

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING AUGUST 2003

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 August 2003, 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:

CASE NO. 03CW25 – HALDE SAND & GRAVEL, INC., c/o Kerry W. Halde, Post Office Box 234, Cheyenne Wells, CO 80810 (Please send all correspondence to Applicant's attorneys: William A. Paddock and K.G. Moore, Carlson, Hammond & Paddock, L.L.C., 1700 Lincoln Street, Suite 3900, Denver, CO 80203-4539)

First Amendment to Application for Water Rights
Lincoln County

2. Application for Surface Water Right: 2.1. Name of Surface Water Right: Halde Spring. **2.2 Legal Description:** A point of diversion located in the NW¼ NW¼ of Section 4, Township 12 South, Range 53 West of the 6th P.M., 350 feet from the North Section Line and 1,000 feet from the West Section Line, Lincoln County, Colorado. **2.3 Source:** Coon Creek, tributary to Big Sandy River, both tributary to the Arkansas River. **2.4 Date of Appropriation:** December 1986. **2.5 How Appropriation was Initiated:** By diversion of water from the spring, and its application to beneficial use. **2.6 Date Water Applied to Beneficial Use:** December 1986. **2.7 Amount Claimed:** 20.0 acre-feet, conditional. **2.8 Use:** Commercial and industrial uses associated with oil and gas well drilling. The water diverted from the spring is fully consumed. The water is pumped from the spring into haul trucks with a capacity of 6,300 gallons per load. The trucks carry the water to various oil and gas well drilling sites in the area. **2.9 Name(s) and address(es) of owner(s) upon which any structure is or will be located, upon which water is or will be used or upon which water is or will be placed to beneficial use:** Bert Clay, 36470 CR39, Hugo, Colorado 80821. **3. Application for Approval of a Plan for Augmentation. 3.1. Names of Structure to Be Augmented:** Halde Spring **3.2. Statement of Plan for Augmentation, Covering all Applicable Matters Under C.R.S. 37-92-103(9), 302(1)(2) and 305(8).** (1) Under the Amended Rules and Regulations Governing the Use of Tributary Ground Water in the Arkansas River Basin ("Amended Rules and Regulations"), the Applicant may not divert from Halde Spring unless depletions are replaced pursuant to a plan approved by the State Engineer. Accordingly, Applicant has secured replacement water through the purchase of 5 shares of the Lower Arkansas Water Management Association ("LAWMA") water rights portfolio pursuant to its Arkansas River Replacement Plan. LAWMA is a non-profit corporation formed for the primary purpose of replacing depletions

from its members' well pumping and other structures requiring augmentation within the lower portion of the Arkansas River Basin. Applicant will divert annually no more than the total number of acre-feet from the Halde Spring that is fully augmented by Applicant's shares in LAWMA. The amount of replacement water will be as approved by the State Engineer under any substitute water supply plan or as finally decreed by the Division 2 Water Court in Case No. 02CW181. (2) Depletions to be Replaced: Applicant calculates that depletions caused by up to 20 acre feet per year of out-of-priority diversions from Halde Spring do not exceed 0.8 acre feet per year. **WHEREFORE**, Applicant asks the Court to enter a judgment and decree: A. Granting the relief requested in Part 2 of this Application; B. Granting the relief requested in Part 3 of this Application; (1) Specifically determining, pursuant to C.R.S. § 37-92-305(8), that the plan for augmentation in Part 3 adequately describes the depletions from the Applicant's use or proposed use of water, in quantity and time, the amount and timing of augmentation water that would be provided by the Applicant, and by adhering to the requested plan for augmentation, that the owners of or persons entitled to use water under a vested water right or a decreed conditional water right will not be materially injured by Applicant's use of water under the proposed plan for augmentation.

(First Amendment to Application for Water Rights, 4 pages)

CASE NO. 03CW65 – SCOTT and MARY CANDIA (as joint tenants with the right of survivorship and not as tenants in common), Business Address: MS Forest, P. O. Box 521, Aguilar, CO 81020; Home Address: 11656 C.R. 312, Walsenburg, CO 81089 (Max I. Exline, Attorney for Applicants, 520 West 9th Street, Pueblo, CO 81003)

Application for Water Rights (Surface); Application for Water Storage Right (as amended)

Huerfano County

2. Name of structure: Simons-Candia Ditch. **3. Legal description of each point of diversion:** Gate structure on the North Bank of Santa Clara Creek located as follows: IN SECTION 21, TOWNSHIP 30 SOUTH, RANGE 67 WEST OF THE 6TH P.M., HUERFANO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: From the southeast corner of Section 21, Thence N 79 degrees 04 minutes 44 seconds W, a distance of 5282.54 feet. **4. Source:** Santa Clara Creek, a tributary of the Cuchara River. **5. A. Date of initiation of appropriation:** August 1, 1914, by predecessor in interest of claimants. This was when construction was commenced, according to the Map and Filing document for Simons Ditch and Simons Reservoir. **B. How appropriation was initiated:** Commencement of construction on subject ditch by claimants' predecessor in interest. **C. Date water applied to beneficial use:** August 1, 1917, by claimants' predecessor in interest, according to Map and File of Simons Ditch and Simons Reservoir. Note the ditch has been used continuously through title transfers. The claimed uses on the original Map and Filing have continued. **6. Amount claimed:** 10 cfs, absolute. **7. Use or proposed use:** irrigation, domestic, fish culture, recreation, stock watering. **A.**

If irrigation, complete the following: Number of acres historically irrigated: 40 acres; **Proposed to be irrigated:** 40 acres. **Legal description of acreage irrigated:** Acreage historically irrigated and to be irrigated is approximately due east of Bear Lake, in a roughly rectangular strip which commenced on the east banks of the lake, approximately the width of the lake north to south, then continuing due east in an amount to contain approximately 40 acres. **B. If non-irrigation, describe purpose fully:** There are purposes in addition to irrigation. This lake, which covers approximately 5.5 acres, is used for watering of livestock, as a domestic water supply, fish culture, and provides recreational use. **8. Name(s) and address(es) of owner(s) 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:** Applicants. The above-identified claimants have most of the ditch on their own property, and will store and place the water to beneficial use on their property. The storage structure is Bear Lake, once known as Simons Reservoir, and is on their property. (See Application for storage right, below.) (2) The diversion gate and a small portion of the ditch is on the property owned by Sig Sporleder and Karl Sporleder, 21087 I-25, Walsenburg, CO 81089. **9. Remarks:** See excerpts of surveys and excerpts of original Map and Filing, attached to the application and incorporated by reference herein. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court.

APPLICATION FOR WATER STORAGE RIGHT

2. Name of reservoir: Bear Lake. **3. A. Legal description of location of dam:** There is no dam as such. This storage structure is generally below grade, with ground level terrain surrounding it, sometimes rising about 2 feet above grade. The lake is located in Section 21, Township 30 South, Range 67 West of the 6th P.M., Huerfano County, Colorado. **B. If off-channel reservoir, name and capacity of ditch or ditches used to fill reservoir, and legal description of each point of diversion: Name and capacity of ditch used to fill reservoir:** The ditch which is the subject of this Application, described above, and referred to as the Simons-Canda Ditch. **Capacity of ditch:** 10 cfs. Legal description of the point of diversion is set forth in the Application for Surface Right, above, and is incorporated by reference herein. **4. Source:** The sources are the ditch identified above, which is on the Santa Clara Creek, a tributary of the Cuchara River, and a small exempt spring which is found near one of the banks of the lake, and from runoff water. **5. A. Date of appropriation:** As shown by the map and Filing of the predecessor in interest, August 1, 1914, when commencement of construction on the lake started. The lake and feeder ditch were completed on August 1, 1917, according to Map and Filing document. **B. How appropriation was initiated:** by commencement of construction of the lake, which was the first step. **C. Date water applied to beneficial use:** August 1, 1917, as shown by the Map and Filing, dated October 17, 1917. Uses have continued. **6. Amount claimed: A. In acre feet:** 88.7 acre feet, absolute. **B. If off-channel reservoir, rate of diversion in cfs for filling the reservoir:** .12 cfs. **7. Use: A. If irrigation, complete the following: (1) Number of acres historically irrigated:** 40 acres. **(2) Total number of acres**

proposed to be irrigated: 40 acres. **Legal description of acreage irrigated or to be irrigated:** Acreage historically irrigated and to be irrigated is approximately due east of Bear Lake, in a roughly rectangular strip which commenced on the east banks of the lake, approximately the width of the lake north to south, then continuing due east in an amount to contain approximately 40 acres. **B. If non-irrigation, describe purpose fully:** There are purposes in addition to irrigation. This lake, which covers approximately 5.5 acres, is used for watering of livestock, as a domestic water supply, fish culture, and provides recreational use. **8. Surface area of high water line:** 5.5 acres. **A. Maximum height of dam in feet:** No distinct dam. Lake shore is mostly at grade to approximately 2 feet above grade. **B. Length of dam in feet:** No distinct dam. **9. Total capacity of reservoir in acre feet:** 69 acre feet. **Active capacity:** 62 acre feet. **Dead storage:** 69 acre feet. **10. Name and address of owners 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:** Applicants. Lake is on land owned by the Applicants. No distinct dam. Land within high water line is 5.5 acres. **11. Remarks or any other pertinent information:** See attached survey excerpt for location and dimensions. Also see Map and Filing excerpt attached to the Application. (Application and attachments, 12 pages)

CASE NO. 03CW67, Water Division 2, and CASE NO. 03CW287, Water Division 1 – VINCENT and SUSAN DiNAPOLI, 135 Pinewood Loop, Monument, CO 80132; DONALD and MARJORIE SCHEIWE and MICHELLE KRAMER, 55 Pinewood Loop, Monument, CO 80132; MARY SCHOENFELD, 430 Maverick Way, Monument, CO 80132; DONALD JR. and GLENDA HERMAN, 435 Maverick Way, Monument, CO 80132; and LUCIEN and MARGARET FIANDACO, 10 Saddlehorn Trail, Monument, CO 80132 (Please

transmit all correspondence to: Carmen S. Hall, Petrock & Fendel, P.C., Attorneys for Applicants, 700 – 17th Street, Suite 1800, Denver, CO 80202)

Amended Application for Underground Water Rights from Nontributary and Not Nontributary Sources and for Approval of Plan for Augmentation, in the Nontributary Arapahoe and Laramie-Fox Hills and the Not Nontributary Dawson and Denver Aquifers

El Paso County

COME NOW Applicants, by and through their undersigned attorneys, and hereby amend the application filed with this Court on July 31, 2003, as follows: The original application requests quantification of groundwater in the nontributary Arapahoe and Laramie Fox-Hills and the not nontributary Dawson and Denver aquifers underlying 5 individual residential tracts located in Arrowwood III Subdivision, located in parts of the S1/2 of Section 7 and the N1/2 of Section 18, T11S, R66W of the 6th P.M. (Subject Property). By this amended application, the water underlying 2 additional tracts being Tract 39 and Tract 10, Filing 3, is being added and included in the application. The owners and addresses and acreage of these 2 tracts are described on revised Attachment A, and the locations of these 2 tracts are shown on revised Attachment B to the Application.

All attachments mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Also, in the original application the tract owned by Applicants Donald and Marjorie Scheiwe was referenced as being Tract 28, when it should have referenced Tract 29. The corrected address and location of the Scheiwe tract are shown on revised Attachments A and B. Parts of the Dawson aquifer water may be withdrawn through existing wells on these 3 referenced tracts which are the subject of Permit Nos. 237876, 220195, and 191612, pursuant to the augmentation plan as requested in the original application which requests additional use of the Dawson aquifer water for irrigation and stockwatering purposes. The amounts and values in the augmentation plan apply to these wells. Applicants will own a pro-rata interest in the total amount of groundwater to be decreed in this case underlying their respective tracts. The wells which will withdraw the groundwater will be located at any location on the land which is the subject of this application. The combined acreage of the 2 new lots added in this amended application is 5 acres and Applicants estimate that the following average annual amounts are available from the subject aquifers underlying the 5 acres, based on current values in the Denver Basin Rules, 2 C.C.R. 402-6. Such water will be added to the amounts requested in the original application:

<u>Aquifer</u>	<u>Saturated Thickness</u>	<u>Annual Amount</u>
Upper Dawson	400 feet	4.0 acre-feet
Denver	481 feet	4.0 acre-feet
Arapahoe	283 feet	2.4 acre-feet
Laramie-Fox Hills	196 feet	1.5 acre-feet

Any matters other than requested herein as described in the original application remain as shown in the July, 2003, resume for Water Division 2. WHEREFORE, Applicants pray that this court enter a decree for the relief requested in this amended application and for such further relief as the court deems proper in the premises.

