

<p>DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 501 North Elizabeth Street Suite 116 Pueblo, Colorado 81003 Phone Number: (719) 404-8832</p> <hr/> <p>IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF SECURITY WATER DISTRICT</p> <p>IN EI PASO, FREMONT, AND PUEBLO COUNTIES, COLORADO</p> <hr/> <p>Attorneys for Applicant: Steven T. Monson, #11329 Ryan W. Farr, #39394 Monson, Cummins & Shohet, LLC 319 North Weber Street Colorado Springs, Colorado 80903 Phone Number: (719) 471-1212 Fax Number: (719) 471-1234 E-mail: stm@cowaterlaw.com rwf@cowaterlaw.com</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case No.: 16CW_____</p> <p>Ctrm.: 406</p>
<p>APPLICATION FOR CHANGE OF WATER RIGHTS AND PLAN FOR AUGMENTATION</p>	

I. Name of Applicant.

Security Water District
c/o Roy E. Heald, Manager
231 Security Boulevard
Colorado Springs, Colorado 80911
(719) 392-3475

II. Attorneys for Applicant.

Steven T. Monson
Ryan W. Farr
Monson, Cummins & Shohet, LLC
319 North Weber Street
Colorado Springs, Colorado 80903
(719) 471-1212

III. Background and Summary of Application.

Security Water District, by and through its water activity enterprise (“District”), desires a change of water rights and to develop a plan for augmentation allowing additional water use within the existing and future District boundaries. The existing boundaries of the District are shown on the attached **Exhibit A**. The District seeks to change five senior water rights on Hayden Creek, tributary to the Arkansas River, from their historical agricultural use to new municipal uses, including direct use and re-use and the use of the fully consumable return flows therefrom as augmentation to replace out-of-priority depletions to Fountain Creek and the Arkansas River from the District’s diversions of water supplies. Direct use will be from use of the historical stream depletions through the District’s water supply system, and augmentation use will be by utilization of the fully consumable return flows of consumptive use credits and from the subject water rights to augment the District’s depletions on Fountain Creek.

IV. Application for Changes of Water Right.

A. Name of Structures. The names of the structures for which changes of water rights are sought are the Hayden Ditch, the Hayden Ditch No. 2, the Hayden Ditch No. 3, and the Hoagg Ditch (referred to collectively as the “Ditches”).

B. Information from Previous Decree.

1. Date Entered. The Ditches were decreed on February 3, 1894 in Case No. 02/03/1894, 11th Judicial District, Fremont County District Court, *In the Matter of the Adjudication of Water Rights in Water District No. 12* (“Decree”).

2. Decreed or Historical Points of Diversion. The decreed or historical point of diversion for each ditch is as follows and is as depicted on the attached **Exhibit B map**:

a) *Hayden Ditch.* The Hayden Ditch’s decreed point of diversion is the west side of Hayden Creek in the NW1/4 of the SW1/4 of Section 33, Township 48 North, Range 11 East of the N.M.P.M., Fremont County, Colorado.

b) *Hayden Ditch No. 2.* The Hayden Ditch No. 2 does not have a decreed point of diversion; however, the historical point of diversion since the entry of the decree has been on the west side of Hayden Creek in the SW1/4 of the SW1/4 of Section 33, Township 48 North, Range 11 East of the N.M.P.M., Fremont County, Colorado.

c) *Hayden Ditch No. 3.* The Hayden Ditch No. 3’s decreed point of diversion is the east side of Hayden Creek in the NW1/4 of the SW1/4 of Section 33, Township 48 North, Range 11 East of the N.M.P.M., Fremont County, Colorado.

d) *Hoagg Ditch.* The Hoagg Ditch’s originally decreed point of diversion is the west side of Hayden Creek in the SW1/4 of the SE1/4 of Section 5, Township 47 North, Range 11 East of the N.M.P.M., Fremont County, Colorado. However, the location

of the Hoagg Ditch point of diversion was moved soon after entry of the original decree to the same point of diversion as the Hayden Ditch No. 2 described above. This move was confirmed by Decree entered on October 10, 2014 in Case No. 14CW3023, District Court, Water Division 2.

