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Debra A Green
Park County Clerk

PARK COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS

Resolution No. 2017 - 10

A RESOLUTION AUTHORIZING THE FILING OF THE SECOND AMENDMENT TO THE COUNTY'S APPLICATION FOR APPROVAL OF A PLAN FOR AUGMENTATION AND A SUBSTITUTE WATER SUPPLY PLAN.

WHEREAS, the County of Park, operating through its Road and Bridge Department, wishes to confirm its water rights claims as described in the original application filed in 2008, the amendment to the application for water rights filed in 2013 and the Second Amendment in Case No. 08CW268 attached hereto as **Exhibit A**, including new conditional water rights, exchanges, requests to make conditional water rights absolute and for approval of a plan for augmentation;

WHEREAS, the County wishes to confirm its appropriation of the conditional water rights and exchanges described in the attached Second Amendment to the application;

WHEREAS, the County desires to authorize special water counsel retained by the County to file the Second Amendment to the application, in substantially the same form as attached hereto as **Exhibit A**.

WHEREAS, the County desires to authorize the filing of a request for a substitute water supply plan to obtain authorization to temporarily operate the plan in accordance with the application and amendments to the application in Case No. 08CW268 while working to obtain a decree of the Water Court.

NOW, THEREFORE, be it resolved by the Board of County Commissioners of the County of Park that:

1. The County confirms and reaffirms its appropriation of the water rights and exchanges described above and the plan for augmentation in the application, the amended application and the Second Amendment to the application.

2. That special water counsel retained by the County be authorized to file the Second Amendment to the application in substantially the same form as attached hereto as **Exhibit A** in order to adjudicate those water rights and exchanges and to obtain approval of a plan for augmentation.

3. That special water counsel retained by the County be authorized to file a request for a substitute water supply plan in order to obtain authorization to temporarily operate the plan and exchanges, as amended, while working to obtain a decree of the Water Court.

Moved, seconded, and approved this 2nd day of MARCH, 2017.

PARK COUNTY BOARD OF COUNTY COMMISSIONERS



Mike Brazell, Chair *ACTING*
Mark Downability

ATTEST:



Park County Clerk & Recorder



<p>DISTRICT COURT, WATER DIVISION NO. 1 STATE OF COLORADO 901 9th Avenue, Room 418 P.O. Box 2038 Greeley, CO 80631</p>	<p>Δ COURT USE ONLY Δ</p>
<p>IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF PARK COUNTY BOARD OF COUNTY COMMISSIONERS AND CENTER OF COLORADO WATER CONSERVANCY DISTRICT.</p> <p>IN PARK COUNTY.</p>	<p>Case Number: 2008CW268</p> <p>Water Division No. 1</p>
<p>ATTORNEYS FOR APPLICANT PARK COUNTY BOARD OF COUNTY COMMISSIONERS Star L. Waring, Atty. Reg. No. 10009 Mark D. Detsky, Atty. Reg. No. 35276 Dietze and Davis, P.C. 2060 Broadway, Suite 400 Boulder, CO 80302 Telephone: (303) 447-1375 Email: swaring@dietzedavis.com; mdetsky@dietzedavis.com</p>	<p>SECOND AMENDED APPLICATION FOR WATER RIGHTS INCLUDING EXCHANGES AND FOR APPROVAL OF A PLAN FOR AUGMENTATION</p>

I. APPLICANTS

1. Park County Board of County Commissioners (“Park County”)

P.O. Box 147
Fairplay, CO 80040

Center of Colorado Water Conservancy District (“Center District”)

177 Range View Drive
Bailey, CO 80421-2140
2. Background. The Application for Water Rights Including Exchanges and For Approval of a Plan for Augmentation was filed with the District Court for Water

Division No. 1 on December 11, 2008 (the "Application") for the benefit of Park County's Road and Bridge Department. The Applicants filed an Amended Application on October 7, 2013 ("First Amended Application"). Park County's Road and Bridge Department diverts water for dust control, repair, and road construction throughout Park County's footprint. The Application sought to decree conditional water rights for submersible pumps used to fill tanker trucks within Water Division No. 1, and for a plan of augmentation and appropriative rights of exchange that would be used to replace the net out-of-priority depletions caused from the pumping of Park County's water rights. The Application also sought a decree approving a plan of augmentation related to a County-owned gravel pit. The First Amended Application removed the gravel pit from the Application, corrected legal descriptions for the location of certain conditional water right claims, added new conditional water rights for pumping and for water storage, and added substitute supplies to the plan for augmentation.

