

**RESOLUTION OF THE BOARD OF TRUSTEES OF
THE TOWN OF LOCHBUIE**

RESOLUTION NO. 2019-11

A RESOLUTION RATIFYING THE APPLICATION FOR CHANGE OF WATER RIGHTS, PLAN FOR AUGMENTATION, AND APPROPRIATION OF CONDITIONAL WATER RIGHTS ASSOCIATED WITH THE USE OF THE TOWN'S FULTON DITCH WATER RIGHTS.

WHEREAS, the Town of Lochbuie ("Town") recently acquired shares in the Fulton Ditch Company ("Fulton Shares") pursuant to a signed Water Resource Credit Agreement with United Water and Sanitation District to provide water to serve the Lochbuie Station development ("the Contract"). The Town is under contract to acquire more shares in the Fulton Ditch Company to provide water to serve another development in Town;

WHEREAS, the Lochbuie Station Contract required the Town to file a water court application to change the Fulton Shares, including diversion of that water by exchange at United Diversion No. 3, for use in the Town's augmentation plans on or before July 31, 2019;

WHEREAS, the Town traditionally operates its water system to replace depletions and required return flows only when there is a senior downstream call for water, and to retain all return flow water when there is not a senior call in order to maximize the amount of water available for municipal use by the Town;

WHEREAS, the Town desires to appropriate water by exchange to the United Diversion Structure No. 3, and to appropriate the return flows from the Fulton Shares at all times when there is no senior downstream call; and

WHEREAS, the Town filed an application in Case No. 19CW3148 on July 31, 2019 to change the Fulton Shares, to seek approval of a plan for augmentation, to seek approval of a conditional exchange water right, and to seek approval of a conditional water right to appropriate the return flows from the Fulton Shares whenever available ("the Application"). A copy of the Application is attached as Appendix A.

NOW THEREFORE,

1. The Town Board, having previously authorized the filing of the Application by entering into the Contract, hereby reaffirms its intent to change the water rights represented by the Fulton Shares to all uses described in the Application, to seek approval of an augmentation plan to provide other sources of replacement water to make up historical irrigation return flows as needed to prevent injury, and to appropriate the historical return flows whenever water is available because there is not a senior downstream call, all as described in the Application.
2. The Town Board hereby ratifies the actions of the Town staff, consultants, and water attorneys in filing the Application, including the claims for new appropriations to maximize the use of the Fulton Shares.

3. The Town Board reaffirms its intent that the Town staff, consultants, and water attorneys should prosecute the Application to completion, to approve the requested changes and plan for augmentation, and to confirm these conditional water rights on behalf of the Town.

Adopted this 20th day of August, 2019.

TOWN OF LOCHBUIE

By: _____

Jacob Lofgren, Its Mayor

ATTEST:

By: _____

Linda Blackston, Its Town Clerk



Weld County District Court Water Division No. 1, Colorado 901 Ninth Ave. PO Box 2038 Greeley, CO 80632-2038 (970) 475-2400	Court Use Only
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE TOWN OF LOCHBUIE IN ADAMS and WELD COUNTIES, COLORADO	
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APPLICATION FOR APPROVAL OF CHANGE OF WATER RIGHTS, CONDITIONAL EXCHANGE WATER RIGHT, APPROPRIATION OF RETURN FLOWS, AND PLAN FOR AUGMENTATION	

1. **Name, address, e-mail address, and telephone number of Applicant:**

Town of Lochbuie (“Lochbuie”)
c/o Town Administrator
703 Weld County Road 37
Lochbuie, CO 80603
(303) 655-9308

