

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED DURING DECEMBER 2008  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed during December 2008, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CASE NO. 07CW119 - GROWING ROOTS, LLC, a Washington limited liability company, c/o Anna C. Wyckoff, 1324 Broadmoor Dr. E., Seattle, WA 98112** (James W. Culichia and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber St., Colorado Springs, CO 80903; (719) 471-1212)

Amended Application for Surface Water Rights

**HUERFANO COUNTY**

**Amendment of Legal Description.** Paragraph 2(B) of the December 28, 2007 Application is amended to correct the legal description of the point of diversion as follows: The headgate of the Meses Y Company Ditch is located in the Southwest 1/4 of the Southwest 1/4, Section 19, Township 27 South, Range 70 West, 6<sup>th</sup> P.M., approximately 470 feet from the west section line and 0 feet from the south section line of said section 19. **Name and address of owners:** Applicant is currently a 3/8 owner of the Meses Y Company Ditch. The headgate is located on lands owned by Donald Cisneros, 5000 Red Creek Springs, Route 209, Pueblo, CO 81005. Except as expressly amended herein, the remainder of the December 28, 2007 Application on file with the Water Court, Water Division 2, remains unchanged.

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**CASE NO. 08CW82 - CHEROKEE METROPOLITAN DISTRICT, c/o Kevin I. Petersen, General Manager, 6250 Palmer Park Blvd., Colorado Springs, CO 80915** (James W. Culichia and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber St., Colorado Springs, CO 80903; (719) 471-1212)

Amended Application to Change Use of Conditional Water Rights

**EL PASO COUNTY**

**Amendment of Legal Description.** Paragraph III(4) of the October 31, 2008 Application is amended to include the following place of use to the already permitted and decreed places of use of the Sweetwater Wells described in Paragraph III(2) of the October 31, 2008 Application: The South Half of the Southwest 1/4 of Section 13, Township 15 South, Range 63 West of the 6<sup>th</sup> P.M., El Paso County, Colorado. Except as expressly amended herein, the remainder of the October 31, 2008 Application on file with the Water Court, Water Division 2, remains unchanged.

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**CASE NO. 08CW90** – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.  
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**CASE NO. 08CW91 - LUCAS ESCH FARMS, INC. and PATRICK ESCH FARMS, INC., c/o Patrick Esch, 717 Colorado, Springfield, CO 81073** (Chris D. Cummins, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 N. Weber St., Colorado Springs, CO 80903; (719) 471-1212

Application for Surface Water Rights

**LINCOLN AND CROWLEY COUNTIES**

**II. APPLICATION FOR SURFACE WATER RIGHTS A. Lucas Pond No. 1.**

**1. Name of Structure:** Lucas Pond No. 1. **2. Legal Description:** In the NW1/4 SW1/4, Section 17, Township 17S South, Range 58 West, 6<sup>th</sup> P.M. UTM coordinates – Northing: 42\_69881 N, Easting: 13\_0593885 E, Zone 13, NAD83 (See Exhibit A Map attached to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** December 10, 2008. **5. Amount Claimed:** 2.6 acre feet, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, augmentation, and fire protection. **7. Remarks:** Lucas Pond No. 1 will have approximately 1.4 acres of surface area, and impound approximately 2.6 acre feet of water. Lucas Pond No. 1 will be located and the waters therefrom used exclusively upon the lands of the Applicants.

**B. Lucas Pond No. 2** **1. Name of Structure:** Lucas Pond No. 2. **2. Legal Description:** In the SW1/4 SE1/4, Section 17, Township 17 South, Range 58 West, 6<sup>th</sup> P.M. UTM coordinates – Northing: 42\_69267 N, Easting: 13\_0594739 E, Zone 13, NAD83 (See Exhibit A Map). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** December 10, 2008. **5. Amount Claimed:** 0.9 acre feet, absolute. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, augmentation, and fire protection. **7. Remarks:** Lucas Pond No. 2 has approximately 0.7 acres of surface area, and impounds approximately 0.9 acre feet of water. Lucas pond No. 2 is located and the waters therefrom are used exclusively upon the lands of the Applicants.

**C. Lucas Pond No. 3** **1. Name of Structure:** Lucas Pond No. 3. **2. Legal Description:** In the NE1/4 NE1/4, Section 20, Township 17 South, Range 58 West, 6<sup>th</sup> P.M. UTM coordinates – Northing 42\_68964 N, Easting 13\_0594990 E, Zone 13, NAD83 (See Exhibit A Map). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** December 10, 2008. **5. Amount Claimed:** 2.1 acre feet, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, augmentation, and fire protection. **7. Remarks:** Lucas Pond No. 3 will have approximately 1.1 acres of surface area, and impound approximately 2.1 acre

feet of water. Lucas pond No. 3 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **D. West Side Pond No. 1** **1. Name of Structure**: West Side Pond No. 1. **2. Legal Description**: In the SW1/4 NE1/4, Section 20, Township 17 South, Range 58 West, 6<sup>th</sup> P.M. UTM coordinates – Northing 42\_62227 N, Easting: 13\_0594872 E, Zone 13, NAD83 (See Exhibit A Map). **3. Source**: Runoff, natural seeps and springs tributary to Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation**: December 10, 2008. **5. Amount Claimed**: 0.7 acre feet, absolute. **6. Uses**: Stockwater, wildlife, wetlands, recreation, piscatorial, augmentation, and fire protection. **7. Remarks**: West Side Pond No. 1 consists of a subsurface and above surface berm for the collection and impoundment of runoff, and shallow spring water and seeps which naturally would accrue to Cramer Creek. This off channel structure will result in some minor surface impoundment estimated at a maximum of 0.7 acres, but will also disburse flows subsurface for enhanced wetlands development. West Side Pond No. 1 is located and the waters therefrom are used exclusively upon the lands of the Applicants. **E. Esch Stock Pond No. 1** **1. Name of Structure**: Esch Stock Pond No. 1. **2. Legal Description of Parsons Pond Diversion**: In the NE1/4 SW1/4, Section 21, Township 17 South, Range 58 West, 6<sup>th</sup> P.M. UTM coordinates – Northing: 42\_68308N, Easting: 13\_0595713 E, Zone 13, NAD83 (See Exhibit A Map). **3. Source**: Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation**: December 10, 2008. **5. Amount Claimed**: 0.7 acre feet, absolute. **6. Uses**: Stockwater, wildlife, wetlands, recreation, piscatorial, augmentation, and fire protection. **7. Remarks**: Esch Stock Pond No. 1 has approximately 0.5 acres of surface area, and impounds approximately 0.7 acre feet of water. The structure is located and the waters therefrom are used exclusively upon the lands of the Applicants. **F. Esch Stock Pond No. 2** **1. Name of Structure**: Esch Stock Pond No. 2. **2. Legal Description of Parsons Pond Diversion**: In the SW1/4 SE1/4, Section 21, Township 17 South, Range 58 West, 6<sup>th</sup> P.M. UTM coordinates – 42\_67976 N, Easting: 13\_0596147 E, Zone 13, NAD83 (See Exhibit A Map). **3. Source**: Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation**: December 10, 2008. **5. Amount Claimed**: 1.7 acre feet, absolute. **6. Uses**: Stockwater, wildlife, wetlands, recreation, piscatorial, augmentation, and fire protection. **7. Remarks**: Esch Stock Pond No. 2 has approximately 0.8 acres of surface area, and impounds approximately 1.7 acre feet of water. The structure is located and the waters therefrom are used exclusively upon the lands of the Applicants. **III. NAME AND ADDRESS OF OWNERS OF LAND ON WHICH STRUCTURES WILL BE LOCATED**: The land, referred to herein as Applicants' Property, on which all structures will be located and upon which the water will be placed to beneficial use is owned by the Applicants. The address of the Applicants is set forth in Paragraph I above. **IV.**

**ADDITIONAL TERMS AND CONDITIONS THAT WILL HELP IN THE ADMINISTRATION OF THE SUBJECT WATER RIGHTS INCLUDE THE FOLLOWING:**

A. The Applicants shall install and maintain such water measuring devices as deemed essential by the State Engineer or Division Engineer and the same shall be installed and operated in accordance with the instruction of that office. B. Applicants' primary purpose in the construction, use and adjudication of these structures is preservation, enhancement and development of wetlands on Applicants' property, and associated uses of wildlife, stockwater, fire protection, recreation, piscatorial, and augmentation, to the extent applicable now or in the future. C. Cramer Creek is intermittent, with live flows near the confluence with Breckenridge Creek only during major storm events, if at all. Applicants' property and the subject water rights are located within the "Horse Creek Basin", as discussed by the Colorado Supreme Court in State Engineer v. Smith Cattle, Inc., 780 P.2d 546 (Colo. 1989) and as discussed in the "Horse Creek Basin Study" completed by the Office of the State Engineer in 1989. Such findings and studies have determined that "*Horse Creek receives water from these tributaries only in time of flood; there is no significant connection between this basin and the Arkansas River; that ground water in storage in the basin would not reach the Arkansas River for a period of between 300 and 800 years, if it would reach the Arkansas at all...and that the wells in the basin should not be administered as part of the Arkansas River supply.*" Smith Cattle at 548. Further, the SEO Study purported to develop and identify the scope of the Horse Creek Basin "*so that it could be administered without having to consider the impact of rights in the basin on the senior water rights of the Arkansas mainstem.*" Study at 10. Applicant asserts that, to the extent that the water rights requested herein are subject to call, they are subject only to a valid *intra-basin* call.

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**CASE NO. 08CW92 - R. JAY JOLLY, a/k/a ROBERT JAY JOLLY and DIANA LYNNE JOLLY, 31111 County Road 23, Hugo, CO 80821** (Estee A. Sanchez, Poulson, Odell & Peterson, LLC, 1775 Sherman Street, Suite 1400, Denver, CO 80203; (303) 861-4400)

Application for Change of Water Right

**LINCOLN COUNTY**

**Decreed name of structure for which change is sought:** Spring Area No. 1.  
**From previous Decree: Date Entered:** May 22, 1975 (Amended June 22, 1977, and possibly at some point between these two dates as well. **Case No.:** W-2825. **Court:** District Court in and for Water Division No. 2, State of Colorado. **Decreed point of diversion:** NW ¼ of SE ¼ of Section 33, Township 12 South, Range 56 West, 6<sup>th</sup> P.M., Lincoln County, Colorado. **Source:** Tributary to Middle Rush Creek. **Appropriation Date:** December 31, 1871, provided, however, that this right shall be junior to all priorities awarded in cases filed prior to 1972, and otherwise junior as provided in C.R.S. 1973 37-92-306. **Amount:** 1 ½ c.f.s., or 675 g.p.m. absolute. **Historic use:** The historical use of Spring Area No. 1 is for livestock watering and sub-irrigation. Water irrigated 320 acres on both sides of Middle Rush Creek for a distance from 50 feet to one half

mile in Sections 33, 34, and 35, Township 12 South, Range 56 West, 6<sup>th</sup> P.M., Lincoln County, Colorado, and Section 2, Township 13 South, Range 56 West, 6<sup>th</sup> P.M. **Proposed change:** (a) Applicant seeks approval to change the use of the water from livestock watering and sub-irrigation to livestock watering and industrial and related uses; (b) **Location:** Applicant will transport water via vacuum truck into temporary storage pits located in the SW ¼ SW ¼ of Section 35, Township 12 South, Range 56 West, 6<sup>th</sup> P.M. and in the NE ¼ NE ¼ of Section 17, Township 13 South, Range 55 West, 6<sup>th</sup> P.M.; (c) **Use:** various purposes in connection with oil and gas drilling and operations; (d) **Amount:** Applicant seeks to change the use of his decreed water rights, 1 ½ c.f.s. or 675 g.p.m. absolute; (e) **Plan for operation:** Applicant intends to use the water for various purposes in connection with oil and gas drilling and operations. Water will be delivered from the decreed point of diversion via a vacuum truck, then pumped into two temporary storage pits, from which the water will be transported via vacuum truck to various locations on Applicant's lands for oil and gas drilling operations. **Name(s) and address(es) of owner(s) or reputed owner(s) 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.

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**CASE NO. 08CW93 - POST OFFICE RANCH, LLC, P. O. Box 206, Poncha Springs, CO 81242; (719) 539-3247**

Application for Surface Water Right

**CHAFFEE COUNTY**

**Name of structure:** Jay Champe seepage ditch--seepage ditch that is fed by springs and seepage. **Legal description of each point of diversion:** Chaffee County, NE ¼ of the NW ¼ Section 8, Township 49 North, Range 8 East, NMPM, 739.19 feet from the South line and 331.56 feet from the East line. **Source:** Seepage and springs originate in both Cochetopa Creek and South Arkansas River drainages. **Date of initiation of appropriation:** June 1906; **How appropriation was initiated:** June 1906. **Date water applied to beneficial use:** 1906. **Amount claimed:** .39 cfs Absolute. **Use or proposed use:** Water is used in 2-3 acre field and is then put in Scanga Seepage Ditch and then used to irrigate an additional 55 acres ±. **If irrigation, complete the following:** **Number of acres historically irrigated:** 58; **proposed to be irrigated:** 58. **Legal description of acreage:** NW ¼ NE ¼ Section 8; NE ¼ NE ¼ Section 8; SW ¼ NE ¼ Section 8; SE1/4 NE ¼ Section 8. **Name(s) and address(es) of owner(s) or reputed owner(s) 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:** Glenna Scanga and Applicant. **Remarks:** This ditch and waters have been used on our property since June 1906 but was never filed on. New subdivision (Friends Ranch) is considering buying property where said ditch originates and have indicated they they plan on filling in said ditch since it has not been filed on.

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**CASE NO. 08CW94 - HAROLD J. PALMER and SUE M. PALMER, 2240 Sunrise Road, Walsenburg, CO 81089; (719) 250-3876 or (719) 250-5692**

Application for Underground Water Right

**HUERFANO COUNTY**

**Name of well and permit, registration or denial number:** Permit is pending; application date: 12/15/2008. **Legal description of well:** SE ¼ of the SE ¼ Section 11, Township 29 South, Range 66 West, 6<sup>th</sup> P.M., 1200 feet from the South line and 20 feet from the East line. **Street Address:** 2240 Sunrise Road, Walsenburg, CO 81089; **Subdivision:** Silver Spurs Ranch, Lot 88, Filing 4. **Source:** Unknown. **Depth:** 690 feet. **Date of appropriation:** Unknown; **How appropriation was initiated:** Unknown. **Date water applied to beneficial use:** Unknown. **Amount claimed:** 1 gpm Absolute. **If well is non-tributary:** **Name of Aquifer:** Unknown; **Amount claimed in acre feet annually:** 1/3. **Proposed use:** If irrigation, complete the following: **Number of acres historically irrigated:** 0; **Total number of acres proposed to be irrigated:** 0; **The legal description of the land irrigated:** N/A. **Area of lawns and gardens irrigated:** 140 square feet. **If non-irrigation, describe purpose fully:** Household use, bathing, drinking, cooking, washing clothes and dishes. **Name(s) and address(es) of owner(s) or reputed owner(s) 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:** N/A.

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**CASE NO. 08CW95 - ROBERT P. DAMJANOVICH and MARGYE P. DAMJANOVICH, 788 CR 524, Walsenburg, CO 81089-9497; (719) 738-2865**

Application for Underground Water Right

**HUERFANO COUNTY**

**Name of well and permit, registration or denial number:** Damjanovich Well No. 1, Permit #198138. **Legal description of well:** Huerfano County, NW ¼ of the NE ¼ Section 30, Township 27 South, Range 67 West, 6<sup>th</sup> P.M., 900 feet from the North line and 2000 feet from the East line. **Street Address:** 788 CR 524, Walsenburg, CO 81089-9497; **Subdivision:** Majors Ranch, Lot 6, Phase 1. **Optional Additional Description:** **GPS location in UTM format (Zone 13, Units in meters; Datum NAD 83; unit set to true north):** Were points averaged? No. **Northing** 4165257; **Easting** 503038. **Source:** Underground aquifer; **Depth:** 394 feet. **Date of appropriation:** 07/25/1997. **How appropriation was initiated:** Well drilled; **Date water applied to beneficial use:** 01/27/2003. **Amount claimed:** 15 gpm Absolute. **Proposed use:** Domestic use: Fire protection, ordinary household purposes inside 3 or fewer single family dwellings, the irrigation of not more than one (1) acre of home gardens and lawns, and the watering of domestic animals. **Name(s) and address(es) of owner(s) or reputed owner(s) 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:  
N/A.

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**CASE NO. 08CW96 - JANET M. CAMPBELL, 4039 CR 340, P. O. Box 1166, Walsenburg, CO 81089; (719) 738-1672**

Application for Underground Water Right

**HUERFANO COUNTY**

**Name of Well and permit, registration or denial number:** Permit 248680.

**Legal description of well:** Huerfano County, Section 31, Township 28 South, Range 66 West, 6<sup>th</sup> P.M., 200 feet from the North line and 150 feet from the East line. **Street Address:** 4039 CR 340, Walsenburg, CO 81089; **Subdivision:**

River Ridge Ranch, Lot 131. **Source:** Ground water; **Depth:** 600 feet. **Date of appropriation:** June 11, 2003; **How appropriation was initiated:** Drilling.

**Date water applied to beneficial use:** June 11, 2003. **Amount:** 9 gpm Absolute. **Proposed use:** Domestic and livestock; irrigation of one acre of home gardens and lawns on Lot 131, River Ridge Ranch.