- 3. Purposes of Second Amendment. This second amendment to the Application is filed for the following purposes:
 - A. Adds a new source of replacement supply to the plan for augmentation consisting of 5.0 AF of fully consumable water rights recently acquired by Park County in the Parmalee No. 2 Ditch, the Parmalee No. 3 Ditch and the Flume Ditch;
 - B. Adds five (5) additional conditional surface water right appropriations;
 - C. Amends Park County's claims for certain conditional water rights to make those rights absolute in part;
 - D. Amends Park County's claims for certain conditional appropriative rights of exchange to make those rights absolute; and
 - E. Clarifies statements in the Application and First Amended Application.

II. SECOND AMENDMENT TO APPLICATION

- 3. The Application in this matter was filed on December 11, 2008. The First Amended Application was filed on October 7, 2013. Applicants hereby make this Second Amendment to the Application ("Second Amended Application") as follows:
- 4. Modification to Conditional Surface and Water Storage Rights (Section I, paragraph (3)). The following changes are made to the Spinney Mountain Diversion conditional water storage right claimed in the First Amended Application.
 - A. Park County Spinney Mountain Diversion. To clarify that this right is a conditional water right that will be diverted directly into storage at the Spinney Mountain Reservoir, an on-channel reservoir, and will be among the rights which

will be made available for exchanges or substitute supply decreed in this augmentation plan.

- i. Para. 7(a) to First Amendment is hereby amended to read: "This junior water storage right will be diverted directly into storage at the Spinney Mountain Reservoir, an on-channel reservoir, and will be among the rights which will be made available for exchanges or substitute supply decreed in this augmentation plan."
- ii. Amount: Change the maximum diversion and volume of storage from 15 AF to "20 AF, with a corresponding right of carry-over."

5. Add New Claims for Conditional Water Rights for Pump Points of Diversion: The Application is amended to claim additional conditional surface water rights, with names, sources, and locations legally described as follows:

Structure	Source	Legal Description PLSS	UTM coordinates	
Tarryall Creek Stagesop Rd Pump	Taryall Creek	NE¼ of SE¼ of Sec 1, T9S, R75W, 1,570 ft from the South Section line and 570 ft from the East Section line	438109	4349676
Ranch of the Rockies Pond Pump	Buffalo Creek	SW¼ of SW¼ of Sec 24, T12S, R77W, 220 ft from the South Section line and 310 ft from the West Section line	416724	4315479
South Platte River CR 112 Pump	South Platte River	SW¼ of NW¼ of Sec 17, T12S, R71W, 2,050 ft from the North Section line and 80 ft from the West Section line	468484	4317885
Antero Reservoir South Boat Ramp Pump	South Fork South Platte	SW¼ of NE¼ of Sec 28, T12S, R76W, 2,080 ft from the North Section line and 2,030 ft from the East Section line	422399	4314707
Eleven Mile Reservoir Witcher's Cove Pump	South Platte River	SE¼ of SW¼ of Sec 19, T13S, R72W, 1,240 ft from the South Section line and 2,030 ft from the West Section line	457227	4306387

6. Information on Appropriations for New Conditional Surface Water Rights Identified in Paragraph 5: For each conditional water right identified in paragraph 5, above, the following information is applicable:

- A. Structures: The additional structures are referred to as follows:
 - 1. Tarryall Creek Stagesop Road Pump
 - 2. South Platte River CR 112 Pump
 - 3. Ranch of the Rockies Pond Pump
 - 4. Antero Reservoir South Boat Ramp Pump
 - 5. Eleven Mile Reservoir Witcher's Cove Pump
- B. Date of Appropriation: February 5, 2016 for each structure.
- C. How Appropriation Was Initiated: The appropriations were initiated and noticed to the public by Park County's request for inclusion in its 2016 Substitute Water Supply Plan ("SWSP"), which SWSP was noticed to the entire Water Division 1 Notification List on February 5, 2016. In addition, or in the alternative, the appropriation was noticed by passage of a Resolution of the Board of County Commissions of Park County evidencing the intent of the Board of County Commissioners to appropriate the conditional water rights claimed in this

Amendment, and the filing of this Second Amendment to the Application.

D. Rate of Diversion: 4.0 cfs, CONDITIONAL for each structure.

E. Uses: dust suppression and road construction for each structure.

F. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new or existing diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:

The additional structures listed in sub-paragraphs 6(A)(1) - 6(A)(2) of this section are located within county road rights of way owned and maintained by Park County. On information and belief, the three reservoir locations listed in sub-paragraphs 6(A)(3) – 6(A)(5) are owned by the Denver Water Board, 1600 West 12th Ave., Denver, CO 80204-3412.