(Amended Application, 3 pages)

CASE NO. 03CW68 - ISG, LLC; a Colorado limited liability company, c/o Big Bend Farms, 35100 C.R. SS, Wiley, CO 81092; BIG BEND FARMS, LLLP, a Colorado limited liability limited partnership, c/o Curtis Tempel, 35100 C.R. SS, Wiley, CO 81092; DEAN L & C COMPANY, INC. a Colorado corporation, 33535 C.R. 13, Las Animas, CO 81054; DAVID FINDLEY, 31936 C.R. 9, Las Animas, CO 81054; JOANN FLETCHER, 8944 C.R. LL, Lamar, CO 81052; HANS FRIEDERICHS, JR., 1251 C.R. LL, Wiley, CO 81092; JO LEYNE WHITE HECKMAN FRIEDERICHS, 1251 C.R. LL, Wiley, CO 81092; DAVID E. GARDNER, 10325 Highway 194, Las Animas, CO, 81054; SUSAN L. GARDNER, 10325 Highway 194, Las Animas, CO, 81054; LORELLA L. GADASH, 207 Woodland Drive, Lamar, CO 81052; CLARENCE A. HAYS, 207 Woodland Drive, Lamar, CO 81052; DARREL W. HAYS, 207 Woodland Drive, Lamar, CO 81052; DELBERT R. HAYS, 207 Woodland Drive, Lamar, CO 81052; MERLE G. HAYS CHILDREN'S TRUST, 207 Woodland Drive,

Lamar, CO 81052; BURT WHITE HECKMAN, 28274 C.R. LL, McClave, CO 81057; CARYOL HECKMAN, 28640 U.S. Hwy. 50, McClave, CO 81057; FREDRICK HECKMAN, 28640 U.S. Hwy. 50, McClave, CO 81057; LAURA WHITE HECKMAN, 28274 C.R. LL, McClave, CO 81057; MARGARET K. HUNKER, c/o Don M. Fedric, Hunker-Fedric, P.A., 215 W. Third St., P.O. Box 1837, Roswell, NM 88202-1837; J-S FARMS, INC., a Colorado corporation, c/o John Sutphen, P. O. Box 226, Lamar, CO 81052; CHARLES O. JONES, 8694 Highway 194, Las Animas, CO 81054; RUBY L. JONES, 8694 Highway 194, Las Animas, CO 81054; RAYMOND L. MAY, 6620 C.R. SS, Lamar, CO 81052; TRESA I. MAY, 6620 C.R. SS, Lamar, CO 81052; GLENDA McWILSON, 8944 C.R. LL, Lamar, CO 81052; THE McKINNIS FAMILY PARTNERSHIP, LTD., a Colorado limited partnership, c/o Bill Dodson, 13771 A East Marina Dr., Aurora, CO 80014; KENT MILLER, 11980 Hwy 50, Las Animas, CO 81054; PEG MILLER, 11980 Hwy 50, Las Animas, CO 81054; DENNIS NETHERTON, 305 Vigil Ave., Las Animas, CO 81054; DAVID H. NUNNERY, 7010 S. Claremont, Centennial, CO 80122; ANITA R. POINTON, 32500 CR 6.3, Las Animas, CO 81054; CHARLES T. POINTON, 32500 CR 6.3, Las Animas, CO 81054; HEATH R. PERDUE, 7315 C.R. UU, Lamar, CO 81052; HEATHER PERDUE, 5720 E. Caley Ave., Centennial, CO 80111; ROBYN Y. PERDUE, 7315 C.R. UU, Lamar, CO 81052; KEITH RASMUSSEN, 11980 Hwy 50, Las Animas 81054; GALE TEMPEL, 42134 CR 35, Wiley, CO 81092; MELODY TEMPEL, 42134 CR 35, Wiley, CO 81092; JUDITH M. TIGNER, 104 East Kendrick Street, Rawlins, WY 82301; JOHN R. VODNECK, 8122 Woodard Dr., Lakewood, CO 80227; DAWN K. VANHOOK, 314 Willow Valley, Lamar, CO 81052; ALLEN VAN WYHE, 1784 Wildwood Dr., Colorado Springs, CO 80918; KATHLEEN VAN WYHE, 1784 Wildwood Dr., Colorado Springs, CO 80918; BARBARA WERTZ, 34244 C.R. LL, McClave, CO 81057; STEVEN WERTZ, 34244 C.R. LL, McClave, CO 81057; JANA WEIMER, 37751 C.R. 3, Wiley, CO 81092; JOSHUA P. WEIMER, 37751 CR 3, Wiley, CO 81092; WOOTTEN INVESTMENTS, LTD., a Colorado Limited Partnership, c/o William Wootten, P. O. Box 1258, Lamar, CO 81052; MICHAEL LYNN WYCKOFF, 32351 Hwy. 109, La Junta, CO 81050 (Karl F. Kumli, III, Star L. Waring, Dietze and Davis, P.C., Attorneys for Applicants, 2060 Broadway, Suite 400, Boulder, CO 80302)

Amended Application for Change of Water Rights in the Arkansas River and Its Tributaries

Otero, Bent, Prowers, Crowley, Kiowa, and Pueblo Counties.

A. The purpose of this application is to change the water rights represented by shares in the Fort Lyon Canal Company, a Colorado mutual ditch company. Applicants own a total of 8,520.55 shares, representing approximately 9.1% (more or less) of the 93,989.4166 shares (more or less) in the Fort Lyon Canal Company issued and outstanding. The Fort Lyon Canal Company owns various water rights set forth in more detail in the application. 1. **Fort Lyon Canal:** (1) Decreed point of diversion: The Fort Lyon Canal headgate is located on the North bank of the Arkansas River in the Northeast Quarter of Section 32, Township 23 South, Range 55 West of the 6th P.M. in Otero County, Colorado;

(2) Source: Arkansas River. **2. Fort Lyon Storage Canal** (a.k.a. Fort Lyon Irrigating and Storage Canal): (1) Decreed point of diversion: The present point of diversion of the Fort Lyon Storage Canal is the diversion structure located on the North bank of the Arkansas River in Section 20, Township 22 South, Range 57 West of the 6th P.M., in Crowley County, Colorado. (2) Source: Arkansas River.

3. Horse Creek Reservoir (a.k.a. Timber Lake): (1) Filling ditches: The Fort Lyon Storage Canal, described above, and Horse Creek Supply Ditch, described below. Horse Creek Reservoir is an off-channel reservoir located off Horse Creek in Sections 1, 2, and 12, Township 22 South, Range 54 West, 6th P.M.; Sections 6 and 7, Township 22 South, Range 53 West, 6th P.M.; Sections 25 and 36, Township 21 South, Range 54 West, 6th P.M.; and Sections 29, 30 and 31, Township 21 South, Range 53 West, 6th P.M., in Otero and Bent Counties, Colorado. (2) Sources: Arkansas River, and Horse Creek, a tributary of the Arkansas River.

4. Horse Creek Supply Ditch (a.k.a. Supply Canal to Horse Creek Reservoir): (1) Decreed point of diversion: a point on the East bank of Horse Creek, on the Section line between Sections 6 and 7, Township 22 South, Range 54 West of the 6th P.M., whence the Southeast corner of said Section 6 bears South 87 degrees, 4 minutes East, 1,972 feet, in Otero County, Colorado. (2) Source: Horse Creek, a tributary of the Arkansas River.

5. Adobe Creek Reservoir (a.k.a. Blue Lake): (1) Filling ditches: The Fort Lyon Storage Canal, described above, and the Adobe Creek Supply Ditch, described below. Adobe Creek Reservoir is an off channel reservoir located off Adobe Creek in Sections 3, 4, 5, 6, 7, 8, 9, 17, and 18, Township 21 South, Range 52 West, 6th P.M.; Sections 27, 28, 29, 32, 33, and 34, Township 20 South, Range 52 West, 6th P.M., in Kiowa and Bent Counties, Colorado. (2) Sources: Arkansas River, and Adobe Creek, a tributary of the Arkansas River.

6. Adobe Creek Supply Ditch (a.k.a. Branch of the Reservoir Canal): (1) Decreed point of diversion: a point on Adobe Creek in the Northwest Quarter of Section 26, Township 20 South, Range 53 West of the 6th P.M. in Kiowa County, Colorado, whence the Southeast corner of said Section 26 bears South 54 degrees, 52 minutes East, 5,013 feet. (2) Source: Adobe Creek, a tributary of the Arkansas River.

7. Thurston Reservoir (a.k.a. Thurston Lake) (formerly decreed as Prince Reservoir): (1) Filling ditch: The Fort Lyon Canal, described above. Thurston Reservoir is located in Section 13, Township 21 South, Range 47 West, and Section 18, Township 21 South, Range 46 West of the 6th P.M. in Prowers County, Colorado. (2) Source: Arkansas River.

8. Thurston Pipeline: (1) Decreed point of diversion: The decreed point of diversion is located at a point whence the Section corner common to Sections 7 and 18, Township 21 South, Range 46, and Sections 12 and 13, Township 21 South, Range 47, all West of the 6th P.M., Prowers County, Colorado, bears North 0 degrees, 41 minutes West a distance of 1,680 feet, with an alternate point of diversion located at a point whence the South Quarter corner of Section 18, Township 21 South, Range 46 West of the 6th P.M., Prowers County, Colorado, bears South 10 degrees East, 10 minutes East a distance of 2,297 feet. (2) Source: Thurston Reservoir (Thurston Lake) whose water is accumulated from springs in said lake, seepage flowing into the lake from all sides thereof, waste water from a canal of the Fort Lyon Canal

Company, rainfall and waste water flowing into the lake from land of owners adjoining the lake. The water so accumulated is not tributary to any natural stream of the State of Colorado, as decreed in Case No. W-27, in the District Court in and for Water Division No. 2, State of Colorado. **9. Pueblo Reservoir as Decreed in the Winter Storage Program:** (1) Pueblo Reservoir is located on the Arkansas River in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, Township 20 South, Range 66 West of the 6th P.M., Sections 1, 2, 3, 4, 5, 9, 10, and 11 of Township 21 South, Range 66 West of the 6th P.M., and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, Township 20 South, Range 67 West of the 6th P.M. in Pueblo County, Colorado. (2) Source: Arkansas River, and Horse Creek and Adobe Creek, tributaries of the Arkansas River. **10. John Martin Reservoir:** (1) John Martin Reservoir is located on the Arkansas River approximately 45 miles downstream from the headgate of the Fort Lyon Canal, and the present place of storage is located in all or portions of Sections 5, 6, 7, 8, 17, and 18, Township 23 South, Range 49 West of the 6th P.M.; Sections 29, 31, 32, 33, 34, and 35, Township 22 South, Range 50 West of the 6th P.M.; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, and 21, Township 23 South, Range 50 West of the 6th P.M.; Sections 25, 33, 34, 35, and 36, Township 22 South, Range 51 West of the 6th P.M.; and Sections 1, 2, 3, 4, 9, and 10, Township 23 South, Range 51 West of the 6th P.M., in Bent County, Colorado. (2) Source: Arkansas River, and Horse Creek and Adobe Creek, tributaries of the Arkansas River. **11. Queen Reservoir (a.k.a. Nee Skah Reservoir):** (1) Nee Skah Reservoir, in the Great Plains Reservoir system which is located in Townships 19, 20 and 21 South, Ranges 46, 47 and 48 West of the 6th P.M. in Kiowa and Prowers Counties, Colorado. (2) Source: Arkansas River. **B. Information from previous Decrees: Water rights to be changed by this application:** The subject water rights sought to be changed by this application include all of the subject approximately 9.1 percent interest in all water rights owned or controlled by the Fort Lyon Canal Company, a Colorado mutual ditch company, including but not limited to the water rights described in the table below. In addition, the Fort Lyon Canal Company has a storage account for 20,000 acre-feet in John Martin Reservoir pursuant to a Resolution Concerning an Operating Plan for John Martin Reservoir adopted by the Arkansas River Compact Administration on April 24, 1980 (hereby incorporated herein by this reference).

