

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED DURING DECEMBER 2009  
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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 2009, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CASE NO. 08CW18 - LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION ("LAWMA"), c/o Donald F. Higbee, Manager, 307 Fifth Street, P. O. Box 1161, Lamar, CO 81052** (Richard J. Mehren, Moses, Wittemyer, Harrison & Woodruff, P.C., P. O. Box 1440, Boulder, CO 80306-1440; (303) 443-8782)

Third Amended Application for Plan for Augmentation

**BENT, PROWERS, KIOWA AND CHEYENNE COUNTIES**

**2. Purpose of application:** LAWMA is a non-profit corporation organized for the purpose of, among other things, providing a means for its members to continue to make groundwater diversions from wells and other structures with junior priorities and to continue to make surface water diversions from structures with junior priorities in the Arkansas River water rights regime. The purpose of this application is to include 43 additional wells or other structures in LAWMA's plan for augmentation, which was decreed on March 8, 2007 in Case No. 02CW181, Water Division No. 2 ("02CW181 Decree"). Seven structures of the 25 structures were included in the application filed in this matter on March 31, 2008. Nine additional structures (for a total of 16) were included in the amended application filed in this matter on April 24, 2008. Nine structures (for a total of 25) were added by the second amended application filed on January 30, 2009. Eighteen structures (for a total of 43) were added by the third amended application. The third amended application also removed a proposed structure claimed in an earlier application, the Enstrom Well, and added a new structure, the Enstrom Pump. Pursuant to paragraph 43 of the 02CW181 Decree, additional wells or structures may be added to the plan for augmentation by filing a new application with the Water Court. **3. Description of structures to be augmented:** Each of the wells and other structures described in Exhibit A to the Third Amended Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. A total of 43 additional wells or other structures will be included in LAWMA's plan for augmentation through this application. The structures added to this Third Amended Application are: Name: Enstrom-Bristol Properties, LLC; SEO ID No., Permit No.; Case No.: Enstrom Pump. Location: SW SE 26-22S-44W, 300' from South line and 2560' from East line, Prowers County; Source: Arkansas River. Name: Reyher Enterprises, Inc.; SEO ID No., Permit No.; Case No.: Bonnie

Place Pond; Location: NE SE 17-22S-48W, 1740' from South line and 650' from East line, Bent County; Source: Arkansas River Valley Fill Aquifer. Name: Reyher Enterprises, Inc.; SEO ID No., Permit No.; Case No: Underground Drain No. 1; Location: SE SW 8-22S-48W, 50' from South line and 2460' from West line, Bent County; Source: Arkansas River Valley Fill Aquifer. Name: Reyher Enterprises, Inc.; SEO ID No., Permit No.; Case No: Underground Drain No. 2; Location: NE NW 17-22S-48W, 1095' from North line and 2625' from West line, Bent County; Source: Arkansas River Valley Fill Aquifer. Name: Reyher Enterprises, Inc.; SEO ID No., Permit No.; Case No: Underground Drain No. 3; Location: NE SE 17-22S-48W, 1835' from South line and 965' from East line, Bent County; Source: Arkansas River Valley Fill Aquifer. Name: Lance O. Verhoeff; SEO ID No., Permit No.; Case No: Dingwall Ditch; 06/03/1922 Adj.; Location: SE SE 28-22S-49W, 147' from South line and 525' from East line, Bent County; Source: East Prowers Arroyo. Name: Lance O. Verhoeff; SEO ID No., Permit No.; Case No: Dudley Ditch No. 1; 06/03/1922 Adj.; Location: NE NE 21-22S-49W, 161' from North line and 967' from East line, Bent County; Source: East Prowers Arroyo. Name: Lance O. Verhoeff; SEO ID No., Permit No.; Case No: Gerald Verhoeff Ditch; CA 418; Location: SE NE 28-22S-49W, 2462' from North line and 624' from East line, Bent County; Source: East Prowers Arroyo. Name: Lance O. Verhoeff; SEO ID No., Permit No.; Case No: Gerald Verhoeff Reservoir; CA 418; Location: SW NW 27-22S-49W, 2010' from North line and 660' from West line, Bent County; Source: East Prowers Arroyo. Name: Lance O. Verhoeff; SEO ID No., Permit No.; Case No: James Cushny Ditch; 11/07/1924 Adj.; Location: SE SW 28-22S-49W, 2' from South line and 1786' from West line, Bent County; Source: West Fork Prowers Arroyo. Name: Lance O. Verhoeff; SEO ID No., Permit No.; Case No: Lyvere Ditch; 06/03/1922 Adj.; Location: SE NE 29-22S-49W, 2603' from North line and 7' from East line, Bent County; Source: West Fork Prowers Arroyo. Name: Lance O. Verhoeff; SEO ID No., Permit No.; Case No: Swallow Seepage Ditch; 06/03/1922 Adj.; Location: SE NE 29-22S-49W, 2603' from North line and 7' from East line, Bent County; Source: West Fork Prowers Arroyo. Name: Lance O. Verhoeff; SEO ID No., Permit No.; Case No: Dingwall Ditch Regulating Reservoir; Location: SE SE 28-22S-49W, 200' from South line and 500' from East line, Bent County; Source: East Prowers Arroyo. Name: Burt White Heckman; SEO ID No., Permit No.; Case No: August Reyher Seepage Ditch No. 1, 08/26/1946 Adj.; Location: NE SE 14-22S-49W, 1950' from South line and 300' from East line, Bent County; Source: August Reyher Drainage Ditch. Name: Burt White Heckman; SEO ID No., Permit No.; Case No: August Reyher Seepage Ditch No. 2, 08/26/1946 Adj.; Location: NE SE 14-22S-49W, 1950' from South line and 300' from East line, Bent County; Source: August Reyher Drainage Ditch. Name: Burt White Heckman; SEO ID No., Permit No.; Case No: August Reyher Seepage Reservoir; Location: NE SE 14-22S-49W, 1950' from South line and 300' from East line, Bent County; Source: August Reyher Drainage Ditch. Name: Big Sandy Cattle Company; SEO ID No., Permit No.; Case No: Feedlot Well No. 1, 156617; Location: SE SW 7-15S-47W, 153' from South line and 1760' from West line, Cheyenne County; Source: Big Sandy Creek Alluvium; Name: Big

