

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED DURING JUNE 2008

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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed during June 2008, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CASE NO. 03CW48(W-101,W-309) - CODY LAND & WATER, LLC ("Cody"), c/o Diane Wallach, 3575 Cherry Creek North Drive, Denver, CO 80209 and WIDEFIELD WATER & SANITATION DISTRICT ("Widefield"), c/o Steve Wilson, Manager, 37 Widefield Boulevard, Colorado Springs, CO 80911** (James R. Montgomery and Marjorie L. Sant, Moses, Wittemyer, Harrison & Woodruff, P.C., Attorneys for Cody, P. O. Box 1440, Boulder, CO 80306-1440; (303) 443-8782; and William B. Tourtillott and Carolyn F. Burr, Ryley, Carlock & Applewhite, Attorneys for Widefield, 1999 Broadway, Suite 1800, Denver, CO 80202; (303) 863-7500)

**EL PASO COUNTY**

**Names of water rights or structures:** The original decree in Case No. W-309 involved a combination of changes of water rights and approval of new appropriations of conditional water rights, which together were characterized as the Gates Land Company plan for augmentation. That plan for augmentation included the following categories of water rights and structures: **Owen and Hall Ditch:** An irrigation water right for which the historical consumptive use had been previously determined in Case No. W-56. **Laughlin Ditch:** Irrigation water rights for which the historical consumptive use was determined in Case No. W-309. **Colorado College Well (Permit No. 014498-F):** A conditional ground water right adjudicated in Case No. W-101. **"Reclamation Rights":** Water attributed to increased ground water accretions to Fountain Creek as a result of the reclamation of historical evapotranspiration, which water the Court has determined in Case No. W-309 and subsequent decrees to have been added to Fountain Creek by the development efforts of applicant Cody and its predecessors. **"Stormwater Rights":** Water attributed to increased precipitation runoff to Fountain Creek which the Court found in Case No. W-309 and subsequent decrees to have been added to Fountain Creek by the development efforts of applicant Cody and its predecessors. **Description of conditional water rights:** **Original decrees:** **Owen and Hall Ditch:** Date: February 15, 1882. Court: District Court in and for El Paso County, State of Colorado. **Laughlin Ditch:** Date: February 15, 1882. **Court:** District Court in and for El Paso County, State of Colorado. **Colorado College Well:** **Date:** April 19, 1971. Case No. W-101, Court: District Court for Water Division No. 2, State of Colorado. **Reclamation Rights:** Date: November 4, 1971. Case No.: W-309. **Court:** District Court for Water Division No. 2, State of Colorado. **Stormwater Rights:** **Date:** November 4, 1971. Case No.: W-309. Court: District Court for Water Division No. 2, State of Colorado. **Subsequent decrees:** A decree in Case No. W-56, District

Court for Water Division No. 2, changed the point of diversion and place of use of Applicants' interest in the Owen and Hall Ditch and quantified the historical consumptive use of Applicants' interest. The conditional water rights decreed in Case No. W-309 were continued to May, 2003 by decree of the District Court, Water Division 2 in Case No. 95CW29, entered May 27, 1997. A subsequent decree in Case No. 97CW111, entered September 1, 1999, made an additional portion of the conditional water rights absolute, but did not change the May 2003 deadline for an application for finding of reasonable diligence.

**Locations:** Owen and Hall Ditch: The headgate is located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. in El Paso County, Colorado, at a point whence the northeast corner of said Section 20 bears North 72°07'East 2,700.81 feet. Laughlin Ditch: The original headgate is located on Fountain Creek in Section 29, Township 14 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado. Colorado College Well: Located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33, Township 14 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado.

**Reclamation and Stormwater Rights:** Water made available to Fountain Creek as a result of applicants' development and reclamation of lands located in Sections 29, 30, 31, 32, and 33, Township 14 South, Range 66 West of the 6<sup>th</sup> P.M.; Sections 5, 6, 7, and 8, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M.; and Section 1, Township 15 South, Range 67 West of the 6<sup>th</sup> P.M., all in El Paso County, Colorado.

**Appropriation dates:** Owen and Hall Ditch: December 31, 1862. Laughlin Ditch: December 31, 1862 and December 31, 1863. Colorado College Well: December 31, 1931.

**Reclamation and Stormwater Rights:** No appropriation date was awarded to the Gates Land Company plan for augmentation, because the Court determined that the developed water may be diverted independent of other priorities.

**Sources:** Owen and Hall Ditch: Fountain Creek. Laughlin Ditch: Fountain Creek. Colorado College Well: Ground water tributary to Fountain Creek, which is tributary to the Arkansas River.

**Reclamation and Stormwater Rights:** Developed water which has been or will be added to Fountain Creek, tributary to the Arkansas River.

**Amounts:** Owen and Hall Ditch: 0.5 cfs (Priority No. 8), the historical consumptive use of which has been determined to be 111.38 acre-feet per year. Laughlin Ditch: (1) 1.872 cfs (Priority No. 10); (2) the historical consumptive use of which has been determined to be 456.42 acre-feet 0.434 cfs (Priority No. 17). Colorado College Well: 2.78 cfs, CONDITIONAL, (0.33 cfs of the conditional water right for the Colorado College Well was made absolute on July 19, 1985 in Case No. 85CW54, by the District Court for Water Division No. 2, State of Colorado).

**Reclamation Rights:** 747.21 acre-feet per year, which is the amount that remained in Cody's ownership following the September 1, 1999 decree in Case No. 97CW111.

**Stormwater Rights:** 512.17 acre-feet per year.

**Uses:** Owen and Hall Ditch and Laughlin Ditch: The historical consumptive use as determined by the Division 2 Water Court's Decrees in Case Nos. W-56 and W-309 is a fully consumable supply of augmentation water, which may be used, reused, and successively used to extinction through direct use for irrigation, domestic, municipal, and recreational purposes or for augmentation purposes. Applicants seek a finding that the 456.42 acre-feet of historical consumptive use associated with the Laughlin Ditch and the 111.38 acre-feet of historical consumptive use associated with the Owen and Hall Ditch are absolute water rights, which have been changed to multiple uses, including augmentation, in prior decrees and for which no further showing of reasonable

diligence is required. Applicants will not claim consumptive use credits under the Owen and Hall Ditch or the Laughlin Ditch except at those times when water is physically and legally available in priority at the respective historical headgates for those ditches. Pursuant to the Stipulation described in paragraph 4, the State and Division Engineers have agreed that the amount available in priority to the Laughlin Ditch rights of the applicants may be determined by diverting such water at the headgate of the Fountain Mutual Ditch if the applicants obtain a right to use that structure by contract with its owner, or by means of such other diversion and measuring structure(s) as may be reasonably acceptable to the Division Engineer. **Colorado College Well:** Municipal and irrigation purposes. **Reclamation and Stormwater Rights:** Fully consumable supply of water for direct diversion to irrigation, domestic, municipal, and recreational purposes, with the right to use, reuse, and successively use to extinction, as well as a source of fully consumable augmentation supply water. Water decreed as part of the Gates Land Company Plan for Augmentation may be used for augmentation or direct use within the Fountain Creek drainage basin. Return flows from direct use within the Fountain Creek drainage basin may be used, reused, and successively used to extinction within the Fountain Creek drainage basin by storage or exchange within or outside the Fountain Creek drainage basin. **Procedural history:** The Court awarded certain amounts of water as developed water in Case No. W-309. In subsequent proceedings, the Court required proof that the development contemplated by the decree in Case No. W-309 as the basis for determining the amount of water being added to Fountain Creek had actually taken place. As a further step, the Court has required proof that the water has been placed to beneficial use in order to obtain an absolute decree. The decree in Case No. 97CW111 determined that the total amount of conditional and absolute water rights remaining in applicant's ownership from the decree in Case No. W-309 was 1,825.80 acre-feet. Of that amount, 972.15 acre-feet were decreed absolute and 853.65 acre-feet remained conditional. In January 2000, Cody's predecessor sold 110 acre-feet of the absolute water rights to the Cheyenne Mountain Center Owners Association. Therefore, at the time of filing the original application in this matter, Cody owned a total of 1,715.80 acre-feet of the absolute and conditional water rights decreed in Case No. W-309. Since filing the original application in this matter, applicants negotiated a stipulation with the State and Division Engineers, which was filed with the Court May 23, 2008 and which the Court approved by Order dated June 11, 2008 ("Stipulation"). Applicants have filed this amended application pursuant to the terms of the Stipulation and the Court's June 11, 2008 Order granting leave to amend. By way of this amended application, applicants seek a declaratory judgment from the Court granting the relief claimed herein, including interpretation of the decree in Case No. W-309 to confirm that the water rights were decreed therein for augmentation use. As a result of the Stipulation, applicants are relinquishing portions of the W-309 rights, as described below. If for any reason the Court does not enter applicants' proposed decree based on the stipulation with the State and Division Engineers, approving and adopting all the substantive provisions of the Stipulation, Applicants may elect to treat the Stipulation as null and void, in which event Applicants may pursue their claims for diligence and to make absolute all of the Cody Water Rights as claimed in the original application in this case. Nothing in the Stipulation shall be used by any party to support or oppose any claim or defense. **Claim of proof for**

**developed water:** At the time of filing of the application in this case, the remaining conditional water rights described above included 75.46 acre-feet of developed water for which proof of development had not yet been provided. These 75.46 acre-feet were part of the water decreed conditional in paragraphs 12 and 13 of the original decree in Case No. W-309, which determined that 420.06 acre-feet of water per year would be developed by the reclamation of areas identified as Broadmoor Valley, Carson Valley, and Broadmoor South. Applicant's engineer has determined, by applying the methodology set out in the decree in Case No. W-309, that reclamation (residential and commercial development) of these areas by applicant has resulted in an additional 34.38 acre-feet of water developed from these parcels. Applicant, therefore, seeks a decree confirming that development of an additional 34.38 acre-feet of water from Broadmoor Valley, Carson Valley, and Broadmoor South has been proved.

**Abandonment and Cancellation:** Pursuant to the Stipulation, applicants seek an order cancelling or abandoning the following water rights: **Reclamation Rights:** the remaining 41.08 acre-feet of the conditional Reclamation Rights originally identified by the decree in Case No. W-309. **Stormwater Rights:** 512.17 acre feet, including the 250 acre-feet of Stormwater Rights decreed absolute in Case No. 97CW111 and the remaining 262.17 acre-feet of Stormwater Rights decreed conditional in Case No. W-309. **Colorado College Well:** the 2.45 cfs of water remaining conditional. **Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to beneficial use as conditionally decreed, including expenditures:**

Applicants' work and expenditures claimed toward diligence were described in the original application filed in this case and include the following. Cody Land and Water, LLC is a successor to Gates Land Company, the original applicant with respect to the conditional water rights described in this application. Since entry of the last decree finding reasonable diligence in the completion of the appropriation of these conditional water rights in Case No. 95CW29, entered May 27, 1997, Cody and its predecessors have developed and maintained detailed accounting of the amount of water accruing to Fountain Creek under the Gates Land Company plan for augmentation. In addition, Cody and its predecessors retained the services of a consulting engineer to determine the amount of development that had taken place as contemplated in the original, conditional decree. Based on the work of its consulting engineer, Cody's predecessor Gates Land Company filed an application in Case No. 97CW111 and obtained a decree confirming that development had taken place as contemplated in the original, conditional decree, resulting in development of an additional 606.77 acre-feet of water thus added to Fountain Creek under the Gates Land Company plan for augmentation and further finding that an additional 879.1 acre-feet of the conditional water rights originally decreed in Case No. W-309 had been placed to beneficial use. Applicant's predecessor expended approximately \$13,000 in engineering fees and approximately \$17,000 in legal fees in the efforts related to Case No. 97CW111 and in the marketing and leasing of the water rights and development of accounting for use of the water rights. Applicant has continued leasing both absolute and conditional water rights amounting to 1,620.34 acre-feet under the Gates Land Company plan for augmentation to Colorado Water Protective and Development Association ("CWPDA") pursuant to a February 1, 2000 lease, which remains in effect. The applicant has also leased 20 acre-feet of the absolute and conditional water rights

associated with the Gates Land Company plan for augmentation to Mulehaven, Ltd. In addition, Applicants have retained the services of other consultants for the purpose of marketing and developing full beneficial use of the water rights associated with the Gates Land Company plan for augmentation. Since entry of the last finding of reasonable diligence in May 1997, applicants and Cody's predecessors have expended approximately \$50,000 in consultants' fees for an assessment of the water rights and preparation of a marketing outlook paper. Applicants have also participated as objector in various Water Court proceedings for the purpose of preventing injury to the water rights that are the subject of this application. Applicants have expended approximately \$2,200.00 in legal fees in connection with such efforts. Other general legal fees related to the water rights totaled approximately \$20,000 during the diligence period. Widefield has a purchase contract to acquire the water rights and has, therefore, joined this case as a co-applicant. **Water applied to beneficial use:** **Date:** April 1, 2001 through March 31, 2002. **Amount:** 521.78 acre-feet. **Use:** Irrigation, domestic, municipal and recreational purposes. **Description of place of use where water is applied to beneficial use:** CWPDA and Division Engineer records reflect that CWPDA used all 1,620.34 acre-feet of water under the Case No. W-309 decree that it leases from applicant Cody during the water accounting years beginning April 1, 2000 and April 1, 2001, as replacement water under a plan approved by the Division Engineer pursuant to Rules and Regulations of the State Engineer. This water was used to replace depletions from various water uses by members of CWPDA pursuant to said plan. In addition, pursuant to the lease between applicant and Mulehaven, Ltd., 20 acre-feet were used by Mulehaven for irrigation, domestic and related purposes during the water accounting year beginning April 1, 2001 and subsequent years. The uses by CWPDA and Mulehaven establish that applicants are entitled to a decree making an additional 521.78 acre-feet of the conditional water rights absolute for a total of 1,273.93 acre-feet absolute remaining in Cody's ownership, which amounts reflect the reductions to which applicants agreed in the Stipulation. **Claim for Declaratory Judgment:** Pursuant to C.R.C.P. 57, applicants further request the Court to declare the rights of the applicants under the prior decrees of the Court, as follows: Confirming that the decree in Case No. W-309 adjudicated the water rights included in the Gates Land Company Plan for Augmentation for beneficial use as a source of fully-consumable augmentation water, in addition to beneficial use by direct diversion as a fully-consumable supply of water for irrigation, domestic, municipal, and recreational purposes, with the right to the use, reuse and successive use of such water to extinction. Confirming that the decree in Case No. W-309 adjudicated the water rights described above for use elsewhere than on the original Gates Land Company land. Applicants further seek a ruling from this Court that the perfection and use of those water rights by Widefield (or by Cody or another successor of Cody if Widefield does not complete the purchase under its contract) will establish the place of use of such rights. A map of Widefield's projected service area is attached to the Amended Application as Exhibit A. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Applicants will seek administrative approval pursuant to a substitute water supply plan, Rule 14 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas Basin, Colorado adopted September 27, 1995, or approval by Water Court decree prior to applying the

water rights to temporary uses outside Widefield's projected service area. Confirming that Paragraph 16 of the decree in Case No. 95CW29 sets forth accounting procedures agreed to by the Offices of the State and Division Engineers and requires that Table 1 attached to that decree be revised as the total amount of augmentation credits proven and made available increases; that as provided in the Stipulation, Table 1 attached to the Amended Application describes the monthly maximum accounting schedule of augmentation credits, in accordance with the decree in Case No. 95CW29 and the additional credits that the applicants claim in this case as further modified by the Stipulation; and that, except as provided in the Stipulation, no other measurement, modeling, or engineering calculation shall be required in order for applicants to divert or apply credit up to the amounts in said Table 1. **Name and address of the owner of the land upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Cody Land and Water, LLC, whose address is 3575 Cherry Creek North Drive, Denver, CO 80209, and its predecessor Gates Land Company, owned all of the land on which the water that is the subject of this application was developed. Such land has since been developed and sold as multiple residential, commercial and other parcels. The use of the water claimed in this application as the basis for making the conditional water rights absolute occurred on lands owned by Mulehaven, Ltd., whose address is 3415 Janitell Road, Colorado Springs, CO 80906, and as credits for water accruing to Fountain Creek adjacent to the lands described above pursuant to the lease between applicant and CWPDA, whose address is P.O. Box 604, La Junta, CO 81050. CWPDA represents members with agricultural and other water uses throughout the Fountain Creek basin and in the Arkansas River basin downstream of Fountain Creek. WHEREFORE, applicant requests the Court to determine (1) that, through development of the land contemplated by the decree in Case No. W-309, an additional 34.38 acre-feet per year of water under the conditional water rights is now reaching Fountain Creek; (2) that a decree should enter making an additional 521.78 acre-feet absolute; (3) that a decree should enter cancelling 41.08 acre-feet of the conditional Reclamation Water rights; (4) that a decree should enter cancelling/abandoning the 2.45 cfs of conditional water rights decreed to the Colorado College Well; (5) that a decree should enter cancelling/abandoning the 512.78 acre-feet of water claimed as increased Stormwater Runoff; and (6) that a decree should enter approving and adopting the Stipulation as an order of the Court and declaring the rights of the applicants under prior decrees as described above.

