

STATE OF
COLORADO

Eschberger - DNR, Amy <amy.eschberger@state.co.us>

Fwd: Draft augmentation plan application for Holcim (Boettcher Quarry)

Travis Bennett <travis.bennett@lafargeholcim.com>
To: "Eschberger - DNR, Amy" <amy.eschberger@state.co.us>

Fri, Apr 24, 2020 at 9:48 AM

Amy,
See attached, I will call to discuss.

----- Forwarded message -----

From: **Tom Korver** <tkorver@petros-white.com>
Date: Fri, Jan 17, 2020 at 12:54 PM
Subject: RE: Draft augmentation plan application for Holcim (Boettcher Quarry)
To: Travis Bennett <travis.bennett@lafargeholcim.com>, Michael Toelle <mike.toelle@lafargeholcim.com>
CC: Matt Lindburg <mlindburg@brwncald.com>, Alan Notary <anotary@brwncald.com>

Gentlemen,

Attached is the Boettcher Ponds augmentation application we filed with the Division 1 Water Court. The application will be included in the February Division 1 Resume, and any party who wishes to file a statement of opposition to the application will have until the last day of March to do so. Unless anything happens sooner, I'll follow up with a status email following the March deadline.

Let me know if you have any questions. Thanks,

Tom

Thomas W. Korver
PETROS & WHITE LLC
1999 Broadway, Suite 3200
Denver, CO 80202
303-825-1980 - phone
303-825-1983 – facsimile
www.petros-white.com

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From: Travis Bennett <travis.bennett@lafargeholcim.com>
Sent: Monday, January 13, 2020 9:43 AM
To: Michael Toelle <mike.toelle@lafargeholcim.com>
Cc: Tom Korver <tkorver@petros-white.com>; Matt Lindburg <mlindburg@brwncald.com>; Alan Notary <anotary@brwncald.com>
Subject: Re: Draft augmentation plan application for Holcim (Boettcher Quarry)

Look good to me.

Thanks,

On Mon, Jan 13, 2020 at 10:18 AM Michael Toelle <mike.toelle@lafargeholcim.com> wrote:

Hi Tom,

I have reviewed the Documents and I am OK with them.

Thanks,

Mike

Michael B. Toelle, CP^{cert}

LafargeHolcim - RCIP-NA

Manager - Raw Materials and Quarries

3500 US Highway 120

Florence, CO 81226

mike.toelle@lafargeholcim.com

Office: (719) 288-1402

Cell: (719) 429-5566

LafargeHolcim - RCIP-NA

On Mon, Jan 13, 2020 at 8:21 AM Tom Korver <tkorver@petros-white.com> wrote:

Gentlemen,

Now that we have received what appears to be DWR's informal comments on our application, attached is a final draft of the augmentation application for the Boettcher Ponds, with exhibits. The attached version incorporates the comments discussed during your phone conference with Al and Matt.

Please let me know if you have any additional comments. Note that I listed Mike under the Applicant on behalf of Holcim – also please let me know if someone else should be listed. Thanks,

Tom

Thomas W. Korver

PETROS & WHITE LLC

1999 Broadway, Suite 3200

Denver, CO 80202

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1527 Cole Boulevard, Suite 300

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From: Deangelis - DNR, Corey <corey.deangelis@state.co.us>

Sent: Thursday, December 26, 2019 3:08 PM

To: Matt Lindburg <mlindburg@brwncald.com>; Alan Notary <anotary@brwncald.com>; Hein, Michael <Michael.Hein@state.co.us>

Subject: Fwd: Draft augmentation plan application for Holcim

Matt,

Thank you for the email. The attachments referenced in the attached document were not included so I was not able to review that detail. The annual amount seems to be in-line with what we discussed we would expect to see replaced. Once the application is filed with attachments we can provide more detailed comments through that process. We look forward to the application for a plan of augmentation to be filed.

