

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING DECEMBER 2003 AND
INVITATION TO SUBSCRIBE TO STATE ENGINEER'S NOTIFICATION LIST

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 December 2003, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 01CW133 – JAMES W. CAMPBELL and KATHERINE M. CAMPBELL, 4420 Green Mountain Drive, Colorado Springs, CO 80921

(James W. Culichia and Bradford R. Benning, Attorneys for Applicants, Felt, Monson & Culichia, LLC, 319 North Weber Street, Colorado Springs, CO 80903)
First Amendment to Application
El Paso County

Applicants, James W. Campbell and Katherine M. Campbell, submit the following First Amendment to Application and state as follows: **1. Summary of Amendment.** The purpose of this amendment is to adjudicate the underground water rights in the Denver Basin aquifers underlying the Applicants' property and to change the source and type of augmentation water which will be used in the plan for augmentation from nontributary groundwater return flows purchased or leased from third parties, as stated in the original application, to not-nontributary and/or nontributary groundwater developed from wells drilled on the Applicants' property. **2. Application for Underground Water Rights.** **A. Well Permits.** Well permit applications for the wells to be drilled pursuant to this amended application and subsequent decree will be applied for prior to drilling wells into the Denver Basin aquifers which are the subject of this application. **B. Legal Description of Wells.** All wells will be located on the Applicant's property, consisting of approximately 140.024 acres within the Southeast quarter of Section 32, the Northeast quarter of Section 32, the Northwest quarter of Section 33, and possibly the Southwest quarter of Section 33, Township 11 South Range 67 West of the 6th P.M., in El Paso County, Colorado ("Applicant's Property"). The Applicant's Property is more particularly described in the Exhibit A legal description and survey plat attached to the original application. No exact location is requested for the proposed wells, as that information will be provided when the well permit applications are submitted. **C. Water Source.** **1. Not Nontributary.** The ground water that will be withdrawn from the Dawson Aquifer of the Denver Basin underlying the Applicant's Property is not nontributary. Pursuant to C.R.S. 37-90-137(9)(c), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. Water withdrawn from the Denver Aquifer is not nontributary and for wells completed in the Denver Aquifer which are more than

one mile from the point of stream/aquifer contact, the augmentation requirement is four percent of the amount of water withdrawn on an annual basis. 2. Nontributary. The ground water that will be withdrawn from the Arapahoe and Laramie-Fox Hills Aquifers of the Denver Basin underlying the Applicant's Property is nontributary. **D. Estimated Rates of Withdrawal and Ground Water Available**. 1. Estimated Rates of Withdrawal. The pumping rates for wells to be completed to each aquifer are estimated to be between 15 gpm and 150 gpm. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts, which may be less than or exceed the above estimates. The actual depth of each well to be constructed within the respective aquifers will be determined by actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying Applicant's Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4), or withdrawn over a longer time based upon actual withdrawals or local government regulations. The estimated average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers will be based upon the Denver Basin Rules. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

<u>Aquifer</u>	<u>Sand Thickness</u>	<u>Ground Water Availability a/f year</u>
Dawson – NNT	134	38
Denver - NNT	105	25
Arapahoe - NT	250	60
Laramie-Fox Hills - NT	140	29

Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **E. Requested Uses**. The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, fire protection, central water supply for such uses, and also for exchange and augmentation purposes. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. **F. Well Field**. Applicant requests that it be permitted to produce the full legal entitlement from the respective Denver Basin aquifers underlying Applicant's Property through any combination of wells constructed into each aquifer on the Applicant's Property. Applicant requests that these wells be treated as a well field. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed from

the Denver Basin aquifers underlying Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifer does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever occurs first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifer underlying Applicant's Property. **G. Post Pumping Depletions.** After pumping ceases, Applicants will demonstrate that any depletions which may occur to the stream system are non-injurious and need not be replaced. However, if the Court finds that such depletions need to be replaced, then Applicants expressly reserve the amount of their nontributary Arapahoe Aquifer or Laramie-Fox Hills Aquifer groundwater underlying the Applicants' property that may be necessary for replacement of post-pumping depletions. **4. Amendment of Augmentation Plan.** Applicant will augment depletions caused by out of priority diversions to the Augmented Structures (described in ¶10 of the Application) through pumping and over-pumping of not-nontributary groundwater, through pumping of non-tributary groundwater and return flows from not-nontributary groundwater applied to beneficial uses. **5. Statements of Opposition.** Applicants consent that all statements of opposition filed to the original application shall apply equally to this First Amendment.
(First Amendment to Application, 6 pages)

CASE NO. 03CW110 – MARGUERITE B. KAMINSKI and WILLIAM H. LING, P. O. Box 525, Westcliffe, CO 81252

Application for Underground Water Right
Custer County

2. Name of well and permit, registration, or denial number: Permit #106208.
3. Legal description of well: Custer County, NW ¼ of the NW ¼ Section 31, Township 21 South, Range 73 West, 6th P.M., 1100 feet from the North line and 300 feet from the West line. **Street Address:** 3656 County Road 182, Westcliffe, CO 81252. **4. A. Source:** Ground water. **B. Depth.** 197 feet. **5. A. Date of appropriation:** May 8, 1979 (Permit). **B. How appropriation was initiated:** Permit granted; well drilled; water put to beneficial use. **C. Date water applied to beneficial use:** August 13, 1979. **6. Amount claimed:** 15 gpm. **7. If well is non-tributary: A. Name of Aquifer:** N/A. **B. Amount claimed in acre feet annually:** _____. **8. Proposed use: A. If irrigation, complete the following: (1) Number of acres historically irrigated:** One. **(2) Total number of acres proposed to be irrigated:** One (See (4) below). **(3) The legal description of the land irrigated:** S2 NW4 NW4 SW4 NW4 S31 T21S R73W 6th P.M. **(4) Area of lawns and gardens irrigated:** Same as (1) above. **B. If non-irrigation, describe purpose fully:** Domestic (1). **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 and attachments, 9 pages)

CASE NO. 03CW111 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 03CW112 – TAYLOR/OSWALD TRUST, Stephen D. Oswald, P.O.A., P. O. Box 304, Cotopaxi, CO 81223

Application for Water Rights (Surface)

Fremont County

2. Name of structure: Lamb Spring. **3. Legal description of each point of diversion:** Fremont County, NE ¼ of the SW ¼ Section 9, Township 47 North, Range 12 East, N.M.P.M., 2,187 feet from the South line and 1,836 feet from the West line. **Optional Additional Description:** GPS location information in UTM format. Required setting 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** 4243263; **Easting** 443241. **4. Source:** McCoy Gulch, a tributary to Sand Gulch, a normally dry tributary to the Arkansas River. **5. A. Date of initiation of appropriation:** May 16, 1907. **B. How appropriation was initiated:** Construction of a springbox and pipeline. **C. Date water applied to beneficial use:** May 16, 1907. **6. Amount claimed:** .10 cfs Absolute. **7. Use or proposed use:** Domestic, irrigation, stockwater, and fire suppression. **A. If irrigation, complete the following: Number of acres historically irrigated:** 5 acres. **Proposed to be irrigated:** 5 acres. **Legal description of acreage:** 5 acres located in part of SW ¼ of NE ¼ and in part of SE ¼ of NW ¼ of Section 9, Township 47 N, Range 12E, NMPM. **B. If non-irrigation, describe purpose fully:** Spring supplies water to the ranch house and livestock tanks via a 4-inch pipeline from the spring to the points of use. **8. Name(s) and address(es) of owner(s) of the land upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Robert Joslen, 01 Main St, Westcliffe, CO 81252, owns the land where the springbox and approximately 1,160 feet of pipeline are located. The Taylor/Oswald Trust, P. O. Box 304, Cotopaxi, CO 81223 owns the land where the water is being put to beneficial use. **9. Remarks:** Up until 1992, the spring, springbox and pipeline were thought to be located on the Taylor Ranch. When the neighboring ranch was subdivided in 1992, a new survey revealed that the spring was actually located on the neighboring property.
(Application and attachments, 10 pages)