**Name(s) and address(es) of owner(s) or reputed owner(s) 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.

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**CASE NO. 08CW97 - BENEDICTINE FELLOWSHIP OF ST. LAURENCE (a Colorado non-profit corporation), c/o Stephen C. Greenlee, Treasurer, 3555 Stanford Road, Suite 204, Fort Collins, CO 80525**

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

Application for Correction of Point of Diversion, for Conditional Surface Water Rights, for Change of Surface Water Rights, and Approval of Plan for Augmentation

**FREMONT COUNTY**

**II. CHANGE OF SURFACE WATER RIGHTS and CORRECTION OF POINT OF DIVERSION**

**A. Description of Structures and Water Rights for Which Changes are Sought:**

**1. The Somerville No. 2 Ditch.** **a. Decree Information.** The water right to be changed represents a 100% interest in the Somerville No. 2 Ditch water right, consisting of the right to divert 1.0 cubic feet per second of water (Tallahassee Creek Priority No. 14, Arkansas Priority No. 239), as adjudicated in the original adjudication dated February 3, 1894, for the irrigation of 10 acres.

**b. Decreed Point of Diversion.** The Somerville No. 2 Ditch diverts from Tallahassee Creek, tributary to the Arkansas River. The decreed point of diversion is on the east bank of Tallahassee Creek, N. 75 degrees, E. 1,380 feet from the northwest corner of Section 31, Township 17 South, Range 72 West of the 6<sup>th</sup> P.M, as depicted in Exhibit A to the Application.

All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **c. Source.** Tallahassee Creek, tributary to the Arkansas River. **d. Appropriation Date.** September 30, 1880.

**B. Correction of Point of Diversion.** Applicant seeks a correction of the decreed point of diversion for the Somerville No. 2 Ditch, as more specifically described above, which placed the point of diversion a distance of approximately fifty (50) feet away from the bank of Tallahassee Creek. Applicant has recently restored the Somerville No. 2 Ditch headgate and diversion structure on the west bank of Tallahassee Creek, within 200 feet of the decreed point of diversion. Both the decreed and corrected points of diversion are depicted on Exhibit A.

**C. Statement of Changes of Water Rights Sought.** Applicant seeks to add the uses of recreational, wildlife, piscatorial, wetlands, fire protection, and augmentation to the Somerville No. 2 Ditch. Applicant seeks to change the place of use of the Somerville Ditch to include the historically irrigated acreage, additional irrigated acreage, as well as two to-be-constructed ponds on Applicant's Property.

**D. Specific Changes Sought.**

- 1. Change of Place of Use.** In addition to the historically irrigated acreage under the Somerville No. 2 Ditch, Applicant wishes to include additional irrigable acreage for landscape and turf irrigation near Applicant's monastery and additional flood irrigation of native grasses at an associated cemetery on the property. In addition, Applicant requests the inclusion as a place of use the sites of the conditional water storage rights requested herein, Benedictine Pond No. 1 and Benedictine Pond No. 2, as depicted on Exhibit B attached to the Application.
- 2. Change of Type of Use.** In addition to the irrigation uses decreed for the Somerville No. 2 Ditch, Applicant requests recreational, wildlife, piscatorial, wetlands, fire protection, and augmentation uses for water diverted in the Somerville No. 2 Ditch and stored in the conditional water rights requested herein, Benedictine Pond No. 1 and Benedictine Pond No. 2.

**III. CONDITIONAL SURFACE WATER RIGHTS**

**A. Benedictine Pond No. 1.**

- 1. Name of Structure:** Benedictine Pond No. 1.
- 2. Legal Description of Location of Dam:** Benedictine Pond No. 1 will be located in the SE1/4 NW1/4 of Section 31, Township 17 South, Range 72 West, 6<sup>th</sup> P.M., approximately 1,870 feet from the west section line of said Section 31 and 1,690 feet from the north section line of said Section 31. (See Exhibit B).
- 3. Source:** Benedictine Pond No. 1 will be supplied by the Somerville Ditch No. 2, as described herein.
- 4. Initiation of Appropriation:** The intent to appropriate water for the Benedictine Pond No. 1 was first evidenced by the Applicant's filing of this application on December 19, 2008.
- 5. Amount Claimed:** Benedictine Pond No. 1 will have a capacity of approximately 1.8 acre feet, conditional. The pond will be filled at a rate not exceeding 1.0 cfs, the maximum flow of the Somerville No. 2 Ditch.
- 6. Use:** Benedictine Pond No. 1 will be used for irrigation, recreational, wildlife, piscatorial, wetlands, fire protection and augmentation purposes. It will be filled and refilled when storage can occur in priority or when augmented by this plan or off site sources.
- 7. Surface Area:** Benedictine Pond No. 1 will have a maximum surface area of approximately 0.5 acres.
- 8. Total Capacity:** Benedictine Pond No. 1 will have a total capacity of 1.8 acre feet, all of which shall be active capacity and none of which shall be dead storage.
- 9. Remarks:** Benedictine Pond No. 1 shall be filled and re-filled and receive freshening flows from the Somerville No. 2 Ditch when in priority, or when operated under the plan for augmentation requested herein. Benedictine



Pond No. 1 will be located and the waters therein stored and used exclusively upon the lands of the Applicant. **B. Benedictine Pond No. 2** **1. Name of Structure**: Benedictine Pond No. 2. **2. Legal Description of Location of Dam**: Benedictine Pond No. 2 will be located in the NE1/4 SW1/4 of Section 31, Township 17 South, Range 72 West, 6<sup>th</sup> P.M., approximately 485 feet from the east section line of said Section 31 and 1,390 feet from the south section line of said Section 31. (See Exhibit B). **3. Source**: Benedictine Pond No. 2 will be supplied by the Somerville Ditch No. 2, as described herein. **4. Initiation of Appropriation**: The intent to appropriate water for the Benedictine Pond No. 2 was first evidenced by the Applicant's filing of this Application on December 19, 2008. **5. Amount Claimed**: Benedictine Pond No. 2 will have a capacity of approximately 2.6 acre feet, conditional. The pond will be filled at a rate not exceeding 1.0 cfs, the maximum flow of the Somerville No. 2 Ditch. **6. Use**: Benedictine Pond No. 2 will be used for irrigation, recreational, wildlife, piscatorial, wetlands, fire protection and augmentation purposes. It will be filled and refilled when storage can occur in priority or when augmented by this plan or off site sources. **7. Surface Area**: Benedictine Pond No. 2 will have a maximum surface area of approximately 0.5 acres. **8. Total Capacity**: Benedictine Pond No. 2 will have a total capacity of 2.6 acre feet, all of which shall be active capacity and none of which shall be dead storage. **9. Remarks**: Benedictine Pond No. 2 shall be filled and re-filled and receive freshening flows from the Somerville No. 2 Ditch when in priority, or when operated under the plan for augmentation requested herein. Benedictine Pond No. 2 will be located and the waters therein stored and used exclusively upon the lands of the Applicant.

**IV. SUMMARY OF PLAN FOR AUGMENTATION** **A. Name of Structures to be Augmented**

Benedictine Pond No. 1 and Benedictine Pond No. 2, both generally located in Section 31, Township 17 South, Range 72 West of the 6<sup>th</sup> P.M., as more particularly depicted in Exhibit B. **B. Plan for Augmentation**: Applicant seeks an augmentation plan covering the depletions caused by the operation and use of Benedictine Pond No. 1 and Benedictine Pond No. 2 (collectively the "Benedictine Ponds"), including evaporative depletions, and depletions resulting from the irrigation of up to one acre of lawn and gardens at the St. Laurence Retreat and Monastery, located approximately 12 miles northwest of Canon City, Colorado. The Benedictine Ponds will be constructed and all irrigation use will occur upon the Applicant's Property, as more particularly depicted in Exhibit B. A location map of Applicants' Property is attached to the Application as Exhibit C. Applicant's Benedictine Pond's will be filled, re-filled and provided with freshening flows from consumptive use credits derived from the cessation of irrigation for a portion of the Somerville No. 2 Ditch, diverting from Tallahassee Creek, tributary to the Arkansas River. Applicant proposes to augment depletions caused by the use and operation of the Benedictine Ponds, and depletions resulting from irrigation of up to one acre of lawn and gardens, as described herein. Applicant proposes to dry-up from irrigation under the Somerville No. 2 Ditch sufficient acreage to result in historical consumptive use credits for the augmentation of out-of-priority depletions resulting from the use and operation of the Benedictine Ponds and lawn and garden irrigation.

Applicant proposes a temporary one-year dry up of such acreage under the Somerville No. 2 Ditch to provide sufficient historical consumptive use credits for the initial fill of the Benedictine Ponds, when constructed. **V. WATER RIGHTS TO BE USED FOR AUGMENTATION** Applicant proposes to augment depletions resulting from use and operation of the Benedictine Ponds and lawn and garden irrigation of up to one acre, utilizing consumptive use credits attributable to Applicant's dry-up of acreage historically irrigated by the Somerville No. 2 Ditch. Applicant's expert hydrologic consultant has determined that the dry-up of approximately 2.7 acres of land historically irrigated under the Somerville No. 2 Ditch results in consumptive use credits of approximately 4.96 acre feet annually, sufficient to replace depletions anticipated to be attributable to the Benedictine Ponds and maximum lawn and garden irrigation, calculated to be approximately 4.85 acre feet annually. **VI. STATEMENT OF PLAN FOR AUGMENTATION COVERING ALL APPLICABLE MATTERS UNDER C.R.S. §§ 37-92-103(9), 37-92-302(1) AND (2), AND 37-92-305(8)** **A. Water Demand and Depletions.** Applicant seeks approval of an augmentation plan covering depletions caused by the use and operation of the Benedictine Ponds. The total combined surface area of the Benedictine ponds is approximately 1.0 acres, and Applicant's expert consultant has determined that the evaporative losses requiring augmentation attributable to the Benedictine Ponds will be approximately 2.63 acre feet per year, while depletions resulting from irrigation of up to one acre of lawn and gardens will result in maximum depletions requiring augmentation of 2.22 acre feet per year. Total depletions to Tallahassee Creek and the Arkansas River system will therefore be 4.85 acre feet annually. Such depletions will be replaced by leaving in the steam diversions to the Somerville No. 2 Ditch sufficient for the irrigation of 2.7 acres, to be dried up under this plan of augmentation. Applicant will be entitled to the use of the combined approximately 1.0 acre Benedictine Ponds for recreational, wildlife, piscatorial, wetlands, recreation and fire protection purposes, and to the replacement of evaporative depletions therefrom, as well as replacement of evaporative depletions resulting from the irrigation of up to one acre of lawn and gardens. Utilizing an evaporative depletion analysis prepared by Applicant's expert consultant, total evaporative depletions attributable to the 1.0 combined surface acres of the Benedictine Ponds, less 0.1 acres of phreatophytic credit not requiring augmentation, are calculated to be a maximum of 2.63 acre feet annually. **B. Operation of Plan of Augmentation.** Operation of the Benedictine Ponds will occur on a year-round basis, resulting in year-round depletions. Applicant's expert consultant has calculated monthly depletions resulting from operation of the Benedictine Ponds, and opined that augmented depletions during irrigation season total 4.39 annual acre feet, while depletions during winter months total 0.46 annual acre feet. Applicant will augment depletions to the Tallahassee Creek and the Arkansas River using augmentation water represented by consumptive use credits resulting from the dry-up of 2.7 acres of historically irrigated acreage under the Somerville No. 2 Ditch. The dry-up of this historically irrigated acreage and the consumptive use credits resulting therefrom, provide a source of augmentation water to replace, in proper place,

time and amount, those monthly depletions as calculated in accordance with the analysis of Applicant's expert consultant. In order to properly time replacement resulting from Applicant's use and operation of the Benedictine Ponds, Applicant proposes to release augmentation water from one or both of the Benedictine Ponds, in such time and amount as may be required by the State and Division Engineers under this plan for augmentation. Consumptive use credits of 4.96 annual acre feet will be generated by the dry-up of historically irrigated acreage under the Somerville No. 2 Ditch. Assuming maximum potential depletions of 4.85 annual acre-feet occur, Applicant will have more than sufficient consumptive use credits for the replacement of all depletions resulting from the operation and use of the Benedictine Ponds. To the extent that Applicant is determined to have any excess consumptive use credits, Applicant requests a finding that such excess credits be available to Applicant for later sale or use in this or other plans for augmentation. Applicant's commitment of 4.96 annual acre feet of historic consumptive use credits will fully augment the maximum potential depletions from Applicant's use and operation of the Benedictine Ponds by replacing actual depletions in time, place and amount.

**VII. NAME AND ADDRESS OF OWNERS OF LAND ON WHICH STRUCTURES WILL BE LOCATED:**

The land, referred to herein as Applicant's Property, on which the Benedictine Ponds will be located and upon which the water will be placed to beneficial use is owned by the Applicant. The address of the Applicant is set forth in Paragraph I above.

**VIII. ADDITIONAL TERMS AND CONDITIONS THAT WILL HELP IN THE ADMINISTRATION OF THIS AUGMENTATION PLAN INCLUDE THE FOLLOWING:**

A. The Applicant shall install and maintain such water measuring devices as deemed essential by the State Engineer or Division Engineer and the same shall be installed and operated in accordance with the instruction of that office.

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**CASE NO. 08CW98 - RALPH A. and ELAINE F. LINDSTROM, 677 Ketchum Road, P. O. Box 245, Walsenburg, CO 81089; (719) 738-2085**

Application for Underground Water Right  
**HUERFANO COUNTY**

**Name of well and permit, registration or denial number:** Permit No. 208728.  
**Legal description of well:** Huerfano County, SE ¼ of the SW ¼ Section 26, Township 27 South, Range 68 West, 6<sup>th</sup> P.M., 50 feet from the South line and 1800 feet from the West line. **Street Address:** 677 Ketchum Road, Walsenburg, CO 81089. **Subdivision:** Majors Ranch, Lot 31, Phase 1.  
**Optional Additional Description: GPS location information in UTM format: (Zone 13; Units set to meters; Datum NAD83; Units set to true north). Northing 5831498; Easting 502568. Source:** Aquifer. **Depth:** 422 feet. **Date of appropriation:** 08/28/2000. **How appropriation was initiated:** Well drilled. **Date water applied to beneficial use:** 08/28/2000. **Amount claimed:** 20 gpm Conditional. **Proposed use:** Ordinary household use, fire protection, 1 acre garden and other beneficial uses.

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**CASE NO. 08CW99 - KENNETH L. BURGE, 4440 South Pearl Street, Englewood, CO 80113; (303) 434-2522**

Application for Underground Water Right

**HUERFANO COUNTY**

**Name of well and permit, registration or denial number:** Burge Well, Permit No. 169043 **Legal description of well:** Huerfano County, NW ¼ of the SW ¼ Section 11, Township 29 South, Range 67 West, 6<sup>th</sup> P.M., 2350 feet from the South line and 4900 feet from the East line. **Subdivision:** La Veta Pines Ranch, Lot 16. **Source:** Domestic Well; **Depth:** 210'. **Date of appropriation:** March 16, 1993. **How appropriation was initiated:** Obtained well permit. **Date water applied to beneficial use:** July 1, 1993. **Amount claimed:** 10 gpm Absolute. **If well non-tributary: Name of Aquifer:** \_\_\_\_\_. **Amount claimed in acre feet annually:** 0.75. **Proposed use:** Fire protection, ordinary household purposes inside one single family dwelling, the watering of domestic animals and irrigation of 1 acre of lawns and gardens.

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**CASE NO. 08CW100 - STEPHEN F. GLASSEY, 21750 Spirit Mountain Drive, Gulnare, CO 81020; (719) 941-0950**

Application for Underground Water Right

**LAS ANIMAS COUNTY**

**Name of well and permit, registration or denial number:** Domestic, Permit No. 189789. **Legal description of well:** Las Animas County, NE ¼ of the NE ¼ Section 27, Township 31 South, Range 66 West, 6<sup>th</sup> P.M., 225 feet from the North line and 400 feet from the East line. **Street Address:** 21750 Spirit Mountain Dr., Gulnare, CO 81020. **Subdivision:** Spirit Mountain Ranch, Lot 10. **Source:** \_\_\_\_\_. **Depth:** 595 feet. **Date of appropriation:** Sept. 7, 1995. **How appropriation was initiated:** \_\_\_\_\_. **Date water applied to beneficial use:** 7/27/1997. **Amount claimed:** 1 ½ gpm. **Proposed use:** Domestic water well and irrigation of 1.0 acres of lawns and gardens.

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**CASE NO. 08CW101 - CITY OF TRINIDAD, 135 North Las Animas Street, Trinidad, CO 81082**

(Jeffrey J. Kahn and Madoline Wallace-Gross, Bernard, Lyons, Gaddis & Kahn, P.C., Attorneys for Applicant, P. O. Box 978, Longmont, CO 80502-0978; (303) 776-9900)

Application for Change of Water Rights

**LAS ANIMAS COUNTY**

**2. Background:** Applicant owns water rights represented by 15 shares of stock in the New John Flood Ditch Company. Applicant also owns a private right to an additional 0.4 cfs of Priority No. 20. Applicant seeks to change the water rights associated with Applicant's interest in the 4.596 cfs, which are collectively referred to as the "Subject Water Rights." **a) Name of structure:** John Flood Ditch. **b) Original adjudication/deed information for Subject Water Rights.**

District 19 Priority Number	Appropriation Date	Original Decree Date	Civil Action Number (District Court, Las Animas County)	Decreed Use	Decreed Amount (cfs)	Trinidad Ownership Claimed in this Application (cfs)
9	01/01/1863	08/10/1903	Original Adjudication	Irrigation	1.28	0.048
15	04/10/1864	08/10/1903	Original Adjudication	Irrigation	5.10	0.128
20	10/07/1865	08/10/1903	Original Adjudication	Irrigation	7.35	0.586
27	05/31/1866	08/10/1903	Original Adjudication	Irrigation	2.25	0.084
145	10/20/1902	01/12/1925	CA 6118	Irrigation	100.00	3.750
					Total	4.596

**c) Description of adjudications/decrees for Subject Water Rights:**

**i) Priority No. 9, Hoehne Ditch.** The point of diversion for 1.28 cfs of Priority No. 9 was transferred to the John Flood Ditch by decree of the District Court, Las Animas County on March 9, 1909.

