

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED DURING AUGUST 2004  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications, and certain amendments, filed during August 2004, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CASE NO. 04CW19 – DENNIS O. BOCKHAUT, 10695 Thomas Road, Colorado Springs, CO 80908**

Amended Application for Water Rights (Surface) and Amended Application for Water Storage Right  
Fremont County

**2. Name of structure:** Serendipitous Spring. **3. Legal description of each point of diversion:** Fremont County, SW ¼ of the SE ¼ Section 34, Township 20 South, Range 72 West, 6<sup>th</sup> P.M., 1250 feet from the South line and 2750 feet from the West line. **Street Address:** 229 Spring Road. **Subdivision:** Cody Park, Lot 3, Filing 15, Block 19. **4. Source:** Spring – defined as: discharge of ground water onto the surface in sufficient quantity so as to produce a current of flowing water. **5. A. Date of initiation of appropriation:** February 29, 2004. **B. How appropriation was initiated:** Water right application submitted. Sign stating intent posted at spring. **C. Date water applied to beneficial use:** Not yet applied. **6. Amount claimed:** .014 cfs Conditional. **7. Use or proposed use:** Impound water in a pond for wildlife habitat, recreation, fire suppression, and household garden watering. **A. If irrigation, complete the following:** NA. **B. If non-irrigation, describe purpose fully:** Approximately 37,000 gallons of water will be impounded by expanding the natural pools currently fed by the spring. This will be achieved by excavating to a depth to 5-6 feet, to a width of 15-20 feet, and minimizing seepage using bentonite and/or artificial lining. The resulting pond will be approximately 50 feet long by 20 feet wide by 5 feet deep. The water level will be at or below the natural ground level. A dam will not be needed. Fire protection – The estimated 37,000 gallons of stored water far exceeds the 4000 gallons of water stored for fire suppression as recommended by the Cody Park Owners Association. Non-consumptive use expected. Consumptive use on emergency basis only. Recreation – Picnic area, wildlife observation, and rest, relaxation, and renewal for mind and body. Non-consumptive use. Wildlife habitat – Non-consumptive use. Watering household garden – Well permit does not allow use of well for watering garden. Consumptive use, although minimal through use of drip irrigation, heavy mulching, etc. Estimated gallons per week for 25' x 40' is approximately 550 gallons. **8. Name and address of the owner of land on which points of diversion and place of use are located:** Applicant.

### Amended Application for Storage Right

**2. Name of Reservoir:** Serendipitous Pond. **3. Legal description:** **A. Location of Dam:** Fremont County, SW ¼ of the SE ¼ Section 34, Township 20 South, Range 72 West, 6<sup>th</sup> P.M., 1275 feet from the South line and 2750 feet from the West line. **Street Address:** 229 Spring Road, **Subdivision:** Cody Park **Lot 3 Filing 15; Block 19.** **4. Source:** Serendipitous Spring. **5. A. Date of appropriation:** February 29, 2004. **B. How appropriation was initiated:** Sign stating intent posted at pond location. Water right application submitted. **C. Date water applied to beneficial use:** Not yet applied. **6. Amount claimed:** **A. In acre feet:** .115 Conditional. **7. Use:** Approximately 37,000 gallons of water will be impounded by expanding the natural pools currently fed by the spring. This will be achieved by excavating to a depth of 5-6 feet, to a width of 15-20 feet, and minimizing seepage using bentonite and/or artificial lining. The resulting pond will be approximately 50 feet long by 20 feet wide, by 5 feet deep. The water level will be at or below the natural ground level. A dam will not be needed. Fire protection – The estimated 37,000 gallons of stored water far exceeds the 4000 gallons of water stored for fire suppression as recommended by the Cody Park Owners Association. Non-consumptive use expected. Consumptive use on emergency basis only. Recreation – Picnic area, wildlife observation, and rest, relaxation, and renewal for mind and body. Non-consumptive use. Wildlife habitat – Non-consumptive use. Watering household garden – Well permit does not allow use of well for watering garden. Consumptive use, although minimal through use of drip irrigation, heavy mulching, etc. Estimated gallons per week for 25' x 40' is approximately 550 gallons. **8. Surface area of high water line:** 1000 sq. ft. **A. Maximum height of dam in feet:** No dam; **B. Length of dam in feet:** No dam. **9. Total capacity of reservoir in acre feet:** .115. **Active capacity:** None – water is stored below natural ground level; **Dead storage:** .115. **10. Name(s) and address(es) of owner(s) of land on which structures for the water right is located (land where dam is located and land within high water line):** Applicant.

