

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING AUGUST 2009

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 2009, 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. 09CW41 - COLORADO STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008 (Kerri

Stroupe, Assistant Attorney General, Attorneys for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5118)

Amended Application for Water Right (Surface)

PUEBLO COUNTY, COLORADO

Name of Structure and legal description: Deerfly Spring. **POD:** Applicant seeks the following point of diversion for the Deerfly Spring: a point located in NE1/4 SW1/4 S19 T19S, R62W, 6th P.M., Pueblo County, 1510' from the S Section line and 1490' from the W Section line of said S 19. **GPS location in UTM format** (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 4248138 **Easting** 554027. **Source:** Unnamed tributary to Chico Creek, a normally dry tributary of the Arkansas River. **Amount:** 0.032 cfs, Absolute. **APP. Date:** April 1965 by watering livestock. **Use:** Livestock water, wildlife and fire suppression.

CASE NO. 09CW50 - COLORADO STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008 (Kerri

Stroupe, Assistant Attorney General, Attorneys for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5118)

Amended Application for Water Storage Rights

PUEBLO COUNTY, COLORADO

Name of Structure and legal description: May Camp Reservoir. **Location:** Storage facility located in the SW1/4 SW 1/4 S23. T18S, R63W, 6th P.M., Pueblo County, 640' from the S Section line and 1190' from the W Section line of said S 23. **GPS location in UTM format** (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 4257506 **Easting** 550672. **Source:** Fed by May Camp Reservoir Spring. **Amount:** 30.45 AF, Absolute, with the right to fill and refill while in priority at a rate of .25 cfs, Absolute. **APP. Date:** 1884 by construction of a dam. **Use:** Domestic, livestock water, waterfowl habitat, wildlife and fisheries. **Dam Height:** 13.3', **Length** 550', **Total Capacity:** 30.45 AF.

CASE NO. 09CW99 - DONALD CISNEROS, 5000 Red Creek Springs Road, Lot 209, Pueblo, CO 81005; (719) 560-9892

Application for Finding of Reasonable Diligence

HUERFANO COUNTY

Name of structure: Cisneros #5, Cisneros #6, Cisneros #7 (all springs). **Date of Original Decree:** August 20, 2003; **Case No.** 02CW33; **Court:** District. **Legal description:** Cisneros #5: NE ¼ NW ¼ Section 30, Township 27 South, Range 70 West, 6th P.M., Huerfano County, Colorado, 1,250' from the West section line and 2,833' from the North section line of Section 30. Cisneros #6: NE ¼ NW ¼ Section 30, Township 27 South, Range 70 West, 6th P.M., Huerfano County, Colorado, 1,290' from the West section line and 1,830' from the South section line of Section 30. Cisneros #7: NW ¼ NE ¼ Section 30, Township 27 South, Range 70 West, 6th P.M., Huerfano County, Colorado, 1,555' from the North section line and 2,000 from the East Section line of Section 30. **Source of water:** Springs tributary to Palo Duro Creek, tributary to Huerfano River. **Appropriation Date:** March 15, 2002. **Amount:** 0.0333 cfs. **Use:** Domestic use and stock water (livestock). Cisneros #7 is absolute for livestock use. **Provide 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:** Cisneros #5 has a 4" perforated pipe reduced to 1" pipe into a 50 gal. plastic tank with an overflow on top. A 1.5" pipe ties into a 1500 gal. cistern tank with an overflow on top which will provide homes and gardens. Cisneros #6 and Cisneros #8 will also be developed the same way as Cisneros #5 and tie into the same 1.5" water line which will provide for future homes and garden use. Cattle stock tanks will be piped off of main water line. Cisneros #7: cattle stock tank is already in place with a 1" water line. Future water line to be piped over to new home on NE ¼ NW ¼ lot. **If claim to make absolute, Date water applied to beneficial use:** Cisneros #5: 4/2007; **Amount:** 0.0333. **Use:** Stock watering, Absolute. Domestic purposes inside 3 single-family dwellings, and the irrigation of up to 1 acre of lawns and gardens per single-family dwelling, conditional. **Description of place of use where water is applied to beneficial use:** One acre of home lawns and gardens for each of the 3 single-family dwellings located within the SE ¼ SW ¼ Section 30, Township 27 South, Range 70 West, 6th P.M., Huerfano County, Colorado. **Names and addresses of owners 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:** Cisneros #7 is located on land owned by John L. Fischer, 4419 W. Ponds Circle, Littleton, CO 80123. Applicant is the owner of the land upon which Cisneros #5 and Cisneros #6 are located.

CASE NO. 09CW100 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 09CW101 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 09CW102 - LEADVILLE BACKCOUNTRY PHASE II, 1708 Mt. Lincoln, Leadville, CO 80461; (719) 486-0126

Amended Application for Surface Water Rights

LAKE COUNTY

Name of structure: Weston Pass Hut (spring). **Legal description of each point of diversion:** SE ¼ of the SW ¼ Section 35, Township 10 South, Range 79 West, 6th P.M., Lake County, Colorado, 1000 feet from the South line and 2840 feet from the East line. **Street Address:** Davis MS 3264. **Source:** Big Union Creek, tributary to the Arkansas River. **Date of initiation of appropriation:** 8/17/09; **How appropriation was initiated:** Purchased land. **Date water applied to beneficial use:** 6/1/10. **Amount claimed:** 7.2 gpm Conditional. **Use:** Water for a hut. Used for washing and drinking inside hut. **Names and addresses of owners 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.