Date Decree Entered	Case Number	Identification of Water Right	District Court	Amount	Source	Appropriation Date
Apr. 8, 1905	Original Adjudication	Fort Lyon Canal	Bent County	164.64 cfs	Arkansas River	Apr. 15, 1884
Apr. 8, 1905	Original Adjudication	Fort Lyon Canal	Bent County	597.16 cfs	Arkansas River	Mar. 1, 1887
Apr. 8, 1905	Original Adjudication	Fort Lyon Canal	Bent County	171.20 cfs	Arkansas River	Aug. 31, 1893
Apr. 8, 1905	Original Adjudication	"Prince Reservoir"	Bent County	355.20 cfs 1,515 af Absolute	Arkansas River	Aug. 12, 1889
Nov. 20, 1972	W-27	"Prince Reservoir" Transfer to Thurston Reservoir	Water Division No. 2	355.20 cfs 1,515 af Conditionally Transferred	Arkansas River	Aug. 12, 1889

Date Decree Entered	Case Number	Identification of Water Right	District Court	Amount	Source	Appropriation Date
Jun. 13, 1975	W-27(74)	"Prince Reservoir" Transfer to Thurston Reservoir	Water Division No. 2	Continued as Conditional 1,515 af transfer	Arkansas River	Aug. 12, 1889
Jan. 11, 1980	79CW085	"Prince Reservoir" Transfer to Thurston Reservoir	Water Division No. 2	1,515 af Transfer made absolute	Arkansas River	Aug. 12, 1889
Feb. 3, 1927	N/A	Great Plains Reservoirs	Bent County	2,100 cfs 265,552 af	Arkansas River	Aug. 1, 1896
Aug. 30, 1922, Feb. 3, 1927, and Nov. 8, 1928	N/A	Horse Creek Reservoir Original Construction	Bent County	2,000 cfs 840 cfs 1,466 cfs 11,400 af	Horse Creek Arkansas River Arkansas River	Aug. 15, 1900 Jan. 25, 1906 Mar. 1, 1910
	N/A	Horse Creek Reservoir 1 st Enlargement	Bent County	840 cfs 5,000 cfs 1,466 cfs 15,487 af	Arkansas River Horse Creek Arkansas River	Jan. 25, 1906 Dec. 20, 1907 Mar. 1, 1910
	N/A	Horse Creek Reservoir 2 nd Enlargement	Bent County	5,000 cfs 840 cfs 1,466 cfs 1,113 af	Horse Creek Arkansas River Arkansas River	Jun. 12, 1908 Jun. 12, 1908 Mar. 1, 1910
	N/A	Adobe Creek Reservoir Original Construction	Bent County	8,631 cfs 840 cfs 1,466 cfs 61,575 af	Adobe Creek Arkansas River Arkansas River	Jan. 25, 1906 Jan. 25, 1906 Mar. 1, 1910
	N/A	Adobe Creek Reservoir Enlargement	Bent County	8,631 cfs 840 cfs 1,466 cfs 25,425 af	Adobe Creek Arkansas River Arkansas River	Dec. 29, 1908 Dec. 29, 1908 Mar. 1, 1910
Nov. 20, 1972 Effective Dec. 31, 1970	W-27	Thurston Pipeline	Water Division No. 2	25 cfs conditional	Thurston Lake whose water is accumulated from springs in said lake, seepage flowing into the lake from all sides thereof, waste water from a canal of the Fort Lyon Canal Company, rainfall and waste water flowing into the lake from land of owners adjoining the lake. Pursuant to the decree in W-27, the water so accumulated is not tributary to any natural stream of the State of Colorado.	Jul. 15, 1969
June 13, 1975	W-27(74)	Thurston Pipeline	Water Division No. 2	25 cfs continued as conditional	Thurston Lake whose water is accumulated from springs in said lake, seepage flowing into the lake from all sides thereof, waste water from a canal of the Fort Lyon Canal Company, rainfall and waste water flowing into the lake from land of owners adjoining the lake. Pursuant to the decree in W-27, the water so accumulated is not tributary to any natural stream of the State of	Jul. 15, 1969

Date Decree Entered	Case Number	Identification of Water Right	District Court	Amount	Source	Appropriation Date
					Colorado.	
Dec. 3, 1979	79CW84	Thurston Pipeline	Water Division No. 2	25 cfs continued as conditional	Thurston Lake whose water is accumulated from springs in said lake, seepage flowing into the lake from all sides thereof, waste water from a canal of the Fort Lyon Canal Company, rainfall and waste water flowing into the lake from land of owners adjoining the lake. Pursuant to the decree in W-27, the water so accumulated is not tributary to any natural stream of the State of Colorado.	Jul. 15, 1969
Mar. 4, 1986	83CW119	Thurston Pipeline	Water Division No. 2	6.68 cfs made absolute 18.32 cfs continued as conditional	Thurston Lake whose water is accumulated from springs in said lake, seepage flowing into the lake from all sides thereof, waste water from a canal of the Fort Lyon Canal Company, rainfall and waste water flowing into the lake from land of owners adjoining the lake. Pursuant to the decree in W-27, the water so accumulated is not tributary to any natural stream of the State of Colorado.	Jul. 15, 1969
Aug. 8, 1990	90CW021	Thurston Pipeline	Water Division No. 2	18.32 cfs continued as conditional	Thurston Lake whose water is accumulated from springs in said lake, seepage flowing into the lake from all sides thereof, waste water from a canal of the Fort Lyon Canal Company, rainfall and waste water flowing into the lake from land of owners adjoining the lake. Pursuant to the decree in W-27, the water so accumulated is not tributary to any natural stream of the State of Colorado.	Jul. 15, 1969
Dec. 13, 1999	96CW102	Thurston Pipeline	Water Division	18.32 cfs continued as	Thurston Lake whose water is accumulated	Jul. 15, 1969

Date Decree Entered	Case Number	Identification of Water Right	District Court	Amount	Source	Appropriation Date
			No. 2	conditional	from springs in said lake, seepage flowing into the lake from all sides thereof, waste water from a canal of the Fort Lyon Canal Company, rainfall and waste water flowing into the lake from land of owners adjoining the lake. Pursuant to the decree in W-27, the water so accumulated is not tributary to any natural stream of the State of Colorado.	
May 8, 1987	79CW160	John Martin Reservoir (change from Horse Creek Reservoir, including a change of use)	Water Division No. 2	Up to 5,000 af cumulative storage per year in John Martin Reservoir from Horse Creek Reservoir, Adobe Creek Reservoir and/or Queen Reservoir	Horse Creek and Arkansas River	(See rights described above for Horse Creek Reservoir)
May 8, 1987	79CW161	John Martin Reservoir (change from Adobe Creek Reservoir including a change of use)	Water Division No. 2	Up to 5,000 af cumulative storage per year in John Martin Reservoir from Horse Creek Reservoir, Adobe Creek Reservoir and/or Queen Reservoir	Adobe Creek and Arkansas River	(See rights described above for Adobe Creek Reservoir)
Sep. 3, 1987	79CW178	Change of point of diversion from Fort Lyon Canal to Fort Lyon Storage Canal for storage in Adobe Creek Reservoir, Horse Creek Reservoir, and/or John Martin Reservoir	Water Division No. 2	164.64 cfs 597.16 cfs 171.20 cfs	Arkansas River Arkansas River Arkansas River	Apr. 15, 1884 Mar. 1, 1887 Aug. 31, 1893
Oct. 31, 1944	CA2158	Queen Reservoir (Nee Skah Reservoir) out of Great Plains Reservoirs described above	Bent County	5,483 af	Arkansas River	Aug. 1, 1896
Jun. 15, 1987	80CW019	Queen Reservoir (Nee Skah Reservoir) out of Great Plains Reservoirs described above	Water Division No. 2	5,483 af	Arkansas River	Aug. 1, 1896
May 8, 1987	80CW051	John Martin Reservoir (change from Queen Reservoir including a change of use)	Water Division No. 2	Up to 5,000 af cumulative storage per year in John Martin Reservoir from Horse Creek	Arkansas River	Aug. 1, 1896

Date Decree Entered	Case Number	Identification of Water Right	District Court	Amount	Source	Appropriation Date
				Reservoir, Adobe Creek Reservoir and/or Queen Reservoir		
Nov. 10, 1990	84CW179	Change, Exchange and Substitution (Winter Storage Program)	Water Division No. 2	(See rights described above for Fort Lyon Canal, Horse Creek Reservoir, Adobe Creek Reservoir, and Thurston Reservoir (transferred from "Prince Reservoir"))	(See rights described above for Fort Lyon Canal, Horse Creek Reservoir, Adobe Creek Reservoir, and Thurston Reservoir (transferred from "Prince Reservoir"))	(See rights described above for Fort Lyon Canal, Horse Creek Reservoir, Adobe Creek Reservoir, and Thurston Reservoir (transferred from "Prince Reservoir"))
Sep. 5, 2000	89CW076	Queen Reservoir (Nee Skah Reservoir) out of Great Plains Reservoirs described above changed to direct flow and to storage in Horse Creek Reservoir, Adobe Creek Reservoir, and John Martin Reservoir	Water Division No. 2	5,483 af	Arkansas River	Aug. 1, 1896
Sep. 5, 2000 as amended Oct. 18, 2000	90CW047	Exchange (from Article III storage account in John Martin Reservoir to Fort Lyon Canal)	Water Division No. 2	544 cfs absolute 606 cfs conditional	Adobe Creek, Horse Creek and Arkansas River Adobe Creek, Horse Creek and Arkansas River	Apr. 24, 1980 Apr. 24, 1980

C. A map showing the approximate location of historic use of the water rights sought to be changed by this Application is attached as Exhibit A to the application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Summaries of records of actual diversions of the water rights which the Applicants intend to rely on in this Application are attached as Exhibit B to the application. A list of apparent owners of the structures listed in this Application is attached as Exhibit D to the application. **D. Description of Proposed Changes: Alternate points of diversion and/or storage:** In addition to the decreed and the present points of diversion and places of storage as set forth above, Applicants seek the right to divert and/or store the subject water rights at the following alternate points of diversion and/or storage: **1. Arkansas River Between Adobe Creek and Purgatoire River.** One or more alternate points of diversion on the Arkansas River in the following described reach of the Arkansas River: beginning at a point immediately downstream of the confluence of the Arkansas River and Adobe Creek (the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 1, Township 23 South, Range 53 West of the 6th P.M., in Bent County, Colorado) and extending generally easterly and ending at a point immediately downstream of the confluence of the Arkansas River and the Purgatoire River (SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 7, Township 23 South, Range 51 West of the 6th P.M. in Bent County, Colorado). **2. Holbrook**

Canal Headgate. The headgate of the Holbrook Canal, located on the North bank of the Arkansas River in Section 24, Township 22 South, Range 58 West of the 6th P.M. in Otero County, Colorado. Water diverted at the Holbrook Canal may be stored in the following described reservoirs: **3. Holbrook Reservoir** – located in all or portions of Sections 5, 6, 7, 8 and 9 in Township 23 South, Range 55 West of the 6th P.M. in Otero County, Colorado. **4. Dye Reservoir** – located in all or portions of Section 32 and 33 in Township 22 South, Range 56 West, and Sections 4 and 5 in Township 23 South, Range 56 West, all of the 6th P.M. in Otero County, Colorado. **5. Colorado Canal Headgate.** The headgate of the Colorado Canal, located on the North bank of the Arkansas River at a point approximately 15 miles downstream from Pueblo near Boone, Colorado, and was originally decreed at a point in the NE ¼ of the NE ¼ of Section 10, Township 21 South, Range 62 West of the 6th P.M. at a point bearing South 0 degrees, 58 minutes West, 426 feet from the Southwest corner of Section 2, Township 21 South, Range 62 West of the 6th P.M. in Pueblo County, Colorado. The present point of diversion is located approximately 300 feet Northeasterly thereof, at a point in the NW ¼ of the NW ¼ of Section 11, Township 21 South, Range 62 West of the 6th P.M. at a point bearing South 63 degrees, 14 minutes East, a distance of 117.3 feet from the Southwest corner of said Section 2. Water diverted at the Colorado Canal may be stored in the following described reservoirs: **6. Lake Meredith Reservoir** – located in all or portions of Sections 15, 16, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, and 33 in Township 21 South, Range 56 West, Sections 1, 6, and 12 in Township 22 South, Range 57 West, and in Sections 24, 25 and 36 in Township 21 South, Range 57 West, all of the 6th P.M. in Crowley County, Colorado. **7. Lake Henry Reservoir** – located in all or portions of Sections 31 and 32, Township 20 South, Range 56 West, and Sections 5 and 6, Township 21 South, Range 56 West, all of the 6th P.M. in Crowley County, Colorado. **8. Pueblo Reservoir.** Pueblo Reservoir is located on the Arkansas River in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 20 South, Range 66 West of the 6th P.M., Sections 1, 2, 3, 4, 5, 9, 10, and 11, Township 21 South, Range 66 West of the 6th P.M., and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25 of Township 20 South, Range 67 West of the 6th P.M. in Pueblo County, Colorado.