CASE NO. 03CW113 – SHANE MILBERGER, 1625 Cortner Road, Pueblo, CO 81006

Application for Change of Water Right

Pueblo County

2. Decreed name of structure for which change is sought: Well No. 1; W-858. **3. From previous Decree: A. Date Entered:** 12/22/72. **Case No.** W858; **Court:** Division 2. **B. Decreed point of diversion:** NE NW Sec. 3, T 21S, R64W, 6th P.M. **C. Source:** Ground water. **D. Appropriation Date:**

5/9/36. **Amount:** 75 gpm. **E. Historic use:** Irrigation of 5 acres including lawn, garden, and orchard. **4. Proposed change:** Relocation to 1625 Cortner Road for lawn, garden, and domestic livestock, for 1 acre limited to 15 gpm. **If a change in point of diversion, please provide legal description:** Pueblo County, NE ¼ of the NE ¼ Section 13, Township 21 South, Range 64 West, 6th P.M., 200 feet from the North line and 300 feet from the East line. **Street Address:** 1625 Cortner Road. **Subdivision:** Parcel 1413003007-0; Par A Var. 420. **Lot:** A Var. #420. **5. Name(s) and address(es) of owner(s) of land on which structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicant. (Application and attachments, 6 pages)

CASE NO. 03CW114 – TERRY PIXLEY and GEOFFREY EDMUNDS, 12910 Tahosa Lane, Colorado Springs, CO 80908 (Steven T. Monson, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903)

Application for Water Storage Rights and Surface Water Rights
El Paso County

II. WATER STORAGE RIGHTS: A. Blackbird Pond. 1. Legal Description. The center point of the dam is located in the NE1/4 of the NE1/4 of Section 11, Township 13 South, Range 62 West, 6th P.M. a distance of 80 feet from the north line of said section and 1,000 feet from the east line of said section. The general location of the structure is shown on the Exhibit A map attached to the Application and is located upon the Applicants' Exhibit B real property ("Applicants' Property"). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **2. Source.** The source for the filling and maintenance of this pond is the Blackbird Spring, as described in Section III.A. below, and the tributary flows of an unnamed gulch, tributary to Big Springs Creek, tributary to Black Squirrel Creek, tributary to the Arkansas River. **3. Appropriation.** The appropriation of this pond was completed on September 30, 1929 by the construction of the dam and the excavation of an existing spring area to divert and capture the spring water and surface flows in the pond. The spring flows were already coming to the surface at this location prior to the excavation. Water was applied to beneficial use on the same date. **4. Amount Claimed.** The amount claimed for this pond is 2.1 acre feet of water to fill the pond, absolute, together with the right to refill and direct freshening flows through the pond. **5. Use.** The use of the pond is for stock watering, recreation, fisheries, wetlands, and wildlife enhancement. **6. Pond Specifications.** The surface area of the pond at high water line is 0.35 of an acre. The maximum height of the dam is 9 feet at the spillway and the length of the dam is 230 feet. The capacity of the pond is 2.1 acre feet which is all dead storage capacity. These are approximate numbers based on Applicants' estimates. **7. Names and Address of Landowners where the Structure is Located.** The storage structure is located upon land owned by the Applicants and is also partially located upon land adjoining the Applicants owned by Peggy M. Winters, whose address is 7650 South Calhan Road, Calhan, CO 80808. **B.**

Coot Pond. 1. Legal Description. The center point of the pond is located in the SE1/4 of the NW1/4 of Section 11, Township 13 South, Range 62 West, 6th P.M. a distance of 1,850 feet from the north line of said section and 2,400 feet from the west line of said section. The general location of the structure is shown on the Exhibit A map attached to the Application. **2. Source.** The source for the filling and maintenance of this pond is the Coot Spring, as described in Section III.B. below, and the tributary flows of an unnamed gulch, tributary to Big Springs Creek, tributary to Black Squirrel Creek, tributary to the Arkansas River. **3. Appropriation.** The appropriation of this pond was completed on September 30, 1929 by the excavation of an existing spring area to divert and capture the spring water and surface flows in the pond. The spring flows were already coming to the surface at this location prior to the excavation. Water was applied to beneficial use on the same date. **4. Amount Claimed.** The amount claimed for this pond is 0.81 acre feet of water to fill the pond, absolute, together with the right to refill and direct freshening flows through the pond. **5. Use.** The use of the pond is for stock watering, recreation, fisheries, wetlands, and wildlife enhancement. **6. Pond Specifications.** The surface area of the pond at high water line is 0.23 of an acre. This structure is an excavated pond and does not have a dam. The capacity of the pond is 0.81 acre feet which is all dead storage capacity. These are approximate numbers based on Applicants' estimates. **7. Names and Address of Landowners where the Structure is Located.** The storage structure is located upon land owned by the Applicants. **C. Horse Pond. 1. Legal Description.** The center point of the dam is located in the NW1/4 of the NW1/4 of Section 11, Township 13 South, Range 62 West, 6th P.M. a distance of 400 feet from the north line of said section and 425 feet from the west line of said section. The general location of the structure is shown on the Exhibit A map attached to the Application. **2. Source.** The source for the filling and maintenance of this pond is the tributary flows of an unnamed gulch, tributary to Big Springs Creek, tributary to Black Squirrel Creek, tributary to the Arkansas River. **3. Appropriation Date.** The appropriation of this pond was completed on September 30, 1929 by the construction of the dam to divert and impound the tributary surface flows at the point of diversion. Water was applied to beneficial use on the same date. **4. Amount Claimed.** The amount claimed for this pond is 2.3 acre feet of water to fill the pond, absolute, together with the right to refill and direct freshening flows through the pond. **5. Use.** The use of the pond is for stock watering, recreation, fisheries, wetlands, and wildlife enhancement. **6. Pond Specifications.** The surface area at high water line is 0.46 of an acre. The maximum height of the dam is 8 feet at the spillway and the length of the dam is 195 feet. The capacity of the pond is 2.3 acre feet which is all dead storage capacity. These are approximate numbers based on Applicants' estimates. **7. Names and Address of Landowners where the Structure is Located.** The storage structure is located upon land owned by the Applicants. **D. Duck Pond. 1. Legal Description.** The center point of the dam is located in the SE1/4 of the NE1/4 of Section 11, Township 13 South, Range 62 West, 6th P.M. a distance of 2,600 feet from the north line of said section and 300 feet from the east line of said section. The general location of the structure is shown on

the Exhibit A map attached to the Application. **2. Source.** The source for the filling and maintenance of this pond is the underlying springs and tributary flows of an unnamed gulch, tributary to Big Springs Creek, tributary to Black Squirrel Creek, tributary to the Arkansas River. **3. Appropriation.** The appropriation of this pond was completed on September 30, 1929 by the construction of the dam to divert and impound the tributary surface flows at the point of diversion. Water was applied to beneficial use on the same date. **4. Amount Claimed.** The amount claimed for this pond is 0.75 acre feet of water to fill the pond, absolute, together with the right to refill and direct freshening flows through the pond. **5. Use.** The use of the pond is for stock watering, recreation, fisheries, wetlands, and wildlife enhancement. **6. Pond Specifications.** The surface area at high water line is 0.25 of an acre. The maximum height of the dam is 3 feet at the spillway and the length of the dam is 120 feet. The capacity of the pond is 0.75 acre feet which is all dead storage capacity. These are approximate numbers based on Applicants' estimates. **7. Names and Address of Landowners where the Structure is Located.** The storage structure is located upon land owned by the Applicants. **III. APPLICATION FOR SURFACE WATER RIGHTS.**