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**CASE NO. 06CW12 - PENROSE WATER DISTRICT, c/o Ron Gasser, District Manager, 340 Grant Street, Penrose, CO 81240** (Steven P. Jeffers, Esq., Mark D. Detsky, Esq., Bernard Lyons Gaddis & Kahn, PC, P.O. Box 978, Longmont, CO 80502-0978, (303) 776-9900).

First Amendment to Application for Change of Water Rights and Appropriative Rights of Exchange

**FREMONT, CUSTER, TELLER and PUEBLO COUNTIES**

**FIRST CLAIM: CHANGE OF WATER RIGHTS 2. Decreed name of structures for which change is sought:** Pleasant Valley Ditch. **3. Previous decrees for water rights to be changed:**

The Pleasant Valley Ditch is decreed for a total diversion of 10 cfs. This amount includes the original appropriation for the Pleasant Valley Ditch and a transfer to the Pleasant Valley Ditch of the water right decreed to the Alexander Ditch. The original application included a total of 8.333 cfs in the Pleasant Valley Ditch. Applicant has acquired an additional 0.603 cfs by deed from Guy and Carol McEnulty ("McEnulty Water"). A copy of the deed is attached to the First Amendment as Exhibit C. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The amended application includes a total of 8.936 cfs described as follows: **A. Pleasant Valley Ditch i) Date entered:** February 3, 1894, District Court, Fremont County. **ii) Legal Description of Point of Diversion:** The decreed point of diversion is on the north side of the Arkansas River in the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$ , Section 27, T49N, R10E, N.M.P.M., Fremont County, Colorado. **iii) Source:** Arkansas River. **iv) Appropriation Date:** May 31, 1883, Priority 291. **v) Amount:** 7.149 cfs out of 8 cfs. **vi) Decreed use:** Irrigation. **B. Alexander Ditch i) Date entered:** July 2, 1906, District Court, Fremont County. **ii) Legal description of point of diversion:** Same as Pleasant Valley Ditch. **iii) Source:** Arkansas River. **iv) Appropriation Date:** December 31, 1877, Priority 194. **v) Amount:** 1.788 cfs out of 2 cfs. **vi) Decreed use:** Irrigation.

**4. Historical use of water rights to be changed:** In addition to the historical use of Applicant's 10/12<sup>th</sup> interest in the Pleasant Valley Ditch on the Goodwin Ranch, the McEnulty Water was used for irrigation of approximately 10.9 acres of alfalfa and grass pasture in a portion of the NW  $\frac{1}{4}$  Section 2, T48N, R10E, N.M.P.M., and the SW 1/4 Section 35, T49N, R10E, N.M.P.M., both located in Fremont County, Colorado. The diversion records for the ditch were included as Exhibit A to the original application. A map showing the location of use of Applicant's water rights on the Goodwin Ranch was attached to the original application as Exhibit B. A map showing the location of use of the McEnulty Water is attached to the Amendment as Exhibit B-1. **5. Inclusion of McEnulty Water in all proposed changes:** Applicant proposes to include the McEnulty Water in all changes of water rights described in the original application, including change to alternate points of diversion, from direct flow to direct flow and storage, change in place of use and change in type of use as described in paragraphs 5, 6, 7, 8, and 9 of the application, including continued irrigation of all historically irrigated lands, or removal of the subject water rights from the historically irrigated lands to effectuate the proposed changes. Applicant proposes to deliver such water for storage in De Weese Reservoir, Pueblo Reservoir, lined gravel pit reservoirs near Penrose, Brush Hollow Reservoir, Skaguay Reservoir, and Phantom Canyon Reservoir, and any expansion or enlargement of such reservoirs as described in the

original application.

**6. Inclusion of McEnulty Water in all appropriative rights of exchange.** Applicant proposes to include the McEnulty Water in all exchanges described in the original application, including all exchanges described in paragraphs 5, 10 and 11, within the rates of exchange claimed in the original application, including the adjudication of conditional appropriative rights of exchange on the Arkansas River, Grape Creek, Eightmile Creek, Brush Hollow Creek, Beaver Creek and West Beaver Creek, utilizing the subject water rights for storage in De Weese Reservoir, Phantom Canyon Reservoir, Brush Hollow Reservoir and Skaguay Reservoir, and any expansion or enlargement of such reservoirs or direct diversion into the Penrose water system.

**7. Names and addresses of owners or reputed owners of the land upon which the water is used, 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:**

A. The Pleasant Valley Ditch and historically irrigated lands on the Goodwin Ranch are owned by the Applicant. B. The land historically irrigated by the McEnulty Water is now owned by Dudley Kingsbury Wright, Jr. and June S. Wright, whose address is 246 Leath King Drive, Castle Rock, CO 80108. C. The Pleasant Valley Ditch may also be owned by Robert and Helen Williams, whose address is County Road 47, Howard, CO 81233-9500 and Glen Vista Property Owners Association, Patti Myers, P.O. Box 1140, Canon City, CO 81215. D. The Lester and Attebery Ditch and the Blue Heron Ponds are located on land owned by the United States Bureau of Land Management, whose address is ATTN: Roy Masinton, Field Manager, 3170 E. Main St., Canon City, CO 81212. E. The Lester and Attebery Ditch and Grisenti Ponds are located on land owned by Grisenti family, whose address is Brush Hollow Partnership ATTN: James J. Grisenti, 15000 Hwy. 115, Florence, CO 81226. F. The Ideal Cement Pump Plant is owned by Holcim Inc., 6211 N. Ann Arbor Rd., Dundee, MI 48131. G. The Phantom Canyon Diversion is on land owned by Dick H. Chess, 4193 County Road 67, Penrose, CO 81240. H. The Phantom Canyon Reservoir is on land owned by Phantom Canyon Ranch Land and Cattle Co., LLC and Morley Companies Family Investment, LLLP, 20 Boulder Crescent, 2<sup>nd</sup> Floor, Colorado Springs, CO 80903. I. De Weese Reservoir is owned by De Weese-Dye Ditch and Reservoir Co., 1631 Chestnut, Canon City, CO 81212. J. Skaguay Reservoir is located on lands owned by the State of Colorado Department of Natural Resources, Division of Wildlife, whose address is 6060 Broadway, Denver, CO 80216 and Central Telephone and Utilities Corporation, whose address is 115 W. 2<sup>nd</sup> St., Pueblo, CO 81003. K. Pueblo Reservoir is located on land owned by the United States Bureau of Reclamation, whose address is ATTN: Fred Ore, Area Manager, Eastern Colorado Area Office, 11056 W. County Rd. 18E, Loveland, CO 80537-9711. L. The Beaver Park Ditch headgate and Brush Hollow Reservoir are on land owned by Beaver Park Water, Inc., P.O. Box 286, Penrose, CO 81240, and the State of Colorado, c/o Fremont County Assessor, P.O. Box 306, Canon City, CO 81212. M. The proposed Penrose Beaver Creek Diversion is located on land owned by the Colorado State Land Board, 1313 Sherman Street, Room 621, Denver, CO 80203. N. The land upon which the proposed well field or other diversion points on the Arkansas River may be located is owned by one or more of the people described above and/or the following people: a. Jean M. Colon, 202 MacKenzie Ave., Canon City, CO 81212-9317. b. Colo Venture IV, LLC and Rocolo VIII, LLC, 20 Boulder

Crescent Street, 2<sup>nd</sup> Floor, Colorado Springs, CO 80903. c. Rodger E. Beck and Albert I. Beck, 2000 Fremont County Road 112, Florence, CO 81226. d. Penrose Ranch I, LLC, 2010 Fox Mountain Point, Colorado Springs, CO 80906-6909. e. Ranch Land, LLC, 3925 Hill Dr., Colorado Springs, CO 80904-1183. f. Mary Wallace, 307 W. 19<sup>th</sup> Street, Pueblo, CO 81003-2607. g. Jessie M. Grisenti, 14662 State Highway 115, Florence, CO 81226. **8. All other claims unaffected.** Except as specifically amended herein, all other claims in the original application remain as originally stated. **9. Statements of Opposition:** All statements of opposition previously filed in this case will apply to the application as amended without the need for filing additional statements of opposition.

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**Case No: 08CW34 - THOMAS N. LAWRENCE and ANITA AKIN LAWRENCE, 613 Goldeneye Dr, Granbury, TX 76049; LINDA SUE MOORHEAD ZUFLACHT and NANCY MOOREHEAD HOPKINS, 5370 Prue Rd, San Antonio, TX 78240; RUTH ROBINSON YORK and RICHARD L. MATHESON TRUST DATED FEBRUARY 4, 1983, 3557 S. Ivanhoe St, Denver, CO 80237; LARRY D. MORGAN AND PORTIA E. MORGAN REVOCABLE TRUST UTA DATED JUNE 9, 1998, P.O. Box 250, Mesilla Park, NM 88047** (Linda McMillan, Attorney for Applicants, 503 N Main St, #222, Pueblo, CO 81003; (719) 543-8596)

#### **HUERFANO COUNTY**

**Structure:** Spruce Creek Spring. **Legal Description of each point of diversion:** Huerfano County, SW ¼ Section 23, T30S, R68W, 6<sup>th</sup> P.M., 230 ft. from the South line and 2112 ft. from the West line. **GPS Location in UTM Format:** Zone 13; Northing 4,141,031; Easting 0,502,512. **Source:** Tributary to Wahatoya Creek a tributary to the Cucharas River a tributary to the Arkansas River. **Appropriation Date:** Approximately July 1958. **Amount:** .00027 c.f.s. **Historic Use:** The water is used for domestic purposes for eight single family residences on 2-3 acres located on the following described property: SW ¼ §23 T30S R68W of the 6<sup>th</sup> P.M. **Name(s) and address(es) of owner(s) or reputed owner(s) 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:** Applicants.

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**CASE NO. 08CW35 - RAY E. DAWSON, 10544 Hwy. 24.5, P. O. Box 1287, Leadville, CO 80461; (719) 486-0438**

Application for Approval of Plan for Augmentation

#### **LAKE COUNTY**

**2. Names of structures to be augmented:** #1, 2, 3, and 4. **Are there other water rights diverted from these structures?** No. **3. Previous decrees for water rights to be used for augmentation:** A. **Date of original Decree:** N/A; **Case No.:** N/A; **Court:** N/A. B. **Type of water right:** N/A. C. **Legal description of points of diversion or place of storage:** #1 - 16' from South section line, 1,838' from West section line in the SE ¼ SW ¼ Sec. 3, T10S, R80W, 6<sup>th</sup> P.M. #2 - 1156' from North section line and 698' from West section line in the NW ¼ NW ¼ Sec. 10, T10S, R80W, 6<sup>th</sup> P.M. #3 - 1589' from North line and 503' from West line in the SW ¼ NW ¼ Sec. 10, T10S, R80W, 6<sup>th</sup> P.M. #4 - 1919' from North line and 347' from West line in SW ¼ SW

$\frac{1}{4}$  Sec. 10, T10S, R80W. **GPS Locations in UTM Format:** #1 - 13S 038582; 4339895; #2 - 13S 0385473; 4339542; #3 - 13S 0385412; 4339411; #4 - 13S 0385363; 4339311.

**D. Source:** Aurora Water District. **E. Appropriation Date:** Unknown (senior); **Amount:** 100 a.f. **F. Decreed use:** Augmentation water to be used on 80 acres. **4. Historic use:** Water from Iowa Gulch has been used for irrigating the hay meadow and pasture for over 100 years from the same diversion points. A total amount of 3 c.f.s for a period of 4 months. **5. Statement of plan for augmentation, covering all applicable matters under §37-92-103(9), 302(1)(2) and 305(8), C.R.S.** Give full details of plan, including a description of all water rights to be established or changed by the plan. 100 acre feet of Twin Lakes water will be leased from Aurora Water District for the year 2008. Copy of water agreement attached to Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. I will be claiming 100% use with no return flows. **6. Name(s) and address(es) of owner(s) or reputed owner(s) 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:** None.

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**CASE NO. 08CW36 - STANBERT E. CLAY AND ALICE A. CLAY, 36470 County Road 39, Hugo, CO 80821; (719) 743-2232**

Application for Water Rights (Surface)

**LINCOLN COUNTY**

**2. Name of structure:** Coon Creek Spring (this is the historical local name for this spring--not Halde Spring). **3. Legal description of each point of diversion:** Lincoln County Section 4, Township 12 South, Range 53 West, 6<sup>th</sup> P.M. **Optional Additional Description:** GPS location information in UTM format: **Were points averaged?** No. **Northing** 4322253; **Easting** 0643145. Zone 13. **4. Source:** Coon Creek Draw, tributary to Big Sandy, tributary to Arkansas. **5. A. Date of initiation of appropriation:** 1907. **B. How appropriation was initiated:** Livestock water and irrigation to homestead. **C. Date water applied to beneficial use:** 1907. **6. Amount claimed:** 2 cfs Absolute. **7. Use or proposed use:** Livestock water and commercial use (oil well driller use; road construction). **8. Name(s) and address(es) of owner(s) or reputed owner(s) 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:** Applicants. **9. Remarks:** As property owner and with historical use, we request this water right be approved rather than the one filed by Halde Sand & Gravel.