(Amended Application and attachments, 6 pages)

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### **CASE NO. 04CW63 – BRUS and VALERIE SVIHUS, 312 “F” Street, Alpine Square, Salida, CO 81201**

Application for Water Right (Surface)

Chaffee County

**2. Name of structure:** 4-Elk Creek/Stream. **3. Legal description of each point of diversion:** Chaffee County, S ½ N ½ NW ¼ Section 22, Township 13 South, Range 79 West, 6<sup>th</sup> P.M., 800 feet from the North line and 1240 through 1927 feet from the West line. **Subdivision:** 4-Elk Subdivision. **Lot:** 17. **4. Source:** 4-Elk Creek/Stream. **5. A. Date of initiation of appropriation:** Pre-1967. **B. How appropriation was initiated:** Pending info. **C. Date water applied to beneficial use:** Pending info. **6. Amount claimed:** \_\_\_\_\_. **7. Use or proposed use:** To allow water to flow throughout property to public pond, fire protection and recreation to subdivision owner. **A. If irrigation, complete the**

**following: Number of acres historically irrigated: \_\_\_\_; proposed to be irrigated. \_\_\_\_.** **Legal description of acreage:** Lot No. 17, Four Elk Camp, according to the plat filed December 1967 and amended February 5, 1968, Chaffee County, Colorado. **B. If non-irrigation, describe purpose fully:** I now request the consideration of the Water Court to accept my application for Water Rights on my property and in the stream known as 4-Elk which flows through our property historically at full length within our 5 acres (from West to East). **8. Name(s) and address(es) 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: \_\_\_\_.**  
(Application and attachments, 5 pages)

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**CASE NO. 04CW64 – HAMILTON S. and PAMELA M. DUROW, 4190 Spaatz Road, Monument, CO 80132**

Application for Underground Water Right  
El Paso County

**Name of well and permit, registration or denial number:** 125782. **3. Legal description of well:** El Paso County, SW ¼ of the NW ¼ Section 28, Township 11 South, Range 67 West, 6<sup>th</sup> P.M. **Street Address:** 4190 Spaatz Road, Monument, CO 80132. **Subdivision:** Pine Hills Add. 3, Lot 3, Block 2. **4. A. Source:** Denver Aquifer; **B. Depth:** 620 ft. **5. A. Date of appropriation:** May 11, 1982. **B. How appropriation was initiated:** application. **C. Date water applied to beneficial use:** July 22, 1982. **6. Amount claimed:** 15 gpm Absolute. **7. If well is non-tributary:** N/A. **8. Proposed use:** **A. If irrigation, complete the following:** N/A. **B. If non-irrigation, describe purpose fully:** Domestic, lawn and garden. **9. Names 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.  
(Application, 3 pages)

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**CASE NO. 04CW65 – FRED R. and JUDITH R. WOODCOCK, 6889 Highway #82, Twin Lakes, CO 81251** (Anthony L. Martinez, Attorney for Applicants, P. O. Box 767, Salida, CO 81201)

Application for Approval of Plan for Augmentation  
Lake County

**2. Name of structure to be augmented:** Twin Peaks Pipeline. **Are there other water rights diverted from this structure?** No. **3. Previous decree(s) for water right(s) to be used for augmentation:** The singular source of replacement water is a share of Twin Lakes Reservoir and Canal Company owned by Applicants. Decree information for Twin Lakes Reservoir and Canal Company is as follows: (1) Twin Lakes Reservoir and Canal Company – Independence Pass Transmountain Diversion System. The Independence Pass Transmountain Diversion System diverts water from the headwaters of Roaring Fork River and its tributaries, and carries such water through the Continental Divide for delivery to Lake Creek, a tributary of the Arkansas River. The System