E. Change to new uses and manner of use: From irrigation and other presently decreed uses to: all beneficial uses, including but not limited to irrigation, municipal, domestic and household purposes, drinking, cooking, cleaning, showers, toilets, irrigation of yards, lawns, shrubbery, trees, pools, fountains, and landscapes, watering domestic animals; mechanical, manufacturing, and industrial, military, and governmental purposes; bottled water; generation of electric power and power generally; fire suppression and protection; sewage treatment; street sprinkling; irrigation of parks, grounds, golf courses, and open spaces; recreation, golf course hazards, ponds, fishing, and fish propagation; agricultural uses, livestock watering and aquaculture; land and reservoir evaporation; maintenance, preservation and conservation of wildlife, wildlife habitat, wildlife propagation, and wetlands; creating, maintaining and enhancing aesthetic values; in-stream flow; erosion control, siltation control, and

flood control; maintaining storage reserves; adjustment and regulation; augmentation; replacement; groundwater recharge; exchange; and for a succession of such uses; and the water may be totally consumptively used, successively used, reused, and recaptured for later use; and the water may be stored in any place Applicants may have or obtain a right to store water. Applicants seek a decree from the Court that they have the right to use, reuse, and successively use to extinction, and dispose of, by sale, exchange or otherwise, all water lawfully diverted and/or stored pursuant to any decree entered in this case. After the change, the subject water rights will still be able to be utilized for agricultural and irrigation purposes, including augmentation thereof, on lands under the Fort Lyon Canal. **6. New places of use:** In addition to lands currently under the Fort Lyon Canal, the subject water rights, both for the previously decreed uses and for the proposed new uses, may be used on any lands that can be served by the subject water rights from the existing and decreed points of diversion and/or places of storage and/or from the proposed alternate points of diversion and/or places of storage listed hereinabove within the following Colorado counties shown as Exhibit C (attached to Application): Otero, Bent, Prowers, Pueblo, Crowley, Kiowa, Custer, Fremont, Chaffee, Park, Teller, El Paso, Lincoln, Elbert, Douglas, Jefferson, Lake, Clear Creek, Gilpin, Denver, Arapahoe, Adams, Washington, Boulder, Broomfield, Larimer, Weld, and Morgan.

(Amended Application and attachments, 22 pages)

CASE NO. 03CW69 – JOHN R. WEHRMAN and C. GAY WEHRMAN, 10500 FS 181A Road, Salida, CO 81201

Application for Water Right (Surface)

Chaffee County

2. Name of structure: Wehrman Ditch #1. **3. Legal description of each point of diversion:** Chaffee County, SE ¼ of the NE ¼ Section 23, Township 50 North, Range 9 East, N.M.P.M., 1370 feet from the North line and 1095 feet from the East line. Street Address: 10500 FS 181A Road, Salida, CO 81201. **4. Source:** Cottonwood Gulch, tributary to the Arkansas River. **5. A. Date of initiation of appropriation:** August 6, 2003. **B. How appropriation was initiated:** By filing. **C. Date water applied to beneficial use:** June 2001. **6. Amount claimed:** .05 cfs (25 gpm) Absolute. **7. Use or proposed use:** Irrigation of 5 acres and stock water. **A. If irrigation, complete the following: Number of acres historically irrigated:** 1 (for 2 yr.); **Proposed to be irrigated:** 5. **Legal description of acreage:** Parcel in SW ¼ of NE ¼, S23, T50N, R9E, NMPM, at a point 2500' S and 1600' W of NE corner of Section 23. **B. If non-irrigation, describe purpose fully:** Maintain pond water level. **8. Name and address of 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:** Applicants. **9. Remarks:** None.

(Application and attachment, 4 pages)

CASE NO. 03CW70 – BEEF CITY, INC., P. O. Box 3, McClave, CO 81057

(John S. Lefferdink, Lefferdink Law Office, Attorneys for Applicant, P. O. Box 110, Lamar, CO 81052)

Application for Water Rights and Plan for Augmentation

Bent County

A. BEEF CITY DAKOTA AQUIFER WELL NO. 1. 2. Name of well and permit number: Beef City Dakota Aquifer Well No. 1, Permit No. 247717. **3. Legal description of well:** SW ¼ SW ¼ of Section 33, Township 21 South, Range 48 West of the 6th P.M., Bent County, Colorado, 1,307 feet from the south section line and 50 feet from the west section line. **4. A. Source:** Dakota Aquifer. **B. Depth:** 615 feet. **5. A. Date of Appropriation:** February 13, 2003. **B. How Appropriation was initiated:** Approval of Well Permit No. 247717; **C. Date of well completion:** April 14, 2003. **6. Amount claimed:** 10 gpm, not to exceed 16 a.f. per year (conditional). **7. Proposed use:** Water supply for commercial livestock feedyard with a maximum capacity of 30,000 head. **8. Name and address of owner of land on which well is located:** Reyher Enterprises, Inc., P. O. Box 3, McClave, CO 81057. **B. BEEF CITY DAKOTA AQUIFER WELL NO. 2. 2. Name of well and permit number:** Beef City Dakota Aquifer Well No. 2, Permit No. 247716. **3. Legal description of well:** SW ¼ SE ¼ of Section 4, Township 22 South, Range 48 West of the 6th P.M., Bent County, Colorado, 50 feet from the south section line and 3,940 feet from the west section line. **4. A. Source:** Dakota Aquifer; **B. Depth:** 555 feet. **5. A. Date of Appropriation:** February 13, 2003. **B. How Appropriation was initiated:** Approval of Well Permit No. 247716; **C. Date of well completion:** June 19, 2003. **6. Amount claimed:** 20 gpm, not to exceed 32 a.f. per year (conditional). **7. Proposed use:** Water supply for commercial livestock feedyard with a maximum capacity of 30,000 head. **8. Name and address of owner of land on which well is located:** Reyher Enterprises, Inc., P. O. Box 3, McClave, CO 81057. **C. BEEF CITY DAKOTA AQUIFER WELL NO. 3. 2. Name of well and permit number:** Beef City Dakota Aquifer Well No. 3, Permit No. 245871. **3. Legal description of well:** SW ¼ SW ¼ of Section 4, Township 22 South, Range 48 West of the 6th P.M., Bent County, Colorado, 20 feet from the south section line and 50 feet from the west section line. **4. A. Source:** Dakota Aquifer; **B. Depth:** 495 feet. **5. A. Date of Appropriation:** November 19, 2002. **B. How Appropriation was initiated:** Approval of Well Permit No. 245871. **C. Date of well completion:** January 27, 2003. **6. Amount claimed:** 25 gpm, not to exceed 40 a.f. per year (conditional). **7. Proposed use:** Water supply for commercial livestock feedyard with a maximum capacity of 30,000 head. **8. Name and address of owner of land on which well is located:** Reyher Enterprises, Inc., P. O. Box 3, McClave, CO 81057. **D. BEEF CITY DAKOTA AQUIFER WELL NO. 4. 2. Name of well and permit number:** Beef City Dakota Aquifer Well No. 4, Permit No. 246342. **3. Legal description of well:** SW ¼ SW ¼ of Section 4, Township 22 South, Range 48 West of the 6th P.M., Bent County, Colorado, 50 feet from the south section line and 1,083 feet from the west section line. **4. A. Source:** Dakota Aquifer; **B. Depth:** 515 feet. **5. A. Date of Appropriation:**

December 17, 2002; **B. How Appropriation was initiated:** Approval of Well Permit No. 246342; **C. Date of well completion:** January 31, 2003. **6. Amount claimed:** 15 gpm, not to exceed 24 a.f. per year (conditional). **7. Proposed use:** Water supply for commercial livestock feedyard with a maximum capacity of 30,000 head. **8. Name and address of owner of land on which well is located:** Reyher Enterprises, Inc., P. O. Box 3, McClave, CO 81057. **E. BEEF CITY DAKOTA AQUIFER WELL NO. 5. 2. Name of well and permit number:** Beef City Dakota Aquifer Well No. 5, Permit No. 245510. **3. Legal description of well:** SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, Township 22 South, Range 48 West of the 6th P.M., Bent County, Colorado, 20 feet from the south section line and 1,115 feet from the east section line. **4. A. Source:** Dakota Aquifer; **B. Depth:** 575 feet. **5. A. Date of Appropriation:** October 30, 2002; **B. How Appropriation was initiated:** Approval of Well Permit No. 245510; **C. Date of well completion:** November 29, 2002. **6. Amount claimed:** 30 gpm, not to exceed 48 a.f. per year (conditional). **7. Proposed use:** Water supply for commercial livestock feedyard with a maximum capacity of 30,000 head. **8. Name and address of owner of land on which well is located:** Reyher Enterprises, Inc., P. O. Box 3, McClave, CO 81057. **F. BEEF CITY CHEYENNE AQUIFER WELL NO. 1. 2. Name of well and permit number:** Beef City Cheyenne Aquifer Well No. 1, Permit No. 249776. **3. Legal description of well:** SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, Township 22 South, Range 48 West of the 6th P.M., Bent County, Colorado, 50 feet from the south section line and 2,500 feet from the west section line. **4. A. Source:** Cheyenne Aquifer; **B. Depth:** 720 feet; **5. A. Date of Appropriation:** April 29, 2003; **B. How Appropriation was initiated:** Approval of Well Permit No. 249776; **C. Date of well completion:** May 20, 2003. **6. Amount claimed:** 30 gpm, not to exceed 48 a.f. per year (conditional). **7. Proposed use:** Water supply for commercial livestock feedyard with a maximum capacity of 30,000 head. **8. Name and address of owner of land on which well is located:** Reyher Enterprises, Inc., P. O. Box 3, McClave, CO 81057. **G. BEEF CITY CHEYENNE AQUIFER WELL NO. 2. 2. Name of well and permit number:** Beef City Cheyenne Aquifer Well No. 2, Permit No. 250973. **3. Legal description of well:** SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, Township 22 South, Range 48 West of the 6th P.M., Bent County, Colorado, 75 feet from the south section line and 2,768 feet from the east section line. **4. A. Source:** Cheyenne Aquifer; **B. Depth:** 730 feet. **5. A. Date of Appropriation:** June 10, 2003; **B. How Appropriation was initiated:** Approval of Well Permit No. 250973; **C. Date of well completion:** June 30, 2003. **6. Amount claimed:** 40 gpm, not to exceed 65 a.f. per year (conditional). **7. Proposed use:** Water supply for commercial livestock feedyard with a maximum capacity of 30,000 head. **8. Name and address of owner of land on which well is located:** Reyher Enterprises, Inc., P. O. Box 3, McClave, CO 81057. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION. 2. Name of Structures for Which Augmentation is Sought:** Beef City Dakota Aquifer Well Nos. 1, 2, 3, 4 and 5 and Beef City Cheyenne Aquifer Well Nos. 1 and 2. **3. Description of Proposed Augmentation:** Under the Amended Rules and Regulations Governing the Use

of Tributary Ground Water in the Arkansas River Basin (“Amended Rules and Regulations”), said Wells may be operated if depletions are replaced pursuant to court decree or a plan approved by the State Engineer. Said Wells will be augmented with shares in the Lower Arkansas Water Management Association (“LAWMA”) pursuant to its Arkansas River Replacement Plan. Applicant will divert annually no more than the total number of acre feet from the wells which is augmented by Applicant’s shares in LAWMA. The amount of replacement water will be as approved by the State Engineer under any substitute water supply plan or as finally decreed by the Division 2 Water Court in Case No. 02CW181. Also, Beef City Dakota Aquifer Well Nos. 3, 4 and 5 which were described in Exhibit G of the LAWMA Application filed in Case No. 02CW181 will be included in that augmentation plan together with the other wells described herein.
(Application, 9 pages)

