

DISTRICT COURT, WATER DIVISION NO.1  
WELD COUNTY, COLORADO  
901 9<sup>th</sup> Avenue / P.O. Box 2038  
Greeley, Colorado 80631  
(970) 351-7300

PLAINTIFF, The Jim Hutton Educational  
Foundation,

v.

DEFENDANTS, Dick Wolfe, in his capacity as the  
Colorado State Engineer; David Nettles, in his  
capacity as Division Engineer in and for Water  
Division No. 1, State of Colorado; the Colorado  
Department of Natural Resources; Colorado Division  
of Water Resources; and Colorado Parks and  
Wildlife.

▲ COURT USE ONLY ▲

**For Defendants Dick Wolfe, State Engineer;  
David Nettles, Division Engineer for Water  
Division No. 1; Colorado Department of  
Natural Resources; and Colorado Division of  
Water Resources**

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Case No. 2015CW3018  
Div.: 1

**STATE AND DIVISION ENGINEERS' MOTION FOR JOINDER**

The State Engineer and Division Engineer for Water Division No. 1 (“Engineers”), through counsel, respectfully move the Court under C.R.C.P. 12(b)(6), C.R.C.P. 19, and C.R.C.P. 57(j) to order the Plaintiff, the Jim Hutton Educational Foundation, to join necessary parties by service pursuant to C.R.C.P. 4. In support of this motion, the Engineers state the following:

### **CERTIFICATION**

Pursuant to section 1-15(8), Rule 121, C.R.C.P., counsel for the Engineers certify that they have contacted counsel for the Plaintiff regarding the relief requested by this motion. Counsel for the Plaintiff indicated that the Plaintiff does not consent to the relief requested by this motion.

### **ARGUMENT**

#### **I. Summary of Argument**

If all of Plaintiff’s factual allegations are taken as true and this Court grants the relief that Plaintiff requests, well owners whom Plaintiff has not yet identified would be responsible for preventing injury to senior surface water rights caused by their groundwater withdrawals, would be curtailed for Compact compliance purposes, or both. Given the vast area of the Northern High Plains Designated Ground Water Basin and the prevalence of groundwater-irrigated agriculture, Plaintiff’s claims implicate many high-capacity irrigation wells. These well owners are affected by and have a strong interest in the subject matter of this action, which

is a fundamental change in the way groundwater use is regulated in the Northern High Plains Designated Ground Water Basin.

Under C.R.C.P. 12(b)(6), C.R.C.P. 19(a), and C.R.C.P. 57(j), Plaintiff must attempt to identify and join affected well owners in the manner provided by C.R.C.P. 4. Resume notice under section 37-92-302, C.R.S. (2014) is insufficient because the resume notice provisions do not apply to declaratory judgment actions that involve more than the interpretation of an existing decree and that would change the administration of water rights in a way that affects other water users. It is Plaintiff who alleges that groundwater withdrawals are injuring its water rights and must be curtailed for Compact compliance purposes, and it is Plaintiff who must identify the well owners whose wells make these groundwater withdrawals.

Additionally, the Colorado Ground Water Commission should be joined in this action because it is responsible for implementing and enforcing statutes that Plaintiff claims are unconstitutional. Tasked with carrying out the statutes at issue, the Ground Water Commission has an obvious interest in this action and any relief that this Court might grant.

## **II. Argument**

- A. *If all of Plaintiff's factual allegations are true and this Court grants the relief that Plaintiff requests, then unidentified well owners in the Northern High Plains Designated Ground Water Basin will be affected.*

Among others, Plaintiff makes the following claims concerning groundwater withdrawals in the Northern High Plains Designated Ground Water Basin:

The NHP Basin covers the aerial [sic] extent of the Ogallala aquifer in Colorado. The NHP Basin includes the entirety of the Republican River basin and its tributaries in Colorado, including the South Fork.

Complaint at p. 5, para. 25.

Upon information and belief, there are currently about 4,000 permitted high capacity irrigation wells located in the Republican River basin.

. . . [T]he vast majority of the wells in the NHP Basin continue to pump ground water.

Complaint at p. 5, para. 26-27.

Few if any ground water wells existed in the Republican River basin before the Tip Jack Ditch, the Hale Ditch, priority no. 38, or Bonny Reservoir were appropriated, and the vast majority of ground water wells were appropriated after the Hutton No. 1 and Hutton No. 2 Ditches.

Complaint at p. 6, para. 28.

The surface flows in the South Fork and other Republican River tributaries declined over time in response to well pumping in the NHP Basin.

Complaint at p. 6, para. 29.

Plaintiff also alleges that the RRCA Groundwater Model predicts that groundwater withdrawals in the Northern High Plains Designated Ground Water Basin cause certain stream depletions to the Republican River and its South Fork.

Complaint at p. 6-7. Plaintiff alleges that these depletions injure its water rights, Complaint at p. 9, para. 58, which Plaintiff alleges are senior to any water rights associated with the “vast majority” of wells in the Northern High Plains Designated Ground Water Basin. Complaint at p. 6, para. 29.

In addition to these allegations concerning injury to its water rights, Plaintiff claims that the State Engineer must administer water rights in the Northern High Plains Designated Ground Water Basin such that wells with water rights junior to Plaintiff's are curtailed for Compact compliance before senior surface rights:

Administration of the Compact must be consistent with Colorado's constitutional and statutory prior appropriation doctrine insofar as possible. The curtailment of decreed surface water rights for Compact compliance, without first curtailing ground water diversions that are depleting the river and which were developed after the surface water appropriations, is inconsistent with Colorado law.

The State Engineer is required to equitably curtail diversions to meet Compact commitments, in a manner that will restore lawful use conditions as they were before the effective date of the Compact insofar as possible. Lawful use conditions prior to the 1942 Compact were predominantly surface water diversions not ground water diversions, yet only surface water diversions are being curtailed.

The State Engineer has the duty to satisfy obligations under the Compact in a manner consistent with Colorado law, including the power to promulgate and enforce rules as necessary.

Complaint at p. 12, paras. 79-81 (internal citations removed).

Plaintiff asks this Court to order:

That the current administration of surface water in the Republican River Basin by the Engineers, DWR, and/or CDNR, including without limitation, the administration of the Foundation's water rights and of Bonny Reservoir, is contrary to Colorado law, federal law, and applicable agreements, unconstitutional, in excess of authority, arbitrary and capricious, and resulting in injury to the Foundation's water rights; and

That the lack of any ground water curtailment under the Compact by the State Engineer while at the same time curtailing more senior surface water rights is contrary to Colorado and federal law, unconstitutional, in excess of authority, arbitrary and capricious, and resulting in injury to the Foundation's water rights.

Complaint at p. 14, paras. 92.A-B.

Finally, Plaintiff's Prayer for Relief requests:

An Order finding that the current administration and management of water in the Republican River Basin is unlawful; and

An Order enjoining the current administrative and management practices regarding water in the Republican River Basin.

Complaint at p. 18, paras. A-B.

Although it is not entirely clear whether Plaintiff seeks an order from this Court that would require a particular type of administration in the Republican River Basin, at the very least Plaintiff seeks an order requiring that the State Engineer administer water rights such that well owners in the Northern High Plains Designated Ground Water Basin would be curtailed for Compact compliance,

have some obligation to ensure that their groundwater withdrawals do not injure senior water rights, or both.

Regardless the precise result, the relief that Plaintiff requests would profoundly impact well owners in the Northern High Plains Designated Ground Water Basin because their wells are not administered against surface water rights and are irrelevant to any potential analysis of injury to Plaintiff's surface water rights. That is because they withdraw designated groundwater, which is governed by the Groundwater Management Act, not the Water Rights Determination and Administration Act. *See* § 37-90-101, et seq., C.R.S. (2014). These well owners also are not currently curtailed for Compact compliance purposes. If Plaintiff is correct that something on the order of 11,240 or 15,907 acre feet of stream depletions to the South Fork of the Republican River are caused annually by Colorado ground water withdrawals, Complaint at p. 7, paras. 38-39, then well owners in the Northern High Plains Designated Ground Water Basin will face a significant new expense in whatever administration regime results from this Court's granting the relief that Plaintiff requests.

*B. Well owners in the Northern High Plains Designated Ground Water Basin have an interest in this action that requires joinder under C.R.C.P. 19 and C.R.C.P. 57(j), and service in accordance with C.R.C.P. 4.*

C.R.C.P. 19(a) requires joinder of a party if: (1) in the absence of the person, complete relief cannot be accorded among those already parties; or (2) the person

claims an interest related to the subject of the action and is so situated that the disposition of the action in the person's absence may as a practical matter impair or impede the person's ability to protect that interest or leave the persons who are parties subject to substantial risk of incurring inconsistent obligations by reason of the person's claimed interest. C.R.C.P. 57(j) requires that when declaratory relief is sought, "all persons shall be made parties who have or claim any interest which would be affected by the declaration."

Here, if all of Plaintiff's factual allegations are true and this Court grants the declaratory relief that Plaintiff seeks, currently unidentified well owners would find themselves subject to curtailment for Compact compliance purposes, required to ensure that their groundwater withdrawals do not injure senior water rights, or both. As explained above, these well owners plainly have an interest in the loss of the ability to use designated groundwater in the Northern High Plains Designated Ground Water Basin in accordance with the Colorado Groundwater Management Act and any new expenses that the relief Plaintiff seeks would impose. No named defendant represents any designated ground water user. The well owners whose farms will be affected if this Court grants the relief that Plaintiff requests should be identified and joined in this action. Their absence would impair or eliminate their ability to protect their interests.

C. *The resume notice provisions of section 37-92-302(3), C.R.S. (2014) do not relieve Plaintiff of the joinder requirements of C.R.C.P. 19 and C.R.C.P. 57(j) and the service requirements of C.R.C.P. 4.*

Only the text of the caption of Plaintiff's Complaint was published in the February 2015 Water Resume Publication for Water Division 1, attached to this motion as Exhibit A. Even if Plaintiff had described this action in detail sufficient to explain the relief that Plaintiff seeks and properly followed the resume notice provisions of section 37-92-302(3), C.R.S. (2014), Plaintiff is not relieved of the responsibility to identify parties that have an interest in this action under C.R.C.P. 19 and 57(j) and serve them in accordance with C.R.C.P. 4.

Where resume notice pursuant to section 37-92-302(3), C.R.S. (2014), is authorized, joinder pursuant to the rules of civil procedure is not appropriate. *See Southeastern Colorado Water Conservancy Dist. v. Fort Lyon Canal Co.*, 720 P.2d 133, 142-143 (Colo. 1986); *City of Aurora v. State Engineer*, 105 P.3d 595, 623 (Colo. 2005). The types of actions where resume notice is authorized are identified in section 37-92-301(a), C.R.S. (2014).

Even if they are water matters, actions that are not identified in section 37-92-301(a), C.R.S. (2014) do not qualify as matters in which the Plaintiff may utilize the resume notice provisions of section 37-92-302(3), C.R.S. (2014) instead of following C.R.C.P. 4 and 19. *See Gardner v. State*, 614 P.2d 357, 360-361 (Colo. 1980). In *Gardner*, the court found that resume notice pursuant to section 37-92-

302(1)(a), C.R.S. (2014) was not applicable to an action in which Plaintiffs sought to abandon another water user's water right. The court noted that the General Assembly did not include applications for a determination of abandonment in section 37-92-302(1)(a), C.R.S. (2014).

The court added:

[p]articularly where the applicant takes under the same source as the putative abandoned interest, or where the applicant's position in relation to unknown owners or their successors in interest is such that the applicant's water right will be enhanced by the decree, it is reasonable to require that the applicant utilize notice procedures more likely to apprise the water right owners or their successors in interest of the pending action than the resume notice provisions of section 37-92-302(3).

*Gardner*, 614 P.2d at 361.

Thus, if a matter before the water court is not specifically included in section 37-92-302(3), C.R.S. (2014), the plaintiff may be required:

“to make reasonable efforts to determine the identity and location of the owner or the successor in interest, and if those efforts are successful, to proceed under the pertinent provisions of C.R.C.P. 4 and 19. If the efforts to determine the identity and location of the owner or the successor in interest are unsuccessful, then the applicant may still proceed under the service by publication provisions of C.R.C.P. 4(h).”

*Id.* at 362 (internal citations omitted).

In this action, if all of Plaintiff's factual allegations are true, the declaratory relief that Plaintiff seeks would potentially result in Plaintiff having more water

available to its surface water rights, and well owners no longer having the ability to withdraw designated groundwater without being curtailed for Compact compliance purposes or having to ensure that their designated groundwater withdrawals do not injure senior surface water rights.

This type of complaint is not identified in section 37-92-302(1)(a), C.R.S. (2014) as a type of application to which resume notice procedures apply. This Court should order Plaintiff to make reasonable efforts to determine the identity and location of the well owners who have an interest in the subject matter of this action for the reasons stated above and to proceed under the pertinent provisions of C.R.C.P. 4 and 19. The Court should also order Plaintiffs to provide notice to those parties who have an interest in the subject matter of this action but whose identity and location may not be reasonably determined by the publication provisions of C.R.C.P. 4(h).

Water Courts for other Divisions have required service under the pertinent provisions of C.R.C.P. 4 and 19 in circumstances similar to those here. For example, in Case No. 2008CW3, the Water Court for Division 3 ordered the plaintiff to identify and serve parties on La Jara Creek because a declaratory judgment that would allow the plaintiff to increase the amount of water available to it would necessarily increase curtailment of other water users in order to meet the delivery requirements of the Rio Grande Compact. *See* Order dated July 7, 2008, filing ID 20539079, at p. 3-5. Also, in Case No. 12CW95, the Water Court for Division 2

ordered the plaintiff to identify and serve parties whose water rights could be directly affected by the declaratory relief that plaintiffs sought. *See* October 30, 2013 Order; Defendant's Motion to Dismiss, filing ID B96A6F345B3AD.

Resume notice is even more deficient in this case because well owners in the Northern High Plains Designated Ground Water Basin have little or no reason to consult the Water Resume Publication for Water Division 1 to look for applications or declaratory judgment actions that might affect their interests in designated groundwater. Any notice required under the Groundwater Management Act follows the procedures of section 37-90-112, C.R.S. (2014), not the resume notice provisions of the Water Rights Determination and Administration Act found in section 37-92-302(3), C.R.S. (2014). Thus, even if Plaintiff had adequately described this action in the February resume, well owners who have an interest in this action should not be considered to have received adequate notice by way of the February resume.

The Engineers acknowledge that in limited circumstance a declaratory judgment action can qualify as a determination of a water right such that resume notice is sufficient. *See, eg. Southern Ute Indian Tribe v. King Consol. Ditch Co.*, 250 P.3d 1226 (Colo. 2011). However, in *Southern Ute Indian Tribe v. King*, the declaratory judgment concerned an interpretation of an existing decree, which the court considered an application for determination of a water right already adjudicated. *Id.* at 1233-1234. Here, Plaintiff does not seek a declaratory judgment interpreting the decrees associated with its water rights, or even clarifying how its

water rights should be administered. Rather, Plaintiff seeks a wholesale change of the manner in which other water users' water rights are administered.

This declaratory judgment action is the kind of “party versus party litigation in water court that come[s] under the personal service requirements of C.R.C.P. 4 and 19.” *Id.* at 1235. Despite its geographic scope and the many well owners that this declaratory judgment action affects, this action is not “an application affecting all water rights on a stream system” in which resume notice is available. *Id.* As explained above, the complaint in this action is not an “application” within the meaning of section 37-92-302(1)(a), C.R.S. (2014), and this action does not concern all water rights on a stream system in the sense that resume notice is intended to address.

The underlying purpose of resume notice is “to put interested parties to the extent reasonably possible on inquiry notice of the nature, scope, and impact of the proposed diversion.” *Closed Basin Landowners Association v. Rio Grande Water Conservation District*, 734 P.2d 627, 634 (Colo. 1987). This notice is critical in the priority system because other water right owners have an interest in protecting their priority and ensuring that whatever the applicant proposes does not deprive the water right owner of the water to which he is entitled. Every application implicates how water rights on the stream system will be administered against each other.