is decreed for 625 c.f.s. through the transmountain tunnel by Decree dated August 25, 1936, with an appropriation date of August 23, 1930, by the District Court, Garfield County, Civil Action No. 3082. The original Decree for the system was modified by a Decree in Case No. W-1901 (District Court, Water Division No. 5) dated May 12, 1976, which Decree contains additional limits more fully set forth therein. The land upon which most of the above diversion system is located is owned by the United States of America and is administered by the Department of Agriculture, National Forest Service, Rocky Mountain Regional Office, 740 Simms, P. O. Box 25127, Lakewood, CO 80225. Its phone number is 303-275-5350. (2) Twin Lakes Canal and Reservoir Company – Twin Lakes Reservoir and Twin Lakes Reservoir Enlargement. Native water stored in Twin Lakes Reservoir pursuant to the Decrees for the Twin Lakes Reservoir and Canal Company adjudicated in Civil Action No. 2346, District Court of Chaffee County, on July 14, 1913, with an appropriation date of December 15, 1896, for 20,645.3 acre-feet and March 29, 1987, for 33,806.7 acre-feet, as changed by Decree in Case No. W-3965, Water Division No. 2, entered April 19, 1974. The land upon which Twin Lakes Reservoir is located is owned by the United States of America and is administered by the Department of Agriculture, National Forest Service, Rocky Mountain Regional Office, 331 Main Street, Ordway, CO 81063. Its phone number is 719-267-4411. **A. Type of water right:** Pipeline. **B. Legal description of point of diversion or place of storage.** Lake County, SE ¼ of the NE ¼ Section 24, Township 11 South, Range 81 West, 6<sup>th</sup> P.M., 1700 feet from the North and 1200 feet from the East. **Street Address:** 6889 Highway #82, Twin Lakes, CO. **C. Source:** Gordon Creek. **D. Amount:** .25. **E. Appropriation:** May 1, 1971. **F. Decreed use:** Commercial, domestic, irrigation, livestock, wildlife and recreation. **4. Historic use:** \_\_\_\_\_. **5. Statement of plan for augmentation, covering all applicable matters under CRS 37-92-103(9), 302(1)(2) and 305(8). Give full details of plan, including a description of all water rights to be established or changed by the plan.** Applicant owns and operates Twin Peaks Enterprises, which is a house with attached Gift Shop and three (3) cabins. The share of Twin Lakes water will be used to augment irrigation uses in the summer and commercial and domestic uses year around. **6. Name and address of owner of the land on which structures 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:** Kermit Johnson, c/o J. M. Bailey, 2218 S. Chatham Street, Janesville, WI 53546-6169. (Application, 8 pages)

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**CASE NO. 04CW66 – CYNTHIA SMITH, P. O. Box 295, San Marcos, CA 92079**

Application for Water Rights (Surface)  
Chaffee County

**2. Name of structure:** Truro Spring. **3. Legal description of each point of diversion:** NW ¼ NW ¼ Section 27, Township 12 South, Range 81 West, 6<sup>th</sup> P.M., 475 feet from North line and 550 feet from West line, Chaffee County, Colorado. **Subdivision:** Truro, Lots A & B. **4. Source:** Natural spring. **5. A.**

**Date of initiation of appropriation:** unknown. **B. How appropriation was initiated:** Undeveloped. **C. Date water applied to beneficial use:** 7/20/04. **6. Amount claimed:** \_\_\_\_ - gpm Conditional. **7. Use or proposed use:** Domestic use (in-house) – single family residence. **A. If irrigation, complete the following:** N/A. **B. If non-irrigation, describe purpose fully:** Rural cabin – rarely accessible in winter months. **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:** Applicant. **9. Remarks:** This is not same structure as Winfield Lot N Spring Pipeline.

(Application, 3 pages)

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**CASE NO. 04CW67 – GRIFFIN RANCH, LLC, 420 Royal Gorge Blvd., Suite 201, Canon City, CO 81212**

Application for Change of Water Right

Fremont County

**2. Decreed name of structure for which change is sought:** Griffin Ditch No. 1; Griffin Ditch No. 2; Griffin Ditch No. 3; Griffin Ditch No. 4; Griffin Ditch No. 5.