2. **Overview of application:**

Lochbuie owns and operates a municipal water and sewer system for the benefit of its citizens and for the provision of water service to extra-territorial customers who may be served from time to time pursuant to contract. Lochbuie has acquired shares of stock in the Fulton Irrigating Ditch Company (“Fulton Ditch”) and seeks court approval to change those water rights to all municipal uses, including augmentation, replacement and exchange for use in the Town’s current and future augmentation plans as described below. The water will continue to be diverted through the Fulton Ditch headgate, and will be returned to the South Platte River through existing or proposed augmentation stations. The water may be used directly or may be exchanged and re-diverted for beneficial use by Lochbuie through United Diversion No. 3. Once diverted through United Diversion No. 3, Lochbuie may store the water in United Reservoir for delivery to the South Platte River or to the Beebe Draw, or deliver

the water to the Beebe Draw through the Beebe Pipeline, Burlington-O'Brien Canal, Barr Lake and FRICO delivery system, and storage in Barr Lake, Lake Henry (a/k/a "Henry Reservoir"), or Highlands Reservoir in space owned by Lochbuie or allocated to Lochbuie by agreement with the reservoir owners. Lochbuie will provide water to the South Platte River to replicate historical irrigation return flows by delivery of a portion of the changed water rights, or delivery of other water rights owned or controlled by Lochbuie. Lochbuie claims the right to use, reuse, and successively use the water diverted to extinction for all changed purposes after meeting all return flow obligations, provided Lochbuie maintains dominion and control over such water. Lochbuie seeks approval of a plan for augmentation to allow replacement of return flows with additional sources acquired or leased in the future pursuant to Section 37-92-305(8)(c), C.R.S., and to appropriate all historical return flows from Lochbuie's Fulton shares when not needed to satisfy a call form a downstream senior water right.

CLAIM FOR CHANGE OF WATER RIGHTS

3. Decreed water rights for which change is sought:

3.1. Name of structure: Fulton Ditch.

3.2. Date of original and subsequent decrees, appropriation dates, amounts decreed to the structure, and amount being changed in this application:

Lochbuie is changing 47 shares of stock out of 7,185 shares outstanding in the Fulton Ditch, which represents approximately 0.65% of the outstanding shares. Lochbuie owns 39 shares, and has a contractual right to use up to 8 additional shares of stock being changed in this case. The following water rights were decreed to the Fulton Ditch by the District Court of Arapahoe County by decree dated April 28, 1883 in Case No. 6009, a pro rata share of which is being changed in this case:

Water Right	Appropriation Date	Decreed Amount (cfs)	Pro rata amount for 47 shares (cfs)
Priority No. 8	May 1, 1865	79.7	0.521
Priority No. 43	July 8, 1876	74.25	0.485
Priority No. 51	November 5, 1879	50.23	0.328

3.3. Legal description of structure as described in most recent decrees that adjudicated the location: The original decreed location is near Section 9, between Sections 16 and 17, T.2S., R.67W., 6th P.M., Adams County, Colorado. The actual headgate location is in the NE¼ NE¼ SE¼ of Section 17, T.2S., R.67W., 6th P.M.,

Adams County, Colorado, according to the decree in Case No. 13CW3025, District Court in and for Water Division No. 1 entered on November 10, 2016.

3.4. **Decreed source:** South Platte River.

3.5. **Decreed use:** Irrigation.

3.6. **Amount of water applicant intends to change:** Applicant intends to change the water rights associated with the 47 shares.

4. **Detailed description of proposed changes:**

4.1. **Change of type of use:** Lochbuie seeks approval to change the type of use of the water rights from irrigation to municipal, including domestic, irrigation, commercial, stock watering, industrial, recreational, fire protection, fish and wildlife propagation, augmentation, replacement, substitution and exchange purposes, including replacement of well depletions and replacement of historical return flows to the South Platte River system. Lochbuie claims the right to fully consume the amount of historical depletions by first use, reuse and successive use to extinction for all proposed purposes. Lochbuie proposes to use the changed water rights as a source of replacement water in the augmentation plans decreed in Case Nos. 10CW214 and 10CW216, and in any future augmentation plans, and to lease, sell or otherwise dispose of any excess consumptive use water changed in this case. The area to be irrigated includes residential lawns and gardens, commercial greenhouses, parks, schools, open spaces, greenways, and other landscaped areas. The current Town service area includes portions of Sections 29, 30 and 31, T1N, R65W, and Sections 25, 35, and 36, T1N, R66W, 6th P.M. in Weld County, and Section 1, T1S, R66W and Section 6, T1S, R65W, 6th P.M. in Adams County.