This case concerns a Designated Ground Water Basin where rights to groundwater are not administered against surface water rights and are irrelevant to any potential analysis of injury to Plaintiff's surface water rights, not a case concerning determination of a water right in which resume notice procedures apply. Plaintiff should not be allowed to transform this action from one that affects specific parties into an application affecting all water rights on a stream system simply by refusing to identify the specific parties who have an interest in this action.

*D. The Colorado Ground Water Commission should be joined in this action because it is responsible for implementing and enforcing statutes that Plaintiff claims are unconstitutional.*

When declaratory relief is sought, “all persons shall be made parties who have or claim any interest which would be affected by the declaration.” C.R.C.P. 57(j). Plaintiff should join the Colorado Ground Water Commission as a defendant because it would be affected by and has strong interest in the declarations that Plaintiff seek.

The Groundwater Management Act created the Colorado Ground Water Commission to “facilitate the functioning” of the Act, *see* § 37-90-103(8), C.R.S. (2014), which includes determining designated basins and performing various other duties. *See, eg.* §§ 37-90-106, 111, C.R.S. (2014). These duties are separate from the duties of the State Engineer under the Act. *See, eg.* §§ 37-90-104, 105, 110, C.R.S. (2014).

Plaintiff asks this Court to enter a declaratory judgment that Senate Bill 52 (2010) is unconstitutional as applied to existing designated ground water basins, that the changes to section 37-90-106(1)(a), C.R.S., enacted by Senate Bill 52 (2010) shall have no force and effect in the Northern High Plains Designated Ground Water Basin and, in the alternative, that the Groundwater Management Act of 1965 is unconstitutional to the extent it prevents ground water and ground water depletions that are subject to a Compact from being administered and imposes that Compact obligation on surface water rights. *See* Complaint at p. 18, paras. C-E

No state agency would be more affected by this relief than the Colorado Ground Water Commission, because it is responsible for administering the very statutes that Plaintiff claims are unconstitutional. The Colorado Ground Water Commission's "specific duties" would be affected, and its "duties include implementation or enforcement of the statute being assailed." *See Lucchesi v. State*, 807 P.2d 1185, 1193-1194 (Colo. Ct. App. 1990). The Colorado Ground Water Commission is therefore "affected" by the declaratory judgment that Plaintiff seeks and must be joined as a necessary party in this action. *Id.*; C.R.C.P. 57(j); C.R.C.P. 19.

WHEREFORE, the Engineers respectfully request that this Court order the Plaintiff to make reasonable efforts to determine the identity and location of the well owners and wells that may be affected by this declaratory judgment action and to proceed with service under the pertinent provisions of C.R.C.P. 4 and 19 in order to

avoid dismissal under C.R.C.P 12(b)(6). The Court should also order Plaintiffs to provide notice to those parties who may be injured but whose identity and location may not be reasonably determined by the publication provisions of C.R.C.P. 4(h). Finally, the Engineers respectfully request that this Court order Plaintiff to join the Colorado Ground Water Commission under the pertinent provisions of C.R.C.P. 4 and 19 in order to avoid dismissal under C.R.C.P 12(b)(6). A proposed order is filed with this motion.

Respectfully submitted this 17<sup>th</sup> day of April, 2015.

CYNTHIA H. COFFMAN  
Attorney General

/s/

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### CERTIFICATE OF SERVICE

This is to certify that on this 17<sup>th</sup> day of April, 2015, I caused a true and correct copy of the foregoing **STATE AND DIVISION ENGINEERS' MOTION FOR JOINDER** to be served electronically via ICCES upon the following:

<b>Party Name</b>	<b>Party Type</b>	<b>Attorney</b>
Jim Hutton Educational Foundation	Plaintiff	Karen Leigh Henderson Steven J. Bushong (Porzak Browning & Bushong LLP)
Colorado Parks and Wildlife	Defendant	Katie L. Wiktor Timothy J. Monahan
Colorado Department of Natural Resources	Defendant	Preston V. Hartman Ema I. G. Schultz
Division of Water Resources	Defendant	Preston V. Hartman Ema I. G. Schultz
State Engineer	State Engineer	State Engineer
Division 1 Engineer	Division Engineer	Division 1 Water Engineer

*Filed pursuant to C.R.C.P. Rule 121 § 1-26.  
A duly signed original is on file with the Office of the Attorney  
General for the State of Colorado.  
/s/ Nan B. Edwards*

Nan B. Edwards

**DISTRICT COURT, WATER DIVISION 1, COLORADO  
FEBRUARY 2015 WATER RESUME PUBLICATION**

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN WATER DIV. 1

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications and certain amendments filed in the Office of the Water Clerk during the month of **FEBRUARY 2015** for each County affected.

DATE FILED: April 17, 2015 3:33 PM

**15CW9 SPRING GARDEN INCORPORATED, 100 Thunder Rd, Longmont, CO 80503. 303-823-4567. APPLICATION FOR SIMPLE CHANGE IN SURFACE POINT OF DIVERSION PURSUANT TO § 37-92-305(3.5), C.R.S. IN LARIMER COUNTY.** Decreed water right for which change is sought: W-341. Structure: Spring Garden Ditch, Spring Garden Upper Canal and Spring Garden Lower Canal. Date of original decree: 6-27-74, case no. W-341, WD1. The Spring Garden Ditch diverts water from the Little Thompson River at the headgate which is located in the NW1/4, NE1/4, S33, T4N, R70W of the 6<sup>th</sup> PM at a point bearing S 62° W a distance of 2300 ft. from the NE corner of said S33. The Spring Garden Ditch trends in a southerly direction bifurcating into the Spring Garden Upper Canal and Spring Garden Lower Canal at a point north of the Little Thompson River. The Upper Canal trends in a curve in an easterly direction returning to the river at a point approximately 3000 ft. from the point of bifurcation. The Lower Canal from the point of bifurcation trends south-easterly crossing the Little Thompson River, and then east returning to the river at a point approximately 4500 ft. from the point of bifurcation. The capacity of said ditch is represented by the applicant as being 10 cfs. Decreed source of water: Little Thompson River. Appropriation Date: 7-1-72. Amount: 3 cfs, Absolute. Use: irrigation of 60 acres located SE1/4, NE1/4 and the NE1/4, SE1/4 S33, T4N, R70W of the 6<sup>th</sup> PM. Amount of water applicant intends to change: 3 cfs, Absolute. Description of proposed change in a surface point of diversion: The September 2013 flood destroyed all structures and realigned the Little Thompson River 2 replacement structures must be constructed. 2 New Points of Diversion: Upper Spring Garden: Northing 4457917.73 Easting 480218.51, Zone 13. Lower Spring Garden: Northing 4457917.73 Easting 480218.51, Zone 13. Street address for both: 100 Thunder Rd., Longmont, CO.

**15CW3013 COMPLAINT FOR DELCARATORY JUDGMENT. THE PLATTE VALLEY IRRIGATION COMPANY, a Colorado Corporation, Plaintiff, 3005 W. 29<sup>th</sup> St., Ste. G1, Greeley, CO 80632 v. THE LUPTON MEADOWS DITCH COMPANY, a Colorado Corporation, Defendant, 11016 CR 23, Ft. Lupton, CO 80621.**

**15CW3014, Frank C. McLister, 12985 North Fourth Street, Parker, CO 80134 (James Petrock, Petrock & Fendel, 700 17<sup>th</sup> Street, #1800, Denver, CO 80202), APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION, DOUGLAS COUNTY.** Groundwater to be augmented: 0.84 acre-feet per year of not nontributary Denver aquifer groundwater as decreed in Case No. 00CW207, District Court, Water Division 1. Applicant is the owner of the subject groundwater which will be withdrawn through a well on Lot 6, Block 4, Grandview Estates, which is generally located in part of the N1/2N1/2 of Section 7, T6S, R66W of the 6th P.M., Douglas County, as shown on Attachment A hereto (Subject Property). Water rights to be used for augmentation: Return flows from the use of not nontributary Denver aquifer groundwater and return flows and direct discharge of nontributary Arapahoe and Laramie-Fox Hills aquifer groundwater as also decreed in Case No. 00CW207. Statement of plan for augmentation: The Denver aquifer groundwater will be used for inhouse use (0.35 acre-feet per year), irrigation of approximately 17,500 square-feet of home lawn, garden, and trees (0.45 acre-feet per year), and stockwatering of two large domestic animals (0.04). Applicant reserves the right to revise these amounts and uses without having to amend or republish this application. Sewage treatment will be provided by a non-evaporative septic system. Return flows associated with inhouse use will be approximately 90% of water used for that purpose and return flow associated with irrigation use will be approximately 10% of water used for that purpose. During pumping Applicant will replace an amount equal to 4% of the annual amount withdrawn pursuant to Section 37-90-137(9)(c.5), C.R.S. Depletion

**EXHIBIT A**

occurs to the Cherry Creek stream system. Return flows from use of the subject water rights from inhouse and irrigaton use will accrue to the South Platte River system via Cherry Creek and those return flows will be sufficient to replace the required amount of replacement while the subject groundwater is being pumped. Applicant will reserve an equal amount of nontributary groundwater as decreed in Case No. 00CW207 to meet post-pumping augmentation requirements. Further, Applicant prays that this Court grant the application and for such other relief as seems proper in the premises. (5 pages).

**15CW3015 (08CW116), Colorado Rockies Bible Camp & Conference, Inc., 5567 Painted Rocks Road, Woodland Park, CO 80863 (James Petrock, Petrock & Fendel, 700 17<sup>th</sup> Street, #1800, Denver, CO 80202), APPLICATION TO MAKE CONDITIONAL WATER RIGHT ABSOLUTE, OR IN THE ALTERNATIVE, FOR FINDING OF REASONABLE DILIGENCE, TELLER COUNTY.** Decree Information: Decreed on February 10, 2009, in Case No. 08CW116, District Court, Water Division 1. Name of structure: Camp Elim Well No. 1. Source of water: Quinlan Gulch, a tributary of the South Platte River. Date of appropriation: March 14, 1967. Amount of water claimed: 10 gpm (conditional). The well is also decreed for 5 gpm absolute and operates pursuant to an augmentation plan as also decreed in Case No. 08CW116 when not in priority. Location: In the SE1/4SE1/4 of Section 16, T11S, R69W of the 6th P.M., at a point approximately 100 feet from the south and 775 feet from the east section line of Section 16, as shown on Attachment A. Uses: domestic, commercial, irrigation and fire protection purposes. Request to Make Conditional Water Rights Absolute: The Camp Elim Well No. 1 was pumped in priority on September 16, 2013, at a rate of flow of 15 gpm for the decreed uses. Therefore, Applicant requests that the conditional rate of flow of 10 gpm be made absolute. In the alternative, this application for Finding of Reasonable Diligence is filed if the request to make the conditional water right absolute is not granted. In support of said application and in continuing the development of the conditional water right during this diligence period, Applicant has continued to use the Camp Elim Well No. 1 to supply water for the camp and conference center, and has continued to maintain, repair, and keep the well and water supply system in good working order. Further, Applicant prays that this Court grant the application and for such other relief as seems proper in the premises. (4 pages).

**15CW3016. Jahanbin Gandomcar, c/o Theresa Jehn-Dellaport, 1746 Cole Boulevard, Suite 340, Lakewood, Colorado 80401-3208. 720.524.4294. Robert E. Schween, Robert E. Schween, P.C., 62489 East Border Rock Road, Tucson, Arizona 85739. Telephone: 303-995-7870. Email: [respc@q.com](mailto:respc@q.com). APPLICATION FOR SIMPLE CHANGE IN POINT OF DIVERSION in DOUGLAS COUNTY. Plum Creek, tributary to the South Platte River.** Applicant is the owner of decreed water right known as the Charles T. Newmarch Ditch, originally decreed in the Decree of December 10, 1883. 2. **Name of Structure:** Charles T. Newmarch Ditch (“Newmarch Ditch”). 3. **Background:** A. Court Decree: Decree of December 10, 1883. The pertinent portion of this decree is attached as **Exhibit A**. B. Legal Description of Structure: The original location of the ditch was described as the SE1/4 of Section 10, Township 7 South, Range 68 West of the 6th P.M. C. Decreed Source of Water: Plum Creek, tributary to the South Platte River. D. Appropriation Date: April 30, 1873. E. Amount Decreed to Structure: 3.0 cfs, ABSOLUTE. F. Decreed Use: Irrigation of 45 acres in parts of the E1/2 of the NW1/4 and the SE1/4 of said Section 10. G. Amount of Water that Applicant Intends to Change: Entire amount (3.0 cfs). 4. **Description of Proposed Change:** A. Applicant proposes to change the point of diversion for the Newmarch Ditch from that originally described in the Decree of December 10, 1883, to its present location, described as follows: **At a point 1840 feet from the North section line and 2420 feet from the East section line in the SW1/4 of the NE1/4, Section 10, Township 7 South, Range 68 West of the 6th P.M., in Douglas County.** B. The original decreed location of the Newmarch Ditch and the changed point of diversion for the Newmarch ditch are shown on the location map attached as **Exhibit B** hereto. The new point of diversion is a pumped diversion rather than a headgate. C. The present location of the diversion point for the Newmarch Ditch has been in use since shortly after the original headgate diversion was destroyed by a flood on July 6, 1973. D. Under Section 37-92-305(3.5), C.R.S., a simple change in

**EXHIBIT A**

point of diversion is allowed if -- (1) The application is not combined with and does not include any other type of change; (2) There are no intervening surface diversion points or inflows between the new point of diversion and the diversion point from which a change is being made; (3) The change in point of diversion will not result in a greater flow rate or amount of water that has been decreed to the water right; (4) There is physically and legally available water at the new diversion point; and (5) The change in point of diversion will not injuriously affect the owners of or persons entitled to use water under a vested or decreed conditional water right. E. A technical report prepared by Quantum Water Consulting providing prima facie evidence with respect to the matters of this application is attached as **Exhibit C. 5. Name and Address of Landowner of the Land upon which the New Point of Diversion is Located:** The above named Applicant. WHEREFORE, Pursuant to Section 37-92-305(3.5), C.R.S., Applicant requests this Court to enter a Decree granting the requested change in point of diversion for the Charles T. Newmarch Ditch to reflect such structure's actual present location. FURTHER, Applicant requests this Court grant such other relief that it deems proper in this matter.

(3 Pages.)