Regards,

Corey T. DeAngelis
Division Engineer
Water Division 1



COLORADO
Division of Water Resources
Department of Natural Resources

P 970.352.8712 x Ext 1204 | C 970.381.3158
[810 9th Street, Greeley, CO, 80631](https://www.colorado.gov/water)

corey.deangelis@state.co.us | www.colorado.gov/water

Please complete our new [DWR User Experience Survey](#) to express your opinions of our service. Your complete satisfaction is important to us!

----- Forwarded message -----

From: **Matt Lindburg** <mlindburg@brwncald.com>

Date: Fri, Dec 20, 2019 at 2:12 PM

Subject: Draft augmentation plan application for Holcim

To: Corey.DeAngelis@state.co.us <Corey.DeAngelis@state.co.us>

Cc: Alan Notary <anotary@brwncald.com>

Corey,

I'm sending you this email to let you know that Holcim will be submitting an application for an augmentation plan to replace out-of-priority depletions from their former quarry ponds north of the Cache la Poudre in the vicinity of Laporte, Colorado. The draft application is attached. If you have a few minutes to read it, we'd appreciate any feedback you may have.

The application is fairly streamlined. To provide some additional technical context for the application, I've copied some of the information that I previously emailed (with a few minor edits) to you regarding augmentation (see below). Please do not hesitate to call or email with questions or comments. Thanks Corey. Happy Holidays!

- **Water sources and physical setting**

- **Source of water to the ponds:** During our prior meeting at your office in Greeley, I was asked whether the source of water to the ponds was groundwater or surface water. I replied that it was both, but I didn't remember the proportion of surface vs groundwater. I reviewed our monitoring records, and inflows to the ponds over the monitoring period were about 80% surface water and 20% groundwater.
- **Hydrogeology:** The ponds were excavated in a bedrock outcrop, and they fall outside mapped alluvial aquifer boundaries in the Poudre basin.

- **Approach to augmentation:**

- **Focus on surface water:** Our approach to augmentation will focus on the accumulation of precipitation and runoff into the ponds for the following reasons:
 - The monitoring we discussed shows that groundwater is a small proportion of inflows to the ponds.
 - The ponds are in bedrock outcrops located outside of alluvial boundaries of the Cache la Poudre.
- **Augmentation amount and timing:** We quantified the maximum amount of water that accumulated in the ponds over a 12-month period during our monitoring program, and that amount was 8.6 AF (December 2016 through November 2017). We compared the rainfall during this period (15.5 inches) to similar periods during the years 2002 through 2017, and found that it was wetter than average (the average is 13.3 inches). We are planning to provide 8.6 AF of replacement supply annually (which is conservative based on our review of recent precipitation records). We plan to provide the water in a monthly distribution (using the same monthly distribution each year) during the irrigation season in a manner that mimics typical rainfall patterns. We feel like this is a conservative approach given that we will likely be over-augmenting during dry conditions when demands on the Poudre are greater yet less water is accumulating in the ponds from precipitation and runoff.

Matt Lindburg, P.E.
Brown and Caldwell

1527 Cole Boulevard, Suite 300

Lakewood, Colorado 80401

mlindburg@brwncald.com

T 303.239.5456 | C 303.253.0673



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4/24/2020

State.co.us Executive Branch Mail - Fwd: Draft augmentation plan application for Holcim (Boettcher Quarry)

Travis Bennett

Sr. Manager, Closed Sites and Remediation

[14500 C.R.1550](#)

[Ada, Oklahoma 74820](#)

Phone: (580) 421-8926

Cell: (580) 421-2057

Fax: (580) 436-3273

email: Travis.Bennett@lafargeholcim.com

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Travis Bennett

Sr. Manager, Closed Sites and Remediation

[14500 C.R.1550](#)

[Ada, Oklahoma 74820](#)