CASE NO. 09CW103 - CITY OF FOUNTAIN (“Fountain”), c/o Larry Patterson, Utilities Director, 116 South Main Street, Fountain, CO 80817

(Direct all pleadings to: Cynthia F. Covell and Andrea L. Benson, Alperstein & Covell, P.C., Attorneys for Applicant, 1600 Broadway, Suite 2350, Denver, CO 80202; (303) 894-8191)

Application of the City of Fountain, Colorado, for Plan for Augmentation, Including Exchanges, and for Use of Fully-Consumable Water for Municipal Uses and Storage

EL PASO AND PUEBLO COUNTIES, COLORADO

2. Background. Fountain is a municipal water provider, and delivers water through a central water distribution system to a population of approximately 20,000. Fountain has experienced unprecedented growth, and anticipates the demand for water service will continue to increase. Current planning studies project Fountain’s population to exceed 37,000 by 2020, with a projected average daily demand of 6.9 MG. Fountain currently supplies water to its customers from wells tributary to Fountain Creek and Jimmy Camp Creek, in El Paso County, Colorado and from Fryingpan-Arkansas Project water (“Project Water” or “Fry-Ark Project Water”) purchased from the Southeastern Colorado Water Conservancy District (“Southeastern”) through the auspices of the Fountain Valley Authority, a water authority public entity of the State of Colorado of which Fountain is a member. Well depletions are augmented pursuant to augmentation plans decreed in Case Nos. W-4396 and W-4559 (consolidated) (“Augmentation Plan I”) and Case No. 85CW110 (“Augmentation Plan II”). Fountain’s application pending in Case No. 01CW146 seeks to add additional wells and to provide for augmentation from additional augmentation supplies

("Augmentation Plan III"). Fountain's application pending in Case No. 07CW68 ("Venetucci Augmentation Plan") seeks to add additional wells, the Venetucci Wells, to its municipal portfolio and to provide for augmentation of well depletions using its augmentation supplies. Fountain's application pending in Case No. 07CW123 ("Cumberland Green Augmentation Plan") seeks to add an additional well and provide for augmentation of that well. In this application, Fountain seeks to add the approximately 252.5 annual acre feet of consumptive available to it from 10.25 shares of the Chilcott Ditch Company (the "Fountain Chilcott Ditch Right"), quantified in Case No. 2006CW119, for direct municipal uses, storage, exchange and augmentation. Chilcott Ditch diversion records are not included with this application as the historic consumptive use associated with shares of the Chilcott Ditch Company has been calculated in Case No. 2006CW119.

3. Names and Relevant Information Regarding of Structures to be Augmented. The Fountain Chilcott Ditch Right will be used, together with Fountain's other legally-available augmentation supplies, to augment well depletions from the following described wells, including replacements thereof. Said wells, including replacements, are herein referred to as the "Wells."

3.1 Wells included in Augmentation Plan I (Case Nos. W-4396 and W-4559). The wells included in Augmentation Plan I are located in Sections 5 and 6, Township 16 South, Range 65 West of the 6th P.M., and Section 24, Township 15 South, Range 66 West of the 6th P.M., all in El Paso County, Colorado. A list of the wells included in Augmentation Plan I, together with permit numbers and specific locations, is attached to the Application as Exhibit A, and shown on the map attached to the Application as Exhibit C. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. These wells are decreed for municipal, domestic, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and small gardens, manufacturing and industrial purposes. Copies of the well permits for the wells shown on Exhibit A have not been filed as this application does not seek any changes pertaining to these wells.

3.2 Other Wells included in Decreed or Pending Applications. The well included in Augmentation Plan II, known as the School Well, is located in Section 8, Township 16 South, Range 65 West of the 6th P.M. Wells included in Augmentation Plan III are located in Sections 5, 6, 8 and 16 of Township 16 South, Range 85 West and Section 4, Township 17 South, Range 65 West of the 6th P.M. The Venetucci Wells, included in the Venetucci Augmentation Plan (Case No. 2007CW68) are located in Section 11, Township 15 South, Range 66 West of the 6th P.M. The Cumberland Green Well, included in the Cumberland Green Augmentation Plan (Case No. 2007CW123), is located in Section 33, Township 15 South, Range 65 West of the 6th P.M. A list of the wells included in Augmentation Plan II, the Venetucci Augmentation Plan, and the Cumberland Green Augmentation Plan, together with available permit numbers and specific locations, is attached to the Application as Exhibit B. These wells are shown on the map attached to the Application as Exhibit C. Copies of the well permits for the wells described on Exhibit B have not been filed as this application does not seek any changes pertaining to these wells.

3.3 Wells to be acquired or

constructed in the future, and replacements thereof. Wells constructed or acquired by Fountain and not included in this Plan for Augmentation may be augmented by the Fountain Chilcott Water Right pursuant to the terms of the decree entered upon this application, or by subsequent water court decree or approved substitute water supply plan. **PLAN FOR AUGMENTATION. 4. Previous Decrees for Water Right to be used for Augmentation.** The Chilcott Ditch headgate is located at a point on the north bank of Fountain Creek in the SE 1/4 of Section 25, Township 15 South, Range 66 West, 6th P.M. in El Paso County, as shown on Exhibit C. **4.1 Original Decrees for the Chilcott Ditch.** 4.1.1 Fountain Creek Priority No. 27 for 27.0 cfs, with an appropriation date of March 21, 1866, as described in the decree for the original adjudication in former Water District 10, decree entered by the District Court, El Paso County, on February 15, 1882. 4.1.2 Fountain Creek Priority No. 39 for 20.63 cfs, with an appropriation date of March 21, 1874, as described in the decree for the original adjudication in former Water District 10, decree entered by the District Court, El Paso County, on February 15, 1882. 4.1.3. Fountain Creek Priority No. 172 for 30.95 cfs, with an appropriation date of December 18, 1905, as described in the decree entered by the District Court, El Paso County, on June 2, 1919, in Case No. 10146. (Fountain agreed to abandon its interest in this priority in Case No. 2006CW119.) **4.2 Quantification of Historic Consumptive Use of Fountain Chilcott Ditch Right.** **4.2.1 Court and Date Entered:** Decree pending in Case No. 2006CW119, Water Court, Water Division 2. **4.2.2 Quantification and Limits.** A ditch-wide analysis of the Chilcott Ditch is included in Case No. 2006CW119, and calculates average historic consumptive use per share of the Chilcott Ditch Company to be 24.61 acre-feet per year. The historic consumptive use of the Chilcott Ditch, as determined in Case No. 2006CW119 will, when decreed, be deemed to be res judicata in future proceedings involving such rights, pursuant to Williams v. Midway Ranches Property Owners' Association, 938 P.2d 515, 521 (Colo. 1997). In addition, Applicant's interest in Priority No. 172 of the Fountain Chilcott Ditch Right will be abandoned in Case No. 2006CW119. All of the terms, conditions, and limitations on the Fountain Chilcott Ditch Right contained in the decree in Case No. 2006CW119 will apply to use of the Fountain Chilcott Ditch Right in any decree entered upon this application. **5. Statement of Plan for Augmentation and Exchange.** **5.1 Continued Operation of Wells and Water Distribution System.** Fountain will continue to deliver water to its customers through its water distribution system, including any extensions or expansions thereof, using any or all of the Wells, as well as Project Water and other water delivered via the Fountain Valley Conduit and the Southern Delivery Pipeline System, when completed. **5.2 Determination of Well Augmentation Requirements.** **5.2.1 Calculation of Well Depletions.** All of the returns from wastewater effluent discharges and irrigation return flows accrue to the Fountain Creek system within the reach of Fountain Creek bounded on the upstream terminus by a point located in the NE1/4 of Section 25, T. 15 S., R. 66 W. of the 6th P.M. and on the downstream terminus by a point located in the NW 1/4 of Section 10, T. 17 S., R. 65 W. of the 6th P.M. In accordance with the decrees in Augmentation Plans I