A. Blackbird Spring. 1. Legal Description. Blackbird Spring is an area of spring waters located in the NE1/4 of the NE1/4 of Section 11, Township 13 South, Range 62 West, 6th P.M. a distance of 60 feet from the north line of said section and 980 feet from the east line of said section. **2. Source.** The source of this spring area is the tributary flows of an unnamed gulch tributary to Big Springs Creek, tributary to Black Squirrel Creek, tributary to the Arkansas River. The Applicants claim this structure as a spring which is exempt from the definition of a well as provided in C.R.S. §37-90-103(21)(b). This spring is a source for the Blackbird Pond. **3. Appropriation Date.** The appropriation of this spring was completed on September 30, 1929 by the excavation of the existing spring area for the impoundment of water in Blackbird Pond. Water was applied to beneficial use on the same date. **4. Amount Claimed.** The amount of this water right sought is 15 gallons per minute, absolute. **5. Use.** The use of the spring is for stock watering, recreation, fisheries, wetlands, and wildlife enhancement. **6. Names and Address of Landowners where the Structure is Located.** The spring area is located upon the Applicants' Property, however the high water mark of Blackbird Pond is partially located on the neighbor's property as previously noted.

B. Coot Spring. 1. Legal Description. Coot spring is located in the SE1/4 of the NW1/4 of Section 11, Township 13 South, Range 62 West, 6th P.M. a distance of 1,850 feet from the north line of said section and 2,400 feet from the west line of said section. **2. Source.** The source of this spring area is the tributary flows of an unnamed gulch, tributary to Big Springs Creek, tributary to Black Squirrel Creek, tributary to the Arkansas River. The Applicants claim this structure as a spring which is exempt from the definition of a well as provided in C.R.S. §37-90-103(21)(b). This spring is a source for Coot Pond. **3. Appropriation Date.** The appropriation of this spring was completed on September 30, 1929 by the excavation of the existing spring area for the impoundment of water in Coot Pond. Water was applied to beneficial use on the same date. **4. Amount Claimed.** The amount of this water right sought is 15

gallons per minute, absolute. **5. Use.** The use of the spring is for stock watering, recreation, fisheries, wetlands, and wildlife enhancement. **6. Names and Address of Landowners where the Structure is Located.** The spring area is located upon land owned by the Applicants.
(Application and attachments, 8 pages)

CASE NO. 03CW115 – TERCIO RANCH HOLDINGS LLC, (“Tercio Ranch”), 15850 County Road 13, Weston, CO 81091 (Monte Pascoe, Russell W. Kemp, and Kelley A. Bergelt, Ireland, Stapleton, Pryor & Pascoe, P.C., Attorneys for Applicant, 1675 Broadway, 26th Floor, Denver, CO 80202)

Application for Change In Water Rights
Las Animas County, Colorado

1. Decreed name of structure for which change is sought: The Burns and Duncan Ditch, also known as the Burns and Duncan Irrigation Ditch. The change in water rights is for 2.75 cfs of The Burns and Duncan Ditch that was the subject of Case No. 80CW3. This application does not affect the remaining 3.25 cfs of The Burns and Duncan Ditch. **2. Description of Decree for water right for which change is sought:** **A. Date Entered:** August 10, 1903. **Case No.:** The original adjudication of this water right was in the Matter of the Adjudication of Priorities of Right to the use of Water in Water District 19, the original petition for which was filed September 29, 1881, and was modified in Case No. 80CW3. **Court:** Las Animas County District Court, Water Division 19. **B. Decreed Point of Diversion:** **(i) Date of original decree:** August 10, 1903, modified in Case No. 80CW3, dated February 20, 1981. **(ii) Location:** The present location of the point of diversion is on the north bank of the Purgatoire River in the SE ¼ of the NE ¼ of Section 12, Township 32 South, Range 62 West of the 6th P.M., 1700 feet south of the northern boundary of Section 12 and 1200 feet west of the eastern boundary. **C. Source:** Purgatoire River. **D. Appropriation date:** January 1, 1866; **Amount:** 2.75 cfs. **E. Historic Use:** Irrigation. A map locating the place of the historic use of the water rights is attached to the Application as Exhibit A. A summary of records showing the diversions of the water right is attached to the Application as Exhibit B. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **4. Proposed Change:** **A. Change Requested:** Tercio Ranch Holdings LLC proposed adding as alternative points of diversion for the 2.75 cfs of The Burns and Duncan Ditch which is the subject of this Application, the locations described in 4.B below for the use described in 4.C below and managed as described in 4.E below. **B. Location:** As determined using the Global Positioning System, with points averaged. (See Exhibit C to Application for locations): (i) Alternative Point of Diversion No. 1: LAT 37°04.411'; LONG 105°01.172'; (ii) Alternative Point of Diversion No. 2: LAT 37°04.672'; LONG 105°02.859'. **C. Use:** Irrigation and Fire Protection. **D. Amount:** 2.75 cfs, diverted in accordance with the conditions and restrictions outlined below. **E. Proposed plan for operation:** Applicant proposes that the change in point of diversion be administered and utilized as described below to assure that other water rights will not be injured: (i) A detailed plan for operation of the change

proposed will include the following: (a) All water diverted at the alternative points of diversion will be measured and operated as required by the Division of Water Resources. (b) Applicant will divert annually at the alternate points of diversion no more than an amount equal to the average annual historic consumptive use of the water right at its presently decreed location, which amount is 141.7 acre feet. (c) Applicant will maintain a measuring device at the present point of diversion for the purpose of measuring the amount of water that would be in priority at such location. Only the proportionate amount of water available to the 2.75 cubic feet per second of The Burns and Duncan Ditch that is the subject of this application, measured in cubic feet per second, shall be diverted, in total, at the alternate points of diversion, less such amount as may be necessary to protect water users located between the alternate points of diversion and the present point of diversion. In any year when diversions are made at the alternate points of diversion, no diversions will be made at the present point of diversion. (d) The water diverted at the alternate points of diversion described in 4.B above, and shown on Exhibit C attached to the Application, will be utilized on the land shown on Exhibit C. **5. Name and addresses of owners of land on which structures will be located and upon which water will be placed to beneficial use:** Applicant.
(Application and attachments, 8 pages)

CASE NO. 03CW116 – RKY & JBY COMPANY, Inc., d/b/a YANT RANCH, Roger B. Yant, V.P., 10113 Rye Trout Farm Road, P. O. Box 189, Rye, CO 81069

Application for Underground Water Right
Pueblo County

2. Name of well and permit, registration, or denial number: Well Permit No. 5366; permit name Robert Garoutte. **3. Legal description of well:** Pueblo County, NE ¼ of the NW ¼ Section 32, Township 24 South, Range 67 West, 6th P.M.; **Street Address:** 10113 Rye Trout Farm Road; **Optional Additional Description:** Required settings for GPS units are: 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. **Northing** 4196731; **Easting** 13S 507612. **4. A. Source:** Ground water tributary to Greenhorn Creek. **B. Depth.** 200 feet. **5. A. Date of appropriation:** 25 March 1960. **B. How appropriation was initiated:** Application/well drilled, pump installed/ State Permit **C. Date water applied to beneficial use:** 12 April 1960. **6. Amount claimed:** 10 gpm or 200 AF Absolute. **7. If well is non-tributary:** N/A. **8. Proposed use:** Domestic, stock watering. **A. If irrigation, complete the following:** N/A. **B. If non-irrigation, describe purpose fully:** Household Uses. **9. 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. **10. Remarks:** Protection of this resource by adjudication is required to ensure a continual supply to this site.
(Application and attachments, 7 pages)