Phone: (580) 421-8926

Cell: (580) 421-2057

Fax: (580) 436-3273

email: Travis.Bennett@lafargeholcim.com



2020-01-17 Application.pdf

1569K

District Court, Water Division 1 Weld County Combined Courts 901 9 th Avenue P.O. Box 2038 Greeley, CO 80632 (970) 475-2400	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF HOLCIM (US) INC., IN LARIMER COUNTY, COLORADO	
Thomas W. Korver, No. 36924 Petros & White, LLC 1999 Broadway, Suite 3200 Denver, Colorado 80202 Phone: (303) 825-1980 Fax: (303) 825-1983 E-Mail: tkorver@petros-white.com	Δ COURT USE ONLY Δ Case No.: 20CW_____
APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION	

1. **Name and address of Applicant:**

Holcim (US) Inc. ("Holcim")
Attn: Michael B. Toelle
3500 US Highway 120
Florence, CO 81226
(719) 288-1402

Copies of pleadings to:

Thomas W. Korver
Petros & White, LLC
1999 Broadway, Suite 3200
Denver, Colorado 80202
303-825-1980

2. **Overview.** Applicant owns the Boettcher Quarry, located north of Fort Collins in Township 8 North, Range 69 West, 6th P.M., in Larimer County, Colorado (the "Property"). By this application, Applicant is seeking a plan for augmentation to augment four ponds associated with former quarry operations on the Property.

3. **Name and Description of Structures to be Augmented.** Pond B3, Pond 2, Pond B and Pond C (the “Ponds”) are located in Sections 5, 6, 8, and 17, Township 8 North, Range 69 West, 6th P.M. The locations of the Ponds were obtained using CDSS MapViewer, (UTM Zone 13, NAD 83). A description of the location and capacities of the Ponds is as follows.

- A. Pond B3 is located in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 5, Township 8 North, Range 69 West, 6th P.M., the approximate center of which is at UTM coordinates 487163.0535, 4503934.5603. The capacity of Pond B3 is 1.4 acre-feet, with a surface area of 0.4 acres.
- B. Pond 2 is located in the NW $\frac{1}{4}$ of Section 8, Township 8 North, Range 69 West, 6th P.M., the approximate center of which is at UTM coordinates 487509.0100, 4503340.2574. The capacity of Pond 2 is 7.3 acre-feet, with a surface area of 1.7 acres.
- C. Pond B is located in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 8, Township 8 North, Range 69 West, 6th P.M., the approximate center of which is at UTM coordinates 487372.2460, 4502717.6112. The capacity of Pond B is 1.7 acre-feet, with a surface area of 0.5 acres.
- D. Pond C is located in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 8, Township 8 North, Range 69 West, and the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 17, Township 8 North, Range 69 West, 6th P.M., the approximate center of which is at UTM coordinates 487841.2012, 4501752.3640. The capacity of Pond C is 10.5 acre-feet, with a surface area of 2.1 acres.

Applicant is not claiming a water right for any of the Ponds by way of the Application in this case. Applicant is investigating the possible removal or filling of the ponds when Highway 287 is relocated to accommodate the future Glade Reservoir. Depletions from the Ponds will impact the Cache la Poudre River in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 33, Township 8 North, Range 69 West, 6th P.M. A map depicting the location of the Ponds is attached hereto as Exhibit A.

4. **Water Rights to be Used for Augmentation.** Depletions from the Ponds will be replaced using augmentation water provided by the City of Greeley pursuant to a March 5, 2019 Augmentation Water Lease Agreement (the Lease”). The Lease provides Applicant with water from Greeley’s supplies in storage at Milton Seaman Reservoir that are available and decreed for augmentation, including but not limited to Greeley’s water rights currently decreed for augmentation use pursuant to the decrees described on Exhibit B attached hereto. The decreed location of Milton Seaman Reservoir is upon Sections 33 and 28, Township 9 North, Range 70 West. The Milton Seaman Reservoir Dam is presently located in the SW $\frac{1}{4}$, NE $\frac{1}{4}$ and SE $\frac{1}{4}$, NW $\frac{1}{4}$ of Section 33, Township 9 North, Range 70 West, taking its supply of water from the

North Fork of the Cache La Poudre River and its tributaries originating upstream of Milton Seaman Dam. The location of Milton Seaman Reservoir in relation to the Ponds is depicted on Exhibit A. Applicant also reserves the right to use additional or alternative sources of replacement water in this plan for augmentation pursuant to C.R.S. § 37-92-305(8)(c).

