

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED DURING APRIL 2010  
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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 April 2010, 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. 96CW228 – PETER LoPRESTI AND CATHERINE BOYER**

**LoPRESTI, 664 Joy Lane, Westcliffe, CO 81252** (William A. Paddock, Esq., Beth Ann J. Parsons, Esq., Carlson, Hammond & Paddock, L.L.C., Attorneys for Applicants, 1700 Lincoln St., Suite 3900, Denver, CO 80203-4539)  
Notice of Remaining Issue in Application for Change of Water Right

**CUSTER COUNTY, COLORADO**

**II. Status of Application.** In May of 1999, Applicants filed an Amended Application, which sought four distinct forms of relief: (1) a correction in the legal description for the decreed point of diversion for Legard Ditch No. 10; (2) a change in the legal description of the lands served by each of the Legard Ditches No. 8, 9, 11, 12, and 13 to conform to the intent in the original adjudication and the historical practice; (3) a change in place of use for Legard Ditches No. 5, 6, and 7; and (4) changes in points of diversion for the Legard Ditches No. 6 through 14. The first, third, and fourth claims have been determined and no longer are before this Court. The only remaining claim is Applicants' claim to change the legal description of the lands served by each of the Legard Ditches No. 8, 9, 11, 12, and 13 to conform to the intent in the original adjudication and the historical practice. By order dated April 30, 2010, the Court directed that notice of the remaining claim be republished. **III. Water Rights Involved:** (A) Adjudication Decree: Entered May 13, 1893, In the Matter of the Priorities of Water Rights and the Adjudication thereof in Water District Number 13, Water Division Number 2 (no case number), In the District Court of the Eleventh Judicial District of the State of Colorado in and for the County of Fremont in the State of Colorado. (B) Claimant: Henry Beaumont. At the time of the Adjudication Decree proceedings, Henry Beaumont owned or claimed 640 acres in Township 22 South, Range 73 East, described as follows: NE1/4 Section 26; SE1/4 Section 23; NW1/4 Section 25; SW1/4 Section 24. (C) Name and Description of Water Rights as Stated in the Adjudication Decree (all in Township 22 South, Range 73 East of the 6<sup>th</sup> P.M): Legard Ditch No. 8: 1.82 c.f.s. with a priority date of October 31, 1874, for the irrigation of 65 acres of land lying in the SW1/4 NE1/4, the NW1/4 NE1/4, and the NE1/4 NE1/4 of Section 36. The headgate is located on the north side of Alvarado Creek (f.k.a. the North Fork of Neave Creek), at a point 700 feet north of the center of Section 26. Said ditch takes its supply of water from the said Creek. Legard Ditch No. 9. 3.76 c.f.s. with a priority date of December 1, 1873, for the irrigation of 75 acres of land lying in the NE1/4 NE1/4 of Section 26, the SW1/4, the SE1/4 SW1/4, the SW1/4 SE1/4, and the NE1/4 SW1/4 of Section 24. The headgate is located on the south side of the North Fork of Alvarado Creek (f.k.a. Neave Creek) at a point 1,080 feet east and 690 feet south of the quarter section corner between Sections 23 and 26. Said ditch takes its supply of water from the said creek. Legard Ditch No. 11. 4.5 c.f.s. with

a priority date of May 31, 1872, for the irrigation of 115 acres lying in the NW1/4 NE1/4 and the SE1/4 SW1/4 of Section 26, the NE1/4 SW1/4 and the NW1/4 SE1/4 of Section 24. The headgate is located on the south side of the North Fork of Alvarado Creek (f.k.a. main branch of Legard Creek), at a point 990 feet south and 100 feet east of the quarter section corner between Sections 23 and 26. Said ditch takes its supply of water from the said creek. Legard Ditch No. 12. 4.84 c.f.s. with a priority date of December 1, 1873, for the irrigation of 105 acres lying in the NW1/4 NE1/4 of Section 26, the SW1/4 SW1/4, the NE1/4 NE1/4, and the NW1/4 SE1/4 of Section 24. The headgate is located on the north side of the North Fork of Alvarado Creek (f.k.a. north branch of Legard Creek) at a point 720 feet south and 85 feet east of the quarter section corner between Sections 23 and 26. Said ditch draws its supply of water from the said creek. Legard Ditch No. 13. 1.87 c.f.s. with a priority date of October 31, 1874, for the irrigation of 85 acres lying in the NW1/4 NE1/4 of Section 26, the SW1/4 SW1/4, and the NE1/4 SE1/4 of Section 24. The headgate is located on the north side of the North Fork of Alvarado Creek (f.k.a. north branch of Legard Creek), at a point 1,000 feet south and 30 feet west from the quarter section corner between Sections 23 and 26. Said ditch draws its supply of water from said creek. **IV. Change in Decreed Place of Use.** Applicants seek to change the legal descriptions of the place of use of the water decreed to five of the Legard Ditches to conform to the intent of the original appropriation and actual historical practice. The lands historically irrigated with these water rights are the lands underlying the ditches. The decree's description of the irrigated lands includes lands to which the ditches could not physically deliver water. This is shown by a comparison of the actual location of the ditches as they existed at the time the water rights were adjudicated, with the area each ditch was decreed to irrigate. The map attached to the May 1999 Amended Application shows the actual location of the ditches as they existed at the time the water rights were adjudicated. Accordingly, the LoPrestis assert that the Adjudication Decree contains a number of errors in the legal descriptions of the place of use and seek to correct the legal descriptions of the place of use by correcting the legal description of the irrigated acreage under each ditch to conform to the historical and current practice. The changes in place of use sought are: Legard Ditch No. 8: Applicants seek to change the decreed place of use of this water right from the SW1/4 NE1/4, the NW1/4 NE1/4, and the NE1/4 NE1/4 of Section 36 to the SW1/4 NE1/4, the NW1/4 NE1/4, and the NE1/4 NE1/4 of Section 26; Legard Ditch No. 9: Applicants seek to change the decreed place of use of this water right from the NE1/4 NE1/4 of Section 26, the SW1/4, the SE1/4 SW1/4, the SW1/4 SE1/4, and the NE1/4 SW1/4 of Section 24, to the NE1/4 NE1/4 of Section 26, the SW1/4 SW1/4 of Section 24 and the SE1/4 SE1/4 of Section 23; Legard Ditch No. 11: Applicants seek to change the decreed place of use of this water right from the NW1/4 NE1/4 of Section 26, the SE1/4 SW1/4 of Section 26, the NE1/4 SW1/4, and the NW1/4 SE1/4 of Section 24, to the NW1/4 NE1/4, and the NE1/4 NE1/4 of Section 26, the SE1/4 SE1/4 of Section 23, and the SW1/4 SW1/4 and the NW1/4 SW1/4 of Section 24; Legard Ditch No. 12: Applicants seek to change the decreed place of use of this water right from the NW1/4 NE1/4 of Section 26, the SW1/4 SW1/4, the NE1/4 NE1/4, and the NW1/4 SE1/4 of Section 24 to the NW1/4 NE1/4 of Section 26, the SW1/4 SE1/4 and the NE1/4 SE1/4 of Section 23, and the NW1/4 SW1/4 of Section 24; Legard Ditch No. 13: Applicants seek to change the decreed place of use of this water right from the NW1/4 NE1/4 of Section 26, the SW1/4 SW1/4 and the NE1/4 SE1/4 of Section 24 to the NW1/4 NE1/4 of Section 26 and the SW1/4 SE1/4 and the NW1/4 SE1/4 of Section 23.