CASE NO. 03CW117(93CW87) TRAIL WEST ASSOCIATION, INC., 18300 Rio Hondo Drive, P. O. Box 2003, Buena Vista, CO 81211 (Bradford R. Benning and James G. Felt, Felt, Monson & Culichia, LLC, 319 North Weber Street, Colorado Springs, CO 80903)

Application for Finding of Reasonable Diligence

Chaffee County

Pursuant to Notice of the Water Court, Water Division 2, dated October 29, 2003, Applicant, Trail West Association, Inc., hereby submits its Application for Finding of Reasonable Diligence. **2. Name of Conditional Water Right:** Trail West Association Jenny Creek Pipeline. **3. Description of Conditional Water Right.** **A. Type of Conditional Water Right.** Conditional surface water right. **B. Date of Original Decree.** The decree in Case No. 1993CW87, Water Division 2 ("Decree") was entered on April 8, 1998. **C. Amount of Conditional Water Right.** 0.334 c.f.s. (150 g.p.m.) conditional. **D. Sources of Conditional Water.** The source of the conditional water right is Jenny Creek, (a/k/a Grandchildren Creek) an unnamed tributary of North Cottonwood Creek, tributary to Cottonwood Creek, tributary to the Arkansas River. **E. Priority Date of the Conditional Water Right.** Pursuant to the Decree, the appropriation date of the conditional water right is May 25, 1993. **F. Uses of the Conditional Water.** The decreed uses of the conditional water right include: irrigation, fire protection, watering of livestock, domestic, fish culture, and aquifer recharge. Irrigation may occur on up to five acres in the SW1/4, Section 10, T14S, R79W, 6th P.M. For the non-irrigation uses, Trail West Association, Inc. ("Trail West") is a Home Owners' Association which operates a central water supply system for residents in Trail West Village. Trail West will utilize the water supplied from Jenny Creek to supplement its physical supply of water either directly or via recharge of the ground water through a stock water pond also used for fire protection and fish propagation. Trail West's physical supply of water from its wells has been augmented by replacement water from the Upper Arkansas Water Conservancy District ("UAWCD") pursuant to the UAWCD's augmentation plan in Case Nos. 92CW94 and 94CW5. **G. Name and Address of Owner(s) of the Land on which a 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.** The United States Forest Service, San Isabel National Forest, 410 East Main, Buena Vista, Colorado, 81211, is the owner of land on which the point of diversion is located. Trails West is the owner of the land on which the conditional water right is to be used. **4. Outline of Work Done Towards Completion of Appropriation and Application of Water to Beneficial Use.** During the diligence period, Trail West has done the following work with its attendant expenditures toward the development of its conditional water right and water supply and distribution system, the completion of the appropriation and application of the conditional water right to beneficial use, and toward the protection and preservation of its conditional water right: Trail West worked with adjoining property owners to construct a reservoir on real property owned by

Peter Paddock and Waldo Stewart pursuant to their decree in Case No. 92CW65. The reservoir, which was completed in 2000, is currently in operation, is lined, and has a measuring gauge. Trail West has installed and connected a dry hydrant to the reservoir to utilize the Jenny Creek Pipeline water for fire protection services as described in the decree. Trail West has retained an engineering and development firm to assist in the implementation, planning, and use of Trail West's conditional water right including creation of a better diversion structure and measuring instrumentation to control the equitable split of water between decreed diverters of water on Jenny Creek, installation of a pipeline from the diversion structure, secure agreements with neighbors for access to the fire suppression reservoir of Trail West and diversion of all excess Trail West water to other storage structures to allow for additional fire protection and ground water recharge for wells in the area. Trail West has expended approximately \$2,314.93 during the diligence period for legal services in connection with protection, preservation, and use of its conditional water right. Trail West has made reasonable and diligent efforts within its legal, physical, economic, and practical means to perform the diligence as outlined above and move toward the use of the conditional water right. (Engineering report with pictures attached to the Application and available for inspection at the Office of the Clerk for Water Division 2.) WHEREFORE, Applicant prays for a Decree of the Water Court granting this Application for Reasonable Diligence and such other and further relief as the Court deems just and proper in the premises.

(Application and attachments, 7 pages)

CASE NO. 03CW118(84CW62, 84CW63, 84CW64) - THE COLORADO CANAL COMPANY, THE LAKE MEREDITH RESERVOIR COMPANY, THE LAKE HENRY RESERVOIR COMPANY, c/o Allen Ringle, Superintendent, 331 Main Street, Ordway, CO 81063; AND THE CITY OF COLORADO SPRINGS, Attn: Kevin Lusk, P. O. Box 1103, Colorado Springs, CO 80947 (Please direct all pleadings to: Mary Mead Hammond, Carlson, Hammond & Paddock, 1700 Lincoln Street, Suite 3900, Denver, Colorado 80203).

Application for Finding of Reasonable Diligence, to Make Certain Conditional Rights of Exchange and Substitution Absolute, and to Correct Erroneous Legal Descriptions in Prior Decree.

In Crowley, Pueblo, Lake, Chaffee, Fremont, El Paso and Otero Counties

The Applicants in this case are The Colorado Canal Company, The Lake Meredith Reservoir Company, The Lake Henry Reservoir Company and the City of Colorado Springs, which is now the majority stockholder in each of the Companies. Foxley & Co. was the majority shareholder in each of the Companies in 1984 when the original applications were filed also in its name in Case Nos. 84CW62, 84CW63 and 84CW64. The City of Colorado Springs has been substituted as an Applicant following its purchase of the bulk of the Foxley & Co. shares. **2. Name of Structures Utilized for Exchange and Substitution: A. Lake Meredith Reservoir ("Lake Meredith").** Lake Meredith Reservoir is located in all or portions of Sections 15, 16, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, and 33 in Township 21 South, Range 56 West, Sections 1 and 12

in Township 22 South, Range 57 West, Section 6 in Township 22 South, Range 56 West, and Sections 24, 25, and 36 in Township 21 South, Range 57 West, all from the 6th P.M., in Crowley County, Colorado. Lake Meredith Reservoir dam axis and the centerline of the outlet canal intersect at a point located in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 12, Township 22 South, Range 57 West of the 6th P.M., at a point from which the West Quarter Corner of said Section 12 bears North 27° 14' West a distance of 564.30 feet. (The foregoing legal description is correct, though it differs slightly from that in the prior decrees in these cases. See below.) **B. Lake Meredith Reservoir Outlet Canal (the "Outlet Canal").** Waters released from Lake Meredith Reservoir are carried through the Outlet Canal to a point in the South Half of Section 21, Township 22 South, Range 57 West of the 6th P.M., where they can be released to the Holbrook Canal and/or discharged into the Fort Lyon Storage Canal whence they are carried southeasterly approximately one-half mile in the Fort Lyon Storage Canal to a point at which they either continue in said Fort Lyon Storage Canal or are discharged through a headgate on its Southerly bank in the Southwest Quarter of Section 22, Township 22 South, Range 57 West of the 6th P.M., in Crowley County, Colorado, whence they travel South-Southeast approximately one mile to discharge into the Arkansas River in the SE $\frac{1}{4}$ of Section 27, Township 22 South, Range 57 West of the 6th P.M., in Otero County, Colorado. (The foregoing legal description is correct, though it differs slightly from that in the prior decrees in these cases. See below.) **C. Lake Henry Reservoir ("Lake Henry").** Lake Henry Reservoir is located in all or portions of Sections 31 and 32, Township 20 South, Range 56 West, and Sections 5 and 6, Township 21 South, Range 56 West, all from the 6th P.M., in Crowley County, Colorado; the primary outlet works for Lake Henry Reservoir are located in the South $\frac{1}{2}$ of said Section 6 and the Lake Henry Reservoir dam axis and the centerline of the outlet canal intersect at a point on the West line of the Southeast Quarter of said Section 6, a distance of 512 feet South of the center of Section 6, Township 21 South, Range 56 West of the 6th P.M., in Crowley County, Colorado. **D. Pueblo Reservoir.** Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in Township 20 South, Range 66 West, Sections 1, 2, 3, 4, 5, 9, 10 and 11 in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23 and 25 in Township 20 South, Range 67 West, all from the 6th P.M., in Pueblo County, Colorado. The Pueblo Reservoir dam axis and the centerline of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section 36 bears North 61° 21'20" East a distance of 2,511.05 feet, all as more particularly described in the decree in Case No. B-42135 (District Court, Pueblo County). **E. Twin Lakes Reservoir.** Twin Lakes Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in Township 11 South, Range 81 West of the 6th P.M., in Lake County, Colorado. The Twin Lakes dam axis and the centerline of Lake Creek intersect at a point whence the Southeast corner of Section 23, Township 11 South, Range 81 West of the 6th P.M., bears South 54° 13'08" East a distance of 3,803.10 feet, all as more particularly described in the decree in Civil Action No.