**ii) Priority 15, Salas North Ditch.** The point of diversion for 0.86 cfs of Priority No. 15 was transferred to the John Flood Ditch by decree of the District Court, Las Animas County, on March 11, 1911.

**iii) Priority 15, Pulaski Ditch.** The point of diversion for 2.56 cfs of Priority No. 15 was transferred to the John Flood Ditch by decree of the District Court, Las Animas County, on March 11, 1911. The point of diversion for 1.68 cfs of Priority No. 15 was transferred to the John Flood Ditch by decree of the District Court, Las Animas County, on June 30, 1917.

**iv) Priority No. 20, Hoehne Ditch.** The point of diversion for 4.95 cfs and 1.20 cfs of Priority No. 20 was transferred to the John Flood Ditch by decree of the District Court, Las Animas County on March 9, 1909. The point of diversion for an additional 1.20 cfs of Priority No. 20 was transferred to the John Flood Ditch by decree of the District Court, Las Animas County, on March 11, 1911.

**v) Priority 27, Salas North Ditch.** The point of diversion for 2.25 cfs of Priority No. 27 was transferred to the John Flood Ditch by decree of the District Court, Las Animas County, on March 11, 1911.

**vi) Priority 145, John Flood Ditch.** The point of diversion for 100.0 cfs of Priority No. 145 was decreed to the John Flood Ditch in Civil Action No. 6118, District Court, Las Animas County, on January 12, 1925.

**d) Decreed point of diversion for Subject Water Rights:** The decreed location of the headgate of the John Flood Ditch is on the north bank of the Purgatoire River at a point which is South 63° West 967 feet from the Northwest Corner of the NE ¼ of the SW ¼ of Section 27, Township 32 South, Range 63 West, of the 6<sup>th</sup> P.M. The actual point of diversion is at the headgate of the Model Canal located on the north bank of the Purgatoire River at a point which is North 53° West 5,780 feet from the Southeast Corner of Section 33, Township 32 South, Range 63 West, of the 6<sup>th</sup> P.M. John Flood Ditch water rights are diverted from the Purgatoire River at the Model Canal headgate.

**e) Source of Subject Water Rights:** Purgatoire River, also known as the Las Animas River.

**f) Historic use of Subject Water Rights:** The Subject Water Rights were historically used to flood irrigate 128.4 acres located in the east half of section 25 and the south half of section 36, T. 31 south, R. 63 west of the 6<sup>th</sup> P.M., and in the west half of section 30, T. 31 south,

R. 62 west of the 6<sup>th</sup> P.M., Las Animas County, Colorado as depicted on the map attached to the Application as Exhibit A (“Parcels”). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. In addition, these rights are usable for winter storage as part of the rights controlled by the Purgatoire River Water Conservancy District (“District”). Such rights are governed by the following: 1) the ruling in Civil Action No. 19793, District Court, Las Animas County; 2) the Operating Principles and Criteria, as amended for the Trinidad Project; and 3) the ruling in Purgatoire River Water Conservancy District v. Kuiper, 593 P.2d 333 (1979). A copy of the CDSS diversion records summary for the John Flood Ditch from 1913 through 2007 is attached to the Application as Exhibit B. **3. Proposed changes of the Subject Water Rights:** Applicant seeks to change the Subject Water Rights as follows: **a) Change of Use:** Applicant seeks to add the following uses to the previously decreed irrigation use for the Subject Water Rights: municipal, industrial, maintenance of the Trinidad Reservoir permanent fishery pool, recreation and fish propagation uses. Municipal includes all municipal uses, such as, but not by way of limitation, domestic, commercial, manufacturing, industrial, fire protection, generation of electric power and power generally, recreation, fish and wildlife propagation, sewage treatment, street sprinkling, maintenance of adequate storage reserves, replacement and substitution, augmentation and exchange, and storage. Applicant also seeks a change of the Subject Water Rights from direct use to storage in Trinidad Reservoir, described in ¶ 3.c. herein, for later application to beneficial use either in Trinidad Reservoir or after release. **b) Change of Place of Use:** Applicant seeks a change of the places of use of the Subject Water Rights to include any locations served by the City of Trinidad inside or outside of City limits. **c) Alternate Point of Diversion.** In addition to the existing point of diversion of the Subject Water Rights, Applicant seeks an additional point of diversion at Trinidad Reservoir. Trinidad Reservoir’s dam is located in Section 27, T33S, R64W to the 6<sup>th</sup> P.M. **4. Remarks.** a) Applicant claims dominion and control of all return flows after initial use of the Subject Water Rights, including but not limited to lawn irrigation return flows and sewer return flows, and claims the right of reuse, successive use, and disposition by sale, contract, exchange, or otherwise to extinction, of the Subject Water Rights. b) Applicant will replace historical return flows in time, location and amount as necessary to prevent injury to other water rights. c) Article V, Section B.4.a.1. of the Operating Principles for the Trinidad Dam and Reservoir Project, as amended in 2004, limit the water available to be diverted under the City of Trinidad’s interest in the John Flood Ditch to that amount of historic consumptive use attributable to 948 acres of historically irrigated land. The historic consumptive use claimed in this Application, when combined with the historic consumptive use decreed in Case No. 88CW061 and claimed in Case No. 06CW78, will exceed the limits imposed by the Operating Principles. Before Applicant takes credit for all the dry-up in the same year under the decree in Case No. 88CW061, the application in Case No. 06CW78 and this Application, Applicant will obtain an amendment of the Operating Principals. **5. Name and address of owners of the land upon which diversion and storage structures**

**are located:** a) The Bureau of Reclamation owns the land upon which the Trinidad Reservoir diversion and storage structures are located. Its address is United States Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18E, Loveland, Colorado 80537-9711. b) The Model Land & Irrigation Company owns the land upon which the point of diversion of the John Flood Ditch is located. Its legal address is the Model Land & Irrigation Company, c/o Thomas Tefertiller, 13747 Hwy 350, Trinidad, CO 81082. Landowner notice was also sent to Model Land & Irrigation Company, P.O. Box 57, Model, CO 81059

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**CASE NO. 08CW102 - ALAN BIELSKI, 4058 Shoshone St., Denver, CO 80211; (303) 458-5917**

Application for Underground Water Right

**HUERFANO COUNTY**

**Name of well and permit, registration or denial number:** MR8A, Permit No. 266641. **Legal description of well:** Huerfano County, SW ¼ of the SE ¼ Section 36, Township 27 South, Range 68 West, 6<sup>th</sup> P.M., 366 feet from the South line and 1349 feet from the East line. **Subdivision:** Majors Ranch, Lot 8A, Phase 2. **Optional Additional Description: GPS location information in UTM format: (Zone 13; Units set to meters; Datum NAD83; Units set to true north). Were points averaged?** No. **Northing** 4167020 **Easting** 504865. **Source:** groundwater, Poison Canyon Fm., sandstone. **Depth:** 681 feet. **Date of appropriation:** 11/18/2005. **How appropriation was initiated:** well permit approved; well drilled; water discovered. **Date water applied to beneficial use:** 7/6/2006. **Amount claimed:** 4 gpm Conditional. **Proposed use:** Irrigation of 1 acre of home lanws and gardens upon Lot 8A, Majors Ranch, Phase 2, and filling of 1500 gallon cistern for household use, domestic animals, and livestock. **Name(s) and address(es) of owner(s) or reputed owner(s) 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.

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**CASE NO. 08CW103 - M. BERNARD PARSONS, P. O. Box 70, Weston, CO 81091** (Chris D. Cummins, Felt, Monson & Culichia, LLC, Attorney for Aplicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Surface Water Rights and Approval of Plan for Augmentation

**II. APPLICATION FOR SURFACE WATER RIGHTS A. Parsons Pond.** 1.

**Name of Structure:** Parsons Pond. **2. Legal Description of Parsons Pond:** In the NE1/4, Section 36, Township 33 South, Range 67 West, 6<sup>th</sup> P.M. (See Exhibit A Map attached to Application). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **3. Source:** Parsons Pond's source of fill and re-fill is historic consumptive use credits physically delivered by tailwater resulting from irrigation of approximately 55 acres of pasture through the Dorn Ditch, as adjudicated by decree dated August 10, 1903, and enlargement of which for such tailwater use

is requested herein, which diverts from the South Purgatoire River, tributary to the Purgatoire River, tributary to the Arkansas River. Parsons Pond's source of water for freshening flows is the nonconsumptive Parsons Pond Diversion, as requested herein, which diverts from the Purgatoire River, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** May 31, 1982. **5. Amount Claimed:** 13.50 acre feet, absolute. **6. Uses:** Stockwater, wildlife, fish propagation, wetlands, recreation, augmentation, and fire protection. **7. Remarks:** Parsons Pond has approximately 2.5 acres of surface area, and impounds approximately 13.50 acre feet of water. Parsons Pond was initially filled during periods of "free river" conditions on the Purgatoire River, including but not limited to in 1999. Parsons Pond is re-filled (to the extent of evaporative losses) by tailwater resulting from irrigation under the Dorn Ditch, and receives nonconsumptive freshening flows from the Parsons Pond Diversion from the Purgatoire River. Evaporative losses will be augmented as set forth herein. Parsons Pond is located and the waters therefrom are used exclusively upon the lands of the Applicant. **B. Parsons Pond Diversion.** **1. Name of Structure:** Parsons Pond Diversion. **2. Legal Description of Parsons Pond Diversion:** On the southern bank of the Purgatoire River in the NE1/4, Section 36, Township 33 South, Range 67 West, 6<sup>th</sup> P.M. (See Exhibit A Map). **3. Source:** Purgatoire River, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** May 31, 1982. **5. Amount Claimed:** 0.5 cubic feet per second, nonconsumptive, absolute. **6. Uses:** Stockwater, wildlife, fish propagation, wetlands, recreation, augmentation, and fire protection. **7. Remarks:** Parsons Pond Diversion consists of an approximately 15 inch culvert to the Purgatoire River at the northwest end of Parsons Pond. Flows enter a small silt/sedimentation pond at this location during late-spring and summer months when river flows are high, flow through Parsons Pond, and return to the Purgatoire River through an outlet at the northeast end of Parsons Pond. Because the level of fill in Parsons Pond remains stable due to impoundment of irrigation tail water in like quantities to replace evaporative depletions, the Parsons Pond Diversion is nonconsumptive in nature. The Parsons Pond Diversion is located and the waters therefrom are used exclusively upon the lands of the Applicant. **C. Dorn Ditch Enlargement.** **1. Name of Structure:** Dorn Ditch Enlargement. **2. Legal Description of Dorn Ditch Enlargement:** The decreed point of diversion for the Dorn Ditch is in the NW1/4, Section 2, Township 34 South, Range 67 West, 6<sup>th</sup> P.M. (See Exhibit A Map). **3. Source:** The Dorn Ditch Enlargement diverts at the decreed point of diversion for the Dorn Ditch, from the east bank of the South Purgatoire River, tributary to the Purgatoire River, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** May 31, 1982. **5. Amount Claimed:** 2.4 cubic feet per second, absolute. **6. Uses:** Stockwater, wildlife, fish propagation, wetlands, recreation, augmentation, and fire protection. **7. Remarks:** The Dorn Ditch Enlargement represents only an enlargement of *use* of existing diversions decreed to the Dorn Ditch. Applicant requests no additional diversion amounts at the Dorn Ditch headgate, but rather only an expanded use of those quantities of diversions already decreed. The Dorn Ditch was originally adjudicated as part of the



original adjudication for District 19 water rights on August 10, 1903, with an appropriation date of April 1, 1866 for irrigation purposes only. The Dorn Ditch was subsequently included in a change case (Case No. W4529) which essentially granted a conditional change of use, transferring the Dorn Ditch to Guajatomayah Reservoir for use therefrom for mining purposes, if and when such reservoir was constructed, which has not occurred. Applicant seeks to add additional uses to the Dorn Ditch, resulting in additional consumption through evaporative loss from Parsons Pond, as addressed by the Plan for Augmentation requested herein. The Dorn Ditch Enlargement is located and the waters therefrom are used exclusively upon the lands of the Applicant. **III. SUMMARY OF PLAN FOR AUGMENTATION. A. Name of Structures to be Augmented:** Parsons Pond, and the Dorn Ditch Enlargement, as requested herein. **B. Plan for Augmentation:** Applicant seeks an augmentation plan covering the out-of-priority depletions which may be attributable to evaporation from Parsons Pond, and out-of-priority depletions which may occur as a result of additional uses of water attributable to the Dorn Ditch Enlargement. Parsons Pond is located upon, and also down-gradient from, acreage historically irrigated by the Dorn Ditch pursuant to its 1903 decree. Parsons Pond therefore collects tailwater from such irrigation practices at times when evaporative losses in Parsons Pond have resulted in available capacity. Applicant proposes to augment such evaporative depletions, coincident with depletions resulting from reduced return flows attributable to increased use of historic Dorn Ditch diversions for the re-fill of evaporative losses from Parsons Pond, as described herein. In the construction of Parsons Pond, construction of several structures upon the Applicant's property, and sale of a portion of the historically irrigated acreage under the Dorn Ditch, Applicant has effectively dried up approximately 15.31 acres of land historically irrigated by the Dorn Ditch. Applicant proposes to utilize the consumptive use credits attributable to such dry up as a source of replacement water for depletions which may be attributable to Applicant's use and operation of Parsons Pond and the Dorn Ditch Enlargement. **IV. WATER RIGHTS TO BE USED FOR AUGMENTATION.** Applicant proposes to augment depletions resulting from use and operation of Parsons Pond and the Dorn Ditch Enlargement utilizing consumptive use credits attributable to Applicant's dry-up of acreage historically irrigated by the Dorn Ditch. Applicant's expert water resource consultant has determined that the dry-up of approximately 14.95 acres of land historically irrigated by the Dorn Ditch results in consumptive use credits of approximately 30.93 acre feet per year, well in excess of depletions attributable to Parsons Pond and the Dorn Ditch Enlargement. **V. STATEMENT OF PLAN FOR AUGMENTATION COVERING ALL APPLICABLE MATTERS UNDER C.R.S. §§ 37-92-103(9), 37-92-302(1) AND (2), AND 37-92-305(8) A. Water Demand and Depletions.** Applicant seeks approval of an augmentation plan covering depletions caused by the use and operation of Parsons Pond and the Dorn Ditch Enlargement. The total surface area of Parsons Pond is 2.51 acres, and Applicant's expert consultant has determined that the evaporative losses requiring augmentation attributable to Parsons Pond will be approximately 9.17 acre-feet per year. Such depletions will be physically replaced by

impoundment of consumptive use credits from dry-up lands, and physically delivered by tailwater resulting from irrigation of up-gradient acreage by the Dorn Ditch, such impoundment being pursuant to the Dorn Ditch Enlargement, as requested herein. Total depletions to the Purgatoire River system will therefore be 9.17 acre feet annually. Applicants will be entitled to the use of the approximately 2.51-acre Parsons Pond for stockwater, wildlife, fish propagation, wetlands, recreation, augmentation, and fire protection, and to replacement of evaporative depletions resulting therefrom. Utilizing an evaporative depletion analysis prepared by Applicants' expert consultant, assuming an evaporative rate of 3.67 acre feet per year per acre, total evaporative depletions attributable to the 2.51 surface acres of Parsons Pond are calculated to be a maximum of 9.17 acre feet annually. **B. Operation of Plan of Augmentation.** Operation of Parsons Pond will occur on a year-round basis, resulting in year-round evaporative depletions, although to a lesser extent during winter months. Applicant's expert consultant has calculated monthly depletions resulting from operation of Parsons Pond and the Dorn Ditch Enlargement, and opined that depletions during irrigation season total 6.75 annual acre feet, while depletions during winter months total 2.42 annual acre feet. Applicant will augment depletions to the Purgatoire River using augmentation water represented by consumptive use credits resulting from the dry up of 14.95 acres of historically irrigated acreage under the Dorn Ditch. The dry up of this historically irrigated acreage and the consumptive use credits resulting therefrom, provide a source of augmentation water to replace, in proper place, time and amount, those monthly depletions as calculated in accordance with the analysis of Applicant's expert consultant. In order to properly time replacement of depletions resulting from Applicant's use and operation of Parsons Pond and the Dorn Ditch Enlargement, Applicant proposes to release required augmentation water either from Parsons Pond, or from another storage vessel to be constructed for the impoundment of consumptive use credits resulting from dry-up under the Dorn Ditch, in such time and amount as may be required by the State and Division Engineers under this plan for augmentation. Consumptive use credits of 30.93 annual acre feet have been generated by the dry-up of historically irrigated acreage under the Dorn Ditch. Assuming maximum potential depletions of 9.17 annual acre-feet occur, Applicant will have excess consumptive use credits, beyond those necessary to replace depletions resulting from the operation and use of Parsons Pond and the Dorn Ditch Enlargement which Applicant proposes to commit and dedicate to this augmentation plan, of 21.76 annual acre feet. Applicant requests a finding that such excess 21.76 acre feet of historic consumptive use credits be available to Applicant for later sale or for use in this or other plans for augmentation. Applicant's commitment of 9.17 acre-feet of historic consumptive use credits will fully augment the maximum potential depletions from Applicant's use and operation of Parsons Pond and the Dorn Ditch Enlargement by replacing actual depletions in time, place, and amount. **VI. NAME AND ADDRESS OF OWNERS OF LAND ON WHICH STRUCTURES WILL BE LOCATED:** The land, referred to herein as Applicant's Property, on which Parsons Pond, Parsons Pond Diversion and the Dorn Ditch Enlargement will be located and upon which

the water will be placed to beneficial use is owned by the Applicant. The address of the Applicant is set forth above. **VII. ADDITIONAL TERMS AND CONDITIONS THAT WILL HELP IN THE ADMINISTRATION OF THIS AUGMENTATION PLAN INCLUDE THE FOLLOWING:** A. The Applicant shall install and maintain such water measuring devices as deemed essential by the State Engineer or Division Engineer and the same shall be installed and operated in accordance with the instruction of that office.