5. **Complete Statement of Plan for Augmentation.** Applicant will augment out-of-priority depletions from the Ponds with releases of water from Milton Seaman Reservoir. Depletions from the Ponds have been conservatively calculated to be a total of 8.6 acre-feet annually based upon water-level and climatological monitoring between June 2016 and November 2017 conducted at the request and meeting the requirements of the State Engineer. For each pond, inflows, outflows, and change in storage were monitored on a daily basis and summarized on a monthly and annual basis. The depletion amount was calculated as the maximum net amount of inflow observed over a 12-month period from precipitation and surface water runoff entering the ponds during the monitoring period. Applicant will account the depletions in the same month that the losses occur by releasing Milton Seaman Reservoir water in accordance with the monthly replacement schedule provided in Exhibit C. If the Applicant is unable to replace losses from the Ponds with sufficient Milton Seaman Reservoir water, Applicant will obtain and use other approved fully consumable sources or pump water from the ponds pursuant to the monthly schedule in Exhibit C hereto. Applicant will submit accounting information to the Division Engineer on an annual basis, or such other basis as may be reasonably required by the State or Division Engineer.

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.** The Ponds are located on land owned by the Applicant.

WHEREFORE, Applicant respectfully requests that this Court: (1) find that there will be no injury to any owner of, or person entitled to use, water under a vested water right or conditionally decreed water right as a result of Applicant's requested plan for augmentation; (2) approves the plan for augmentation; and (3) grants such other relief to the Applicant as the Court deems just and proper.

Respectfully submitted this 17th day of January, 2020.

PETROS & WHITE, LLC

/s/ Thomas W. Korver

Thomas W. Korver, No. 36924


Attorneys for Applicant Holcim (US) Inc.

E-filed pursuant to C.R.C.P. 121. A printed or printable copy of this document bearing the original, electronic, or scanned signatures is on file at the offices of Petros & White, LLC

VERIFICATION

[illegible]

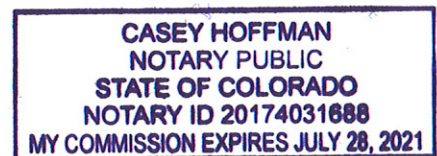
I, Matthew G. Lindburg, Consulting Engineer for Holcim, state under oath that I have read the foregoing Application for Approval of Plan for Augmentation and that the same is true and correct to the best of my information and belief.



Matthew G. Lindburg

Subscribed and sworn to before me this 14 day of January, 2020, by Matthew G. Lindburg.

