

<p>DISTRICT COURT, WATER DIVISION NO. 1 COLORADO</p> <p>Weld County Courthouse 901 9th Avenue P. O. Box 2038 Greeley, Colorado 80632 (970) 351-7300</p>	<p>DATE FILED: July 15, 2016 2:17 PM FILING ID: 639149274A972 CASE NUMBER: 2008CW175</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</p> <p>THE CITY OF EVANS</p> <p>IN LARIMER AND WELD COUNTIES</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Dennis M. Montgomery, #6424 Matthew A. Montgomery, 44039 Hill &amp; Robbins, P.C. 1441 18th Street, Suite 100 Denver, CO 80202-1256 Phone: (303) 296-8100 Fax: (303) 296-2388 E-mail: dennismontgomery@hillandrobbins.com matthewmontgomery@hillandrobbins.com</p>	<p>Case Number: 08CW175  Ctrm/Div: 1</p>
<p><b>THIRD AMENDED APPLICATION FOR CHANGE OF WATER RIGHTS AND APPROVAL OF PLAN FOR AUGMENTATION</b></p>	

**Name, address, and telephone number of the Applicant**

City of Evans (“Evans”)  
1100 37th Street  
Evans, CO 80620  
Telephone: 970-339-5344

**I. CHANGE OF WATER RIGHTS**

1.1. Decreed name of structures for which changes are sought from previous decree: The water rights for which changes are sought in this application are represented by Evans' ownership of: 24 shares in the Godfrey Ditch Company; 34.67 shares in the Greeley and Loveland Irrigation Company (“GLIC”); 4.5 shares in the Seven Lakes Reservoir

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Company (“Seven Lakes”); and 5 contract rights in the Loveland and Greeley Reservoir (“Lake Loveland”).

A. Godfrey Ditch

1. The Godfrey Ditch Company is a mutual ditch company that owns the water rights decreed to Section No. 3 Ditch (commonly referred to as the Godfrey Ditch).
2. Decree Information: The Godfrey Ditch was originally decreed in Case No. CA6009 with an original priority date of March 10, 1870, for 26.88 cfs and an enlargement in the amount of 30.83 cfs with a priority date of March 15, 1873. The combined decreed diversion capacity is 57.71 cfs. The following table summarizes the Godfrey Ditch priorities.

Water Right Name	TS	RNG	SEC	Q160	ADJ. DATE	APRO. DATE	CASE NO	USE TYPE	RATE (cfs)
Section No. 3 Ditch	4N	66W	3	SE	4/28/1883	3/10/1870	CA6009	IRR	26.88 cfs
Section No. 3 Ditch	4N	66W	3	SE	4/28/1883	3/15/1873	CA6009	IRR	30.83 cfs

3. Decreed point of diversion: Section 3, Township 4 North, Range 66 West of the 6th P.M., Weld County, Colorado.
4. Source: The South Platte River.
5. Use: Irrigation.

B. GLIC, Seven Lakes, and Lake Loveland (collectively, the “Companies”)

1. The Companies hold legal title to the following water rights:

a. Barnes Ditch

- 1) Decree information:

<u>Amount</u>	<u>Appropriation Date</u>	<u>Adjudication Date</u>	<u>Court</u>
18.56 cfs	10/20/1865	5/28/1883	Boulder District Court
12.06 cfs	06/01/1867	5/28/1883	Boulder District Court
19.93 cfs	06/23/1873	5/28/1883	Boulder District Court

- 2) Decreed point of diversion: In Section 17, Township 5 North, Range 69 West, 6th P.M., Larimer County. The historic point of diversion is on the North side of the Big

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Thompson River in the NW 1/4 of the SE 1/4 of said Section 17. The Barnes Ditch has an alternate point of diversion on the Big Thompson River in Section 15, Township 5 North, Range 69 West, 6th P.M., Larimer County.

3) Source: Big Thompson River.

4) Use: Irrigation.

5) Portions of the Barnes Ditch water rights are owned by and delivered to owners of certain contractual rights, commonly referred to as "inches." These rights are not included in this application.

b. Loveland and Greeley Canal.

1) Decree information:

<u>Amount</u>	<u>Appropriation Date</u>	<u>Adjudication Date</u>	<u>Court</u>
297.44 cfs	04/01/1881	5/28/1883	Boulder District Court

2) Decreed point of diversion: The Loveland and Greeley Canal was decreed with two separate headgates, one located in Section 15 and one in Section 17, each in Township 5 North, Range 69 West, 6th P.M., Larimer County. The actual point of diversion of the Loveland and Greeley Canal is in the SW 1/4 of Section 15, Township 5 North, Range 69 West, 6th P.M., Larimer County.