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**CASE NO. 08CW37 - STANBERT E. CLAY AND ALICE A. CLAY, 36470 County  
Road 39, Hugo, CO 80821; (719) 743-2232**

Application for Water Rights (Surface)

**LINCOLN COUNTY**

**2. Names of structures:** Section 35a; Section 35b; 2-Mile Spring; Davis Place Spring.  
**3. Legal description of each point of diversion:** Section 35a: Section 35, Township 11 South, Range 53 West, 6<sup>th</sup> P.M., Lincoln County. GPS location in UTM format, Zone 13: Northing 4322770; Easting 0647224. Section 35b: Section 35, Township 11 South, Range 53 West, 6<sup>th</sup> P.M., Lincoln County. GPS location in UTM format, Zone 13: Northing 4323299; Easting 0647185. 2-Mile Spring: Section 8, Township 12 South, Range 53 West, 6<sup>th</sup> P.M., Lincoln County. GPS location in UTM format, Zone 13: Northing 4320147; Easting 0642847. Davis Place Spring: Section 35, Township 12 South, Range 53 West, 6<sup>th</sup> P.M., Lincoln County. GPS location in UTM format, Zone 13: Northing 4313561; Easting 0647730. **4. Source:** Big Sandy, tributary to the Arkansas River. **5. A. Date of initiation of appropriation:** 1907. **B. How appropriation was initiated:** Livestock water. **C. Date water applied to beneficial use:** 1907. **6. Amount claimed:** less than 1 cfs Absolute as to each spring. **7. Use or proposed use:** Livestock water. **8. Name(s) and address(es) of owner(s) or reputed owner(s) 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:** Applicants. **9. Remarks:** These springs have not been "improved", and we do not intend to "improve" them at this time.

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**CASE NO. 08CW38 - HILL RANCH, LTD., c/o F. F. Hill, 3794-C Highway 67W, Glen Rose, TX 76043** (Robert F. T. Krassa, Krassa & Miller, LLC, Attorneys for Applicant,

2344 Spruce Street, Suite A, Boulder, CO 80302; (303) 442-2156)

Application for Change of Water Rights, for Water Storage Right, for Appropriative Rights of Exchange, and for Approval of Plan for Augmentation Application

**LAS ANIMAS COUNTY, COLORADO**

**2. Decreed names of structures for which change is sought:** Velasquez and Chacon No. 2 Ditch. **3. Information from Previous Decree.** **a. Date entered:** August 10, 1903, District Court for Las Animas County, Colorado. **b. Decreed point of diversion:** The decreed point of diversion for the Velasquez and Chacon No. 2 ditch is not specifically stated in the said 1903 decree. The present point of diversion, which is believed to be the original and historic point of diversion, is on the south bank of the Purgatoire River in the NW/4 Section 4, T.34S., R.66W of the 6th P.M. Any locations within the Maxwell Grant are described according to the generally accepted protraction of land in said Grant. Location shown on map attached to Application as Exhibit A. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **c. Source:** Purgatoire River. **d. Appropriation date:** April 10, 1867, priority number 32. **e. Amount:** 2 cfs **f. Historic use:** irrigation of approximately 36.6 acres in the NE/4 Sec. 4, T.34 S., R.66 W., the NW/4 Sec 3., T.34 S., R. 66 W., SW/4 Sec. 34, T.33 S., R.66 W. and the SE/4 Sec. 33, T.33 S., R.66 W. The approximate location of said use is shown on map attached to Application as

Exhibit A, and monthly summaries of Division Engineer records of diversions are attached to Application as Exhibit B.

**4. Proposed changes:**

**a. Change of Type of Use.** In addition to irrigation, Applicant proposes to use the water for all municipal purposes including domestic, industrial, commercial, manufacturing, agricultural, irrigation, stock watering, recreational, piscatorial, fish and wildlife, fire protection, street washing, hydroelectric power production, for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from use of water from other sources, for replacement of reservoir evaporation, for all augmentation purposes and for all other beneficial purposes. Such use shall include the right to use, re-use and successively dispose of to extinction that portion of the water available to the subject water rights which was historically consumed through irrigation use or which represented stream depletions.

**b. Point of Diversion** - no change requested.

**c. Place of Use.** Storage for all of the above described uses will be in Legend Lake Reservoir located in the NE/4 NE/4 Section 4 and NW/4 NW/4 Section 3, T.34S., R.66W of the 6th P.M., as shown on map attached to Application as Exhibit A. Other uses of subject water may be at any location upstream of the dam of Trinidad Reservoir, which is located in Section 27, Township 33 South, Range 64 West of the 6th P.M. in Las Animas County.

**d. Proposed Plan of Operation.** Diversions will continue to be made at the existing Velasquez and Chacon No. 2 headgate, located as described above. The historic consumptive use attributable to said water right will be stored in Legend Lake reservoir located in the NE/4 Section 4 and NW/4 Section 3, T.34S., R.66W of the 6th P.M. Historic return flows will be replaced as necessary to prevent injury. To the extent that Legend Lake Reservoir intercepts inflows of ground water, such inflows will be released back to the stream. Applicant will install such measuring devices as are reasonably required by the Division Engineer.

**5. Name and address of owners of 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:** Applicant.

**APPLICATION FOR WATER STORAGE RIGHT.**

**6. Name of Reservoir:** Legend Lake.

**7. Location of Dam:** NE/4 NE/4 Section 4, T.34S., R.66W of the 6th P.M. The mid point of the reservoir is approximately 364 feet south of the north section line, and approximately 452 feet west of the east section line, of said Section 4.

**8. Name, capacity and location of ditches used to fill reservoir:** Velasquez and Chacon No. 2 Ditch, capacity 10 cfs, point of diversion located in the NE/4 NW/4 Section 4, T.34S., R.66W of the 6th P.M. at a point approximately 253 feet south of the north section line and approximately 2908 feet west of the east section line of said Section 4.

**9. Source:** Purgatoire River.

**10. A. Date of Appropriation:** February 8, 2007, the date upon which Applicant requested approval of a substitute water supply plan for said reservoir.

**B. How appropriation was initiated:** By formation of intent to appropriate water, construction of Legend Lake for purposes of a new water storage right therein, and request for substitute water supply.

**C. Date water applied to beneficial use:** not applicable (conditional water right).

**11. a. Amount claimed:** 121.25 acre feet, conditional.

**b. If off channel: rate of diversion in cfs for filling the reservoir:** 10 cfs.

**12. Use:** as stated in above paragraph 4.

**13. Dimensions:**

**A. Surface area of high water line:** 9.7 acres

**B Maximum height of dam:** 8.75 feet

**C. Length of dam:** 1557

feet **14. Capacities:** A. Total capacity of reservoir: 121.25 acre feet B. Active capacity: 43.65 acre feet. C. Dead Storage: 77.60 acre feet **15. Name and address of owners of 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:** Applicant. **Land upon which any structure will be located:** Applicant. **APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.** **16. Name of structure to be augmented:** Legend Lake reservoir. **17. Previous decree for water right to be used for augmentation:** Velasquez & Chacon No. 2 Ditch as described in foregoing paragraph 3. **18. Historic use of water right to be used for augmentation:** as described in foregoing paragraph 3.e. **19. Statement of plan for augmentation:** The Division Engineer in approving Applicant's existing Substitute Water Supply Plan has determined that at times when the storage content of Legend Lake is less than a staff gauge measurement that corresponds to an elevation of 6,610.2 feet, the reservoir will be considered to be intercepting ground water at a rate of 6 g.p.m. Such ground water shall be aggregated and released as directed by the Water Commissioner. To the extent Applicant is unable to release such water originating from such uncontrolled ground water inflow, Applicant will release water stored in Legend Lake under the Velasquez and Chacon No. 2 water right to the extent necessary to prevent injury to other vested water rights. **20. Name and address of owners of 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:** Applicant

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**CASE NO. 08CW39 (Water Division 2) and 08CW131 (Water Division 1) - JOEL D. BASLER and JENNIFER T. BASLER, 11775 Lexie Lane, Colorado Springs, CO 80908** (Henry D. Worley, MacDougall, Wolridge & Worley, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905-1743; (719) 520-9288)

Application for Adjudication of Denver Basin Ground Water and for Approval of Plan for Augmentation

#### **EL PASO COUNTY**

**I. APPLICATION FOR DENVER BASIN WATER RIGHTS.** **1. Names of wells and permit, registration or denial numbers:** There is an old, unpermitted well on the property in the Dawson aquifer. **2. Legal description of wells:** One additional well in the Dawson aquifer (two total), and one in each of the Denver, Arapahoe and Laramie-Fox Hills aquifers, plus all necessary additional and/or replacement wells, to be located anywhere on Applicants' 10 acre property located in the SE1/4 Section 17, T. 12 S., R. 65 W., 6<sup>th</sup> P.M., in El Paso County (the "Property"). The legal description of the Property is attached to the Application as Exhibit A, and a map depicting its location is attached to the Application as Figure 1. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The Property is located entirely within the Arkansas River drainage. **3. Sources:** Not nontributary Dawson aquifer; not nontributary Denver aquifer; nontributary Arapahoe aquifer; nontributary Laramie-Fox Hills aquifer. **4. A. Date of appropriation:** Not applicable. **4.B. How appropriation was initiated:** Not applicable. **4.C. Date water applied to**

**beneficial use:** Not applicable. **5. Amount claimed:** Dawson aquifer - 15 g.p.m. per well, 5.8 acre feet annually, absolute; Denver aquifer - 50 g.p.m., 5.8 acre feet annually, absolute; Arapahoe aquifer - 250 g.p.m., 4.3 acre feet annually, absolute; Laramie-Fox Hills aquifer - 120 g.p.m., 2.9 acre feet annually, absolute. The above amounts will be changed in any decree entered herein to take into account the State Engineer's Determination of Facts. The water court will be asked to retain jurisdiction over such decree to enter a final determination of the amount of water available for appropriation from each aquifer based on geophysical logs for such wells. **6. Proposed use:** All beneficial uses except municipal. **7. Name and address of owner of land on which wells are/will be located:** Same as Applicants. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.** **8. Name of structures to be augmented:** Up to two Dawson aquifer wells, one of which is already constructed. No other water rights are or will be diverted from these wells. After entry of a decree, the existing Dawson aquifer well will be permitted consistent with the provisions of the decree. **9. Previous decrees for water rights to be used for augmentation:** None. **10. Historic use:** Not applicable. **11. Statement of plan for augmentation:** Applicants intend to subdivide the Property into two five-acre residential lots, each of which will be served by individual on-lot Dawson aquifer wells which may pump no more than 0.7 acre foot (228,100 gallons) annually, each. Indoor use for each of the houses is expected to equal 0.30 acre foot annually. Treatment of waste water from indoor uses will be achieved using nonevaporative individual septic tanks and leach field systems ("ISDS"); consumption of water so treated will not exceed 10 percent of uses, with 90 percent, or 0.54 acre foot annually, returning to the nearest stream. Depletions in the 300<sup>th</sup> year are modeled to equal approximately 27 percent of annual pumping, or 0.38 acre foot based on annual pumping of 1.4 acre feet. So long as a single family dwelling is located on each lot, ISDS return flows alone will equal or exceed maximum stream depletions each year during pumping. Change of the type of wastewater treatment to a central sewage treatment with direct discharge to any tributary of Fountain Creek shall not require an amendment to this plan for augmentation, but change to any other type of waste water disposal shall require an amendment. Applicants propose to replace depletions during pumping with return flows from the ISDS, and to replace injurious post-pumping depletions with the nontributary Arapahoe aquifer water decreed herein, approximately 560 acre feet of which will be reserved for that purpose. However, Applicants seek to reserve the right to replace such depletions with any judicially acceptable source of augmentation water. **12. Miscellaneous provisions:** Applicants propose to aggregate all depletions and replace them to the Arkansas River drainage. Any final decree entered in this case shall provide that no more than 1.4 acre feet per year may be diverted from the Dawson aquifer absent an amendment of this plan for augmentation. Because depletions will occur in both Water Divisions 1 and 2, this application is being published in both water divisions, and will be consolidated in Water Division 2, where the property is located. Applicants will give notice of the application to the beneficiary of a deed of trust on the property, as required by 37-92-302(2)(b), and will supplement this application with a copy of such letter after notice has been sent.

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**CASE NO. 08CW40(W-2545,W-3890) - RODNEY J. PREISSER, 31 East Platte**

**Avenue, Suite 200, Colorado Springs, CO 80903** (Richard J. Mehren and Patricia M. DeChristopher, Moses, Wittemyer, Harrison & Woodruff, P.C., Attorneys for Applicant, P. O. Box 1440, Boulder, CO 80306-1440; (303) 443-8782)

Application for Finding of Reasonable Diligence

**LINCOLN COUNTY**

**2. Name of structures:** Preisser Well Nos. 5 and 11-15 (collectively referred to as the "Preisser Wells"). **3. Description of conditional water rights:** The subject conditional water rights were decreed on September 25, 1973, as amended by order dated December 16, 1974, in Case Nos. W-2545 and W-3890 in District Court, Water Division No. 2. **a. Location:** The Preisser wells were originally decreed for the following locations in Township 14 South, Range 58 West, 6<sup>th</sup> P.M., Lincoln County, Colorado: Well No. 5: In the NW1/4 NW1/4, Section 29, at a point approximately 100 feet from the North line and 1040 feet from the West line thereof. Well No. 11: In the NW1/4 SW1/4, Section 29, at a point approximately 2640 feet from the North line and 600 feet from the West line thereof. Well No. 12: In the NW1/4 NE1/4, Section 22, at a point approximately 200 feet from the North line and 2600 feet from the East line thereof. Well No. 13: In the SE1/4 NE1/4, Section 22, at a point approximately 2600 feet from the North line and 900 feet from the East line thereof. Well No. 14: In the SE1/4 SE1/4, Section 22, at a point approximately 200 feet from the South line and 200 feet from the East line thereof. Well No. 15: In the SE1/4 SW1/4, Section 22, at a point approximately 1000 feet from the South line and 2400 feet from the West line thereof. In 1986, Well Nos. 5 and 11 were replaced within Section 29 as follows: Well No. 5: At a point approximately 42 feet from the North line and 1006 feet from the West line thereof. Well No. 11: At a point approximately 2920 feet from the North line and 544 feet from the West line thereof. Pursuant to the terms of a settlement agreement between the Applicant and the State and Division Engineers (the "State"), Box Springs Canal and Reservoir Company and its individual shareholders ("Box Springs"), Reid Cattle Company ("Reid") Smith Cattle Company ("Smith") and Horse Creek Water Users Association ("HCWUA") entered into on May 4, 1998 (the "Settlement Agreement"), whereby the Applicant may relocate any of the Preisser Wells within the property boundaries of Preisser's land subject to certain limitations, Applicant has relocated Well Nos. 12 and 14 to the following locations in Township 14 South, Range 58 West, 6<sup>th</sup> P.M., Lincoln County, Colorado: Well No. 12: In the NW1/4 NE1/4 of Section 22, at a point 300 feet from the North Line and 2600 feet from the East line thereof. Well No. 14: In the SE1/4 NE1/4 of Section 22, at a point 2457 feet from the North line and 1120 feet from the East line thereof. **B. Source:** The Nussbaum aquifer located within the basins of Little Horse Creek and the Steel Fork of Little Horse Creek. **C. Appropriation dates and amounts:** The Preisser Wells have an appropriation date of August 25, 1972. Well No. 5: 400 gpm (conditional); Well No. 11: 470 gpm (conditional); Well No. 12: 570 gpm (conditional); Well No. 13: 310 gpm (conditional); Well No. 14: 275 gpm (conditional); Well No. 15: 500 gpm (conditional). Pursuant to the May 4, 1998 Settlement Agreement, Applicant has agreed to limit total pumping and consumptive use of the Preisser Wells to 550 acre-feet per year. This 550 acre-feet is

fully consumable under the terms of the Settlement Agreement. Not more than 175 acre-feet will be pumped in the winter (November 1 - March 31). Not more than 50 acre-feet per year will be pumped as a total from wells located west of the north-south centerline of Section 21, Township 14 South, Range 58 West, 6<sup>th</sup> P.M. Of this 50 acre-feet, not more than 20 acre-feet will be pumped in winter. Applicant has abandoned the Preisser Wells water rights in excess of a combined pumping of 550 acre-feet per year. Pursuant to the Settlement Agreement and a stipulation and supplemental stipulation with Jack L. Pfost dated March 30, 1998 and May 14, 1998, respectively, not more than 525 acre-feet per year will be pumped as a total from groundwater tributary to Little Horse Creek from wells located east of the north-south centerline of Section 21, Township 14 South, Range 58 West, 6<sup>th</sup> P.M. There are currently four wells (Preisser Well Nos. 12, 13, 14, and 15) located in Section 22, Township 14 South, Range 58 West, 6<sup>th</sup> P.M., decreed to pump groundwater tributary to Little Horse Creek. There are currently two wells (Preisser Well Nos. 5 and 11) located in Section 29, Township 14 South, Range 58 West, 6<sup>th</sup> P.M., decreed to pump groundwater tributary to Steel's Fork.