G. Remarks: A list of all points of diversion requested in the Application, the First Amended Application, and the Second Amended Application is provided in the Table attached as **ATTACHMENT A** with legal descriptions in PLSS and UTM formats. The new structures listed in paragraph 5, above, are highlighted at the bottom of Attachment A.

7. Amendments to Conditional Water Right Claims to Make Certain Water Rights Absolute in Part:

The Application and plan for augmentation including exchanges has been operating by administrative approval of the State Engineer’s Office. Under the SWSP, certain surface diversions and appropriative rights of exchange have been made in priority or by operation of the SWSP. Park County is therefore amending certain conditional water claims in the Application to be made absolute in part, as follows:

A. Conditional Surface Water Rights to Be Made Absolute in Part:

Sub-para.	Water District	Structure	Amount	Date Applied to Beneficial Use
1.	80	Hi Meadow CR 72 Pump Station	1,300 gpm/ 2.9 cfs	___/___/___
2	80	KZ Ranch Rock Road Pump Station	1,300 gpm/ 2.9 cfs	
3	80	North Fork CR 68 Pump	1,300 gpm/ 2.9 cfs	
4	23	CR 90A Pump Station	1,300 gpm/ 2.9 cfs	
5	23	Middle Fork CR 59 Pump Station	1,300 gpm/ 2.9 cfs	
6	23	Tarryall Creek CR 33 Pump Station	1,300 gpm/ 2.9 cfs	

7	23	Tarryall Creek CR 77 Pump Station	1,300 gpm/ 2.9 cfs	
8	23	Middle Fork Beresford Crossing Pump	1,300 gpm/ 2.9 cfs	
9	23	South Fork CR 22 Pump	1,300 gpm/ 2.9 cfs	
10	23	Tarryall Creek CR 211 Pump	1,300 gpm/ 2.9 cfs	
11	23	Middle Fork CR 12 Pump	1,300 gpm/ 2.9 cfs	
12	23	Michigan Creek CR 77 Pump	1,300 gpm/ 2.9 cfs	
13	23	South Platte River CR 59 Pump	1,300 gpm/ 2.9 cfs	
14	23	South Fork SH 9 Pump	1,300 gpm/ 2.9 cfs	

B. Evidence in Support of Partial Absolute Claims

1. Uses: For each appropriation, dust suppression and road construction.
2. Supporting evidence. Confirmation from the Water Commissioner for Water District 23 and Water District 80 that the Applicant has diverted water in-priority and applied such water to beneficial use claimed and in the amounts claimed are in the diversion records attached to this Second Amendment as **ATTACHMENT B**.
3. Place of use. The water diverted has been applied to beneficial use on public roads within Park County that are maintained or constructed by Park County in proximity to the points of diversion listed above.
4. Partial absolute claim. The diversion rates made absolute constitute a portion of the 4.0 cfs requested for each point of diversion. For each claim requested above, 1.1 cfs remains **CONDITIONAL**.

C. Appropriative Rights of Exchange to Be Made Absolute.

[insert table]

8. Amendments to Plan for Augmentation (Section II):

A. Insert new source of substitute supply in paragraph 6:

Applicant is the owner of 5.0 AF of fully consumable consumptive use credits of the following described water rights historically beneficially used in Park County:

i) The Parmalee Ditch No. 2. 0.63 cubic feet per second (cfs) out of 0.83 cfs originally decreed in Case No. 1678, on May 22, 1913 in the Park County District Court. The source of which water is Deer Creek, tributary to the North Fork of the South Platte River, with an appropriation date of May 1, 1867. The headgate of the Parmalee Ditch No. 2 is decreed on Deer Creek in Section 5, Township 7 South, Range 72 West of the 61h P .M., at a point whence the S⁰ corner of Section 32, Township 6 South, Range 72 West bears North 9⁰4' West 2,613 feet.

ii) The Parmalee Ditch No. 3. 0.58 cfs originally decreed in Case No. 1678, on May 22, 1913 in the Park County District Court. The source of which water is Deer Creek, tributary to the North Fork of the South Platte River, with an appropriation date of May L 1867. The Parmalee No. 3 headgate was decreed in Section 5, Township 7 South, Range 72 West. at a point whence the S'4 corner of Section 32, Township 6 South, Range 72 West bears North 14⁰55' West 2,700 feet.

iii) The Flume Ditch. 0.48 cfs out of 4.41 cfs originally decreed to this structure in Case No. 1679 on May 22, 1913 in the Park County District Court. The source of which water is Deer Creek, tributary to the North Fork of the South Platte River, with an appropriation date of May 1, 1867. The decreed point of diversion for the Flume Ditch is located at a point whence the SE Corner of Section 4, Township 7 South, Range 72 West of the 6th P.M. bears South 89⁰30' East 4.791 feet.