3) Source: Big Thompson River.

4) Use: Irrigation.

c. Larimer County Irrigation and Manufacturing Ditch or the Chubbuck Ditch.

1) Decree information:

<u>Amount</u>	<u>Appropriation Date</u>	<u>Adjudication Date</u>	<u>Court</u>
8.36 cfs	11/01/1865	05/28/1883	Boulder District Court
39.04 cfs	10/20/1870	05/28/1883	Boulder District Court
35.50 cfs	10/25/1873	05/28/1883	Boulder District Court
15.20 cfs	11/01/1878	05/28/1883	Boulder District Court

2) Decreed point of diversion: Diverts from the Big Thompson River through the headgate(s) of the Loveland and Greeley Canal.

3) Source: Big Thompson River.

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4) Use: Irrigation.

5) Portions of the water rights decreed for diversion at the Chubbuck Ditch are owned by and delivered to owners of certain contractual rights, commonly referred to as "inches." These rights are not included in this application.

d. Loveland and Greeley Reservoir (Lake Loveland).

1) Decree information:

<u>Amount</u>	<u>Appropriation Date</u>	<u>Adjudication Date</u>	<u>Court</u>
14,238.7 AF	01/14/1893	06/29/1916	
14,239 AF	01/14/1893	06/27/1978	District Court, Water Div. No. 1, Case No. W-8665-77

2) Reservoir Location: In the NE 1/4 of Section 10, Section 11, and the N 1/2 of N 1/2 of Section 14, all in Township 5 North, Range 69 West, 6th P.M., Larimer County.

3) Source: Lake Loveland is an off-channel reservoir that is supplied by diversions from the Big Thompson River through the Barnes Ditch or the Louden Ditch. In addition, Lake Loveland is supplied by waters arising in the drainage basin into the reservoir.

4) Use: Irrigation, domestic, recreation, and industrial uses for lands and users under system of the Greeley and Loveland Irrigation Company System.

e. Seven Lakes Reservoir System.

1) Decree information:

<u>Amount</u>	<u>Appropriation Date</u>	<u>Adjudication Date</u>	<u>Court</u>
8,432 AF	04/28/1902	06/29/1916	
8,432 AF	04/28/1902	06/29/1978	District Court, Water Div. No. 1, Case No. W-8664-77.

2) Location of Storage: Seven Lakes Reservoir System consists of interconnected reservoirs located in Sections 30 and 31, Township 6 North, Range 68 West, 6th P.M.; Section 36, Township 6 North, Range 69 West, 6th P.M.; Section 1, Township 5 North, Range 69 West, 6th P.M.; and Sections 6 and 7, Township 5 North, Range 68 West, 6th P.M., all of which are in Larimer County, Colorado, the outlet of which is decreed as being located in the NW1/4 of the SE1/4, Section 6, Township 5 North, Range 68 West of the 6<sup>th</sup> P.M., at a point 1300 feet East and 850 feet South of the center of said Section 6, Larimer County, Colorado.

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3) Source: Big Thompson River drainage. The lakes may be supplied by the Barnes Ditch, Lake Loveland, Little Barnes Ditch, Chubbuck Ditch, Louden Ditch, and the Loveland and Greeley Canal, as well as by the local drainages.

4) The Seven Lakes Reservoir Company also owns 26 1/2 shares of the 600 shares in the Louden Irrigation Canal Company, and the water produced by these shares is used within the Seven Lakes Reservoir Company system. The decree information on the rights of the Louden Ditch is as follows:

<u>Amount</u>	Appropriation		Adjudication	
	<u>Date</u>		<u>Date</u>	<u>Court</u>
7.0 cfs	11/10/1861		05/28/1883	Boulder District Court
40.0 cfs	10/01/1871		05/28/1883	Boulder District Court
123.0 cfs	11/01/1877		05/28/1883	Boulder District Court
0.008 cfs	09/17/1883		05/29/1884	Boulder District Court

The historical place of diversion of the Louden Ditch, out of the Big Thompson River, is in the SW1/4 of the NW1/4 of Section 12, Township 5 North, Range 70 West, 6<sup>th</sup> P.M.

5) Use: Irrigation, domestic, recreation, and industrial uses.

f. Boyd Lake.

1) Decree information:

<u>Amount</u>	Appropriation		Adjudication	
	<u>Date</u>		<u>Date</u>	<u>Court</u>
48,564 AF	04/28/1902		06/29/1916	
44,031 AF	04/28/1902		06/27/1978	District Court, Water Div. No. 1, Case No. W-8665-77.