**15CW3017 CITY OF WESTMINSTER**, 4800 West 92nd Avenue, Westminster, Colorado 80030, (303) 658-2400. **APPLICATION FOR A SEXENNIAL FINDING OF REASONABLE DILIGENCE IN ADAMS AND JEFFERSON COUNTIES.** All correspondence and pleadings should be sent to Lee H. Johnson and Mason H. Brown, Carlson, Hammond & Paddock, LLC, 1900 Grant St., #1200, Denver, CO 80203. Name of Structures: Westminster's Big Dry Creek Waste Water Treatment Plant, Metro Wastewater Reclamation District Plant, the Church Ditch, the Farmers' High Line Canal, and the Croke Canal. Description of conditional water rights: A. Date of Original Decree: June 14, 1994, Case No. 90CW211, District Court, Water Division 1, State of Colorado. B. List of Subsequent Diligence Decrees: June 28, 2001, Case No. 00CW103 and February 18, 2009, Case No. 07CW144, District Court, Water Division No. 1, State of Colorado. C. Location: In Case No. 90CW211, Westminster obtained a decree for two appropriative rights of exchange. The first right of exchange operates between the outfall of Westminster's Big Dry Creek Wastewater Treatment Plant ("Big Dry Creek Plant") and the Church Ditch headgate, the Farmers' High Line Canal headgate, and the Croke Canal headgate ("Big Dry Creek Exchange"). The second right of exchange operates between the outfall of the Metro Wastewater Reclamation District Plant ("Metro Plant") and the Church Ditch headgate, the Farmers' High Line Canal headgate, and the Croke Canal headgate ("Metro Exchange"). Collectively, these two exchanges are referred to herein as the "Subject Water Rights." The locations of the relevant structures are as follows: i. Westminster's Big Dry Creek Waste Water Treatment Plant: The outfall from the Big Dry Creek Plant is located at a point on the north bank of Big Dry Creek 400 feet east of Huron Street in the Northwest 1/4 of the Southwest 1/4 of Section 27, Township 1 South, Range 68 West, County of Adams, State of Colorado. Westminster provides the following coordinates to help further identify the approximate relevant location utilizing the Universal Transverse Mercator (UTM) grid system projection based on the North American Datum of 1983 (NAD83), Zone 13 North: (500574 E, 4420578 N). ii. Metro Wastewater Reclamation District Plant: The outfall from the Metro Plant is located at a point on the East bank of the South Platte River in Section 1, Township 3 South, Range 68 West, which lies 1,400 feet East of the SW corner of said Section 1, County of Adams, State of Colorado. Westminster provides the following coordinates to help further identify the approximate relevant location utilizing the Universal Transverse Mercator (UTM) grid system projection based on the North American Datum of 1983 (NAD83), Zone 13 North: (503898 E, 4406978 N). iii. Church Ditch: The headgate of the Church Ditch, also known as the Golden City and Ralston Creek Ditch, is located on the north bank of Clear Creek at a point in the NE1/4 of Section 32, Township 3 South, Range 70 West, Jefferson County, Colorado, 1450 feet S 69° 30' W from the northeast corner of said section. Westminster provides the following coordinates to help further identify the approximate relevant location utilizing the Universal Transverse Mercator (UTM) grid system projection based on the North American Datum of 1983 (NAD83), Zone 13 North: (478991 E, 4400296 N). iv. Farmers' High Line Canal: The headgate of the Farmers' High Line Canal is located on the North bank of Clear Creek in the SW1/4 of Section 27, Township 3 South, Range 70 West, a short distance

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below the Ford Street Bridge across Clear Creek in the City of Golden, Jefferson County, Colorado. This point is approximately 1.5 miles upstream of the headgate of the Croke Canal. Westminster provides the following coordinates to help further identify the approximate relevant location of the Farmers' High Line Canal headgate on Clear Creek utilizing the Universal Transverse Mercator (UTM) grid system projection based on the North American Datum of 1983 (NAD83), Zone 13 North: (481286 E, 4400999 N). v. Croke Canal: The headgate of the Croke Canal is located on the north bank of Clear Creek in the NW1/4NE1/4 of Section 26, Township 3 South, Range 70 West, 6th P.M., Jefferson County, Colorado. Westminster provides the following coordinates to help further identify the approximate relevant location utilizing the Universal Transverse Mercator (UTM) grid system projection based on the North American Datum of 1983 (NAD83), Zone 13 North: (483408 E, 4402089 N). Decreed points of diversion also include the following: At a point on Ralston Creek where the Croke Canal crosses Ralston Creek in Section 1, Township 3 South, Range 70 West, 6th P.M., Jefferson County, Colorado, at a point near the center of said Section 1. Westminster provides the following coordinates to help further identify the approximate relevant location on Ralston Creek utilizing the Universal Transverse Mercator (UTM) grid system projection based on the North American Datum of 1983 (NAD83), Zone 13 North: (485135 E, 4407840 N). On Leyden Creek at a point where the Croke Canal crosses Leyden Creek in the NW1/4 of Section 31, Township 2 South, Range 69 West, 6th P.M., Jefferson County, Colorado. C. Source: In Case No. 90CW211, Westminster obtained a decree for appropriate rights of exchange using effluent generated at the Big Dry Creek Plant and/or effluent generated at the Metro Plant as the substitute water supply. The source of water diverted by exchange is native to Clear Creek, Ralston Creek, and Leyden Creek. The source of the effluent that is used as a substitute supply is: (a) municipal return flows derived from exercise of the water rights changed in Case No. 90CW211, upon which any required returns have been paid, or upon which municipal return flows exceed required returns; and/or (b) municipal return flows derived from the exercise of the water rights changed in Case No. 90CW211, which accrue at times when no required returns are owed to the stream because there are no unsatisfied senior demands or the call is junior to the priority date of the exchange. D. Appropriation Dates: December 31, 1990. E. Amounts: 3 c.f.s. CONDITIONAL. F. Use: Pursuant to the decree entered in Case No. 90CW211, the water diverted by exchange will be used in Westminster's Municipal Water Utility System for municipal, irrigation, domestic, commercial, industrial, recreational, exchange, replacement, and augmentation purposes. Water diverted into Westminster's system by exchange shall carry rights of use, reuse, successive use, and disposition, and may be fully consumed by Westminster, since such water will be fully replaced with effluent that is derived from water that may be fully consumed. Detailed outline of what has been done toward completion of the appropriation and application to a beneficial use as conditionally decreed. A. The Subject Water Rights decreed in Case No. 90CW211, and continued in effect Case Nos. 00CW103 and 07CW144, are part of Westminster's Clear Creek Water Supply System, an integrated system under § 37-92-301(4)(b), C.R.S. During the diligence period, Westminster has continued the development of its Clear Creek Water Supply System. Activities have included, among other things: acquisition of additional interests in water on Clear Creek and its tributaries and the South Platte River; prosecuting Water Court applications to incorporate said interests into the City's Water Supply System; exercising conditional exchanges and making portions absolute or obtaining diligence decrees on the remaining conditional portions; completing negotiations on an amended contract for the construction of an additional storage vessel; completing negotiations on an intergovernmental agreement to minimize Jim Baker Reservoir facility impacts from regional transportation projects; construction and operation of an aeration system related to Jim Baker Reservoir; participation in Lower Clear Creek/Colorado Agricultural Ditch bifurcation structure project; and, participation in numerous Water Court cases for purposes of protecting, maintaining and developing Westminster's Water Supply System. Expenses associated with these activities were incurred during the diligence period. B. One of the sources of water to be exchanged via the conditional exchanges in Case No. 90CW211 is Westminster fully consumable effluent generated at the Big Dry Creek Plant. During the diligence period, Westminster finalized a \$44.5 million dollar upgrade to the BDCWWTP completed, in part, to meet discharge limitations and to increase treatment capacity at the Plant. Some of the expenditures related to said upgrades were incurred during the diligence

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period. In addition, during the diligence period, Westminster incurred operation and maintenance expenses associated with the Big Dry Creek Plant. Another source of water to be exchanged is Westminster's fully consumable effluent generated at the Metro Wastewater Reclamation District Plant. During the diligence period, Westminster paid certain fees to the Metro Wastewater Reclamation District related to treatment and discharge of Westminster's effluent at the Metro Plant. C. During the diligence period, Westminster continued to operate under the carriage agreement with the Farmers' High Line Canal and Reservoir Company for the use of excess capacity in the Farmers' High Line Canal. This agreement allows Westminster to carry additional water through the Farmers' High Line Canal, including water exchanged to the Farmers' High Line Canal in accordance with the decree in Case No. 90CW211. Westminster is contractually obligated to pay an annual fee for use of the Farmers' High Line Canal. Westminster has continually made these payments during the diligence period. D. During the diligence period, Westminster paid funds in the form of ditch assessments to the Church Ditch Water Authority, the Farmers' High Line Canal and Reservoir Company, and the Farmers' Reservoir and Irrigation Company. Said assessments have been used in part to fund annual operations and maintenance activities associated with the Farmers' High Line Canal, the Church Ditch and the Croke Canal. Through ownership interests and/or agreements, Westminster claims the right to carry excess water in these ditches and the exchanges decreed in Case No. 90CW211 directly involve these ditches. E. During the diligence period, Westminster has participated in a number of water court proceedings in an effort, in part, to protect and maintain return flows to Big Dry Creek and the Clear Creek and South Platte River basins. Costs associated with these efforts were incurred during the diligence period. Water applied to beneficial use: N/A. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: The Big Dry Creek Plant, and the related outfall, is owned by Westminster and located on City lands. On information and belief, the Metro Plant, and the related outfall, is owned by Metro Wastewater Reclamation District. There is no need to modify either of these outfalls in order to accomplish the conditional exchanges. Moreover, all structures associated with the conditional exchanges diverting from Clear Creek are existing, not new structures. There is no need to modify these structures in order to accomplish the conditional exchanges. On information and belief, a new or modified diversion structure diverting from Ralston Creek into the Croke Canal may be located on lands owned by: Farmers Reservoir and Irrigation Company, 80 South 27<sup>th</sup> Avenue, Brighton, Colorado 80601; City of Arvada, 8101 Ralston Road, Arvada, Colorado 80002. Solely as to the application filed in this matter, Westminster no longer seeks diligence as to the "exchange to" point on Leyden Creek at the Croke Canal. For purposes of this decree only, the Leyden Creek diversion point will be abandoned as an "exchange to" point under the decree in Case No. 90CW211. This applies solely to the diversion point adjudicated for exchange purposes in Case No. 90CW211, and no other decree or water right. Additional notice by certified or register mail, as set forth in § 37-92-302(2)(b), C.R.S., will be provided to the entities identified above for the Ralston Creek diversion point to the Croke Canal. The remaining structures involved with the conditional exchanges are all existing, not new, diversion or storage structures and no additional notice beyond the notice provided by the publication and resume is required. WHEREFORE, Westminster requests the Court to enter its decree and ruling as follows: 1. Consistent with paragraph 8 of the decrees in Case Nos. 00CW103 and 07CW144, to make a finding and enter a ruling confirming that the conditional exchanges adjudicated in Case No. 90CW211 are part of Westminster's Clear Creek Water Supply System, an integrated system under § 37-92-301(4)(b), C.R.S.; 2. To make a finding of reasonable diligence with respect to Westminster's Big Dry Creek Exchange and Metro Exchange that were conditionally decreed in Case No. 90CW211, and continued in effect in Case Nos. 00CW103 and 07CW144, and providing that a subsequent showing of diligence on these exchanges be made six years from the date of entry of a decree of diligence; 3. To enter a judgment and decree that Westminster has been reasonably diligent in the development of the conditional exchanges originally adjudicated in Case No. 90CW211; and, 4. Any other ruling the Court deems appropriate in the above-captioned matter.

**15CW3018 THE JIM HUTTON EDUCATIONAL FOUNDATION’S COMPLAINT FOR DECLARATORY JUDGMENT REGARDING ADMINISTRATION OF WATER RIGHTS IN THE REPUBLICAN RIVER BASIN AND THE CONSTITUTIONALITY OF SENATE BILL 52 (2010), AND THE GROUND WATER MANAGEMENT ACT. Plaintiff: The Jim Hutton Educational Foundation, a Colorado non-profit corporation. PO Box 427, Burlington, CO 80807. v. Defendants: Dick Wolfe, in his capacity as the Colorado State Engineer, 1313 Sherman St., Ste. 821, Denver, CO 80203; David Nettles in his capacity as Division Engineer in and for Water Division No. 1, State of Colorado, 810 9<sup>th</sup> St., Ste. 200, Greeley, CO 80631; The Colorado Department of Natural Resources, 1313 Sherman St., Room 718, Denver, CO 80203; Colorado Division of Water Resources, 1313 Sherman St., Ste. 821, Denver, CO 80203; and Colorado Parks and Wildlife, 1313 Sherman St., 6<sup>th</sup> Floor, Denver, CO 80203..**

**15CW3019 (05CW263), Little Thompson Water District** c/o Nancy Koch, Water Resources Manager, 835 East Highway 56, Berthoud CO 80513. Applicant’s Attorney: Lee H. Johnson, Reg. No. 18852, Johanna Hamburger, Reg. No. 45052, Carlson, Hammond & Paddock, LLC, 1900 Grant Street, Suite 1200, Denver, Colorado 80203, Phone Number: (303) 861-9000. **APPLICATION FOR A SEXENNIAL FINDING OF REASONABLE DILIGENCE IN LARIMER AND WELD COUNTIES, COLORADO.** 1. Name and address of Applicant: Little Thompson Water District (“Applicant” or the “District”), c/o Nancy Koch, Water Resources Manager, 835 East Highway 56, Berthoud CO 80513, (970) 532-2096. 2. Name of Structures: The Bayshore Lakes, the Bayshore Diversion, and the 05CW263 Conditional Exchange as described in paragraph 3, below. A map setting forth the approximate locations of the relevant structures is attached as Exhibit A. 3. Description of conditional water rights: A. Bayshore Lakes Water Right. i. Date of Original Decree: Case No. 05CW263, Water Court Division 1, State of Colorado, decreed on February 4, 2009. ii. Subsequent Findings of Diligence: Not applicable. iii. Legal Description: In Case No. 05CW263, the Applicant obtained a decree for a conditional water storage right involving up to four separate lakes (the “Bayshore Lakes”, a.k.a., the “Barefoot Lakes”). Pursuant to said decree, up to three of the Bayshore Lakes would be located in the South 1/2 of Section 35 and 36, Township 3 North, Range 68 West, of the 6th Principal Meridian. These three lakes will be filled by a surface diversion (the “Bayshore Diversion”), which will be located on the north bank of St. Vrain Creek in the SW1/4SW1/4 of Section 35, Township 3 North, Range 68 West of the 6th Principal Meridian. The approximate UTM coordinates for said structure would be 502,013E, 4,447,325N (with units in meters), Zone 13N, NAD 83. The fourth pond of the Bayshore Lakes storage right would be located in the South 1/2 of Section 25, Township 3 North, Range 68 West, of the 6th Principal Meridian. Water will be conveyed to this location by a pipe from the other Bayshore ponds located in Sections 35 and 36, Township 3 North, Range 68 West. The approximate location of the outfall of the Bayshore Lakes for releasing water back to St. Vrain Creek will be located at the following UTM coordinates: 503,650E, 4,447,884N (with units in meters), Zone 13N, NAD 83. iv. Source: St. Vrain Creek, tributary to the South Platte River. v. Appropriation Date: August 4, 2005. vi. Amount: 1,400 acre-feet annually. The total combined capacity of the Bayshore Lakes, which may include up to four separate lakes, will be approximately 1,400 acre-feet. Little Thompson has requested the right to fill and refill these lakes when in priority up to a total annual appropriation of 1,400 acre-feet. The rate of fill for the Bayshore Lakes shall not exceed 10 c.f.s. vii. Use: In accordance with the decree entered in Case No. 05CW263, the water diverted pursuant to this water right will be used for agricultural, commercial, industrial, irrigation, augmentation, replacement, exchange, and municipal purposes, within the Applicant’s service area, as it currently exists or as it may be modified in the future. Such uses include, but are not limited to, domestic, irrigation of lawns, gardens and parks, fire protection, recreational, wildlife, piscatorial, lake and reservoir evaporation, and use as a substitute supply and to meet replacement, return flow, or other obligations related to other decreed water rights. Applicant intends to use and reuse the water claimed to extinction. B. 05CW263 Conditional Exchange. i. Date of Original Decree: Case No. 05CW263, Water Court Division 1, State of Colorado, decreed on February 4, 2009. ii.