**D. Uses:** The Preisser Wells were decreed absolute for on-site irrigation in Case Nos. W-2545 and W-3890, but were decreed conditional for the uses of irrigation, municipal, commercial, industrial, recreational and other beneficial purposes including the out-of-basin transfer of water for such purposes. The Settlement Agreement imposed no limits on the place or type of reuse of the 550 acre-feet of water. **E. Depth:** Well No. 5: 152 feet (as reconstructed); Well No. 11: 132 feet (as reconstructed); Well No. 12: 117 feet (as reconstructed); Well No. 13: 102 feet; Well No. 14: 103 feet (as reconstructed); Well No. 15: 107 feet.

**4. Prior diligence:** Since the original decree was entered for the Preisser Wells, a timely application for finding of reasonable diligence was filed in accordance with Colorado law in Case No. 99CW143. A decree was entered on June 12, 2002 in Case No. 99CW143 granting the application and finding that Applicant has exercised reasonable diligence toward completion of the appropriation of the Preisser Wells.

**5. Detailed outline of work and expenditures toward completion of the appropriation and application of the water to beneficial use:** During the subject diligence period, beginning in June 2002, Applicant has worked with the Sunset Metropolitan District ("District") to dedicate the Preisser Wells as a source of supply for future development within the District's service area and has incurred expenses associated with such activities. Applicant owns or has an interest in land that has been platted for development within the District's Service area, including Springs East Village, Viewpoint Village, Ellicott Springs, Sunset Village, Ellicott Town Center and Santa Fe Springs developments. These developments have been variously platted for residential and commercial use. As part of the subdivision approval process, the State Engineer's Office has opined that the Preisser Wells are an adequate source of supply for the Springs East Village and Viewpoint Village subdivisions. Pursuant to the District's Water System Master Plan, the Preisser Wells will be integrated into the District's long-term water resource supply program through the construction of a 28-mile pipeline. In developing its Water System Master Plan, the District has relied on the future inclusion of the Preisser Wells into its integrated water supply system. Applicant intends to continue to work diligently to develop the Preisser Wells for use as a source of supply for the District's service area. Additionally, during approximately five years of the

subject diligence period, Applicant was involved in extensive litigation involving a Lincoln County building permit for a hog-farming operation that proposed to use the Preisser Wells as a source of supply (Preisser v. Board of County Commissioners of Lincoln County, Case No. 98CV6, District Court, Lincoln County, Colorado, and related appeals). The value and use of the Preisser Wells was central to this litigation. As a result of this litigation and the events leading up to it, Applicant was unable to use the Preisser Wells as a source of supply for the proposed hog-farming operation as planned. If not for the litigation, Applicant would have been able to apply the Preisser Wells' water to a commercial beneficial use through supply for the hog-farm operation, making at least a portion of the water right absolute. During the subject diligence period, Applicant incurred expenses in excess of \$587,150.00 related to the building permit litigation and other diligence activities. WHEREFORE, Applicant respectfully requests the Court to enter a decree finding that reasonable diligence has been performed toward appropriation of the subject conditional water rights and continuing the subject conditional water rights in full force and effect.

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**CASE NO. 08CW41(00CW151) - P&E ENTERPRISES, LLC, d/b/a BIG HORN PARK,  
c/o Edith A. Darrah, P. O. Box 109, 16373 Highway 50 West, Coaldale, CO 81222-  
0109** (David M. Shohet, Felt, Monson & Culichia, LLC, 319 North Weber Street,  
Colorado Springs, CO 80903; (719) 471-1212)

Application for Finding of Reasonable Diligence

**FREMONT COUNTY**

**2. Name of Structures:** Bighorn Park Diversion No. 1, Bighorn Park Diversion No. 2 , Bighorn Park Pond No. 1   **3. Description of conditional water rights from the Ruling of Referee and Decree:** **A. Date of Original Decree:** June 12, 2002, **Case No.:** 00CW151, **Court:** District Court, Water Division 2 **B. Legal Description:** i. Bighorn Park Diversion No. 1: The point of diversion is located in the Northeast 1/4 of the Southeast 1/4, Section 33, Township 48 North, Range 11 East of the N.M.P.M., Fremont County, Colorado. Exhibit A attached to the Application indicates the approximate location of Bighorn Park Diversion No. 1. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. ii. Bighorn Park Diversion No. 2: The point of diversion is the outflow of a culvert which runs underneath U.S. Highway 50 in the Southeast 1/4 of the Southeast 1/4, Section 33, Township 48 North, Range 11 East, N.M.P.M., Fremont County, Colorado. Exhibit A indicates the approximate location of Bighorn Park Diversion No. 2. iii. Bighorn Park Pond No. 1: To be constructed in the Northeast 1/4 of the Southeast 1/4, Section 33, Township 48 North, Range 11 East, N.M.P.M., Fremont County, Colorado. Exhibit A indicates the approximate location of Bighorn Park Pond No. 1. **C. Source:** i. Bighorn Park Diversion No. 1: An unnamed watercourse tributary to the Arkansas River. ii. Bighorn Park Diversion No. 2: An unnamed watercourse tributary to the Arkansas River representing the outflow from a series of ponds located in that portion of the Southeast 1/4 of the Southeast 1/4, Section 33, Township 48 North, Range 11 East N.M.P.M. which lies south of the U.S. Highway 50 right of way. iii. Bighorn Park Pond No. 1: Diversions from the Bighorn Park Underground Water Right, Bighorn Park Diversions No. 1 and No. 2, all waters tributary to unnamed watercourses tributary to the Arkansas River, Fremont County, Colorado. **D. Appropriation Date:** i. Bighorn Park Diversion

No. 1, Bighorn Park Diversion No. 2, Bighorn Park Pond No. 1: October 6, 2000. **E. Amount:** i. Bighorn Park Diversion No. 1: 0.26 c.f.s., conditional. ii. Bighorn Park Diversion No. 2: 0.25 c.f.s., conditional. iii. Bighorn Park Pond No. 1: 2.0 acre feet capacity, conditional with the right to fill and refill. **F. Use:** i. Bighorn Park Diversion No. 1 and Bighorn Park Diversion No. 2: Domestic, recreation, commercial, swimming pool, fish propagation, storage and irrigation of up to 3 acres of lawn, garden and landscaping. ii. Bighorn Park Pond No. 1: Storage, recreation, fish propagation and irrigation of up to 3 acres of lawn, garden and landscaping.

**4. Description of work performed toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** On August 2, 2005, Applicant purchased Bighorn Park. Bighorn Park is a family camping resort consisting of a campground store, swimming pool, hotel units, camper cabins, mobile homes/trailers, bath house, lawns, laundry, tent spaces and RV spaces. Bighorn Park has operated as a family camping resort since 1945. In Case No. 00CW151, the Court decreed to Applicant's predecessor the use of three underground water rights for domestic, recreation, commercial, swimming pool, fish propagation, storage and irrigation of up to 3 acres of lawn, garden and landscaping. Additionally, the Court granted one storage right for storage, recreation, fish propagation and irrigation of up to 3 acres of lawn, garden and landscaping. Two of the underground water rights, the Bighorn Park Diversion No. 1 and the Bighorn Park Diversion No. 2, along with the storage right, the Bighorn Park Pond No. 1, were decreed as conditional. These conditional water rights are part of an integrated water supply system for the full development of Bighorn Park. During this diligence period, Applicant has located and staked the point of diversion for Bighorn Park Diversion No. 1. Furthermore, Applicant has surveyed and staked out the pipeline to carry water from Bighorn Park Diversion No. 1 to Bighorn Park Pond No. 1. In relation to Bighorn Park Diversion No. 2, Applicant has inquired with the U.S. Corp of Engineers regarding any and all necessary permits needed to use this water right on the north side of the Arkansas River. Lastly, in regards to Bighorn Park Pond No. 1, Applicant has staked the perimeter of the pond and has commenced construction of Bighorn Park Pond No. 1 by removing material and debris where the pond will be located. In addition to the work described above, during this diligence period, Applicant, in connection with the development of Bighorn Park, as part of the integrated system, has spent considerable time and money repairing and upgrading the camp resort. Applicant has installed new washers and dryers, installed new playground equipment and opened a campground store to provide additional conveniences for its campers. Applicant has also installed and replaced new propane tanks, heaters and hot water boilers for the cabins and motel unit. Applicant has further spent considerable time and money updating the water works system in Bighorn Park including installing new water hydrants, a new septic tank and leach field and repairing the swimming pool. Additionally, Applicant replaced all bedding, pillows, quilts, window coverings, towels and rugs in the cabins and motel unit. Lastly, Applicant has expended considerable amounts of money on advertising Bighorn Park, including the development of an internet website. Therefore, during this diligence period Applicant has devoted substantial time and money towards Bighorn Park, which includes the development of the conditional water rights as part of the integrated system. During this diligence period Applicant has spent the following amounts on the

development of Bighorn Park and Bighorn Park Diversion No. 1, Bighorn Park Diversion No. 2, Bighorn Park Pond No. 1, as part of the integrated system: \$4,200.00 on washers and Dryers for the laundromat; \$1,188 on propane heaters for cabins and motel units; \$1,100.00 for new hot water heaters; \$5,459.00 on water hydrants, septic tank, leach field, tools and other plumbing repairs and replacement costs, \$1,175.00 on road base; \$2,350.00 on motel and cabin roof replacement; \$2,076.00 on swimming pool repair and replacement parts, \$1,200.00 on new playground equipment; \$2,741.00 for the replacement of all bedding, pillows, quilts, window coverings, towels, and rugs, \$1,191.00 on replacing furniture, appliances, and electronics in motel and cabin rooms; \$7,920.00 on paint, stain, lumber, interior remodeling, replace windows on motel and cabin rooms; \$9,000.00 to start up Camp Store and Gift Shop products; and, \$15,393.00 on advertising. Thus, during this diligence period, Applicant has spent a total of \$54,993.00 on the integrated system and development of the Applicant's property of which Bighorn Park Diversion No. 1, Bighorn Park Diversion No. 2, Bighorn Park Pond No. 1 are a part. During this diligence period Applicant has, therefore, devoted substantial efforts toward the development of the Bighorn Park and the integrated system, for the further application of water from Bighorn Park Diversion No. 1, Bighorn Park Diversion No. 2, and Bighorn Park Pond No. 1 to beneficial use.

**5. Claim to Make Absolute:** No part of the conditional water rights decreed in Case No. 98CW175 are claimed to be made absolute at this time. **6. Name and address of the owners of land on which structure is located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** The owner of the property upon which the point of diversion for Bighorn Park Diversion No. 2 is the Colorado Department of Transportation, whose address is Administrative Office, 4201 East Arkansas Avenue, Denver, CO 80222.

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**CASE NO. 08CW42 (Water Division 2) and CASE NO. 08CW140 (Water Division 1) - SUSAN REDDEN, 11170 Black Forest Road, Black Forest, CO 80908** (Christopher Cummins and Michael J. Gustafson, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)  
Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation

## **EL PASO COUNTY**

**II. Application for Underground Water Rights A. Legal Description of Wells** **1. Property Description.** All wells will be located on a property consisting of Lot 1, Cherokee Acres subdivision, which contains 8.97 acres, more or less, located in the SW 1/4 NE 1/4 Section 19, Township 12 South, Range 65 W., 6<sup>th</sup> P.M. ("Applicant's Property"). Applicant's Property is generally shown on the Exhibit A map attached to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **2. Existing Wells.** State Engineer Well Permit No. 65306 is a domestic well currently located in the NE 1/4 NE 1/4 Section 19, Township 12 South, Range 65 W., 6<sup>th</sup> P.M., approximately 1730 feet from the north section line of said Section 19, and 200 feet from the east section line of said Section 19 ("Redden Well No. 1"). State Engineer Well Permit No. 133640 is a domestic well currently located in the SW 1/4 NE 1/4 Section 19, Township 12 South, Range 65 W., 6<sup>th</sup> P.M., approximately 2180 feet from the north section line of said Section 19, and 410

feet from the east section line of said Section 19 ("Redden Well No. 2"). Redden Well No.1 and Redden Well No. 2 are collectively referred to as the "Redden Wells".

**B. Water Source.** **1. Not Nontributary.** The ground water withdrawn from the Dawson, Denver, and Arapahoe aquifers of the Denver Basin underlying Applicant's Property is not nontributary. Pursuant to C.R.S. 37-90-137(9)(c), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. The Denver and Arapahoe aquifers underlying the Applicant's Property are more than one mile from any point of contact between any natural stream, including its alluvium. Pursuant to C.R.S. §37-90-137(9)(c), the augmentation requirements for wells into the Denver and Arapahoe aquifers will require the replacement to the affected stream system of a total amount of water equal to 4 percent of the water withdrawn on an annual basis. **2. Nontributary.** The groundwater that will be withdrawn from the Laramie-Fox Hills Aquifer of the Denver Basin underlying the Applicant's Property is nontributary. **C. Estimated Rates of Withdrawal and Ground Water Available**

**1. Estimated Rates of Withdrawal.** Pumping from each of the Redden Wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions.