2) Location of Storage: In Section 5, the SE 1/4 of Section 6, the E 1/2 of the E 1/2 of Section 7, Section 8, all in Township 5 North, Range 68 West, 6th P.M.; Section 29, the E 1/2 of the E 1/2 of Section 30, the E 1/2 of the E 1/2 of Section 31, Section 32, all in Township 6 North, Range 68 West, 6th P.M., Larimer County, Colorado.

3) Source: Boyd Lake is an off-channel reservoir that is supplied by diversions from the Big Thompson River through, the Barnes Ditch and delivered to Boyd Lake through Lake Loveland and Horseshoe Reservoir, or diverted and delivered by the Louden Ditch or by the Loveland and Greeley Canal. In addition, Boyd Lake is supplied by waters arising in the Dry Creek drainage basin and in the areas naturally sloping toward the Lake.

4) Historical Use: Irrigation, domestic, recreation, and industrial uses for lands and users under the Greeley and Loveland Irrigation Company system.

## 1.2. Proposed Changes

A. **Godfrey Ditch.** The Godfrey Ditch shares included in this application were historically used to irrigate 196.9 acres of land under the Godfrey Ditch. A map showing the approximate location of the historical use of the shares is included as Exhibit A. A summary of the Godfrey Ditch diversions is included as Exhibit B. Evans will not change the points of diversion at which water is diverted under the Godfrey Ditch rights; however, Evans seeks approval to change the place of use of the water rights represented by its 24 Godfrey Ditch Company shares so that it may utilize the consumptive use credit from the shares for storage, replacement, and augmentation uses. Evans proposes to secure the removal of 196.9 acres from irrigation. It is anticipated the subject 24 Godfrey Ditch Company shares will provide approximately 285.6 acre-feet of consumptive use credit on an annual basis. Pursuant to the augmentation plan described in section II below, Evans proposes to store this consumptive use credit in Nissen Reservoir, or alternate storage within the Central Colorado Water Conservancy District (CCWCD), to augment of depletions from pumping Well No. 1-1335 and a newly developed well owned by EnviroTech. In addition, the consumptive use credit may be used to satisfy return flow obligations associated with the change of shares in the Greeley and Loveland Irrigation Company, the Seven Lakes Reservoir Company and contract rights in the Loveland and Greeley Reservoir in Evans' Case Nos. 96CW958 and 03CW314, and for lease and/or exchange to third parties, including EnviroTech and CCWCD for use as replacement supplies.

B. **The Companies.** The GLIC, Seven Lakes, and Lake Loveland shares and contract rights included in this application were used historically to irrigate approximately 1,088 acres of farmland. However, not all of the shares and contract rights historically used on this farmland are included in this application. In accordance with previous changes of GLIC, Seven Lakes, and Lake Loveland shares and contract rights, the dry-up of land historically irrigated needed to support the change in this application is 442.0 acres. Maps showing the approximate location of the historical use of the shares and contract rights are included as Exhibits C and D to the application. A summary the GLIC, Seven Lakes, and Lake Loveland diversion records is included as Exhibit E. Evans will not change the points of diversion at which water is diverted under the Companies' water rights; however, Evans proposes to secure the removal of 442.0 historically irrigated acres from irrigation. It is anticipated the subject GLIC, Seven Lakes, and Lake Loveland shares and contract rights will provide approximately 288.0 acre-feet of consumptive use credit on an annual basis. Pursuant to the augmentation plan described in section II below, Evans proposes to use these consumptive use credits to replace out-of-priority stream depletions from pumping Well No. 1-1335 and a well owned by EnviroTech. In addition, Evans seeks approval (1) to deliver consumptive use credits available under these shares and contract rights, whether such water is attributable to direct-flow or storage rights, to the Ground Water Management Subdistrict of the Central Colorado Water Conservancy District ("CCWCD") to satisfy Evans' obligations to Central under an intergovernmental agreement between Evans and CCWCD for