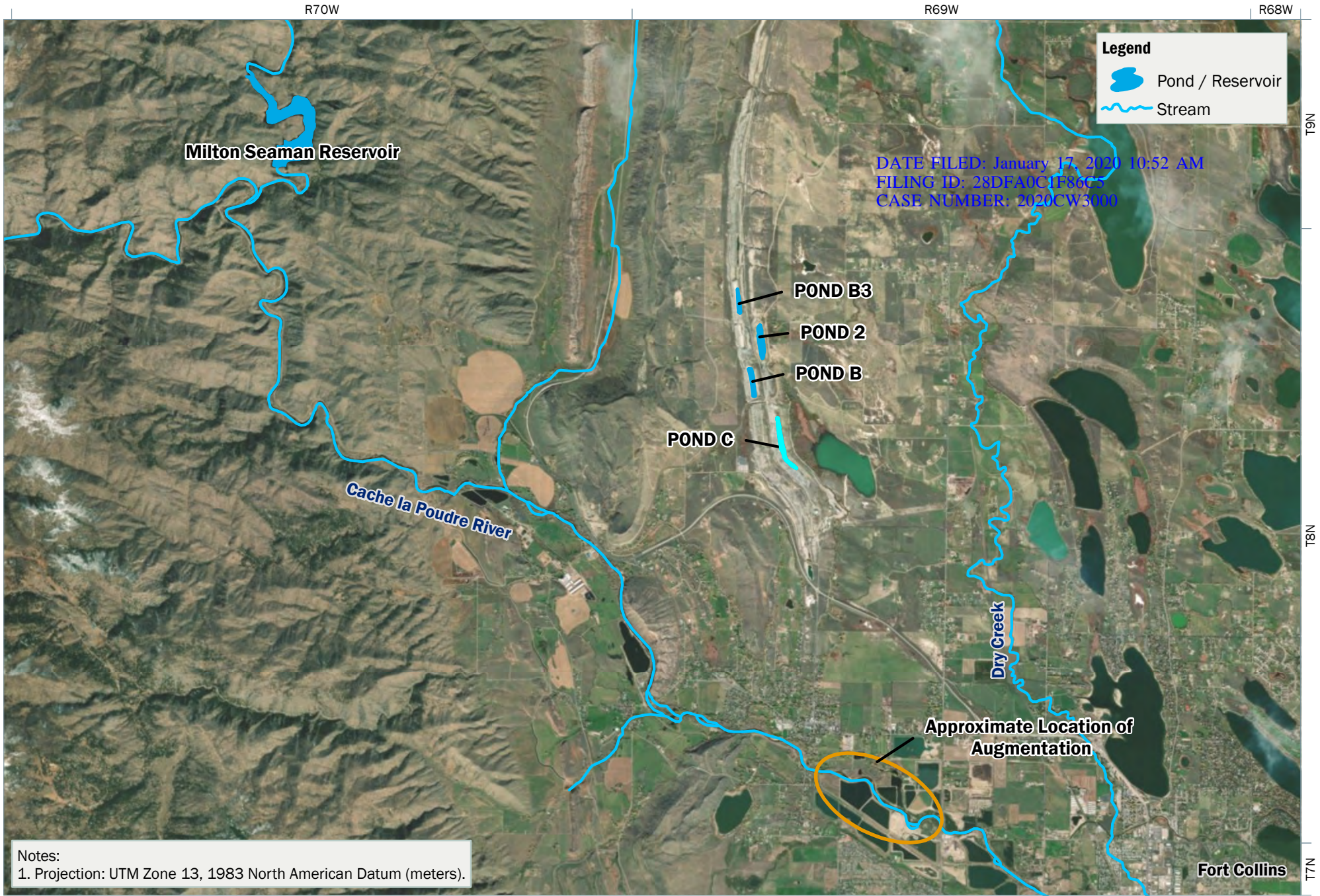
Witness my hand and official seal.

My commission expires: July 28, 2021




Notary Public

E-filed pursuant to C.R.C.P. 121. A printed or printable copy of this document bearing the original, electronic, or scanned signatures is on file at the offices of Petros & White, LLC



Holcim
**Laporte Ponds
Augmentation**
Date: April 2018
Project: 149099



Exhibit A
Laporte Ponds

EXHIBIT B

AUGMENTATION WATER LEASE AGREEMENT

(Holcim (US), Inc.)

FILED January 17, 2020 10:52 AM
FILING ID: 28DFA0C1F86C5
CASE NUMBER: 2020CW3000

This AUGMENTATION WATER LEASE AGREEMENT ("Agreement") is entered into this 5th day of March 2019, by and between HOLCIM (US), INC., a Delaware corporation operating in the State of Colorado, whose address is 8700 W. Bryn Mawr Ave., Suite 300N, Chicago, IL 60631 ("Holcim") and the CITY OF GREELEY, a Colorado home rule municipal corporation acting by and through its Water and Sewer Board, whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 ("Greeley") (collectively the "Parties").