3. Source. The source of water for the Ditches is Hayden Creek, tributary to the Arkansas River.

4. Appropriation Dates/Amounts. The appropriation dates and decreed amounts for the Ditches are as follows (“Subject Water Rights”):

Water Right Name	Adjudication Date	Appropriation Date	Local Priority No.	Full Water Right (cfs)	Decreed Acreage
Hayden Ditch	February 3, 1894	May 10, 1870	1	1.60	40
Hoagg Ditch	February 3, 1894	February 28, 1873	4	1.60	40
Hayden Ditch No. 2	February 3, 1894	April 1, 1873	5	2.60	65
Hayden Ditch No. 3	February 3, 1894	May 1, 1873	6	1.05	40
Hayden Ditch No. 2	February 3, 1894	December 30, 1881	12	0.40	10

The District is the owner of the entirety of the Subject Water Rights.

C. Historical Use. The Subject Water Rights have historically been used for the irrigation of 195 acres of decreed property within Sections 28, 29, 32, and 33 of Township 48 North, Range 11 East, N.M.P.M. (“Historically Irrigated Property”). The Historically Irrigated Property is located within and around the property known as the “Hayden Ranch,” which is shown in attached **Exhibit B** (“Hayden Ranch”). During a study period of 95 years from 1912 through 2006 and the analysis of consumptive use by crops on the Historically Irrigated Property, historical diversions associated with the Subject Water Right resulted in net stream depletions (consumptive use credits) of approximately 236 annual acre-feet. The District’s diversions and depletion credits shall be limited in accordance with the monthly depletion factors and also monthly and annual volumetric limitations to replicate historical use. The District shall receive depletion credits under the Subject Water Rights only when a continuous live stream exists from the augmentation station location to the confluence of Hayden Creek and the Arkansas River. The breakdown of in-priority diversions for each water right over the study period is provided in the attached **Exhibit C** with the averages of such diversions as follows:

1. Hayden Ditch. In-priority diversions averaged 309.41 annual acre-feet.
2. Hayden Ditch No. 2 (Senior). In-priority diversions averaged 368.63 annual acre-feet.
3. Hayden Ditch No. 2 (Junior). In-priority diversions averaged 21.58 annual acre-feet.

4. Hayden Ditch No. 3. In-priority diversions averaged 87.87 annual acre-feet.

5. Hoagg Ditch. In-priority diversions averaged 361.71 annual acre-feet.

D. Use Sought. The District seeks to change the type and place of use for the historical use of the Subject Water Right to allow the historical stream depletions to be directly used as a municipal water supply within the District's existing and future municipal service area by means of conveyance through or from Pueblo Reservoir to the District's water distribution infrastructure. The District is a member of the Fountain Valley Authority and has the right to use the Fountain Valley Conduit. The District's sewerred and non-sewerred return flows therefrom are to be used and reused to extinction by direct use and by augmentation of Fountain Creek and the Widefield and Windmill Gulch Aquifers to replace depletions from the District's groundwater and surface diversions.

1. Type of Use. The change in type of use sought for the Subject Water Right is from direct flow for irrigation use to direct flow and storage for the District's uses including continued irrigation, commercial, recreational, municipal, and other beneficial uses, including augmentation, exchange, recharge, and replacement purposes. The changed historical net depletions and return flows therefrom are to be used, reused, and successively used to extinction by the District for these beneficial uses.