and II and the application in Augmentation Plan III, Fountain replaces all depletions from the Wells by providing replacement water to balance the well depletions on the basis of schedules which determine depletions as a percentage of diversions by the Wells. Well depletions from Fountain's wells included in Augmentation Plans I and II will continue to be calculated using the depletion factors applied when wastewater treatment does not include use of sewage lagoons, as is the case. Well depletions from Fountain's wells included in Augmentation Plan III, the Venetucci Augmentation Plan and the Cumberland Green Augmentation Plan will be calculated as set forth in those decrees, when entered.

5.2.2 Calculation of Wastewater Return Flows. When water is used in Fountain's water distribution system, a portion of that water is returned to Fountain Creek via the wastewater treatment facilities of the Fountain Sanitation District and the Widefield Water & Sanitation District. The locations of return of treated effluent are on Fountain Creek at points located (a) in the NW1/4 of Section 17, T. 16 S., R. 65 W. of the 6th P.M. (Fountain Sanitation District plant) and (b) in the NE1/4 of Section 25, T. 15 S., R. 66 W. of the 6th P.M. (Widefield Water & Sanitation District plant.) These plants are shown on Exhibit C. A regional wastewater treatment plant is being constructed at a location several miles downstream of Fountain, in the NW1/4 of Section 10, T. 17 S, R. 65 W. of the 6th P.M. as shown on Exhibit C. This future location for discharge of return flows, return flow credit, and replacement of depletions was first authorized for Fountain in Augmentation Plan II. That decree provides for an exchange of such return flows to Fountain wells at the rate of 11 cfs, with a priority date of September 13, 1985. In Augmentation Plan III, Fountain proposes to continue to use this exchange for return flow credit and replacement of depletions. Calculation of return flows from wastewater effluent, and exchange of wastewater effluent, will be in accordance with the decrees in Augmentation Plans I, II, and III. To the extent wastewater return flows include water originating from the Fountain Chilcott Ditch Right, those return flows will be calculated, and may be exchanged to the Wells in accordance with, and will be subject to the applicable terms and conditions of the decrees in Augmentation Plans I, II and III, the Venetucci Augmentation Plan and the Cumberland Green Augmentation Plan.

5.2.3 Calculation of Lawn Irrigation Return Flows. A portion of the return flows from Fountain's water deliveries accrue to the Fountain Creek alluvium as return flows from irrigation of lawns, parks and open spaces. Lawn irrigation return flows will continue to be calculated in accordance with the decrees in Augmentation Plans I, II and III. To the extent lawn irrigation return flows include water originating from the Fountain Chilcott Ditch Right, those return flows will be calculated in accordance with, and will be subject to the applicable terms and conditions of the decrees in Augmentation Plans I, II and III, the Venetucci Augmentation Plan and the Cumberland Green Augmentation Plan.

5.3 Calculation of Replacement Credits from Fountain Chilcott Ditch Right. The available replacement credits from the decreed historic consumptive use of the Chilcott Ditch will be calculated as provided in the decree in Case No. 2006CW119 and this paragraph 5.3.

5.3.1 Case No. 2006CW119 Limits. Case

No. 2006CW119 imposes volumetric limitations on the Fountain Chilcott Ditch Right as follows:

Month	Maximum delivery to Augmentation station (a.f.)	20-yr average delivery to aug station (a.f.)	Maximum Monthly Consumptive Use (a.f.)	20-year average consumptive use (a.f.)
Nov. 1-14	50.5	25.5	24	12
Nov. 15 - 30	0	0	0	0
December	0	0	0	0
January	0	0	0	0
February	0	0	0	0
March 1-15	0	0	0	0
March 16-31	57.5	28.5	26	13
April	100.5	50	56	28
May	150.5	75	97	48.5
June	111	55	72	36
July	115.5	57.5	78	39
August	102.5	51	68	34
September	70.5	35.5	43	21.5
October	82	41.5	51	25.5
Total Annual	630.5	419.5	387	257.5

5.3.2 Determination of Available Replacement Credits. Case No. 2006CW119 finds the ditch-wide historic average consumptive use per share of the Chilcott Ditch Company is 24.61 acre-feet per year, and the Fountain Chilcott Ditch Right therefore yields average annual consumptive use of 252.5 acre-feet. The amount of historic consumptive use varies from year to year, depending on the amount of water available for diversion under the Chilcott Ditch Water Rights. Subject to the limitations set forth above, Applicant's available replacement credits will be calculated by multiplying the amount of in-priority diversions under the Fountain Chilcott Ditch Right delivered to Fountain Creek through the Chilcott augmentation station by the following monthly depletion factors:

Month	Depletion Factor (%)
November 1-14	47.5
November 15-30	NA
December	NA
January	NA
February	NA
March 1-15	NA
March 16-31	45.2
April	55.8
May	64.5
June	65.0
July	67.5
August	66.4
September	61.0
October	62.2