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**CASE NO. 08CW104 - JAMES and LINDA MODLISH, 391 Sunrise Road, Walsenburg, CO 81089; (719) 251-9053**

Application for Underground Water Right

**HUERFANO COUNTY**

**Name of well and permit, registration or denial number:** Modlish #1 Well; Permit No. 271524-A. **Legal description of well:** Huerfano County, NW ¼ of the SW ¼ Section 1, Township 29 South, Range 66 West, 6<sup>th</sup> P.M., 1613 feet from the South line and 534 feet from the West line. **Street Address:** 391 Sunrise Road, Walsenburg, CO 81089. **Subdivision:** Silver Spurs Ranch, Lot 64. **Optional Additional Description:** **GPS location information in UTM format (Zone 13; Units set to meters; Datum NAD83; Units set to true north).** **Northing** 4155658 **Easting** 523064. **Source:** Groundwater well. **Depth:** 410 feet. **Date of appropriation:** August 10, 2007. **How appropriation was initiated:** Pump installed. **Date water applied to beneficial use:** August 31, 2007. **Amount claimed:** 15 gpm Absolute. **Proposed use:** The use of ground water from this well is limited to fire protection, ordinary household purposes inside not more than three (3) single family dwellings, the irrigation of not more than one (1) acre of home gardens and lawns, and the watering of poultry, domestic animals, and livestock on a farm or ranch. **Name(s) and address(es) of owner(s) or reputed owner(s) 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.

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**CASE NO. 08CW105 - JAMES F. MOBLEY and PATRICIA D. MOBLEY, P. O. Box 947, Cedar Hill, TX 75106; (972) 291-3744**

Application for Underground Water Right

**HUERFANO COUNTY**

**Name of well and permit, registration or denial number:** Scoones Well, Permit No. 237881. **Legal description of well:** Huerfano County, SE ¼ of the SW ¼ Section 3, Township 29 South, Range 66 West, 6<sup>th</sup> P.M., 200 feet from the South line and 2400 feet from the West line. **Street Address:** 565 Cantel, Walsenburg, CO 81089. **Subdivision:** Silver Spurs Ranch, Filing 3, Lot 42. **Source:** \_\_. **Depth:** 167 feet. **Date of appropriation:** 12/03/2001. **How appropriation was initiated:** Owner struck water while drilling for water. **Date water applied to beneficial use:** 12/04/2001. **Amount claimed:** 7 gpm Absolute. **If well non-tributary:** **Name of Aquifer:** Sandstone Poison Canyon

Aquifer. **Amount claimed in acre feet annually:** .016. **Proposed use:** Household use and the irrigation of one acre of home lawns and gardens upon Lot 42, Silver Spurs Ranch, Filing 3, Huerfano County, Colorado. **Name(s) and address(es) of owner(s) or reputed owner(s) 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.

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**CASE NO. 08CW106 - UPPER ARKANSAS WATER CONSERVANCY DISTRICT, P. O. Box 1090, Salida, CO 81201** (Send all pleadings and correspondence to John R. Hill, Jr., Bratton Hill, LLC, Attorney for Applicant, 232 West Tomichi Avenue, Suite 202, Gunnison, CO 81230; (970) 641-1903; [jrhill@brattonhill.com](mailto:jrhill@brattonhill.com))

Application for Appropriative Right of Exchange and Approval of Plan for Augmentation

**CHAFFEE COUNTY**

**FIRST CLAIM (Application for Appropriative Right of Exchange).** Applicant requests confirmation of a conditional appropriative right of stream exchange as described herein. **The lower terminus is** that point on Cottonwood Creek where the head gate of the Trout Creek Ditch Company Ditch is located to wit: “On the south bank of Cottonwood Creek 200 yards easterly of the junction of the Denver, South Park and Pacific Railroad and the Denver and Rio Grande Railroad south of Buena Vista, Chaffee County, Colorado.” The ditch is located on the bank of Cottonwood Creek in the NW¼NW¼NW¼ Section 16, Township 14 South, Range 78 West, 6<sup>th</sup> P.M., Chaffee County. **The upper termini are:** Cottonwood Reservoir a/k/a Cottonwood Lake which is located on South Cottonwood Creek, a tributary of Cottonwood Creek a tributary of the Arkansas River in the SE¼, Section 36, Township 14 South, Range 80 West, 6<sup>th</sup> P.M., Chaffee County; and Rainbow Lake which is located on Middle Cottonwood Creek, a tributary of Cottonwood Creek a tributary of the Arkansas River in the SE¼SW¼, SW¼SE¼, and SW¼SE¼, Section 19, the NE¼NW¼ and NW¼NE¼, Section 30, at a point whence the SE corner of Section 19, Township 14 South, Range 79 West 6<sup>th</sup> P.M. bears South 80°34.0’ East, 2,110.3 feet, Chaffee County. **Exchange Appropriation Information: Date of initiation of appropriation:** May 11, 2006. **How appropriation was initiated:** By action of the Board of Directors of Applicant on May 11, 2006 to make the appropriation listed herein. **Amount:** 2.0 cfs conditional. **Uses:** All beneficial uses including but not limited to irrigation, livestock water, municipal, industrial, replacement water in plans for augmentation, fish culture, and recreation. Applicant will develop and operate this stream exchange as part of its integrated water system. **Source of Exchange Water:** Up to 2.0 cfs pumped from the UAWCD-Moltz Well into the Trout Creek Ditch Company Ditch pursuant to the Applicant’s plan for augmentation decreed in Case No. 92CW84. As the water flows out of the UAWCD-Moltz well, it will take on the nature, type and identity of Paul Moltz’s water rights to wit: 4.75 cfs of the 19.98 cfs water right decreed to

Trout Creek Ditch Company Ditch (TCDC Ditch) as priority no. 39 for irrigation out of Cottonwood Creek with a December 17, 1872 appropriation date. The water not diverted at the headgate and exchanged to storage will take on the nature, type and identity of the water used to augment the well. As the depletions resulting from the well diversions will be fully augmented, the exchanged water will be fully consumable and available as an augmentation supply within UAWCD's decreed plan for augmentation in Case No. 94CW5 and Case No. 06CW32. The depletions resulting from the UAWCD-Moltz Well will be replaced with Fryingpan-Arkansas Project water, Twin Lakes or other waters that are decreed for augmentation within the UAWCD's decreed plan for augmentation in Case No. 92CW84 or other waters that are decreed for augmentation within the UAWCD decreed plans for augmentation in Case No. 92CW84 as such may be supplemented by Case No. 06CW32. Moltz and Applicant have an agreement for an intra-ditch exchange by which Moltz allows Applicant to use up to 2.0 cfs of his Trout Creek Ditch Company Ditch water right and his interest in the ditch at the lower terminus as described above. In exchange therefor, the Applicant will construct a well in close proximity to the ditch which will pump the Exchange Amount less ditch losses into the Trout Creek Ditch Company Ditch at a point where Moltz can take the replacement water at his farm headgate. The well will be operated pursuant to the Applicant's plan for augmentation in Case No. 92CW84 using the sources of replacement water described above. The location of the replacement well (UAWCD-Moltz Well) will be in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 22, Township 14 South, Range 78 West, 6<sup>th</sup> P.M.

**SECOND CLAIM (Application for Approval of Plan for Augmentation) Statement of Plan for Augmentation:** The water sought to be stored in Cottonwood Reservoir and Rainbow Lake pursuant to the stream exchange described above will be used as a supplemental supply of replacement water for the District's plan for augmentation approved in Case No. 94CW5 and for the application pending in Case No. 06CW32. The supplemental replacement water made available by the stream exchange described above will be used in accordance with the provisions of the Findings of Fact and Decree of Court entered in Case No. 94CW5 and those to be entered in Case No. 06CW32.

**Terms and conditions to prevent injury.** Applicant proposes the following terms and conditions to prevent injury to vested water rights or decreed conditional water rights: The exchange may only be operated when the Trout Creek Ditch Company Ditch's December 17, 1872 water right is in priority and diverting. The typical diversion season is April through October. The exchange may only be operated when the controlling call on Cottonwood Creek is junior to December 31, 1872. This is the priority date of Cottonwood Irrigating Ditch, which is partly owned by St. Charles Mesa. At no time will the exchange be operated to cause the flow in Cottonwood Creek above the headgate of the Trout Creek Ditch Company Ditch to be depleted below 10 cfs. The exchange shall not cause the flow of Cottonwood Creek above the headgate of the Trout Creek Ditch Company Ditch to be depleted below 20 cfs for more than a two week period. When the exchange has caused the flow of Cottonwood Creek to be depleted below 20 cfs for a two-week period, the exchange will be discontinued

for one week. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing pool:** There will be no new structures except the UAWCD-Moltz Well which will be constructed pursuant to an agreement with V. Paul Moltz, the owner of the land upon which it will be constructed. Mr. Moltz's address is P.O. Box 1887, Buena Vista, CO 81211. Water will be stored in the existing Cottonwood Reservoir which is on land owned by the United States of America and Administered by USDA Forest Service, 2840 Kachina Drive Pueblo, CO 81008. Applicant has a Special Use Permit. Water will be stored in the existing Rainbow Lake which is located on land owned by Rainbow Lake Resort, Inc., 21509 County Road 306, Buena Vista, CO 81211.

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**CASE NO. 08CW107 - ALANE WILSON, 463 Leather Drive, Walsenburg, CO 81089; (719) 989-0744**

Application for Underground Water Right

**HUERFANO COUNTY**

**Name of well and permit, registration or denial number:** Wilson Well, Permit No. 212011. **Legal description of well:** NW ¼ of the SE ¼ Section 14, Township 29 South, Range 66 West, 6<sup>th</sup> P.M., 1500 feet from the South line and 1500 feet from the East line. **Street Address:** 463 Leather Drive, Walsenburg, CO 81089. **Subdivision:** Silver Spur Ranch, Lot 107, Filing 5. **Source:** Raton sandstone. **Depth:** 468 feet from surface. **Date of appropriation:** Domestic and livestock well permit 2120011 Oct. 5, 1998. **How appropriation was initiated:** Well permit. **Date water applied to beneficial use:** Oct. 20, 1998. **Amount claimed:** 15 gpm Absolute. **Proposed use:** Domestic and livestock well on 35 acre parcel. **Name(s) and address(es) of owner(s) or reputed owner(s) 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:** Alane and Wes Wilson, 463 Leather Drive, Walsenburg, CO 81089.

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**CASE NO. 08CW108 - PRESTON C. ROBERTS, III, 1417 Silver Spur Road, Walsenburg, CO 81089; (719) 859-4633**

Application for Underground Water Right

**HUERFANO COUNTY**

**Name of well and permit, registration or denial number:** Permit No. 197128. **Legal description of well:** SE ¼ of the SE ¼ Section 10, Township 29 South, Range 66 West, 6<sup>th</sup> P.M., 700 feet from the South line and 5200 feet from the West line. **Street Address:** 1417 Silver Spur Road, Walsenburg, CO 81089. **Subdivision:** Silver Spurs Ranch, Lot 19, Filing 2. **Source:** Well. **Depth:** 518. **Date of appropriation:** 8-6-96; **How appropriation was initiated:** Permit #197128. **Date water applied to beneficial use:** 12/30/96 - pump installed. **Amount claimed:** 12 gpm Absolute. **If well non-tributary:** **Name of Aquifer:**

Raton Basin sandstone - Poison Canyon Aquifer. **Amount claimed in acre feet annually:** 1/3. **Proposed use:** Domestic use - 1 household; irrigation of 750-1000 sq. ft. of lawn and garden area and 2 domestic animals. **Name(s) and address(es) of owner(s) or reputed owner(s) 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:** Preston Carl and Priscilla M. Roberts, 1417 Silver Spur Road, Walsenburg, CO 81089.

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**CASE NO. 08CW109 - DAVID ROBB, 3480 Shangri La, Lafayette, CA 94549; (925) 330-2527** (K. Gwen Beacham, Attorney for Applicant, 15758 County Road 220, Salida, CO 81201

Application for Approval of Plan for Augmentation

**CHAFFEE COUNTY**

**Name(s) of structure(s) to be augmented:** Link School Well. The Link School Well is located in the SW ¼ SW ¼ of Section 27, Township 13 South, Range 79 West, of the 6<sup>th</sup> Principal Meridian, at a point approximately 994 feet from the south line and 345 feet from the west line of Section 27. A location map of the Link School Well and property is shown on "Figure 1" attached to the Application. All attachments mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The well was originally drilled as a residential exempt well under Permit No. 217978 on July 14, 2000, to a depth of 147 feet. The well permit was changed to Permit No. 279090 for commercial exempt purposes on November 5, 2008, and limited to a maximum pumping rate of 15 gpm. Water pumped from the well will cause depletions to the Arkansas River. **Are there other water rights diverted from this structure?** No. **Previous decree(s) for water right(s) to be used for augmentation:** **A.** Applicant proposes to augment depletions attributable to the Link School Well utilizing a portion of the water available to one share of stock in the Twin Lakes Reservoir and Canal Company ("Twin Lakes") owned by Applicant. A copy of the stock certificate is attached to the Application as "Exhibit A." The Twin Lakes water rights are more particularly described as follows: i. Colorado River Water Rights: a. Decrees: Case No. 3082, District Court, Garfield County, August 25, 1936, as modified by Case No. W-1901, District Court, Water Division 5, May 12, 1976. b. Priority: August 23, 1930, No. 431. c. Source: Roaring Fork River and its tributaries, which are tributaries of the Colorado River in Water Division 5, as described in the above-referenced Decrees. Water is carried through the Continental Divide for delivery to Lake Creek, a tributary of the Arkansas River. d. Use: Direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal, and all beneficial uses. e. Amount: Direct flow amount of 625 cfs for diversion through transmountain tunnels, with an annual limit of 68,000 acre feet, a running ten year limit of 570,000 acre feet, and other limitations described in the Decrees. ii. Arkansas River Water Rights: a. Decrees: Case No. 2346, District Court, Chaffee County, July 14, 1913, as modified by Case No. W-3965, District Court, Water Division 2, April 19, 1974. b.

Priorities: December 15, 1896, No. 3, and March 25, 1897, No. 4. c. Source: Lake Creek and its tributaries, which are tributaries of the Arkansas River. d. Use: Storage for irrigation, domestic, commercial, industrial, and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoirs which are capable of being served water by diversion from the Arkansas River. e. Amount: 20,645.3 acre feet for Priority No. 3, and 33,806.7 acre feet for Priority No. 4, for a total of 54,452 acre feet. **Type of water right:** Surface. **Legal description of point(s) of diversion or place of storage:** Twin Lakes Reservoirs, in Lake County, are on-stream reservoirs located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 of Township 11 South, Range 80 West, of the 6<sup>th</sup> Principal Meridian. **Historic use:** The water to be used for augmentation, as specifically described above, was decreed and historically used for all beneficial uses, including direct flow and storage, irrigation, domestic, commercial, industrial and municipal. Twin Lakes shares represent a pro rata interest in native Arkansas River diversions and the Independence Pass transmountain diversion system which diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County for storage in the Twin Lakes Reservoirs in Lake County. Twin Lakes shares consist of direct flow and storage rights which are available for one-hundred percent consumptive use and reuse, including augmentation purposes. **Statement of plan for augmentation, covering all applicable matters under §37-92-103(9), 302(1)(2) and 305(8), C.R.S.** Applicant owns 40 acres of land upon which the well is located and the water use will occur. Applicant has leased this land to The Link School, an alternative high school that will house 12 students and 5 full-time staff members for 9 months per year. During the three summer months, there will be 2 full-time residents. At 75 gpd per person, the in-building use will total 1.11 acre-feet annually. A non-evaporative type septic tank and leach field disposal system will treat and dispose of the wastewater. The consumptive use will be 10 percent of the in-building demand, or 0.11 acre-foot annually. There will be 0.25 acre of irrigated turf grass and 0.023 acre (1,000 square-feet) of irrigated landscape around the school buildings. The irrigation demand will average 0.54 acre-foot annually (2.00 acre-feet per acre), and the consumptive use will average 0.46 acre-foot annually. There will be up to 12 head of horses stabled on the premises year-round. At 12 gpd per animal, the livestock water demand and consumptive use will total 0.16 acre-foot annually. Applicant will obtain administrative approval to allow use of the well for such purposes. Combined, the water demands will total 1.81 acre-feet annually and the consumptive use will total 0.73 acre-foot annually. A summary of the monthly water demands and consumptive use is depicted on "Table 1" attached to the Application. Water pumped from the well will cause depletions to the Arkansas River. Modeling results show that in the 10<sup>th</sup> year of operation, with consumptive use of 0.73 acre-foot annually, the depletion would be 0.004 acre-foot; in the 25<sup>th</sup> year, the depletion would be 0.083 acre-foot; in the 50<sup>th</sup> year, the depletion would be 0.257 acre-foot; and in the 100<sup>th</sup> year, the depletion would be 0.488 acre-foot. Applicant owns one share of Twin Lakes Reservoir and Canal Company stock. The water supply is available in Twin Lakes and can be delivered to the



Arkansas River approximately 14 miles upstream of the point impacted by the Link School Well depletions. The water associated with Twin Lakes shares is available for one hundred percent consumptive use and reuse, including augmentation purposes, and it has been used in numerous plans for augmentation. The yield of a Twin Lakes share ranges from 0.5 to 1.6 acre-feet annually. A unique feature of ownership of Twin Lakes shares is the opportunity for each shareholder to regulate the annual yield in their portion of the storage capacity, thereby making a more uniform supply. As detailed in this Application, the annual depletions to the Arkansas River attributable to the Link School Well will be small. Therefore, Applicant proposes to have the augmentation water released from Twin Lakes annually at the direction and discretion of the Division Engineer to replace the depletions caused by the use of water at The Link School. A proposed accounting form is shown on "Table 2" attached to the Application. The Link School Well will be equipped with a totalizing flow meter and the readings will be recorded monthly. The irrigation system will be metered so that the irrigation use can be isolated from the in-building and livestock uses. The consumptive use will be calculated monthly using the procedures described in the accounting form. The meter readings will be submitted monthly to the Division Engineer and the completed accounting form will be submitted annually or as directed by the Division Engineer. **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:** The land upon which the Link School Well is located, and upon which the water use will occur, is owned by Applicant.