CASE NO. 03CW71 – JAMES L. WALKER and MARGARET B. WALKER, 12770 County Road 261C, Nathrop, CO 81236 (James W. Culichia, Felt, Monson & Culichia, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903)

Application for Water Storage and Surface Water Rights
Chaffee County

WATER STORAGE RIGHT

2. Name of Reservoir: Mesa Antero Pond. **3. Legal Description of location of dam:** The Mesa Antero Pond is located in the SE1/4, SW 1/4 of Section 8, Township 51 North, Range 8 East of the N.M.P.M., Chaffee County, Colorado, and the dam is located approximately 2110 feet east from the west section line and 845 feet north from the south section line of said Section 8. Optional Additional Description: GPS Location information in UTM Format: Were the points averaged: yes. Northing: 42 82.000; Easting: 403.750. **4. Source:** The Mesa Antero Pond is an off-channel reservoir which impounds water from the following sources: **A.** Perennial springs tributary to Browns Creek, tributary to the Arkansas River as identified in the October 30, 1984 Findings of Fact, Conclusions of Law, Judgment and Decree in Case No. W-4086, *In the Matter of the Second Amended Application for Approval of Plan for Augmentation, Including Change of Water Rights and Exchange of Linjac Colorado Corporation*. **B.** Walker Spring No. 1 (¶ 11 of this Application). **C.** Walker Spring No. 2 and Seep Ditch (¶ 18 of this Application). **D.** Walker Spring No. 3 (¶ 25 of this Application). **5. Date of Appropriation:** **A.** October 30, 1984, absolute. **B. How appropriation was initiated:** By construction of the dam and pond, the impoundment and placement of water to beneficial use, and approval of a plan for augmentation for the structure by Water Court in Case No. W-4086. **C. Date water applied to beneficial use:** October 30, 1984. **6. Amount claimed in acre feet:** 11 acre feet - Absolute as decreed in Case No. W-4086. **7. Use.** **A.** Fire protection, recreation, fish propagation and wildlife. **8. Surface area of high water line:** approximately 1.3 acres. **A. Maximum height of dam:** 9.0 feet. **B. Length of dam in feet:** 360 feet, east face; 240 feet, south face. **9. Total capacity of reservoir:** 11 acre feet. Active capacity: 11 acre feet; Dead

Storage: 0. **10. Names and addresses of owners upon which any structure is or will be located:** Applicant owns the property upon which the Mesa Antero Pond is located.

SURFACE WATER RIGHTS

11. Name of Structure: Walker Spring No. 1. **12. Legal Description of point of diversion:** The point of diversion for the Walker Spring No. 1 is located in the SE 1/4, SW 1/4, Section 8, Township 51 North, Range 8 East of the N.M.P.M., Chaffee County, Colorado at a point approximately 2060 feet east from the west section line and 635 feet north from the South section line of said Section 8. **13. Source:** Spring, tributary to Browns Creek, tributary to the Arkansas River. **14. Date of Appropriation:** **A.** October 20, 1984. Absolute. **B. How appropriation was initiated:** Development of the spring and diversion of the spring water into the Mesa Antero Pond. **C. Date water applied to beneficial use:** October 20, 1984. **15. Amount claimed:** 0.011 c.f.s. (5.0 gallons per minute). **16. Use. A.** Fire protection, fish propagation, wildlife, recreation and storage for beneficial uses in Mesa Antero Pond. **17. Names and addresses of owners upon which any structure is or will be located:** Applicant owns the property upon which all structures are located. **18. Name of Structure:** Walker Spring No. 2 and Seep Ditch. **19. Legal Description of point of diversion:** The point of diversion for the Walker Spring No. 2 and Seep Ditch is located in the SE 1/4, SW 1/4, Section 8, Township 51 North, Range 8 East of the N.M.P.M., Chaffee County, Colorado at a point approximately 1530 feet east from the west section line and 740 feet north from the south section line of said Section 8. **20. Source:** Spring, tributary to Browns Creek, tributary to the Arkansas River and seepage water from the Erhart-Bertschey Ditch. **21. Date of Appropriation:** **A.** October 20, 1984. **B. How appropriation was initiated:** Development of the spring and diversion of the spring water into the Mesa Antero Pond and construction of the seepage ditch and diversion of the seepage waters into Mesa Antero Pond. **C. Date water applied to beneficial use:** October 20, 1984. **22. Amount claimed:** 0.0335 c.f.s (15 gallons per minute). **23. Use. A.** Fire protection, fish propagation, wildlife, recreation and storage for beneficial uses in Mesa Antero Pond. **24. Names and addresses of owners upon which any structure is or will be located:** Applicant owns the property upon which all structures are located. **25. Name of Structure:** Walker Spring No. 3. **26. Legal Description of point of diversion:** The point of diversion for the Walker Spring No. 3 is located in the SE 1/4, SW 1/4, Section 8, Township 51 North, Range 8 East of the N.M.P.M., Chaffee County, Colorado at a point approximately 1850 feet east from the west section line and 1005 feet north from the south section line of said Section 8. **27. Source:** Springs, tributary to Browns Creek, tributary to the Arkansas River. **28. Date of Appropriation:** **A.** October 20, 1984. **B. How appropriation was initiated:** Development of the spring and diversion of the spring water into the Mesa Antero Pond. **C. Date water applied to beneficial use:** October 20, 1984. **29. Amount claimed:** 0.007 c.f.s. (3.1 gallons per minute). **30. Use. A.** Fire protection, fish propagation, wildlife, recreation and storage for beneficial uses in Mesa Antero Pond. **31. Names and addresses of owners upon which any structure is or**

will be located: Applicant owns the property upon which all structures are located. **32. Miscellaneous. A.** Existing Augmentation Plan for the Mesa Antero Pond. Evaporation from Applicants' out of priority diversions into the Mesa Antero Pond are already fully augmented by the decree entered in Case No. W-4086 (described in ¶ 4.a above) and all that Applicants' seek with this application is to obtain a water storage decree for the Mesa Antero Pond as well as to adjudicate the water sources to the Mesa Antero Pond. The augmentation plan for the Mesa Antero Pond will not be changed or modified by this application and all findings contained in the Case No. W-4086 decree regarding the Mesa Antero Pond, including but not limited to its size, amount of net evaporation and the absence of injury from the operation of the Mesa Antero Pond as provided in the W-4086 decree are *res judicata*. **B. Augmentation Water Source.** Pursuant to an agreement dated September 29, 2000 between Applicants and the Mesa Antero Water Association, Applicants have a perpetual right to receive up to 4.0 acre feet per year of augmentation water from the augmentation plan approved in Case No. W-4086 to augment the evaporation from the Mesa Antero Pond. **C. Future Enlargement of the Pond.** The original decree in Case No. W-4086 authorized the enlargement the Mesa Antero Pond from its current size of 1.3 acres and 11 acre feet to 2.7 acres and 20 acre feet. The 4.0 acre feet of augmentation water contracted for by Applicants fully augments the increased size of the Mesa Antero Pond as provided in the original decree in Case No. W-4086. In the event that Applicants wish to enlarge the Mesa Antero Pond as provided in the W-4086 Decree, such enlargement will be the subject of a future application.

(Application, 6 pages)

CASE NO. 03CW72 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 03CW73 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 03CW74 – SIDNEY L. and VIOLET E. CRADDOCK, 7100 West U.S. Hwy. 50, Pueblo, CO 81007

Application for Underground Water Right
Pueblo County

2. Name of well and permit, registration, or denial number: Permit Number 50819-A. **3. Legal description of well:** SE ¼ NE ¼ Section 36, Township 19 South, Range 67 West, 6th P.M., Pueblo County, Colorado, 2400 feet from the North line and 1220 feet from the East line; **Street Address:** 7100 West U.S. Hwy. 50, Pueblo, CO 81007. **4. A. Source:** Ground Water. **B. Depth.** 29 feet. **5. A. Date of appropriation:** January 24, 1972. **B. How appropriation was initiated:** Application for well permit. **C. Date water applied to beneficial use:** March 29, 1972. **6. Amount claimed:** 15 gpm Absolute. **7. If well is non-tributary: A. Name of Aquifer:** N/A. **B. Amount claimed in acre feet annually:** N/A **8. Proposed use: A. If irrigation, complete the following:**

(1) Number of acres historically irrigated: (2) Total number of acres proposed to be irrigated: (3) The legal description of the land irrigated: (4) Area of lawns and gardens irrigated: B. If non-irrigation, describe purpose fully: Domestic: Household, domestic animals, less than 1 acre of lawn, trees and garden. **9. Names and addresses of owners 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:** Applicants. **10. Remarks:** Exhibits included – 1. Original Well Permit issued Jan. 24, 1972 - #50819; 2. Redrill Well Permit issued Nov. 15, 2001 - #50819-A (This permit was issued because the original well casing collapsed); 3. Well Construction and Test Report dated Jun. 3, 2002; 4. Map indicating location of well. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court.
(Application and attachments, 7 pages)

CASE NO. 03CW75 – GELIA and CRAIG COLEMAN, 12 Park Row Court, Arlington, TX 76013

Application for Underground Water Right
Custer County

2. Name of well and permit, registration, or denial number: Permit Number 198323; 3-16-99. **3. Legal description of well:** SW ¼ SE ¼ Section 1, Township 23 South, Range 72 West, 6th P.M., Custer County, Colorado, 1000 feet from the South line and 2000 feet from the East line; **Street Address:** 1115 CR 319; **Subdivision:** Whispering Pine, Lot 9. **4. A. Source:** Granite. **B. Depth.** 607 feet. **5. A. Date of appropriation:** 3-16-99. **B. How appropriation was initiated:** Domestic use. **C. Date water applied to beneficial use:** 3-16-99. **6. Amount claimed:** 30 gpm Absolute. **7. If well is non-tributary: A. Name of Aquifer:** _____. **B. Amount claimed in acre feet annually:** _____. **8. Proposed use: A. If irrigation, complete the following: (1) Number of acres historically irrigated: (2) Total number of acres proposed to be irrigated: (3) The legal description of the land irrigated: (4) Area of lawns and gardens irrigated: B. If non-irrigation, describe purpose fully:** Domestic use—drinking, washing. **9. Names and addresses of owners 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:** Applicants.
(Application and attachments, 8 pages)

CASE NO. 03CW76(96CW187) – DAVID W. BOYER, 13584 Neck Yoke Road, Rapid City, SD 57701

Application to Make Absolute
Custer County

2. Name of Structure: Boyer Diversion. **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree: A. Date of Original Decree:** 28 Oct. 1996; **Case No.** 96CW187. **Court:** District Court, Water Division 2. **B. Legal description:** Custer County, NE ¼ of

the NE ¼ Section 34, Township 24 South, Range 72 West, 6th P.M., 600 feet south and 1,320 feet west of the northeast corner of Sec. 34. **C. Source:** _____. **D. Appropriation Date:** 24 Oct. 1996; **Amount:** 0.2500. **E. Use:** Livestock watering. **4. Provide a 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, including expenditures:** A headgate was installed in Cottonwood Creek from which a 3" PVC pipe turns water to a storage tank located at the point of diversion. The inlet pipe has a valve to permit the flow into the tank when the water diversion is in priority and to discontinue diversion of water into the stock tank when the water appropriation is not in priority. **5. If claim to make absolute: Water applied to beneficial use:** **A. Date:** 7 Aug. 2001; **Amount:** .15; **Use:** Livestock water. **B. Description of place of use where water is applied to beneficial use:** NE ¼ of the NE ¼ Sec. 34, T. 24 S., R. 72 W., 6th P.M. **6. Names and addresses of owners of the 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:** Applicant.