The terms and conditions from Case No. 2006CW119, including those set forth above, will determine the amount of water available for use by Fountain from the Fountain Chilcott Ditch Right at any given time. Such amounts are referred to as "Fountain Chilcott Ditch Replacement Credits." **5.4 Use of Fountain Chilcott Ditch Replacement Credits for Augmentation and Exchange to Wells.** The Fountain Chilcott Ditch Replacement Credits may be used as an augmentation supply to augment depletions from the Wells. Such Fountain Chilcott Ditch Replacement Credits will be an augmentation supply in addition to the augmentation supplies provided for in Augmentation Plans I, II and III, and any other augmentation supplies that may be legally available to Fountain in the future. The Fountain Chilcott Ditch Right will be diverted at the Chilcott Ditch headgate and the Fountain Chilcott Ditch Replacement Credits will be released at the Chilcott Ditch augmentation station currently located in the NW 1/4 of Section 31, T. 15 S, R. 65 W. of the 6th P.M., as described in Case No. 2006CW119. The augmentation station is shown on Exhibit C. The Wells described on Exhibit A (except those identified as A.7, A.8, and A.9) and the wells described on Exhibit B at B.1 - b.16 are located downstream of the Chilcott Ditch augmentation station. Fountain Chilcott Ditch Replacement Credits released from the Chilcott Ditch Augmentation Station can be delivered directly to the points of depletion from these Wells. In addition, Fountain Chilcott Ditch Replacement Credits can be exchanged to these Wells as provided in paragraph 9. The Wells described on Exhibit B at B.17-B.23 ("Venetucci Wells") and the wells described on Exhibit A at A.7, A.8 and A.9 cause depletions to Fountain Creek upstream of the Chilcott Ditch augmentation station. The Fountain Chilcott Ditch Replacement Credits will be exchanged to the locations of these depletions as described in paragraph 9 below. The Well described on Exhibit B at B.24 ("Cumberland Green Well") causes depletions to Jimmy Camp Creek. The Fountain Chilcott Ditch Replacement Credits will be exchanged to the locations of depletions from this Well as described in paragraph 9. The recordkeeping and accounting for use of the Fountain Chilcott Ditch Replacement Credits will be integrated into the recordkeeping and accounting for Fountain's augmentation plans, and provided to the Division Engineer as required by those plans. **DIRECT MUNICIPAL USE OF FOUNTAIN CHILCOTT DITCH REPLACEMENT CREDITS. 6. Direct Municipal Use.** Fountain seeks to use the Fountain Chilcott Ditch Replacement Credits for direct municipal use by delivering such credits from the Chilcott Ditch Augmentation Station to its water treatment facilities, or by storage of such credits as described in paragraph 7 below, and subsequent delivery to Fountain's water treatment facilities. Fully consumable wastewater effluent and lawn irrigation return flows originating from such direct use of the Fountain Chilcott Ditch Replacement Credits will be quantified in the manner described in Augmentation Plans II and III, and may be reused, stored or exchanged as provided in those plans and as described in paragraphs 7 - 9 of this application. **STORAGE AND EXCHANGES OF FOUNTAIN CHILCOTT DITCH REPLACEMENT CREDITS. 7. Storage.** When and to the extent Fountain does not use available Fountain Chilcott Ditch Replacement Credits for augmentation of Well depletions, such credits may be stored in reservoirs legally

available to Fountain for such storage. Water stored in such reservoirs in the Fountain Creek drainage basin or on the Arkansas River or its tributaries may be later released for direct municipal use or augmentation or for exchange, as described in paragraphs 8 and 9. Among other storage locations, Fountain plans to store water in a reservoir to be constructed at a site along Fountain Creek generally described as portions of Sections 7, 18 and 19, Township 16, South, Range 65 West of the 6th P.M. in El Paso County, and at sites available to Fountain pursuant to any decree entered in Case No. 2006CW122, which provides for storage to be shared among parties to the Intergovernmental Agreement among the Cities of Pueblo, Fountain, Colorado Springs and Aurora, the Southeastern Colorado Water Conservancy District and the Board of Water Works of Pueblo, effective May 27, 2004, as such agreement may be amended from time to time ("Regional IGA").

8. Exchange of Fountain Chilcott Ditch Replacement Credits to Pueblo Reservoir.

8.1 Relationship to Case No. 2001CW108: This application adds Fountain Chilcott Ditch Replacement Credits to the water rights that may be exchanged to Pueblo Reservoir pursuant to Fountain's Pueblo Reservoir exchange pending in Case No. 2001CW108. The exchange will be operated consistent with the decree in Case No. 2001CW108, and the terms and conditions set forth below.

8.2 Appropriation Date: December 28, 2006 (for exchange of Fountain Chilcott Ditch Replacement Credits.)

8.3 How Appropriation Initiated: The intent to appropriate an exchange was first formed and the appropriation was initiated by meeting with representatives of the U.S. Geological Survey (USGS) and others to make arrangements to modify the Fountain Creek transit loss model in order to properly implement the exchange of reusable Project Water return flows and other water rights. The intent to exchange the Fountain Chilcott Ditch Replacement Credits was formed at the time Fountain acquired its interest in the Fountain Chilcott Ditch Right, and filed an application to quantify the consumptive use in Case No. 2006CW119 for augmentation and exchange purposes, followed by the filing of the application in this case.

8.4 Amount claimed: 19 cfs, conditional, to be included within the 19 cfs exchange rate applied for in Case No. 2001CW108.

8.5 Exchange reach.

8.5.1 Downstream Terminus: The downstream terminus of the exchange reach is the confluence of Fountain Creek and the Arkansas River, in the NE 1/4 of Section 6, Township 21 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado.

8.5.2 Upstream Terminus: The upstream terminus of the exchange reach is located on the Arkansas River at Pueblo Reservoir in the S1/2 of Section 36, Township 20 South, Range 66 West of the 6th P.M. in Pueblo County, Colorado.