2. Place of Use. The change in place of use sought for the Subject Water Right is from the Historically Irrigated Property under the Subject Water Right to use by the District within current and future boundaries of the District. The District's current municipal service area lying within Sections 1, 2, 3, 11, 12, 13, 14, and 24, Township 15 South, Range 66 West and within Sections 6 and 7 in Township 15 South, Range 65 West of the 6th P.M., El Paso County, Colorado, and as generally shown on **Exhibit A** ("Service Area"). The Subject Water Right may also be used for continued irrigation upon the Historically Irrigated Property to the extent not limited by municipal use of the depletion credits and dry-up requirements. The District will withdraw portions of the Historically Irrigated Property from irrigation as depletion credits are used by the District.

E. Augmentation Station. The District will construct an augmentation station located on the Hayden Ranch within Section 33, Township 11 North, Range 48 East of the N.M.P.M., Fremont County, State of Colorado ("Augmentation Station") for purposes of the measurement and administration of the Subject Water Rights under its change of water rights and plan for augmentation.

F. Recharge Facility. The District may construct a ground water recharge facility upon the Hayden Ranch ("Recharge Facility"). The location of a Recharge Facility within the Hayden Ranch will be as provided for in the final decree. For the change of water right, the recharge facility may be used to receive historical stream depletions and return flows of the Subject Water Rights for recharge to the aquifer and later delivery of accretion credits back to

the Arkansas River. The timing of those recharge credits will be lagged to the Arkansas River in accordance with the application of the Glover Method and other standard engineering practices. The Recharge Facility may be by pond infiltration, after reduction for evaporation, or may be by a buried facility recharging water directly to the groundwater system.

G. Return Flow Obligations. Historical return flows from the irrigation use of the Subject Water Rights accrue directly to the Arkansas River. The District will replace return flow obligations to the Arkansas River by delivery of those return flows to the river by means of the Augmentation Station, accretion credits generated by the Recharge Facility, releases from Pueblo Reservoir after storage of depletion credits, use of the consumptive use credits from the District's fourteen shares of stock in the Twin Lakes Reservoir and Canal Company, and use of other consumptive use water available to the District at or above Pueblo Reservoir under its Augmentation Plans and other Water Court decrees. To the extent the diversions from the Subject Water Rights, as changed, are continued to be applied to the irrigation of the Historically Irrigated Property, such continued irrigation on a pro rata basis will meet the District's obligations for return flows. Return flows from the Subject Water Rights will be appropriated by the District and only need to be replaced when the call below the Hayden Ranch is senior to the August 31, 2016 filing date of this Application.

H. Remarks. The District's use of storage in Pueblo Reservoir for the Subject Water Rights shall be in compliance with a storage contract with the Bureau of Reclamation.

I. Names and Addresses of Owners of Land Upon Which Structures are Located. The current owners of the land where the structures for the Subject Water Rights are located are as follows:

1. The District.
2. Holcim (US) Inc: Owner of property where the Hayden Ditch No. 2 and Hoagg Ditch headgate may be located. A Delaware corporation with assessor listed address of 24 Crosby Drive, Bedford, Massachusetts 01730.
3. Jerry A. Kemperman and Elizabeth A. Wallace Lindebraekke: Owners of property where the Hayden Ditch No. 2 and Hoagg Ditch headgate may be located. P.O. Box 266, Coaldale, Colorado 81222.
4. Louis D. and Linda K. Engelhart: Owner of the property where the Hayden Ditch headgate is located. P.O. Box 317, Magnolia, Ohio 44643.
5. Lydia A. Xentaras: Owner of the property where the Hayden Ditch No. 3 headgate is located. 1690 Detroit Street, #2, Denver, Colorado 80206.
6. United States Department of Interior, Bureau of Reclamation: Owner of Pueblo Reservoir. 11056 W. County Road 18E, Loveland, Colorado

80537.

V. **Plan for Augmentation.**

A. Water Rights to be Used for Augmentation. The water rights to be used for augmentation are:

1. The depletion credits to be adjudicated to the Subject Water Rights as requested to be adjudicated herein, and the sewer and non-sewer return flows from the District's use of the historical depletion credits under the Subject Water Rights to be adjudicated for the District's purposes.