(Application and attachments, 4 pages)

CASE NO. 03CW77 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 03CW78 - WILSHIRE DEVELOPMENTS (Wisconsin), L.L.C., a Wisconsin limited liability company, 6040 North 22nd Place, Phoenix, AZ 85016 (Robert E. Schween, Robert E. Schween, P.C., Attorney for Applicant, 8185 South Winnipeg Circle, Aurora, CO 80016)

Application for Nontributary and Not-Nontributary Ground Water Rights in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills Aquifers and for a Plan for Augmentation for Withdrawal of Not-Nontributary Ground Water
El Paso County

2. **Well Permits:** Well permit applications for the wells to be constructed pursuant to this application and subsequent decree will be applied for at such time as Applicant is prepared to construct such wells pursuant to the terms of the decree to be entered in this matter. 3. **Names, Description, and Estimated Depths of Wells:** A. The wells which will withdraw ground water from each aquifer underlying the land described in paragraph 11 below will be located on "Applicant's Property," consisting of 200 acres, more or less, in the NW ¼ and the W ½, W1/2, NE ¼, Section 22, Township 12 South, Range 65 West of the 6th P.M., in El Paso County, Colorado. **See Exhibit A**, General Location Map, **Exhibit A-1**, Site Location Map, and **Exhibit B**, Property Legal Description, 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. Applicant requests the right to construct such wells anywhere on the tract to recover the entire allowable annual amounts from each aquifer as claimed herein or as determined by the Court pursuant to its retained jurisdiction. B. The estimated depths to the base of the aquifers at the location of Applicant's Property are as described in the Denver Basin Rules, 2 CCR 402-6. Actual well

completion depths will comply with the well permit, but may vary slightly from the permitted depth depending on the topography at any particular location. 4. **Source of Water Rights:** A. Not-Nontributary Ground Water. The ground water contained in the Dawson and Denver aquifers at this location is not-nontributary ground water as defined at § 37-90-103 (10.7), C.R.S. Applicant may not obtain a well permit and withdraw such not-nontributary ground water until an augmentation plan is approved for the replacement of injurious depletions caused thereby. *See § 37-90-137(9), C.R.S. Such a plan is sought by this application with respect to the Dawson aquifer ground water, as described hereinbelow.* B. Nontributary Ground Water. The ground water contained in the Arapahoe and Laramie-Fox Hills aquifers at this location is nontributary ground water as defined at § 37-90-103 (10.5), C.R.S. Applicant may obtain a well permit, withdraw, and fully consume such nontributary ground water, except that Applicant must relinquish two-percent (2%) of such ground water withdrawn to the stream system, as required by the Denver Basin Rules. Such relinquishment may be by any means selected by the Applicant. 5. **Background:** Applicant files this application for water rights pursuant to § 37-92-203, C.R.S., as a water matter concerning nontributary and not-nontributary ground water. Applicant is the contract purchaser the overlying land as described herein. 6. **Date of Initiation of Appropriation:** Not Applicable. 7. **Right to Ground Water Claimed Herein:** A. Applicant seeks a decree for all ground water determined to be available from the named aquifers underlying the tract of land described herein based upon a statutory aquifer life of 100 years. Applicant asserts that withdrawal in the average annual amounts determined to be available from the named aquifers can be made pursuant to § 37-90-137(4) and (9), C.R.S., without causing material injury to the vested rights of others. B. The herein applied-for plan for augmentation must be approved by the Water Court before any such not-nontributary ground water adjudicated herein may be produced and put to use. 8. **Estimated Amounts and Rates of Withdrawal:** A. **Estimated Average Annual Amounts Available:** The estimated average annual amounts of withdrawal available from the named aquifers underlying Applicant's Property, as indicated below, are based upon interpretations of information contained in the Denver Basin Rules, 2 C.C.R. 402-6.

<u>Aquifer</u>	<u>Acres</u>	<u>Sat. Sand Thickness</u>	<u>Specific Yield</u>	<u>Average Annual Amount</u>
Dawson	200	310 Feet	20%	124 AF
Denver	200	320 Feet	17 %	109 AF
Arapahoe	200	250 Feet	17 %	85 AF
Laramie-Fox Hills	200	190 Feet	15 %	57 AF

Note: The final average annual amounts available from each aquifer will depend upon the actual hydrogeology and the legal entitlement of Applicant to all ground water in the subject aquifers underlying Applicant's Property. B. **Average Pumping Rates:** The average pumping rate for wells to be completed into the four named aquifers is expected to vary from 15 to about 250 gpm. Applicant requests that the pumping rates for each well may be as great as necessary to withdraw the full annual allocation of water from each named aquifer. 9. **Well Fields:** Subject to obtaining an adequate Court-approved augmentation plan for withdrawal of not-nontributary ground water, Applicant has the right to withdraw

all of the legally available ground water in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the parcel described in Paragraph 11 below, through any well(s) initially permitted in each aquifer and any additional well(s) which may become part of the Applicant's well field. Applicant requests that the initial well(s) permitted, along with any additional well(s) completed into the same aquifer, shall be treated as a well field. As additional wells are constructed, well permit applications will be filed in accordance with § 37-90-137(10), C.R.S. 10. **Proposed Uses:** A. Applicant requests the right to use all ground water subject to this application. Such water is to be used, reused, successively used and, after use, leased, sold or otherwise disposed of for the following beneficial purposes: *domestic, industrial, agricultural, commercial, irrigation, stock watering, storage, recreational, fish and wildlife propagation, fire protection, and any other beneficial purposes, to be used on or off the land described in Paragraph 11.* B. Such water will be produced for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of stream depletions caused by the use of water from other sources, and for augmentation. 11. **Description of the Land Overlying Subject Ground Water:** The Applicant's property overlying the ground water claimed herein is a tract of land consisting of 200 acres, more or less, located in El Paso County, and generally described as follows: **The NW ¼, and the W ½, W ½, NE ¼, Section 22, Township 12 South, Range 65 West of the 6th P.M., in El Paso County, also known as 8875 Burgess Road, El Paso County.** See General Location Map, **Exhibit A**, Site Location Map, **Exhibit A-1**, and Property Legal Description, **Exhibit B**. 12. **Jurisdiction:** The Water Court has jurisdiction over the subject matter of this application pursuant to §§ 37-92-302(2) and 37-90-137(6), C.R.S. 13. **Name of Owner of the Land on Which Structures are Located:** The owner of the property described herein is Black Forest Partnership. The Applicant herein, Wilshire Developments (Wisconsin), LLC, is the contract purchaser of the property and has the consent of the owner to proceed with this application.

PLAN FOR AUGMENTATION

14. **Description of Plan for Augmentation:** A. Ground Water to be Augmented: Dawson aquifer ground water to be decreed as described in paragraph 8A above. B. **Water Rights to be Used for Augmentation:** Return flows from the use of fully augmented not-nontributary and nontributary ground water and direct discharge of nontributary ground water. 15. **Statement of Plan for Augmentation:** A. Applicant will use Dawson aquifer ground water herein to serve as the domestic supply of 60 homes to be constructed on the property, each home with its own Dawson aquifer well. Such ground water will be used for all domestic, stockwatering, and irrigation purposes at each homesite on Applicant's property. Each home site will be equipped with a nonevaporative wastewater disposal system. B. For purposes of this application, it is estimated that each residence will require an annual amount of up to 0.6 acre-feet per year. In-structure use will require approximately 0.27 acre-feet per year, and lawn and garden irrigation and stockwatering uses will be limited to approximately 0.33 acre-feet per year. Applicant reserves the right to amend these values based on final annual quantities

available and final land planning decisions. **C.** Consumptive use associated with in-residence use will be approximately 10% of water used. For purposes of this application, it is estimated that approximately 15% of water used for lawn irrigation purposes will percolate and return to the stream system and that any water used for stock watering purposes will be fully consumed. **D.** Before any other type of sewage treatment is proposed in the future, including incorporation of the facility into a central sewage collection and treatment system, Applicant, or its successors and assigns, will amend a decree entered in this case prior to such change and thereby provide notice of the proposed change to other water users by publication procedures required by then existing law. **16. Replacement of Depletions:** **A. During the Pumping Period.** (1) Pumping from the not-nontributary Dawson aquifer at this location will result in stream depletions. Applicant will replace modeled actual stream depletions to the affected stream system pursuant to § 37-90-137(9)(c), C.R.S., to the extent required. Such stream depletions occur principally to the Monument/Fountain Creek stream system, tributary to the Arkansas River, although minor stream depletions will occur to the South Platte River system. For that reason, this application shall also be filed in both Water Division 1 and Water Division 2, and consolidation will be sought in Water Division 2. (2) Return flows from the use of Dawson aquifer ground water will accrue to the Monument Creek/Arkansas River system in amounts in excess those amounts sufficient to replace fully the actual modeled stream depletions while such ground water is being pumped. (3) Stream depletions accruing to South Platte River tributaries are de minimis in effect. See Stream Depletion Table, Exhibit C to the Application. In the event Applicant is required to make replacements in this drainage basin, it will contract for an adequate replacement source, which source may include tributary or nontributary return flow water or reuse water. **B. During the Period After Pumping Ceases:** After the total of 10,800 acre-feet (0.6 AF/Yr./Home x 60 Homes X 300 years) of Dawson aquifer ground water has been withdrawn by the planned development or after all Dawson aquifer pumping ceases, Applicant will demonstrate that any depletions which may continue to occur to the stream system are unmeasurable, non-injurious to other water rights, and need not be replaced. However, if the Court finds that such stream depletions must be replaced, Applicant will reserve an adequate amount of nontributary ground water in the Arapahoe aquifer underlying Applicant's property to meet fully such post-pumping augmentation requirements. **17. Remarks:** A. Applicant claims the right to withdraw more than the average annual amounts estimated in paragraph 8A above pursuant to Rule 8A of the Statewide Ground Water Rules, 2 C.C.R. 402-7. B. Although Applicant has estimated the amounts of water available for withdrawal from the subject aquifers based on estimates of relative values for specific yield and saturated thicknesses, Applicant requests the right to revise the estimates upward or downward, based on better or revised data, without the necessity of amending this application or republishing the same. C. Applicant will withdraw the not-nontributary Dawson aquifer ground water requested herein under the plan of augmentation requested herein pursuant to § 37-90-137(9)(c), C.R.S. D. In compliance with House Bill 93-1060 (effective March 30, 1993), Applicant will give notice to every person or entity who has a lien or mortgage on, or deed of trust

to, or other financial interest in the overlying land recorded in the county in which the overlying land is located within 10 days of the filing of this application. WHEREFORE, Applicant Wilshire Developments (Wisconsin), L.L.C., requests a ruling and decree granting the application herein and awarding the ground water rights claimed herein as final water rights, except as to those issues for which jurisdiction of the Court will be specifically retained, so that the State Engineer may issue well permits for such well(s) as Applicant requests under this decree, subject to the limitations described in such ruling and decree. Further, Applicant requests that the ruling and decree find that -- (1) Applicant has complied with § 37-90-137(4), C.R.S., and ground water is legally available for withdrawal from the named aquifers through wells to be located on the Applicant's property, EXCEPT THAT withdrawals of not-nontributary ground water may be made only pursuant to the augmentation plan approved herewith; (2) Jurisdiction is to be retained with respect to the average annual amounts of withdrawal specified herein to provide for the adjustment of such amounts to conform to actual local aquifer characteristics from adequate information obtained from wells or test holes drilled on or near Applicant's property, pursuant to § 37-92-305(11), C.R.S.; (3) Applicant or its successors may construct wells into the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers anywhere on the subject property, without the necessity of filing any further amendments to this application, republishing this application, or reopening the decree to be awarded. Applicant will waive well spacing requirements for wells to be completed on the property. (4) Vested or conditionally decreed water rights of others will not be materially injured by the withdrawals proposed herein; (5) In accordance with § 37-92-305(11), C.R.S., no findings of reasonable diligence are required to maintain the water rights applied for herein; and (6) The nature and extent of the water rights claimed herein are defined by § 37-90-137(4), C.R.S., and the withdrawals sought to be made are based upon an aquifer life of 100 years and upon the quantity of ground water, exclusive of any artificial recharge, underlying the land shown on Exhibit A and described in Exhibit B to the Application. FURTHER, Applicant requests this Court grant such other relief as it deems proper in the premises.