4.2. **Change in manner and season of use:** Lochbuie seeks approval to change the water rights from direct use to direct use and storage for subsequent use at any time of the year, provided the water is diverted during the historical season of diversion through the Fulton Ditch. A portion of the water from Lochbuie's shares, after deducting ditch losses, will be returned to the South Platte River and may be stored in the following structures after diversion by exchange at the United Diversion Structure No. 3:

4.2.1. **United Reservoir:** United Reservoir is located on the East side of the South Platte River in the S½ of Section 26 and N½ of Section 35, T1S, R67W, 6th P.M. in Adams County.

4.2.2. **Barr Lake:** Barr Lake is located upon the whole or part of Sections 15, 21, 22, 23, 26, 27, 28 and 33, T1S, R66W, 6th P.M., in Adams County, Colorado.

4.2.3. **Lake Henry:** Lake Henry is located in portions of the E½ of the NW¼ and the W½ of the NE¼ Section 31, T1N, R65W, 6th P.M., in Weld County, Colorado.

4.2.4. **Highlands Reservoir:** Highlands Reservoir is a proposed reservoir to be constructed in the NW¼ of Section 32, Township 1 North, Range 65 West of the 6th P.M., in Weld County, Colorado.

Lochbuie's water may be physically delivered and stored in any of those reservoirs, and after storage in one reservoir, the water may be transferred to any of the other reservoirs by use of a book-over or paper exchange of water from the original reservoir.

4.3. **Change in place of use:** Applicant seeks approval to change the place of use to include any location within Lochbuie's current or future service area, and any location outside Lochbuie's service area served by contract, and in all reservoirs where the water may be stored. A map showing the approximate location of the place of historical use is attached as EXHIBIT A. A map showing Lochbuie's current service area is attached as EXHIBIT B. A map showing the diversion and storage locations is attached as EXHIBIT C.

5. **Proposed terms and conditions to prevent injury from change of water rights.**

Lochbuie will determine the amount of historical diversions, historical consumptive use and return flows for the 47 shares on a parcel-specific basis. Summaries of available diversion records for the Fulton Ditch are attached as EXHIBIT D. Lochbuie proposes the following terms and conditions to prevent injury to other water rights as a result of the proposed changes:

5.1. **Diversion season:** Lochbuie will only take delivery of water from its shares between April 1 and October 31.

5.2. **Ditch losses:** Lochbuie will continue to divert water from its shares through the Fulton Ditch headgate and will bear actual ditch losses in the same percentage as all other shareholders in the Fulton Ditch, in accordance with the Fulton Ditch bylaws and policies.

5.3. **Delivery through augmentation stations:** Lochbuie's water will be measured and delivered from the Fulton Ditch to the South Platte River through one or more augmentation stations on the Fulton Ditch in accordance with the bylaws of Fulton Ditch.

5.4. **Volumetric limits:** Water deliveries from Lochbuie's Fulton shares will be subject to maximum monthly, annual, and twenty-year volumetric limitations.

5.5. **Historical return flow obligations:** Lochbuie will replace historical return flows on a daily basis any time there is a call by a water right senior to July 29, 2019. Return flows will be replaced with water from the Lochbuie Fulton shares through augmentation stations or by release of such water after storage in United Reservoir; by delivery of nontributary ground water owned or controlled by Lochbuie, including water decreed in Case Nos. W-7806-74, 80CW158, 84CW385, 84CW027, and 84CW028; by release of water stored in United Reservoir pursuant to decree in Case No. 09CW268, or delivery of any other available source pursuant to the plan for augmentation approved in this case.

5.6. **Accounting:** Lochbuie will separately account for its delivery of water pursuant to its Fulton shares, replacement of return flows, exchange, storage and use of that water under this decree, and incorporate the delivery of such water for replacement purposes in the accounting for the appropriate augmentation plan decrees.

CLAIM FOR CONDITIONAL EXCHANGE WATER RIGHT

6. **Name of Exchange:** Lochbuie Fulton Ditch-United Diversion Exchange No. 1.

7. **Structures to be used in exchange:**

7.1. **Exchange-from point:** The Fulton water changed in this case and in any future case may be released from several augmentation stations on the Fulton Ditch located within the reach from the Fulton Ditch headgate described in paragraph 3.3, down to the point where the Fort Lupton augmentation station returns water to the South Platte River at a delivery point in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 31, T2N, R66W, 6th PM in Weld County, approximately 1,320 feet north of the south line and 1,720 feet west of the east line of Section 31. The downstream terminus of the exchange is at the delivery point of the Fort Lupton augmentation station.