Recitals

WHEREAS, Holcim owns and operates a series of ponds located in the SW¼ of the SW¼ of Section 5, the NW¼ of Section 8, the NW¼ of the SW¼ of Section 8, the SE¼ of the SW¼ of Section 8, and the E½ of the NW¼ of Section 17, all in Township 8 North, Range 69 West of the 6th P.M. in Larimer County, Colorado ("Holcim Ponds"); and

WHEREAS, Holcim desires to replace out-of-priority depletions to the Cache la Poudre River caused by the Holcim Ponds; and

WHEREAS, Holcim accordingly plans to seek approval of an augmentation plan from the Division 1 Water Court to set forth the terms by which Holcim will replace such depletions to the Cache la Poudre River; and

WHEREAS, Holcim desires to secure a reliable source of augmentation water to utilize as a replacement source in its augmentation plan, and Greeley is willing to lease to Holcim water that may be lawfully used for this purpose;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Holcim and Greeley agree as follows.

Agreement

1. Lease of Augmentation Water. Greeley hereby agrees to lease Holcim up to 10 acre-feet of water per year during the term of this Agreement. The water made available by Greeley pursuant to this Agreement shall be decreed or otherwise usable for augmentation purposes under Colorado law ("Augmentation Water").

2. Term of Lease. The term of this Agreement begins on the date of mutual execution by the Parties and ends on December 31, 2028. Thereafter, this Agreement will automatically renew for up to two additional subsequent terms of five years each. Notwithstanding the foregoing, this Agreement may be terminated at any time by Holcim or Greeley pursuant to either Paragraph 6 or Paragraph 9 below.

3. Water Delivery Schedule and Administration. The Augmentation Water to be made available by Greeley pursuant to this Agreement shall be released in accordance with the following annual schedule ("Delivery Schedule").



	March	April	May	Total
Amount (acre-feet)	1.0	2.5	1.5	5.0
Rate (c.f.s.)	0.016	0.042	0.024	

Holcim may update the Delivery Schedule at any time during the term of this Agreement by submitting an advance written notice to Greeley of sixty days. Notwithstanding the total maximum amount of 100 acre-feet available to Holcim under this Agreement through December 31, 2028, Greeley shall not be obligated to deliver more than 2.5 acre-feet of Augmentation Water in any month, or more than 10 acre-feet of Augmentation Water in any year. The foregoing delivery limits shall remain in effect if the Parties renew this Agreement in accordance with Paragraph 2 above.

4. Lease Payment. Holcim shall pay to Greeley \$1,200.00 per acre-foot of Augmentation Water leased pursuant to this Agreement ("Lease Payment"). Holcim shall pay to Greeley an initial Lease Payment for the 5 acre-feet of Augmentation Water set forth in the Delivery Schedule above and anticipated as necessary in 2019, in the amount of \$6,000.00, within five days after mutual execution of this Agreement by the Parties. Each year thereafter during the term of this Agreement, Greeley shall adjust the Lease Payment in accordance with the increase in the Consumer Price Index ("CPI") for the Denver/Boulder/Greeley region, using 2019 as a baseline. Holcim shall pay to Greeley that annually adjusted Lease Payment based on the then current Delivery Schedule for that year, but in no event shall the Lease Payment for Augmentation Water under this Agreement be less than \$1,200.00 per acre-foot. Greeley shall invoice Holcim in advance of each augmentation year, and Holcim shall remit payment to Greeley no later than March 1, or within fifteen days after receiving such invoice. Failure to timely pay the Lease Payment may result in the suspension of Augmentation Water deliveries and termination of this Agreement, as described more particularly in Paragraph 9 below. In any year during which Greeley curtails deliveries of Augmentation Water pursuant to Paragraphs 6(a) or 6(b) below, Greeley shall either (i) provide Holcim with a refund for any amounts of Augmentation Water requested and paid for but not delivered, or (ii) apply such amount as credits toward Holcim's future payments for Augmentation Water.