use of CCWCD's augmentation station on the Godfrey Ditch and for use of a portion of the storage capacity in Nissen Reservoir; and (2) to deliver water available under these shares and contract rights, whether such water is attributable to direct-flow or storage rights, to Boyd Lake and/or Lake Loveland for treatment by the City of Greeley, which water will then be delivered to Evans for all municipal purposes within its current and future service areas, including but not limited to domestic, irrigation, watering of lawns, parks and grounds, commercial, industrial, mechanical, manufacturing, fire protection, sewage treatment, street sprinkling, recreational, storage for later use, operational detention, replacement, and all other beneficial purposes related to the operation of municipal water and sewer services. To the extent return flows attributable to the new use of the shares and contract rights are not sufficient to maintain historical return flows, Evans further seeks approval to deliver water available under these shares and contract rights to the Big Thompson River or the South Platte River as necessary to maintain historical return flows. To the extent return flows attributable to the new use of the shares and contract rights that are the subject of this application exceed the historical return flows therefrom, Evans seeks confirmation of the right fully to consume that incremental amount, whether by reuse, successive use, exchange, sale or otherwise. A map showing the decreed points of diversion and Evans' current and future service area is attached to the application filed by Evans in Case No. 96CW958, which is on file with the Water Clerk for Water Division 1. Finally, Evans seeks approval to use the consumptive use credit to satisfy return flow obligations associated with the change of shares and contract rights in the Companies in Evans' Case Nos. 96CW958 and 03CW314, and for lease and/or exchange to third parties, including EnviroTech and CCWCD, for use as replacement supplies.

1.3. Names and addresses of owners of land on which structures are located:

The Godfrey Ditch diversion structure is owned by the Godfrey Ditch Company, PO Box 607, 18269 WCR 394, La Salle, CO 80645. The Companies' structures are owned by the Greeley and Loveland Irrigation Company and the Seven Lakes Reservoir Company, whose address is 808 23rd Avenue, Greeley, Colorado 80631, or the Louden Irrigation Canal Company, whose address is c/o Dale Leach, President, 4009 E. County Road 30, Fort Collins, Colorado 80528. The wastewater treatment plant outfalls are owned by Evans. Nissen Reservoir is owned by Central Colorado Water Conservancy District, 3209 West 28th Street, Greeley, CO 80634. Well No. 1-1335 is located on lands owned by the City of Evans and the existing EnviroTech well is located on lands owned by EnviroTech 910 54th Ave, Suite 230, Greeley, CO 80634.

## **II. PLAN FOR AUGMENTATION**

- 2.1. Name of Structures to be augmented: Evans non-potable Well No. 1-1335 and EnviroTech well drilled under Permit No. 67595-F.
- 2.2. Other water rights diverted from the structures?: No.
- 2.3. Previous decrees for water rights to be used for augmentation:

Godfrey Ditch Water Rights: See paragraph 1.1.A above.

GLIC, Seven Lakes, and Lake Loveland Water Rights: See paragraph 1.1.B above.

2.4. Statement of Plan for Augmentation:

Well No. 1-1335 was formerly operated pursuant to substitute water supply plans (SWSP) by the Groundwater Appropriators of the South Platte (GASP), but was inactive from 2002 until it was operated for non-potable irrigation pursuant to SWSPs approved after the application in Case No. 08CW175 was filed. The EnviroTech well was constructed under Well Permit No. 67595-F, issued October 9, 2008, and has been operated pursuant to SWSPs approved after the application in Case No. 08CW175 was filed. The following table summarizes the location and decree information for Well No. 1-1335 and the EnviroTech well.

Well Name	Permit	Location				Case No.	Approp. Date	Decreed Amount
		Sect	Q40	Q16 0	T-R			
Well No. 1-1335	1335-R	29	NW	NE	T5N-R65W	W-2258	1/19/1960	1.11 cfs
EnviroTech Well	67595-F	2		SW	T4N-R66W	n/a	n/a	n/a

Evans proposes to include Well No. 1-1335 in a non-potable irrigation system serving up to 17 acres, including 4.7 acres in the Riverside Meadows subdivision in the NW1/4 of the NE1/4 of Section 29, Township 5 North, Range 65 West of the 6<sup>th</sup> P.M. The annual non-potable demand is estimated to be 51 acre-feet based upon the permitted irrigated area of 17 acres and an estimated gross annual demand of 3 acre-feet per acre. Net stream depletion is estimated at 42.3 acre-feet annually, assuming an irrigation efficiency of 83 percent. The non-potable irrigation system utilizes sprinkler application methods. Therefore, it is estimated that 15 percent of the total well pumping will return to the river by deep percolation and 2 percent will return by surface runoff. Depletions from the well will impact the South Platte River about 0.4 miles above the 37th Street bridge. The location of the stream depletions is approximately 1.6 miles above the Patterson Ditch river headgate and 4.0 miles above the Plumb Ditch river headgate. Evans will limit the amount of pumping from its non-potable irrigation well to 51 acre-feet of pumping annually.