7.2. **Exchange-to point:** United Diversion Facility No. 3 is located on the East bank of the South Platte River in the SW $\frac{1}{4}$ of Section 26, T1S, R67W of the 6th P.M., in Adams County, approximately 1,531 feet from the South line and 1,636 feet from the West line of said Section 26.

7.3. A map showing the location of the exchange points is attached as EXHIBIT E.

8. **Source:** South Platte River.

9. **Amount claimed:** 5.0 cfs, conditional.

10. **Date of Appropriation:** May 7, 2019.

11. **How appropriation was initiated:** The Town Board approved and signed a Water Resource Credit Agreement with United Water and Sanitation District dated May 7, 2019 to provide water service for the Lochbuie Station subdivision ("Lochbuie Station WRCA"), establishing Lochbuie's right to acquire and use up to 47 Fulton shares in this case, and the right to acquire additional diversion and capacity in United Diversion No. 3, United Reservoir, the Beebe Pipeline, Highlands Reservoir, and additional carriage capacity through the Burlington-O'Brien Canal and FRICO system. Lochbuie obtained title to 39 shares of the Fulton water and obtained a lien on the additional 8 Fulton shares in this case at the closing held May 30, 2019. The Lochbuie Town Board approved and signed a separate Water Resource Credit Agreement dated October 16, 2018, to provide water service for Silver Peaks East Subdivision ("Silver Peaks East WRCA") establishing Lochbuie's right to acquire and use an additional 26.44 shares in the Fulton Ditch, and Lochbuie has had discussions with other developers regarding the possible dedication of additional Fulton shares for use in the Town's water system in exchange for water service. Lochbuie filed this application in water court.

12. **Date water applied to beneficial use:** N/A.

13. **Uses:** Municipal purposes, including domestic, irrigation, industrial, commercial, stock watering, recreation, fire protection, fish and wildlife propagation, augmentation, replacement, substitution and exchange. Such water is intended for use as part of a unified municipal water system within the Town of Lochbuie and other locations served by the Town by contract. Water may be delivered for such uses to the Beebe Draw via the Beebe Pipeline, Burlington Ditch, O'Brien Canal, Barr Lake, Beebe Seep Canal and other FRICO system ditches, or delivered back to the South Platte River for such uses. The area to be irrigated includes residential lawns and gardens, commercial greenhouses, parks, schools, open spaces, greenways, and other landscaped areas. The current Town service area includes portions of Sections 29, 30 and 31, T1N, R65W, and Sections 25, 35, and 36, T1N, R66W, 6th P.M. in Weld County, and Section 1, T1S, R66W and Section 6, T1S, R65W, 6th P.M. in Adams County. Any water not used immediately may be stored in United Reservoir, Barr Lake, Lake Henry, or Highlands Reservoir.

CLAIM FOR APPROVAL OF AUGMENTATION PLAN

14. **Description of augmentation plan:**

14.1. Structure to be augmented: Historical return flows from Lochbuie's Fulton shares.

14.2. Location of return flows: The return flows historically accrued to the South Platte River between the Fulton Ditch headgate described in paragraph 3.3 and approximately the south line of Section 1, T2N, R67W, 6th P.M. in Weld County.

14.3. Water rights to be used for augmentation and statement of plan: In order to increase the supply of water available to Lochbuie for beneficial use from the Fulton

shares, Lochbuie may provide a substitute supply of water to replace historical return flows associated with the changed water rights from the sources described in paragraph 5.5, and from any other water supplies acquired or leased by Lochbuie in the future for use as a source of replacement water in this plan for augmentation pursuant to the procedures allowed by Section 37-92-305(8)(c), C.R.S.

CLAIM FOR APPROPRIATION OF RETURN FLOWS

15. **Claim for return flows:** Lochbuie claims the right to retain and use for all changed purposes the historical return flow portion of the Fulton shares at any time of the year whenever there is no call for water rights below the historical return flow location, or that call is junior to July 29, 2019.