**2. Estimated Average Annual Amounts of Ground Water Available.** Applicant requests an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

Aquifer	Saturated Thickness (Feet)	Specific Yield (%)	Total Water Adjudicated (Acre Feet)	Annual Average Withdrawal (Acre Feet)
Dawson	215	.20	385	3.85
Denver	310	.17	472	4.72
Arapahoe	260	.17	396	3.96
Laramie Fox Hills	190	.15	255	2.55

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **D. Requested Uses.** The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, fire protection, and also for exchange and augmentation purposes. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall

only be entitled to construct a well or use water from the not nontributary Dawson, Denver, or Arapahoe aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c). **E. Name and Address of Owner of Land Upon Which Wells are to Be Located.** The land upon which the wells are and will be located is owned by Applicant. **III. Plan for Augmentation.** **A. Structures to be Augmented.** The structures to be augmented consist of the Redden Wells in the not nontributary Dawson aquifer of the Denver Basin underlying the Applicant's Property and any replacement wells. **B. Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during pumping are the return flows of the not nontributary Dawson aquifer from the Redden Wells as set forth in this plan for augmentation, together with water rights from the nontributary Laramie-Fox Hills aquifer for post pumping depletions. Applicant will also use her water rights in the nontributary Denver and Arapahoe Aquifers determined in consolidated Case Nos. 05CW49 Water Court Division 2 and 05CW173 Water Court Division 1 as augmentation water under this plan. **C. Statement of Plan for Augmentation.** **1. Water Demand and Depletions.** Applicant seeks an augmentation plan covering the following depletions: **A. In-House Uses/Bed and Breakfast Uses.** Depletions associated with withdrawals from the Redden Wells for seven multi family equivalent units ("MFE") that are part of a bed and breakfast on Applicant's Property. Four of the MFEs are served by Redden Well No. 1 and three of the MFEs are served by Redden Well No. 2. Assuming two persons per MFE and an average daily demand of 90 gallons per day per person, the average MFE will require 180 gallons per day, making the total diversion for in-house use 0.2 acre-feet per year per MFE, or 1.4 annual acre feet combined for all the MFEs/bed and breakfast units. The bed and breakfast facilities are serviced by non-evaporative septic leach field disposal systems. On this basis, the average consumptive use for MFE/bed and breakfast use is calculated at 10 percent of annual diversions, or 0.020 acre-feet of depletions per MFE per year, for a total in-house/bed and breakfast use depletion for the Redden Wells of 0.14 annual acre-feet. **B. Banquet Facilities.** Depletions associated with withdrawals from the Redden Wells include uses in a banquet facility on Applicant's property used to host weddings. The banquet facility is used a maximum of 12 times per year to accommodate up to 100 people per event. The banquet facility includes a small kitchen with a sink and a dishwasher, all food provided for weddings at the banquet facility is catered by outside vendors who take all dishes off site for washing. Thus, only a very small amount of water is used on occasion in the banquet facility kitchen. The banquet facility also has two bathrooms that each contain a sink and toilet. For the purposes of this analysis the kitchen sink is assumed to have a flow rate of 2.5 gallons per minute with a total of 1 minute per use resulting in each use totaling 2.5 gallons. Assuming that 12 wedding events are held at the banquet facility each year and during each event the sink is used 5 times, the banquet facility kitchen sink will use approximately 150 gallons annually. For the purposes of this analysis the two bathroom sinks are assumed to each have flow rates of 2.5 gallons per minute with a total of 15 seconds per use resulting in each use consuming a total of 0.625 gallons. Assuming that 12 wedding events are held at the banquet facility each year and during each event each bathroom sink is used 100 times (2 times per person), the two bathroom sinks will use a total of approximately

1,500 gallons annually (750 gallons per sink). For the purposes of this analysis the toilets in the banquet facility bathrooms are assumed to have flow rates of 1.6 gallons per flush. Assuming that 12 wedding events are held at the banquet facility each year and during each event each toilet is used 100 times (2 times per person), the two toilets will use a total of approximately 3,840 gallons annually (1920 gallons per toilet). Under this scenario the banquet facility will use a total of approximately 5,490 gallons of water annually, or 0.17 acre feet. The kitchen sink, bathroom sink, and the two toilets are assumed to have a 10 percent consumptive use rate. Assuming a 10 percent consumptive use, annual depletions from the banquet facility equal 549 gallons or .0017 acre feet. C. Landscape Irrigation. Depletions associated with the Redden Wells for irrigation of lawn, garden, trees and shrubs over a maximum of 30,000 square feet. Assuming an application rate of 2.0 acre feet per acre and a 85% consumptive use rate, consumptive use attributable to irrigation amounts to 1.17 acre feet. D. Animal Watering. Depletions from the Redden Wells for the watering of up to eight (8) head of domestic animals. Utilizing a consumptive use component of one hundred percent, each animal will consume 0.011 acre-feet annually (10 gallons per day), for a total annual consumptive use attributable to domestic animal watering of 0.088 annual acre feet. E. Total Depletions. The total maximum annual depletions from the Redden Wells equal 1.40 annual acre feet (0.14 acre feet for in-house uses, 0.0017 acre feet for banquet uses, 1.17 acre feet for irrigation, and 0.088 acre feet for animal watering). 2. Replacement. Applicant's augmentation water during the plan term will consist of septic return flows from in-house, banquet facility, and irrigation uses. The wastewater from the in-house and banquet uses will be disposed of through non-evaporative septic systems that are determined to have return flows to the tributary stream system of 90 percent of pumping. Therefore, Applicant asserts that 1.26 acre feet of the 1.4 annual acre feet of pumping for in-house uses and 0.015 acre feet of the 0.017 acre feet of pumping for banquet facility uses return to the stream. Applicant asserts that fifteen percent of the 1.37 acre feet diverted for irrigation uses or 0.20 annual acre feet will return to the stream. Therefore, return flows total 1.26 annual acre feet for the bed and breakfast, 0.015 annual acre feet for the banquet facility, and 0.20 annual acre feet for irrigation for total return flows of 1.47 annual acre feet. These return flows during the period of the plan will augment the tributary stream system in an amount greater than the maximum actual stream depletion amount from the Dawson aquifer of 1.40 annual acre feet. Therefore, Applicant's return flows prevent material injury to other vested water rights. D. Filing in Both Water Divisions. This Application is being filed in both Water Divisions 1 and 2 because aquifer depletions may occur in both divisions under the State's Model. The return flows set forth above will accrue to only the Arkansas River system where most depletions occur. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. E. Post-Pumping Depletions. For the replacement of post-pumping depletions, Applicant will reserve up to 249 acre feet of water from the nontributary Laramie-Fox Hills aquifer underlying the Applicant's Property, less the amount of actual stream depletions replaced during the plan pumping period. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Applicant

claims that post pumping depletions will be noninjurious and do not need to be replaced, and under the Court's retained jurisdiction Applicant reserves the right in the future to so prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used, as so necessary, to replace any injurious post pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to file for and receive well permits for up to two Dawson, Denver and/or Arapahoe aquifer wells for the uses in accordance with this Application. **IV. REMARKS.** Additional remarks are as follows: 1. Applicant requests a finding that it has complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested nontributary wells and by the requested not nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). 2. Applicant requests a finding that it has complied with C.R.S. §37-90-137(4) and that Applicant is the owner of the overlying land. 3. The term of this augmentation plan is for 100 years, however the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions will be determined as the average annual withdrawals for all wells through cessation of pumping and accrue only to the extent of actual pumping. 4. Applicant will comply with C.R.S. §37-90-137(9)(b) requiring the relinquishment of the right to consume no more than two percent of the amount of the nontributary ground water withdrawn. 5. Applicant, as necessary, will comply with C.R.S. §37-92-302(b) requiring this Application to be supplemented by evidence that the Applicant has, within ten days after filing the application, that Applicant has given notice of the application by registered or certified mail, return receipt requested to every person who has a lien or mortgage on, or deed of trust to, the overlying land. 6. The Court will retain jurisdiction over this matter for those who object to the application to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 7. Upon the entry of a decree, the Existing Wells will be repermitted as augmented wells pursuant to this plan of augmentation under C.R.S. 37-90-137, and all subsequent wells will be drilled pursuant to permits issued under C.R.S. 37-90-137. 8. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 9. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 10. The Applicant intends to waive the 600 feet well spacing requirement for the wells to be located upon the Applicant's Property.

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**CASE NO. 08CW43** – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

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**CASE NO. 08CW44 - STRATMOOR HILLS WATER DISTRICT, c/o Ralph  
Ravenscroft, Operations Manager, 1811 "B" Street, Colorado Springs, CO 80906**

(William B. Tourtillott and Susan M. Curtis, Ryley Carlock & Applewhite, Attorneys for Applicant, 1999 Broadway, Suite 1800, Denver, CO 80202; (303) 863-7500)

Application to Amend Plan for Augmentation

**EL PASO COUNTY, COLORADO**

**Names of structures to be augmented:** The plans for augmentation previously decreed in W-3935/W-4237 and 91CW24 operate to replace depletions from the following Stratmoor wells. The source of the water supply is Fountain Creek and the Widefield Aquifer.

- a. Well No. SH10: Located in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 3, Township 15 South, Range 66 West of the 6th P.M., at a point 1,395 feet from the East and 1,200 feet from the South section lines of said Section 3, with an appropriation date of April 1, 1959 in the amount of 1.449 cfs not to exceed 218 acre-feet annually.
- b. Well No. SH0: Located in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 3, Township 15 South, Range 66 West of the 6th P.M., at a point 750 feet from the South and 4,060 feet from the East section lines of said Section 3, with an appropriation date of January 15, 1956 in the amount of 600 gpm (1.33 cfs).
- c. Well No. SH1: Located in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4, Township 15 South, Range 66 West of the 6th P.M., at a point 4,110 feet from the South and 1,840 feet from the East section lines of said Section 4, with an appropriation date of May 15, 1954 in the amount of 252 gpm (0.56 cfs).
- d. Well No. SH1A: Located in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4, Township 15 South, Range 66 West of the 6th P.M., at a point 3,860 feet from the South and 1,770 feet from the East section lines of said Section 4, with an appropriation date of February 5, 1955 in the amount of 142 gpm (0.32 cfs).
- e. Well No. SH2: Located in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4, Township 15 South, Range 66 West of the 6th P.M., at a point 4,250 feet from the South and 1,920 feet from the East section lines of said Section 4, with an appropriation date of February 7, 1955 in the amount of 197 gpm (0.43 cfs).
- f. Well No. SH3: Located in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 3, Township 15 South, Range 66 West of the 6th P.M., at a point 1,920 feet from the South and 4,110 feet from the East section lines of said Section 3, with an appropriation date of September 10, 1957 in the amount of 500 gpm (1.11 cfs).
- g. Well No. SH4: Located in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 3, Township 15 South, Range 66 West of the 6th P.M., at a point 1,770 feet from the South and 2,640 feet from the East section lines of said Section 3, with an appropriation date of November 15, 1957 in the amount of 1,800 gpm (4.0 cfs).
- h. Well No. SH5: Located in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 3, Township 15 South, Range 66 West of the 6th P.M., at a point 1,880 feet from the South and 2,820 feet from the East section lines of said Section 3, with an appropriation date of November 15, 1957 in the amount of 950 gpm (2.1 cfs).
- i. Well No. SH6: Located in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 3, Township 15 South, Range 66 West of the 6th P.M., at a point 1,590 feet from the South and 4,170 feet from the East section lines of said Section 3, with an appropriation date of November 11, 1963 in the amount of 1,000 gpm (2.2 cfs).
- j. Well No. SH8: Located in the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 3, Township 15 South, Range 66 West of the 6th P.M., at a point 2,230 feet from the South and 3,310 feet from the East section lines of said Section 3.
- k. Well No. SH9: Located in the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 3, Township 15 South, Range 66 West of the 6th P.M., at a point 2,370 feet from the South and 3,610 feet from the East section

lines of said Section 3. **Previous decrees for replacement water rights:** Stratmoor was decreed augmentation plans in consolidated cases W-3935/W-4237 on December 12, 1975 and 91CW24 on March 10, 1995. The decreed augmentation plans allow Stratmoor to withdraw up to 1,270 acre-feet per year out-of-priority from Fountain Creek and the Widefield aquifer. Decreed replacement water consists of the following sources: • 70 shares of Fountain Mutual Ditch stock. • Laughlin Ditch No. 10 for 5.616 cfs with an appropriation date of December 31, 1862. • Laughlin Ditch No. 17 for 1.736 cfs with an appropriation date of December 31, 1863. • 40 acre-feet per year of return flow from water imported by Colorado Springs, pursuant to contract. • Sewered return flows from Fryingpan-Arkansas Project water with an appropriation date of July 29, 1957, pursuant to contract. **Proposed amendment to the Augmentation Plan:** Stratmoor requests the removal of the 70 shares of Fountain Mutual Irrigation Company ("FMIC") from the decrees in W-3935/W-4237 and 91CW24. Stratmoor has adequate augmentation water to satisfy its replacement water requirements without the use of the 70 shares of Fountain Mutual Irrigation Company. See the Affidavits of Gary Thompson, attached to the Application as Exhibits A and B. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Stratmoor has a buyer for the 70 shares of FMIC. That sale is contingent upon the shares being released from any duty under W-3935/W-4237 and 91CW24. This court amended the decree in 03CW09 on March 4, 2008 to remove the 70 shares of FMIC as a source of replacement water. The plan for augmentation will operate as described in the previous decrees, minus the 70 shares of FMIC. Under the augmentation plans in W-3935/W-4237 and 91CW24, Stratmoor will make replacement and recharge water available at times of a valid senior call to replace annual net depletions associated with up to 1,270 acre-feet of water pumped through the Stratmoor Wells. By providing an adequate replacement and recharge supply to replace those depletions, out-of-priority diversions through the Stratmoor Wells may continue, without adversely affecting decreed conditional water rights or vested water rights in Fountain Creek or its tributaries. In order to assure the continued operation of this augmentation plan, Stratmoor will continue to follow such accounting procedures and install and maintain such measuring devices acceptable to the Division Engineer as may be reasonably required to assure that the amount of augmentation water equals or exceeds the out-of-priority depletions resulting from the use of the Augmented Water Rights. As part of its accounting procedures, Stratmoor will continue to use totalizing flow meters on each of its wells.