5141 (District Court, Chaffee County, Colorado). **F. Turquoise Reservoir.** Turquoise Reservoir is located in all or portions of Sections 7, 8, 17, 18, 19 and 20, Township 9 South, Range 80 West, and Sections 10, 11, 12, 13, 14 and 15, Township 9 South, Range 81 West, all from the 6th P.M., in Lake County, Colorado. The Turquoise Reservoir dam axis and the centerline of Lake Fork Creek intersect at a point whence the Northwest corner of Section 16, Township 9 South, Range 80 West of the 6th P.M., bears North 44° 46'18" East a distance of 10,344.35 feet, all as more particularly described in the decree in Civil Action No. 5141 (District Court, Chaffee County). **G. Clear Creek Reservoir.** Clear Creek Reservoir is located in all or part of Sections 7 and 8, Township 12 South, Range 79 West of the 6th P.M., in Lake County, Colorado. The Clear Creek Reservoir dam axis and the centerline of Clear Creek intersect at a point whence the South ¼ corner of Section 8, Township 12 South, Range 79 West of the 6th P.M., bears South 27° West a distance of 2,255 feet. **3. Describe conditional water right (as to each structure) giving the following from the Judgment and Decree: Conditional Rights of Exchange and Substitution as follows:** A. Conditional Exchange or Substitution to Pueblo Reservoir. (1) Original Decree: October 21, 1985; Cases No.: 84CW62, 84CW63 and 84CW64; Prior Diligence Decree: December 30, 1997; Case No. 89CW61. Court: District Court, Water Division No. 2. (2) Stream Reach Affected: The reach of the Arkansas River between the following points: a. Downstream Point of Exchange or Substitution: Lake Meredith Reservoir Outlet Canal. b. Upstream Point of Exchange or Substitution: Pueblo Reservoir. (3) Exchange Priority Date: April 14, 1981. (4) Amount: That quantity which can be exchanged or substituted annually using an active storage capacity of 10,915 acre feet for Lake Henry and using an active storage capacity of 41,413 acre feet from Lake Meredith at rates of flow not to exceed 756.28 c.f.s. (5) Source: Any waters stored in Lake Henry or Lake Meredith. (6) Use: All beneficial uses for which the stored waters to be exchanged or substituted are decreed. B. Conditional Exchange or Substitution to Turquoise Reservoir, Twin Lakes Reservoir, and Clear Creek Reservoir. (1) Original Decree: October 21, 1985; Cases No.: 84CW62, 84CW63 and 84CW64; Prior Diligence Decree: December 30, 1997; Case No. 89CW61. Court: District Court, Water Division No. 2. (2) Stream Reach Affected: The reach of the Arkansas River and its tributaries between the following points: a. Downstream Points of Exchange: Lake Meredith Reservoir Outlet Canal; Pueblo Reservoir. b. Upstream Points of Exchange: Pueblo Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, and Clear Creek Reservoir. (3) Exchange Priority Date: April 14, 1981, subordinate and junior to any water right or exchange right filed for adjudication prior to 1984. (4) Amount: That quantity which can be exchanged or substituted annually using an active storage capacity of 10,915 acre feet for Lake Henry and using an active storage capacity of 41,413 acre feet from Lake Meredith at rates of flow not to exceed 756.28 c.f.s. (5) Source: Any waters stored in Lake Henry, Lake Meredith, and Pueblo Reservoir. (6) Use: All beneficial uses for which the stored waters to be exchanged or substituted are decreed. (7) Amounts previously made absolute: a. From Lake Meredith

Reservoir Outlet to Twin Lakes Reservoir: 75.36 c.f.s. b. From Lake Meredith Reservoir Outlet to Turquoise Reservoir: 10 c.f.s.

DILIGENCE

4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: A. During the diligence period, Applicants constructed system improvements for the purpose of improving the necessary facilities for the integrated water systems of the Applicants and perfecting these conditional water rights. These improvements included the following work on facilities of the Colorado Canal: construction of flumes and related appurtenances in 1990, 1992, 1993, at a total cost of approximately \$104,941; sluice improvements in 1990, 1991, 1992, 1995, and 1999, at a total cost of approximately \$240,710; repairs to siphons and gates in 1990, 1991, 1992, 1996, 1997, 1999, and 2002 at a total cost of approximately \$145,583; construction and repair of wasteways in 1998 and 1999 at a total cost of approximately \$30,356; headgate and ditch improvements and repairs in 1990, 1991, 1993, 1994, 1996, 1998, 1999, 2000, and 2002, at a cost of approximately \$30,690; installation of System Control and Data Acquisition (“SCADA”) technology for computer-operated remote system controls in 2001, 2002, and 2003, at a cost of approximately \$55,812.49. Legal expenses associated with these improvements totaled \$96,197 between 1990 and 2003, while engineering expenses totaled \$4,173 over the same period. Improvements to Lake Henry Reservoir facilities during the diligence period included reservoir repairs in 1991, 1992, 1994, 1995, 1996, 1997, and 2003, the total cost of which was approximately \$52,482; work on the Reservoir’s toe drain in 1999, 2002, and 2003, for a total cost of approximately \$198,258; channel improvements costing \$450 in 1993; and gate repairs in 1996 and 1997, costing a total of \$727. Expenses for legal services associated with these projects totaled \$28,476 over the period from 1990 to present, while engineering expenses for these projects over the same period totaled \$45,256. Improvements to Lake Meredith Reservoir facilities during the diligence period included extensive work cleaning and rechanneling a portion of the inlet canal and repairing the outlet gate, with work performed in 1990, 1999, 2000, 2001, 2002, and 2003 totaling \$1,597,890; installation of siphons in 1991 and 1998, at a total cost of \$10,855; work on the gates at Bob Creek in 1998, 2001, and 2003, for a total cost of \$2,851; work on drop structures in 1992, 1993, and 1996, for a total cost of approximately \$56,818; work on the canal levy in 1997 for a total cost of \$6,787; and meter facilities in 1994 at a cost of \$1,850. Expenditures for legal expenses in connection with these projects over the period from 1990 to the present totaled \$37,568, and engineering charges totaled \$60,387 over the same period. B. During the diligence period, Applicant the City of Colorado Springs expended in excess of \$28,216,000 towards the perfection of these conditional water rights as part of its integrated water system. Said sum includes \$27,582,000 for capital improvements to the Otero Pump Station and Pipeline, including construction of the new Twin Rocks Pump Station, and \$633,000 spent to secure temporary “if and when” storage contracts in Bureau of Reclamation facilities, so as to