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**CASE NO. 10CW17 – RICHARD PURSELL, P. O. Box 248, Poncha Springs, CO 81211**

(Send all pleadings to: Glenn E. Porzak and Thomas W. Korver, Porzak Browning & Bushong, LLP, Attorneys for Applicant, 929 Pearl Street, Suite 300, Boulder, CO 80302; (303) 443-6800)

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

**CHAFFEE COUNTY, COLORADO**

**2. Background:** Applicant owns approximately 38 acres of land in the N½ NE¼ of Section 36, Township 50 North, Range 7 East, N.M.P.M., in Chaffee County, Colorado. Applicant's property is located within Blank Gulch and has historically been irrigated with water from the Eureka Ditch, which diverts from Squaw Creek. There are five ponds located on Applicant's property as a result of dams constructed on the Eureka Ditch. This application seeks (1) to adjudicate water rights for the five on-channel ponds on Applicant's property; (2) a change of water rights allowing Applicant to store his Eureka Ditch interest in the subject ponds for new uses; and (3) approval of a plan for augmentation to replace out-of-priority evaporative depletions caused by the open water surfaces of the ponds. **I. APPLICATION FOR WATER STORAGE RIGHTS. 3. Name of**

**Reservoirs:** Pursell Ponds Nos. 1-5. **4. Description of Water Rights: A.**

**Pursell Pond No. 1. i. Location:** The centerline of the dam is located in the W½ NE¼ NE¼ of Section 36, Township 50 North, Range 7 East of the New Mexico P.M., at a point 204 feet from the North section line and 1284 feet from the East section line of said Section 36. **ii. Appropriation Date:** December 31, 1969, by construction. **iii. Date Water Applied to Beneficial Use:** December 31, 1969. **iv.**

**Amount:** 0.63 acre-feet, absolute, together with the right to refill this amount when water is available in priority. (a) Active Capacity: 0.0 acre-feet (b) Dead Storage: 0.63 acre-feet. **v. Surface Area:** 0.25 acres. (a) Maximum Height of Dam: 6.0 feet (b) Length of Dam: 140 feet. **B. Pursell Pond No. 2. i. Location:**

The centerline of the dam is located in the W½ NE¼ NE¼ of Section 36, Township 50 North, Range 7 East of the New Mexico P.M., at a point 458 feet from the North section line and 1166 feet from the East section line of said Section 36. **ii. Appropriation Date:** April 30, 2003, by construction. **iii. Date Water Applied to Beneficial Use:** April 30, 2003. **iv. Amount:** 0.50 acre-feet, absolute, together with the right to refill this amount when water is available in priority. (a) Active Capacity: 0.0 acre-feet (b) Dead Storage: 0.50 acre-feet **v.**

**Surface Area:** 0.17 acres. (a) Maximum Height of Dam: 6.0 feet (b) Length of Dam: 75 feet **C. Pursell Pond No. 3. i. Location:** The centerline of the dam is located in the W½ NE¼ NE¼ of Section 36, Township 50 North, Range 7 East of the New Mexico P.M., at a point 696 feet from the North section line and 1032 feet from the East section line of said Section 36. **ii. Appropriation Date:**

December 31, 1969, by construction. **iii. Date Water Applied to Beneficial Use:** December 31, 1969. **iv. Amount:** 0.46 acre-feet, absolute, together with the right to refill this amount when water is available in priority. (a) Active Capacity: 0.0 acre-feet (b) Dead Storage: 0.46 acre-feet. **v. Surface Area:** 0.17 acres. (a) Maximum Height of Dam: 6.0 feet (b) Length of Dam: 110 feet. **D. Pursell Pond**

**No. 4. i. Location:** The centerline of the dam is located in the W½ NE¼ NE¼ of Section 36, Township 50 North, Range 7 East of the New Mexico P.M., at a point 866 feet from the North section line and 914 feet from the East section line of said Section 36. **ii. Appropriation Date:** December 31, 1969, by construction. **iii. Date Water Applied to Beneficial Use:** December 31, 1969. **iv. Amount:** 0.68 acre-feet, absolute, together with the right to refill this amount when water is available in priority. (a) Active Capacity: 0.0 acre-feet (b) Dead Storage: 0.68 acre-feet **v. Surface Area:** 0.20 acres. (a) Maximum Height of Dam: 6.0 feet (b) Length of Dam: 125 feet. **E. Pursell Pond No. 5. i. Location:** The centerline of the dam is located in the W½ NE¼ NE¼ of Section 36, Township 50 North, Range 7 East of the New Mexico P.M., at a point 1008 feet from the North section line and 861 feet from the East section line of said Section 36. **ii. Appropriation Date** December 31, 1969, by construction. **iii. Date Water Applied to Beneficial Use:** December 31, 1969. **iv. Amount:** 0.38 acre-feet, absolute, together with the right to refill this amount when water is available in priority. (a) Active Capacity: 0.0 acre-feet (b) Dead Storage: 0.38 acre-feet **v. Surface Area:** 0.12 acres. (a) Maximum Height of Dam: 6.0 feet (b) Length of Dam: 100 feet. Pursell Ponds Nos. 1-5 are claimed for domestic, irrigation, stock watering, fire protection, hydropower, recreation, piscatorial and augmentation. **Source:** The source of the Pursell Ponds Nos. 1-5 is the Eureka Ditch, which diverts from Squaw Creek, a tributary to the Arkansas River. The Eureka Ditch has a capacity of 1.8 cfs. The Eureka Ditch was decreed on June 19, 1890, in Case No. 1127, Chaffee County District Court, in the amount of 1.8 cfs absolute for irrigation uses, with an appropriation date of March 1883. The decreed point of diversion of the Eureka Ditch is on the south bank of Squaw Creek in Section 10, T. 50 N., R. 7 E., N.M.P.M., Chaffee County, Colorado. Applicant is the owner of a 10% interest in the Eureka Ditch. In addition, Applicant benefits from the terms of the Joint Water Use and Maintenance Agreement described in paragraph 8 below which burdens other interests in the Eureka Ditch. Applicant's 10% interest in the Eureka Ditch and the Pursell Ponds Nos. 1-5 has been historically used for the irrigation of 16.3 acres of land in the NE¼ of Section 36, T. 50 N., R. 7 E., N.M.P.M., which irrigation will continue subject to the limitations described in paragraph 9 below. A map showing the point of diversion of the Eureka Ditch and the locations of the Purcell Pond Nos. 1-5 is 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.) **II. APPLICATION FOR CHANGE OF WATER RIGHTS. 5. Description of Water Rights to be Changed:** Applicant seeks to change his 10% interest in the Eureka Ditch, as said Ditch is described in paragraph 4 above. **6. Description of Proposed Changes:** By this application, the Applicant seeks (a) to change his 10% interest in the Eureka Ditch to include domestic, irrigation, stock watering, fire protection, hydropower, recreation, piscatorial and augmentation; and (b) to divert his 10% interest in the Eureka Ditch at its decreed location during the months of April through October and store all or some portion of the water right in the Pursell Ponds Nos. 1-5 described in paragraph 4 above. To prevent an enlargement of use from these changes, Applicant will implement the plan for

augmentation described in paragraph 9 below. A map depicting the point of diversion of the Eureka Ditch, the location of historic use of the Eureka Ditch, and the locations of the Purcell Pond Nos. 1-5 is attached to the Application as Exhibit 1. A summary of diversion records is attached to the Application as Exhibit 2.

**III. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.**

**7. Name of Structures to be Augmented:** Purcell Pond Nos. 1-5, as described in paragraph 4 above.

**8. Water Rights to be Used for Augmentation:**

A. Applicant's 10% interest in the Eureka Ditch as described in paragraph 5 above, and as changed as described in paragraph 6 above. Applicant's interest in the Eureka Ditch has been historically used during the months of April through October to irrigate an average of 16.3 acres of land with an irrigation water requirement of 1.38 acre-feet per irrigated acre. The historic consumptive use of water delivered from Applicant's 10% interest in the Eureka Ditch averaged 7.5 acre-feet per year.

B. The 50% interest in the Eureka Ditch owned by Mark Anderson, as burdened by the terms of the September 12, 2000 Water Use and Maintenance Agreement (the Water Use Agreement"), as the Water Use Agreement was interpreted by the Water Court in Case No. 02CW176. The Water Court specifically held at paragraph 19D of the Judgment and Decree in Case No. 02CW176 that Mr. Anderson's rights in the Eureka Ditch are governed by the terms of the Water Use Agreement. Paragraph 3 of the Water Use Agreement specifies that "one half of the water flowing in the Eureka Ditch shall remain in the main channel of such ditch to maintain the ditch flow, maintain pond levels, and to supply Anderson with the allocated share owned by Anderson." Paragraph 5 of the Water Use Agreement goes on to state that the intent of the Water Use Agreement is to maintain historic irrigation practices and the pond levels. Given the foregoing, under the terms of the Water Use Agreement as interpreted by the Water Court in the proceedings in Case No. 02CW176, Anderson's 50% interest in the Eureka Ditch is burdened by the obligation to maintain the level of the Pursell ponds that existed at the time of the Water Use Agreement, and to cover all transit losses. Mr. Anderson's 50% interest in the Eureka Ditch was decreed in Case No. 1127, described in paragraph 4 above, and was changed in Case No. 02CW176 to include the uses of pond storage, stock watering, recreational, piscatorial, fire protection and augmentation, in addition to the previously decreed irrigation use. Mr. Anderson's interest in the Eureka Ditch has been historically used during the months of April through October to irrigate an average of 37 acres of land, resulting in an average consumptive use for Mr. Anderson's 50% interest of 42.6 acre-feet per year.

**9. Statement of Plan for Augmentation:** By this application, the Applicant seeks to adjudicate a plan to augment out-of-priority evaporative depletions from the structures described in paragraph 4 above. Applicant will use a portion of his interest in the Eureka Ditch to replace out-of-priority evaporative depletions caused by the open water surface of Pursell Pond No. 2, which was constructed after the execution of the Water Use Agreement. Out-of-priority evaporative depletions from the Pursell Ponds Nos. 1, 3, 4 and 5 existed at the time of the Water Use Agreement, and will be replaced by Anderson's interest in the Eureka Ditch pursuant to the terms of the Water Use Agreement.