(Application and attachments, 11 pages)

CASE NO. 03CW79(84CW181) – ALEXANDER T. McCULLOCH, JR. and CAROLE S. McCULLOCH, 5901 Corporate Drive, Colorado Springs, CO 80919-1941 (Steven T. Monson, Felt, Monson & Culichia, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903)

Application for Finding of Reasonable Diligence
Pueblo County

II. Names of Structures. Newbery Water Intake. **III. Description of Conditional Water Right.** **A. Date of Original Decree.** The original decree was entered on March 26, 1987 in Case No. 84CW181, Water Division 2. **B. Legal Description of Point of Diversion.** The initial point of gathering of the underflow or subterranean waters is located in the valley of Fountain Creek on the westerly side thereof whence the South quarter corner of Section 19, Township 18 South, Range 64 West of the 6th P.M. bears North 10° 22' East

1,280 feet; from said point submerged pipelines are extended up across the valley of said river a distance of about one mile, and thereby the subterranean or underflow waters of said river are brought to said initial point; from said initial point the said pipeline runs in a general southerly and southwesterly direction to a point where it has been plugged with concrete at the furthest downstream point of withdrawal of water from said pipeline approximately 2,000 feet North of the South line of Section 31, Township 18 South, Range 64 West of the 6th P.M. **C. Source.** The source of the Newbery Water Intake is Fountain Creek, a tributary of the Arkansas River. **D. Appropriation Date.** The appropriation date for the Newbery Water Intake is August 31, 1984. **E. Use.** The decreed use of this water right is for domestic, irrigation, municipal, commercial, industrial, fire protection, fish and wildlife, recreational, stock watering and any other beneficial purposes. The water claimed may be produced for immediate application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from use of water from other sources and for all other augmentation purposes. **F. Depth of Intake Galleries.** The intake galleries for the Newbery Water Intake is approximately up to 10 feet below the bed of Fountain Creek. **G. Additional Information.** The Newbery Water Intake is a junior water right diverting from the structure also commonly known as the Fountain Valley Underflow and diverts ground water which is tributary to Fountain Creek. Diversions from the Newbery Water Intake are required to be augmented in accordance with the plan for augmentation decreed in Case No. 84CW182 and under the terms of the decree entered in consolidated Case Nos. 93CW17 and 93CW18. **IV. Outline of Work Done Towards Completion of Appropriation and Application of Water to Beneficial Use.** During the diligence period the Applicants have proceeded with planning, surveying, and the preparation of maps and plats for the subdivision and development of their property using the Newbery Water Intake as the physical source of water. Depletions from the diversions of the Newbery Water Intake under the original decree in Case No. 84CW181 are to be augmented under the decreed plan for augmentation in Case No. 84CW182. The Applicants have rebuilt the electric motor for the Frank Mass Well No. 2, which is a diversion point off of the Newbery Water Intake to be used in Applicants' development, and have also replaced and updated the electrical system for this well and pump house for its irrigation and future development purposes. Work has been performed to the pump house for the Frank Mass Well No. 2. In addition, the Applicants' engineering firm, Clyde B. Young & Company, has proceeded with the continuing engineering for the design and construction of a water treatment plant for diversions to a central water supply system from the Frank Mass Well No. 2 on the Newbery Water Intake. This water supply and treatment system is for a proposed subdivision and development of the Applicants' property, with an initial phase of 120 lots. This engineering has included several field trips to the property and the site specific criteria and design for the treatment, storage and construction of the water treatment plant and pipelines for the calculated average and peak development demand. This design includes the initial 120 unit development with expansion capability and establishes cost estimates and

financial feasibility for the water treatment. Soil samples were taken from the proposed water treatment plant site by a geo technical engineering firm. These soil samples have been analyzed and evaluated to provide geo technical design and recommendations for construction of the water treatment plant. From the conclusion of the last due diligence period, the Applicants have excavated the Newbery Water Intake or Fountain Underflow System at the southern downstream end of their property and filled the buried pipeline with concrete to prevent any leakage from the system and thereby control and account for all diversions and returns from the Newbery Water Intake. The Applicants also concluded the plan for administration of the Newbery Water Intake and Fountain Underflow System by assisting in the implementation of the relocation of the Pinon Gage on Fountain Creek through, without limitation, granting the necessary easements to the gage site and the construction of an access road to the gaging and measurement station. These actions, as well as others, were taken in connection with Case No. 93CW18 concerning the administration of the Newbery Water Intake and Fountain Underflow System. The approximate costs incurred in the above matters have included, without limitation, land use planning of \$12,429.11, electrical system upgrade and replacement of \$2,115.75, pump repairs and upgrade of \$4,000.00, pump house work of \$500.00, legal fees and costs of \$5,012.62, engineering fees for water system design of \$3,377.50, and geo technical engineering of \$2,000.00, for a total of approximately \$29,434.98. The Applicants have incurred legal fees with regard to the above matters and in filing statements of opposition to water rights applications to protect their water rights, including the Newbery Water Intake and its plan for augmentation. In addition, the Applicant Alexander McCulloch, has spent a substantial amount of time and has incurred costs in the administration and performance of the above diligence work for the development of his property and water rights. **WHEREFORE**, the Applicants request that this application be granted and that continued diligence be found for the Newbery Water Intake, plus such other and further relief as the Court deems appropriate.

(Application, 4 pages)

CASE NO. 03CW80 – CUERNO VERDE AIRPORT ASSOCIATES, INC., c/o Wray S. Pedro, P. O. Box 5542, Colorado Springs, CO 80931-5542 (James G. Felt and Bradford R. Benning, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903)
Application To Amend Plan For Augmentation
Custer County

B. DESCRIPTION OF EXISTING PLAN FOR AUGMENTATION: Judgment and Decree was entered on September 13, 1985 in Case No. 85CW11 approving a plan for augmentation for a subdivision development for the Cuerno Verde Airport, a.k.a. Silver-West Airport and Business Park, located southeast of Westcliffe, Colorado. The plan called for replacement of depletions caused by the pumping of individual wells for the household use only purposes for fifty (50) single family residences with septic leach field type disposal, two hundred (200) condominium units and twenty (20) commercial units whose water would be

supplied through a central water system with waste water being disposed of by way of a mechanical treatment or municipal type waste water treatment plant and the irrigation of lawns, gardens, trees and shrubs not to exceed 1.5 acres. The decreed annual gross water requirement was 42.31 acre feet allocated 15.6 acre feet to in-house domestic uses in single family residences, 17.15 acre feet allocated to condominium in-house domestic use, 6.27 acre feet for commercial uses and 3.21 acre feet of water allocated to irrigation. The total consumptive use from all uses was calculated to be not greater than 5 annual acre feet allocated 1.57 acre feet for the single family residences, 1.18 acre feet for the condominium/commercial development and 2.25 acre feet for the annual consumptive demand for 1.5 acres of irrigation uses. Depletions caused by Applicant's use of water occurs to the lower reaches of Antelope Creek and Froze Creek. The replacement water to augment depletions was 5 acre feet of consumptive use water made available to Antelope Creek, a tributary of Grape Creek, from dry up of historically irrigated lands irrigated by the John L. Schwab Ditch No. 1, Priority No. 45, and John L. Schwab Ditch No. 1, Priority No. 299, Water District 13, adjudicated on May 13, 1893 by the District Court of Fremont County. Historic use findings were made by the Court and 0.2252 cfs equally apportioned between the two John L. Schwab Ditch No. 1 priorities was permanently dedicated to the plan. Terms and conditions were set forth in the decree and dry up was certified by the Water Commissioner. The Water Court found that the Westcliffe fault intercepts the augmentation water provided by the John L. Schwab No. 1 Ditch rights therefore allowing the augmentation water to be available year round to Grape Creek and the Arkansas River basin and thereby avoiding injury to other water rights. Since the Applicants have had their plat approved 3 well permits have been issued for residential units, 2 of which are currently in use. **C. STATEMENT OF REQUESTED AMENDMENT:** As a result of the planning and platting process with Custer County and changing market demands for the development, Applicants have actually platted only 46 single family residential units, have determined to eliminate all of the condominium units and are requesting to reduce the 20 commercial units to 6 commercial lots. The remaining 6 commercial lots will no longer be serviced by a central water system nor central sewer plant for waste water disposal, but rather will be serviced by individual wells with septic leach field type disposal systems. The reduction in size of the development allows excess consumptive use water to be available for livestock use. The Silver-West Airport and Business Park is a portion of the lands originally augmented by the Applicants in 85CW11 and is located in a portion of Section 25, Township 23 South, Range 72 West of the 6th P.M. and a portion of Sections 30 and 31, Township 23 South, Range 71 West of the 6th P.M. in Custer County. The requested changes to the augmentation plan are as follows. 1. Reduce the number of single family residences on individual well and septic systems from 50 to 46. 2. Eliminate all multi-family units. 3. Decrease irrigation from 1.5 acres to 1.12 acres. 4. Reduce commercial use from 20 units to 6 units. 5. Add horse use for a potential total of 154 horses for the subdivision development. A comparison summary of the augmentation

requirements under the existing plan and as requested in this amendment is set forth as follows:

SUMMARY OF AUGMENTATION REQUIREMENTS

in Acre-Feet

<u>Category of Use</u>	<u>As Decreed in Case No. 85CW11</u>		<u>As Existing and Changed</u>	
	<u>No. Of Units or Area</u>	<u>Annual Augmentation Requirement</u>	<u>No. Of Units or Area</u>	<u>Annual Augmentation Requirement</u>
Single-family residences	50	1.57	46	1.44
Condominiums	200	0.86	0	0
Irrigation	1.5 acres	2.25	1.12 acres	1.645
Commercial	20	0.31	6	0.19
Horses	<u>0</u>	<u>0</u>	<u>154</u>	<u>1.725</u>
	Total =	4.99	Total =	5.0

The consumptive use requirements for the single family residences and irrigation remains the same as decreed in 85CW11. Consumptive use for horse watering is calculated on the basis of 10 gallons per horse per day at a 100% consumptive use rate for 154 horses for a total of 1.725 acre feet annual depletions from potential horse watering. The in-house commercial water demand remains the same per unit, but the consumptive use rate from septic leach field disposal for the commercial demand increased from 5% to 10%. Except as herein specifically requested to be changed, the Decree in 85CW11 shall remain in full force and effect. **D. THE NAMES AND ADDRESSES OF THE PERSONS WHO OWN PROPERTY UPON WHICH THE POINTS OF DIVERSION (WELLS) AND PLACES OF USE OF THE PROPOSED AUGMENTATION PLAN ARE AS FOLLOWS:** Applicants have sold lots to 12 different parties since the original Decree in this matter was entered. The names and addresses of those parties and actual notice to those parties has been provided by the certificate of mailing of this Application attached to the 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. The balance of the property is owned by the Applicant. A map showing the location of the Silver-West Airport and Business Park is attached to the Application as Exhibit B. The Decree with Ruling of Referee in 85CW11 is attached to the Application as Exhibit C. The notice of compliance with Decree is attached to the Application as Exhibit D. (Application and attachments, 32 pages)

CASE NO. 03CW81 – DON D. GREGORY, 12481 Lost Canyon Trail, Parker, CO 80138 and FOUNTAIN MUTUAL IRRIGATION COMPANY (“FMIC”), 325 Haversham Drive, Colorado Springs, CO 80906 (James G. Felt and Steven T.