8.6 Uses. Water from the Fountain Chilcott Ditch Replacement Credits may be exchanged to storage in Pueblo Reservoir pursuant to the exchange to be decreed in Case No. 2001CW108, and may be delivered from storage in Pueblo Reservoir back to Fountain via the Fountain Valley Conduit and/or the Southern Delivery Pipeline system to be used for all municipal purposes, including domestic, irrigation, recreation, storage, piscatorial, commercial, industrial, replacement, substitution, augmentation, and further reuse and exchange to extinction, storage and release from storage for all of the foregoing purposes.

8.7 Locations Where Water

From the Fountain Chilcott Ditch Replacement Credits Will Be Released for Exchange. Water from the Fountain Chilcott Ditch Replacement Credits will be delivered to Fountain Creek from the Chilcott Ditch Augmentation Station, lawn irrigation return flows, and/or the wastewater treatment plants described in paragraph 5.2.2. Water from the Fountain Chilcott Ditch Replacement Credits that is stored in other structures on Fountain Creek or the Arkansas River may be released from those structures and exchanged to Pueblo Reservoir as provided in Case No. 2001CW108 and any other decrees that may govern such exchanges.

8.8 Operation of Exchange. To the extent the Fountain Chilcott Ditch Replacement Credits are not used for direct municipal use or augmentation when delivered to Fountain Creek, such Fountain Chilcott Ditch Replacement Credits may be included with the “Excess Augmentation Credits” as described in Case No. 2001CW108. That case provides that if and to the extent Excess Augmentation Credits are available, they may be exchanged to storage in Pueblo Reservoir. The exchange herein applied for authorizes Excess Augmentation Credits attributable to Fountain Chilcott Ditch Replacement Credits to be exchanged to Pueblo Reservoir subject to the same terms and conditions as will be imposed in the decree in Case No. 01CW108. Operation of the exchange of Fountain Chilcott Ditch Replacement Credits to Pueblo Reservoir is also subject to Fountain’s obligations under the Regional IGA and to the requirements for operation of Pueblo Reservoir imposed by Southeastern Colorado Water Conservancy District and the United States Bureau of Reclamation, and the requirements of the Fountain Valley Authority. In addition, the operation of this exchange will be limited by the timing and availability of the Fountain Chilcott Ditch Replacement Credits to be exchanged within the exchange reach. The exchange will be operated only when there is a live stream maintained between the point of delivery of water for exchange and the upstream terminus of the exchange. The exchange will only be operated to the extent that other vested water rights senior to this exchange are not deprived of water to which they would have been entitled in the absence of such exchange, considering the call of the Fountain Chilcott Ditch Water Right.

9. Exchange of Fountain Chilcott Ditch Replacement Credits to Wells.

9.1 Appropriation Date: December 28, 2006.

9.2 How Appropriation Initiated: The intent to exchange the Fountain Chilcott Ditch Replacement Credits was formed at the time Fountain acquired its interest in the Fountain Chilcott Ditch Right, and filed an application to quantify the consumptive use in Case No. 2006CW119 for augmentation purposes, followed by the filing of the application in this case.

9.3 Amount claimed: 3.6 cfs, conditional.

9.4 Exchange reach

9.4.1 Downstream Terminus: The downstream terminus of the exchange reach is the regional wastewater treatment plant described in paragraph 5.2.2.

9.4.2 Upstream Termini: The upstream termini of the exchange reach are (a) the point of depletion of the Venetucci Wells, located on Fountain Creek generally in Section 11, Township 15 South, Range 66 West of the 6th P.M. and (2) the point of depletion of the Cumberland Green Well, located on Jimmy Camp Creek generally in Section 33, Township 15 South, Range 66 West of the 6th P.M. in El Paso County.

9.5 Uses. Water from the Fountain Chilcott Ditch Replacement Credits may be

exchanged to the points of depletion of the Wells located within the exchange reaches to augment depletions from those wells. **9.6 Operation of Exchange.** The operation of this exchange will be limited by the timing and availability of the Fountain Chilcott Ditch Replacement Credits to be exchanged within the exchange reach. The exchange will be operated only when there is a live stream maintained between the point of the exchange and the upstream terminus of the exchange. The exchange will only be operated to the extent that other vested water rights senior to this exchange are not deprived of water to which they would have been entitled in the absence of such exchange, considering the call of the Fountain Chilcott Ditch Water Right. **10. Terms and Conditions.**

10.1. Terms and Conditions from Previous Decrees. Terms and conditions in the decrees for Augmentation Plans I, II, III, the Venetucci Augmentation Plan and the Cumberland Green Augmentation Plan will apply to use of the Wells, and calculation of well depletions, wastewater effluent, lawn irrigation return flows, and well augmentation requirements. The Fountain Chilcott Ditch Replacement Credits will be incorporated into Fountain's water rights accounting, and will be used and accounted for as required by such accounting, as it may be amended from time to time. Records shall be maintained and reports made to the Division Engineer as required by the decrees in Augmentation Plans I, II and III, the Venetucci Augmentation Plan and the Cumberland Green Augmentation Plan, and, with regard to the exchange to Pueblo Reservoir, the terms and conditions of any decree entered in Case No. 2001CW108. **10.2 Fountain Creek Transit Loss Model.** Fountain is participating, and agrees to continue participating, in a combined and coordinated effort with various stakeholders to update and maintain the existing USGS Fountain Creek transit loss model from the point of the USGS Colorado Springs gage to the confluence of Fountain Creek and the Arkansas River in order to improve the administration of water rights and stream flow in Fountain Creek by including existing and future water uses, water rights, exchanges and plans for augmentation in the framework of the transit loss model. If not already included in the transit loss model, the Chilcott Ditch headgate (where the Fountain Chilcott Ditch Right is diverted) and the Chilcott Ditch augmentation station (where the Fountain Chilcott Ditch Right is released) will be included in the transit loss model, and Fountain will be responsible for its appropriate share of the costs as provided in the December 20, 2007, Fountain Creek Transit Loss Memorandum of Understanding among the City of Colorado Springs, the Fountain Mutual Irrigation Company, and the El Paso County Water Authority (of which Fountain is a member.) **10.3 No Injury.** So long as, and to the extent that Fountain operates the plan for augmentation and exchanges herein sought consistent with the requirements of Augmentation Plans I, II and III, the terms and conditions of any decree entered in Case No. 2001CW108, and the terms and conditions described in this application, the use of Fountain Chilcott Ditch Replacement Credits as described in this application will not injure vested water rights or decreed conditional water rights. **11. Names and addresses of owners of land on which any new diversion or storage structure or modification to any existing diversion or storage structure or storage pool is or will be constructed or upon which water is or will be**