**A. Pursell Pond No. 2:**

Out-of-priority evaporative depletions associated with Pursell Pond No. 2 will be replaced using a portion of the historical consumptive use credits associated with Applicant's 10% ownership interest in the Eureka Ditch. Applicant's deliveries for irrigation will be reduced by 6%, and Applicant will permanently remove from irrigation 0.91 acres of historically irrigated land. Applicant's foregone deliveries will remain in the Eureka Ditch at the division point specified in the Water Use Agreement, flow down Blank Gulch and into and through the Pursell Ponds Nos. 1-5. The 0.42 acre-feet of historical consumptive use credit that is included in the foregone deliveries will either be stored or released from the Pursell ponds such that 1) evaporative depletions are replaced, and 2) return flows associated with the 6% reduction are replaced in a manner that is consistent with the historical return flow pattern. Water released from the Pursell Ponds will be via a pump system and pipeline until such time as outlet facilities are constructed. **B. Pursell Ponds Nos. 1, 3, 4 and 5:** i. Under the terms of the Water Use Agreement as interpreted by the Water Court in the proceedings in Case No. 02CW176, Anderson's 50% interest in the Eureka Ditch is burdened by the obligation to maintain the level of the Pursell ponds that existed at the time of the Water Use Agreement, and to cover all transit losses. Accordingly, evaporative losses from the Pursell Ponds Nos. 1, 3, 4 and 5 will be replaced in a manner similar to Pursell Pond No. 2, but using a portion of the water rights described in paragraph 8.B, and regulation of ponds on the Anderson property. Based on a maximum surface area of 0.74 acres for Pursell Pond Nos. 1, 3, 4 and 5, the estimated annual replacement requirement will be 1.81 acre-feet. The replacement can be accomplished by Anderson foregoing 4.3% of the amount of water Anderson delivers for irrigation pursuant to his 50% ownership interest. The 1.81 acre-feet of historical consumptive use credit included in the foregone deliveries will either be stored or released from the Anderson ponds such that 1) evaporative depletions are replaced, and 2) return flows associated the 4.3% reduction are replaced in a manner that is consistent with the historical return flow pattern. To be consistent with the approaches used by upstream owners in the Eureka Ditch, Anderson must also permanently remove approximately 1.6 acres from irrigation. ii. In the alternative, out-of-priority evaporative depletions associated with the Pursell Ponds Nos. 1, 3, 4 and 5 may be replaced using historical consumptive use credits associated with Applicant's 10% ownership interest in the Eureka Ditch. In that event, Applicant will forgo additional deliveries for irrigation and permanently remove 3.97 additional acres of historically irrigated land, and will either store or release the resulting additional historical consumptive use credits in the Pursell ponds in the same manner as provided for in paragraph 9.A. above. **C.** So as to assure the operation of the subject augmentation plan, Applicant will install and maintain such water measuring devices and implement such accounting procedures as may be required to verify that the amount of augmentation water replaces the amount of consumptive use resulting from the out of priority depletions augmented herein. **D.** Except to the extent of dry up under the subject plan for augmentation, Applicant's interest in the Eureka Ditch will continue to be used for irrigation and other uses on Applicant's property provided that the consumption from all uses of Applicant's 10% interest do not

cumulatively exceed 7.5 acre-feet on an average annual basis. **10. Ownership:** The Eureka Ditch water rights are owned by Applicant and: Mark Anderson, c/o Paul G. Anderson, LLC, P.O. Box 50631, Colorado Springs, CO 80949; Henry Sebesta and Mary M. Sebesta Revocable Trust and C & K Properties, Inc., c/o Holland & Hart, Attn: Meghan Winoker, P.O. Box 8749, Denver, CO 80201-8749; and Wail Hashimi and Diana Hashimi, c/o Henry D. Worley, MacDougall, Woldridge & Worley, P.C., 530 Communication Circle, Suite 204, Colorado Springs, CO 80905-1743. WHEREFORE, Applicant requests that this Court enter a decree which: (i) Adjudicates the water rights described in paragraph 4; (ii) Approves the requested change of water rights described in paragraph 6; (iii) Approves the plan for augmentation described in paragraph 9; and (iv) Finds that as a result of the subject change of water rights and plan for augmentation, there will be no injury to any owner of or persons entitled to use water under a vested water right or decreed conditional right.

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**CASE NO. 10CW18 – CARL M. SHINN, P. O. Box 390, Lamar, CO 81052**  
(Donald L. Steerman, Attorney for Applicant, P. O. Box 390, Lamar, CO 81052;  
(719) 336-4313)

Application for Change of Water Right

**PROWERS COUNTY, COLORADO**

**Decreed water right for which change is sought:** **Name of structure:** W.N. Hutchison Ditch. **Date of original and all relevant subsequent decrees:** General Adjudication Decree dated November 7, 1924. **Case No:** 138172; **Court:** Bent County District Court entitled In the Matter of the Adjudication of Priorities of Right to use Water for Domestic and Irrigation Purposes in Water District 67, in the State of Colorado. **Legal description of structure:** The Original Headgate for the original point of diversion was stated in the decree as: At a point in the County of Prowers and State of Colorado, whence the section corner common to sections 23, 24, 25, and 26, Township 22 South, Range 47 West of the 6<sup>th</sup> principal meridian bears North 62° 07' East a distance of 1756.5 feet and that water from said ditch was decreed from said last mentioned point. **Decreed source of water:** Vista Del Rio Drainage Ditch. **Appropriation Date:** July 12, 1919; **Total amount decreed to structure:** 5.00 cfs. **Decreed use or uses:** Irrigation. **Amount of water that applicant intends to change:** Applicant does not seek to change either the use of the water nor does he seek to change the place where the water is applied for irrigation. The Decree provides that the water right was to irrigate 205 acres of land. **Detailed description of proposed change:** **Background:** Applicant purchased the subject water right by Warranty Deed dated January 10, 1966 given by McKinley-Winter Cattle Co, Inc. In that deed and a subsequent deed dated March 6, 1969 given by A.H. Filkins and Clara McCall, he purchased a portion of Indian Claim No. 26. Located Township 22 South, Ranges 46 and 47 West of the 6<sup>th</sup> Principal Meridian. Copies of each of the deeds are attached to the Application as Exhibits "A" and "B" and incorporated herein. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court.) The property described therein encompasses a portion of Section

Twenty-five (25), Township Twenty-two (22) South, Range 47 West of the 6<sup>th</sup> P.M. and a portion of Section Thirty (30), Township Twenty-two (22) South, Range 46 West of the 6<sup>th</sup> p.m. Prowers County, Colorado. The decree provides for the irrigation of 205 acres of land. The actual acreage of irrigation land located on the above-described property is 203.2 acres as shown by the USDA, Farm Service Agency Field Maps of the property; a copy of the USDA aerial photographs depicting the actual irrigated fields are attached to the Application as Exhibit “C” for the lands included in Section 25-22-47 and Exhibit “D for those land included in Section 30-22-46. The subject property borders and is immediately south of US Highway 50. The Vista Del Rio Drainage, the source of the Hutchison Ditch, ran north of US Highway 50 at the point of the decreed point of diversion until sometime prior to 1975. The Colorado Department of Highways started a project on U.S. Highway 50, widening the right of way of the highway and substantially restructuring said highway. The State of Colorado through the Department of Highways, together with the then water commissioner for District 67 approached Applicant about moving the Vista Del Rio Drainage Ditch and removing both the decreed point of diversion and the Hutchison Ditch. The Vista Del Rio Ditch was revamped to run immediately north of Applicant’s fields and two lift pumps were put in the Vista Del Rio Ditch allowing Applicant to irrigate his fields from the lift pumps. Accordingly, this application seeks a decree for a change of point of diversion to the western-most lift pump on Applicant’s property installed on the Vista Del Rio Drainage Ditch as set forth at the location set out below and for an alternate point of diversion for the eastern lift pump on Applicant’s property installed on the Vista Del Rio Drainage Ditch as set forth below. **If a change in point of diversion, provide legal descriptions of decreed location and actual or new location of structure. GPS location information in UTM format.** Required settings for GPS units are as follows: Format must be UTM; Zone must be 12 or13; Units must be Meters; Datum must be NAD83, and Units must be set to true North.