**3. From previous Decree: A. Date Entered:** Griffin Ditch Nos., 1, 2, 3, 4 and 5: 02/03/1894; **Case Nos.:** Griffin Ditch No. 1: 722; Griffin Ditch No. 2: 723; Griffin Ditch No. 3: 724; Griffin Ditch No. 4: 725; Griffin Ditch No. 5: 726. **Court:** Griffin Ditch Nos. 1, 2, 3, 4 and 5: 12. **B. Decreed point of diversion:** Griffin Ditch No. 1: The headgate of said ditch is situated on the West side of Oak Creek at a point 867 feet N. 49 degrees W. from the S. E. corner of Section 23, Tsp. 20S., R. 71 W. Griffin Ditch No. 2: The headgate of said ditch is situated on the West side of Oak Creek at a point 450 feet S. 74 degrees and 8 minutes E. from the N. E. corner of the S. E. quarter of Section 26, Tsp. 20S., R. 71W. Griffin Ditch No. 3: The headgate of said ditch is situated on the East side of Oak Creek at a point 673 feet S. 53 degrees and 5 minutes from the N. W. corner of the S. W. quarter of Section 25, Tsp. 20 S., R. 71W. Griffin Ditch No. 4: The headgate of said ditch is situated on the East side of Oak Creek at a point 397 feet N., 65 degrees and 45 minutes W. from the S. E. corner of the N. E. quarter of Section 23, Tsp. 20S., R. 71W. Griffin Ditch No. 5: The headgate of said ditch is situated on the West side of Oak Creek at a point 954 feet S., 71 degrees and 10 minutes E. from the N. E. corner of the S. E. quarter of Section 23, Tsp. 20S., R. 71W. **C. Source:** Griffin Ditch Nos. 1, 2, 3, 4 and 5: Oak Creek. **D. Appropriation Date:** Griffin Ditch No. 1: 10/01/1877, 04/03/1880. Griffith Ditch No. 2: 07/31/1881, 12/31/1887, 06/01/1888; Griffin Ditch No. 3: 07/01/1881, 05/31/1886; Griffin Ditch No. 4: 04/30/1885, 05/31/1891; Griffin Ditch No. 5: 05/01/1883. **Amount:** Griffin Ditch No. 1: 1.0 cfs; Griffin Ditch No. 2: 1.0 cfs; Griffin Ditch No. 3: 1.4 cfs; Griffin Ditch No. 4: 1.0 cfs; Griffin Ditch No. 5: 1.0 cfs. **E. Historic use:** Griffin Ditch No. 1: Original adjudication, construction and beneficial use irrigating 12 acres. Griffin Ditch No. 2: Original adjudication, construction and beneficial use irrigating 10 acres; Griffin Ditch No. 3: Original adjudication, construction and beneficial use irrigating 35 acres; Griffin Ditch No. 4: Original adjudication, construction and beneficial use

irrigating 22 acres; Griffin Ditch No. 5: Original adjudication, construction and beneficial use irrigating 6 acres. **4. Proposed change:** Griffin Ditch No. 1: Request moving diversion point upstream approximately 3,960 feet for more efficient irrigation utilizing schedule 80 pvc pipe. Stream structure to become the common diversion point for all 5 Griffin ditches. Griffin Ditch No. 2: Request moving diversion point upstream approximately 300 feet for more efficient irrigation utilizing schedule 80 pvc pipe. Stream structure to become the common diversion point for all 5 Griffin ditches. Griffin Ditch No. 3: Request moving diversion point upstream approximately 150 feet for more efficient irrigation utilizing schedule 80 pvc pipe. Stream structure to become the common diversion point for all 5 Griffin ditches. Griffin Ditch No. 4: Request moving diversion point upstream approximately 6,900 feet for more efficient irrigation utilizing schedule 80 pvc pipe. Stream structure to become the common diversion point for all 5 Griffin ditches. Griffin Ditch No. 5: Request moving diversion point upstream approximately 7,200 feet for more efficient irrigation utilizing schedule 80 pvc pipe. Stream structure to become the common diversion point for all 5 Griffin ditches. **If a change in point of diversion, please provide legal description:** Griffin Ditch Nos. 1, 2, 3, 4 and 5: NW ¼ of the SW ¼ Section 25, Township 20 South, Range 71 West, 6<sup>th</sup> P.M., 2,942 +/- feet from the North line and 452 +/- feet from the West line. **Street Address:** 13256 CR 143; **Subdivision:** Homestead on Oak Creek; Lot 10. **Optional Additional Description:** GPS location information in UTM format. Settings as follows: Format, UTM; Zone, 13; Units, Meters; Datum, NAD27 (CONUS). **Were points averaged?** Yes. **Northing,** 475380; **Easting,** 4236690. **5. Name and address of owner or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.  
(Application and attachments, 34 pages)