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**CASE NO. 08CW45 - TOWN OF MONUMENT, c/o Catherine Green, Town Manager,  
P. O. Box 325, Monument, CO 80132** (Robert F. T. Krassa and Robin A. Byers,  
Krassa & Miller, LLC, Attorneys for Applicant, 2344 Spruce Street, Suite A, Boulder, CO  
80302; (303) 442-2156)

Application for Change of Water Rights, Determination of Rights to Groundwater and for  
Approval of Well Field Operation

**EL PASO COUNTY, COLORADO**

**2. Existing Decrees.** Some of the water, wells and water rights which are the subject of this Application, are the subject of the following existing decrees or pending applications. **All decrees and exhibits mentioned in this Application may be**

**inspected at the office of the Clerk of the Water Court, or downloaded as explained at the end of this Resume, and all recorded documents mentioned herein may be inspected at the office of the El Paso County Clerk and Recorder.**

(a) Decrees entered by this Court on June 13, 1980, in Monument's Cases W-627 and W-4103 (as constituent cases in a consolidated remand from the Colorado Supreme Court.) (b) Decree entered by this Court on August 13, 1987, in Monument's Case 82CW211, and recorded August 24, 1987, at reception number 01611040, Book 5412, page 801, records of El Paso County, Colorado. (c) Decree in case 94CW4 as entered by this Court February 6, 1996, upon the application of Zonta Partnership, Ltd.; change of water rights of Zonta Partnership, Ltd., L.L.L.P., in Case No. 07CW67 as filed in this court June 29, 2007 and decreed April 30, 2008. (d) Decree in case 94CW72, as entered by this Court November 15, 1995, upon the application of Fred Labib. **3. Parcel and Ownership Information.** This case pertains to Denver Basin aquifer groundwater under all of the following parcels. All of the parcels involved in this case have been annexed into Monument according to law, with the exception of the Zonta/Wakonda and Willow Springs parcels, which are presently in the process of being annexed into Monument. Monument owns all of the groundwater underlying all of parcels (a) through (x), except any pre SB-213 groundwater owned by others. For purposes of this Application, the term "pre SB-213" means a well or groundwater which conforms to the definition at §37-90-137(5), C.R.S. All parcels are in El Paso County and all recording references are to El Paso County records. All parcels are shown on map attached to the Application as Exhibit A. Parcel Group I: Overlying Areas for which Arapahoe and Laramie Fox Hills Aquifer Groundwater was adjudicated in Case No. 82CW211. This application seeks to adjudicate the groundwater in the Dawson and Denver aquifers under these areas, and to establish well fields in the Dawson and Denver aquifers under these areas, in addition to the well fields in the Arapahoe and Laramie-Fox Hills aquifers established in case 82CW211. (a) Senate Bill 5 Ordinance Boundary. As described in Decree in Case 82CW211. Secs. 10, 11, 14, 15, 22, 23, T. 11 S., R. 67 W., 6th P.M. This area encompasses 534 acres. (b) Bed and Banks. As described in Decree in Case 82CW211. Sec. 15, T. 11 S., R. 67 W, 6th P.M. The area outside the SB5 Ordinance Boundary is approximately 74.1 acres. Parcel Group II: Parcels Partially Within and Partially Outside the Area for which Groundwater Rights were Decreed in Case No. 82CW211 (as described above): This application seeks to include the water in the Dawson and Denver aquifers under the portions of these parcels within the 82CW211 boundary into the well fields requested herein. In addition, this application seeks adjudication of nontributary and not-nontributary groundwater in the Dawson and Denver aquifers within the 82CW211 boundary and all aquifers of the Denver Basin for those parts of these parcels situated outside the 82CW211 decreed well field boundary. (c) Zonta/Wakonda, as described in said Cases 94CW4 and 07CW67, in Sec. 10, T. 11 S., R. 67 W., 6th P.M. Acreage of this parcel outside the 82CW211 adjudicated area: 98.8 acres. (d) Squires, located in Sec. 15, T. 11 S., R. 67W, 6th P.M. approximately 0.3 acres. Parcel Group III: Outside the Overlying Area Adjudicated in 82CW211, and Annexed or Pending Annexation After January 1, 1985: This application seeks adjudication of nontributary and not-nontributary groundwater amounts for the Denver, Dawson, Arapahoe and Laramie-Fox Hills aquifers of the Denver Basin for all of these parcels, and that such groundwater in the Arapahoe and Laramie-Fox Hills be

incorporated into the existing well fields in these aquifers, and that such groundwater in the Dawson and Denver aquifers be incorporated into the well fields in these aquifers requested herein. (e) Barrera, located in N2 NE4 Sec. 15, T. 11 S., R. 67 W., 6th P.M. (f) Beacon Lite Business Park No. 2, located in SW4 Sec. 11, T. 11 S., R. 67 W., 6th P.M. (g) Beacon Lite Business Park No. 3, located in SW4 Sec. 11, T. 11 S., R. 67 W., 6th P.M. (h) Tri-Lakes Chamber of Commerce, located in S2 NW4 Sec. 14, T. 11 S., R. 67 W., 6<sup>th</sup> P.M. (i) West Oak Ridge Subdivision, located in NW4 NE4 Sec. 22, T. 11 S., R. 67 W., 6th P.M. (j) Beechwood Heights Parcel 1, located in NW4 Sec. 15, T. 11 S., R. 67 W., 6th P.M. and 2) Parcel 2, located in NW4 Sec. 15, T. 11 S., R. 67 W., 6th P.M. (k) NAVSYS, located in W2 SE4 Sec. 35, T. 11 S., R. 67 W., 6th P.M. (l) Lake of the Rockies, located in S2 Sec. 15, T. 11 S., R. 67 W., 6<sup>th</sup> P.M. (m) Town of Monument - 1994 One, Secs. 14, 22, and 23, T. 11 S., R. 67 W., 6th P.M. (n) Monument Addition No. 5, SE4 Sec. 15, T. 11 S., R. 67 W., 6th P.M. (o) Town of Monument - 1994 Two, NW4 Sec. 11, T. 11 S., R. 67 W., 6th P.M. (p) Town of Monument - 1994 Three, NW4 Sec. 11, T. 11 S., R. 67 W., 6th P.M. (q) Howard & Johnson (1) No. 1, NW4 Sec. 26, T. 11 S., R. 67 W., 6th P.M. (2) No. 2, NW4 Sec. 26, T. 11 S., R. 67 W., 6th P.M. (r) Larson's, N2 SW4 SE4 Sec. 10, T. 11 S., R. 67 W., 6th P.M. (s) Knollwood Boulevard, E2 of SE4 Sec. 14, T. 11 S., R. 67 W., 6th P.M. (t) Baptist Road Addition No. 1, SW4 SW4 Sec. 25, and SE4 Sec. 26, all in T. 11 S., R. 67 W., 6<sup>th</sup> P.M. (u) Kerr Addition No. 1, NW4 SE4 Sec. 15, T. 11 S., R. 67 W., 6th P.M. (v) Willow Springs Ranch (annexation pending) (1) Addition No. 1, SE4 Sec. 22, Secs. 26, 27, T. 11 S., R. 67 W., 6th P.M. (2) Addition No. 2, W2 SW4 Sec. 26 and E2 SE4 Sec. 27, T. 11 S., R. 67 W., 6th P.M. (w) Monument Business Park, NW4 NE4 Sec. 15, T. 11 S., R. 67 W., 6th P.M. (x) Trails End Annexation No. 1, SW4 SW4 Sec. 23, T. 11 S., R. 67 W., 6<sup>th</sup> P.M. **APPLICATION FOR CHANGE OF WATER RIGHTS.** **4. Change Requested.** Monument requests that the Court approve the following changes in the water rights which are the subject of the decrees identified in paragraph 2 hereof: (a) Wells to withdraw the water adjudicated in any of the said previous decrees may be constructed at any location within the exterior perimeter of the entire well field in each aquifer, consisting of the entire group of overlying lands made up of the parcels described in foregoing paragraph 3, without restriction to well locations identified in said decrees, as shown on Exhibit A. (b) The water adjudicated in the said previous decrees, and adjudicated in the present case, may be withdrawn from wells constructed at any location within the exterior perimeter of the entire well field in each aquifer, consisting of the entire group of overlying lands made up of the parcels described in foregoing paragraph 3. (c) Monument also requests that the groundwater adjudicated in the said decrees be added to its existing well fields in the Arapahoe and Laramie-Fox Hills aquifers, and incorporated into the Dawson and Denver well fields requested herein, all as more particularly set out in paragraph 14 hereof. (d) Monument further requests that amounts of water adjudicated in Zonta Case Nos. 94CW4 and 07CW67 be conformed to agree with Applicant's calculated values for that parcel, based on SB5. **APPLICATION FOR DETERMINATION OF RIGHTS TO GROUNDWATER.** **5. Application for Determination of Rights to Groundwater.** (a) Monument requests a determination of its rights to groundwater in the Dawson and Denver aquifers underlying all of the parcels listed in foregoing paragraph 3 except any already-decreed parcels. The amounts of groundwater under said parcels are described in paragraphs 9 and 15 hereof. Monument further requests a determination of

its rights to any groundwater in those aquifers underlying the other parcels identified in paragraph 3 hereof which was not adjudicated in the decrees identified in paragraph 2 hereof. (b) Monument also requests a determination of its rights to groundwater in the Arapahoe and Laramie Fox Hills aquifers underlying all of the parcels listed in foregoing paragraph 3 except any already-decreed parcels. The amounts of groundwater under said parcels are described in paragraphs 9 and 15 hereof. Monument further requests a determination of its rights to any groundwater in those aquifers underlying the other parcels identified in paragraph 3 hereof which was not adjudicated in the decrees identified in paragraph 2 hereof.

**6. Well Permits.** (See complete application)

**7. Legal Description of Wells and Subject Property.**

The wells which will withdraw groundwater from the Dawson, Denver, Arapahoe and Laramie Fox Hills aquifers may be located at any point on any or all of the parcels described in Paragraph 3 hereof.

**8. Source of Water.**

The groundwater to be withdrawn from the Dawson, Denver, and the not-nontributary portion of the Arapahoe aquifers is not-nontributary, as defined at §37-90-103(10.7), C.R.S. The groundwater to be withdrawn from the nontributary portion of the Arapahoe aquifer and Laramie Fox Hills aquifer is nontributary as described at §37-90-103(10.5), C.R.S., and withdrawal thereof will not, within 100 years, deplete the flow of a natural stream, including a natural stream, as defined in §37-82-101(2) and §37-92-102(1)(b), C.R.S., at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal. Prior to the use of any water which is decreed as not nontributary groundwater, Monument will obtain judicial approval of a plan for augmentation in accordance with §37-90-137(9)(c), C.R.S.

**9. Amounts Claimed and Pumping Rates:**

(a) Monument claims all of the groundwater in the Dawson, Denver, Arapahoe and Laramie Fox Hills aquifers legally available within the outer perimeter of each well field described herein except ground water within existing pre-SB 213 cylinders of appropriation. The estimated average annual amounts of withdrawal available from the subject aquifers are summarized as follows, and set forth for each parcel in Exhibits C and D. (b) The following table summarizes the average annual amounts to be added to Monument's well fields pursuant to this Application, and the resulting total average annual amounts in each well field once the water which is the subject of the present application is added to Monument's well fields as adjudicated in said case 82CW211. All quantities are in acre-feet per year.

Well Field	From 82CW211	Added to Well Field	Total
	Decree	by This Case	
Dawson - NNT	0.0	511.0	511.0
Denver - NNT	0.0	567.7	567.7
Arapahoe- NT	398.0	339.1	737.1
Arapahoe - NNT	0.00	67.4	67.4
Laramie-Fox Hills NT	182.4	193.1	375.5

The wells which will withdraw the water will operate at rates of flow from approximately 100 to 1000 gpm. (c) Monument requests that in the event the Court determines that any water in the Dawson, Denver, Arapahoe or Laramie Fox Hills aquifers underlying the parcels identified in paragraph 3 hereof is legally unavailable to Monument at this time because such water is within the cylinder of appropriation of one or more pre-Senate Bill 213 wells and such cylinder is later reduced, or has been reduced subsequent to entry of any previous decrees upon which the estimated amounts in

paragraph 15 hereof are based, that the amount of water available to Monument hereunder be increased correspondingly under the retained jurisdiction of this Court. Monument does not intend at this time to abandon, waive or reduce any of its rights to its own pre-SB213 wells or water rights. **10. Proposed Uses.** The subject wells will be used as sources of supply in a unified water system to serve the present and future service area of Monument. All of the groundwater may be used, reused and successively used, and otherwise disposed of for municipal, domestic, industrial, agricultural, commercial, irrigation, stock watering, recreation, fish and wildlife, fire protection and other beneficial uses including augmentation, substitution and exchange. Such water may be withdrawn through the wells described herein for immediate application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for all other augmentation purposes including taking credit for all return flows as augmentation for or as offsets against out-of-priority tributary depletions as provided in augmentation plan decrees of this Court. **11. Names and Addresses of Owners of Land on Which Wells Will be Located.** Monument owns, or has the right to use pursuant to platted well site dedications, all well sites considered necessary at this time to withdraw the subject groundwater. **12. Adjustment of Amount.** Monument requests that the Court retain jurisdiction to provide for the adjustment of the amounts of groundwater which are available for withdrawal under the Adjudication Parcels from the Dawson, Denver, Arapahoe and Laramie Fox Hills aquifers, based on actual aquifer characteristics, and to authorize Monument to invoke such retained jurisdiction at any time after such data becomes available. **13. Notice.** (a) Monument is a statutory town, and has obtained the right to withdraw the groundwater under Parcels (a) and (b) pursuant to C.R.S. 37-90-137(8), by enactment of its Senate Bill 5 Ordinance, as filed with the Office of the State Engineer on May 27, 1986, as well as pursuant to the decree issued in Case. No. 82CW211, as set forth in Paragraph 2 herein. Exhibit B to the Application is a copy of said Ordinance. (b) Each and every one of the remaining Adjudication Parcels (with the exception of the Squires parcel, which was not adjudicated in 82CW211, but was subsequently merged with a parcel that was) has been or is in the process of being annexed into the Town pursuant to valid and existing ordinances which required dedication of all the groundwater in the Denver Basin aquifers underlying the annexed areas, to Monument at the time of annexation. Each and every one of the remaining Adjudication Parcels, with the exception of the Knollwood Blvd. Parcel (which belongs to the Town of Monument) is or is committed to be within Monument's water service area. (c) Monument has copies of deeds, assignments, consents or other written evidence of consent regarding groundwater under the following parcels described in Paragraph 3 hereof (letters preceding parcel names here are those used to identify parcels in said paragraph): (i) West Oak Ridge Subdivision (Filings 2, 3, and 4, and Lot 5 Block 1 and Lot 2 Block 2, Filing 1); (k) NAVSYS; (l) Lake of the Rockies; (m) Monument 1994 One (as to Peak View Ridge Subdiv. and Valley Ridge Subdiv.); (n) Monument Addition No. 5 (as to Lot 8 only); (p) Monument 1994 Three; (s) Knollwood Blvd.; (x) Trails End. Therefore, pursuant to C.R.S. Sec. 37-92-302(2)(c), no further notice to the owners of the overlying land or persons who have a lien or mortgage on or deed of trust to the overlying land located within said parcels is required. A detailed listing of these parcels and the

documents evincing consent, dedication, and/or ownership of groundwater is set forth in Exhibit E to the Application. (d) However, with reference to the notice requirements of C.R.S. Sec. 37-92-302(2)(b) and (c), Monument has not been able to find copies of specific deeds, assignments, consents or other written evidence of consent regarding all groundwater sought to be adjudicated in this case under the following parcels: (c) Zonta; (d) Squires; (e) Barrera; (f) Beacon Lite No. 2; (g) Beacon Lite No. 3; (h) Tri-Lakes C of C; (i) West Oak Ridge Subdivision (Filing 1 only, except Block 1 Lot 5 and Block 2 Lot 2); (j) Beechwood Heights; (m) Monument 1994 One (except Peak View Ridge and Valley Ridge Subdivs.); (n) Monument Add'n No. 5 (except Lot 8); (o) Monument 1994 Two; (r) Larson's; (t) Baptist Rd. Add'n; (u) Kerr Add'n No. 1; (v) Willow Springs; (w) Monument Bus. Pk. As to these parcels, Monument will, within ten days after the filing of this Application, give notice thereof by certified mail, return receipt requested, to every owner of the overlying land and every person who has a lien or mortgage on or deed of trust to the overlying land, to the last address shown for such owners in the public records of El Paso County. Monument has relied on the real estate records of El Paso County assessor or the records of the El Paso County Clerk and Recorder, as searched by title companies and the Applicant, in determining such owners and lien holders. Notwithstanding compliance with said notice requirements, Monument alleges that all owners of property that has been annexed to the Town are subject to the Town's water dedication requirements, and should be regarded as having consented, or their predecessors in title have consented, to withdrawal by the Town of the Denver Basin aquifer groundwater under their properties, and are estopped to object to this application. In the event any owner of land overlying any of the parcels described herein contests Monument's ownership of the water in the said aquifers, then Monument reserves the right to terminate water service to such parcels.