<b>Alternative (UTM):</b>	<b>Description</b>	
Were points averaged? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Northing: 706144 Easting 4220722  <input type="checkbox"/> Zone 12 <input checked="" type="checkbox"/> Zone 13

**Alternate point of diversion.** As explained above a decree for an alternate point of diversion is sought for the second and easterly lift pump on the Vista Del Rio Drainage Servicing Applicant’s property. This alternate point of diversion is located approximately one mile easterly from the change in point of diversion sought above. There are no intervening diversions between the original point of diversion, the proposed change in point of diversion and the proposed alternate point of diversion. The proposed alternate point of diversion on the Vista Del Rio Drainage Ditch for Applicant’s water right is located as follows: **GPS location information in UTM format.** Required settings for GPS units are as follows: Format must be UTM; Zone must be 12 or13; Units must be Meters; Datum must be NAD83, and Units must be set to true North.



<b>Alternative (UTM):</b> Were points averaged? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Description</b> Northing: 707642 Easting 4221025 <input type="checkbox"/> Zone 12 <input checked="" type="checkbox"/> Zone 13
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A copy of the original decree issued for the W. N. Hutchinson Ditch is attached to the Application as Exhibit "E". A copy of the USGS Topographical map printed showing the original point of diversion, the new point of diversion, the alternate point of diversion, and the approximate irrigated fields is attached to the Application as Exhibit "F". The same map in a satellite aerial photograph is attached to the Application as Exhibit "G" for ease of comparison. **Proposed terms and conditions:** Terms and conditions imposed on the alternate point of diversion shall include a requirement that a measuring device be fitted on both lift pumps and the total amount diverted from both points of diversion shall be limited to the decreed amount. **Ownership of Property:** Applicant is the Owner of the Property where these structures are located so no notice to landowners is required. **No Other Changes:** Except for the change in point of diversion and alternate point of diversion, applicant seeks no other changes to his decree. **WHEREFORE** applicant respectfully requests the Court grant the relief requested herein and such other relief as may be just and appropriate under the circumstances.

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**CASE NO. 10CW19 (Previous Case Nos. W-29, W-628, W-628(74), W-628(78), 80CW89(W-29), 84CW114(W-29), 88CW46(W-29), 94CW65(W-29), and 02CW128(W-29) – HUERFANO CUCHARAS IRRIGATION COMPANY, a mutual ditch company, 215 West Second Street, Pueblo, CO 81003** (William F. Mattoon, Petersen & Fonda, P.C., Attorneys for Applicant, 215 West Second Street, Pueblo, CO 81003; (719) 545-9330)

Application for Finding of Reasonable Diligence

**HUERFANO COUNTY**

**Name of Structure:** Cucharas Valley Reservoir No. 5. Appropriation Priority No. 354C, Reservoir Priority No. 66C. **Describe conditional water right:** Reservoir No. 65 Cucharas Valley Reservoir Appropriation No. 354C; Reservoir Priority No. 66C. **Date of Original Decree:** 3 October 1921, **Case No.** 1414; **Court:** Huerfano County District Court. **Subsequent decrees awarding findings of diligence:** The Court and diligence proceedings have awarded a continuation in good standing as 34,404 a.f. in case numbers W-29, W-628, W-628 (74), W-628 (78), 80CW89 (W-29), 84CW114 (W-29), 88CW46 (W-29), 94CW65 (W-29) and 02CW128 (W-29). **Legal description:** Huerfano County Cucharas Valley Reservoir No. 5, and the dam across the Cucharas River creating said reservoir, all located on Sections 25, 26, 35 and 36, Twp. 26S, Rge. 65 W, Sections 30 and 31, Twp. 26 S., Rge. 64 W, Sections 6 and 7, Twp. 27 S. Rge. 64 W., and Sections 1, 2, 3, 10, 11, 12, 14 and 15, Twp. 27 S., Rge. 64 W., in the County of Huerfano, State of Colorado. **Source of Water:** the source of water is the Cucharas River. **Appropriation Date:** 3/14/1906; **Amount:** 34,404 acre feet. **Use:** Irrigation. **Detailed outline of what has been done toward completion or for completion of the appropriation and application of**

**water to a beneficial use as conditionally decreed:** Below is a detailed list of expenditures, the vast bulk of which expenditures were for engineering and hydrological studies and reports of proposals to repair or replace the dam and other diversion facilities in a pursuit of two objectives: 1. To resolve the safety issues that may exist with the Division Engineer. 2. To pursue the conditionally decreed rights of the company to absolute decrees:

<u>Name</u>	<u>Date</u>	<u>Amount</u>
Boesch-Fisher Engineering, Inc.	9/9/04	\$ 3744.50
	11/12/04	\$ 3245.00
	12/10/04	\$ 7777.00
Subtotal: \$19,423.00		
Lytle Water Solutions, LLC	6/22/05	\$ 3424.00
	8/17/05	\$ 4072.01
	10/7/05	\$ 1508.55
	12/8/05	\$ 727.37
	1/26/06	\$ 2270.00
	12/12/06	\$ 5794.46
	3/7/07	\$ 735.68
Subtotal: \$18,532.07		
URS	2/7/07	\$ 10,000.00
	9/2/07	\$ 3,000.00
Subtotal: \$13,000.00		
Applegate Group	5/18/09	\$ 7,500.00
	7/8/09	\$ 2,000.00
	10/9/09	\$ 2,500.00
Subtotal: \$12,000.00		
GEI Consultants	9/9/09	\$ 30,000.00
	1/6/10	\$ 17,487.88
	2/10/10	\$115,460.04
	3/30/10	\$ 38,783.00
Subtotal: \$201,730.92		

**Grand Total: \$264,685.99**

In addition to the above engineering studies, outlines and reports, the following installations of head gates gave rise to the below list of expenditures:

3/9/06 Mike Blasis Trucking, work on easement and road to dam	\$ 250.00
4/7/06 Mesa Fab Shop, rebuild head gate	\$15,416.94
5/1/07 Mesa Fab Shop, rebuild drop gate	\$ 3,173.49
3/12/09 Pipeyard, headgate supplies	\$ 1,390.18

Grand Total: \$20,230.61

The above head gate construction and replacement might be interpreted as repair, although most were new constructions.

The Huerfano Cucharas Irrigation Company, along with the Two Rivers Water Company/HCIC Holdings, LLC, now the owner of the majority of shares of the Huerfano Cucharas Company, have performed work and spent a considerable sum of money in the past few years upon engineering studies concerning the replacement or repair of the Huerfano Cucharas dam and its ditches. These

studies served a dual purpose of pursuing the Company's objective of continuing reasonable diligence for their conditional decree and resolving issues that the Company may have with the State Engineer's office concerning the safety of the existing dam. The most recent engineer's study was submitted by GEI Consultants, Inc., a firm specializing in geotechnical environmental and water resources engineering. This final report from GEI was submitted March, 2010. Among other things, the GEI studies have developed the probable costs of various alternative ways of improving or replacing the dam, which include estimates for construction, engineering, administration, permitting, design and construction contingencies. The GEI report contains an examination of several alternatives which would be in support of eventual conversion of all or part of the conditional decree into an absolute decree. These studies also address the requests by the State Engineer to improve or replace the dam in order to detect and address safety issues which directions also contain a limitation on storage at the present time. A restriction on the dam's capacity has been in place since 1987, when the State Engineer's office thought there were significant stability concerns. The studies in other words served a dual purpose. One is the demonstration of how the conditional decree can ultimately in whole or in part be converted to an absolute decree. The second addresses the safety problems identified by the State Engineer's office. The GEI report sets forth "that the study was performed to evaluate the feasible alternatives for repair or replacement of the existing Cucharas Dam that would enable adequate water storage and operation of the dam in a safe manner." GEI performed the following work for this feasibility study: 1. Review of Information. Review available data to facilitate identification of basic Project concepts and sizing of Project features. Perform site inspection and review documents at the SEO. 2. Confirm Flood Hydrology. Determine appropriate design flood, basin parameters and spillway sizing. 3. Formulation of Alternatives. Develop feasibility designs and layouts for rehabilitation of the existing rock fill dam and the replacement of the existing dam with a new roller-compacted concrete (RCC) structure. 4. Selection of Preferred Alternative. Confirm the suitability of up to three alternatives to meet Project objectives through discussion with the TRWC. Make any needed adjustments to the three alternatives. 5. Develop Feasibility Design and Layout. Design and layout preferred alternative, including preliminary design drawings. 6. Prepare Cost Estimates. Prepare opinion of probable construction and project costs for the feasibility alternatives. 7. Prepare this Feasibility Study. Prepare preliminary design study report summarizing our findings and cost opinions. Ten engineers with various specialties worked on this report. The Project Manager is Steven R. Townsley, P. E. The GEI report included the following: A Project History, a Construction History, a Settlement and Seepage History, a Reservoir Sedimentation report, a Data Review, a Site Geology report, an Analysis of Alternatives of which three were proposed, including rehabilitation of existing dam, a rock fill replacement dam with RCC Diaphragm Wall and Downstream Roller Compacted Concrete (RCC) Dam and then comparative evaluations of the several suggestions. The report then contained a description of preferred alternatives including preliminary design criteria, preliminary

hydrology, a project layout, construction and permanent access, opinions of probable construction and project costs. They also provided a detailed estimate of project costs broken down into various categories. The Appendix A phase of the report contains a substantial number of preliminary design drawings. Appendix B of the report contains alternative project delivery methods for dam construction and rehabilitation. The report contains several means of construction of the dam, including the design-build concept, the design-assist concept, the target price or shared risk methodology and the cost plus concept.