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**CASE NO. 08CW110 - BRENT R. KIMBALL, 2128 West 32<sup>nd</sup> Avenue, Denver, CO 80211; (303) 359-1505**

Application for Surface Water Rights

**HUERFANO COUNTY**

**Name of structure:** Otis-Spike Spring. **Legal description of each point of diversion:** Huerfano County, SW ¼ of the SW ¼ Section 19, Township 27 South, Range 70 West, 6<sup>th</sup> P.M., 645 feet from the South line and 350 feet from the West line. **Street Address:** S ½ SW ¼ SW ¼ Section 19, Township 27 South, Range 70 West, 6<sup>th</sup> P.M. **Optional Additional Description:** **GPS location information in UTM format (Zone 13, Units in meters; NAD83 Datum; units set to true north):** Were points averaged? Yes. **Northing** 4170500 **Easting** 476304. **Source:** Tributary of Palo Duro Creek.. **Date of initiation of appropriation:** 1974. **How appropriation was initiated:** Used in house kitchen, bath and drinking. Plus livestock. **Date water applied to beneficial use:** 1974. **Amount claimed:** 12 gpm Absolute. **Use or proposed use:** Domestic and livestock. **8. Name(s) and address(es) of owner(s) or reputed owner(s) 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.

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**CASE NO. 08CW111 - SIERRA de HIERRO RANCH, LLC, 2207 Iris Road, Pueblo, CO 81006; (719) 583-1089**

Application for Surface Water Rights

**HUERFANO COUNTY**

**Name of structure:** C&G #2/SDH #2. **Legal description of each point of diversion:** Huerfano County, NW ¼ of the NW ¼ Section 30, Township 27 South, Range 70 West, 6<sup>th</sup> P.M., 680 feet from the North line and 450 feet from the West line. **Source:** Natural spring, tributary to Palo Duro Creek. **Date of initiation of appropriation:** Livestock, January 31, 1955; Domestic, December 31, 1976. **How appropriation was initiated:** Developed for livestock, pipeline for domestic. **Date water applied to beneficial use:** Livestock, January 31, 1955; Domestic, December 31, 1976. **Amount claimed:** 6 gpm livestock and 6 gpm domestic Absolute. **Use or proposed use:** Livestock and domestic for home and garden/lawn. **Name(s) and address(es) of owner(s) or reputed owner(s) 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.

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**CASE NO. 08CW112 - SCOTT BOYD, Mt. Elbert Lodge, P. O. Box 719, Twin Lakes, CO 81251; (719) 486-0594 and LAURA DOWNING, P. O. Box 40, Twin Lakes, CO 81251** (Anthony L. Martinez, Attorney for Applicants, 249 E Street, P.

O. Box, 767, Salida, CO 81201; (719) 539-5375)

Application for Change of Water Right

**LAKE COUNTY**

**Decreed name of structure for which change is sought:** Lady Elise Pipeline. **From previous Decree:** **Date Entered:** December 6, 2008 [Note: Court records indicate the Decree in Case No. 04CW46 was entered on December 6, 2005). **Case No.:** 04CW46; **Court:** Water Division 2. **Decreed point of diversion:** NE ¼ of the NW ¼ Section 27, Township 11 South, Range 81 West, 6<sup>th</sup> P.M., Lake County, Colorado, approximately 400 feet from the North line and 2000 feet from the West line of Section 27. **Source:** Black Cloud Creek. **Appropriation Date:** August 1, 1939; **Amount:** 1.0 cfs. **Historic use:** Irrigation, industrial and domestic. No more than one acre of outside irrigation. **Proposed change:** Applicant seeks to use a well as an alternate point of diversion. The Colorado Department of Health has imposed restrictions on use of the pipeline and now require a well. The placement of the well will only be a few feet from the historic point of diversion. There is no proposed change in type of use, volume of water consumed, timing of use or return of flows to the system. Applicants are seeking only the ability to install a well. **If a change in point of diversion, please provide legal description:** Lake County, NE ¼ of the NW ¼ Section 27, Township 11 South, Range 81 West, 6<sup>th</sup> P.M., 400 feet from the North line and 1500 feet from the West line. **Street Address:** 10764 Highway

#82, Twin Lakes, CO. **Optional Additional Description: GPS location information in UTM format: (Zone 13; units in meters; NAD83 datum; unit set to true north). Were points averaged? No. Northing 39°1.15 North Easting 106°26.88 West. Name(s) and address(es) of owner(s) or reputed owner(s) 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.**

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**CASE NO. 08CW113 - MORLEY-BENTLEY INVESTMENTS, LLC, c/o Tony Bettis, 2251 Fieldcrest Drive, Colorado Springs, CO 80921** (William H.

Fronczak and Christopher Sutton, Perkins Coie, LLP, Attorneys for Applicant, 1899 Wynkoop Street, Suite 700, Denver, CO 80202; (303) 291-2300)

Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation

**EL PASO COUNTY**

**II. APPLICATION FOR ADJUDICATION OF DENVER BASIN GROUND WATER RIGHTS. A. Relevant Background:** The nontributary Arapahoe and Laramie-Fox Hills aquifers underlying an approximately 1,410 acre portion of the Applicant's Property ("Previously Adjudicated Property") was previously adjudicated and quantified in Case Nos. 86CW18 and 86CW19 in the Water Court for Division 2, respectively. Applicant does not seek any amendment of these existing adjudicated water rights decrees. Rather, Applicant seeks adjudication and quantification of water rights in the not-nontributary Dawson and Denver aquifers underlying Applicant's entire 1,451.44-acre property (the "Applicant's Property"), and quantification of those portions of the Arapahoe and Laramie-Fox Hills aquifers underlying Applicant's Property not previously adjudicated in 86CW18 and 86CW19. The entirety of the Applicant's Property of approximately 1,451.44 acres is more particularly described in Exhibit A attached to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The Previously Adjudicated Property, the subject of Case No. 86CW18 and 86CW19, is more particularly described in Exhibit B attached to the Application. The additional property as pertains to the quantification of the Arapahoe and Laramie-Fox Hills aquifers underlying Applicant's Property not previously adjudicated in 86CW18 and 86CW19 ("Additional Property"), is more particularly described in Exhibit C attached to the Application. A map of the Applicant's Property is attached to the Application as Figure 1. **B. Permitted Wells:** 1. There are two (2) permitted wells located upon the Applicant's Property, both of which were adjudicated in Case No. W-1309 before the Division 2 Water Court in 1973. Permit No. 86007, adjudicated as the "West Well", is constructed to the alluvium of Sand Creek and permitted for use as a stock water well. Permit No. 86008, adjudicated as the "Middle Well", is constructed to the alluvium of an unnamed tributary to Sand Creek and permitted for use as a stock water well. Neither of these wells will be affected by the Determination of Denver Basin Ground Water and Plan for Augmentation sought herein. 2. Applicant will construct an undetermined

quantity of wells into the not-nontributary Dawson and Denver aquifers underlying the Applicant's Property, as necessary to withdraw Applicant's full entitlement from each respective aquifer. Applicant requests that such wells to each respective aquifer be considered a Well Field, and requests waiver of the 600 foot spacing rule with regards to wells to be located solely on Applicant's Property. **C. Water Source:** 1. Not-nontributary. The ground water that will be withdrawn from the Dawson aquifer and Denver aquifer 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 and Denver aquifer adjudicated herein will require the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. The ground water that will be withdrawn from the Arapahoe aquifer underlying the Additional Property is not-nontributary. Pursuant to C.R.S. 37-90-137(9)(c), the augmentation requirements for wells in the Arapahoe aquifer underlying Additional Property require the replacement of only four percent of the amount of not-nontributary water withdrawn. 2. Nontributary. The ground water contained in the Laramie-Fox Hills aquifer of the Denver Basin underlying the Additional 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 in each aquifer are estimated to be between 15 g.p.m. and 150 g.p.m. The actual pumping rate 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 not-nontributary Dawson and Denver aquifers underlying the Applicant's Property, and the not-nontributary Arapahoe and the nontributary Laramie-Fox Hills aquifers underlying the Additional 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). 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 Dawson and Denver aquifers underlying the Applicant's Property. Additionally, Applicant estimates that the following values and average annual amounts are representative of the Arapahoe and Laramie-Fox Hills aquifers underlying the Additional Property (an approximately 41.44 acre portion of Applicant's Property which was previously unadjudicated):

Aquifer	Avg. Saturated Thickness (Feet)	Total Water Depth (Feet)	Adjudicated (Acre-Feet)	Annual Average Withdrawal (Acre-Feet)
Dawson (NNT)	143	0-1000	42,909	413.65 <sup>1,2</sup>
Denver (NNT)	312	1000-1900	76,818	768.18 <sup>2</sup>
Arapahoe (NNT)	306	1100-1615	2,156	21.56 <sup>3</sup>
Laramie-Fox Hills (NT)	190	1900-2190	1,181	11.81 <sup>3</sup>

Pursuant to C.R.S. §37-92-304(11), the Applicant 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 all beneficial uses including, without limitation, domestic, commercial, industrial, irrigation, stock water, recreation, fish and wildlife propagation, fire protection, central water supply for such uses and also for exchange, aquifer recharge, replacement, and augmentation purposes. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct a well or use water from the non-nontributary Dawson, Denver, and Arapahoe aquifers pursuant to the augmentation plan to be decreed herein, covering the stream depletions from such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c). **F. Well Fields:** Applicant requests that it be permitted to produce the full legal entitlement from the Dawson and Denver aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells to each respective aquifer 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 to the Dawson and Denver aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers 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 comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the Dawson and Denver aquifers underlying the Applicant's Property. As to the not nontributary Arapahoe and nontributary Laramie-Fox Hills aquifers, Applicant requests that it be entitled to withdraw those quantities of ground water quantified herein, along with that ground water previously quantified in 86CW18 and 86CW19, respectively, from common structures, in consideration of the contiguity of the overlying land between such adjudications (i.e. Applicant's Property). **G. Description of Land**

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<sup>1</sup> The acreage of the Subject Property under which water has been calculated to be available in the underlying Dawson aquifer was reduced by a total of 90.7 acres to account for four (4 existing pre-213 well cylinders attributable to neighboring wells (Permit Nos. R-8745, R-8746, R-8747, and R-8748).

<sup>2</sup> Underlying approximately 1,451.44 acres

<sup>3</sup> Underlying approximately 41.44 acres

**Overlying Subject Ground Water:** The land overlying the Dawson and Denver ground water which is the subject of this Application consists of approximately 1,451.44 acres in Sections 27, 28, 32, 33, and 34, Township 12 South, Range 65 West, and Section 4, Township 13 South, Range 65 West, El Paso County, Colorado, as more specifically described in Exhibit A ("Applicant's Property"). The land overlying the Arapahoe and Laramie-Fox Hills aquifers which are the subject of this Application consists of approximately 41.44 acres in the NW1/4 of Section 4, Township 13 South, Range 65 West and in the SE1/4 SW1/4 SE1/4 Section 32, Township 12 South, Range 65 West, of the 6th P.M., and is likewise more specifically described in Exhibit C ("Additional Property").

**H. Remarks.** The development for which Applicant proposes to utilize the ground water requested for quantification herein, combined with the previously adjudicated ground water, is located in northern El Paso County, and sewer service to that development will be provided by the Woodmen Hills/Paint Brush Hills Metropolitan District (the "District"). The District currently operates a waste water treatment facility which discharge accrues to the North Fork of the Upper Black Squirrel Creek. However, Applicant asserts that such discharged sewer return flows attributable to the development ("Sewer Return Flows") will be captured and transported to the Arkansas River or its tributaries to replace any out-of-priority depletions resulting from the use of the notnontributary water quantified herein. Applicant will also use the development's lawn irrigation return flows ("LIRFs") to replace any out-of-priority depletions resulting from the use of the not-nontributary water quantified herein.

**I. Name and Address of the Owner of the Land Upon Which the Wells are to be Located:** The Applicant, as set forth in Section I above, is the owner of the property on which the wells are to be located.

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

**A. Structures to be Augmented:** Applicant seeks approval for a plan for augmentation to replace injurious out-of-priority depletions which may result from Applicant's withdrawal of the not-nontributary ground water within the Dawson and Denver aquifers underlying the Applicant's Property, and the portion of the not-nontributary Arapahoe aquifer underlying the Additional Property, as requested for quantification herein, through wells to be constructed and permitted for such purpose. There are no other water rights to be diverted from these well structures.

**B. Water Rights to be Used for Augmentation:** The water rights to be used for augmentation during pumping are LIRFs from use of withdrawals from the not-nontributary Dawson, Denver and Arapahoe aquifer wells to be pumped as set forth in this plan of augmentation, together with LIRFs from use of withdrawals from the nontributary Arapahoe and Laramie-Fox Hills aquifers, as quantified herein, and as adjudicated in 86CW18 and 86CW19, together with fully consumable water ("Sewer Return Flows") which will be provided by the District based upon Applicant's development plan. The Sewer Return Flows and a reserved portion of the Laramie-Fox Hill authorization, as needed, will also be utilized to replace any injurious post pumping depletions.

**1. Lawn Irrigation Return Flows.** The water rights to be used for augmentation during pumping include: (i) the LIRFs from the use of withdrawals from the not-nontributary

Dawson, Denver and Arapahoe aquifer wells to be pumped; and (ii) the LIRFs from use of withdrawals from the nontributary Arapahoe and Laramie-Fox Hills aquifers, as quantified herein, and as adjudicated in 86CW18 and 86CW19. LIRFs will accrue to the Sand Creek alluvial aquifer underlying the Applicant's Property. Applicant seeks credit for the LIRFs as an augmentation source during the 300-year productive life of the Denver Basin aquifers quantified herein and as adjudicated in Case Nos. 86CW18 and 86CW19. Applicant proposes to use a value of 11 percent of the total irrigation pumping (decreed in numerous cases in Division 2 based on the Cottonwood Curve) to compute the LIRF credits. **2. Sewer Return Flows.** The water right to be used for augmentation during pumping and for post-pumping depletions is the fully consumable Sewer Return Flows captured and piped to the Applicant's Property from the District. The Sewer Return Flows will accrue to Sand Creek through direct discharge or to the Sand Creek alluvium through direct injection or infiltration through storage ponds or injection wells located throughout the Applicant's Property. The Applicant seeks credit to use a portion of the Sewer Return Flows during the 300-year productive life of the Denver Basin aquifers quantified herein and as adjudicated in Case Nos. 86CW18 and 86CW19. The Applicant also seeks credit to use a portion of the Sewer Return Flows for post pumping depletions through direct releases to Sand Creek or through infiltration through storage ponds located throughout the Applicant's property. Applicant proposes to use a value of 90 percent of the total in-house use pumping to compute the Sewer Return Flows credit. **C. Statement of Plan for Augmentation:** Applicant wishes to provide for the augmentation of injurious out-of-priority stream depletions which may be caused by the pumping of the not-nontributary Dawson, Denver and Arapahoe aquifer wells proposed herein. Applicant seeks to utilize the not-nontributary Denver Basin ground water underlying Applicant's Property in the Dawson and Denver aquifers and the not-nontributary Arapahoe aquifer underlying the Additional Property, for use in single-family and multi-family residences on Applicant's Property, totaling approximately 1082 units. Similarly, Applicant seeks to utilize the nontributary Denver Basin ground water underlying Applicant's Property in portions of the Arapahoe aquifer and all of the Laramie-Fox Hills aquifer for use in single-family and multi-family residences thereon, totaling approximately 853 units (including nontributary ground water previously quantified in 86CW18 and 86CW19), for a total of 1935 units to be constructed on Applicant's Property. Applicant proposes to replace any injurious out of priority depletions resulting from Applicant's use of not-nontributary Denver Basin ground water through LIRFs and a portion of the Sewer Return Flows. The total ground water available for use in this requested plan for augmentation consists not only of that ground water quantified under the Subject Property above (see paragraph II(D)(2) but also of the nontributary ground water in the Arapahoe and Laramie-Fox Hills aquifers, as previously adjudicated in Case Nos. 86CW18 and

86CW19. The total water underlying Applicant's Property and available for use is as follows:

Aquifer	Annual Average Withdrawal (Acre-Feet) <sup>4</sup>
Dawson (NNT)	13.7.9 <sup>5</sup>
Denver (NNT)	256
Arapahoe (NNT)	7.20
Arapahoe (NT)	191.6
Laramie-Fox Hills (NT)	124.6 <sup>6</sup>

**D. Anticipated Uses:** Applicant anticipates that each single-family residence and each multi-family unit will require an annual supply of 0.371 annual acre-feet for in house and lawn/landscape irrigation usage. The proportionate amounts of each anticipated use is as follows: 1. In-House Use: 0.261 acre feet annually per single-family residence/multi-family unit ("ERU"), with a 10% consumptive use conservatively based on central sewer wastewater disposal through the District. The annual consumptive use for each ERU is therefore 0.0261 acre feet, with return flows of 0.235 acre-feet per year per ERU. 2. Landscape Irrigation: 0.11 acre-feet annually per ERU, with an 89% consumptive use rate. The annual consumptive use for each ERU is therefore 0.0979 acre-feet per year, with Lawn Irrigation Return Flows ("LIRF") being 0.0121 acre-feet per ERU. Such allocation should be sufficient to allow for the irrigation of approximately 2,000 square feet of lawns and gardens per ERU, assuming an application rate of 0.0566 acre feet per 1,000 square feet (2.4 acre-feet per acre).