**APPLICATION FOR APPROVAL OF WELL FIELD OPERATION.** **14. Well Field Operation.** Five well fields are requested herein, in the Dawson, Denver, Arapahoe not-nontributary ("NNT"), Arapahoe nontributary ("NT"), and Laramie-Fox Hills aquifers. Monument requests that the groundwater in the nontributary portion of the Arapahoe aquifer and Laramie Fox Hills aquifer underlying all of the parcels described in paragraph 3 except parcel (a) be added to Monument's existing well field in the respective aquifer as adjudicated by this Court in Case 82CW211, and that the area within the exterior perimeter of the entire group of overlying lands made up of the parcels described in foregoing paragraph 3 be a single well field in each of those aquifers. In the Arapahoe aquifer, there will be two well fields. The Arapahoe nontributary well field will comprise all of the parcels described in Paragraph 3, except the Baptist Road Addition, Howard & Johnson, NAVSYS and the NNT part of Willow Springs. The Arapahoe NNT well field will comprise the Baptist Road Addition, Howard & Johnson, NAVSYS parcels, and the NNT part of Willow Springs. Monument also requests that the groundwater in the Dawson and Denver aquifers underlying the exterior perimeter of the entire group of overlying lands made up of the parcels described in foregoing paragraph 3 be a single well field in each of those aquifers. (a) Monument requests judicial approval of well field operation under which all of its rights to groundwater from specific aquifers, or nontributary and not-nontributary portions of aquifers, of the Denver Basin as described herein, can be withdrawn from a minimum number of suitably located wells with maximum flexibility as to pumping rates of such

wells. All wells in a given aquifer will be referred to herein as a "well field". The term "well field" shall include all of the rights and operational flexibility of "well field" as that term is defined in Rule 4.A.13 of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7, and all of the rights and operational flexibility which can be attained by judicial approval for all the wells in a well field to be alternate points of diversion for each other. (b) The wells and water rights in the Arapahoe and Laramie Fox Hills aquifers described in the above referenced decrees in Cases 94CW4, 07CW67, and 94CW72 together with overlying lands associated therewith, and all of the groundwater in the said aquifers underlying the parcels described in foregoing paragraph 3 except parcel (a), shall be added to the corresponding Well Field described in Monument's well field decree entered in above described Case 82CW211 as if originally a part thereof. In addition, such additional wells as are constructed pursuant to the provisions of the said decrees or of the decree entered pursuant to the present application, to maintain production of and to recover the amount of groundwater to which Monument is entitled from each aquifer, shall be included among the wells in said well field. (c) map showing all of the subject parcels is attached to the Application as Exhibit A and incorporated by reference. (d) Each well in the above described well fields, including additional wells, shall be an alternate point of diversion for all of the other wells in that well field. (e) if Monument constructs any additional, alternate point or supplemental wells pursuant to the terms of the decrees identified in paragraph 2 hereof, or pursuant to the decree to be entered herein, each such well shall be automatically a part of the well fields requested herein without the necessity to amend this application or any decree entered herein.

**15. Amounts of Water Added to Well Fields.** The average annual amounts of water which may be withdrawn from the Denver Basin aquifers under the requested additions to the well fields are summarized in Paragraph 9(b) hereof, and are set forth in detail in Exhibit C and Tables 1 through 4 of Exhibit D to the Application. These amounts are taken from the following sources: the Decree in Case No. 82CW211 entered by this Court for the groundwater in the Arapahoe and Laramie-Fox Hills aquifers under the SB5 Ordinance Boundary and Bed and Banks parcels (referenced in Paragraph 2 hereof); and, for the other parcels, from estimates by Monument's engineers based on the State Engineer's Denver Basin Rules, 2 CCR 402-6. The quantities set forth in Exhibits C and D to the Application and summarized in Paragraph 9(b) herein are subject to adjustment pursuant to the terms of the said decrees and pursuant to the terms of any decree to be entered pursuant to this application.

**MATTERS OF GENERAL APPLICABILITY.** **16. Additional Requests, Statements and Provisions.** The following requests, statements and provision are applicable to Monument's request for approval of well field operation, including alternate points of diversion, as well as its application for determination of rights to groundwater herein, unless otherwise stated.

**17. Description of Land to be Irrigated.** Any land served or committed to be served by Monument's municipal water system as it now exists or as it may grow in the future. Such land is generally contained in Township 11 South, Range 67 West of the 6th P.M., in El Paso County, but Monument may serve others outside its boundaries pursuant to contract or its rules and regulations.

**18. Additional Wells.** The well fields requested herein shall include each additional well, alternate point of diversion well, supplemental well or replacement well which is necessary to withdraw all of the groundwater in each well field, including the

groundwater for which adjudication is requested in paragraphs 5 through 13 hereof, may be withdrawn through such additional, supplemental and replacement wells as necessary without publishing additional notice or filing additional pleadings with the Court.

**19. Banking.** Monument requests the right to withdraw an amount of water in excess of the decreed allowed average annual amount of withdrawal for each well field, as long as the total amount of water withdrawn from each well field does not exceed the product of the number of years since the date of issuance of the original permit or the original decree for each water right described herein, whichever is first, times the decreed allowed average annual amount of withdrawal.

**20. Pumping Rates.** Monument may withdraw the total annual average amount of water provided herein for each well field from any combination of the wells in that well field. The pumping rates for each well in that well field may exceed the nominal pumping rates set forth herein or in any decree mentioned in paragraph 2, to the extent necessary to withdraw the full allocation of water from that well field, or to withdraw banked water, and in addition, to withdraw Monument's pre-SB213 water as requested in Paragraph 23(c) herein.

**21. Water Service Entitlements; Termination of Water Service.** Nothing herein is intended to create any implication that the granting of the present application will affect the entitlement of any person to receive water service from Monument. Rights to water service will continue to be governed by the applicable Annexation Agreements, other Contracts and Agreements, and Monument's Rules and Regulations. However, in the event any owner of land overlying any of the parcels described herein contests Monument's ownership of the water in the said aquifers, then Monument reserves the right to terminate water service to such parcels.

**22. Overlying Lands.** The overlying lands which relate to the groundwater which is the subject of this application are fully described in the decrees referenced in paragraph 2, the parcel descriptions in paragraph 3 and are also shown on the map attached to the Application as Exhibit A.

**23. Pre SB-213 Wells.** (a) Monument owns three wells in this case which come within the provisions of §37-90-137(5) C.R.S.), which reads in part as follows: "Any right to the use of groundwater entitling its owner or user to construct a well, which right was initiated prior to July 6, 1973, as evidenced by an unexpired well permit issued prior to July 6, 1973, or a current decree, shall not be subject to the provisions of subsection (4) of this section." These wells are referred to herein as "Pre-SB 213 wells." See S.B. 213, Colo. Sess. Laws (1973, Ch. 441, p. 1520). These are Town of Monument Wells 1 (Permit 11349-R) and 2 (Permit 11350-R) decreed in said Case W-627, which states that they were decreed September 29, 1972 and Well 3 (Permit 016343-F), decreed in said case W-4103, in which the application shows that the right to use such water was initiated on October 6, 1972. These wells, which may be referred to herein as Monuments Pre-SB 213 Wells, are completed in the Dawson and Denver aquifers. Monument requests that its Pre-SB 213 wells and water rights, through their cylinders of appropriation, maintain the contiguity of the well unit in which such cylinders are located, as if such cylinders were part of the well unit. However, the Pre-SB 213 wells are not actually part of any well field. (b) Monument does not request banking (as defined at Rule 8.A, Statewide Non-tributary Groundwater Rules) of the water which these Pre-SB 213 wells may withdraw under their Pre-SB 213 entitlement. On the other hand, this paragraph is not intended to limit Monument's right to bank any other water. (c) Monument requests that it be allowed to withdraw well field water from its Pre SB-

213 wells, and withdraw its Pre-SB-213 water from its well field wells, as it may elect to minimize the capital investment in additional wells, and requests the Court determine that such operation will not cause legal injury to any other water right. **24. Records**. Monument will maintain such records and make such measurements of water as may be reasonably required by the Division Engineer. **25. Previous Terms and Conditions**. Monument does not request any change in the terms and conditions of the existing Decrees mentioned in the foregoing paragraph 2 except as requested herein or as necessary to allow the requested well field operations. **26. Well Construction**. This is not an application which will require the construction of a well within the meaning of §37-92-302(2), C.R.S. **27. Effective Dates**. For purposes of applying §37-90-137(10), C.R.S., the original date of filing of well permit applications, the date of filing of the applications in cases mentioned in paragraph 2, the date of filing of applications for adjudication of the decreed underground water rights which were subsequently superseded by any decrees mentioned in paragraph 2 hereof, or the date of filing of this application, whichever is earlier and applicable, is the date which shall be used by the State Engineer when considering permits for additional wells. **28. Well Permits**. Monument requests the Court to order that in considering any well permit applications, the State Engineer shall be governed by the Findings of Fact, Conclusions of Law, and Decree herein which may result from this Application and shall issue said permits in accordance with the provisions of such decree and 37-90-137(10) C.R.S., and that Monument shall not be required to submit any additional proof or evidence of matters finally determined in such decree when making application for wells to withdraw the water rights confirmed therein. Monument further requests the Court to order that any failure to construct a well necessary to produce groundwater hereunder within the period of time specified in any well permit not be deemed to extinguish the underlying right to water. **29. Non-Injury**. No legal injury will occur to the owner of any vested or conditionally decreed water right from the granting of this application. **30. Jurisdiction**. This Court has jurisdiction over the subject matter of this Application pursuant to Sections 37-92-203(1), 37-92-302(2) and 37-90-137(6), C.R.S. WHEREFORE, Monument prays that the Court enter a decree: 1) adjudicating the ground water in the Dawson and Denver aquifers within the 82CW211 areas comprising the SB5 Ordinance Boundary and Bed and Banks parcels; 2) adjudicating the ground water in the Dawson, Denver, nontributary portion of the Arapahoe aquifer, not nontributary portion of the Arapahoe aquifer and the Laramie Fox Hills aquifer under all parcels not previously decreed; 3) establishing well fields in the nontributary portion of the Arapahoe aquifer, and in the Laramie Fox Hills aquifer, by adding all of the subject ground water in this case to the ground water in those aquifers adjudicated in case 82CW211; 4) establishing well fields in the Dawson and Denver aquifers under all of the parcels described in this case including the areas under which the Arapahoe and Laramie Fox Hills aquifers were decreed in 82CW211; 5) establishing a well field in the not-nontributary Arapahoe aquifer comprising the Baptist Road, Howard and Johnson, NAVSYS and Willow Springs parcels; 6) conforming the quantities of water under the Zonta parcel previously decreed in Cases 94CW4 and 07CW67 to the calculations by Monument's engineers, which are based on the State Engineer's SB5 maps; and 7) granting this application and such other and additional relief as it deems proper in the premises. A complete copy of this application, including exhibits, may be obtained from

the clerk of the court, or may be downloaded electronically – connect to the internet, go to [www.krassa.com](http://www.krassa.com) and click on Current Information in the left hand panel. The complete Application in this case, and the exhibits, can then be opened, downloaded and printed from the list in the center panel using the free Adobe Acrobat Reader program.

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**CASE NO. 08CW46 (Water Division 2) and CASE NO. 08CW144 (Water Division 1) - DAVID M. RIESTER, 8650 Wildridge Road, Colorado Springs, CO 80908** (Chris D.

Cummins and Michael J. Gustafson, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation

**EL PASO COUNTY, COLORADO**

**II. APPLICATION FOR ADJUDICATION OF DENVER BASIN GROUND WATER**

**A. Permitted Wells:** 1. There is one well currently permitted by the State Engineer constructed upon the Applicant's approximately 11.62 acre property located in the SE1/4 NE1/4 of Section 33, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M. in El Paso County, Colorado ("Applicant's Property"), as more particularly described on Exhibit A attached to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The existing well is permitted under Permit No. 38932. Upon approval of the plan for augmentation requested herein, this well will be re-permitted under C.R.S. §37-90-137 for operation under the plan for augmentation.

**B. Future Wells:** Applicant intends to drill one additional well on Applicant's Property. Upon approval of the plan for augmentation requested herein, this well will be permitted under C.R.S. §37-90-137 for operation under the plan for augmentation.

**C. Water Source:** 1. Not-nontributary. The ground water that will be withdrawn from the Dawson and Denver aquifers of the Denver Basin underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. 37-90-137(9)(c), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. 2. Nontributary. The ground water that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers of the Denver Basin underlying the Applicant's Property is nontributary.

**C. Estimated Rates of Withdrawal and Ground Water Available:**

1. Estimated Rates of Withdrawal. The pumping rates for the wells to be completed to each aquifer are estimated to be between 15 g.p.m. and 100 g.p.m. The actual pumping rate for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts, which may be less than or exceed the above estimates. The actual depth of each well to be constructed within the respective aquifers will be determined by actual aquifer conditions.

2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying Applicant's Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4), but for the purposes of this Application, withdrawals must be limited to the 300-year subdivision water supply requirements of El Paso County. The estimated average annual amounts of ground

water available for withdrawal from the underlying Denver Basin aquifers will be based upon the Denver Basin Rules. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property of approximately 11.62 acres as follows:

<u>Aquifer</u>	Saturated Thickness <u>(Feet)</u>	Specific Yield <u>(%)</u>	Total Water Adjudicated <u>(Acre Feet)</u>	Annual Average Withdrawal <u>(Acre Feet)</u> <sup>1</sup>
Dawson	480	.20	1,115.52	3.71
Denver	375	.17	740.77	2.46
Arapahoe	260	.17	513.60	1.71
Laramie Fox Hills	185	.15	322.45	1.07

Pursuant to C.R.S. §37-92-304(11), the Applicant requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer.