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Subsequent Findings of Diligence: Not applicable. iii. Legal Description: In Case No. 05CW263, the Applicant obtained a decree for a conditional appropriative right of exchange involving the exchange of water from the St. Vrain Sanitation District's Wastewater Treatment Plant Outfall, as currently constructed, or as relocated in the future, and a point approximately 100 feet downstream of the St. Vrain Sanitation District's Wastewater Treatment Plant Outfall. As set forth in said decree, the Wastewater Treatment Plant Outfall is located generally on St. Vrain Creek in the SW1/4NE1/4 of Section 31, Township 3 North, Range 67 West of the 6th Principal Meridian, and more particularly described as 40°11'3" North, 104°55'51" West. Water would be exchanged to the Bayshore Diversion for storage in the Bayshore Lakes, as described in paragraph 3.A, above. iv. Source: St. Vrain Creek for water diverted by exchange. The source of substitute supply includes reusable sewer return flows from Applicant's fully consumable water after a first use within the Bayshore development, from the following sources: (1) Applicant's Windy Gap Water; (2) Water stored in the Bayshore Lakes pursuant to the conditional water rights claimed herein or as a result of fully augmented out-of-priority diversions; and (3) any other decreed fully consumable source that is approved by the Division Engineer, provided that Little Thompson notifies all objectors prior to using a source of substitute supply other than those sources identified above. v. Appropriation Date: August 4, 2005. vi. Amount: 2.5 c.f.s., conditional. vii. Use: In accordance with the decree entered in Case No. 05CW263, the water diverted pursuant to this water right will be used for agricultural, commercial, industrial, irrigation, augmentation, replacement, exchange, and municipal purposes, within the Applicant's service area, as it currently exists or as it may be modified in the future. Such uses include, but are not limited to, domestic, irrigation of lawns, gardens and parks, fire protection, recreational, wildlife, piscatorial, lake and reservoir evaporation, and use as a substitute supply and to meet replacement, return flow, or other obligations related to other decreed water rights. Applicant intends to use and reuse the water claimed to extinction. 4. Detailed outline of what has been done toward completion of the appropriation and application of water to a beneficial use: A. The Bayshore Lakes Conditional Storage Right and the related plan for augmentation and appropriative rights of exchange are all part of Little Thompson's Water Supply System, an integrated system under § 37-92-301(4)(b), C.R.S. During the diligence period, Little Thompson has continued the development of its Water Supply System. Activities have included, among other things: acquisition of additional interests in senior water rights diverting from the Big Thompson and Little Thompson, both tributary to the South Platte River; ongoing acquisition of Colorado-Big Thompson ("CBT") interests; ongoing acquisition efforts related to interests in Windy Gap units; continued participation in the Windy Gap Firming Project and associated efforts and expenses related to obtaining a Record of Decision from the lead federal agency associated with said Firming Project; and, participating in various Water Court proceedings. Expenses associated with these activities were incurred during the diligence period. In addition, in connection with the operation of the Little Thompson Water Supply System and during the diligence period, the District diverted water into the Bayshore Lakes as discussed below. B. During the diligence period, construction of the proposed Bayshore Lakes was initiated and completed. The Bayshore Lakes, as originally constructed, were located in the South 1/2 of Section 35 and 36, Township 3 North, Range 68 West, of the 6th Principal Meridian. As part of the construction activity, the Bayshore Lakes were lined in accordance with the requirements of the decree and in conformance with the August 1999 State Engineer Guidelines for Lining Criteria for Gravel Pits. By letter dated September 7, 2007, the Division Engineer for Water Division No. 1, approved the lining of the Bayshore Lakes. Expenses associated with these activities were incurred during the diligence period. During the historic flooding events of September, 2013, the lakes and associated structures were significantly damaged. Prior to the flood event, the Bayshore Lakes were located immediately north of the then-banks of St. Vrain Creek. The significant flooding events of 2013 caused the course of the St. Vrain Creek to shift, inundating the Bayshore Lakes and extensively damaging the bentonite liners associated with the Bayshore Lakes. Since that time, significant efforts were initiated to rebuild the lakes and repair the damage done by the floods. These efforts are ongoing. Expenses associated with these activities were incurred during the diligence period. C. During the diligence period and prior to the September 2013 flood events, design plans, cost estimates, and permitting inquiries were conducted regarding the Bayshore Diversion structure. An engineer's opinion on cost estimates was

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commissioned. Guidance was sought from the U.S. Army Corps of Engineers (“Corps”) regarding whether or not the lake construction would require a Section 404 permit. By a letter dated January 30, 2007, the Corps stated that a 404 permit was not necessary. Expenses related to the design plan, estimates, and inquiries were incurred during the diligence period. D. During the diligence period, commencing on June 29, 2011, and ending on August 1, 2011, (prior to the damaging floods of September, 2013), the Applicant pumped water from the St. Vrain Creek into the constructed Bayshore Lakes. During this period, the rate of flow varied, but the maximum flow rate was 10 c.f.s., which is consistent with the limitation in the decree. During the diversion times identified above, and with the approval of the water commissioner, Little Thompson caused a total of 601 acre-feet to be diverted from the St. Vrain River into the Bayshore Lakes. Expenses related to this diversion were incurred during the diligence period. E. The augmentation plan, including exchange, originally adjudicated in Case No. 05CW263 contemplated using water derived from Windy Gap units as a source of augmentation and exchange. Windy Gap Water is fully-consumable trans-mountain delivered from the Colorado River Basin to the South Platte River Basin. It is derived from an allotment contract with the Municipal Subdistrict of the Northern Colorado Water Conservancy District for Windy Gap Project water (“Windy Gap Water”). The water rights associated with the Windy Gap Project are more particularly described in the decrees entered by the District Court, Water Division No. 5, in Civil Action Case No. 1768 and in Cases No. W-4011, 80CW108, 88CW169, and 89CW298. During the diligence period, Little Thompson took steps to acquire an interest in 12 units of said Windy Gap Water, previously held by the City of Greeley. Prior to and during the diligence period, the City of Greeley initiated discussions regarding the transfer of twelve units of Windy Gap water from Greeley to Little Thompson. As a result of these discussions, the City of Greeley and Little Thompson are in the process of applying to the Subdistrict for the transfer and assignment of all right, title, and interest in twelve units of Subdistrict water via a petition for an allotment contract. Expenses associated with these efforts were incurred during the diligence period. 5. Water applied to beneficial use for claim of absolute right: Although the Applicant did take steps to divert St. Vrain water into the completed Bayshore Lakes during the summer of 2011, (see paragraph 4.D., above), Applicant is not claiming any such amounts absolute in this proceeding. Applicant, however, reserves the right to claim as absolute any water that is diverted in priority and placed to beneficial use during the pendency of this matter in accordance with the decree in Case No. 05CW263. 6. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: On information and belief, new or modified diversion and storage structures from St. Vrain Creek may be located on lands owned by: St. Vrain Lakes Metropolitan District No. 1, 6465 S. Greenwood Plaza Blvd., Suite 700, Centennial, Colorado 80111. On information and belief, the lands on which the St. Vrain Sanitation District’s Wastewater Treatment Plant outfall is currently located are owned by: St. Vrain Sanitation District, 11307 Business Park Circle, Firestone, CO 80504. Additional notice by certified or register mail, as set forth in § 37-92-302(2)(b), C.R.S., will be provided to these entities. The remaining structures involved with the conditional exchanges are all existing, not new, diversion or storage structures. WHEREFORE, Applicant requests the Court to enter its decree and ruling as follows: 1. To make a finding of reasonable diligence with respect to the entirety of the Bayshore Lakes Conditional Storage Right and providing that a subsequent showing of diligence be made six years from the date of entry of a decree of diligence in this matter. 2. To make a finding of reasonable diligence with respect to the entirety of the conditional exchange adjudicated in 05CW263 and providing that a subsequent showing of diligence be made six years from the date of entry of a decree of diligence in this matter. 3. To the extent subsequently diverted in priority and applied to beneficial use during the pendency of this matter, to make absolute such amounts as the Court deems appropriate and enter a finding of reasonable diligence for up to the entirety of the remaining conditional amounts associated with the decree entered in 05CW263. 4. Any other ruling the Court deems appropriate in the above-captioned matter.

**15CW3020, Smart Reservoir and Irrigation, Inc., 10050 Wadsworth Blvd., Westminster, CO 80021, (303) 469-1873 and The Consolidated Mutual Water Company, 12700 West 27<sup>th</sup> Avenue, Lakewood, CO 80215, (303) 238-0451**, through counsel Evan D. Ela, Esq., Collins Cockrel & Cole, P.C., 390 Union Boulevard, Suite 400, Denver, CO 80228, (303) 986-1551, APPLICATION TO MAKE ABSOLUTE DECREED CONDITIONAL WATER RIGHTS in **JEFFERSON COUNTY**. **2. Name of Structures:** Smart Reservoir (aka Rocky Flats Lake) and Last Chance Ditch. **3. Location of Structures:** The decreed storage and filling structures are located as decreed in Civil Action No. 14183, Boulder County District Court: (a) Smart Reservoir (aka Rocky Flats Lake): The reservoir is located in Sections 16 and 21, Township 2 South, Range 70 West of the 6th P.M., in Jefferson County, Colorado; the initial point of survey for the maximum high water line of which is a point on the south line of Section 16, Township 2 South, Range 70 West of the 6th P.M., from whence the SE corner of said Section 16 bears N89°51'E a distance of 2,448.57 feet; (b) Last Chance Ditch: Smart Reservoir is filled by means of diversions from Coal Creek into the Last Chance Ditch and then by a lateral from the Last Chance Ditch to Smart Reservoir; the headgate of said Last Chance Ditch is located on the south side of Coal Creek at the mouth of the canyon in Section 18, Township 2 South, Range 70 West of the 6th P.M., in Jefferson County, Colorado. **4. Description of the Subject Water Rights from Prior Decrees:** Smart Reservoir, Inc. and Consolidated Mutual jointly own the water rights described below as the Smart Reservoir Third Enlargement and the Smart Reservoir Refill rights in the respective amounts of 77.5% for Consolidated Mutual and 22.5% for Smart Reservoir, Inc.: (a) Original Decrees. The original decree for the Smart Reservoir Third Enlargement was issued on July 17, 1961, in Civil Action No. 14183, Boulder County District Court, State of Colorado. The original decree granted a total 423.95 acre-feet of storage, of which 175.56 acre-feet were decreed absolute and 248.39 acre-feet were decreed conditional. Soon after, on May 14, 1962, the Boulder County District Court, under the same Civil Action No. 14183, decreed an additional 58.31 acre-feet of storage as absolute, the remaining 190.08 acre-feet conditional, with the right to fill at a flow rate of up to 28.78 cfs through Last Chance Ditch. The original decree for the Smart Reservoir Refill was issued on March 4, 1964 in Civil Action No. 14622, Boulder County District Court, State of Colorado. The original decree granted a total 874.94 acre-feet of storage, of which 131.12 acre-feet were decreed absolute and 743.83 acre-feet were decreed conditional, with the right to fill at a flow rate of up to 28.78 cfs through Last Chance Ditch; (b) Change decree. In Case No. W-7955(75), District Court, Water Division 1, the Subject Water Rights, along with other rights associated with Smart Reservoir and the Last Chance Ditch were changed from their respective original uses to use for domestic, irrigation, municipal, manufacturing, industrial, recreation, fish & wildlife, and replacement of evaporative loss uses; (c) Prior diligence. The most recent diligence approval for the Subject Water Rights was granted in the Division 1 Water Court in Case Nos. 02CW271 and 07CW253, which were consolidated for trial under Case No. 02CW271. Separate decrees were issued by this Court under each case number. The decree entered in Case No. 02CW271, dated November 6, 2014, continued diligence of the remaining 190.08 acre-feet conditional right through November of 2020. The decree entered in Case No. 07CW253, dated November 6, 2014, continued diligence through November of 2020 for 276.20 acre-feet of the remaining conditional refill right due to a stipulated abandonment of a portion of the original conditional refill right as described below; (d) Partial abandonment. As a condition for reaching settlement with the City of Boulder in the consolidated Case Nos. 02CW271 and 07CW253, the Applicants affirmatively abandoned a portion of the remaining conditional Smart Reservoir Refill right. The decree entered in Case No. 07CW253, dated November 6, 2014, continued diligence for 276.20 acre-feet. A Notice of Abandonment for the abandonment of 467.63 acre-feet of the conditional Smart Reservoir Refill water right was filed with the Division 1 Water Court; (e) Volumetric limits. In the consolidated Case Nos. 02CW271 and 07CW253, the Division 1 Water Court imposed volumetric limits and conditions as set forth in the decrees and Stipulation between Applicants and the City of Boulder. The volumetric limits restrict the Applicants' total diversions of water from Coal Creek into the Last Chance Ditch for storage in Smart Reservoir under the Subject Water Rights (the Smart Reservoir Third Enlargement and Smart Reservoir Refill) as well as Smart Reservoir Priorities 5, 9, and 16, and diversions to storage (as allowed by the change decree issued in Case No. W-7955(75)) under the 3.23 cfs direct

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flow water right decreed to the Last Chance Ditch. The cumulative total annual maximum was set at 1,105.27 acre-feet, with a 13-year running long term average of 5,562 acre-feet. The diversions supporting the claims for perfection made in this Application incorporate and are limited to the claims made by the above-described volumetric limits; (f) Smart Reservoir Third Enlargement: (1) Source: Coal Creek; (2) Date of appropriation: April 13, 1956; (3) Amount: 233.87 acre-feet, ABSOLUTE, and the remaining 190.08 acre-feet, CONDITIONAL, with the right to fill at a flow rate of up to 28.78 cfs through the Last Chance Ditch; (4) Beneficial uses: Domestic, irrigation, municipal, manufacturing, industrial, recreation, fish & wildlife, and replacement of evaporative loss; (g) Smart Reservoir Refill: (1) Source: Coal Creek; (2) Date of appropriation: June 15, 1962; (3) Amount: 131.12 acre-feet, ABSOLUTE, and the remaining 276.20 acre-feet, CONDITIONAL, with the right to fill at a flow rate of up to 28.78 cfs through the Last Chance Ditch; (4) Beneficial uses: Domestic, irrigation, municipal, manufacturing, industrial, recreation, fish & wildlife, and replacement of evaporative loss. **5. Claim to make absolute**: Smart Reservoir, Inc. and Consolidated Mutual have maintained steady application of effort to complete the appropriation of the conditional portions of the Subject Water Rights up to and through the adjudication of continued diligence in Case Nos. 02CW271 and 07CW253. This Application seeks to perfect the balance of the remaining conditional portion of the Subject Water Rights: (a) Pursuant to §37-92-301(4)(e), C.R.S., a conditional water storage right may be decreed absolute for all decreed purposes based on the volume captured, possessed and controlled at the decreed storage structure; (b) Smart Reservoir (aka Rocky Flats Lake) stores water under a number of decreed rights. The original Smart Reservoir right (priority 5), the Smart Reservoir First Enlargement (priority 9), and the Smart Reservoir Second Enlargement (priority 16), are all senior in priority to the Smart Reservoir Third Enlargement (priority 45), and the Smart Reservoir Refill (priority 52). The Reservoir filled during 2013, the basis for the claims for absolute herein, based on allocating storage under the most senior priority first; (c) In water years 2003, 2007, and 2013, diversions through the Last Chance Ditch were captured and stored under the Smart Reservoir Third Enlargement priority to its full extent. Therefore, Applicants claim the remaining 190.08 acre-feet of conditional storage rights under the Smart Reservoir Third Enlargement as absolute; (d) In water year 2013, diversions through the Last Chance Ditch were captured and stored under the Smart Reservoir Refill right in the amount of 407.32 acre-feet. In 2013, after initially diverting the 131.12 acre-feet under the absolute portion of the Smart Reservoir Refill water right, Applicants diverted 276.20 acre-feet of water under the conditional portion of the right for a total annual diversion of 407.32 acre-feet. Therefore, Applicants claim the remaining conditional 276.20 acre-feet of storage rights under the Smart Reservoir Refill as absolute; (e) Diversion records for the Last Chance Ditch into storage at the Smart Reservoir support the above claims to make absolute; (f) The Subject Water Rights, as fully perfected rights, will be subject to the total annual maximum and 13-year moving average volumetric limits described in the decrees issued in Case Nos. 02CW271 and 07CW253. The decree issued in this matter will restate the same limitations as applicable to the perfected rights. **6. Name and address of potentially affected landowners**: (a) Smart Reservoir is located on lands currently owned by the United States Fish and Wildlife Service, USPO Box 6014, Omaha, Nebraska 68102. (7 pages)