5. Delivery of Augmentation Water. Greeley shall make the Augmentation Water available to Holcim, according to the then current Delivery Schedule, by releasing such water from its available supplies in storage at Milton Seaman Reservoir. Greeley may, in its sole discretion, use any of its supplies in storage at Milton Seaman Reservoir that are available and decreed for augmentation use to meet its obligations under this Agreement. Holcim shall be solely responsible for all accounting and administration of the Augmentation Water after its release from Milton Seaman Reservoir, including for the accounting of any transit losses charged to Holcim by the Colorado Division of Water Resources. Greeley's obligation to make the Augmentation Water available to Holcim under this Lease shall commence on March 1, 2019, or the date on which Greeley receives the initial payment described in Paragraph 4 above, whichever date occurs later.

6. Limitations on Obligation to Deliver Augmentation Water. Greeley's obligation to make the Augmentation Water available to Holcim under this Agreement may be curtailed

under the following circumstances:

a. Greeley may curtail deliveries of Augmentation Water to Holcim if it imposes, in Greeley's sole discretion, mandatory city-wide water use restrictions to address drought conditions, dam or pipeline failure, or other catastrophic circumstance limiting Greeley's ability to satisfy the indoor water usage needs of its citizens, so long as, and to the extent that, deliveries under this Agreement are prevented or delayed by such cause.

b. Greeley may curtail deliveries of Augmentation Water to Holcim if an accident, act of war, natural catastrophe, fire, explosion, or other cause beyond the reasonable control of Greeley prevents or delays its ability to deliver Augmentation Water, so long as, and to the extent that, deliveries under this Agreement are prevented or delayed by such cause.

c. If at any time during the term of this Agreement Holcim no longer needs Augmentation Water to replace out-of-priority depletions associated with the Holcim Ponds, Greeley's obligation to make Augmentation Water available under this Agreement shall terminate and be of no further force and effect, subject to the notice provisions in this paragraph. If Greeley reasonably believes that the Holcim Ponds are no longer causing depletions to the Cache la Poudre River, Greeley shall notify Holcim of such belief in writing sixty days prior to its proposed termination of this Agreement. Holcim shall be entitled during this sixty-day period to demonstrate in writing that it still needs Augmentation Water to replace depletions from the Holcim Ponds, which shall preclude termination of the Augmentation Water delivery obligation.

d. If Holcim determines that it no longer needs Augmentation Water to replace out-of-priority depletions associated with the Holcim Ponds, Holcim may terminate the Agreement by submitting an advance written notice to Greeley of ninety days.

7. Use of the Augmentation Water. Holcim shall use the Augmentation Water made available pursuant to this Agreement only to replace the out-of-priority depletions associated with the Holcim Ponds, whether in an augmentation plan approved by the Division 1 Water Court or in an associated substitute water supply plan approved by the Colorado Division of Water Resources. Greeley may object to or oppose the inclusion and use of the Augmentation Water by Holcim in any proceeding to approve such a substitute water supply plan or augmentation plan to ensure that the proposed use of the Augmentation Water by Holcim is consistent with this Agreement. Greeley may also participate in such proceedings to protect Greeley's interest in its water rights, so long as Greeley's participation is not inconsistent with, or does not frustrate the purpose of, this Agreement.

8. Notices. Any notices required hereunder shall be deemed sufficient when (i) hand-delivered or (ii) sent certified mail, return receipt requested to the Parties by the contact information set forth below. The Parties shall notify each other in the event that the appropriate contact information changes.