accommodate use of the City's interest in the conditional water rights within the Colorado Springs municipal system. In addition, Colorado Springs paid over \$3,461,000 in assessments levied by the Companies, portions of which were applied to the improvements described above, and to the costs of legal proceedings in which the Companies participated to protect their water rights, as described below. Further, Colorado Springs participated independently as an Objector in Water Court proceedings to protect its interests in the decreed water rights, and expended significant sums for legal representation in connection with such proceedings. C. During the diligence period, the City of Aurora ("Aurora"), a stockholder of the Companies and a beneficiary of the decreed exchanges, expended in excess of \$10.5 million towards the perfection of these conditional water rights as part of its integrated water system. Said sum includes \$1,688,000 for assessments paid to the Colorado Canal Companies, approximately \$4,000,000 for studies and renovation/expansion of the Otero Pump Station, over \$500,000 for payments for storage contracts and other payments for use of Pueblo Reservoir, \$226,000 for expenditures associated with revegetation of Colorado Canal lands, approximately \$4,000,000 for capital improvements for Twin Lakes Reservoir, and over \$90,000 in expenditures associated with studies of exchange potential in the Arkansas River basin. Further, there was additional work and expenditures, not included in said sum, associated with Aurora's integrated water supply system in the South Platte Basin, necessary for delivery to and use of this water by Aurora. D. In addition, during the diligence period, Applicants have participated as an Objector in at least 8 cases in Water Court to protect their water rights, including the conditional water rights. Over the period from 1998 to December 2003, the Colorado Canal Companies expended in excess of \$28,500 in connection with such proceedings. E. During the diligence period, Applicants made diligent efforts to implement the conditional rights of exchange and substitution set forth above, and did implement the exchanges in part. In 1995, the conditional right of exchange from Lake Meredith to Pueblo Reservoir was exercised for a total of 5,619.95 acre feet at a maximum rate of 500 c.f.s., and the conditional right of exchange from Lake Meredith to Turquoise Reservoir was exercised for a total of 2,330.66 acre feet at a maximum rate of 100 c.f.s.; in 1996 the conditional right of exchange from Lake Meredith to Twin Lakes Reservoir was exercised for a total of 694.22 acre feet at a maximum rate of 150 c.f.s. All exchanges were within the decreed volumetric and rate of flow limitations and were for use in accordance with paragraph 6.2 of the original Decree in Cases No. 84CW62, 84CW63, and 84CW64. F. Applicants' actions during the diligence period constitute reasonable diligence in the development and implementation of the foregoing conditional rights of exchange and substitution. Applicants intend to place these conditional rights of exchange and substitution to beneficial use within a reasonable period of time. **CLAIM TO MAKE ABSOLUTE** 5. **If claim to make absolute -- water applied to beneficial use:** A. Applicants exchanged from Lake Meredith Reservoir Outlet Canal to Pueblo Reservoir 5,619.95 acre feet during the period between June 1, 1995 and June 7, 1995 at a maximum rate of flow of 500 c.f.s. They exchanged a total of 2,330.66 acre feet from Lake Meredith Reservoir Outlet Canal to

Turquoise Reservoir between June 8, 1995 and June 24, 1995 at a maximum rate of flow of 100 c.f.s. They also exchanged 694.22 acre feet between June 1, 1996 and June 3, 1996 from the Lake Meredith Reservoir Outlet Canal to Twin Lakes Reservoir at a maximum rate of flow of 150 c.f.s. Said water in turn has been delivered to the Colorado Springs and Aurora municipal water systems and placed to beneficial use in accordance with the requirements of the Decree in Cases No. 84CW62, 84CW63, and 84CW64. B. Applicants accordingly request that the Conditional Right of Exchange and Substitution described in paragraph 3.A., above, be made absolute as follows: (1) From Lake Meredith Reservoir Outlet to Pueblo Reservoir: Rate of flow: 500 c.f.s. Total absolute rate of flow: 500 c.f.s. C. Applicants further request that the conditional right of exchange and substitution described in paragraph 3.B above, be made absolute as follows: (1) From Lake Meredith Reservoir Outlet to Turquoise Reservoir: Rate of flow: 90 c.f.s. Total absolute rate of flow: 100 c.f.s. (2) From Lake Meredith Reservoir Outlet to Twin Lakes Reservoir: Rate of flow: 74.64 c.f.s. Total absolute rate of flow: 150 c.f.s.

REQUEST TO CORRECT ERRONEOUS LEGAL DESCRIPTIONS IN PRIOR DECREES

6. In reviewing the decrees entered heretofore in Cases No. 84CW62, 84CW63, 84CW64, and 89CW61, Applicants have become aware that the legal descriptions for Lake Meredith Reservoir, and for the location where water is discharged from the Lake Meredith Outlet Canal into the Arkansas River, are slightly erroneous, apparently as a result of a clerical error. A. The errors in the legal description previously decreed are as follows: (1) The prior description for Lake Meredith includes land in Section 6, Township 22 South, **Range 57 West** of the 6th P.M. In fact, the Section 6 land occupied by Lake Meredith is in Township 22 South, **Range 56 West** of the 6th P.M. (2) The prior description for the point where releases through the Lake Meredith Reservoir Outlet Canal reach the Arkansas River Outlet Canal reach the Arkansas River is in the **NW ¼ of the SE ¼ of Section 22**, Township 22 South, Range 57 West of the 6th P.M. In fact, the point is in the **SE ¼ of Section 27**, Township 22 South, Range 57 West of the 6th P.M. **7. Applicants aver that no party has been adversely affected by the errors in the prior descriptions, as recourse to any map of the relevant area will disclose the actual location of both Lake Meredith and its outlet canal. REQUEST FOR RELIEF** **8. Applicants pray the Court enter judgment:** A. finding that Applicants have shown reasonable diligence on all the conditional water rights decreed in these cases; B. continuing in good standing all remaining conditionally decreed water rights of exchange and substitution and fixing a date when a further application for a finding of diligence is required; C. making absolute the rights of exchange and substitution as requested in paragraphs 5.B and 5.C above; and D. acknowledging the prior errors in legal description for Lake Meredith and the Lake Meredith Reservoir Outlet Canal described in paragraph 6.A above, and ordering that they be corrected, and that the correct legal descriptions, as set forth in paragraphs 2.A and 2.B above, be accepted and substituted for the erroneous legal descriptions for all purposes. (Application, 12 pages).