B. Subject to 03CW231 Decree Terms and Conditions. The 5.0 AF constitutes eight and seventy-four one-hundredths percent (8.74%) of the decreed consumptive use flow rates, determined as a ratio of the 5.0 AF to the 57.2 AF of fully consumable water attributable to the above-described water rights which were changed to augmentation use in Case No. 03CW231. The applicant in that case is to file a petition to remove 5.0 AF from that decree. To this end, Park County will be able to divert its pro rata share attributable to the 5.0 AF of the c.f.s. based upon the diversion rate(s) of the water rights as

set forth in the 03CW231 Decree, including the volumetric limitations on the use of the water and the return flow "flow rate" obligations of the water rights.

9. Insert changes to Statement of Plan for Augmentation, Including Exchanges, at Paragraph 7.

A. Change the maximum depletion amount estimated in paragraph ¶ 7(a): The maximum depletions expected are increased from 15.0 AF annually to 25.0 acre-feet annually.

B. Add additional language to "replacements" paragraph 7(b), as follows:

i. New Paragraph 7(b)(iv). "Bypassing the Parmalee Ditch No. 2, Parmalee Ditch No. 3, and Flume Ditch rights at the Parmalee No. 2 and 3 and Flume Ditch headgates."

7. Map. Attached as **ATTACHMENT 3** is a map which shows all 23 of the pump locations Park County is seeking in this Application, as amended, as well as the 9 exchange reaches claimed as the Applicant's appropriate rights of exchange.

8. This Second Amended Application is fully incorporated into the original Application and the First Amended Application which otherwise remain unchanged.

9. All previously filed statements of opposition shall be considered fully applicable to this amendment to the Application.

Respectfully submitted this 28th day of February, 2017.

DIETZE AND DAVIS, P.C.



By: _____
Star L. Waring, #10009
Mark D. Detsky, #35276

**ATTORNEYS FOR APPLICANT BOARD OF
COUNTY COMMISSIONERS OF THE
COUNTY OF PARK**

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Debra A Green
Park County Clerk

FELT, MONSON & CULICHIA, LLC

By:  for _____

David M. Shohet, #36675

Ryan W. Farr, #39394

**ATTORNEYS FOR APPLICANT CENTER OF
COLORADO WATER CONSERVANCY
DISTRICT**

VERIFICATION

STATE OF COLORADO)
) ss
COUNTY OF _____)

Jared Dains, being first duly sworn upon his oath, deposes and states that he is the Water Engineer for the Board of County Commissioners of the County of Park, the Applicant herein, that he has read the foregoing Amendment to the Application, knows the contents thereof and that the same are true to the best of his knowledge and belief.

Jared Dains

Notary public

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of October, 2013, true and correct copies of the foregoing **SECOND AMENDED APPLICATION** were served electronically pursuant to C.R.C.P. 121 on the following parties:

CCWCD	Applicant	James W Culichia	Felt, Monson & Culichia, LLC
Centennial Water And Sanitation District	Opposer	Veronica A Sperling	Buchanan and Sperling, P.C.
City Of Aurora	Opposer	John Marshall Dingess	Duncan Ostrander & Dingess PC
Colorado Water Conservation Board	Opposer	Jennifer Lyn Mele	CO Attorney General
Division Engineer	Division Engineer	Division 1 Water Engineer	State of Colorado DWR Division 1
Dominion Water And Sanitation District	Opposer	Carolyn F Burr	Welborn Sullivan Meck & Tooley, P.C.
Dominion Water And Sanitation District	Opposer	James Merle Noble	Welborn Sullivan Meck & Tooley, P.C.
Girl Scouts Of Colorado	Opposer	Cynthia Frazer Covell	Alperstein Covell PC
Girl Scouts Of Colorado	Opposer	Andrea Luise Benson	Alperstein Covell PC
Lone Rock H2o LLC	Opposer	Daniel Kenneth Brown	Fischer Brown Bartlett and Gunn PC
State Engineer	State Engineer	Colorado Division Of Water Resources	State of Colorado - Division of Water Resources
United Water And Sanitation District	Opposer	John P Akolt III	N/A
United Water And Sanitation District	Opposer	Tod Jay Smith	The Law Office of Tod J Smith
Upper South Platte Water Conservancy Dis	Applicant	Jeffrey J Kahn	Lyons Gaddis Kahn Hall Jeffers Dworak & Grant, PC.
Upper South Platte Water Conservancy Dis	Applicant	Madoline Wallace-Gross	Lyons Gaddis Kahn Hall Jeffers Dworak & Grant, PC.