**E. Augmentation of Depletions During Pumping:** Through computer groundwater flow modeling, it has been theoretically demonstrated that pumping the not-nontributary Dawson and Denver aquifer wells underlying the Applicant's Property, and wells to the not-nontributary Arapahoe aquifer underlying the Additional Property as proposed in this augmentation plan over one hundred years, will deplete surface water flows at a greater rate than 0.1 percent of the pumping rate, and such aquifers are therefore not-nontributary. Actual stream depletions will need to be replaced for pumping from the Dawson and Denver aquifers. However, contact between the not-nontributary Arapahoe aquifer underlying the Additional Property with surface streams, including their alluvium, occurs greater than one mile from the anticipated location of Applicant's wells, and therefore, pursuant to C.R.S. §37-90-137(9)(c)(I), replacement of 4% of pumping from the not-nontributary Arapahoe aquifer is adequate to replace injurious depletions. 1. Based upon the anticipated quantities of water available for withdrawal described in Paragraph III(C) above, and upon the anticipated usage factors described in Paragraph

<sup>4</sup> Based upon a 300 year aquifer life.

<sup>5</sup> The acreage of the Subject Property under which water has been calculated to be available in the underlying Dawson aquifer was reduced by a total of 90.7 acres to account for four (4) existing pre-213 well cylinders attributable to neighboring wells (Permit Nos. R-8745, R-8746, R-8747, and R-8748).

<sup>6</sup> The amount of the water available for use is reduced to account for the 59 acre-feet per year reserved for any necessary post pumping depletions.



III(D) above, Applicant calculates that the Dawson aquifer underlying Applicant's Property contains sufficient supply to service approximately 372 ERUs, with resulting Sewer Return Flow of approximately 87.38 acre-feet annually. In addition, LIRF of approximately 4.5 annual acre-feet can be attributed to the 372 Dawson aquifer ERUs, for a total anticipated annual return flow of 91.88 annual acre-feet attributable to Dawson aquifer pumping. 2. Based upon the anticipated quantities of water available for withdrawal described in Paragraph III(C) above, and upon the anticipated usage factors described in Paragraph III(D) above, Applicant calculates that the Denver aquifer underlying Applicant's Property contains sufficient supply to service approximately 690 ERUs, with resulting Sewer Return Flow of approximately 162.08 annual acre-feet. In addition, LIRF of approximately 8.34 annual acre-feet can be attributed to the 690 Denver aquifer ERUs, for a total anticipated annual return flow of 170.42 annual acre-feet attributable to Denver aquifer pumping. 3. Based upon the anticipated quantities of water available for withdrawal described in Paragraph III(C) above, and upon the anticipated usage factors described in Paragraph III(D) above, Applicant calculates that the not-nontributary portion of the Arapahoe aquifer underlying the Additional Property contains sufficient supply to service approximately 20 ERUs, with resulting Sewer Return Flow of approximately 4.7 annual acre-feet. In addition, LIRF of approximately 0.24 annual acre-feet can be attributed to the 20 Arapahoe aquifer ERUs, for a total anticipated annual return flow of 4.94 annual acre-feet attributable to not-nontributary Arapahoe aquifer pumping. 4. Applicant's expert consultant has calculated maximum actual depletions attributable to the Dawson and Denver aquifer pumping to be approximately 102.76 and 20.80 acre feet annually, respectively. Assuming annual pumping of 7.6 acre feet from the not-nontributary Arapahoe aquifer underlying the Additional Property, Applicant's 4% replacement requirement is anticipated to be approximately 0.30 acre feet annually. The total annual replacement requirement is estimated at of 123.86 acre-feet annually for combined not-nontributary Dawson, Denver and Araphoe aquifer pumping. 5. Return flows attributable to LIRFs resulting from pumping of the not-nontributary Dawson, Denver, and Arapahoe aquifers discussed above to service 1082 units totals 13.09 annual acre feet. In addition, LIRFs attributable to the pumping of ground water from the nontributary Arapahoe and Laramie-Fox Hills underlying the Applicant's Property, both as quantified herein and as previously adjudicated in 86CW18 and 86CW19, for the service of 853 units totals an additional 10.32 annual acre feet, for a total LIRF replacement of 23.41 annual acre feet. Replacement of the remaining 100.45 annual acre feet of anticipated depletions must be made through either (1) Sewer Return Flows; or, (2) additional fully consumable water provided by the District. 6. Sewer Return Flows will accrue to Sand Creek at a rate of 0.235 annual acre feet per unit, for a total of 454.7 annual acre feet of Sewer Return Flows attributable to the anticipated 1935 units. Such return flows will provide replacement water in excess of the remaining 100.45 annual acre feet of depletions in the amount of 354.3 acre feet. 7. The Applicant requests that the Court recognize that the total amount of ERUs anticipated to be supplied by these Denver Basin authorizations may change as a result of market

conditions, county approvals, and developmental issues. As a result, the Applicant is seeking Court authorization and approval to utilize the value of 11 percent of the total irrigation pumping to compute LIRF credits and 90 percent of in-house pumping to compute the Sewer Return Flows credits. **F. Augmentation for Post Pumping Depletions:** For the replacement of post-pumping depletions occurring after the anticipated 300-year pumping life of the Denver Basin wells, Applicant will either reserve Denver Basin ground water or dedicate Sewer Return Flows stored on the Applicant's Property. Applicant is proposing, as needed, to reserve 59 acre-feet from its Laramie-Fox Hills authorization and to dedicate Sewer Return Flows stored on the Applicant's Property for the post pumping depletions. This quantity of replacement water, less the amount of actual stream depletions replaced during the plan pumping period, will be sufficient to replace all calculated injurious post-pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for replacement of such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, Applicant claims that post pumping depletions will be noninjurious and do not need to be replaced. Under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. Upon entry of a decree in this case, the Applicant will be entitled to file for and receive well permits for the subject Dawson and Denver and not-nontributary Arapahoe aquifer wells for the uses in accordance with this Application. **G. Remarks:** Additional remarks are as follows: 1. Applicant requests a finding that it has complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). 2. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. 3. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 4. Before any wells are constructed, applications for well permits will be filed with the State Engineer's office, and well permits shall be granted in accordance with the decree pursuant to this application. 5. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 6. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 7. The Applicant intends to waive the 600 feet well spacing requirement for the

wells to be located upon the Applicant's Property. 8. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 10 days of the filing of this application.

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**CASE NO. 08CW114 - CITY OF FOUNTAIN, COLORADO (“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 for Plan for Augmentation, Including Exchange

**EL PASO AND PUEBLO COUNTIES**

**Background.** Fountain is a municipal water provider, and delivers water through a central water distribution system to a population of approximately 15,000 (year 2000). Fountain has experienced unprecedented growth, and anticipates the demand for water service will continue to increase. 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. 2001CW146 seeks to add additional wells and to provide for augmentation from additional augmentation supplies (“Augmentation Plan III”). Fountain has acquired 4.69 cfs decreed to the Miller Ditch (the “Fountain Miller Ditch Right”) and seeks by this application to use the Fountain Miller Ditch Right to provide an additional supply of augmentation water to augment of out-of-priority depletions from the wells described in paragraph 3 below, to store the Fountain Miller Ditch Right, and to exchange the Fountain Miller Ditch Right to Pueblo Reservoir as provided in paragraph 5.5.3 of this application. The historic consumptive use associated with the Fountain Miller Ditch Right was calculated and decreed in Case No. 2003CW59 by the Water Court, Water Division No. 2 on June 22, 2007. **Names and Relevant Information Regarding of Structures to be Augmented.**

**1. Wells, or replacements thereof, included in Augmentation Plan I (Case Nos. W-4396 and W-4559).** The wells and water rights included in Augmentation Plan I are owned by Fountain. These wells are decreed for municipal, domestic, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and small gardens, manufacturing and industrial purposes, and are identified and described in the decree for Augmentation Plan I as follows:

Well Name/No.	Permit No.	Location (all in El Paso County, Colorado )	Decreed flow rate (gpm)	Priority Date
Fountain Well No. 1	19875-2	600' west from East Sec. line and 2400' S. from N. Sec. line of Sec. 6, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	3105	12/10/1953
Fountain Well No. 2	2345-F	400' west from East Sec. line and 2900' S. from N. Sec. line of Sec. 6, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	2592	8/16/1937
Fountain Well No. 3	10272-F	4800' west from East Sec. line and 4300' S. from N. Sec. line of Sec. 5, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	2880	11/11/1965
Fountain Well No. 3A	(proposed APD for #3)	100' west from East Sec. line and 4700' S. from N. Sec. line of Sec. 6, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	2880	11/11/1965
Fountain Well No. 4	19875-1	1100' west from East Sec. line and 2100' S. from N. Sec. line of Sec. 6, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	900	1937
Fountain Well No. 9	6919; 6921	2600' west from East Sec. line and 4300' S. from N. Sec. line of Sec. 5, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	750	1953
Fountain Well No. 10	15908	2900' west from East Sec. line and 4700' S. from N. Sec. line of Sec. 24, T. 15 S., R. 66 W. of the 6 <sup>th</sup> P.M.	500	4/13/1955
Fountain Well No. 11		2900' west from East Sec. line and 4900' S. from N. Sec. line of Sec. 24, T. 15 S., R. 66 W. of the 6 <sup>th</sup> P.M.	100	7/1954
Fountain Well No. 12		3600' west from East Sec. line and 4200' S. from N. Sec. line of Sec. 24, T. 15 S., R. 66 W. of the 6 <sup>th</sup> P.M.	200	7/1954
Fountain Well No. 15		600' west from East Sec. line and 2800' S. from N. Sec. line of Sec. 6, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	125	1952

**2. Well included in Augmentation Plan II as amended by Case No. 91CW21.**

**2.1 School Well No. 1-35174-F, Well Permit:** Permit No. 35174-F, **Location:** NE1/4 of the SE1/4 of Section 8, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 1950 feet from the south section line and 1150 feet from the east section line of said Section 8, in El Paso County, Colorado, **Capacity:** 550 gpm (1.22 cfs), **Uses:** Municipal, domestic, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and small gardens, manufacturing and industrial purposes, **Owner:** Fountain-Ft. Carson School District 8 owns this well, and the land on which it is located, but by agreement, Fountain is responsible for augmenting out of priority depletions from this well, and may use the well for municipal purposes. **3. Wells included in Augmentation Plan III (Pending Case No. 2001CW146):**

**3.1 Aragon Well: Well Permit:** Permit No. 45244-F, **Location:** SW1/4 of the SW1/4 of Section 5, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 900 feet from the south section line and 100 feet from the west section line of said Section 5, in El Paso County, Colorado, **Capacity:** 70 gpm (0.16 cfs), **Uses:** Irrigation; municipal pursuant to agreement upon amendment or re-issuance of well permit, **Owner:** Fountain-Ft. Carson School District 8 owns this well, but by agreement, Fountain is responsible for augmenting out of priority depletions from this well, and may use the well for municipal purposes;

**3.2 Racetrack Well No. 7, Well Permit:** Permit No. 5195-FR, **Previous Decrees:** Decreed in Case Nos. W-1528 and W-4376, Water Court, Water Division No. 2, for municipal, industrial, irrigation and domestic purposes with an appropriation date of February 27, 1964, **Location:** SW1/4 of the SW1/4 of Section 4, Township 17 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 2,654 feet from the north section line and 186 feet from the west section line of said Section 4, in El Paso County, Colorado, **Capacity:** 1,073 gpm (2.39 cfs), **Owner:** Fountain;

**3.3 Racetrack Well No. 11: Well Permit:** Permit No. 47879-F (Replacement for Well Permit No. 6921-F); **Previous Decrees:** Decreed in Case Nos. W-1528 and W-4376, Water Court, Water Division No. 2, for municipal, industrial, irrigation and domestic purposes with an appropriation date of March 2, 1965, **Location:** NW1/4 of the NW1/4 of Section 4, Township 17 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 310 feet from the north section line and 242 feet from the west section line of said Section 4, in El Paso County, Colorado, **Capacity:** 907 gpm (2.02 cfs), **Owner:** Fountain;

**3.4 City of Fountain Well No. 5** (Replacement well plus additional yield), **Well Permit:** Permit No. 62052-F (formerly 6920-R), **Previous decrees:** Well No. 5 was decreed in Case No. W-425 on April 5, 1972, with a priority date of 1949, and a flow rate of 126 gpm, for municipal uses. The decreed location of the well is 1300 feet west from the east section line, and 2400 feet south from the north section line, in Section 6, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. in El Paso County, Colorado. This well was included in Augmentation Plan I prior to being redrilled and included in Augmentation Plan III, **Location:** A replacement well was drilled in 2004, and is located in the SW1/4 NE 1/4 of Section 6, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a location 2498 feet from the North section line and 1642 feet from the East section line of said Section 6 in El Paso County, Colorado, **Uses:** municipal, including domestic,

irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Capacity:** 126 gpm (pursuant to decree in Case No. W-425), Additional capacity applied for in Case No. 2001CW146: 874 gpm, conditional, total capacity: 1000 gpm, **Owner:** Fountain.

**3.5 City of Fountain Well No. 16, Well Permit:** Not yet applied for, **Location:** SE1/4 of the SE1/4 of Section 8, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 100 feet from the south section line and 260 feet from the east section line of said Section 8, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain.

**3.6 City of Fountain Well No. 17, Well Permit:** Permit No. 056286-F, **Location:** NW1/4 of the SE1/4 of Section 5, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 1,740 feet from the south section line and 2,470 feet from the east section line of said Section 5, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Capacity:** 500 gpm (1.11 cfs), **Owner:** Fountain,

**3.7 City of Fountain Well No. 18, Well Permit:** Permit application receipt number 3601238, **Location:** SE1/4 of the SE1/4 of Section 5, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 550 feet from the south section line and 1300 feet from the east section line of said Section 5, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain,

**3.8 City of Fountain Well No. 19, Well Permit:** To be applied for, **Location:** SW1/4 of the SW1/4 of Section 9, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 190 feet from the south section line and 10 feet from the west section line of said Section 9, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain,

**3.9 City of Fountain Well No. 20, Well Permit:** To be applied for, **Location:** NW1/4 of the NW1/4 of Section 16, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 70 feet from the north section line and 940 feet from the west section line of said Section 16, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain,

**3.10 City of Fountain Well No. 21, Well Permit:** To be applied for, **Location:** NE1/4 of the NW1/4 of Section 16, Township 16

South, Range 65 West of the 6<sup>th</sup> P.M. at a point 70 feet from the north section line and 1,340 feet from the west section line of said Section 16, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain; **3.11 City of Fountain Well No. 22, Well Permit:** To be applied for, **Location:** NE1/4 of the NW1/4 of Section 16, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 70 feet from the north section line and 1,740 feet from the west section line of said Section 16, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain, **3.12 City of Fountain Well No. 23, Well Permit:** To be applied for, **Location:** NW1/4 of the NW 1/4 of Section 16, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M., at a point 870 feet from the north section line and 870 feet from the west section line of said Section 16, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain, **3.13 City of Fountain Well No. 24, Well Permit:** To be applied for, **Location:** SE 1/4 of the NW1/4 of Section 16, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M., at a point 1,740 feet from the north section line and 1,740 feet from the west section line of said Section 16, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain, **3.14 Delbert Wells Well No. 1, Well Permit:** Permit No. R-20110-1 (A new permit will be obtained for uses and quantities decreed pursuant to this application), **Previous Decree:** Decreed in Case No. W-2273, Water Court, Water Division No. 2, for 654 gpm (1.46 cfs) for irrigation use with an appropriation date of December 31, 1937, **Location:** NW1/4 of the SE1/4 of Section 8, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 2,570 feet from the south section line and 1,550 feet from the east section line of said Section 8, in El Paso County, Colorado, **Uses:** Irrigation, and municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 654 gpm (1.46 cfs), **Owner:** Fountain, **3.15 Delbert Wells Well No. 2, Well Permit:** Permit No. R-20110-2 (A new permit will be obtained for uses and quantities decreed pursuant to this application.), **Previous Decree:** Decreed in Case No. W-2273, Water Court,

Water Division No. 2, for 490 gpm (1.09 cfs) for irrigation use with an appropriation date of December 31, 1939, **Location:** NW1/4 of the SE1/4 of Section 8, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 2,550 feet from the south section line and 2,150 feet from the east section line of said Section 8, in El Paso County, Colorado, **Uses:** Irrigation and municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 490 gpm (1.09 cfs), **Owner:** Fountain.