**D. Requested Uses:** The Applicant requests the right to use the ground water for all beneficial uses including, without limitation, domestic, commercial, industrial, irrigation, stock water, recreation, fish and wildlife propagation, fire protection, central water supply for such uses and also for exchange, augmentation, aquifer recharge and replacement purposes.

**E. Well Fields:** Applicant requests that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. Applicant requests that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property.

**F. Description of Land Overlying Subject Ground Water:** The land overlying the ground water which is the subject of this Application consists of approximately 11.62 acres, as more specifically described in Exhibit A, and as depicted in Exhibit B.

**G. Remarks.** The Applicant reserves the right to reserve some additional ground water from quantification in the Dawson aquifer for use by an exempt well pursuant to C.R.S. §37-92-602.

**H. Name and Address of the Owner of the Land Upon Which the Wells are to be Located:** The Applicant, as set forth in Section I above, is the owner of the Applicant's Property, on which the wells are to be located.

**III. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.** **A. Name of Structures to be Augmented:** Two Dawson aquifer wells. There are to be no other water rights diverted from these well structures.

**B. Water Rights to be Used for Augmentation:** The water rights to be used for augmentation during pumping are return flows from the not nontributary Dawson aquifer wells to be pumped as set forth in this plan of augmentation, together with water rights from the nontributary Laramie-Fox Hills aquifer for post pumping depletions.

**C. Statement of Plan for Augmentation:** Applicant wishes to provide for the augmentation of stream depletions caused by pumping the not nontributary Dawson aquifer wells proposed herein for up to two

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<sup>1</sup> Based upon a 300 year aquifer life.

residential lots. Water use criteria and their consumptive use component for replacement of actual depletions for the lots is as follows: 1. Household Use Only: 0.30 acre feet annually per single family dwelling with a ten percent consumptive use based on nonevaporative septic leach field disposal systems. The annual consumptive use for each residence is therefore 0.030 acre feet. Any other type of waste water disposal shall require and amendment to this plan of augmentation. 2. Horses (or equivalent livestock): 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. 3. Landscape Irrigation: 0.046 acre feet annually per 1,000 square feet (2.0 acre feet per acre) per year, with a 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet irrigated is therefore 0.039 acre feet. The wells supplying the Applicant's Property should therefore be able to pump 1.24 acre feet per year, which is sufficient to support in house purposes for two single family residences, the watering of eight horses, and the irrigation of a maximum of 12,000 square feet of lawn or garden. This Application is being filed in Water Divisions 1 and 2 because depletions may occur to both divisions. The return flows set forth above will accrue to the South Platte River system where the majority of depletions occur. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient.

D. Augmentation of Depletions During Pumping: Pursuant to C.R.S. §37-90-137(9)(c) Applicant is required to replace actual stream depletions attributable to pumping of the Dawson wells to the extent necessary to prevent injurious effect. Based upon annual pumping of 1.24 acre feet per year, Applicant is required to replace 0.616 acre feet annually. Applicant has determined that during pumping, septic system return flows from the two residences should account for approximately 0.54 acre feet per year and return flows from irrigation will equal 0.082 acre feet per year, for a total of 0.62 acre feet of return flows. Thus, there is enough return flows through the septic system and irrigation alone to replace the estimated stream depletions. E. Augmentation for Post Pumping Depletions: For the replacement of post-pumping depletions, Applicant will reserve up to 315 acre feet of water from the nontributary Laramie-Fox Hills aquifer underlying the Applicant's Property, less the amount of actual stream depletions replaced during the plan pumping period. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, Applicant claims that post pumping depletions will be noninjurious and do not need to be replaced. Under the court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to file for and receive well permits for the subject Dawson aquifer wells for the uses in accordance with this Application. F. Remarks: Additional remarks are as follows: 1. Applicant requests a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). 2. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well or wells may be extended

beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. 3. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 4. Pursuant to C.R.S. §37-90-137, upon approval of the plan for augmentation requested herein, Applicant will file an application with the State Engineer's office to re-permit the existing well on Applicant's 11.62 acres (Permit No. 38932) and permit the other well for operation under the plan for augmentation. 5. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 6. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 7. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. 8. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 10 days of the filing of this application.

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**CASE NO. 08CW47 - CITY OF FOUNTAIN, 116 South Main Street, Fountain, CO 80817 and WIDEFIELD WATER & SANITATION DISTRICT, 37 Widefield Boulevard, Colorado Springs, CO 80911** (Please direct all correspondence or inquiries regarding this matter to the attorneys for Fountain and Widefield: Cynthia F. Covell, Alperstein & Covell, P.C., Attorneys for City of Fountain, 1600 Broadway, Suite 2350, Denver, CO 80202; (303) 894-8191; and Carolyn F. Burr and Susan M. Curtis, Ryley Carlock & Applewhite, Attorneys for Widefield Water & Sanitation District, 1999 Broadway, Suite 1800, Denver, CO 80202; (303) 863-7500)

Application for Change of Water Rights

**CUSTER COUNTY, COLORADO**

**2. Decreed Name of Structures for which Change is Sought:** 2.1 W.A. Bell Ditch No. 1. The W.A. Bell Ditch No. 1 diverts a total of 3.71 cfs out of the Alvarado (a/k/a Cheesefactory or Neave) Creek. The W.A. Bell Ditch No. 1 is located on the east side of the Alvarado Creek at a point 16 rods west and 2 rods north of the Southeast corner of the SE ¼ of the NW ¼ of Section 24, Township 22 South, Range 73 West of the 6<sup>th</sup> P.M. in Custer County, Colorado. 2.2. W.A. Bell Ditch No. 2. The W.A. Bell Ditch No. 2 diverts a total of 3.38 cfs out of the Venable (a/k/a/ Bothwell) Creek. The W.A. Bell Ditch No. 2 is located on the northwest side of the Venable Creek at a point 50 rods south and 23 rods west of the center of Section 23, Township 22 South, Range 73 West of the 6<sup>th</sup> P.M. in the SW ¼ of the same Section 23 in Custer County, Colorado. 2.3. W.A. Bell Ditch No. 3. The W.A. Bell Ditch No. 3 diverts a total of 8.608 cfs out of the Venable (a/k/a Bothwell) Creek. The W.A. Bell Ditch No. 3 is located on the east bank of the Venable Creek at a point 36.5 rods east and 5.5 rods north of the center of Section 22, Township 22 South, Range 73 West of the 6<sup>th</sup> P.M. in Custer County,

Colorado. **3. Prior Decrees:** 3.1. Original Adjudication. The W.A. Bell Ditch Nos. 1, 2 and 3 (the "Subject Water Rights") were awarded priorities by the Findings and Decree dated August 26, 1893 by the District Court of the 11<sup>th</sup> Judicial District of the State of Colorado, in and for the County of Fremont, In the Matter of the General Adjudication of Water Rights in Water District No. 13, Water Division No. 2. 3.1.1. W.A. Bell No. 1 was awarded Priority No. 30 for a direct flow right of 3.71 cfs out of Alvarado (a/k/a Cheesefactory or Neave) Creek with an appropriation date of August 31, 1871 for irrigation purposes. Fountain and Widefield own 2.56 cfs out of the 3.71 cfs decreed to W.A. Bell Ditch No. 1. 3.1.2. W.A. Bell Ditch No. 2 was awarded Priority No. 23 for a direct flow right of 3.38 cfs out of Venable (a/k/a Bothwell) Creek, with an appropriation date of June 1, 1871 for irrigation purposes. Fountain and Widefield own 2.61 cfs out of the 3.38 cfs decreed to the W.A. Bell Ditch No. 2. 3.1.3. W.A. Bell Ditch No. 3 was awarded Priority No. 114 for a direct flow right of 8.608 cfs out of Venable (a/k/a Bothwell) Creek, with an appropriation date of May 1, 1875 for irrigation purposes. Fountain and Widefield own 6.3825 cfs out of the 8.608 cfs decreed. W.A. Bell Ditch No. 3 was also awarded Priority Nos. 35 and 55 for a combined total of 2.152 cfs, but these Applicants do not own an interest in these priorities, and they are not subject to the claims that have been made herein. 3.2. Prior Change Cases. 3.2.1. Beardsley v. Kelling et al. Decree entered by the Custer County District Court on December 16, 1908 confirming a four day rotation schedule for the period between March 15 throughout the irrigation season for *inter alia* the W.A. Bell Ditch No. 1 between George Beardsley and Allen Bates (predecessor-in-interest to the Applicants). 3.2.2. Findings of Fact, Conclusions of Law and Decree entered in Case No. W-4321 on January 17, 1977 by the District Court in and for Water Division No. 2 for a Plan for Augmentation and to change 2.56 cfs of W.A. Bell Ditch No. 1; 2.61 cfs of W.A. Bell Ditch No. 2, 6.3825 cfs of W.A. Bell Ditch No. 3, Priority No. 114; the Lea Adams Well, Permit No. 1555 for 1.25 cfs with an appropriation date of June 3, 1963; and 1.20 cfs of A. Katzenstein Ditch No. 2. 3.2.3. Findings of Fact, Conclusions of Law, Judgment and Decree entered in Case No. W-4370 on April 22, 1980 by the District Court in and for Water Division No. 2 finding that Lea and Celesta Adams acquired a 0.77 cfs interest in W.A. Bell Ditch No. 2 from Frank Schneider by adverse possession and changing 0.85 cfs of W.A. Bell Ditch No. 1, 0.4105 cfs of W.A. Bell Ditch No. 3, Priority Nos. 35 and 55, and 1.417 cfs of W.A. Bell Ditch No. 3, Priority No. 114, all owned by Frank Schneider, to alternate points of diversion. 3.2.4. Judgment and Decree entered in Case No. 80CW90 on August 31, 1981 by the District Court, Water Division No. 2 changing 0.70 cfs of Lea and Celesta Adams' 1.7415 cfs interest in the W.A. Bell Ditch No. 3, Priority Nos. 35 and 55 to the Adams Well for use for municipal purposes. 3.2.5. Findings of Fact, Conclusions of Law and Decree Approving Change of Water Rights and Vacating Decree in Case No. W-4321 entered on September 12, 1996 by the District Court, Water Division No. 2 resulting in 2.56 cfs of the W.A. Bell Ditch No. 1, 2.61 cfs of the W.A. Bell Ditch No. 2, and 6.3825 cfs of W.A. Bell Ditch No. 3 being changed back to irrigation use on the NE ¼ of Section 23 and the N ½ of Section 24, Township 22 North [Court records indicate this location to be in Township 22 South], Range 73 West of the 6<sup>th</sup> P.M. **4. Proposed Change:** 4.1. Historic Use: The water rights owned by Fountain and Widefield have historically been used to irrigate approximately 486 acres of land known as the H2O Ranch (a/k/a the Adams Ranch). The historically irrigated

lands consist of the N ½ of Section 24 and the NE ¼ of Section 23, Township 22 South, Range 73 West of the 6<sup>th</sup> P.M. in Custer County, Colorado.

4.2. Change in Type of Use: Fountain and Widefield seek to quantify the historic consumptive use attributable to the Subject Water Rights and to change their use from the previously decreed use to all municipal uses, including but not limited to domestic, commercial, industrial, recreation, piscatorial, wildlife, irrigation, replacement and substitution, exchange, recharge and storage of the previously decreed direct flow rights for subsequent use within the Fountain and Widefield service areas as they now exist and as they may exist in the future. This request includes the right to use and reuse such water to extinction. The Subject Water Rights will continue to be diverted and measured at the currently decreed points of diversion and then returned to the stream. Any consumptive use quantified in this case shall be delivered via Alvarado and Venable Creeks to Grape Creek, then to the Arkansas River for delivery to Pueblo Reservoir for use by Fountain and Widefield either on a direct flow basis through the Fountain Valley Conduit, or for storage and later use. The use of any consumptive use quantified in this case in a particular augmentation plan, exchange or recharge plan shall require a new water court application to be filed by Fountain and/or Widefield. Return flows from the water rights have historically accrued to Taylor Creek, Alvarado Creek and Venable Creek. Applicants will replace historical return flows in time, location and amount as necessary to prevent injury to other water rights.

4.3 Change in Place of Use: Fountain and Widefield seek to change the place of use of the consumptive use portion of the Subject Water Rights to the service areas of the City of Fountain and the Widefield Water & Sanitation District as they currently exist and may exist in the future. The Fountain and Widefield service areas are generally located in an area bounded by Townships 15 and 16 South and Ranges 64, 65 and 66 West of the 6<sup>th</sup> P.M. in El Paso County, Colorado. Pueblo Reservoir is general located in Section 36, Township 20 South, Range 66 West of the 6<sup>th</sup> P.M. in Pueblo County, Colorado.

4.4. Alternate Point of Diversion: The current location of the W.A. Bell Ditch No. 2 headgate on Venable Creek is only a few hundred yards upstream of the current location of the W.A. Bell Ditch No. 3 headgate. There are no intervening diversions between the two headgates. Applicants seek to make the point of diversion for their interest in the W.A. Bell Ditch No. 2 an alternate point of diversion for the W.A. Bell Ditch No. 3.

5. Proposed Terms and Conditions: Terms and conditions imposed on the change of Fountain and Widefield's interest in the Subject Water Rights shall include the following:

- 5.1. Maximum annual volumetric diversions will be imposed, based on historic use of the Subject Water Rights.
- 5.2. Twenty year maximum diversion limitations will be imposed.
- 5.3. Maximum monthly diversion limitations will be imposed.
- 5.4. Diversions and measurement of the Subject Water Rights at the original points of diversion may only take place during the historic irrigation season.
- 5.5. Maximum net depletions will be established for the irrigation season when there is a valid downstream call.
- 5.6. Return flow patterns during the irrigation and non-irrigation season will be maintained. Replacements will be made during the non-irrigation season in accordance with the historic pattern of such return flows when there is a valid downstream call.

6. Owners of Land on which Structures are Located:

- 6.1. W.A. Bell Ditch No. 1 and W.A. Bell Ditch No. 3: the City of Fountain.
- 6.2. W.A. Bell Ditch No. 2: Charles Koch, 1431 Walnut Street, Canon City, CO 81212.
- 6.3. Pueblo Reservoir: United States Department of Interior, Bureau of

Reclamation, 11056 W. County Road 18E, Loveland, CO 80537. **7. Diversion Records and Irrigated Area.** Summaries of records of actual diversions of the W.A. Bell Ditch Nos. 1, 2 and 3 for the water years 1970 through 2006 are attached to the Application as Exhibit 1. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. A map depicting the lands historically irrigated by the W.A. Bell Ditch Nos. 1, 2 and 3 is attached to the Application as Exhibit 2. ACCORDINGLY, Fountain and Widefield request that the Court enter a decree granting this application for change of water rights.

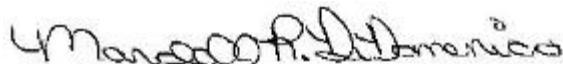
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THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of August 2008, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this 7th day of July, 2008.



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Mardell R. DiDomenico, Clerk  
District Court Water Div. 2  
203 Judicial Bldg., 320 W. 10th Street  
Pueblo, CO 81003 Tel. 583-7048

(Court seal)

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