stored. No new structures or modifications to existing structures are contemplated by this application. Inasmuch as water from the Fountain Chilcott Ditch Right has not been stored in Pueblo Reservoir, the landowner may be entitled to notice pursuant to C.R.S. § 37-92-302(b)(II). The name and address of the owner of the land on which Pueblo Reservoir is located is: United States Department of Interior, Bureau of Reclamation, 11056 West County Road 18E, Loveland, CO 80537. WHEREFORE, Fountain respectfully requests that this Court enter a decree including the Fountain Chilcott Ditch Right as an additional supply for augmentation and exchange and other municipal uses as herein applied for.

CASE NO. 09CW104 – THOMAS C. SEVERANCE and CECELIA M. SEVERANCE, 257 County Road 312, Walsenburg, CO 81089; (719) 738-2475

Application for Underground Water Right

HUERFANO COUNTY

Name of well and permit number: Thomas C. Severance, Permit No. 263634.

Legal description of well: NE ¼ NW ¼ Sec. 30, T29S, R65W, 6th P.M., Huerfano County, Colorado, 331 feet from the North line and 2550 feet from the West line of Section 30. **Subdivision:** Blackhawk Ranch, Lot 5. **UTM Coordinates (Meters, Zone 13, NAD83):** Points not averaged. Northing 4150232; Easting 525348. **Source:** Aquifer; **Depth:** 287 ft. **Date of appropriation:** 6/9/05. **How appropriation initiated:** Well drill permit; **Date water applied to beneficial use:** 1/13/2006. **Amount claimed:** 14 gpm Absolute. **Proposed use:** 1 acre of irrigation of lawns and gardens, household use, fire protection, animals and livestock. **Names and addresses of owners 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:** Applicants.

CASE NO. 09CW105 - MM RANCH, LLC, 20 Boulder Crescent, #200, Colorado Springs, CO 80903 and FOUNTAIN MUTUAL IRRIGATION COMPANY (Co-Applicant), 325 haversham Dr., Colorado Springs, CO 80906

(Chris D. Cummins, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Underground Water Right, Change of Water Rights, and Plan for Augmentation

EL PASO COUNTY

GENERAL STATEMENT OF PLAN. Applicant is a Colorado limited liability company that owns and operates a commercial horse boarding facility upon its El Paso County Colorado property located in the N1/2 NE1/4 and S1/2 NE1/4 of Section 6, Township 16 South, Range 64 West, 6th P.M., which property is more particularly described in Exhibit A, and depicted upon the Exhibit B map, attached to the Application (“Applicant’s Property”). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The commercial horse boarding operation and a residence upon the

Applicant's Property are both serviced through the combined flows of two wells located on the property, and constructed into the shallow alluvial aquifer of an unnamed gulch tributary to Williams Creek, tributary to Fountain Creek tributary to the Arkansas River. By this Application, Applicants seek the adjudication of these wells, and approval of a plan for augmentation for replacement of out-of-priority depletions resulting from the operation thereof utilizing Fountain Mutual Irrigation Company water shares ("FMIC") to be committed to such augmentation plan. FMIC is a Co-Applicant in this case only for purposes of protecting the company's interests under the proposed use of the FMIC shares. **APPLICATION FOR UNDERGROUND WATER RIGHTS** Name of Well. MM Ranch Well No. 1. Legal Description. MM Ranch Well No. 1 is located upon the Applicant's Property in the NE1/4 NE1/4 of Section 6, Township 16 South, Range 64 West of the 6th P.M., El Paso County, Colorado, approximately 155 feet south of the north section line, and 1222 feet west of the east section line of said Section 6. UTM coordinates are easting 0535436, and northing 4282829, NAD 83, Zone 13. Source. The source for the well is the tributary, alluvial ground water of an unnamed tributary to Williams Creek, tributary to Fountain Creek, tributary to the Arkansas River. The depth of the well is approximately 35 feet. Appropriation. Date of Initiation of Appropriation. August 25, 2009. How Appropriation Was Initiated. The appropriation was initiated by the submission of this Application, and rehabilitation of the existing well structure, all with Applicant's intent to appropriate underground water and apply the water to beneficial use as set forth herein. Amount Claimed. The amount of water claimed is the maximum yield of the well which is estimated at 15 g.p.m., absolute. Use. The uses contemplated for the MM Ranch Well No. 1 are in-house uses, landscape irrigation, and commercial uses including but not limited to the watering of boarded livestock, washing of animals, and other commercial uses. Applicant plans to irrigate trees and shrubs on less than 1 acre of Applicant's Property located in the NE1/4 of Section 6, Township 16 South, Range 64 West of the 6th P.M., El Paso County, Colorado. Land Ownership. The land upon which MM Ranch Well No. 1 is to be located, and the ground water will be used, is owned by the Applicant. Remarks. MM Ranch Well No. 1 was originally constructed pursuant to Exempt Well Permit No. 43225-MH, and was re-drilled in early 2009 in anticipation of this application. Applicant has submitted, contemporaneously with this Application, an application to the Division of Water Resources for the permitting of MM Ranch Well No. 1 pursuant to C.R.S. §37-90-137, consistent with the terms and uses requested in this Application, and a request for approval of a Substitute Water Supply Plan for the operation of this well pending completion of this adjudication. MM Ranch Well No. 1 is plumbed together with MM Ranch Well No. 2, as requested below, and their combined pumping will provide the physical source of supply for the uses requested herein upon Applicant's Property. Name of Well. MM Ranch Well No. 2. Legal Description. MM Ranch Well No. 2 is located upon the Applicant's Property in the NE1/4 NE1/4 of Section 6, Township 16 South, Range 64 West of the 6th P.M., El Paso County, Colorado, approximately 588 feet south of the north section line, and 1343 feet west of the east section line of said Section 6. UTM

coordinates are easting 0535398, and northing 4282697, NAD 83, Zone 13.