16. **Name of structure:** Fulton Ditch.

17. **Location of structure:** The location of the Fulton Ditch headgate is described in paragraph 3.3.

18. **Source:** South Platte River.

19. **Amount claimed:** Lochbuie owns or has the right to use up to 47 shares in the Fulton Ditch described in paragraph 3. Lochbuie claims a rate and volume of all return flows associated with those shares to the extent available under this claimed appropriation, conditional.

20. **Date of Appropriation:** July 29, 2019.

21. **How appropriation was initiated:** By taking all actions described in paragraph 11 and filing the application in this case.

22. **Date water applied to beneficial use:** N/A.

23. **Uses:** The water is claimed for the same uses described in paragraphs 4.1 and 13.

24. **Notice to landowners:** Name and address of owners or reputed owners 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.

24.1. The Fulton Ditch is owned by the Fulton Irrigating Ditch Company, 25 South 4th Avenue, Brighton, CO 80601.

24.2. The United Diversion Facility No. 3 is on land owned by Henderson Aggregate Ltd., c/o of Albert Frei & Sons (Registered Agent), 11521 Brighton Road, Henderson, CO 80640. Lochbuie owns a perpetual right to divert up to 818 acre-feet per year.

24.3. United Reservoir is on land owned by Bromley District Water Providers, LLC, c/o of Robert A. Lembke (Registered Agent), 8301 East Prentice Ave., Suite 100, Greenwood Village, CO 80111. Lochbuie owns a perpetual right to use up to 445 acre-feet of storage space in United Reservoir with a contractual right to obtain up to an additional 50 acre-feet.

24.4. Barr Lake is on land owned by the Farmers Reservoir and Irrigation Company, Scott Edgar, General Manager, 80 South 27th Avenue, Brighton, CO 80601.

24.5. Lake Henry is on land owned by the Applicant.

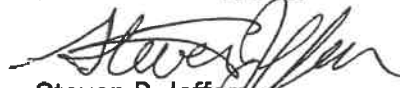
24.6. TRS Equities, LLC, Highlands Equities, LLC, Weld Kil 270 Equities, LCC, and the Damiano Family Trust hold legal title as nominees for South Weld Holdings, LLC, the beneficial title owner, to the land upon which Highlands Reservoir will be located. The address for South Weld Holdings is c/o Josh Shipman, 8301 East Prentice Ave., #100, Greenwood Village, Colorado 80111. Lochbuie has a contractual right to acquire up to 25 acre-feet of storage capacity in Highlands Reservoir.

24.7. Fort Lupton augmentation station is owned by the City of Fort Lupton, 130 South McKinley Avenue, Fort Lupton, CO 80621.

WHEREFORE, Lochbuie requests the Court enter a decree approving the change of water rights, conditional exchange water right, appropriation of return flows, and plan for augmentation described in this application.

DATED: July 31, 2019

LYONS GADDIS KAHN HALL
JEFFERS DWORAK & GRANT, PC



Steven P. Jeffers
sjeffers@lyonsgaddis.com
ATTORNEYS FOR APPLICANT,
TOWN OF LOCHBUIE

**VERIFICATION AND ACKNOWLEDGMENT OF PERSON HAVING KNOWLEDGE OF THE FACTS
STATED IN THIS APPLICATION**

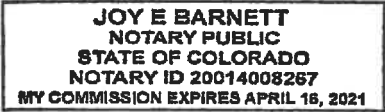
Being first duly sworn, I hereby state that I have read this application, and that I have personal knowledge of the facts stated and verify its contents to the best of my knowledge, information, and belief.



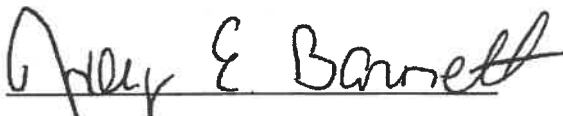
Christopher J. Sanchez, P.G.

The foregoing instrument was acknowledged before me in the County of Aspen,
State of Colorado, this 30 day of July 2019, by Christopher J. Sanchez

Witness my hand and official seal.



My Commission Expires: 4-16-21



Notary Public

The person signing this verification is a water consultant for the Town of Lochbuie.