**CASE NO. 03CW119 – ARKANSAS GROUNDWATER USERS ASSOCIATION,
C.R. Evans, President, P. O. Box 7, 101 North Park Street, Manzanola, CO
81058** (Paul G. Anderson, Merrill, Anderson, King and Harris, Attorneys for
Applicant, 20 Boulder Crescent, Colorado Springs, CO 80903)
Application for a Conditional Appropriative Right of Exchange
Pueblo County, Colorado

Introduction: The Arkansas Groundwater Users Association (AGUA) seeks a decree approving an appropriative right of exchange under which water will be exchanged within a reach of the Arkansas River extending from the confluence of Chico Creek and the Arkansas River to Pueblo Reservoir, including from the Excelsior Ditch Augmentation Station Outlet Canal located within that reach, for storage in Pueblo Reservoir. **1. Name and Location of Structures:** Excelsior Ditch Headgate. The Excelsior Ditch Headgate is located in SE ¼, Section 36, Township 20 South, Range 64 West of the 6th Principal Meridian, Pueblo County, Colorado. Excelsior Ditch Augmentation Station Outlet Canal. The Excelsior Ditch Augmentation Station Outlet Canal discharges into the Arkansas River in the SW ¼, Section 34, Township 20 South, Range 63 West of the 6th Principal Meridian, Pueblo County, Colorado. Excelsior Ditch Recharge Ponds: The Excelsior Ditch Recharge Ponds are located on the west bank of Chico Creek in the NE ¼, Section 6, Township 21 South, Range 62 West of the 6th P.M. in Pueblo County, Colorado. A proposed pond is planned to be located in the NE ¼, Section 31, Township 20 South, Range 62 West of the 6th P.M. in Pueblo County, Colorado. Chico Creek Confluence with the Arkansas River. The confluence of Chico Creek (an ephemeral stream) and the Arkansas River is located in the NW ¼, Section 8, Township 21 South, Range 62 West of the 6th Principal Meridian, Pueblo County, Colorado. Pueblo Reservoir. The Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 of Township 20 South, Range 66 West of the 6th P.M. and Sections 1, 2, 3, 4, 5, 9, 10 and 11 of Township 21 South, Range 66 West of the 6th P.M. and Sections 8, 9, 13, 14, 15, 16, 22, 23 and 25 of Township 20 South, Range 67 West of the 6th P.M. all in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section 36 bears North 61° 21'20" East, a distance of 2,511.05 feet, all more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado. **2. Appropriative Right of Exchange: Source of Exchange Water:** Excelsior Ditch water rights and other fully consumable water as may be acquired by AGUA from time to time. AGUA currently owns 1,792 shares of 3,333 total shares outstanding in the Excelsior Irrigating Company or a 53.765 percent interest. The remaining 1,541 shares are owned by Mr. C.R. Evans and are included in this application with his consent. Applicant does not seek to change any of the water rights listed as the sources of exchange water herein. A change of the Excelsior Ditch water rights to allow for exchange will be sought through a separate Water Court application. A. Excelsior Ditch Water Rights via the

Excelsior Ditch Augmentation Station. Water diverted in priority from the Arkansas River at the Excelsior Ditch Headgate pursuant to the water rights of the Excelsior Ditch and returned to the Arkansas River through the Excelsior Ditch Augmentation Station Outlet Canal. B. Excelsior Ditch Water Rights via the Excelsior Ditch Recharge Ponds. Water diverted in priority from the Arkansas River at the Excelsior Ditch Headgate pursuant to the water rights of the Excelsior Ditch, placed into the Excelsior Ditch Recharge Ponds (existing and proposed), and accruing to the Arkansas River as lagged subsurface flow. C. Other fully consumable water via the Excelsior Ditch Augmentation Station. Fully consumable water AGUA may acquire from time to time, delivered to the Excelsior Ditch Headgate, diverted from the Arkansas River at the Excelsior Ditch Headgate and returned to the Arkansas River through the Excelsior Ditch Augmentation Station Outlet Canal. D. Other fully consumable water via the Excelsior Ditch Recharge Ponds. Fully consumable water AGUA may acquire from time to time, delivered to the Excelsior Ditch Headgate, diverted from the Arkansas River at the Excelsior Ditch Headgate, placed into the Excelsior Ditch Recharge Ponds (existing and proposed), and accruing to the Arkansas River as lagged subsurface flow. 3. **Appropriation Date:** December 6, 2003, by passage of a resolution of the Board of Directors of the Arkansas Groundwater Users Association to make the appropriation herein. 4. **Amount Claimed:** For all exchanges – 60 cfs, conditional. 5. **Proposed Use:** Applicant seeks to adjudicate the appropriative rights of exchange described herein to allow water to be exchanged into Pueblo Reservoir while retaining irrigation as a decreed use of the Excelsior Ditch water rights. Water stored in Pueblo Reservoir will be used to replace depletions to the Arkansas River due to AGUA member well depletions and to replace historical return flow obligations attributable to the Excelsior rights. AGUA is a water users association, consisting of approximately 265 members with 350 active wells. AGUA's member well pumping is regulated based on annually approved substitute water supply plans prepared and approved pursuant to the State of Colorado's Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin, Colorado dated September 27, 1995. 6. **Place of Use:** The Arkansas River downstream of the dam at Pueblo Reservoir. 7. **Description of Exchanges:** At times when a live stream exists between the following structures (locations described above), AGUA will operate, when in priority, the following individual exchanges up to 60 cfs: A. From the confluence of Chico Creek and the Arkansas River to Pueblo Reservoir. B. From the Excelsior Ditch Augmentation Station Outlet Canal point of discharge at the Arkansas River to Pueblo Reservoir. Attached to the application is a map illustrating the location of the points of exchange and the facilities described herein. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. 8. **Owners of the Land upon which the Structures are Located:** Pueblo Reservoir is owned by: United States Department of Interior, Bureau of Reclamation, 11056 West County Road 18E, Loveland, CO 80537-9711. The Excelsior Ditch Augmentation Station Outlet Canal is located on land owned by: LaFarge West, Inc., a subsidiary of LaFarge NA, c/o Eric Reckentine,

Colorado Land Manager, 1400 West 64th Avenue, Denver, CO 80221. The existing Excelsior Ditch Recharge Ponds are located on land owned by: Mr. C.R. Evans, 231 Nyberg Road, Pueblo, CO 81006. The proposed Excelsior Ditch Recharge Pond will be located on land owned by: Pueblo Depot Activity aka Pueblo Chemical Depot, Department of the Army, Pueblo, CO 81006. **9. Proposed Terms and Conditions:** Applicant shall operate the claimed exchanges only during times when it is legally permissible to do so and water is physically available to effect an exchange. To this end, Applicant shall operate the exchange only at such times as water can be legally and physically exchanged between Chico Creek and Pueblo Reservoir without injury to vested water rights located within the exchange reach. Applicant also stipulates that the exchanges to be adjudicated hereunder are junior to all previously adjudicated exchanges located within the same exchange reach or any part thereof. Applicant shall coordinate all such exchanges with the Division Engineer's office including measurement of waters delivered into the Arkansas River for exchange at the Excelsior Ditch Augmentation Station Outlet Canal, and including accounting for lagged accretions of water placed into recharge in the Excelsior Ditch and accruing at the confluence of Chico Creek and the Arkansas River. **10. No injury:** Applicant submits that the above exchange and proposed terms and conditions comply with the requirements under C.R.S. 1973, sections 37-92-103(3) and 103(5), 302(1) and 305(3)-(5), and applicable requirements of the Arkansas groundwater use rules. If administered as proposed, operation of the plan will not cause material injury to vested water rights on the Arkansas River. (Application and attachments, 7 pages)

CASE NO. 03CW120 – MCTN, LLC, Attn: M.D. Scully, 101 W. Broadway, Suite 1600, San Diego, CA 92101 (Joseph Adams Cope, Frasca, Joiner, Goodman and Greenstein, P.C., Attorneys for Applicant, 4750 Table Mesa Drive, Boulder, CO 80305-5575)