**15CW3021 The Groundwater Management Subdistrict of the Central Colorado Water Conservancy District (District), 3209 West 28<sup>th</sup> Street, Greeley, Colorado 80634**, c/o Lawrence Jones Custer Grasmick LLP, 5245 Ronald Reagan Blvd., Suite 1, Johnstown, CO, (970)622-8181. APPLICATION TO ADD WELLS TO AUGMENTATION PLAN IN WELD COUNTY. 2. Augmentation Plan. Applicant operates an augmentation plan decreed in Case No. 02CW335. ¶14.5 of the decree in Case No. 02CW335 (Decree) allows the addition of wells to the plan subject to notice and terms and conditions. 3. Structures to be Added and Augmented. 3.1. Decreed Name of Structures to be Added and Augmented. Rock Well No. 1-11652-R (WDID 0208572); McArthur Well No. 1-13979-R (WDID 0207168); McArthur Well No. 2-13980-R (WDID 0207169); Schmidt Well No. 12013 (WDID 0207995); Greenhead Ranch Well. Permit No. 15424-R (WDID 0206015), hereinafter “Wells.” 3.2. Name and Address of Well Owners. Melecio and Margaret A. Chavez, 739 WCR 47, Hudson, CO 80634

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(Rock Well No. 1). Eckhardt Farms, Inc., Frank A. Eckhardt Jr., David F. Eckhart and Steven A. Eckhardt, 21454 WCR 33, LaSalle, CO 80645 (McArthur Wells No. 1 and 2). Schmidt Estate Revocable Trust, A.F. Schimit & Co., V.J. Schmidt & Co., 13539 WCR 10, Fort Lupton, CO 80621 (Schmidt Well); Michael Janeczko, 3920 Ogallala Rd, Longmont, CO 80503 (Greenhead Ranch Well). 3.3. Rock Well Decree. A decree was entered in Water Court, Water Division No. 1, Case No. W-5661 on September 21, 1978, adjudicating Rock Well No. 1-11652 in the NE1/4 NE1/4 Section 35, Township 1 North, Range 65 West of the 6th P.M., Weld County, Colorado at a point 1300 feet South and 650 feet West of the NE corner of Section 35, in the amount of 1.67 c.f.s absolute with an appropriation date of September 20, 1952 for irrigation of 157 in the NE1/4 Section 35, Township 1 North, Range 65 West of the 6th P.M., Weld County, Colorado, along with Rock Well No. 2-11653 and Rock Well No. 3-11654. Rock Well No. 1-11652 irrigates 60 acres. 3.4. McArthur Wells No. 1 & 2 Decree. A decree was entered in Case No. W-597 on December 29, 1971, adjudicating McArthur Well No. 1-13979 in the SE1/4 NW1/4 Section 14 and McArthur Well No. 2-13980 in the SE1/4 NE1/4 Section 14, both in Township 4 North, Range 66 West of the 6th P.M., Weld County, Colorado in the amount of 2.22 c.f.s. each, absolute, with appropriation dates of 1928 for McArthur Well No. 1 and August, 1946 for McArthur Well No. 2 for irrigation of 120 acres in the S1/2 NW1/4 and part of the S1/2 NE1/4 Section 14, Township 4 North, Range 66 West of the 6th P.M., Weld County, Colorado. 3.5. Schmidt Well Decree. A decree was entered in Case No. W-766 on July 23, 1975, adjudicating Schmidt Well No. 12013 at a point 68 feet North of the South line and 1300 feet East of the West line of Section 8, Township 1 North, Range 66 West of the 6th P.M., Weld County, Colorado, in the amount of 1050 g.p.m. or 2.34 c.f.s., absolute, with an appropriation date of April 30, 1955 for irrigation of 60 acres in Section 8, Township 1 North, Range 66 West of the 6th P.M., Weld County, Colorado. 3.6. Greenhead Ranch Well. An application for water right for Greenhead Ranch Well, Permit No. 14524-F was filed in Case No. 14CW3141 on November 25, 2104, Water Court, Water Division No. 1, seeking to adjudicate Greenhead Ranch Well located in the NE1/4 SW1/4 Section 18, Township 4 North, Range 66 West of the 6th P.M., Weld County, Colorado at a point described by the UTM coordinate, Northing 4462194, Easting 515111, UTM Zone 13, NAD83, in the amount of 160 g.p.m. (0.36 c.f.s) and 3.75 af/yr., conditional, with an appropriation date of November 25, 2014 for irrigation of 7 acres in the NE1/4 SW1/4, Section 18, Township 4 North, Range 66 West of the 6th P.M., Weld County, Colorado. 4. Proposed Terms and Conditions. 4.1. The terms and conditions for the Wells will be the same as for the other Member Wells in the Decree. The consumptive use factors will be 60% for flood irrigated acres and 80% for sprinkler irrigated acres. The method for determining future Well depletions will be those set out in the Decree at ¶17.3.3.2. The Wells will be subject to all the terms and conditions for operation as for other Member Wells in the Decree. 4.2. Net Stream Depletions. Depletions resulting from the consumptive use of groundwater and accretions resulting from deep percolation of groundwater applied for irrigation will be lagged back to the South Platte River using the Glover alluvial aquifer method and the following parameters.

Permit	WD ID	Well Name	GMS Contract		GMS Depletions				Admin Reach
			No.	Name	Aquifer Parameters				
					X (ft)	W (ft)	sy	T (gpd/ft)	
1165 2-R	020 857 2	Rock Well No. 1	1112	Chavez, Melecio & Margaret A.	6,600	7,300	0. 2	52,000	E
1397 9-R	020 716 8	McArthur Well No. 1	1113	Eckhardt Farms, Inc.	11,300	25,000	0. 2	146,00 0	C

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1398 0-R	020 716 9	McArthur Well No. 2			12,700	25,500	0. 2	148,00 0	C
1201 3-R	020 799 5	Schmidt Well 12013	699	Schmidt Estate Revocab le Trust	4063.65* **	7498.6 9***	0. 2	72,100 **	F
1452 4-R	020 601 5	Greenhea d Ranch	Not issued as of 2/15/2015.		920	13,700	0. 2	66,300	C

4.3 Out of priority depletions from pumping of the Wells will be augmented by GMS.

**15CW3022 JOHANI FAMILY REVOCABLE LIVING TRUST**, 10965 McKISSICK RD., PEYTON, CO 80831-8326. (719) 238-0612; Attorney for Applicant: Myrna L. Bennett, #9632, Myrna L. Bennett, PC.; 4570 Hilton Parkway, Suite 103, Colorado Springs, CO 80907, Telephone (719) 260-0272, **APPLICATION FOR FINDING OF REASONABLE DILIGENCE IN PARK COUNTY**. Date of original decree: 9-4-02 in case 96CW492, WD 1. Subsequent decree: 2-9-09 in case 08CW176, WD1. Johani Well located NW1/4, NE1/4, S26, T9S, R75W of the 6th PM at a point approximately 2480 ft. from E. section line and 825 ft. from N section line. a/k/a Lot 58, Filing 25, Indian Mountain Subdivision, 1055 Bowstring Rd. Source: Ground water. Appropriation date: 5-31-73. Amount: 15 gpm. Use: Household.

**15CW3023 Stapp Lakes Ranch, LLC, c/o Christine B. Orris, 101 Model T Road, Boulder Colorado**, 80302, (763) 392-5726. Application for Finding of Reasonable Diligence in **BOULDER COUNTY**. 1. Name, address, and telephone number of Applicants: Stapp Lakes Ranch, LLC, c/o Christine B. Orris, 101 Model T Road, Boulder Colorado, 80302, (763) 392-5726. Please copy Applicant's counsel, Christopher L. Thorne, Kylie J. Crandall, Holland & Hart LLP, P.O. box 8749, Denver, CO 80201-8749, (303) 295-8000, [cthorne@hollandhart.com](mailto:cthorne@hollandhart.com), [kjcrandall@hollandhart.com](mailto:kjcrandall@hollandhart.com). 2. Name of Structure. a. Stapp Reservoir, which was formerly known as Manas Sarovar Reservoir, and also known as Big Lake (referred to herein as "Big Lake"); and b. Stapp Ditch, which was formerly known as Kailash Kund Ditch, used to fill Big Lake (referred to herein as "Stapp Ditch"). 3. Information From Previous Decree. a. Date of Original Decree: The original decree in Case No. 97CW378 (Water Division No. 1) was entered on December 28, 2000. b. Subsequent Finding of Diligence: A finding of reasonable diligence was made on February 18, 2009 in Case No. 06CW282 (Water Division No. 1). c. Legal Description of Big Lake: Big Lake is located in the SE1/4 of Section 22, Township 2 North, Range 73 West, 6th P.M., Boulder County, Colorado; the outlet is at a point N 79°17'50"W 1338.7 feet from the SE corner of Section 22. Big Lake is depicted on the map attached to this Application as Exhibit 1. d. Legal Description of Stapp Ditch (which is the point of diversion used to fill Big Lake): Stapp Ditch is located on the North Fork of Beaver Creek. The headgate of the ditch is located in the S1/2 of the SE1/4 of Section 21, Township 2 North, Range 73 West, 6th P.M. at a point described as follows: A point 680 feet north of the south line of said Section 21, and 6,620 feet west of the west line of Section 26, Township 2 North, Range 73 West, 6th P.M. e. Source: North Fork of Beaver Creek, a tributary to South St. Vrain Creek, a tributary to St. Vrain Creek. f. Appropriation date: December 30, 1997. g. Amount: 40 acre feet, conditional, with the right to fill and refill when water is legally available. The rate of diversion for filling this off-channel reservoir is 1.6 cfs. h. Use: Domestic use (including three cabins, a main house, a caretaker's house, and one lodge in SE1/4 of Section 22 and SW1/4 of Section 23). 4. Integrated System. There is an integrated system of water rights that serves Applicant's Stapp Lakes Ranch property (the "Property"), which includes Big Lake and the water right associated with Big Lake

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described in this Application. “When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.” C.R.S. § 37-92-301(4)(b). 5. Detailed outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed. During the most recent diligence period, the Applicant has continued to take steps to diligently develop the conditional water right associated with Big Lake including, without limitation, the activities described below. This list is not intended to be all-inclusive and may be supplemented by additional evidence. a. Applicant purchased the Property in 2012, and since that time has been working with consultants to develop a plan for the Property and the associated water rights, including the conditional Big Lake water right described in this Application. The water rights are an important aspect of the Applicant’s plans for its Property, and Applicant intends to further develop and utilize the water rights pursuant to such plans. b. In conjunction with the purchase of the Property, Applicant and its representatives and consultants conducted several site visits to inspect the Property and the water rights, including inspecting Big Lake and confirming the location of the Stapp Ditch point of diversion. c. Applicant regularly cleans and maintains, and has improved the structures associated with its water rights on the property, including Big Lake. Applicant also regularly cleans and maintains the Stapp Ditch diversion structure. d. Applicant engaged the services of water resources, engineering, and environmental consultants for advice with respect to the above-described activities and associated water rights matters. e. Applicant engaged the services of attorneys to provide legal advice with respect to the above-described activities and associated water rights matters. f. Total expenditure in time and money for all the above-described work during the diligence period is difficult to determine, but is conservatively estimated at \$20,000. 6. Names and addresses of owners of land on which structure is located and upon which water is placed to beneficial use: Applicant.

**15CW3024, Bromley District Water Providers, LLC, c/o The Bromley Companies, 8301 East Prentice Avenue, Suite 100, Greenwood Village, Colorado 80111, (303) 785-3584** (Carolyn F. Burr, James M. Noble, Jens Jensen, WELBORN SULLIVAN MECK & TOOLEY, P.C., 1125 – 17<sup>th</sup> Street, Suite 2200 Denver, CO 80202, (303) 830-2500, APPLICATION FOR CHANGE OF NOT NONTRIBUTARY AND NONTRIBUTARY DENVER BASIN WATER RIGHTS AND APPROVAL OF A PLAN FOR AUGMENTATION IN THE NOT NONTRIBUTARY DAWSON AND DENVER BASIN AQUIFERS, **DOUGLAS COUNTY**. 2. **Application for Change of Water Rights.** This Application concerns decreed nontributary Denver Basin ground water underlying approximately 1,471 acres, which is a portion of the Bell Mountain Ranch sub-division located near Castle Rock in Douglas County, Colorado (the “Subject Lands”). The Subject Lands are described in the 80CW158 Decree as follows: Portions of Sections 2, 3 and 4 of Township 9 South, Range 67 West and Section 34, Township 8 South, Range 67 West of the 6<sup>th</sup> P.M., Douglas County, Colorado. *See* General Location Map, Exhibit A and Subject Lands Legal Description, Exhibit B. Bell Mountain Ranch is comprised of 305 residential lots. The subject water rights were originally adjudicated in Case No. 80CW158, which was entered on Sept. 16, 1981. On December 30, 2002, the decree was amended to reflect the final annual entitlement in the Lower Dawson, Denver and Arapahoe aquifers based on site specific data. In 1994, after the land was subdivided, 260 a.f. per year of the Denver aquifer water and 240 a.f. per year of the Arapahoe aquifer water were conveyed to what is now the Consolidated Bell Mountain Ranch Metropolitan District, which provides water service to the residential lots of Bell Mountain Ranch. This application does not cover the rights conveyed to Consolidated Bell Mountain Ranch Metropolitan District. This application also does not involve the water underlying 51.32 acres (Bell Mountain Lots 98, 99, 100 and 101, Bell Mountain Ranch Subdivision, Filing 1-A) owned by R&M Devco. (R&M Devco owns 3.6% of the remaining water, in each aquifer, under the original 80CW158 Decree after the conveyance of 260 a.f./year in the Denver aquifer and 240 a.f./year in the Arapahoe aquifer: Dawson, 14.3 a.f./year; Denver, 6.7 a.f./year; Arapahoe, 15.3 a.f./year; Laramie Fox Hills, 10.8 a.f./year.). The remainder of the 80CW158 water rights were conveyed to Bromley District Water Providers, LLC (“Bromley”) in 2001 and 2002. Bromley

subsequently conveyed portions of the water to other parties referred to herein as the “Bromley Grantees.” (The Bromley Grantees, together with the amounts of Denver Basin water owned in each aquifer, are as follows: **Town of Lochbuie:** Dawson 200 a.f./year, Denver 145 a.f./year, Arapahoe 425 a.f./year; **Ravenna Metropolitan District:** Dawson 136.5 a.f./year, Denver 129.8 a.f./year, Arapahoe 157.7 a.f./year; **Diversified et al:** Denver 33.3 a.f./year, Laramie Fox Hills 289.2 a.f./year; **Bromley District Water Providers, LLC:** Dawson 0.02 a.f./year, Denver 634.2 a.f./year. \*Diversified et al consists of the following entities and individuals, and the percentage each owns in the totals shown above for the Denver and Laramie Fox Hills aquifers: Diversified Mortgage 11.809%, Carol A. Wilkins 14.130%, Robert A. Lembke 18.254%, Castle Pines Land Trust 7.359%, Richard E. Damiano 2.270%, Damiano Family Trust 13.363%, and CAW Equities 32.815%). The water owned by Bromley and the Bromley Grantees is hereinafter referred to as the “Subject Water Rights.” The Bromley Grantees have all executed consents to the relief requested herein regarding the Subject Water Rights. The Subject Water Rights are or are intended to be exported for beneficial use outside of the Bell Mountain Ranch subdivision.