Monson, Attorneys for Applicants, Felt, Monson & Culichia, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903)

Application for Plan of Augmentation

El Paso County

NAMES OF STRUCTURES TO BE AUGMENTED A. Janitell Well No. 104, State Engineer Permit R-19486-RF, adjudicated in the Water Court, Water Division 2, Case No. W-2694 entered June 21, 1976 and adjudicated for two points of diversion located as follows: SW ¼ SW ¼ Section 28, Township 14 South, Range 66 West, 6th PM, El Paso County, Colorado (A) at a point whence the SW corner of Section 28 bears south 88° one minutes west a distance of 680 feet; (B) at a point whence the SW corner of Section 28 bears south 88° one minute west a distance of 810 feet. The amount of water adjudicated was 3.0 cfs (1,350 gpm) for irrigation and fish purposes with a priority date of May 1, 1928 and for municipal purposes with a priority date of June 1, 1965. B. Janitell Well No. 104, State Engineer Permit 26863-F, adjudicated in Case No. W-2694 as the second point of diversion for Janitell Well No. 104 for the same amounts and purposes as set forth above. The cumulative pumping rate for both wells is 1,350 gpm. C. Don Gregory Well, State Engineer Permit No. 28725-F. There is no decree for the Don Gregory Well. This well was drilled to supplement the production of the two wells drilled pursuant to the Decree for Janitell Well No. 104 referenced above. The combined maximum pumping rate for this well and for the two wells represented by Janitell Well No. 104 is permitted not to exceed 1,350 gpm. The well is located in the SW ¼ SW ¼ Section 28, Township 14 South, Range 66 West of the 6th PM in El Paso County, Colorado approximately 200 feet northwest of Janitell Well No. 104 alternate point B as set forth above. All wells are located within the Applicant’s property known as the Circle Drive Mobile Home Park, 2840 S. Circle Drive, Colorado Springs, CO 80906. **3.**

WATER RIGHTS TO BE USED FOR AUGMENTATION A. The water rights to be used for augmentation are 10 shares of Fountain Mutual Irrigation Company common stock (“FMIC”). FMIC diverts its water to the Fountain Mutual Ditch from Fountain Creek, tributary to the Arkansas River at its headgate located in the SW1/4 of Section 20, Township 14 South, Range 66 West of the 6th P.M. FMIC’s water rights were originally decreed for irrigation purposes. Those water rights have been the subject of numerous change actions and plans for augmentation. FMIC water rights are decreed as follows:

DIRECT FLOW

Fountain Creek Priority No.	Priority Date	Decree Date	Total Decree (cfs)
4	9/21/1861	3/06/1882	9.84 (5.38) ¹
7	4/01/1862	3/06/1882	1.125
11	2/01/1863	3/05/1882	16.69
17	12/31/1863	3/06/1882	4.25 (2.125) ²
21	12/31/1864	3/06/1882	4.65
28	12/31/1866	3/06/1882	8.48
29	12/31/1867	3/06/1882	6.45
41	9/21/1874	3/06/1882	17.05
168	1/31/1903	6/02/1919	343.2

STORAGE

Fountain Creek <u>Priority No.</u>	<u>Priority Date</u>	<u>Decree Date</u>	<u>Total Decree (AF)</u>
Fountain	3/18/1903	6/2/1919	10,000

B. Historic Use. FMIC water rights have been decreed for use in numerous other changes of water rights and plans of augmentation. In those previous cases, this court has determined that each share of FMIC has historically yielded on the average the equivalent of 0.7 acre feet of net replacement or consumptive use water each year, which number represents a portion of the farm headgate delivery. These findings have been previously established by this court, without limitation, in the decrees in Case Nos. 90CW28, 95CW3, 90CW7, 99CW146, 00CW152 and 01CW153, Water Division 2. The replacement or augmentation credit allowed to FMIC water rights has also determined in prior cases as a percentage of the FMIC actual delivery to its shareholders computed on the basis of the following table.

¹ FMIC's interest in Priority No. 4 is 5.38 cfs. The amount of 1.73 cfs was changed on application of Security Water District in Case No. 90CW28. In addition to the 5.38 cfs, FMIC claims the right to divert any of the remaining 2.73 cfs decreed to this priority which is not used by the other owners thereof.

² Priority No. 17 is referred to as the Janitell's right and FMIC has used ½ of the water, or 2.125 cfs, in return for the carriage of the other 2.125 cfs to its owner through the FMIC ditch. By Decree Authorizing Change in Point of Diversion in Civil Action No. 38180, entered July 29, 1959, the point of diversion for this 4.25 cfs of Priority No. 17 of the Laughlin Ditch was changed to the headgate of the Fountain Mutual Ditch.

FMIC REPLACEMENT CREDIT

<u>Month</u>	<u>Replacement Credit as a Percentage of Farm Headgate Delivery</u>
January	47
February	58
March	70
April	70
May	70
June	70
July	72
August	72
September	74
October	66
November	40
December	49

This historic consumptive use of FMIC shares was affirmed in Case No. 95CW3 which findings, together with other recent decrees, are binding as a matter of res judicata. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997). This same historic consumptive use was most recently affirmed in Case Nos. 00CW152 and 01CW153 decreed on August 29, 2001 and May 15, 2002, respectively. There have been no material changed circumstances since these last decrees to modify these historic consumptive use determinations. Applicants request that the Court find that each FMIC share has historically yielded on the average the equivalent of 0.7 acre feet of net replacement or consumptive use water each year, which number represents a portion of farm headgate delivery. The total amount of consumptive use under the FMIC water rights varies from year to year based upon the amount of water available for diversion under those rights. Therefore, the actual consumptive use available from such shares shall be based on actual in-priority diversions applied to the above monthly replacement credits schedule. As Applicants rely upon these prior determinations, diversion records and a map are not submitted. **4. STATEMENT OF PLAN FOR AUGMENTATION A. Introduction:** Applicant owns the Circle Drive Mobile Home Park. The park is located adjacent to Fountain Creek within the city limits of Colorado Springs in the vicinity of South Circle Drive and Interstate 25 in the SW ¼ SW ¼ Section 28, T14S, R66W, 6th PM. The park consists of 302 mobile home sites and common areas. The water uses are for the domestic in-house use and lawn and garden irrigation of the mobile home sites and a common playground area. There are approximately 7.1 acres of irrigable lawns within the park. Applicant owns the three wells named as structures to be augmented. Water pumped from the wells is delivered to the Garden Valley Water and Sanitation District for treatment and then returned to the park for delivery to its users. Sewage effluent from the residents of the mobile home park is processed by the Garden Valley Water and Sanitation District through its central wastewater treatment plant located adjacent to Applicant's property, with return flows from that plant directly returning to Fountain Creek. Applicant has historically augmented its junior wells by a

membership in the Colorado Water Protective and Development Association (“CWPDA”) and now wishes to permanently augment domestic uses of the mobile home park and as remaining augmentation credit may allow certain of the irrigation of lawn and garden. Applicant will supplement any balance of its augmentation requirement by utilization of Fryingpan Arkansas-Arkansas Project Water through the Southeastern Colorado Water Conservancy District and/or remain a member of CWPDA or such other organization for the purposes of replacement of any depletions from additional lawn and garden watering not covered by this plan. **B. Water Demand:** **1. In-house Use:** Applicant’s mobile home park is exclusively marketed to senior residents. Twenty-five percent of the residents are single, therefore, assuming that there are 1.8 people per unit and that the park is normally at eighty-five percent occupancy using 80 gallons of water per day or 0.09 acre foot of water per year per resident, an annual water demand for indoor domestic water use is 41.4 acre feet. The central waste water treatment facility of the Garden Valley Water and Sanitation bank located just south of the park consumes five percent of the total indoor water use. The consumptive use associated therefore with in-house use is approximately 2.3 acre feet per year. Indoor water use depletions occur on a constant year round basis. **2. Lawn Irrigation:** The total lawn irrigation within the park is 7.1 acres of irrigable area and assuming that over the growing season (April to October) 9 inches of water is applied to turf and garden area this would yield a net application of 5.3 acre feet. Applicant has instituted a drought water conservation plan in which lawn watering is limited to one hour in the morning and one hour in the evening two days per week. The Colorado Division of Water Resources commonly allows a return flow credit of fifteen percent for turf irrigation. Therefore, there is a net consumptive use of 4.5 acre feet associated with 5.3 acre feet per year of turf irrigation diversions. **C. Depletion Analysis:** Well pumping occurs on a year round basis, with greater amounts pumped during the irrigation season associated with lawn irrigation. The three wells are located a distance of approximately 1,300 feet from Fountain Creek and are drilled into the alluvium thereof. Applicant’s engineers have completed a lag depletion analysis using the Glover method. Based on an average saturated thickness of 17 feet, a coefficient impermeability of 2,000 gallons per day per square foot, transmissibility of 34,000 gallons per day per foot and specific yield of 0.25, a stream depletion factor of 93 is computed. Assuming 46.2 acre feet per year is pumped for year round in-house domestic purposes at five percent consumptive use rate from the central sewer treatment plant and 5.3 acre feet is pumped for lawn irrigation, assuming an eighty-five percent efficiency, the stream depletions are summarized for steady state conditions as follows:

Month	Gross Depletion (acre feet)	Sewered Return (acre-feet)	Net Depletion (acre-feet)	Net Depletion as a Percentage of Annual Total
Jan	4.11	3.66	0.45	6.7
Feb	4.07	3.66	0.41	6.1
Mar	4.04	3.66	0.38	5.6

Apr	4.02	3.66	0.36	5.3
May	4.02	3.66	0.36	5.4
June	4.12	3.66	0.46	6.8
July	4.29	3.66	0.63	9.3
Aug	4.50	3.66	0.84	12.4
Sept	4.56	3.66	0.90	13.3
Oct	4.46	3.66	0.80	11.8
Nov	4.31	3.66	0.65	9.6
Dec	4.18	3.66	0.52	7.7
Totals	50.7	43.9	6.8	100.0

The overall annual depletion associated with pumping of 51.5 acre-feet is 6.8 acre-feet. Average depletion as a percentage of well pumping is 13.2 percent.

D. Operation of the Plan: The release of the replacement water from the FMIC water rights will be made to replace those monthly depletions as calculated in accordance with the Glover analysis for the diversions from each of the wells. Applicant's pro rata interest in FMIC's 10,000 acre feet of decreed storage in Big Johnson Reservoir will be stored in Big Johnson Reservoir, together with any excess consumptive use credits from FMIC shares dedicated for augmentation purposes. Such storage and use shall be in accordance with FMIC rules and regulations. The water so stored in Big Johnson Reservoir is to be used as augmentation for an intraditch exchange during any month in which Applicant's deliveries of water under its direct flow rights to the Spring Creek augmentation station may be inadequate. The intraditch exchange from Big Johnson Reservoir to the Spring Creek augmentation station will operate at any time FMIC is diverting water, except when both (a) Big Johnson Reservoir is full, and (b) the date is between November 15 and March 15. This intraditch exchange shall exist from Big Johnson Reservoir, which is located in Sections 8, 17 and 18, Township 15 South, Range 65 West, 6th P.M., up the Fountain Mutual Ditch to the location of the Spring Creek augmentation station in the NE1/4 of Section 29, Township 14 South, Range 66 West, 6th P.M. As an alternative to the Spring Creek augmentation station, if FMIC obtains approval for and constructs a new augmentation station on Fountain Mutual Ditch down gradient from Big Johnson Reservoir, Applicant's replacements may also be made by releasing water from Big Johnson Reservoir and returning it to Fountain Creek through the new augmentation station, in addition to the intraditch exchange. Such releases can be made at any time to the extent that Applicant owns a pro rata portion of the water stored in Big Johnson Reservoir. Applicant's FMIC water rights as changed herein for augmentation purposes will be permanently removed from their historical use for irrigation and the historically irrigated property will no longer be irrigated at such time as these shares are committed to meet depletions under this plan of augmentation. Until so used in this plan of augmentation, such FMIC shares may be continued to be used through the Fountain Mutual Ditch in accordance with the terms of its decrees. Once shares have been dedicated to this plan for replacement purposes, those shares will not

be used for other purposes absent a new water court application. The Fountain Mutual system is a water short system, and the withdrawal of water deliveries under the Fountain Mutual Ditch to lands under the FMIC system results in naturally reduced irrigation and the dry up of property. No dry up covenant of Fountain Mutual lands is therefore required for shares committed to this plan of augmentation. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997); and Case Nos. 99CW146, 00CW152 and 01CW153. Applicant's average annual replacement credit from the 10 shares of FMIC stock will be 7.0 acre feet. Applicants propose the following additional terms and conditions to prevent injury to other vested water rights by this Application: 1. A totalizing flow meter will be installed on all wells to allow accurate monitoring of this augmentation plan. 2. Monthly accountings shall be made to the Division Engineer demonstrating compliance with this plan for each well, including diversions for each well, total stream depletions, available augmentation water credit and any intraditch exchange. Augmentation water available under Applicant's FMIC shares and measured through the augmentation station shall equal or exceed the out of priority depletions of the Applicant's wells. NAMES AND ADDRESSES OF OWNERS OF LAND ON WHICH STRUCTURES ARE LOCATED AND UPON WHICH WATER WILL BE PLACED TO BENEFICIAL USE: Applicant is the owner of the Circle Drive Mobile Home Park and the three wells to be augmented. The Decree in W-2694 and its Ruling of Referee is attached to the 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. The well permits for the structures to be augmented are attached to the Application as Exhibit B. A map showing the location of the Circle Drive Mobile Home Park and the structures to be augmented is attached to the Application as Exhibit C. WHEREFORE, the Applicants request that this Application for Plan for Augmentation be granted as requested herein, and for such other and further relief as the court deems appropriate in these circumstances.
(Application and attachments, 26 pages)

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 October 2003, (forms available at Clerk's office, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$70.00). 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.

Witness my hand and the seal of this Court this 9th day of September, 2003.

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

(Court seal)
Published: September _____, 2003