**4. Venetucci Wells (Case No. 2007CW68).** Water from the Venetucci Wells (described below) is available to Fountain pursuant to a Sublease Agreement dated December 15, 2006, with Security Water District and Widefield Water and Sanitation District. These wells are located in the Widefield Aquifer, tributary to Fountain Creek, in El Paso County. The use and augmentation of Fountain's leased interest in the Venetucci Wells are the subjects of Fountain's pending Application in Case No. 2007CW68 ("Venetucci Well Augmentation Plan"). The Venetucci Wells are owned by the Pikes Peak Community Foundation.

**4.1. Venetucci Well No. 4.** Venetucci Well No. 4 is located in the SE1/4 SW1/4 of Section 11, under Well Permit No. 18664-R, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.78 cfs for municipal use with a priority date of August 1, 1954.

**4.2 Venetucci Well No. 5.** Venetucci Well No. 5 is located in the SE1/4 SW1/4 of Section 11, under Well Permit No. 17490-U, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.78 cfs for municipal use with a priority date of August 1, 1954.

**4.3. Venetucci Well No. 7.** Venetucci Well No. 7 is located in the SW1/4 SE1/4 of Section 11, under Well Permit No. 4869-F, as decreed on December 31, 1973 in Case No. W-568, District Court for Water Division 2, for 2.67 cfs for domestic, municipal and industrial use, with a priority date of December 10, 1963.

**4.4. Venetucci Well No. 8.** Venetucci Well No. 8 is located in the SW1/4 SE1/4 of Section 11, under Well Permit No. 4907-F, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.56 cfs for municipal use with a priority date of December 17, 1963.

**4.5. Venetucci Well No. 1 and Well No. 1 as Enlarged.** Venetucci Well No. 1 and Well No. 1 as enlarged is located in the NE1/4 SW1/4 of Section 11, under Well Permit Nos. 17490-R and 4835-F, respectively, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.562 cfs and up to 306 annual acre feet for irrigation of 170 acres in combination with Well Nos. 2 and 3, with priority dates of November 1, 1941 for 1.003 cfs and December 3, 1963 for 1.559 cfs.

**4.6. Venetucci Well No. 2 and Well No. 2 as Enlarged.** Venetucci Well No. 2 and Well No. 2 as Enlarged is located in the NE1/4 SW1/4 of Section 11, under Well Permit Nos. 17490-S and 4915-F, respectively, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.784 cfs and up to 332 annual acre feet for irrigation of 170 acres in combination with Well Nos. 1 and 3, with priority dates of November 1, 1941 for 1.225 cfs and December 3, 1963 for 1.559 cfs.

**4.7. Venetucci Well No. 3.** Venetucci Well No. 3 is located in the SE1/4 NW1/4 of



Section 11, under Well Permit No. 17490-T, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 1.78 cfs and up to 212 annual acre feet for irrigation of 170 acres in combination with Well Nos. 1 and 2, with a priority date of November 1, 1941. **5. Cumberland Green Well (Case No. 2007CW123)**. Cumberland Green Well is located in the SW1/4SW1/4 of Section 33, Township 15 South, Range 65 West of the Sixth P.M., 6.53 feet from the South section line, and 238.9 feet from the West section line in said Section 33, in El Paso County, Colorado. It is tributary to Fountain Creek, and was originally permitted with Permit No. 015748-F. The Cumberland Green Well was decreed by the Water Court, Water Division No. 2, in Case No. W-590 on August 1, 1972, for 1.01 cfs (455 gpm) and a total annual withdrawal not to exceed 320 acre-feet, for domestic use and irrigation of approximately 150 acres. The Cumberland Green well is owned by Jimmy Camp LLC, which is developing a subdivision known as Cumberland Green, which will obtain water service from the City of Fountain. An application for inclusion of the Cumberland Green Well in the City's augmentation plans is pending in the Water Court, Water Division No. 2, in Case No. 2007CW123 ("Cumberland Green Augmentation Plan.") **6. Wells to be constructed in the future, and replacements thereof**. Wells constructed or acquired by Fountain and not included in this Plan for Augmentation may be included by amendment of the decree entered upon this application, or by subsequent water court decree. **Previous Decrees for Water Right to be used for Augmentation**. All of the foregoing wells are referred to as the "Wells." Existing Wells are augmented with augmentation supplies decreed in Augmentation Plan I and Augmentation Plan II, and, when Augmentation Plan III is decreed, will be augmented pursuant to that decree as well. This application adds the decreed historic consumptive use associated with the Fountain Miller Ditch Right as an additional source of water to be used for augmentation of the Wells. **Original Decree for the Miller Ditch**. **Date entered:** February 15, 1882, **Court:** District Court, El Paso County, **Decreed point of diversion:** Section 25, Township 15 South, Range 66 West, 6<sup>th</sup> P.M. in El Paso County, **Source:** Fountain Creek, **Appropriation date:** December 31, 1863 (Fountain Creek Priority No. 16.), Fountain owns 4.69 cfs of the 8.03 cfs originally decreed to the Miller Ditch, and seeks to include in this case only the 4.69 cfs of the Miller Ditch that it owns. **Change Decree for Fountain Miller Ditch Right**, **Date entered:** April 6, 1981, **Court:** Water Division No. 2, Case No. 80CW100, **Decreed point of diversion:** Point of diversion changed to the headgate of the Chilcott Ditch, located on Fountain Creek at a point whence the quarter corner of the East line of Section 25, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M. bears North 36°45' East 571 feet. (The Chilcott Ditch Headgate is shown on Exhibit A.), **Quantification of Historic Consumptive Use of Fountain Miller Ditch Right**. **Date entered:** June 22, 2007, **Court:** Water Division No. 2, Case No. 2003CW59, **Quantification of Historic Consumptive Use**. Historic consumptive use of Fountain's interest in the Miller Ditch was quantified, and volumetric limits and depletion factors determined in the decree in Case No. 2003CW59, and these are 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), 938 P.2d 515 (Colo. 1997). Reference is made to the decree in Case No. 2003CW59, and to paragraph 5.4 below for more information. **Statement of Plan for Augmentation and Exchange. 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. **Determination of Well Augmentation Requirements. 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 6<sup>th</sup> 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 6<sup>th</sup> 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. **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 6<sup>th</sup> P.M. (Fountain Sanitation District plant) and (b) in the NE1/4 of Section 25, T. 15 S., R. 66 W. of the 6<sup>th</sup> P.M. (Widefield Water & Sanitation District plant.) A regional wastewater treatment plant may be constructed in the future at a location several miles downstream of Fountain, in the NW1/4 of Section 10, T. 17 S, R. 65 W. of the 6<sup>th</sup> P.M. as shown on Exhibit A. 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 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 Miller Ditch Right, those return flows will be calculated, and may be exchanged in accordance with, and will be subject to the applicable terms and conditions of the decrees in Augmentation Plans I, II and III. **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 Miller 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 as therein provided. **Calculation of Replacement Credits (Augmentation Plans).** The decrees in Augmentation Plans I and II, and Augmentation Plan III (when entered) provide for calculation of replacement credit available from Fountain’s augmentation supplies, and this application does not change such calculations. Rather, the available credits from the decreed historic consumptive use of the Miller Ditch (“Fountain Miller Ditch Replacement Credits”) will be calculated as provided in the decree in Case No. 2003CW57, and paragraph 5.4 below, and will be included in Fountain’s accounting for all of the Augmentation Plans. **Calculation of Replacement Credits: Fountain Miller Ditch Right, Decree in Case No. 2003CW59.** The decree in Case No. 2003CW59 quantified the consumptive use associated with the Fountain Miller Ditch Right and imposed volumetric limitations as follows:

Month	Maximum delivery to Augmentation station (acre-feet)	10-yr average delivery to aug station (acre-feet)	Maximum Consumptive Use (acre-feet)	10-year average consumptive use (acre-feet)
Jan	47	12	9	3
Feb	44	13	9	3
Mar	66	23	24	8
Apr	81	65	44	35
May	121	97	69	55
Jun	78	63	41	33
Jul	100	80	60	48
Aug	87	63	48	35
Sep	70	51	37	27
Oct	79	58	44	32
Nov	0	0	0	0
Dec	62	31	18	6
TOTAL		556		285

**Decreed Annual Volumetric and Seasonal Limits.** The decree in Case No. 2003CW59 provides that Fountain’s diversions under the Fountain Miller Ditch Right are subject to annual volumetric and seasonal deliveries to the Chilcott Augmentation Station as follows: to no more than 807 acre-feet in any year, to no more than 596 acre-feet in the period of April - October of any year, and to no more than 5,555 acre-feet in any consecutive 10-year period. Fountain’s consumptive use under the Fountain Miller Ditch Right is also limited by the decree in Case No. 2003CW59 to no more than 392 acre-feet in any year, to no more than 332 acre-feet during the period of April - October of any year, and to no more than 2,850 acre-feet in any consecutive 10-year period. **Calculation of Available Replacement Credits.** Subject to the monthly, seasonal and annual volumetric limits set forth above, the decree in Case No. 2003CW59 provides

that Fountain’s consumptive use credits from the Fountain Miller Ditch Right are calculated by multiplying the amount of in-priority diversions under the Fountain Miller Ditch Right delivered to Fountain Creek through the Chilcott Ditch Augmentation Station by the following monthly depletion factors:

Month	Depletion Factor (%)
January	21.4
February	23.0
March	36.4
April	54.4
May	56.8
June	52.4
July	60.2
August	55.7
September	53.1
October	55.6
November	N/A
December	32.2

The foregoing terms and conditions from the decree in Case No. 2003CW59 will determine the amount of water available for use by Fountain from the Fountain Miller Ditch Right at any given time. Such amounts are referred to as “Fountain Miller Ditch Replacement Credits.” **Use of Fountain Miller Ditch Replacement Credits. Augmentation.** The Fountain Miller Ditch Replacement Credits may be used to augment depletions from the Wells as 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. **Storage.** When and to the extent Fountain does not use available Fountain Miller 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 reservoirs in the Fountain Creek drainage basin or on the Arkansas River or its tributaries may be later released for augmentation or exchanged to Pueblo Reservoir, subject to the terms and conditions of this application. **Exchange of Miller Ditch Replacement Credits to Pueblo Reservoir. Relationship to Case No. 2001CW108:** This application adds Fountain Miller Ditch Replacement Credits to the water rights that may be exchanged to Pueblo Reservoir pursuant to Fountain’s Pueblo Reservoir the 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. **Appropriation Date:** March 27, 2001. **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. **Amount claimed:** 19 cfs, conditional, to be included within the 19 cfs exchange rate applied for in Case No. 2001CW108. **Exchange reach: 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 6<sup>th</sup> P.M. in Pueblo County, Colorado, the location at which the water released to Fountain Creek from the upstream terminus locations described below reaches the Arkansas River. **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 6<sup>th</sup> P.M. in Pueblo County, Colorado. **Uses.** Water from the Fountain Miller 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. **Location Where Water from the Fountain Miller Ditch Replacement Credits Will Be Released for Exchange.** Water from the Fountain Miller Ditch Replacement Credits will be delivered to Fountain Creek from the Chilcott Ditch Augmentation Station. Water from the Fountain Miller Ditch Replacement Credits that is stored in other structures 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. **Operation of Exchange.** To the extent the Fountain Miller Ditch Replacement Credits are not used for augmentation when delivered to Fountain Creek, such Miller Ditch Replacement Credits will 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 merely authorizes Excess Augmentation Credits attributable to the Fountain Miller 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 to Pueblo Reservoir herein decreed is subject to Fountain’s obligations under 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”). **Terms and Conditions. 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, calculation of well depletions, wastewater effluent, lawn irrigation return flows, and well augmentation requirements. The Fountain Miller 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, and, with regard to the exchange to Pueblo

Reservoir, the terms and conditions of any decree entered in Case No. 2001CW108. **Exchange of Fountain Miller Ditch Replacement Credits to Pueblo Reservoir and Use of Such Credits Stored in Pueblo Reservoir.** Use of the Fountain Miller Ditch Replacement Credits stored in Pueblo Reservoir shall also be subject to the terms and conditions of Augmentation Plans I, II and III and any decree that is entered in Case No. 2001CW108, the Regional IGA, the requirements for operation of Pueblo Reservoir imposed by Southeastern and the United States Bureau of Reclamation, and the requirements of the Fountain Valley Authority. **Quality of Augmentation and Exchange Water.** Evidence of water quality measurements to date demonstrates that Fountain's augmentation and exchange water is of a quality and continuity to meet the requirements of use to which senior downstream appropriations have normally been put in compliance with C.R.S. § 37-80-120(3). **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 Miller Ditch Right is diverted) and the Chilcott Ditch Augmentation Station (where the Fountain Miller 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.) **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, and the terms and conditions of any decree entered in Case No. 2001CW108, the use of Fountain Miller Ditch Replacement Credits as described in this application will not injure vested water rights or decreed conditional water rights. **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 Miller 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 Miller Ditch Right as an additional supply for augmentation and exchange and other municipal uses as herein applied for.

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**CASE NO. 08CW115 - CITY OF FOUNTAIN, COLORADO (“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 for Change of Water Rights and Plan for Augmentation, Including Exchange

**EL PASO COUNTY, COLORADO**

**Background.** Fountain is a municipal water provider, and delivers water through a central water distribution system to a population of approximately 15,000 (year 2000). Fountain has experienced unprecedented growth, and anticipates the demand for water service will continue to increase. 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. 2001CW146 seeks to add additional wells and to provide for augmentation from additional augmentation supplies (“Augmentation Plan III”). In the 1970s, Fountain acquired 0.25 cfs of Priority 6, and 0.67 cfs of Priority 16, both of which were included in the transfers to the Crabb Ditch, and changed them to municipal uses in Augmentation Plan I. This application does not include those previously-changed portions of Priorities 6 and 16. In 2007, Fountain acquired the remaining interests in Crabb Ditch Priorities 6 and 16, and all of Priority 131 from members of the Simmons family. The interests acquired from the Simmons family are the subject of this application, and are referred to in this application as the “Simmons Crabb Ditch Rights.” Fountain seeks by this application to change the use of the Simmons Crabb Ditch Rights to all municipal uses, including but not limited to irrigation, storage, exchange and augmentation. **CHANGE OF WATER RIGHTS. Name of structure.** Crabb Ditch. **Information from previous decrees. Priorities, Appropriation Dates and Amounts.** The Crabb Ditch has three decreed priorities, as follows:

Priority No.	Amount (cfs)	Amount included in this case	Appropriation Date	Adjudication Date	Court & Case No.
6	0.50	0.25	12/31/1861	2/15/1882	El Paso County District Court CA 37005 (Transfer from Stubbs & Miller)

16	3.35	2.68	12/31/1863	2/15/1882	El Paso County District Court CA 37005 (Transfer from Miller)
131	6.00	6.00	3/1/1885	6/2/1919	El Paso County District Court, CA 10146

**Decreed Point of Diversion.** The decreed point of diversion of the Crabb Ditch is located on the easterly bank of Fountain Creek in the NW1/4, Sec. 31, T. 15 S., R. 65 W. of the 6<sup>th</sup> P.M. in El Paso County. See Exhibit A to application.

**Source.** Fountain Creek, tributary to the Arkansas River. **Historic Use.** The Simmons Crabb Ditch Right was historically used to irrigate approximately 58 acres located generally in portions of Section 6, T. 16 S., R. 65 W. of the 6<sup>th</sup> P.M. in El Paso County, Colorado, as shown on Exhibit A. A summary of the diversion records is attached as Exhibit B to the application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **Proposed Change. Change Requested.** Fountain seeks to quantify the historic consumptive use attributable to the Simmons Crabb Ditch Right and to change the use of the Simmons Crabb Ditch Right from its previously-decreed irrigation uses to all municipal uses, including but not limited to domestic, irrigation, commercial, industrial, recreation, fishery, piscatorial, wildlife, augmentation, replacement and substitution, exchange and storage of the previously decreed direct flow rights. Fountain also seeks to change the point of diversion of the Simmons Crabb Ditch Right to the headgate of the Chilcott Ditch, located on Fountain Creek at a point whence the quarter corner of the East line of Section 25, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M. bears North 36°45' East 571 feet. (The Chilcott Ditch headgate is shown on Exhibit C to the application. **Location.** Subject to obtaining the necessary agreement with the Chilcott Ditch Company, Fountain plans to divert the Simmons Crabb Ditch Right at the Chilcott Ditch headgate, and will obtain such an agreement with the Chilcott Ditch Company before using any of this water right through the Chilcott Ditch. **Use.** The water will be used to meet present and future municipal needs of Fountain's customers, and for storage, replacement and substitution, augmentation and exchange. **Amount.** The average consumptive use associated with the Simmons Crabb Ditch Right had been calculated to be approximately 1.13 acre-feet per acre, or a total of 65.4 acre-feet, based on analysis of the period from 1960 - 1998. This time period reflects use of the Priorities 6 and 16 after their transfer to the Crabb Ditch in 1959. The ditch was regularly used until 1990; thereafter, diversion records are unavailable although irrigation reportedly continued to some extent. The average consumptive use is distributed throughout the irrigation season. **Operation of Change.** When the Simmons Crabb Ditch rights are in priority, they will be diverted at the Chilcott Ditch headgate, and measured and the return flows and historic consumptive use credits available to Fountain will be released to Fountain Creek at the Chilcott Ditch Augmentation Station, provided that Fountain shall first have appropriate agreements with the Chilcott Ditch Company for the use of these facilities. Return flows from the Simmons Crabb Ditch Right have historically accrued to