2.1. Previous Decrees. 2.1.1. The original decree in this matter, entered by the Court on September 16, 1981 in Case No. 80CW158 (the “80CW158 Decree”), adjudicated the non-tributary groundwater in the Dawson, Denver, Arapahoe and Laramie Fox Hills aquifers underlying approximately 1,471 acres in Douglas County, Colorado as follows: a) Dawson: 397 a.f./year; b) Denver: 445 a.f./year; c) Arapahoe: 665 a.f./year; d) Laramie Fox Hills: 300 a.f./year. The 80CW158 Decree was entered by the Division 1 Water Court on Sept. 16, 1981, prior to the passage of Senate Bill 5 (“S.B. 5”) and the subsequent adoption of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7 and the Denver Basin Rules, 2 CCR 402-6. The 80CW158 Decree thus differs from post-S.B. 5 Denver Basin decrees in that it identifies specific locations for each well; contains volumetric pumping limits on each well; limits the percentage of the total annual allocation that can be pumped by each well; and does not provide for a “well field” concept which allows for one or more wells located within a single aquifer to pump singly, or in combination, the decreed annual volume for that aquifer. 2.1.2. On December 30, 2002, the Court, pursuant to its retained jurisdiction authority, amended the original decree in this case to reflect the final annual entitlement in the Lower Dawson, Denver and Arapahoe aquifers based on site specific engineering data (hereinafter “Amended Decree”) as follows: a) Dawson: -46 a.f./year for a total of 351 a.f./year; b) Denver: +764 a.f./year for a total of 1209 a.f./year; c) Arapahoe: +173 a.f./year for a total of 838 a.f./year. No other changes were made to the terms of the 80CW158 Decree. 2.1.3. To date, there are a total of five of the 80CW158 decreed wells that are permitted and completed. The Consolidated Bell Mountain Metropolitan District owns an existing Arapahoe well, located on Tract I, Filing 1-B, Permit No. 51785-F, for 240 a.f. of Arapahoe aquifer water, depicted on Exhibit A as “District Well 1.” The District has also completed a well to withdraw 260 a.f. of Denver aquifer water on Tract I, Filing 1-B, Permit No. 75848-F, depicted on Exhibit A as “District Well 2.” Bromley has completed the following three wells, which are depicted on Exhibit A as BR-1, BR-2 and BR-3: a) Well DN-5 a/k/a BR-1, a Denver aquifer well located on Tract K, Filing 1-A, Well Permit No. 057961-F; b) Well DA-3 a/k/a BR-2, a Dawson aquifer well located on Tract L, Filing 1-A, Well Permit No. 057960-F; and c) Well Arap-1 a/k/a BR-3, an Arapahoe aquifer well located on Tract L in Filing 1-A, Well Permit No. 057962-F.

2.2. Subject Water Rights. Taking into account the court’s determinations of water rights in the 80CW158 Decree and the Amended Decree, and excluding the portion of the water rights conveyed to R&M Devco and the Consolidated Bell Mountain Metropolitan District, the water rights that are the subject of this Application are the water rights owned by Bromley and the Bromley Grantees as follows (Subject Water Rights): a) Dawson: 336.7 a.f./year; b) Denver: 942.3 a.f./year; c) Arapahoe: 582.7 a.f./year; d) Laramie Fox Hills: 289.2 a.f./year. This Application seeks to (1) change the points of diversion for the Subject Water Rights to add several alternate points of diversion in different locations from the originally decreed points of diversion and (2) modify the terms and conditions of the 80CW158 Decree to allow the withdrawal of water in a manner that is consistent with the current Statewide Nontributary Ground Water Rules and Denver Basin Rules. Applicant is not seeking to alter or expand the allowed annual amount of withdrawal decreed in 80CW158, as amended. However, application of the existing Denver Basin Rules to the Subject Water Rights results in a portion of the water in the Dawson and the Denver aquifers being

potentially reclassified from nontributary to not nontributary. Accordingly, in light of this potentiality, Applicant also seeks approval of a plan for augmentation to replace depletions from those aquifers in accordance with the Denver Basin Rules and C.R.S. §37-90-137(9).

**2.3. Decreed Names of Structures for Which Change is Sought.** The 80CW158 decree identified the following specific locations for wells in each aquifer: Pursuant to the terms of the 80CW158 Decree, wells completed into each aquifer may be used as alternate points of diversion for other wells in that same aquifer, subject to certain volumetric limitations.

2.3.1 DA-1: The decreed location of DA-1 is the SW1/4 SE1/4 of Section 2, Township 9 South, Range 67 West of the 6<sup>th</sup> P.M., at a point 1000 feet from the South Section line and 1900 feet from the East Section line of said Section 2.

2.3.2. DA-2: The decreed location of DA-2 is the SE1/4 NE1/4 of Section 3, Township 9 South, Range 67 West of the 6<sup>th</sup> P.M., at a point 2105 feet from the North Section line and 760 feet from the East Section line of said Section 3.

2.3.3. DA-3 a/k/a BR-2: a Lower Dawson aquifer well located in the SW1/4 of the NE1/4 of Section 34, Township 8 South, Range 67 West of the 6<sup>th</sup> P.M., at a point 2100 feet from the North Section line and 1700 feet from the East Section line of said Section 34, Well Permit No. 057960-F.

2.3.4. DN-1: The decreed location of DN-1 is the NE1/4 NW1/4 of Section 2, Township 9 South, Range 67 West of the 6<sup>th</sup> P.M., at a point 800 feet from the North Section line and 2500 feet from the West Section line of said Section 2.

2.3.5. DN-2: The decreed location of DN-2 is the SW1/4 SW1/4 of Section 2, Township 9 South, Range 67 West of the 6<sup>th</sup> P.M., at a point 1000 feet from the South Section line and 1000 feet from the West Section line of said Section 2.

2.3.6. DN-3: The decreed location of DN-3 is the NE1/4 SW1/4 of Section 3, Township 9 South, Range 67 West of the 6<sup>th</sup> P.M., at a point 1500 feet from the South Section line and 1400 feet from the West Section line of said Section 3.

2.3.7. DN-4: The decreed location of DN-4 is the SE1/4 SE1/4 of Section 34, Township 8 South, Range 67 West of the 6<sup>th</sup> P.M., at a point 100 feet from the South Section line and 1000 feet from the East Section line of said Section 34.

2.3.8. DN-5 a/k/a BR-1, a Denver aquifer well located in the SE1/4 of the NE1/4 of Section 34, Township 8 South, Range 67 West of the 6<sup>th</sup> P.M., at a point 1470 feet from the North Section line and 300 feet from the East Section line of said Section 34, Well Permit No. 62772-F.

2.3.9. Arap-1 a/k/a BR-3, an Arapahoe aquifer well located in the SW1/4 of the NE1/4 of Section 34, Township 8 South, Range 67 West of the 6<sup>th</sup> P.M., at a point 2200 feet from the North Section line and 1800 feet from the East Section line of said Section 34, Well Permit No. 057962-F.

2.3.10. LF-1: The decreed location of LF-1 is the NW1/4 NE1/4, Section 34, Township 8 South, Range 67 West of the 6<sup>th</sup> P.M., at a point 1300 feet from the North Section line and 2700 feet from the West Section line of said Section 34.

2.3.11. LF-2: SE1/4 NW1/4, Section 3, Township 9 South, Range 67 West of the 6<sup>th</sup> P.M., at a point 2300 feet from the North Section line and 2900 feet from the East Section line of said Section 3.

**2.4. Proposed Change in Points of Withdrawal:** Applicant seeks to change the 80CW158 Decree, as amended, to authorize wells which will withdraw the groundwater from each of the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers at the Alternate Well Sites described below.

2.4.1. AW-1: Located in the Northwest Quarter of Section 34, Township 8 South, Range 67 West of the 6<sup>th</sup> P.M., Douglas County, Colorado within a portion of Tract B, Bell Mountain Ranch Subdivision Filing 1-A, at a point 375 feet from the North Section line and 1,485 feet from the West Section line.

2.4.2. AW-4: Located in the Northwest Quarter of Section 3, Township 9 South, Range 67 West of the 6<sup>th</sup> P.M., Douglas County, Colorado within a portion of Tract P, Bell Mountain Ranch Subdivision Filing 1-B, at a point 1,238 feet from the North Section line and 1,694 feet from the West Section line.

2.4.3. AW-6: Located in the Southwest Quarter of Section 3, Township 9 South, Range 67 West of the 6<sup>th</sup> P.M., Douglas County, Colorado in a portion of Lot 208, Bell Mountain Ranch Subdivision Filing 1-B, at a point 279 feet from the West Section line and 2,589 feet from the South Section line.

2.4.4. AW-7: Located in the Southwest Quarter of Section 3, Township 9 South, range 67 West of the 6<sup>th</sup> P.M., Douglas County, Colorado in a portion of Tract Q, Bell Mountain Ranch Subdivision Filing 1-B, at a point 2,490 feet from the West Section line and 2,575 feet from the South Section line.

2.4.5. AW-9: Located in the Northwest quarter of Section 34, Township 8 South, Range 67 West of the 6<sup>th</sup> P.M., Douglas County, Colorado in a portion of Tract F-1, Bell Mountain Ranch Subdivision Filing 1-A, 2<sup>nd</sup> Amendment, at a point 1,210 feet from the West Section line and 2,381 feet from the North Section line.

**2.5. Modification of Decree Terms and Conditions to be Consistent with the Statewide Nontributary Ground Water Rules**

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and Denver Basin Rules: Currently, paragraph 17 and Table 1 of the 80CW158 Decree limit the withdrawal of water volumetrically and as a percentage of total pumping in each aquifer by well. These limitations make it practically and economically difficult for Applicant to withdraw the total annual allocation in each aquifer. In addition, the 80CW158 Decree lacks other provisions contained in the Statewide Nontributary Ground Water Rules and Denver Basin Rules that would enable the applicant to complete wells and ensure its ability to fully withdraw the Subject Water Rights. Accordingly, Applicant seeks a modified decree with the following terms and conditions:

2.5.1. Applying the Denver Basin Rules to the Subject Water Rights will result in the following re-characterizations of the Dawson and Denver aquifers: a) For the Subject Lands in Sections 3 and 4, Township 9 South, Range 67, the Dawson consists of not nontributary Lower Dawson aquifer. Applicant will replace to Plum Creek the actual depletions associated with the withdrawal of such water. b) For the Subject Lands in Section 2, Township 9 South, Range 67 West, the Dawson aquifer is undifferentiated, and is not nontributary. Applicant will replace to Plum Creek the actual depletions associated with the withdrawal of such water. c) For the Subject Lands in Section 34, Township 8 South, Range 67 West, the Lower Dawson is nontributary and does not require augmentation. d) For the Subject Lands in Sections, 3 and 4, Township 9 South, Range 67 West and Section 34, Township 8 South, Range 67 West, the Denver aquifer is reclassified from nontributary to not nontributary. Applicant will make replacements to Plum Creek of 4% of its withdrawals of such water. e) For the Subject Lands in Section 2, Township 9 South, Range 67 West, the Denver aquifer is nontributary and does not require augmentation.

2.5.2. Pursuant to the Denver Basin Rules and C.R.S. §37-90-137(9), Applicant will relinquish two percent (2%) of its withdrawals of the nontributary Subject Water Rights to Plum Creek.

2.5.3. Applicant seeks to have up to four active wells completed at any of Bromley's three Completed Well Sites or the Alternate Well Sites provided that each well shall be completed into a single aquifer and that if two or more wells are completed in a particular aquifer at different well sites, the entire annual withdrawal decreed for said aquifer may be produced through any combination of such wells.

2.5.4. The total withdrawal by Applicant from wells completed into any aquifer shall not exceed the Applicant's interest in the allowed annual amount of withdrawal decreed in 80CW158 and the Amended Decree allocated to the Subject Water Rights.

2.5.5. Pursuant to C.R.S. §37-90-137(10), Applicants shall have the right to construct additional wells.

2.5.6. A totalizing flow meter shall be installed on each well prior to withdrawing any water therefrom, and shall be maintained and operational at all times for the life of the well. Applicant shall keep accurate records of all withdrawals by each well, make any calculations necessary, and submit such records to the Division Engineer upon request.

2.5.7. The entire length of the open bore hole shall be geophysically surveyed prior to casing and the copies of the geophysical log submitted to the Division of Water Resources.

2.5.8. Groundwater production shall be limited to the subject aquifers. Plain, non-perforated casing shall be installed and properly grouted to prevent withdrawal from or intermingling of water from zones other than those for which the well was designed.

2.5.9. Each well shall be permanently identified by its permit number, water court Case No. 80CW158, and the name of the producing aquifer on the above-ground portion of the well casing or on the pump house.

2.5.10. Applicant waives any 600 foot spacing rule for its own wells, but must satisfy C.R.S. §37-90-137(4) for wells owned by others on the Subject Lands or adjacent properties, unless otherwise agreed to by the owners of said wells.

2.5.11. The allowed annual amount of withdrawal may exceed the allowed average annual amount of withdrawal as long as the total volume of water withdrawn from the well or wells does not exceed the product of the number of years since the date this application is approved times the allowed average annual amount of withdrawal.

3. Plan for Augmentation.

3.1. Groundwater to be Augmented: All of the Subject Water Rights were previously decreed in 80CW158, as amended:

3.1.1. Applicant's interest in the not nontributary Dawson and Lower Dawson aquifer Water Rights from wells located in Sections 2, 3 and 4, Township 9 South, Range 67 West.

3.1.2. Applicant's interest in the not nontributary Denver aquifer groundwater located in Sections 3 and 4, Township 9 South, Range 67 West, and Section 34, Township 8 South, Range 67 West.

3.2 Water Rights to be Used for Augmentation: The water rights to be used to replace any injurious out-of-priority depletions during pumping are direct discharge from the use of Applicant's interest in the not nontributary Upper Dawson, Lower Dawson and Denver Subject Water Rights, and direct discharge from the use of Applicant's

interest in the nontributary Dawson, Denver, Arapahoe and Laramie Fox Hills Water Rights. The water rights to be used for augmentation of any injurious post pumping depletions resulting from pumping the not nontributary wells described herein is Applicant's interest in the nontributary water from the Laramie-Fox Hills aquifer. 3.3. Statement of Plan for Augmentation. The Subject Water Rights in the Dawson, Lower Dawson and Denver aquifers will be used, reused and successively used for all municipal purposes, including domestic, industrial, commercial, irrigation, stock watering, recreation, fire protection and any other beneficial purposes. Said waters will be produced for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes, as originally decreed in Case No. 80CW158. Applicants will withdraw the Dawson, Lower Dawson and Denver aquifer groundwater through wells to be located at the points described herein, or through additional permitted wells. Because Applicant intends to export the Subject Water Rights for uses outside of the Subject Lands, all uses shall be considered to be 100% consumed. During pumping, Applicant will replace actual depletions in the not nontributary portions of the Dawson and Lower Dawson aquifers pursuant to C.R.S. §37-90-137(9)(c.5) and 4% of the withdrawals in the not nontributary portion of the Denver aquifer pursuant to C.R.S. §37-90-137(9)(c.5). Replacement of such depletions will be made to Plum Creek. Applicant will reserve an equal amount of nontributary groundwater decreed in Case No. 80CW158, as amended, to meet post pumping augmentation requirements. 3.4. Ownership of Subject Lands. Applicant has obtained the consent of the overlying landowners pursuant to a Settlement Agreement, the effective date of which is Feb. 27, 2009 and recorded at the Douglas County Clerk and Recorder's Office at Reception No.2010015114. Because Applicant's right to withdraw groundwater has been determined by a valid decree, pursuant to C.R.S. §37-90-137(4)(b.5)(III), Applicant is not required to provide notice of this application by registered or certified mail to every record owner of the overlying land.