**6. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.**

In answer to paragraph 6, the names and addresses of the shareholders are: BAR NOTHING RANCHES, LLC, C/O Operating Manager, 6916 Broadacre Road, Avondale, CO 81022; HCIC HOLDINGS, LLC, c/o Two Rivers Water CO, Wayne Harding, 2000 S. Colorado Blvd., Annex Building Suite 200, Denver, CO 80222; Russell C. Hudler, 6430 Vertrees Road, Avondale, Colorado 81022; Evelyn R. Hudler, 6430 Vertrees Road, Avondale, CO 81022; Robert E. and Eva M. Kratzer, 41112 Bush Road, Avondale, Colorado 81022; Dale and Carla Martin, 5182 40<sup>th</sup> Lane, Avondale, CO 81022; Michael E. Rinks, 41901 Bush Road, Avondale, CO 81022; Michael E. and Velma Rinks, 41901 Bush Road, Avondale, Colorado 81022; Lawrence J. and Cheryl R. Sagstetter, 40444 Bush Road, Avondale, Colorado 81022; Debra Jane Staebell, 9473 Pinyon Trail, Lone Tree CO 80124; Tiegs Family Trust, 1125 Cambrook Ct., Monument, CO 80932 (Bankruptcy: 09-35050-HRT, Julie B. Cliff, Trustee, 4291 Austin Bluffs Parkway, Suite 104, Colorado Springs, CO 80918).

**CASE NO. 10CW20 – HAROLD REED and BLSH, LLC, 2761 County Road LL, Wiley, CO 81092**

(Please address all correspondence to: Bennett W. Raley and Lisa M. Thompson, Trout, Raley, Montano, Witwer & Freeman, P.C., Attorneys for Applicants, 1120 Lincoln Street, Suite 1600, Denver, CO 80203; (303) 861-1963)

Application for Change of Water Right

**BENT AND PROWERS COUNTIES**

**2. Decreed water rights for which change is sought: A. Name of structures:** Wiley Drainage Ditch water rights (a.k.a., Pleasant Valley Seepage rights) including the following:

<b>Water Right</b>	<b>Pleasant Valley Priority</b>	<b>Appropriation Date</b>	<b>Total amount decreed to structure (cfs)</b>
Pleasant Valley Ditch	No. 1	April 1, 1895	3.6 cfs
Taylor Ditch No. 1	No. 2	January 15, 1896	0.63 cfs
McKibbon Shortline	No. 3	February 24, 1896	1.08 cfs
Parmenter Seepage Ditch	No. 4	April 1, 1896	1.26 cfs
Ecton Ditch	No. 6	April 1, 1898	1.08 cfs

Taylor Ditch No. 4	No. 9	April 1, 1901	1.17 cfs
Taylor Ditch No. 2	No. 11	March 15, 1904	0.18 cfs

**B. Date of original and all relevant subsequent decrees:** Bent County District Court, April 1, 1906; Case No. W-4496; Case No. W-4497. **C. Legal description of structures (see Figure 1 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.):** i) Pleasant Valley Ditch: NE ¼ SE ¼ of Section 25, Township 21S, Range 48W; ii) Taylor Ditch No. 1: SW ¼ SW ¼ of Section 30, Township 21S, Range 48W; iii) McKibbon Shortline: NW ¼ NW ¼ of Section 21, Township 22S, Range 47W; iv) Parmenter Seepage Ditch: Half section line between the north and south halves of Section 8, Township 22S, Range 47W; v) Ecton Ditch: NW ¼ NW ¼ of Section 21, Township 22S, Range 47W; vi) Taylor Ditch No. 4: decreed location appears to include a clerical error in the Range; the decreed location is SW 1/4 of the SE 1/4 of Section 25, Township 21S, Range 47 West; the correct location is SW 1/4 of the SE 1/4 of Section 25, Township 21S, Range 48 West. vii) Taylor Ditch No. 2: NE ¼ SE ¼ of Section 25, Township 21S, Range 48W. **D. Decreed source of water:** Wiley Drainage Ditch (a.k.a., Pleasant Valley Seepage). **E. Decreed use or uses:** domestic and irrigation. **F. Amount of water that Applicants intends to change:** i) The points of diversion for the following water rights (and associated amounts) were previously changed in Case Nos. W-4497 and 4496 to the Upper Diversion point (as described below in paragraph 3.A). a) Case No. W-4496: 0.28 c.f.s. of the Pleasant Valley Priority No. 1 (Pleasant Valley Ditch); 0.63 c.f.s. of the Pleasant Valley Priority No. 2 (Taylor Ditch No. 1); 0.90 c.f.s. of the Pleasant Valley Priority No. 4 (Parmenter Seepage Ditch). b) Case No. 4497: 2.24 c.f.s. of the Pleasant Valley Priority No. 1 and 0.36 c.f.s. of the Pleasant Valley Priority No. 4. Applicants herein seek confirmation of these previous changes in points of diversion. In the alternative, Applicants seek to change the Case Nos. W-4496 and W-4497 water rights to the Upper Diversion point. ii) Applicants further seek to change the remaining portion of the Pleasant Valley Ditch Priority No. 1 in the amount of 1.08 cfs to the Upper Diversion point. Thus the total decreed amount of 3.6 cfs from Pleasant Valley Ditch would be diverted at the Upper Diversion point. The following is a summary of the water rights and amounts for diversion at the Upper Diversion point:

Water Right	Pleasant Valley Priority	Amount (cfs)
Pleasant Valley Ditch	No. 1	3.60
Taylor Ditch No. 1	No. 2	0.63
Parmenter Seepage Ditch	No. 4	1.26

iii) Applicants herein seek to change the remaining water rights to the Lower Diversion point. The following is a summary of the water rights and amounts for diversion at the Lower Diversion point:

<b>Water Right</b>	<b>Pleasant Valley Priority</b>	<b>Amount (cfs)</b>
McKibbon Shortline	No. 3	1.08
Ecton Ditch	No. 6	1.08
Taylor Ditch No. 4	No. 9	1.17
Taylor Ditch No. 2	No. 11	0.18

iv) Applicants also claim that based on historic diversion records, the Koen Seepage Ditch and Pearl Ditch water rights (also part of the Wiley Drainage Ditch) have been continuously diverted and put to beneficial use by the Applicants. Applicants' use of the Koen Seepage Ditch and Pearl Ditch was actual, adverse, hostile, and under claim of right, as well as open, notorious, exclusive, and continuous for the statutory period. The Koen Seepage Ditch was adjudicated in Bent County District Court, April 1, 1906, appropriation date of May, 1896, for 10 cfs. The Pearl Ditch was adjudicated in the June 3, 1922, appropriation date of April 26, 1915, for 1.5 cfs. Applicants further seek to change these water rights to the Upper and Lower Diversion points. **3. Detailed description of proposed change: A. Change in point of diversion/new location of structures (see Figure 2):** i) Upper Diversion: Located in the northeast quarter of Section 6, Township 22 South, Range 47 West, 6th P.M., at a point approximately 2,430 feet south of the north section line and 100 feet west of the east section line. ii) Lower Diversion: Located in the northeast quarter of Section 17, Township 22 South, Range 47 West, 6th P.M., at a point approximately 1,390 feet south of the north section line and 1,760 feet west of the east section line. **4. Name(s) and address(es) of owner(s) or reputed owners of the land where diversion structures are located:** Upper Diversion Point, Curtis R. Lubbers, 36487 County Rd. 6, Lamar, Colo. 81052. Lower Diversion Point, Applicants.