If to Holcim: Holcim (US), Inc. Portland Plant
3500 State Hwy 120
Florence, Colorado 81226

With copy to: Brown and Caldwell
Attn: Matt Lindburg, P.E.
1527 Cole Boulevard, Suite 300
Lakewood, Colorado 80401
mlindburg@brwnald.com

If to Greeley: Greeley Water and Sewer Department
Attn: Jennifer Petrzela, Water Resource Operations Manager
1001 11th Avenue, Second Floor
Greeley, Colorado 80631
jennifer.petrzelka@greeleygov.com

With copy to: Greeley City Attorney's Office
Attn: Environmental and Water Resources Practice Group
1100 10th Street, Suite 401
Greeley, Colorado 80631
daniel.biwer@greeleygov.com

9. Default and Termination. If either of the Parties fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 8 above. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure period, or after any written extension thereof mutually agreed upon by the Parties, the non-defaulting party may declare the Agreement terminated by written notice in accordance with Paragraph 8 above.

a. Notwithstanding the above, any failure by Holcim to comply with the terms of Paragraph 7 or 15 in this Agreement constitutes a material breach. In the event that Holcim commits a material breach, Greeley may immediately terminate this Agreement by written notice to Holcim.

b. The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

10. Attorneys' Fees and Costs. In addition to any remedies otherwise available, a party that prevails in a legal action commenced against the other due to a default or material breach of this Agreement may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action.

11. Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Venue for any action regarding this Agreement shall be in the District Court for Weld County, Colorado or the Division 1 Water Court, as appropriate.

12. Recording. Holcim shall not record this Agreement in the real property records of any jurisdiction, but may disclose or otherwise utilize this Agreement in any proceeding to obtain approval of a plan for augmentation from the Division 1 Water Court or a substitute water supply plan from the Colorado Division of Water Resources.

13. Counterparts. This Agreement may be executed in counterparts, each of which when executed by the Parties may be deemed an original. The combination of such identical counterparts when executed by the Parties shall constitute one agreement.


14. No Vested Interest in Augmentation Water. This Agreement is made expressly subject to Section 17-4 of the Charter of the City of Greeley. Greeley grants no interest in the Augmentation Water to Holcim other than as explicitly set forth in this Agreement. Holcim shall make no claim to any rights, title, or interest in the Augmentation Water other than as expressly set forth in this Agreement. In no event shall Greeley be required to provide Augmentation Water in amounts greater or for a period longer, than expressly described herein.

15. Restriction on Sublease and Assignment. Holcim shall not rent, sublet, or otherwise convey the right to use the Augmentation Water. Holcim shall not assign this Agreement, except to a successive owner or operator of the Holcim Ponds for augmentation of the Holcim Ponds, and only with prior written consent from Greeley. Holcim shall request consent from Greeley prior to any purported assignment of this Agreement by advance written notice of at least thirty days. Such consent may be given or withheld in the sole discretion of Greeley.

16. Indemnification. Holcim agrees to exercise its rights under this Agreement at its own risk. Holcim shall indemnify and hold Greeley harmless from and against any cost, expense, or liability arising out of this Agreement or related activities. Nothing in this Agreement is intended constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq., as it may be applicable now or hereafter amended.

IN WITNESS WHEREOF, Holcim and the City of Greeley have executed this Agreement on the dates set forth below.

HOLCIM (US), INC.

By: 
Title: _____

Sr. Vice President, Manufacturing

Date: 2/13/19

CITY OF GREELEY

a Colorado home rule municipal corporation
acting by and through its Water and Sewer Board

By: [Signature]
Mayor

Date: 2-20-19

ATTEST:

By: Betsy D. Holder
City Clerk 3/5/19



[Signature]

EXHIBIT C

DATE FILED: January 17, 2020 10:52 AM
 FILING ID: 28DFA0C1F86C5
 CASE NUMBER: 2020CW3000

	April	May	June	July	August	September	October	Total
Amount (acre-feet)	1.3	1.9	1.1	1.1	1.2	1.1	0.9	8.6
Rate (cfs)	0.022	0.031	0.018	0.018	0.020	0.018	0.015	