2. Interest in fourteen shares of stock in the Twin Lakes Reservoir and Canal Company ("Twin Lakes Shares"). Each share of stock in the Twin Lakes Reservoir and Canal Company ("Twin Lakes") represents a pro rata interest in the water rights described below in accordance with the terms and conditions of Twin Lakes' Articles of Incorporation and By-laws.

a. Colorado River Water Rights.

- i. Structure Name: Independence Pass Transmountain Diversion System.
- ii. Previous Decrees: Civil Action No. 3082, District Court, Garfield County, entered August 25, 1936; Case No. W-1901, District Court, Water Division No. 5, entered May 12, 1976.
- iii. Amount: 625 cfs for direct flow, with an annual limit of 68,000 acre-feet and a 10-year limit of 570,000 acre-feet.
- iv. Priority date: August 23, 1930, Priority No. 431.
- v. Source: Roaring Fork River and its tributaries, tributary to the Colorado River.
- vi. Uses: Direct flow and storage in Twin Lakes Reservoir for irrigation, domestic, commercial, industrial, municipal and all beneficial uses.

b. Arkansas River Water Right.

- i. Structure Name: Twin Lakes Reservoir.
- ii. Previous Decrees: Civil Action No. 2346, District Court,

Chaffee County, entered July 14, 1913, as modified by Case No. W-3965, District Court, Water Division No. 2, entered April 19, 1974.

- iii. Amounts: 54,452 acre-feet (20,645.3 acre-feet for Priority No. 3 and 33,806.7 acre-feet for Priority No. 4)
 - iv. Priority Dates: December 15, 1896 for Priority No. 3; March 29, 1897 for Priority No. 4.
 - v. Source: Lake Creek and its tributaries, tributary to the Arkansas River.
 - vi. Uses: Storage for irrigation, domestic, commercial, industrial and municipal purposes; and the change of location of use from lands served by the Colorado Canal in Crowley and Pueblo Counties, Colorado, to any site in the Arkansas River basin of Colorado below the Twin Lakes Reservoir which are capable of being served water by diversions from the Arkansas River.
- c. Amount. In previous augmentation plan cases approving the use of water available to Twin Lakes shares, each such share was considered to have a “firm” yield of 0.78 acre-feet per year. However, the native Arkansas River water component of the Twin Lakes Shares will not be used for augmentation purposes under this plan, as only the Independence Pass Transmountain Diversion System water will be used for augmentation purposes. Nevertheless, the District reserves the right to use the native component for augmentation purposes at a later time by means of future water court filing.

B. Inclusion into Previous Augmentation Plans. The District has decreed plans for augmentation in Case Nos. W-4212, 90CW28, 01CW149, 06CW117, 07CW51, 09CW92, and 12CW99 (“Plans for Augmentation”), which plans replace depletions to Fountain Creek resulting from the District’s municipal well diversions from the Widefield Aquifer and the Windmill Gulch Aquifer. The reusable non-sewered return flows also augment the Widefield and Windmill Gulch Aquifers in accordance with the terms of Case No. 01CW149. The return flows from the adjudicated depletion credits attributable to the Subject Water Rights when used for augmentation shall be used according to the terms and conditions of the Plans for Augmentation and as set forth below.

C. Point of Depletion. As provided in the Plans for Augmentation, pumping of the District’s wells located in the Widefield aquifer and the Windmill Gulch aquifer causes depletions to Fountain Creek in the general location of NE1/4 of Section 25, Township 15

South, Range 66 West of the 6th P.M. The sewered return flows from the Subject Water Rights and Twin Lakes shares from the upstream Wastewater Treatment Plan will be supplied to this location.

D. Delivery of Replacement Water. Augmentation water from sewered return flows of the Subject Water Rights and Twin Lakes Shares may be delivered to Fountain Creek by means of the District's wastewater treatment facility in the NW1/4 of Section 24, Township 15 South, Range 66 West of the 6th P.M. ("Wastewater Treatment Plant").