Application for Water Rights
El Paso County

FIRST CLAIM – Application for water storage right: 2. Name of Reservoir: Jake's Lake. **3. Legal Description:** **A. Location of Dam:** SE ¼ NW ¼, Section 31, T11S, R66W, 6th P.M., El Paso County, at a point approximately 2370 feet from the west line and 1410 feet from the north line. **4. Source:** An unnamed tributary of Monument Creek. **5. Date of Appropriation:** April 1, 1985. **A. How Appropriation was Initiated:** By construction of pipeline from reservoir to Glen Eagle Golf Course. **B. Date Water Applied for Beneficial Use:** April 1, 1985. **6. Amount Claimed in Acre Feet:** acre feet, 10.0 including multiple refills, of which 10.0 acre feet is absolute and 0 acre feet is conditional. **7. Use:** **A. If irrigation, complete the following: Number of acres historically irrigated:** 100; **Number of acres proposed to be irrigated:** 100. **Legal Description of Acreage Irrigated or to be Irrigated:** The Gleneagle Golf Course is generally located in the N ½ of Section 6, T12S, R66W, 6th P.M., and the S ½ of Section 31, T11S, R66W, 6th P.M., El Paso County. **8. Surface Area of High Water Line:** 0.25 ac. **A. Maximum Height of Dam in**

Feet: 6; B. Length of Dam in Feet: 30. 9. Total Capacity of Reservoir in Acre Feet: 1.5; Active Capacity: 1.5; Dead Storage: 0. 10. Name and Address of Owner of Land on which Structures for the Water Right are Located: Gleneagle North Homeowners Association, P. O. Box 1922, Monument, CO 80132. **SECOND CLAIM – Application for Surface Water Right: 1. Name of Structure:** Jake’s Lake Intake. **2. Legal Description of Each Point of Diversion:** SE ¼ NW ¼, Section 31, T11S, R66W, 6th P.M., El Paso County, at a point approximately 2370 feet from the west line and 1410 feet from the north line. **3. Source:** Unnamed tributary of Monument Creek. **4. A. Date of Initiation of Appropriation:** April 1, 1985; **B. How Appropriation was Initiated:** By construction of pipeline from reservoir to Glen Eagle Golf Course. **C. Date Water Applied to Beneficial Use:** April 1, 1985. **5. Amount Claimed:** 1 c.f.s., of which 0.5 c.f.s. is absolute and 0.5 c.f.s. is conditional. **6. Use or Proposed Use:** Irrigation of the Gleneagle Golf Course. **A. Number of Acres Historically Irrigated:** 100; **Proposed to be Irrigated:** 100; **Legal Description of Acreage:** The Gleneagle Golf Course is generally located in the N ½ of Section 6, T12S, R66W, 6th P.M., and the S ½ of Section 31, T11S, R66W, 6th P.M., El Paso County. **7. Name and Address of Owner of Land on which Points of Diversion and Place of Use are Located:** Gleneagle North Homeowners Association, P. O. Box 1922, Monument, CO 80132.
(Application, 4 pages)

CASE NO. 03CW121 – RICHARD (Dick) PURSELL, P. O. Box 248, Poncha Springs, CO 81211 (Anthony L. Martinez, Attorney for Applicant, 249 E Street, P. O. Box 767, Salida, CO 81201)
Application for Water Storage Right
Chaffee County, Colorado

2. Name of Reservoir: Pursell Pond. **3. A. Legal description of location of dam:** A series of five pools cascading into the lowest point described here: Chaffee County, NE ¼ of the NE ¼ Section 36, Township 50 North, Range 7 East, N.M.P.M., 800 feet from the North line and 990 feet from the East Line. **Subdivision:** Eureka Ranch, **Lot:** Tract 1. **B. If off-channel reservoir, name and capacity of ditch or ditches used to fill reservoir, and legal description of each point of diversion:** **i. Source:** Squaw Creek, a tributary of Placer Creek, a tributary of Blank Gulch aka Spaulding Gulch, a tributary of the Arkansas River. **ii. Appropriation date:** ____; **iii. Adjudication Date:** N/A; **iv. Point of Diversion:** SE ¼ NE ¼ Section 36, Township 50 North, Range 7 East, N.M.P.M., Chaffee County, Colorado, approximately 750 feet west of the east section line and approximately 1,629 feet south of the north section line. **v. Amount:** 2 cfs. **4. Source:** Squaw Creek, a tributary of Placer Creek, a tributary of Blank Gulch aka Spaulding Gulch, a tributary of the Arkansas River. **5. A. Date of appropriation:** June 1, 2003; **B. How appropriation was initiated:** survey; **C. Date water applied to beneficial use:** N/A. **6. Amount claimed:** **A. In acre feet:** 2.27 Conditional; **B. If off-channel reservoir, rate of diversion in cfs for filling the reservoir:** 2.0 cfs Absolute. **7. Use:** **A. If irrigation, complete the following: (1) Number of acres historically**

irrigated: 20; (2) Total number of acres proposed to be irrigated: 30. Legal description of acreage irrigated or to be irrigated: Tract 1, NE ¼ NE ¼ Section 36, T. 50 N., R. 7E NMPM. B. If non-irrigation, describe purpose fully: Livestock and wildlife watering, piscatorial, recreational and augmentation releases. 8. Surface area of high water line: .25 acre; A. Maximum height of dam in feet: 8 feet; B. Length of dam in feet: 75 feet. 9. Total capacity of reservoir in acre feet: 2.27; Active capacity: 2.27 acre feet; Dead storage: 0. 10. 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: Land owned entirely by applicant. 11. Remarks or any other pertinent information: This is a series of five pools which constitute one pond.
(Application and attachments, 7 pages)

CASE NO. 03CW122 – RICHARD (Dick) PURSELL, P. O. Box 248, Poncha Springs, CO 81211 (Anthony L. Martinez, Attorney for Applicant, 249 E Street, P. O. Box 767, Salida, CO 81201)
Application for Water Rights (Surface)
Chaffee County, Colorado

2. Name of structure: Eureka Ditch Supplement. 3. Legal description of each point of diversion: Chaffee County, SE ¼ of the NE ¼ Section 36, Township 50 North, Range 7 East, N.M.P.M., approximately 750 feet west of the east section line and approximately 1,629 feet south of the north section line. 4. i. Source: Squaw Creek, a tributary of Placer Creek, a tributary of Blank Gulch aka Spaulding Gulch, a tributary of the Arkansas River. ii. Appropriation date: ____; iii. Adjudication Date: N/A. iv. Point of Diversion: SE ¼ NE ¼ Section 36, Township 50 North, Range 7 East, N.M.P.M., Chaffee County, Colorado, approximately 750 feet west of the east section line and approximately 1,629 feet south of the north section line. v. Use: Storage, irrigation, stock watering, recreational, piscatorial, fire protection, and augmentation release. 5. 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.
(Application, 3 pages)

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

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

**INVITATION TO SUBSCRIBE TO
STATE ENGINEER'S NOTIFICATION LIST**

Section 37-92-308, C.R.S. (2003) directs the State Engineer to establish a notification list for each water division to notify interested parties of requests for approval of: substitute water supply plans (§37-92-308), loans for an instream flow (HB03-1320, §37-83-105), and interruptible water supply agreements (HB03-1334, §37-92-309).

To receive this information for 2004, specify whether you prefer to receive the information by first-class mail or electronic mail and send your name, mailing address, e-mail address, daytime telephone number and water division(s) to: Substitute Water Supply Plan Notification List, Colorado Division of Water Resources, 1313 Sherman Street, Room 818, Denver, Colorado 80203 or e-mail to: dwr-sspnotice@state.co.us.

There is a \$12 fee for this information per calendar year, per water division. The fee may be paid by Visa, MasterCard, check or money order payable to the Colorado Division of Water Resources. If paying by credit card, please include the credit card number and expiration date.

Additional information regarding Substitute Water Supply Plans is available on the Division of Water Resources' website at <http://water.state.co.us>. Questions may be directed to the Division of Water Resources at (303) 866-3581.

Witness my hand and the seal of this Court this 6th day of January, 2004.

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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