s/ Julie A. Wolfe

Table 1: Park County Diversion Locations

Structure	Source	Location	UTM Zone 13N	
			UTM X [m]	UTM Y [m]
Hi Meadow CR 72 Pump	Deer Creek	SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec 23, T7S, R72W, 2,350 ft from the North Section line and 860 ft from the East Section line	464417	4364012
KZ Ranch Rock Rd Pump	Deer Creek	NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec 26, T6S, R73W, 1,450 ft from the South Section line and 1,650 ft from the East Section line	455459	4371433
CR 90A Pump	South Platte River	SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec 19, T12S, R71W, 290 ft from the South Section line and 20 ft from the East Section line	468501	4315333
Middle Fork CR 59 Pump	Middle Fork South Platte	NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec 10, T12S, R75W, 1,750 ft from South Section line and 200 ft from East Section line	434554	4319051
Tarryall Creek CR 33 Pump	Taryall Creek	NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec 20, T8S, R76W, 2,200 ft from the South Section line and 2,550 ft from the West Section line	421454	4354866
Sacramento Creek Gold Pan Ln Pump	Sacramento Creek	SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec 34, T9S, R78W, 2,080 ft from the North Section line and 300 ft from the East Section line	406032	4342352
Mosquito Creek Park City Rd Pump	Mosquito Creek	SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec 10, T9S, R78W, 1,250 ft from South Section line and 60 ft from the East Section line	406184	4348160
Middle Fork CR 14 Pump	Middle Fork South Platte	NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec 29, T9S, R77W, 1,610 ft from the South Section line and 880 ft from the West Section line	411234	4343471
North Fork CR 68 Pump	North Fork South Platte	NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec 3, T8S, R72W, 820 ft from the North Section line and 2,450 ft from the West Section line	462257	4359659
Middle Fork SH 285 Pump	Middle Fork South Platte	SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec 34, T9S, R77W, 900 ft from the South Section line and 310 ft from the West Section line	414238	4341572
Middle Fork Beresford Crossing Pump	Middle Fork South Platte	NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec 24, T8S, R78W, 1,680 ft from the South Section line and 2,560 ft from the West Section line	408621	4354708
South Fork CR 22 Pump	South Fork South Platte	NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec 19, T11S, R77W, 1,210 ft from the North Section line and 500 ft from the West Section line	409382	4326473
Michigan Creek SH 285 Pump	Michigan Creek	SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec 13, T8S, R76W, 870 ft from the South Section line and 1,430 ft from the East Section line	428339	4356020
Middle Fork CR 12 Pump	Middle Fork South Platte	SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec 13, T9S, R78W, 1,720 ft from the North Section line and 20 ft from the East Section line	409393	4347265
Michigan Creek CR 77 Pump	Michigan Creek	SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec 1, T9S, R75W, 2,060 ft from the North Section line and 180 ft from the West Section line	436708	4350197
Tarryall Creek CR 211 Pump	Taryall Creek	SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec 23, T11S, R72W, 1,500 ft from the North Section line and 1,050 ft from the West Section line	464029	4325750
South Platte River CR 59 Pump	South Platte River	NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec 32, T12S, R73W, 1,240 ft from the North Section line and 2,100 ft from the East Section line	449570	4313394
South Fork SH 9 Pump	South Fork South Platte	NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec 9, T12S, R75W, 2,420 ft from the South Section line and 80 ft from the West Section line	431424	4319279
Tarryall Creek Stagesop Rd Pump	Taryall Creek	NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec 1, T9S, R75W, 1,570 ft from the South Section line and 570 ft from the East Section line	438109	4349676
Ranch of the Rockies Pond Pump	Buffalo Creek	SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec 24, T12S, R77W, 220 ft from the South Section line and 310 ft from the West Section line	416724	4315479
South Platte River CR 112 Pump	South Platte River	SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec 17, T12S, R71W, 2,050 ft from the North Section line and 80 ft from the West Section line	468484	4317885
Antero Reservoir South Boat Ramp Pump	South Fork South Platte	SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec 28, T12S, R76W, 2,080 ft from the North Section line and 2,030 ft from the East Section line	422399	4314707
Eleven Mile Reservoir Witcher's Cove Pump	South Platte River	SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec 19, T13S, R72W, 1,240 ft from the South Section line and 2,030 ft from the West Section line	457227	4306387