Not Nontributary Sources and for Approval of Plan for augmentation, in the Nontributary Laramie-Fox Hills and the Not Nontributary Denver Aquifers

**EL PASO COUNTY**

**3. Subject Property:** 13.4 acres generally located in the NW1/4SE1/4 of Section 35, T11S, R67W of the 6th P.M., El Paso County, see Attachment 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.). Applicant is the owner of the Subject Property and notice pursuant Section 37-92-302(2) is not required. Copy of vesting deed attached on Attachment A. **4. Source of Water Rights:** The Denver aquifer is not nontributary as described in Sections 37-90-103(10.7), C.R.S., and the Laramie-Fox Hills aquifer is nontributary as described in Section 37-90-103(10.5), C.R.S. **5. Estimated Amounts:** Denver: 9 acre-feet, Laramie-Fox Hills: 3.7 acre-feet. **6. Proposed Use:** Domestic, commercial, irrigation, livestock watering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property. **7. Jurisdiction:** The Water Court has jurisdiction over the subject matter of this application pursuant to C.R.S. 37-92-302(2), and 37-90-137(6). **8. Description of Plan for Augmentation:** **A. Groundwater to be augmented:** 1 acre-foot per year for 300 years of the Denver aquifer groundwater requested herein. **B. Water rights for augmentation:** Return flows from the use of not nontributary and nontributary groundwater and direct discharge of nontributary ground water. **C. Statement of plan for augmentation:** The Denver aquifer groundwater will be used on the Subject Property through an individual well for in-house in one residence, irrigation, commercial, fire protection, and stockwatering use. Applicants reserve the right to revise the annual amount to be withdrawn and the proposed uses without having to amend the application or republish the same. Return flow from in-house/commercial use and irrigation use will be approximately 90% and 15% of that use, respectively. During pumping Applicants will replace actual depletions to the affected stream system pursuant to Section 37-90-137(9)(c.5), C.R.S. Depletions occur to the Arkansas River Creek stream systems.

Return flows accrue to the Arkansas River stream system via Monument Creek and those return flows are sufficient to replace actual depletions while the subject groundwater is being pumped. Applicants will reserve an equal amount of nontributary groundwater underlying the Subject Property to meet post pumping augmentation requirements. Further, Applicants pray that this Court grant the application and for such other relief as seems proper in the premises.

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

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of October 2019, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this 6<sup>th</sup> day of September 2019.



*Michele Santistevan*

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Michele M. Santistevan, Clerk  
District Court, Water Div. 2  
Pueblo Judicial Building  
501 N. Elizabeth Street, Suite 116  
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(Court seal)  
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