**15CW3025 (07CW137, 98CW448). City of Golden, 911 Tenth Street, Golden, Colorado 80401, Attention: Public Works Director (303) 384-8010. APPLICATION TO MAKE CONDITIONAL RIGHTS ABSOLUTE AND FOR FINDING OF REASONABLE DILIGENCE IN JEFFERSON COUNTY, COLORADO. CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF GOLDEN ). DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO, 901 9th Avenue, Greeley, CO 80631. 1. Name, address and telephone number of applicant: City of Golden, 911 Tenth Street, Golden, Colorado 80401, Attention: Public Works Director (303) 384-8010. Direct all pleadings to: Glenn E. Porzak (#2793), Steven J. Bushong (#21782), Porzak Browning & Bushong LLP, 2120 13<sup>th</sup> Street, Boulder, CO 80302. 2. Name of Structures: City of Golden White Water Course and City of Golden White Water Course (Extension). 3. Description of Decreed Conditional and Absolute Water Rights. A. City of Golden White Water Course i. Date of Original Decree: The City of Golden White Water Course (referred to herein as the "Course") was decreed on June 13, 2001, in Case No. 98CW448, by the District Court in and for Water Division 1. The decree was affirmed on appeal by operation of law. *State Engineer v. City of Golden*, 69 P.3d 1027 (Colo. 2003). ii. Date of Previous Diligence Finding: February 6, 2009, in Case No. 07CW137, by the District Court in and for Water Division 1. iii. Legal Description. The Course is located within the modified channel of Clear Creek in the NW1/4 of the NE1/4 of Section 33, T. 3 S., R. 70 W. of the 6th P.M., Jefferson County, Colorado. The Course begins at a rock deflector device followed by 7 dam structures of various types, each of which controls, concentrates and directs the stream flow for the beneficial uses described below. See Exhibit A, attached. The locations of the structures that constitute the Course are as follows: a. Structure 1. A dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 82°56'9" W., a distance of approximately 2790 feet. b. Structure 2. A deflector dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 84°37'37" W., a distance of approximately 2843 feet. c. Structure 3. A deflector dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N.**

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85°38'33" W., a distance of approximately 2888 feet. d. Structure 4. A deflector dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 85°59'33" W., a distance of approximately 2954 feet. e. Structure 5. A dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 87°25'56" W., a distance of approximately 3000 feet. f. Structure 6. A dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 88°44'21" W., a distance of approximately 3245 feet. g. Structure 7. A dam located at a point within the channel of Clear Creek where the NW corner of Section 33, T. 3 S., R. 70 W. bears N. 88°25'32" W., a distance of approximately 3546 feet. iv. Source: Clear Creek, a tributary of the South Platte River. v. Appropriation Date: December 30, 1998. vi. Amounts decreed: The following tables display the monthly flow rates decreed for the structures that constitute the City of Golden White Water Course. The water right was originally decreed part absolute and part conditional for the time period of 6 a.m. – 6 p.m. and fully conditional for the time period of 6 p.m. – 6 a.m., as follows:

6 a.m. – 6 p.m.	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70
Decreed absolute (cfs)	43	42	45	166	325	840	562	157	129	85	62	49
Decreed conditional (cfs)	27	28	25	89	675	160	438	402	122	58	41	21
6 p.m. – 6 a.m.	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed conditional (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70

vii. Beneficial Use: recreational boating purposes. B. City of Golden White Water Course (Extension) i. Date of Original Decree: The City of Golden White Water Course (Extension) (referred to herein as the “Course Extension”) was decreed on June 13, 2001, in Case No. 98CW448, by the District Court in and for Water Division 1. The decree was affirmed on appeal by operation of law. *State Engineer v. City of Golden*, 69 P.3d 1027 (Colo. 2003). ii. Date of Previous Diligence Finding: February 6, 2009, in Case No. 07CW137, by the District Court in and for Water Division 1. iii. Legal Description. The Course Extension was decreed for up to ten structures within the channel of Clear Creek in a reach beginning immediately below Structure 7 of the Course, as described above at paragraph 3(A)(iii), and extending approximately 2750 feet within the channel of Clear Creek, terminating at a point in the SW1/4 of the SW1/4 of Section 27, T. 3 S., R. 70 W., of the 6<sup>th</sup> P.M., approximately 1,300 feet North of the South section line and 800 feet East of the West section line, in Jefferson County. See Exhibit A. The City of Golden has constructed seven of the ten structures comprising the Course Extension. Those Course Extension structures are located in Sections 27, 28, and 33, T. 3 S., R. 70 W. of the 6<sup>th</sup> P.M., Jefferson County, Colorado, and when considering the North line of said Section 33 to bear South 89°40'13" West, the location of each existing Course Extension structure was more specifically described in the Case No. 07CW137 decree, as follows: a. Structure No. 8. A structure located in the NE1/4 of Section 33, at a point within the channel of Clear Creek which bears South 86°07'13" West, approximately 1620 feet from the NE corner of said Section 33 (the Section corner common to said Sections 27, 28, and 33). b. Structure No. 9. A structure located in the NE1/4 of said Section 33, at a point within the channel of Clear Creek which bears South 86°22'24" West, approximately 1540 feet from the NE corner of said Section 33 (the Section corner common to said Sections 27, 28, and 33). c. Structure No. 10. A structure located in the SE1/4 of said Section 28, at a point within the channel of Clear Creek which bears North 87°18'58" West, approximately 1260 feet from the SE corner of said Section 28 (the Section corner common to said

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Sections 27, 28, and 33). d. Structure No. 11. A structure located in the SE1/4 of said Section 28, at a point within the channel of Clear Creek which bears North 73°50'51" West, approximately 1060 feet from the SE corner of said Section 28 (the Section corner common to said Sections 27, 28, and 33). e. Structure No. 12. A structure located in the SE1/4 of said Section 28, at a point within the channel of Clear Creek which bears North 50°39'22" West, approximately 880 feet from the SE corner of said Section 28 (the Section corner common to said Sections 27, 28, and 33). f. Structure No. 13. A structure located in the SE1/4 of said Section 28, at a point within the channel of Clear Creek which bears North 31°55'10" West, approximately 870 feet from the SE corner of said Section 28 (the Section corner common to said Sections 27, 28, and 33). g. Structure No. 14. A structure located in the SW1/4 of said Section 27, at a point within the channel of Clear Creek which bears North 01°04'11" East, approximately 970 feet from the SW corner of said Section 27 (the Section corner common to said Sections 27, 28 and 33). iv. Source. Clear Creek, a tributary of the South Platte River. v. Date of Appropriation: December 30, 1998. vi. Amounts decreed: The following tables display the monthly flow rate decreed for the structures that constitute the Course Extension. Both the time periods of 6 a.m. – 6 p.m. and 6 p.m. – 6 a.m. were originally decreed fully conditional, as follows:

6 am – 6 pm	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed conditional (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70
6 pm – 6 am	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed conditional (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70

vii. Beneficial Use: Recreational boating purposes. 4. Additional amounts Made Absolute in Case No. 07CW137. In Case No. 07CW137, this Court found that additional portions of the water rights decreed to the Course and Course Extension had become absolute. As a result of the decree in Case No. 07CW137, the monthly absolute flow rates for the Course and the Course Extension are now identical. The following tables display the total monthly flow rate that has been made absolute and the monthly flow rate that remains conditional for both the Course and Course Extension for the time periods of 6 a.m. – 6 p.m., and 6 p.m. – 6 a.m.

6 a.m. – 6 p.m.	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70
Total absolute (cfs)	70	61	70	190	671	1000	741	260	188	142	73	70
Remaining conditional (cfs)	0	9	0	65	329	0	259	299	63	1	30	0
6 p.m. – 6 a.m.	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70
Total absolute (cfs)	0	0	55	101	1000	1000	741	260	188	91	0	0
Remaining conditional (cfs)	70	70	15	154	0	0	259	299	63	52	103	70

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5. Claim to Make Additional Water Rights Absolute for the City of Golden White Water Course and White Water Course (Extension). All of the fourteen existing structures comprising the Course and Course Extension have been placed to beneficial use during the six years since the decree in Case No. 07CW137 was entered by the Water Court. Applicant is entitled to make absolute those flow rates put to beneficial use in any given month at the structures within the Course and Course Extension. Documented beneficial use during the diligence period when flows met or exceeded the decreed water rights, or when flows exceeded the amounts previously found to be absolute, included competitions, expert showcase demonstrations, kayaking and swiftwater rescue lessons, club excursions, day camp outings, and drop-in use by Golden residents and visitors. Based upon such use, the City of Golden claims additional amounts of the Course and Course Extension water rights absolute as summarized in the tables below. The amounts not yet made absolute are noted as remaining conditional. The City of Golden reserves the right to make additional portions of the water rights absolute based upon flows and use that occur while this application is pending.

6 am – 6 pm	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70
Total currently absolute (cfs) under 07CW137	70	61	70	190	671	1000	741	260	188	142	73	70
Additional claimed absolute (cfs)	0	0	0	65	329	0	259	299	63	1	30	0
Remaining conditional (cfs)	0	9	0	0	0	0	0	0	0	0	0	0
6 pm – 6 am	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Total decreed (cfs)	70	70	70	255	1000	1000	1000	559	251	143	103	70
Total currently absolute (cfs) under 07CW137	0	0	55	101	1000	1000	741	260	188	91	0	0
Additional claimed absolute (cfs)	0	0	15	154	0	0	259	299	63	52	0	0
Remaining Conditional (cfs)	70	70	0	0	0	0	0	0	0	0	103	70

6. Outline of work done to complete project and apply water to beneficial use. With respect to any portion of the conditional water rights decreed to the Course and/or Course Extension that are not made absolute in this matter, the City of Golden seeks to retain the conditional status thereof by demonstrating its reasonable diligence. Within the past 6 years, the City of Golden has been diligent in the continued use and development of its conditional water rights. Activities include beneficial use of the amounts claimed herein; work done to help stabilize the river bank along the Course and Course Extension; maintenance and repair of the Course and Course Extension structures; improvements to access for the structures;

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widening of the Clear Creek trail alongside the structures; improvements to other amenities associated with the Course and Course Extension; hosting of local, national and international boating events on the Course and Course Extension; hiring summer crews of park rangers to monitor and enforce park regulations and use at the Course and Course Extension; public meeting to discuss use of the Course and Course Extension; defense of the City of Golden's water rights including the Course and Course Extension rights; research on designs to be used for the remaining three structures that are planned for the Course Extension; and other actions that demonstrate reasonable diligence with respect to the subject conditional water rights. 7. Names and addresses of owners of land on which structures are or will be located, or upon which water is or will be placed to beneficial use: In addition to lands owned by the City of Golden, owners of other lands on which Course and Course Extension structures are located and/or upon which the water is placed to beneficial use are the following: Tebo-Golden, LLC (dba Golden Hotel Corp.) 800 11<sup>th</sup> Street, Golden, CO 80401 & Colorado School of Mines, 1500 Illinois Street, Golden, CO 80401. WHEREFORE, Applicant seeks a decree of the Court ruling that the conditional water rights described at paragraphs 3 and 4, above, have been made absolute for recreational boating purposes in the amounts identified in paragraph 5, above; that Golden has demonstrated reasonable diligence with respect to any remaining portions of said conditional water rights not made absolute by this Application, thus retaining the conditional status thereof; and such other and further relief as this Court deems just and proper. (9 pages)

## AMENDMENTS

**14CW3068, Town of Wiggins, 304 Central Avenue, Wiggins, CO 80654**, through their attorneys: Petrock & Fendel, P.C., Frederick A. Fendel, III, Atty. Reg. #10476, Matthew S. Poznanovic, Atty. Reg. #29990, 700 Seventeenth Street, Suite 1800, Denver, Colorado 80202, Telephone: (303) 534-0702. FIRST AMENDED APPLICATION FOR CHANGE OF WATER RIGHTS AND AMENDMENTS TO PLAN FOR AUGMENTATION AND EXCHANGE IN WELD AND MORGAN COUNTIES. 2. Summary and relation to other cases. 2.1 This amended application restates and replaces the original application. Changes from the original application include correction of the legal description for Pond A, addition of a new recharge location, the Wiggins Recharge Pond, as an additional source of augmentation for the plan for augmentation originally decreed in Case No. 11CW131; use of Wiggins's augmentation supplies to replace out of priority depletions from wells included in the Boxelder Creek Properties, LLC ("BCP") augmentation plan pending in Case No. 13CW3108 and from the Recharge Well that diverts to the Wiggins Recharge Pond pursuant to the augmentation plan pending in Case No. 15CW3010, and; integration of the operations of the augmentation plans pending in Case Nos. 13CW3108 and 15CW3010 with Wiggins's existing augmentation plan. 2.2 In Case No. 11CW131, the court approved a change of water rights for 6 shares of Weldon Valley Ditch Company stock, exchange, water rights for Wiggins's new municipal wells, Town Wells Nos. 1 and 2 ("Town Wells") and a plan for augmentation for the Town Wells. Wiggins now leases and will acquire the 6 shares pursuant to a lease/purchase agreement from William M. and Susan K. Kammerer. Pursuant to the same lease/purchase agreement, Wiggins now leases and will also acquire 4 Weldon Valley shares not included in Case No. 11CW131 ("4 Kammerer shares"). 2.3 Wiggins has since acquired 17 additional Weldon Valley shares. 10.4 of the 17 shares were changed to new uses by Joe Hawkins in Case No. 04CW90. 6.6 shares were part of the historical use analysis in that case but were not changed. 2.4 Wiggins agreed in Case No. 11CW131 to limit or cease recharge at the Kammerer site under certain conditions. At such times, Wiggins's Weldon Valley water will be delivered from the Weldon Valley Ditch at either the Hawkins augmentation station described in 11CW131 or at Pond A, described below. At Pond A, Wiggins may place its water into recharge, or may deliver the water directly to the South Platte River for augmentation or return flow credit, or for exchange to the Wiggins Recharge Pond for further recharge according to Case No. 15CW3010. 2.5 In Case No. 15CW3010, Wiggins and BCP seek a water right for a recharge project, including a well for diversion of 150 acre-feet of water per year ("Recharge Well") to one or two interconnected recharge ponds ("Wiggins Recharge Pond") all located in a 30-acre parcel within the NE1/4 NE1/4 of Section 3, the W1/2 of Section

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2, and the W1/2 of Section 11, Township 4 North, Range 63 West, 6<sup>th</sup> PM, Weld County, a plan for augmentation for the Recharge Well, to quantify recharge credits generated by recharge via the Wiggins Recharge Pond, and to confirm appropriation of additional exchange rights to the Wiggins Recharge Pond's diversion point or the location at which depletions from the Recharge Well reach the South Platte River. 2.6 Pursuant to agreement (the "BCP agreement") with BCP, Wiggins will provide augmentation water to be used to replace out of priority depletions to the South Platte River caused by wells used by BCP pursuant to the augmentation plan which is the subject of pending Case No. 13CW3108 ("BCP plan"). Wiggins has agreed to operate the BCP plan and integrate operations of the BCP plan and the 15CW3010 plan with Wiggins' 11CW131 plan. Out of priority depletions caused by wells in the BCP plan will be determined, accounted for and replaced pursuant to the BCP plan. Wiggins will provide replacement water for replacement of depletions to the South Platte River in the BCP plan by delivery of accretions from the Wiggins Recharge Pond or any of its other augmentation sources. Diversions from the Recharge Well pursuant to pending Case No. 15CW3010 will cause depletions to the South Platte River which shall be determined, accounted for and replaced pursuant to the plan for augmentation requested in Case No. 15CW3010, with replacement water provided by Wiggins from sources described herein. The remaining replacement water not used for replacement under the BCP agreement will be used in the 11CW131 plan for augmentation as amended herein. 2.7 Pursuant to an agreement with the Weldon Valley Ditch Company, after the recharge ponds at the Kammerer site are included in the Case No. 02CW377 decree, Wiggins will be entitled to 60% of the recharge credits resulting from water diverted into recharge ponds at the Kammerer site pursuant to the water right decreed in Case No. 02CW377. 2.8 By this application, Wiggins seeks to use water derived from 17 additional Weldon Valley shares to augment the Town Wells based on historical use as determined in Case No. 04CW90; change the water rights associated with the 4 Kammerer shares; add water from the 17 Weldon Valley shares and 4 Kammerer shares, including Weldon Valley recharge pursuant to Case No. 02CW377 based on its ownership of the additional 17 Weldon Valley Shares and its agreement with Weldon Valley Ditch Company described in paragraph 2.7 and recharge from the Wiggins Recharge Pond to its existing augmentation plan decreed in Case No. 11CW131 as additional sources of augmentation, amend the existing augmentation plan to include terms agreed to in settlement of that case as described in paragraph 2.4; integrate operation of Wiggins's existing augmentation plan decreed in Case No. 11CW131 as amended herein with operation of the augmentation plan for the Wiggins Recharge Well requested in Case No. 15CW3010 and the BCP plan; and add water from the changed 17 Weldon Valley Shares, including Weldon Valley recharge pursuant to Case No. 02CW377, and water from the changed 4 Kammerer shares as additional sources of substitute supply for Wiggins's exchange decreed in Case No. 11CW131. 3. Water Rights to be Changed: Wiggins seeks to use 21 shares out of the 640 outstanding shares in the Weldon Valley Ditch Company, with stock certificate nos. 1256, 1302 and 1303. The rights to be changed are: 3.1 Original Decree: Case No. 433, entered November 21, 1895, Weld County District Court. 3.2 Point of diversion: the Weldon Valley Ditch, located in the SW1/4 NW1/4 SE1/4, Section 13, Township 4 North, Range 61 West of the 6<sup>th</sup> P.M., Weld County, Colorado. 3.3 Source: South Platte River. 3.4 Priority Date: October 26, 1881. 3.5 Use: Irrigation. 3.6 Amount: 165 cfs. 3.7 Historical use: 3.7.1 The 4 Kammerer Shares were used through 2003 together with 8 other shares on the "Kammerer/Groves farm," located on 120 Acres in the SE1/4, Section 25, Township 5 North, Range 60 West, 6<sup>th</sup> P.M., Morgan County, Colorado. Beginning in 2004, the 4 Kammerer Shares were used together with 6 other shares to irrigate approximately 110 acres located in the NE1/4, Section 34 and the NW1/4 of Section 35, Township 5 North, Range 60 West, 6<sup>th</sup> P.M., Morgan County, Colorado ("Kammerer site"). Historical use of the 4 Kammerer shares will be determined in a manner consistent with the court's findings in Case No. 04CW81, the decree of Groves Farms and Riverview Farms, LLC which changed the other 8 shares used on the Kammerer/Groves farm. 3.7.2 Historical use of 17 Weldon Valley shares previously owned by Joe Hawkins was determined in Case No. 04CW90. In Case No. 04CW90, 16 of the Hawkins' 39.125 shares were changed based on a historical use analysis of all 39.125 shares then in common ownership. These 17 shares include both changed shares and shares for which historical use was quantified but which were not changed in that case. Wiggins claims a pro rata share of