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**CASE NO. 04CW68 – RONNIE J. and MARY F. GARCIA, 2233 Woodhollow Road, Denton, TX 76208-7349**

Application for Water Rights (Surface)

Huerfano County

**2. Name of structure:** Garcia Spring. **3. Legal description of each point of diversion:** Huerfano County, NE ¼ of the SE ¼ Section 14, Township 27 South, Range 70 West, 6<sup>th</sup> P.M., 2650 feet from South line and 770 feet from East line. **Street Address:** 6241 C.R. 540, Gardner, CO 81040. **Subdivision:** Colorado Land and Grazing, Lot 241 Unit CC-2. **Optional Additional Description:** **GPS location information in UTM format. Required settings for GPS units are as follows: Format must be UTM; Zone must be 13; Units must be Meters Datum must be NAD27 (CONUS) and; Units must be set to true north. Were points averaged?** Yes. **Northing** 13S0484045 **Easting** 4172591. **4. Source:** Spring tributary of Oak Creek, a tributary of the Huerfano River. **5. A. Date of initiation of appropriation:** August 26, 2004. **B. How appropriation was**

**initiated:** Spring box, water line, cistern and stock tank installed. **C. Date water applied to beneficial use:** August 26, 2004. **6. Amount claimed:** .03333 cfs Absolute. **7. Use or proposed use:** Household use, livestock watering, home garden. **A. If irrigation, complete the following: Number of acres historically irrigated:\_\_\_; proposed to be irrigated. \_\_\_.** **Legal description of acreage: \_\_\_.** **B. If non-irrigation, describe purpose fully:** Household use, livestock watering, home garden. **8. Name(s) and address(es) 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, 6 pages)

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**CASE NO. 04CW69 – C. DWAIN NELSON, 1002 Cedars Drive, McPherson, KS 67460; 1281 C.R. 131, Westcliffe, CO 81252**

Application for Water Rights (Surface)

Custer County

**2. Name of structure:** Cougar Crossing Spring. **3. Legal description of each point of diversion:** Custer County, SE ¼ NE ¼ Section \_\_\_\_, Township 23 South, Range 73 West, 6<sup>th</sup> P.M., 1960 feet from the North line and 400 feet from the East line. **Street Address:** 101 Ridgeline Drive. **Subdivision:** Macey Creek Ranch Filing No. 2. **Lot:** 14. **Optional Additional Description: GPS location information in UTM format. Required settings for GPS units are as follows: Format must be UTM; Zone must be 13; Units must be Meters Datum must be NAD27 (CONUS) and; Units must be set to true north. Were points averaged? No. Northing 4210119N Easting 130455402E.** **4. Source:** Spring. **5. A. Date of initiation of appropriation:** 5-28-63. **B. How appropriation was initiated:** Construction of spring. **C. Date water applied to beneficial use:** 5-28-63. **6. Amount claimed:** 0-26 gpm. **7. Use or proposed use:** Irrigation of lawn and landscape vegetation, fire protection. **A. If irrigation, complete the following: Number of acres historically irrigated: 3600 sq. ft.; proposed to be irrigated: Same. Legal description of acreage:** The most southerly 3600 sq. ft. of the Nelson Parcel 6 of Matthaei Subdivision as defined in a deed recorded in Book 144 at Page 236 of the Custer County, Colorado records. **B. If non-irrigation, describe purpose fully: \_\_\_\_.** **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:** 1281 CR 131.

(Application and attachments, 4 pages)

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**CASE NO. 04CW70 – MESA ANTERO WATER ASSOCIATION, a Colorado non-profit corporation, c/o James B. Speier, President, P. O. Box 211, Nathrop, CO 81236** (Robert F. T. Krassa, Krassa & Miller, LLC, Attorney for Applicant, 1680 – 38<sup>th</sup> Street, Suite 800, Boulder, CO 80301-2611)