Fountain Creek. 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 6<sup>th</sup> P.M. (Fountain Sanitation District plant) and (b) in the NE1/4 of Section 25, T. 15 S., R. 66 W. of the 6<sup>th</sup> P.M. (Widefield Water & Sanitation District plant.) A regional wastewater treatment plant may be constructed in the future at a location several miles downstream of Fountain, in the NW1/4 of Section 10, T. 17 S, R. 65 W. of the 6<sup>th</sup> P.M. Fountain will replace historic return flows from the Simmons Crabb Ditch Right in time, location and amount as necessary to prevent injury to other water rights. **PLAN FOR AUGMENTATION Names and Relevant Information Regarding of Structures to be Augmented.** All of the wells described below are herein referred to as the “Wells.” Existing Wells are augmented with augmentation supplies decreed in Augmentation Plan I and Augmentation Plan II, and, when Augmentation Plan III is decreed, the Wells will be augmented pursuant to that decree as well. **1. Wells, or replacements thereof, included in Augmentation Plan I (Case Nos. W-4396 and W-4559).** The wells and water rights included in Augmentation Plan I are owned by Fountain. These wells are decreed for municipal, domestic, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and small gardens, manufacturing and industrial purposes, and are identified and described in the decree for Augmentation Plan I as follows:

Well Name/No.	Permit No.	Location (all in El Paso County, Colorado )	Decreed flow rate (gpm)	Priority Date
Fountain Well No. 1	19875-2	600’ west from East Sec. line and 2400’ S. from N. Sec. line of Sec. 6, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	3105	12/10/1953
Fountain Well No. 2	2345-F	400’ west from East Sec. line and 2900’ S. from N. Sec. line of Sec. 6, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	2592	8/16/1937
Fountain Well No. 3	10272-F	4800’ west from East Sec. line and 4300’ S. from N. Sec. line of Sec. 5, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	2880	11/11/1965
Fountain Well No. 3A	(proposed APD for #3)	100’ west from East Sec. line and 4700’ S. from N. Sec. line of Sec. 6, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	2880	11/11/1965
Fountain Well No. 4	19875-1	1100’ west from East Sec. line and 2100’ S. from N. Sec. line of Sec. 6, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	900	1937

Fountain No. 9	Well	6919; 6921	2600' west from East Sec. line and 4300' S. from N. Sec. line of Sec. 5, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	750	1953
Fountain No. 10	Well	15908	2900' west from East Sec. line and 4700' S. from N. Sec. line of Sec. 24, T. 15 S., R. 66 W. of the 6 <sup>th</sup> P.M.	500	4/13/1955
Fountain No. 11	Well		2900' west from East Sec. line and 4900' S. from N. Sec. line of Sec. 24, T. 15 S., R. 66 W. of the 6 <sup>th</sup> P.M.	100	7/1954
Fountain No. 12	Well		3600' west from East Sec. line and 4200' S. from N. Sec. line of Sec. 24, T. 15 S., R. 66 W. of the 6 <sup>th</sup> P.M.	200	7/1954
Fountain No. 15	Well		600' west from East Sec. line and 2800' S. from N. Sec. line of Sec. 6, T. 16 S., R. 65 W. of the 6 <sup>th</sup> P.M.	125	1952

**2. Well included in Augmentation Plan II as amended by Case No. 91CW21.**

**2.1 School Well No. 1-35174-F, Well Permit:** Permit No. 35174-F, **Location:** NE1/4 of the SE1/4 of Section 8, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 1950 feet from the south section line and 1150 feet from the east section line of said Section 8, in El Paso County, Colorado, **Capacity:** 550 gpm (1.22 cfs), **Uses:** Municipal, domestic, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and small gardens, manufacturing and industrial purposes, **Owner:** Fountain-Ft. Carson School District 8 owns this well, and the land on which it is located, but by agreement, Fountain is responsible for augmenting out of priority depletions from this well, and may use the well for municipal purposes. **3. Wells included in Augmentation Plan III (Pending Case No. 2001CW146):** **3.1 Aragon Well: Well Permit:** Permit No. 45244-F, **Location:** SW1/4 of the SW1/4 of Section 5, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 900 feet from the south section line and 100 feet from the west section line of said Section 5, in El Paso County, Colorado, **Capacity:** 70 gpm (0.16 cfs), **Uses:** Irrigation; municipal pursuant to agreement upon amendment or re-issuance of well permit, **Owner:** Fountain-Ft. Carson School District 8 owns this well, but by agreement, Fountain is responsible for augmenting out of priority depletions from this well, and may use the well for municipal purposes; **3.2 Racetrack Well No. 7, Well Permit:** Permit No. 5195-FR, **Previous Decrees:** Decreed in Case Nos. W-1528 and W-4376, Water Court, Water Division No. 2, for municipal, industrial, irrigation and domestic purposes with an appropriation date of February 27, 1964, **Location:** SW1/4 of the SW1/4 of Section 4, Township 17 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 2,654 feet from the north section line and 186 feet from the west section

line of said Section 4, in El Paso County, Colorado, **Capacity:** 1,073 gpm (2.39 cfs), **Owner:** Fountain; **3.3 Racetrack Well No. 11: Well Permit:** Permit No. 47879-F (Replacement for Well Permit No. 6921-F); **Previous Decrees:** Decreed in Case Nos. W-1528 and W-4376, Water Court, Water Division No. 2, for municipal, industrial, irrigation and domestic purposes with an appropriation date of March 2, 1965, **Location:** NW1/4 of the NW1/4 of Section 4, Township 17 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 310 feet from the north section line and 242 feet from the west section line of said Section 4, in El Paso County, Colorado, **Capacity:** 907 gpm (2.02 cfs), **Owner:** Fountain; **3.4 City of Fountain Well No. 5** (Replacement well plus additional yield), **Well Permit:** Permit No. 62052-F (formerly 6920-R), **Previous decrees:** Well No. 5 was decreed in Case No. W-425 on April 5, 1972, with a priority date of 1949, and a flow rate of 126 gpm, for municipal uses. The decreed location of the well is 1300 feet west from the east section line, and 2400 feet south from the north section line, in Section 6, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. in El Paso County, Colorado. This well was included in Augmentation Plan I prior to being redrilled and included in Augmentation Plan III, **Location:** A replacement well was drilled in 2004, and is located in the SW1/4 NE 1/4 of Section 6, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a location 2498 feet from the North section line and 1642 feet from the East section line of said Section 6 in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Capacity:** 126 gpm (pursuant to decree in Case No. W-425), Additional capacity applied for in Case No. 2001CW146: 874 gpm, conditional, total capacity: 1000 gpm, **Owner:** Fountain. **3.5 City of Fountain Well No. 16, Well Permit:** Not yet applied for, **Location:** SE1/4 of the SE1/4 of Section 8, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 100 feet from the south section line and 260 feet from the east section line of said Section 8, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain, **3.6 City of Fountain Well No. 17, Well Permit:** Permit No. 056286-F, **Location:** NW1/4 of the SE1/4 of Section 5, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 1,740 feet from the south section line and 2,470 feet from the east section line of said Section 5, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Capacity:** 500 gpm (1.11 cfs), **Owner:** Fountain, **3.7 City of Fountain Well No. 18, Well Permit:** Permit application receipt number 3601238, **Location:** SE1/4 of the SE1/4 of Section 5, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 550 feet from the south section line and 1300 feet from the east section line of said Section 5, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection,

sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain, **3.8 City of Fountain Well No. 19, Well Permit:** To be applied for, **Location:** SW1/4 of the SW1/4 of Section 9, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 190 feet from the south section line and 10 feet from the west section line of said Section 9, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain, **3.9 City of Fountain Well No. 20, Well Permit:** To be applied for, **Location:** NW1/4 of the NW1/4 of Section 16, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 70 feet from the north section line and 940 feet from the west section line of said Section 16, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain, **3.10 City of Fountain Well No. 21, Well Permit:** To be applied for, **Location:** NE1/4 of the NW1/4 of Section 16, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 70 feet from the north section line and 1,340 feet from the west section line of said Section 16, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain; **3.11 City of Fountain Well No. 22, Well Permit:** To be applied for, **Location:** NE1/4 of the NW1/4 of Section 16, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 70 feet from the north section line and 1,740 feet from the west section line of said Section 16, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain, **3.12 City of Fountain Well No. 23, Well Permit:** To be applied for, **Location:** NW1/4 of the NW 1/4 of Section 16, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M., at a point 870 feet from the north section line and 870 feet from the west section line of said Section 16, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain, **3.13 City of Fountain Well No. 24, Well Permit:** To be applied for, **Location:** SE 1/4 of the NW1/4 of Section 16, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M., at a

point 1,740 feet from the north section line and 1,740 feet from the west section line of said Section 16, in El Paso County, Colorado, **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 600 gpm (1.34 cfs), **Owner:** Fountain,

**3.14 Delbert Wells Well No. 1, Well Permit:** Permit No. R-20110-1 (A new permit will be obtained for uses and quantities decreed pursuant to this application), **Previous Decree:** Decreed in Case No. W-2273, Water Court, Water Division No. 2, for 654 gpm (1.46 cfs) for irrigation use with an appropriation date of December 31, 1937, **Location:** NW1/4 of the SE1/4 of Section 8, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 2,570 feet from the south section line and 1,550 feet from the east section line of said Section 8, in El Paso County, Colorado, **Uses:** Irrigation, and municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 654 gpm (1.46 cfs), **Owner:** Fountain,

**3.15 Delbert Wells Well No. 2, Well Permit:** Permit No. R-20110-2 (A new permit will be obtained for uses and quantities decreed pursuant to this application.), **Previous Decree:** Decreed in Case No. W-2273, Water Court, Water Division No. 2, for 490 gpm (1.09 cfs) for irrigation use with an appropriation date of December 31, 1939, **Location:** NW1/4 of the SE1/4 of Section 8, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 2,550 feet from the south section line and 2,150 feet from the east section line of said Section 8, in El Paso County, Colorado, **Uses:** Irrigation and municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange, **Source:** This well is tributary to Fountain Creek, **Capacity:** 490 gpm (1.09 cfs), **Owner:** Fountain.

**4. Venetucci Wells (Case No. 2007CW68).** Water from the Venetucci Wells (described below) is available to Fountain pursuant to a Sublease Agreement dated December 15, 2006, with Security Water District and Widefield Water and Sanitation District. These wells are located in the Widefield Aquifer, tributary to Fountain Creek, in El Paso County. The use and augmentation of Fountain's leased interest in the Venetucci Wells are the subjects of Fountain's pending Application in Case No. 2007CW68 ("Venetucci Well Augmentation Plan"). The Venetucci Wells are owned by the Pikes Peak Community Foundation.

**4.1. Venetucci Well No. 4.** Venetucci Well No. 4 is located in the SE1/4 SW1/4 of Section 11, under Well Permit No. 18664-R, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.78 cfs for municipal use with a priority date of August 1, 1954.

**4.2 Venetucci Well No. 5.** Venetucci Well No. 5 is located in the SE1/4 SW1/4 of Section 11, under Well Permit No. 17490-U, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.78 cfs for municipal use with a priority date of August 1, 1954,

**4.3. Venetucci Well No. 7.** Venetucci Well No. 7 is

located in the SW1/4 SE1/4 of Section 11, under Well Permit No. 4869-F, as decreed on December 31, 1973 in Case No. W-568, District Court for Water Division 2, for 2.67 cfs for domestic, municipal and industrial use, with a priority date of December 10, 1963, **4.4. Venetucci Well No. 8.** Venetucci Well No. 8 is located in the SW1/4 SE1/4 of Section 11, under Well Permit No. 4907-F, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.56 cfs for municipal use with a priority date of December 17, 1963, **4.5. Venetucci Well No. 1 and Well No. 1 as Enlarged.** Venetucci Well No. 1 and Well No. 1 as enlarged is located in the NE1/4 SW1/4 of Section 11, under Well Permit Nos. 17490-R and 4835-F, respectively, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.562 cfs and up to 306 annual acre feet for irrigation of 170 acres in combination with Well Nos. 2 and 3, with priority dates of November 1, 1941 for 1.003 cfs and December 3, 1963 for 1.559 cfs. **4.6. Venetucci Well No. 2 and Well No. 2 as Enlarged.** Venetucci Well No. 2 and Well No. 2 as Enlarged is located in the NE1/4 SW1/4 of Section 11, under Well Permit Nos. 17490-S and 4915-F, respectively, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.784 cfs and up to 332 annual acre feet for irrigation of 170 acres in combination with Well Nos. 1 and 3, with priority dates of November 1, 1941 for 1.225 cfs and December 3, 1963 for 1.559 cfs, **4.7. Venetucci Well No. 3.** Venetucci Well No. 3 is located in the SE1/4 NW1/4 of Section 11, under Well Permit No. 17490-T, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 1.78 cfs and up to 212 annual acre feet for irrigation of 170 acres in combination with Well Nos. 1 and 2, with a priority date of November 1, 1941. **5. Cumberland Green Well (Case No. 2007CW123).** Cumberland Green Well is located in the SW1/4SW1/4 of Section 33, Township 15 South, Range 65 West of the Sixth P.M., 6.53 feet from the South section line, and 238.9 feet from the West section line in said Section 33, in El Paso County, Colorado. It is tributary to Fountain Creek, and was originally permitted with Permit No. 015748-F. The Cumberland Green Well was decreed by the Water Court, Water Division No. 2, in Case No. W-590 on August 1, 1972, for 1.01 cfs (455 gpm) and a total annual withdrawal not to exceed 320 acre-feet, for domestic use and irrigation of approximately 150 acres. The Cumberland Green well is owned by Jimmy Camp LLC, which is developing a subdivision known as Cumberland Green, which will obtain water service from the City of Fountain. An application for inclusion of the Cumberland Green Well in the City's augmentation plans is pending in the Water Court, Water Division No. 2, in Case No. 2007CW123 ("Cumberland Green Augmentation Plan.") **6. Wells to be constructed in the future, and replacements thereof.** Wells constructed or acquired by Fountain and not included in this Plan for Augmentation may be included by amendment of the decree entered upon this application, or by subsequent water court decree. **7. Previous Decrees for Water Right to be used for Augmentation.** In addition to augmentation supplies decreed in Augmentation Plans I, II, III, and other cases, the Wells may be augmented by the Simmons Crabb Ditch right described above. **Statement of Plan for Augmentation. 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.

**Determination of Well Augmentation Requirements. 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 6<sup>th</sup> 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 6<sup>th</sup> 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.

**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 6<sup>th</sup> P.M. (Fountain Sanitation District plant) and (b) in the NE1/4 of Section 25, T. 15 S., R. 66 W. of the 6<sup>th</sup> P.M. (Widefield Water & Sanitation District plant.) A regional wastewater treatment plant may be constructed in the future at a location several miles downstream of Fountain, in the NW1/4 of Section 10, T. 17 S., R. 65 W. of the 6<sup>th</sup> 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 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 Simmons Crabb Ditch Right, those return flows will be calculated, and may be exchanged in accordance with, and will be subject to the applicable terms and conditions of the decrees in Augmentation Plans I, II and III.

**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 Crabb 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 as therein provided. **Calculation of Replacement Credits.** The decrees in Augmentation Plans I and II, and Augmentation Plan III (when entered) provide for calculation of replacement credit available from Fountain's augmentation supplies, and this application does not change such calculations. Rather, the available credits from the historic consumptive use of the Simmons Crabb Ditch Right ("Simmons Crabb Ditch Replacement Credits") will also be calculated and will be included in Fountain's accounting for all of the Augmentation Plans. The Simmons Crabb Ditch Replacement Credits will be available only during the irrigation season, and will be subject to appropriate volumetric and seasonal limitations to assure that there will be no injury to vested water rights or decreed conditional water rights. Subject to appropriate monthly, seasonal and annual volumetric limits, Fountain's consumptive use credits from the Simmons Crabb Ditch Right will be determined by multiplying the amount of in-priority diversions under the Simmons Crabb Ditch Right delivered to Fountain Creek through the Chilcott Ditch Augmentation Station by monthly depletion factors to determine the amount of Simmons Crabb Ditch Replacement Credits available at any given time. **Use of Simmons Crabb Ditch Replacement Credits. Augmentation.** The Simmons Crabb Ditch Replacement Credits may be used to augment depletions from the Wells, as 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. **Storage.** When and to the extent Fountain does not use available Simmons Crabb 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 reservoirs on the Fountain Creek drainage basin or the Arkansas River or its tributaries may be later released for augmentation. **Terms and Conditions. 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, calculation of well depletions, wastewater effluent, lawn irrigation return flows, and well augmentation requirements. The Simmons Crabb 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. **Limitations on Use of Simmons Crabb Ditch Replacement Credits.** Simmons Crabb Ditch Replacement Credits may only be used when and to the extent the Simmons Crabb Ditch Right is legally and physically available for diversion at the Chilcott Ditch headgate, and subject to all seasonal and volumetric limitations, and to maintenance of the Simmons Crabb Ditch Right historic return flow patterns. **Quality of Augmentation Water.** Evidence of water quality measurements to date demonstrates that Fountain's



augmentation water is of a quality and continuity to meet the requirements of use to which senior downstream appropriations have normally been put in compliance with C.R.S. § 37-80-120(3). **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, Fountain the Chilcott Ditch headgate (where the Simmons Crabb Ditch Right will be diverted) and the Chilcott Ditch Augmentation Station (where the Fountain Crabb Ditch Right will be 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.) **No Injury.** So long as, and to the extent that Fountain operates the plan for augmentation herein sought consistent with the requirements of Augmentation Plans I, II and III, and the terms and conditions herein proposed, use of the Simmons Crabb Ditch Right as described in this application will not injure vested water rights or decreed conditional water rights. **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 or storage pools are contemplated by this application. WHEREFORE, Fountain respectfully requests that this Court enter a decree including the Fountain Crabb Ditch Right as an additional supply for augmentation and exchange as herein applied for.

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THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED. YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of February 2009, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this 7th day of January, 2009.



*Mardell R. DiDomenico*

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

(Court seal)  
Published: January \_\_\_\_\_, 2009

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