E. Depletions. Depletions from the District's Widefield Aquifer and Windmill Gulch Aquifer wells shall be determined on the same lagged basis as under the Plans for Augmentation.

F. Return Flows.

1. Indoor Base Use = Average water use by the District during the prior period of December through February.

2. Outdoor Water Use during each Accounting Period = Total water use by the District – Indoor Base Use.

3. Percentage of Outdoor Water Use = Outdoor Water Use ÷ Total Water Use.

4. Sewered Return Flows = Total water diverted into the District's system from the Subject Water Rights and/or the Twin Lakes Shares ÷ total water used by the District x the lesser of 95-percent of Indoor Base Use or total wastewater discharged to Fountain Creek.

5. Non-Sewered Deep Percolation = 14.65% x Percentage of Outdoor Water Use x Total water diverted into the District's system from the Subject Water Rights and/or the Twin Lakes Shares. Such determined amounts shall be reduced if the District implements watering restrictions.

6. Non-Sewered Surface Return Flow = 2% x Percentage of Outdoor Water Use x Total water diverted into the District's system from the Subject Water Rights and/or the Twin Lakes Shares.

G. Non-Sewered Return Flows. Non-sewered return flows from the Subject Water Rights or from the District's interest in the Twin Lakes Shares may be used for augmentation to the Widefield Aquifer and Windmill Gulch Aquifer as set forth in the Plans for Augmentation. Non-sewered return flows equal average non-sewered deep percolation during the past 52 weeks plus non-sewered surface return flow. The non-sewered deep percolation return flows can also be claimed as augmentation to the Widefield aquifer.

H. Replacement Without Local Call. At times when there is no local call on

Fountain Creek from the Wastewater Treatment Plant to the confluence of Fountain Creek and the Arkansas River, the District may augment depletions to Fountain Creek by releasing the depletion credits from the Subject Water Rights or the Twin Lakes Shares directly to the Arkansas River, including as released from storage in Pueblo Reservoir to the Arkansas River in the NE1/4 of Section 36, Township 20 South, Range 66 West of the 6th P.M.

I. Depletions from Widefield Aquifer. Depletions from the District's municipal wells in the Widefield Aquifer are already calculated under the District's Plans for Augmentation on a monthly basis considering the system wide municipal depletion percentages, lagged depletions from the District's wells within the Widefield Aquifer, sewer and non-sewer return flows from well diversions, and administration of the Widefield Aquifer Management Agreement.

J. Widefield Aquifer Stipulation. Use of the Subject Water Rights for augmentation purposes to the aquifer pursuant to the Plans for Augmentation and this case will remain consistent and in compliance with the terms and conditions of the Widefield Aquifer Stipulation from Case No. W-116, District Court, Water Division 2, as now exists and as is amended in the future between the municipal users of Widefield aquifer groundwater.

VI. Remarks.

The District seeks to confirm the direct use of its Twin Lakes shares within its water distribution system by conveyance of the consumptive use credits from the Twin Lakes shares through the Fountain Valley Authority conduit.

VII. Other Terms and Conditions.

A. The District shall provide accounting and reporting as required by the Division Engineer for the proper administration of the Subject Water Rights.

B. The District shall install such measuring devices and recording devices as are reasonably determined by the Division Engineer to be necessary for the proper administration and operation of the changed water rights.

C. Deliveries of the District's depletion credits to Pueblo Reservoir or other downstream locations shall be reduced by transit losses assessed by the Division Engineer.

WHEREFORE, the District requests this Application for Change of Water Rights and Plan for Augmentation be granted as requested herein and for such other and further relief as the Court deems appropriate.

Respectfully submitted this 31st day of August, 2016.

MONSON, CUMMINS & SHOHET, LLC

By: /s/ Steven T. Monson
Steven T. Monson, #11329
Ryan W. Farr, #39394
Attorneys for Security Water District