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**CASE NO. 10CW21 (Water Division 2) and 10CW130 (Water Division 1) – CHRIS L. ODELL REVOCABLE TRUST, Chris L. Odell, Trustee, 1985 Craig Drive, Colorado Springs, CO 80921** (Henry D. Worley, MacDougall, Woldridge & Worley, Attorneys for Applicant, 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:** Permit No. 141475. **2. Legal description of wells:** Permit No. 171745 is constructed in the Dawson aquifer in the NW1/4 NW1/4 Section 4, T. 12 S., R. 66 W., 6<sup>th</sup> P.M., 200 feet from the north section line and 1000 feet from the west section line. One well in each of the Denver, Arapahoe and Laramie-Fox Hills aquifers is contemplated, plus all necessary additional and/or replacement wells, to be located anywhere on Applicant's 5.0 acre property located in the NW1/4 NW1/4 Section 4, T. 12 S., R. 66 W., 6<sup>th</sup> P.M., in El Paso County (the "Property"). The address of the property

is 14475 Silverton Road, Colorado Springs, CO 80921; its legal description is Lot 4 Block 2, Sun Hills subdivision no. 1. A map showing its general location is attached to the Application as Figure 1; a second map which is a portion of the Sun Hills no. 1 plat map is attached to the Application as Figure 2. (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. A copy of the Applicant's deed is attached to the Application as Exhibit A. **3. Sources:** not nontributary Dawson aquifer; not nontributary Denver aquifer; not nontributary Arapahoe aquifer; nontributary Laramie-Fox Hills aquifer. **5. Amount claimed:** Dawson aquifer - 15 gpm, 2.15 acre feet annually, absolute; Denver aquifer - 15 g.p.m., 4.71 acre feet annually, absolute; Arapahoe aquifer - 150 g.p.m., 2.24 acre feet annually, absolute; Laramie-Fox Hills aquifer - 150 g.p.m., 1.62 acre feet annually, absolute. This amount includes the water underlying 0.7 acre to the center of the adjacent Silverton Road and Glenwood Drive. 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:** Drinking, cooking and sanitary purposes inside a primary house and a guest house/detached home office; commercial; stock water; hot tub/spa and/or swimming pool; lawn and garden irrigation; other landscaping features; augmentation. **7. Name and address of owner of land on which wells are/will be located:** Same as Applicant. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION. 8. Name of structures to be augmented:** Well permit 171745. No other water rights are or will be diverted from that well. After entry of a decree, permit 171745 will be re-permitted consistent with the provisions of the decree. **11. Statement of plan for augmentation:** Well permit 171745 is only permitted for indoor residential uses and noncommercial domestic animals. Applicant seeks approval of a plan for augmentation which will allow multiple uses from this structure, including without limitation indoor residential uses, commercial uses, a detached home office or guest house, landscape and garden irrigation, hot tub and/or swimming pool. Indoor use for the existing house is expected to equal 0.26 acre foot annually. Treatment of waste water from indoor uses will be achieved using a nonevaporative individual septic tank and leach field system ("ISDS"); consumption of water so treated will not exceed 10 percent of uses, with 90 percent, or 0.234 acre foot annually, returning to the nearest stream. Depletions in the 230<sup>th</sup> year are modeled to equal approximately 20 percent of annual pumping, or 0.15 acre foot based on the maximum allowable annual pumping rate of 0.75 acre foot. So long as a single family dwelling is located on the 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. Applicant proposes to replace depletions during pumping with return flows from the ISDS, and to replace post-pumping depletions with the nontributary Laramie-Fox Hills aquifer

water decreed herein, all of which will be reserved for that purpose. Applicant will reserve the right to replace such depletions with any other judicially acceptable source of augmentation water, upon judicial approval after appropriate notice. **12. Miscellaneous provisions.** (1) There are no liens or encumbrances against the Applicant's property, so the notice provisions of C.R.S. 37-92-302(2)(b) are not applicable. (2) This application is being filed in Water Divisions 1 and 2. After the period for filing statements of opposition has expired, Applicant will seek to consolidate the two cases in Division 2, where the Property is located. (3) A copy of this application is being sent to the El Paso Board of County Commissioners by certified mail, return receipt requested. A copy of that letter is attached to the Application as Exhibit B.

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**CASE NO. 10CW22 - BETTY L. STEWART, 2332 Franklin Road, Fort Collins, CO 80524; LINDA HESS MILLER, 7265 W. Center Ave. Unit 419, Lakewood, CO 80226; MARY JO HESS MATTESON, 3628 Orchard Drive, LaPorte, CO 80535; RAY HESS, 2115 Westview Road, Fort Collins, CO 80524; JIM HESS, 15889 Paulding Blvd, Brook Park, OH 44142; ARCHIE D. HESS III, PO Box 308, Westcliffe, CO 81252.** (Future correspondence and pleadings to: Donald E. Frick, No. 39406, Fischer, Brown, Bartlett & Gunn P.C., Attorneys for Applicants, 1319 Prospect Road, Fort Collins, Colorado 80525, Phone Number: (970) 407-9000 x218; FAX Number: (970) 407-1055.)

Application For Water Right (Surface)

**CUSTER COUNTY**

**2. Name of Structure:** Beaver Lodge Ditch. **2.1. Legal description:** The point of diversion is on the south bank of Cottonwood Creek, in the SW ¼ of the SE ¼ of Section 4, T25S, R72W, 6<sup>th</sup> P.M. **2.2. Source:** Cottonwood Creek in Custer County. **2.3. Date of appropriation:** On or before June 22, 1962. **2.3.1. How appropriation was initiated:** By formation of intent to appropriate coupled with notice to interested persons by overt acts, including filing of map of proposed diversion ditch with forest supervisor, construction of pipeline, and actual diversion and beneficial use. **2.3.2 Date water applied to beneficial use:** On or before December 31, 1963. **2.4. Amount claimed:** 50 gpm, Absolute. **2.5. Uses:** Stockwatering, irrigation, wildlife, piscatorial, recreation, storage for subsequent beneficial use, and maintenance of water levels in an existing stockwatering pond. Water diverted is delivered to an existing stockwatering pond for immediate use, or subsequent use following storage. Applicants irrigate up to 40 acres generally located in the S ½ of the SE ¼ and the NW ¼ of the SE ¼ of Section 4, T25S, R72W, 6<sup>th</sup> P.M. Applicants seek the right to use, reuse and successively use the water diverted. **2.6. Comments:** Applicants are the owners of approximately 160 acres in the S ½ of the SE ¼ and the NW ¼ of the SE ¼ of Section 4, and the NW ¼ of the NE ¼ of Section 9, T25S, R72W, 6<sup>th</sup> P.M. Applicants seek confirmation of an existing water right from Cottonwood Creek for the filling of, and maintenance of water levels, in a stockwatering pond located in the NW ¼ of the SE ¼ of Section 4, T25S, R72W, 6<sup>th</sup> P.M. Said stockwatering pond was constructed pursuant to C.R.S. §35-49-101 *et seq.* The Beaver Lodge Ditch and associated stockwatering pond were constructed in the



early 1960s, and Applicants and/or their predecessors in interest have since historically diverted and beneficially used water for the aforementioned purposes. Applicants seek a decree confirming their existing water rights, and recognizing their right to divert water pursuant thereto at times when the water right is in priority and/or entitled to divert pursuant to C.R.S. §37-92-502(2)(a). **3. Names and addresses of owners of land on which 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 (other than Applicants):** **3.1.** Lands of the United States of America within the San Isabel National Forest: **3.1.1.** C/o United States Department of Agriculture, 14th St. and Independence Ave. S.W., Washington, D.C. 20250. **3.1.2.** C/o The United States Forest Service, 201 14<sup>th</sup> St. S.W., Washington, D.C. 20250.

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**CASE NO. 10CW23 (Previous Case Nos. 02CW37; 95CW91; 88CW43; 84CW56; 80CW88; 80CW6; W-28(76); W-629; W-28) - SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT, 31717 United Avenue, Pueblo, CO 81001** (Attorney for Applicant: Stephen H. Leonhardt, Burns, Figa & Will, P.C., 6400 S. Fiddler's Green Circle, Suite 1000, Greenwood Village, CO 80111, 303-796-2626).

Application for Finding of Reasonable Diligence and to Make Conditional Right Absolute

In the Arkansas River and its Tributaries

**LAKE, CHAFFEE, FREMONT, PUEBLO, CROWLEY, OTERO, AND BENT COUNTIES, COLORADO**

**I. APPLICATION FOR FINDING OF REASONABLE DILIGENCE. 2. Name of Structure:** The Fryingpan-Arkansas Project, which includes the following:

**FRYINGPAN-ARKANSAS PROJECT**

Name of Structure; Priority Number (District Court of Chaffee County)	Source of Water	Amount Total	Amount Remaining Conditional
Turquoise Lake* A92C	Lake Fork of Arkansas River and drainage tributary thereto above the dam which creates the reservoir, and water diverted under the District's west slope decrees	129,432 a.f. & refill	Refill only
Twin Lakes Reservoir* A93C	Arkansas River and drainage tributary thereto through the Mt. Elbert Conduit, from Lake Creek, and water diverted under the District's west slope decrees	141,000 a.f. & refill	1,250 a.f. & refill