Source. The source for the well is the tributary, alluvial ground water of an unnamed tributary to Williams Creek, tributary to Fountain Creek, tributary to the Arkansas River. The depth of the well is approximately 35 feet.

Appropriation.

Date of Initiation of Appropriation. August 25, 2009.

How Appropriation Was Initiated. The appropriation was initiated by the submission of this Application, and rehabilitation of the existing well structure, all with Applicant's intent to appropriate underground water and apply the water to beneficial use as set forth herein.

Amount Claimed. The amount of water claimed is the maximum yield of the well which is estimated at 15 g.p.m., absolute.

Use. The uses contemplated for the MM Ranch Well No. 2 are in-house uses, landscape irrigation, and commercial uses including but not limited to the watering of boarded livestock, washing of animals, and other commercial uses. Applicant plans to irrigate trees and shrubs on less than 1 acre of Applicant's Property located in the NE1/4 of Section 6, Township 16 South, Range 64 West of the 6th P.M., El Paso County, Colorado, which irrigated acreage is more accurately set forth on Exhibit A.

Land Ownership. The land upon which MM Ranch Well No. 2 is to be located, and the ground water will be used, is owned by the Applicant.

Remarks. MM Ranch Well No. 2 was originally constructed pursuant to Exempt Well Permit No. 192249, however, a replacement well was drilled under that same permit, and continues to operate pursuant to the terms thereof. The MM Ranch Well No. 2 structure was rehabilitated in early 2009 in anticipation of this Application. Applicant has submitted, contemporaneously with this Application, an application to the Division of Water Resources for the permitting of MM Ranch Well No. 2 pursuant to C.R.S. §37-90-137, consistent with the terms and uses requested in this Application, and a request for approval of a Substitute Water Supply Plan for the operation of this well pending completion of this adjudication. MM Ranch Well No. 2 is plumbed together with MM Ranch Well No. 1, as requested below, and their combined pumping will provide the physical source of supply for the uses requested herein upon Applicant's Property.

PLAN FOR AUGMENTATION/CHANGE OF WATER RIGHTS

Structures to be Augmented. The structures to be augmented are MM Ranch Well Nos. 1 and 2, which are set forth in Sections III and IV of this Application.

Water Rights to be Used for Augmentation. The water rights to be used for augmentation are five (5) shares of FMIC. FMIC diverts its water to the Fountain Mutual Ditch from Fountain Creek, tributary to the Arkansas River, at its headgate located in the SW 1/4 of Section 20, Township 14 South, Range 66 West, 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

<u>Priority No.</u>	<u>Priority Date</u>	<u>Decree Date</u>	<u>Total Decree (cfs)</u>
4	9/21/1861	3/6/1882	9.84 (5.38) ¹
7	4/1/1862	3/6/1882	1.125
11	2/1/1863	3/6/1882	16.69
17	12/31/1863	3/6/1882	4.25 (2.125) ²
21	12/31/1864	3/6/1882	4.65
28	12/31/1866	3/6/1882	8.48
29	12/31/1867	3/6/1882	9.68
41	9/21/1874	3/6/1882	17.05
168	1/31/1903	6/2/1919	343.20

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

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. 90CW7, 99CW146, 00CW152, 01CW153, and 04CW118, Water Division 2. The replacement or augmentation credit allowed to FMIC water rights, as also determined in prior cases, is 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 one-half 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 historical 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 No. 04CW118 decreed on February 2, 2008. 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. For the Applicant's five shares, this represents an average consumptive use of 3.5 annual acre feet which may be used for replacement water under this plan. 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 Applicant relies upon these prior determinations, diversion records and a map are not submitted. **Statement of Plan for Augmentation.** The consumptive use attributable to the 5 shares of FMIC under this plan shall be committed to this plan of augmentation to replace the out of priority depletions associated with operation of MM Ranch Well Nos. 1 and 2. Diversions from MM Ranch Well Nos. 1 and 2 will be consolidated and utilized within Applicant's commercial operations, as well as within one single family residence located on Applicant's Property. Diversions and depletions associated with Applicant's use of diversions from MM Ranch Well Nos. 1 and 2 are anticipated to be as follows: **In-House Domestic Use.** In-house uses will divert approximately 0.30 acre feet annually within one single family dwelling with a ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for this residence is therefore 0.030 acre feet, with resulting return flows of 0.27 annual acre feet. Any other

type of waste water disposal shall require an amendment to this plan of augmentation. **Commercial Indoor Uses:** Based upon a maximum of 15 users per day at an average of 15 gallons per person per day, and 365 days per year of operations, diversions of 0.25 acre feet are anticipated for sanitary and drinking purposes. Based upon ten percent consumptive use utilizing nonevaporative septic leach field disposal, consumptive use annually is calculated at 0.025 acre feet, with return flows of 0.225 annual acre feet. Any other type of waste water disposal shall require an amendment to this plan of augmentation. **Stockwater:** Stockwater uses amount to 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. Applicant anticipates a maximum average number of stock boarded on site to be approximately 50 animals, with resulting annual consumptive use of 0.6 acre feet. **Animal Washing:** Water use for washing of animals is anticipated to be a maximum of 60 gallons per day. Conservatively applying such usage to 365 days per year and assuming one hundred percent consumption results in total diversions and consumptive use annually of 0.07 annual acre feet. **Landscape Irrigation:** Diversions for landscape irrigation are anticipated to be 0.055 acre feet annually per 1,000 square feet (2.4 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.047 acre feet. Assuming the maximum one acre of lawn and gardens is annually irrigated, maximum consumptive use is 2.0 acre feet, with return flows of 0.4 acre feet. **Horse Arena Dust Control:** Dust control activities upon both the indoor and outdoor arenas upon Applicant's property utilize varying amounts of water with seasonal variations. Winter dust control typically utilizes a maximum of 600 gallons per week (for 20 weeks), while summer dust control utilizes twice that amount, or 1,200 gallons per week (for 32 weeks). Conservatively estimating such uses to be 100% consumptive, resulting diversions and consumption annually are estimated to be 0.16 acre feet. Total diversions anticipated from MM Ranch Well Nos. 1 and 2 for the above described uses on Applicant's Property are therefore 3.78 annual acre feet, with consumptive use associated with such uses being 2.885 annual acre feet. Based on the average annual consumptive use yield per share of 0.7 acre feet, 5 shares of FMIC should therefore provide 3.5 acre feet of replacement water, or 0.615 acre feet in excess of anticipated consumption. The above is supplied for illustrative purposes. The actual operation of the plan will be that Applicant's out of priority well depletions to the stream shall not exceed the consumptive use available under its FMIC shares. Water available under Applicant's shares to be used for augmentation will be diverted at the headgate of the Fountain Mutual Ditch and released back to Fountain Creek at the Spring Creek Augmentation Station, and Applicant will contract with FMIC for the use of the augmentation station. The replacement credits under this plan for FMIC shares will be computed as a percentage of actual FMIC in priority diversions applied to the above monthly replacement credit schedule. Depletions from MM Ranch Well Nos. 1 and 2 to Fountain Creek will be calculated on a monthly basis. Applicant shall calculate these depletions as necessary by the use of a Glover analysis performed by Applicant's engineer. The release of replacement