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historical use determined in Case No. 04CW90 for each changed and unchanged share. Case No. 04CW90 determined the 17 shares historically irrigated a portion of 247 acres located in portions of sections 3, 7 and 8, Township 4 North, Range 60 West, and sections 34 and 35, Township 5 North, Range 60 West, 6<sup>th</sup> P.M., Morgan County, Colorado. 4. Proposed Change: 4.1 Change of use: In Case No. 04CW90, 10.4 of these Weldon Valley shares were changed to allow use for irrigation, augmentation, replacement, recharge, and exchange, with the right to totally consume the consumable portion (“Changed Shares”). Wiggins seeks to use these Changed Shares in its augmentation plan. The other 6.6 shares remain decreed for irrigation (“Unchanged Shares”). In this case, the uses of the Unchanged Shares and the 4 Kammerer Shares will be changed to allow augmentation of all municipal uses, including commercial, industrial, domestic, irrigation, stock watering, recreation, fish culture and propagation, fishing, wildlife, aesthetic, and fire protection, replacement and recharge with the right to totally consume the consumable portion of the water, either by first use, reuse, successive use or disposition. Wiggins claims no further change of water right is required to use the Changed Shares in its augmentation plan, though terms and conditions for use in the plan will be proposed. In the alternative, Wiggins seeks to change the Changed Shares for use in its augmentation plan as described. Water will be used directly, following storage, by exchange, including exchange pursuant to the exchanges decreed in Case No. 11CW131 and requested in 15CW3010, and augmentation by recharge of ground water for delayed credit, irrigation of the Kammerer site, and replacement of return flows from all of Wiggins’s Weldon Valley Ditch Company shares. 4.2 Changed places of use: 4.2.1 Kammerer site, described above. 4.2.2 Augmentation of use in the Town of Wiggins service area as it now exists and may exist in the future. The current service area is generally located in Sections 10, 11, 12, 14 and 15, Township 3 North, Range 60 West of the 6<sup>th</sup> P.M., Morgan County, Colorado. 4.3 Augmentation use will also include augmentation of out of priority depletions caused by the wells included in the BCP plan and the Recharge Well included in Case No. 15CW3010 at the locations described in those applications. 4.4 The point of diversion will remain unchanged. Water will continue to be diverted from the South Platte River at the Weldon Valley Ditch headgate, and either (1) returned directly to the South Platte River for exchange to the Wiggins Recharge Pond or to augment the uses described, (2) delivered to recharge in Pond A, as described in Case No. 04CW90, or (3) delivered to recharge ponds at the Kammerer site and allowed to percolate from the ponds into the underground aquifer for delayed augmentation credit pursuant to the amendment to the plan for augmentation requested below. Pond A is located in the SE1/4 SE1/4 of Section 7 and the SW1/4 of Section 8, Township 4 North, Range 60 West of the 6<sup>th</sup> P.M., Morgan County Colorado. Two recharge ponds are currently located at the Kammerer site. Recharge credit from Pond A will enter the South Platte River in or above the SW1/4, Section 8, Township 4 North, Range 60 West, 6<sup>th</sup> P.M., Morgan County. Recharge credit from the Kammerer ponds will enter the South Platte River in the NW1/4 Section 2, Township 4 North, Range 60 West of the 6<sup>th</sup> P.M., Morgan County. Direct returns will be made via Wiggins’ portion of the Hawkins augmentation station located in the NE1/4, Section 3, Township 4 North, Range 60 West, 6<sup>th</sup> P.M., Morgan County, or via the headgate to Pond A in the SE1/4, Section 7, Township 4 North, Range 60 West, 6<sup>th</sup> P.M., Morgan County. Direct deliveries at the Hawkins augmentation station will return to the South Platte River in the NE1/4 NE1/4 of Section 3, Township 4 North, Range 60 West of the 6<sup>th</sup> P.M., Morgan County, Colorado. Direct deliveries at the Pond A site will return to the South Platte River in the S1/2 SW1/4 of Section 8, Township 4 North, Range 60 West of the 6<sup>th</sup> P.M., Morgan County, Colorado. 4.5 Return flows from the changed water rights shall only be replaced at times when the calling water right is senior to the date of the application in 04CW90, April 12, 2004 (for 10.4 shares) or June 5, 2014, the date of the original application (for the remaining shares). **AMENDMENT TO PLAN FOR AUGMENTATION.** A plan for augmentation for Town Wells Nos. 1 and 2 was decreed in Case No. 11CW131. This amendment adds additional augmentation water, two additional recharge sites, and an additional site for direct return from the Weldon Valley Ditch to the river as sources of augmentation to allow additional diversions under the plan for augmentation in Case No. 11CW131, and integrates operations of the augmentation plans pending in Case Nos. 13CW3108 and 15CW3010 with Wiggins’s 11CW131 augmentation plan. 5. Structures to be augmented: Town Wells Nos. 1 and 2, decreed in Case No. 11CW131 5.1 Locations (See also attached Exhibit A): 5.1.1 Town

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Well No. 1 (Permit No. 75611-F, WDID 0110538) is located in the NE1/4, SE1/4 of Section 19, Township 4 North, Range 60 West of the 6<sup>th</sup> P.M., Morgan County, Colorado, at a point 1650 feet from the South line and 300 feet from the East line. 5.1.2 Town Well No. 2 (Permit No. 75612-F, WDID 0110539) is located in the NE1/4, SE1/4 of Section 19, Township 4 North, Range 60 West of the 6<sup>th</sup> P.M., Morgan County, Colorado, at a point 1690 feet from the South line and 300 feet from the East line. 5.2 Source: Groundwater tributary to the South Platte River. 5.3 Amounts: 850 gpm per well, not to exceed 590 acre-feet per year, combined (conditional) 5.4 Priority date: August 22, 2011. 5.5 Uses: The Town Wells Nos. 1 and 2 will be used for all municipal uses, including commercial, industrial, domestic, irrigation, augmentation, stock watering, recreation, fish culture and propagation, fishing, wildlife, aesthetic, and fire protection within the Town of Wiggins Service Area. Water pumped through the Town Wells Nos. 1 and 2 will also be delivered to storage tanks included in the Town of Wiggins water supply system. As described below, some of the water pumped through the Town Wells Nos. 1 and 2 will be treated and a portion of the water will be returned to the South Platte River (“WTP Returns”) in the SE1/4 SE1/4 of Section 18, Township 4 North, Range 60 West, 6<sup>th</sup> P.M., Morgan County, Colorado, for use as augmentation water in the augmentation plan, as amended. 5.6 Depletions from the Town Wells Nos. 1 and 2 will accrue to the South Platte River in the SE1/4, Section 18, Township 4 North, Range 60 West, 6<sup>th</sup> P.M., Morgan County, Colorado. Subject to paragraph 20.2 of the 11CW131 decree, use of water from the Town Wells Nos. 1 and 2 will be considered 100% consumptive. Paragraph 20.2 of the 11CW131 decree recognizes return flow from the Wiggins water treatment plant, and the possibility of future return flow from use in Wiggins’s service area. 6. Statement of Amended Plan for Augmentation: 6.1 The Town Wells will be used for the uses described in Case No. 11CW131. This plan for augmentation will use Weldon Valley shares, WTP Returns, and Weldon Valley recharge pursuant to Case No. 02CW377 based on Wiggins’ ownership of the additional 17 Weldon Valley Shares and its agreement with Weldon Valley Ditch Company described in Paragraph 2.7 to replace any resulting out-of-priority depletions to the South Platte River, including out-of-priority post-pumping depletions to the extent necessary to prevent injury to other water rights. Out of priority depletions for each well shall be replaced at times when there is a call senior to the priority date for each respective well from a downstream water right. 6.2 To integrate operations of the augmentation plans requested in Case Nos. 13CW3108 and 15CW3010 with Wiggins’s 11CW131 augmentation plan, Wiggins’ Case No. 11CW131 augmentation plan is requested to be amended to include the replacement obligations for the BCP plan and 15CW3010 described in paragraph 2.6 in the projection and accounting of operations of the Case No. 11CW131 augmentation plan to ensure all depletions from pumping pursuant to the BCP plan and Case No. 15CW3010 and the return flow obligations for all of Wiggins’ Weldon Valley shares are replaced and there is no double counting the augmentation use of replacement supplies. The amount, timing and location of depletions from wells included in the BCP plan and the Recharge Well included in Case No. 15CW3010 will be determined in the BCP plan and 15CW3010 respectively, and incorporated into the accounting for Wiggins’ augmentation plan under this case. 6.3 The amount and timing of depletions will be calculated. Augmentation water will be diverted from the South Platte River at the headgate of the Weldon Valley Ditch Company and delivered to one or more water recharge ponds at the Kammerer site, to recharge at Pond A, or delivered back to the South Platte River. Water delivered to recharge will return back to the South Platte River over a delayed period of time. Water delivered to the South Platte River will be available immediately. Pumping will be limited so depletions do not exceed the available augmentation supply, after accounting for Wiggins’s obligations under the BCP agreement. 6.4 Augmentation water or credits accruing at times they are not needed will be exchanged to and re-diverted and recharged again at either the Weldon Valley ditch, pursuant to the exchange decreed in Case No. 11CW131, or to the Wiggins Recharge Pond pursuant to the exchange claimed in Case No. 15CW3010, and will thereafter be available for use in the 11CW131 plan as requested to be amended herein, the BCP plan and the 15CW3010 augmentation plan. 6.5 The amended plan for augmentation will not cause any material injurious effect to the owner or user of any vested water rights or decreed conditional water rights. 7. Statement of Amendment of Exchange: 7.1 A conditional appropriative right of exchange was decreed in Case No. 11CW131. Sources of substitute supply contemplated by Wiggins in making its

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appropriation of the exchange included additional Weldon Valley Ditch Company shares. The decree provides Wiggins may file an application to include additional Weldon Valley Ditch Company shares as additional sources of substitute supply for the exchange decreed in Case No. 11CW131. This application requests the 21 Weldon Valley Ditch Company shares described in Paragraph 3 above, delivered to the South Platte River within the exchange reach described in Paragraph 11.2 of the 11CW131 decree either directly at the augmentation station or via Pond A, or following recharge at the Kammerer site or Pond A, recharge allocated to the 17 Weldon Valley shares under Case No. 02CW377, and recharge under Case No. 02CW377 allocated pursuant to Wiggins' agreement with Weldon Valley Ditch Company described in Paragraph 2.7 be included as additional sources of substitute supply for the exchange decreed in Case No. 11CW131. 8. Description of Conditional Right of Exchange Decreed in Case No. 11CW131: 8.1 When water attributable to any of Wiggins's augmentation sources is delivered directly or following recharge to the South Platte River in excess of replacement requirements and return flow obligations such water may be substituted for water diverted by exchange at the headgate of the Weldon Valley Ditch for delivery to the recharge ponds located at the Kammerer site. 8.2 Exchange Reach. The exchange operates from various specified "exchange from" points in the reach between where recharge accretions attributable to the Case No. 02CW377 decree return back to the South Platte River and the "exchange to" point at the headgate of the Weldon Valley Ditch, in the SE1/4 of Section 13, Township 4 North, Range 61 West of the 6<sup>th</sup> P.M., Weld County, for delivery to the recharge ponds at the Kammerer site. 8.3 Date of appropriation: August 22, 2011. 8.4 Amount: 3.0 c.f.s., conditional. The maximum combined rate of exchange from all "exchange from" locations shall not exceed 3.0 c.f.s. 8.5 Use. Irrigation of the Kammerer site, replacement of return flows from the 6 Weldon Valley Shares changed in Case No. 11CW131, exchange in the appropriative right of exchange decreed in Case No. 11CW131, and augmentation of all municipal uses, including commercial, industrial, domestic, irrigation, stock watering, recreation, fish culture and propagation, fishing, wildlife, aesthetic, and fire protection. Wiggins shall have the right to totally consume the consumable portion of the water. 9. Owners of land on which the headgates and structures are or will be located: 9.1 Weldon Valley Ditch: Weldon Valley Ditch Company, P.O. Box 626, Weldona, CO 80653. 9.2 Town Wells 1 & 2: Wiggins 9.3 Kammerer Site Recharge Ponds: Wiggins 9.4 Wiggins Recharge Pond and Wiggins Recharge Well: TH Ranch LLC, 34555 WCR 50, Kersey, CO 80644 9.5 Pond A: Joe Hawkins, 22411 Dunreath Ave., Orchard, CO 80649 9.6 The Hawkins Augmentation Station is owned by Wiggins and: Justin & Julie Hawkins, 22857 Washington Avenue, Orchard, CO 80649. United Water & Sanitation District, 8301 E. Prentice Ave., Suite 120, Greenwood Village, CO 80111. Central Colorado Water Conservancy District, 3209 W. 28<sup>th</sup> St., Greeley, CO 80644 10. The following documents are filed with this application and are available from the Water Clerk, or from counsel for Wiggins: 10.1 Maps showing location of Wiggins' well sites and approximate location of historically irrigated acreage. 10.2 Summary of diversion records. 11. Remarks: By letter dated May 22, 2014, the Weldon Valley Ditch Company approved the change of point of delivery of the Weldon Valley shares involved in this case in accordance with the company bylaws. WHEREFORE, Wiggins prays that this Court enter a decree approving the changes of water rights, amendments to the plan for augmentation and exchange requested in this application, and finding that there will be no injury to owners and persons entitled to use water under any vested and conditional water rights, and for such other and further relief as may be warranted. (14 pages including exhibits)

**THE WATER RIGHTS CLAIMED BY THESE APPLICATIONS MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT WITHIN THE TIME PROVIDED BY STATUTE OR BE FOREVER BARRED.**

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or an amended application, may file with the Water Clerk, P. O. Box 2038, Greeley, CO 80632, a verified Statement of Opposition, setting forth facts as to why the application should not be granted, or why it should be

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granted only in part or on certain conditions. Such Statement of Opposition must be filed by the last day of **APRIL 2015** (forms available on [www.courts.state.co.us](http://www.courts.state.co.us) or in the Clerk's office), and must be filed as an Original and include **\$158.00** filing fee. A copy of each Statement of Opposition must also be served upon the Applicant or Applicant's Attorney and an affidavit or certificate of such service of mailing shall be filed with the Water Clerk.