Application for Change of Water Right

Chaffee County, Colorado

**2. Decreed name of structure for which change is sought:** Mesa Antero Well No. 12. **3. From previous Decree: (A) Date entered:** September 21, 1999, Case No. 97CW147; **Court:** District Court, Water Division No. 2. **(B) Decreed Point of Diversion (please see also map on file with Application):** in the SW ¼ NW ¼ of Section 18, T. 51 N., Range 8E of the New Mexico Principal Meridian in Chaffee County, at a point 10 feet from the west line and 1675 feet from the north line of said Section. **Source:** Groundwater tributary to Browns Creek and to the Arkansas River. **(D) Appropriation Date:** October 31, 1997; **Amount:** 60 gpm. **(E) Historic Use:** not applicable; this water right is conditional. **4. Proposed Change:** Applicant proposes to locate Mesa Antero Well No. 12 anywhere within the said SW ¼ of the NW ¼ of Sec. 18, T. 51 North, Range 8E of the New Mexico Principal Meridian in Chaffee County, Colorado. Please see map attached to the application as Exhibit A. All exhibits mentioned herein may be inspected at the office of the Clerk of the Court. No other changes are requested. **5. Names and Addresses of Owners of Land upon which any new structure may be constructed:** William Terry Cannon and Carol Bliss Cannon, P. O. Box 3454, 132 Mountain View Drive, Breckenridge, CO 80424; Chaffee County, P. O. Box 699, Salida, CO 81201; Carl and Gloria A. Charette, 13710 CR 261B, Nathrop, CO 81236; Marilyn Laverty, 6109 South Elm Ct., Littleton, CO 80121; Mesa Antero, LLC, 810 N. Tejon, Colorado Springs, CO 80903; Harley A. and Phyllis B. Penney, 3200 Andover Drive, Bedford, TX 76021; Charles and Jan Azzopardi, 31088 Hathaway, Livonia, MI 48150; Steve Wurz and Gail Nottingham, 13776 CR 261H, Nathrop, CO 81236; Charles R. and Mary Lou Smith, 408 Old Corral Road, Bailey, CO 80421; Mesa Antero Property Owners Association, P. O. Box 56, Nathrop, CO 81236; William F. and Annette Shure, 17680 CR 261R, Nathrop, CO 81236; Stephen S. and Adele M. Jackson, 1142 Fairway Club Lane, Estes Park, CO 80517; Gayle A. Dudley, 13995 CR 261A, Nathrop, CO 81236; Dennis and Patricia A. Molick, 11116 Vera Cruz Avenue North, Champlin, MN 55316; Michael Mark and Colleen Marie Mitchell, P. O. Box 354, Sullivan, IL 61951; Fred B. Syphax, P. O. Box 96, Sequim, WA 98382; Eric G. Edwards, 6432 East Jamison Circle South, Englewood, CO 80112; Jim and Lou Speier Living Trust, 13950 CR 261H, Nathrop, CO 81236; Dean S. and Nancy A. Miller, P. O. Box 172, Nathrop, CO 81236; and William A. Hass, 4927 Eagle Trail Drive, Houston, TX 77084-2923.

(Application and attachments, 6 pages)

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**CASE NO. 04CW71(95CW10) – HERMIT BASIN LODGE, LLC, c/o Paul Zeller, 6578 County Road 130, Westcliffe, CO 81252** (Direct all pleadings to: Michael F. Browning, Porzak Browning & Bushong LLP, Attorneys for Applicant, 929 Pearl Street, Suite 300, Boulder, CO 80302)

Application and Amended Application to Make Portions of Water Rights Absolute and for Finding of Reasonable Diligence

Custer County, Colorado

**2. Name of structures:** (A) Priestly-Robbins Ditch (B) Hermit Basin Upper Pond (C) Hermit Basin Exchange (D) Hermit Basin Well Nos. 1, 2 and 3. **3. Description of Rights:** All of the subject conditional water rights were decreed