The ultimate pumping demand for the EnviroTech well is estimated at 45 acre-feet annually. The uses of the pumped water will include primarily the production of road base stabilization and de-icing products, which will result in 100 percent of the water being delivered off-site within the finished product. The EnviroTech plant is located in the NW1/4 of the SW1/4 of Section 2, Township 4 North, Range 66 West of the 6<sup>th</sup> P.M. A small percentage of the groundwater diversion may be used for irrigation and indoor use at the plant site. Diversions for commercial production will be 100 percent consumptive. Diversions for non-potable irrigation are estimated to be 83 percent consumptive. The irrigation system is expected to utilize sprinkler application methods. Because the well and irrigation are located a significant distance from the river, it is estimated that 17 percent of the total well pumping will return to the river by deep percolation and 0 percent will return by surface runoff. Diversions for non-potable indoor use

are estimated to be 10 percent consumptive, with 90 percent of the indoor use returning to the aquifer through an on-site septic system.

Replacement of injurious out-of-priority depletions will be achieved by the permanent dry-up of approximately 196.9 acres of land historically irrigated by Evans' shares of the Godfrey Ditch Company, and/or by the permanent dry-up of 442.0 acres of land historically irrigated by Evans' shares or contract rights in the Companies. It is anticipated the subject 24 Godfrey Ditch Company shares will provide approximately 285.6 acre-feet of consumptive use credit on an annual basis. Evans intends to divert its interest in the Godfrey Ditch water rights through the Godfrey Ditch river headgate, at the original point of diversion. After diversion through the headgate, Evans will release the deliveries to the South Platte River through the existing augmentation station owned by CCWCD pursuant to an agreement to use the station. A portion of the consumptive use credit may be delivered into Nissen Reservoir pursuant to agreement with CCWCD for storage and later release to the South Platte River for replacement. It is anticipated that the subject shares and contract rights in the Companies will provide approximately 288.0 acre-feet of consumptive use credit on an annual basis. These consumptive use credits will be delivered to the Big Thompson River or the South Platte River from releases from Lake Loveland, from Boyd Lake, or from an outlet structure on the Greeley and Loveland Canal at Ashcroft Draw.

All replacement deliveries to the river will be reduced for conveyance losses calculated as one-half percent per mile along the South Platte River and one-quarter percent per mile along the tributary streams and rivers, or as otherwise required by the Division of Water Resources, from the point of delivery to the point of stream depletion caused by the well pumping. The distance from the Hill 'N Park wastewater treatment facility (the uppermost wastewater treatment facility) to the point of furthest downstream stream depletion is 3.88 miles. The distance from the point of Godfrey Ditch water delivery to the point furthest downstream stream depletion is approximately 2 miles. Therefore, a conveyance loss of 1 percent is included for all Godfrey Ditch replacement deliveries, assuming a one-half percent per mile conveyance loss. The distance from the Lake Loveland release to the furthest downstream depletions is 23 miles along the Big Thompson River plus 5 miles along the South Platte River. The distance from the Boyd Lake release to the furthest downstream depletions is 18 miles along the Big Thompson River plus 5 miles along the South Platte River. The distance from the Greeley-Loveland Canal release at Ashcroft Draw to the furthest downstream depletions is 3.5 miles along the Ashcroft Draw plus 3.7 miles along the South Platte River. For replacement supplies delivered into Nissen Reservoir, an additional conveyance loss will be included for the conveyance along 4 miles of river.

Pursuant to an Intergovernmental Agreement (IGA) between the Applicant and CCWCD, CCWCD will be entitled to use up to 11 Shares out of the 24 shares of the Godfrey Ditch Company during the period of 2009 through 2023. In exchange, the Applicant will receive up to 70 acre-feet of storage space within Nissen Reservoir, or an alternate storage location within the CCWCD. Pursuant to the IGA, CCWCD is responsible for obtaining approval for the use of the 11 Shares and maintaining the historical return flows associated with those Shares. In the event the IGA is terminated prior to 2023, Evans will be obligated to deliver water to CCWCD for a specified period, in which case Evans intends to deliver water from the subject shares and contract rights in the Companies or other sources consented to by CCWCD.

EXHIBIT A

Applicant shall install and maintain such measuring devices and implement such accounting and reporting procedures as may be reasonably required by the Division Engineer for adequate administration of the water rights and plan for augmentation described in this application

Dated: July 15, 2016.

Respectfully submitted,

*signed original on file at Hill & Robbins, P.C.*

s/Matthew A. Montgomery

Matthew A. Montgomery

Dennis M. Montgomery