Mt. Elbert Forebay* A93C	Waters impounded by Twin Lakes Reservoir Enlargement, the Arkansas River and drainage tributary thereto through the Mt. Elbert Conduit, from Lake Creek, and water diverted under the District's west slope decrees	11,407 a.f. & refill	259 a.f. & refill
Mt. Elbert Conduit* A94C	Lake Fork of Arkansas River and drainage tributary thereto, and water diverted under the District's west slope decrees	370 c.f.s.	0
Halfmoon Diversion Structure* A95C	Halfmoon Creek	150 c.f.s.	0
Malta Canal A96C	Arkansas River	350 c.f.s.	350 c.f.s.
Otero Conduit* A97C	Lake Creek above Twin Lakes Dam and Mt. Elbert Conduit	725 c.f.s.	725 c.f.s.
_Otero to Wapaco Section - Subsection A A98C	Clear Creek and Otero Power Plant tailrace	600 c.f.s.	600 c.f.s.
Otero to Wapaco Section - Subsection B A99C	Clear Creek, Otero Power Plant tailrace, and Pine Creek	600 c.f.s.	600 c.f.s.
Wapaco Diversion Canal Section A100C	Arkansas River	600 c.f.s.	600 c.f.s.
Wapaco to Princeton Section A101C	Arkansas River, Wapaco Power Plant and Wapaco Diversion Canal	600 c.f.s.	600 c.f.s.
Princeton Forebay A102C	Arkansas River, Arkansas Power Canal System, and its intercepts	500 a.f. & refill	500 a.f. & refill
Princeton to Pancho Section A103C	Arkansas River and Chalk Creek	750 or 1,000 c.f.s.	750 or 1,000 c.f.s.
Chalk Creek Diversion Canal Section A104C	Chalk Creek	375 c.f.s.	375 c.f.s.
Pancho Forebay A105C	Arkansas River, Arkansas Power Canal System, and its intercepts	418 a.f. & refill	418 a.f. & refill
Pancho to Salida Section A106C	Arkansas River and Pancho Power Plant tailrace	1,000 c.f.s.	1,000 c.f.s.
Salida Forebay A107C	Arkansas River, Arkansas Power Canal System, and its intercepts	1,425 a.f. & refill	1,425 a.f. & refill
Salida Afterbay A108C	Arkansas River, Arkansas Power Canal System, and its intercepts	600 a.f. & refill	600 a.f. & refill

Pueblo Reservoir* A-22C	Arkansas River and drainage tributary thereto above the dam which creates the reservoir, and water diverted under the District's west slope decrees	357,678 a.f. & refill	74,471 a.f. & refill
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\*These decrees for these structures have been modified to conform to the structures as they have been built for the Fryingpan-Arkansas Project, pursuant to Case No. 80CW6.

**SANGRE DE CRISTO POWER SYSTEM**

Name of Structure; Priority Number (District Court of Chaffee County)	Source of Water	Amount Total	Amount Remaining Conditional
Canal A and Tenderfoot Tunnel A112C	Arkansas River and drainage tributary thereto including all imported waters from the Roaring Fork and Fryingpan Rivers introduced by the Fryingpan-Arkansas Project into the Arkansas River	2,000 c.f.s.	2,000 c.f.s.
Grape Creek Dam and Reservoir B-16C	Arkansas River and Grape Creek	1,620 a.f.	1,620 a.f.
Canal C B-17C	Arkansas River	2,000 c.f.s.	2,000 c.f.s.

**3. Priorities:** **a.** The priority numbers are designated above in paragraph 2. **b.** The priority date for the east slope water rights of the Fryingpan-Arkansas Project under the Chaffee County decree is February 10, 1939. However, the decree states: "As to water rights heretofore adjudicated in this District, priorities for irrigation granted by this decree shall be enforceable only as of July 14, 1942, and priorities for purposes other than irrigation granted by this decree shall be enforceable only as of December 15, 1942." The priority date for the Sangre de Cristo Power System structures under the Chaffee County decree is August 6, 1945. The priority date under the Fremont County decree is August 6, 1945. However, the decree states: "As to water rights heretofore adjudicated in this District, this priority shall be enforceable only as of March 13, 1954, as to irrigation and non-irrigation purposes." The priority date under the Pueblo County decree is February 10, 1939. Southeastern agreed in a 1989 stipulation in Case Nos. 88CW43 and 84CW56 to certain terms and conditions on the application of this priority date to upstream exchanges of return flows from points below Pueblo Reservoir. **c. Decrees:** Chaffee County District Court, Case No. 5141, July 9, 1969. Fremont County District Court, Case No. 8757, February 16, 1968. Pueblo County District Court, Case No. B-42135, June 25, 1962. The above decrees have been modified and amended by the decrees in Case Nos. 80CW6 and 80CW88, Water Division No. 2, and continued by Case Nos. 84CW56, 88CW43, 95CW91, and 02CW37, Water Division No. 2. **d. Decreed Uses:** irrigation, manufacturing, domestic, municipal, power purposes, flood

control, recreation, and wildlife conservation; all municipal purposes, including human consumption, fire protection, sewage treatments, street sprinkling, watering of parks, lawns, and grounds, and maintaining adequate storage reserves; all farming purposes, including the growing of crops of all kinds, stock water, domestic purposes, and the watering of lawns, trees and shrubs; all industrial purposes, and the generation of electric power; for a succession of such uses and to fill and refill the reservoirs, forebays and afterbays described above; and use and reuse of all the project waters herein described. **e. Decreed Amounts:** See listing in ¶ 2 above. **f. Legal Description:** The legal descriptions for each of the Fryingpan-Arkansas Project structures included in this application are found in the decrees for Civil Action Nos. 5141 (Chaffee County), B-42135 (Pueblo County), and 8757 (Fremont County), as amended by Case No. 80CW6. Relevant portions of these decrees are attached as Exhibit A to the Application and is available for inspection at the Office of the Clerk for Water Division 2. **4. Source of Water:** The sources of water for each structure are the sources designated in paragraph 2, all of those sources' tributaries, and water diverted under the District's west slope decrees, in Garfield County District Court Case No. CA-4613 and in Division 5, Case Nos. W-829-76, 80CW267, 83CW352 and 84CW195. Water is also stored by exchange in accord with exchange provisions in decrees of Chaffee County District Court, Case No. 5141, Pueblo County District Court, Case No. B-42135 and Division 2 Water Court, Case Nos. 80CW6, 84CW56 and 88CW43. **5. Notice to Abandon Remaining Conditional Capacity For Mt. Elbert Forebay:** The District hereby provides notice of its abandonment of the remaining conditional decreed storage capacity for the Mt. Elbert Forebay. In Case No. 80CW06 (Water Div. 2), the decreed amount for the Mt. Elbert Forebay was 11,407 acre-feet conditional. In Case No. 95CW91 (Water Div. 2), the Mt. Elbert Forebay was decreed an absolute storage right for 11,148 acre-feet. The Bureau of Reclamation has determined that the capacity of the Mt. Elbert Forebay is safety-limited so as not to exceed 11,148 acre-feet. The District does not intend to store any greater volume of water in the Mt. Elbert Forebay. Therefore, the District hereby abandons the remaining 259 acre-feet conditional storage capacity right (but not the refill right) for the Mt. Elbert Forebay. **6. Detailed outline of work done toward completion of Project and application of water to beneficial use:** Work in connection with the Fryingpan-Arkansas Project and the Sangre de Cristo Power System, and all their decreed diversions, has been prosecuted with reasonable diligence. The existing East Slope structures of the Fryingpan-Arkansas Project have been used to convey and store Project water, including that diverted from the West Slope, and to deliver such water for decreed beneficial uses. Southeastern has contractual agreements for planning, construction, operation, maintenance and repayment of the Fryingpan-Arkansas Project with the United States Bureau of Reclamation. Consequently, the acts of the Bureau of Reclamation evidence diligence with respect to the District's water rights. Fryingpan-Arkansas Project activities include operation, maintenance and improvement of the collection system. Operation is subject to the terms of Water Division 5 and Division 2 Decrees, the Operating Principles, and the Congressional authorizing legislation.