by the District Court in and for Water Division No. 2, by decree in Case No. 95CW10 dated August 4, 1998. (A) The Priestly-Robbins Ditch diverts from Middle Taylor Creek in the SW1/4SE1/4 of Section 19, T.22 S., R. 73 W. of the 6<sup>th</sup> P.M. at a point 1,300 feet from the South section line and 1,600 feet from the East section line of said Section 19. It was decreed 0.6 cfs for domestic, landscape irrigation, commercial, fire fighting and recreational (including snowmaking) purposes, with an appropriation date of June 1, 1985, of which 0.033 cfs was decreed absolute and 0.567 cfs was decreed conditional. (B) The Hermit Basin Upper Pond is located in the NW1/4NE1/4 of Section 30, T. 22 S., R. 73 W. of the 6<sup>th</sup> P.M. at a point approximately 1,750 feet from the East section line and 270 feet from the North section line of said Section 30. It is filled from Middle Taylor Creek via the Priestly-Robbins Ditch described above. It was decreed for 2.5 acre feet, conditional, for in storage aesthetic and recreational, with an appropriation date of December 1, 1993. (C) The Hermit Basin Exchange is an appropriative right of exchange on Middle Taylor Creek from the point where water is released thereto from Conquistador Reservoir No. 1 to the Priestly-Robbins Ditch and Hermit Basin Upper Pond described above. The Conquistador Reservoir is located in the SE1/4 of Section 21, T. 22 S., R. 73 W. of the 6<sup>th</sup> P.M. The exchange was decreed for 2 cfs, conditional, with an appropriation date of June 30, 1995. (D) Hermit Basin Well Nos. 1, 2 and 3 were decreed conditionally for 60 gpm each, for domestic, landscape irrigation, commercial, fire fighting and recreational (including snowmaking) uses, each with an appropriation date of June 30, 1995. Well No. 1 is decreed to be located in the NE1/4NE1/4 of Section 30, T. 22 S., R 73 West of the 6<sup>th</sup> P.M. at a point 900 feet from the North section line and 100 feet from the East section line. Well No. 2 is decreed to be located in the NE1/4NE1/4 of said Section 30 at a point 900 feet from the North section line and 900 feet from the East section line. Well No. 3 is decreed to be located in said Section 30 at a point 900 feet from the North section line and 1,700 feet from the East section line. All of the wells will withdraw groundwater tributary to Middle Taylor Creek. **4. Facts in Support of Claim to Make Portions Absolute** (A) Diversions at the Priestly-Robbins Ditch have been made in priority at a maximum rate of 44 gpm (0.098 cfs) and applied to the decreed uses. These diversions were made in priority during periods of no call in the summer of 2004. Accordingly, 0.065 cfs of the 0.567 cfs that is currently conditional should be made absolute (0.098 less 0.033 equals 0.065), leaving 0.502 conditional. (B) Water has been diverted into and stored in the Hermit Basin Upper Pond in the amount of 2.5 acre feet and used for aesthetic and recreational purposes. Accordingly, this entire amount should be made absolute. (C) Water has been released from the Conquistador Reservoir No. 1 into Middle Taylor Creek at a rate in excess of 2 cfs under the Hermit Basin Exchange for the decreed exchange purposes. Accordingly, all 2 cfs of the Hermit Basin Exchange should be made absolute. **5. Facts in Support of Claim for Diligence.** The above facts set forth with respect to the claim to make portions of the subject conditional water rights absolute also establish diligence with respect to the remainder of the conditional water rights. In addition, Applicant has continued to maintain and operate the integrated water

supply system of which the subject conditional water rights are a part, and has begun plans to increase the intake capacity of the system. Applicant has also drilled test holes to determine the possible yield from Hermit Basin Well Nos. 1, 2 and 3. WHEREFORE, applicant requests that the Court make the following portions of the subject conditional water rights absolute and enter a finding of reasonable diligence with respect to the remaining conditional portion of such rights: **Subject Right:** Priestly-Robbins Ditch. **Portion To Be Made Absolute:** 0.065 cfs, in addition to 0.033 cfs previously decreed absolute. **Portion To Remain Conditional:** 0.502 cfs. **Subject Right:** Hermit Basin Upper Pond. **Portion To Be Made Absolute:** 2.5 acre feet. **Portion To Remain Conditional:** None. **Subject Right:** Hermit Basin Exchange. **Portion To Be Made Absolute:** 2 cfs. **Portion To Remain Conditional:** None. **Subject Right:** Hermit Basin Well Nos. 1, 2 and 3. **Portion To Be Made Absolute:** None. **Portion To Remain Conditional:** 60 gpm each.  
(Application, 5 pages; Amended Application, 5 pages)

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

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of October 2004, (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.

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Witness my hand and the seal of this Court this \_\_\_\_\_ day of September, 2004.

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

(Court seal)  
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