water from the FMIC water rights will be made to replace monthly depletions and also the well stream depletions as required under the terms of this plan. 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 John Reservoir is to be used as augmentation for an intra-ditch 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 intra-ditch 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 intra-ditch 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, should FMIC in the future obtain 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 intra-ditch 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. 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 used under 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.

Name and Address of Owner of Land Upon Which Structures Are Located.

The Applicant is the owner of the land where the augmented structures are located. **Additional Information/Requests.** The use of the shares of FMIC are to be changed to include augmentation use as set forth herein. Applicant further requests the ability to add additional shares of FMIC to this plan for augmentation in order provide additional augmentation water. Any additional shares not previously changed for augmentation purposes shall require an additional change of water right though the Water Court committing such additional FMIC shares to the uses and purposes under this augmentation plan. **Terms and Conditions.** Applicants propose the following additional terms and conditions to prevent injury to other vested water rights by this Application: 1. Totalizing flow meters will be installed on the wells to allow accurate monitoring of this augmentation plan. 2. The Applicants shall install and maintain such water measuring devices, recording devices, and flow meters as are deemed essential by the Office of the State Engineer and that the same shall be installed and operated in accordance with the instructions of said office. 3. Monthly

accountings shall be made to the Division Engineer demonstrating compliance with this plan for MM Ranch Well Nos. 1 and 2, including well diversions, total stream depletions, and available augmentation water credit. 4. Applicant's well diversions shall be limited in order that augmentation water available under Applicant's FMIC shares shall equal or exceed the out of priority depletions of uses from MM Ranch Well Nos. 1 and 2. 5. The Division Engineer shall assess appropriate transit losses, if any. 6. Only that amount of water actually available and attributable to 5 shares of FMIC stock will be made available for purposes of this augmentation plan, until and unless such time as additional shares are added to this plan. 7. Applicant will curtail its diversions as required by this decree and directed by the Division Engineer if the available water directly attributable to Applicant's owned and leased shares of FMIC stock is not sufficient to fully augment the depletions under this plan.

CASE NO. 09CW106 - KAY HAWKLEE, 1739 Fremont County Road 21A, Canon City, CO 81212 (James S. Witwer and Douglas M, Sinor, Trout, Raley, Montano, Witwer & Freeman, P.C., Attorneys for Applicant, 1120 Lincoln Street, Suite 1600, Denver, CO 80203; (303) 861-1963)

Application for Underground Water Right

FREMONT COUNTY, COLORADO

2. Name(s) of well(s) and permit, registration, or denial number(s). Hawklee Well, exempt well permit no. 268069. Copies of the Well Permit, Well Construction Test Report, and Pump Installation and Test Report are attached to the Application as Exhibit 1. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **3. Legal description of well:** Bar J Ranch Filing No. 5, Parcel 8, in the NW ¼ of SW ¼ of Section 24, T17S, R73W, 6th P.M., Fremont County, at a point approximately 2,395 feet from the north line and 672 feet from the west line of Section 24. UTM Northing: 4267360.5; UTM Easting: 455427.3. Street address: 1739 Fremont County Road 21A, Canon City, CO 81212. The approximate location of the Hawklee Well is shown on the maps attached to the Application as Exhibit 2. **4. Source of water:** ground water in clay and volcanic rock. **5. Depth of well, if completed:** 650 feet. **6. Appropriation: A. Date of appropriation and priority date pursuant to C.R.S. § 37-92-602(4):** February 27, 2006. **B. How appropriation was initiated:** By filing application for exempt well permit. **C. Date water applied to beneficial use:** July 6, 2006, based on pump installation and test. **7. Amount claimed in gallons per minute (gpm):** 15 gpm, absolute. **8. Proposed Use:** Fire protection, indoor household use, watering of poultry, domestic animals and livestock, and irrigation of not more than one acre of residential lawn and garden associated with residence and 35-acre parcel, Bar J Ranch Filing No. 5, Parcel 8. **9. Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.** Applicant. **10. Remarks or any**

other pertinent information: Applicant seeks to confirm a water right and priority date for the Hawlee Well in accordance with C.R.S. § 37-92-602(4).

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 2009, (forms available at Clerk's office or at www.courts.state.co.us, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 10th day of September, 2009.



Mardell R. DiDomenico

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 _____, 2009

NOTICE

New Water Court Rule revisions went into effect on July 1, 2009, available at <http://www.courts.state.co.us/Courts/Water/Index.cfm>

Mandatory E-Filing required for all water case documents filed by attorneys is effective in all Water Divisions July 1, 2009, including for all existing cases. Pro se parties need file only one paper copy of each application and document with the Water Court Clerk under Rule 2 of the Revised Water Court Rules. Reference, Bill Number: HB 09-1185, Water Rights Applications Documents and Rule 2 of the Revised Water Court Rules available at <http://www.courts.state.co.us/Courts/Water/Index.cfm>