Current diversions and recordkeeping are integral to future development of the system's conditional rights. Throughout the diligence period, the Boustead Tunnel, Turquoise Lake, Mt. Elbert Conduit, Halfmoon Diversion Structure, Mt. Elbert Forebay, Mt. Elbert Power Plant Unit No. 1, Twin Lakes Dam, and Pueblo Dam were in operation and maintenance status. From April 2004 through March 2010, the Fryingpan-Arkansas Project expended approximately \$24,439,060 on East Slope and West Slope Project operation and maintenance costs, including approximately \$1,374,116 on Sugarloaf Dam and Turquoise Reservoir, \$2,234,098 on Twin Lakes Dam and Reservoir, \$7,165,660 on Pueblo Dam and Reservoir, \$365,187 on Mt. Elbert Conduit/Halfmoon Diversion, and \$948,750 on the Boustead Tunnel. Southeastern was allocated approximately \$6,605,771 of these total Project operation and maintenance costs, of which approximately 56% was attributable to irrigation purposes and 44% was attributable to municipal and industrial purposes. During the diligence period, the Bureau of Reclamation has expended approximately \$10,734,839 on substantial improvements to the Mt. Elbert Power Plant, and \$1,618,497 on substantial improvements to the South Outlet Gate on Pueblo Dam. In addition, the Bureau has expended approximately \$41,316 on design and planning capital improvement projects to be completed in future years, including South Outlet Works Slide Operator Replacements. Southeastern has expended during April 2004-March 2010 more than \$144,000 for engineering and more than \$3.5 million for legal fees, primarily to protect the District's West and East Slope water decrees and for further Project development. Southeastern has appeared as a party in various water rights proceedings involving water rights along the Arkansas River and its tributaries in order to protect the District's various decreed rights in the Fryingpan-Arkansas Project. Southeastern also has expended substantial executive time and legal and engineering expense toward protecting and administering the Winter Water Storage Program in Pueblo Reservoir pursuant to the Decree in 84CW179, which program contributes to repayment of the Fryingpan-Arkansas Project costs. Southeastern has taken part in various legislative, administrative and judicial proceedings to protect Southeastern's rights in the Fryingpan-Arkansas Project, including its absolute and conditional East Slope water rights. During the diligence period, Southeastern, acting through its Water Activity Enterprise, filed and diligently pursued adjudication of exchange applications in Water Division 2, including Case No. 01CW151 for exchange of certain return flows from Fryingpan-Arkansas Project water into Pueblo Reservoir for use within the Southeastern District. Such exchanges help to "secure the greatest benefit from the use and reuse of imported project waters within project boundaries in the State of Colorado," as provided in the Operating Principles and contemplated in the decrees for Southeastern's water rights. Southeastern has entered into settlement stipulations with most of the opposers in Case. No. 01CW151. Southeastern's activities on this matter demonstrate reasonable diligence with respect to the District's water rights for the Project. During the diligence period, Southeastern entered into various intergovernmental agreements regarding Fryingpan-Arkansas Project East Slope storage facilities and related exchange operations. On May 25, 2004, Southeastern, the City of

Pueblo, the City of Aurora, the City of Fountain, the City of Colorado Springs, and the Board of Water Works of Pueblo, Colorado entered an agreement to settle Case No. 01CW160 (Water Division No. 2), in which Pueblo filed an application for an in-channel diversion (“RICD”) water right. This agreement provides for an Arkansas River Flow Management Program and protection of the RICD flows provided for in the agreement, provided that the parties also devise and operate methods and facilities to mitigate adverse impacts to senior and pending water rights. In furtherance of this agreement, Southeastern and other parties filed an exchange application (Case No. 06CW120) in December 2006. On July 24, 2006, Southeastern, Chaffee County, the Colorado Department of Natural Resources, the Colorado Division of Wildlife, the Colorado Division of Parks and Outdoor Recreation, Upper Arkansas Water Conservancy District, City of Salida, Arkansas River Outfitters Association, the City of Colorado Springs acting through Colorado Springs Utilities, the Board of Water Works of Pueblo, Colorado, and Pueblo West Metropolitan District entered a memorandum of understanding to settle Case No. 04CW129 (Water Division No. 2), in which Chaffee County applied for a RICD water right. This MOU protects Southeastern’s and others’ water rights against injury, protects operation of the Fryingpan-Arkansas Project for its authorized purposes, and of the Upper Arkansas Voluntary Flow Management Program for its recreational and fishery purposes, and provides agreed levels of protection for native Arkansas River flows for Chaffee County’s RICD, while preserving reasonable opportunities for future water development and exchanges in the Arkansas River basin upstream of Salida. Southeastern, acting through its Water Activity Enterprise, has also worked extensively toward the completion of the Arkansas Valley Conduit. The Conduit is a proposed East Slope feature of the Fryingpan-Arkansas Project that was originally contemplated in the Project’s authorizing legislation to divert water from Pueblo Dam, supplying water to municipalities and water providers in the Arkansas River Valley. During the diligence period, Southeastern expended approximately \$1,665,829 related to project management, conduit alignment and technical evaluations, environmental reviews, permitting needs and constructability evaluations, financial planning evaluations, water supply evaluations, participant water supply planning evaluations, contract oversight and coordination, and the initial National Environmental Policy Act compliance for the anticipated construction of the Arkansas Valley Conduit. Congress recently appropriated \$5 million to Reclamation for further design and development of the Arkansas Valley Conduit. While the construction of certain conditionally decreed Project features has not yet been started, there is no intent to abandon these features. As this Court has previously found, the construction, operation and maintenance of parts of the Fryingpan-Arkansas Project demonstrate reasonable diligence for other parts of the Project. The collection, transportation, storage, and power systems of the Fryingpan-Arkansas Project comprise one overall, integrated water supply project. See, e.g., Decree in Case No. 02CW37 at 8 ¶7 (April 27, 2004). The Fryingpan-Arkansas Project is a major source of water for, and incorporates, the Sangre de Cristo Power System and therefore is part of the Sangre de Cristo Power System. Reasonable diligence on the Fryingpan-

Arkansas Project is reasonable diligence on the Sangre de Cristo Power System. *Id.* **II. APPLICATION TO MAKE CONDITIONAL RIGHT ABSOLUTE.** 1. The District requests that an absolute decree be entered for the following structure.

**2. Structure:**

Name of Structure	Total Decreed Amount	Previous Absolute Decree	Requested Absolute Decree	Remaining Conditional Amount	Date of Storage
Mt. Elbert Forebay A93C	11,407 a.f. and refill	11,148 a.f. (no refill)	11,148 a.f. refill	0	June 2006

**3. Conditional water right:** See Part I, paragraphs 2 through 4, above. **4. Legal Description:** See Part I, paragraph 3.f. **5. Source of water:** See Part I, description for Mt. Elbert Forebay under paragraph 2, and paragraph 4. The refill of Mt. Elbert Forebay was made from water diverted in priority from these legally available sources. **6. Date water applied to beneficial use:** June-September 2006. Work done to complete project: See Part I, paragraph 6, above. The 11,148 acre-feet claimed to be made absolute for the refill of Mt. Elbert Forebay were stored and applied to beneficial use for decreed purposes.

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**CASE NO. 10CW24 – ANTHONY AND JUDITH CUCUZZA, 6355 Burrows Road, Colorado Springs, CO 80908**

(James J. Petrock and Kara N. Godbehere, Petrock & Fendel, P.C., Attorneys for Applicants, 700 Seventeenth Street, Suite 1800, Denver, CO 80202; (303) 534-0702)

Application for Plan for Augmentation

**EL PASO COUNTY**

**2. Description of plan for augmentation: A. Groundwater to be augmented:** Approximately 3 acre-feet per year for 300 years of not nontributary Dawson aquifer groundwater available underlying the Subject Property as decreed in Case No. 00CW84, District Court, Water Division 2. The Subject Property is comprised of approximately 70.8 acres of land which is generally located in part of Section 29, T12S, R65W of the 6th P.M., as described and shown on Attachment A to the Application ("Subject Property"). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **B. Water rights to be used for augmentation:** Return flows from the use of not nontributary Dawson aquifer water and return flows and direct discharge of nontributary Laramie-Fox Hills aquifer groundwater underlying the Subject Property as also previously decreed in Case No. 00CW84. **C. Statement of plan for augmentation:** One acre-foot per year of the Dawson aquifer groundwater will be used for inhouse, irrigation, and stockwatering use, including storage, and 2 acre-feet per year will be used for in-building commercial use, including sanitary and shower facilities, kitchens, and cleaning and maintenance purposes. The Dawson aquifer groundwater will be withdrawn through new wells and existing wells located on the Subject Property permitted in Well Permit Nos. 228940 and 203335, which will be re-permitted to operate under this plan when necessary. Applicants reserve the right to amend the amount and values based on final planning of the Subject Property without having to amend or republish this application. Sewage treatment for inhouse and commercial use will be provided by non-evaporative septic systems. Return

flows from in-house and commercial use will be approximately 90% of water used and return flows from irrigation use will be approximately 10% of water used. Water used for stockwatering is considered to be 100% consumed. **D.** During pumping Applicants will replace actual depletions to the affected stream system pursuant to Section 37-90-137(9)(c), C.R.S. Applicants estimate that depletions occur to the Arkansas River and Monument Creek stream system. Return flows from use of the water will accrue to the Arkansas River system systems and those return flows are sufficient to replace actual depletions while the subject groundwater is being pumped. Applicants will reserve an equal amount of nontributary Laramie-Fox Hills aquifer groundwater as decreed in Case No. 00CW84 to meet post-pumping augmentation requirements.

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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 June 2010, (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 10th day of May, 2010.



*Mardell R. DiDomenico*

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Mardell R. DiDomenico, Clerk  
District Court, Water Div. 2  
Pueblo County Judicial Building  
320 W. 10th Street  
Pueblo, CO 81003; (719) 583-7048

(Court seal)  
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