Sandy Cattle Company; SEO ID No., Permit No.; Case No: Feedlot Well No. 2; Location: NE NW 18-15S-47W, 1268' from North line and 1396' from West line, Cheyenne County; Source: Big Sandy Creek Alluvium. Name: Big Sandy Cattle Company; SEO ID No., Permit No.; Case No: Feedlot Well No. 3; Location: NW NW 18-15S-47W, 823' from North line and 947' from West line, Cheyenne County; Source: Big Sandy Creek Alluvium. **4. Water rights and other sources of water to be used for augmentation:** Those water rights and other sources of water identified in paragraph 40 of the 02CW181 Decree. **5. Statement of plan for augmentation:** The amount, timing and location of depletions from the wells and other structures described in Exhibit A will be determined in accordance with the methodologies approved in the 02CW181 Decree. LAWMA intends to account for and fully replace all out-of-priority stream depletions caused by the wells and other structures described in Exhibit A with fully-consumable water in accordance with the terms and conditions of the 02CW181 Decree in a manner that protects Colorado senior surface water rights from injury and assures compliance with the Arkansas River Compact. This application does not seek to change any provisions of the 02CW181 Decree other than the inclusion of additional wells and structures. **6. Name and address of owners of land upon which any new diversion or storage structure, or modification to any existing diversion or storage structures or existing storage pool is or will be constructed or upon which water is or will be stored:** A. Bonnie Place Pond, Underground Drain Nos 1, 2 and 3: Reyher Enterprises, Inc., P. O. Box 8, McClave, CO 81057; B. Dingwall Ditch, Dudley Ditch No. 1, Gerald Verhoeff Ditch; Gerald Verhoeff Reservoir, James Cushny Ditch, Lyvere Ditch, Swallow Seepage Ditch, and Dingwall Ditch Regulating Reservoir: Lance O. Verhoeff, P. O. Box 14, McClave, CO 81057; C. August Reyher Seepage Ditch Nos. 1 and 2 and August Reyher Seepage Reservoir: Burt White Heckman, 28274 County Road LL, McClave, CO 81057; D. Feedlot Well Nos. 1, 2 and 3: Big Sandy Cattle Company, P. O. Box 39, Cheyenne Wells, CO 80810; E. Enstrom Pump: Enstrom-Bristol Properties, LLC, c/o Rick Enstrom, 13393 W. LaSalle Circle, Lakewood, CO 80228. WHEREFORE, LAWMA respectfully requests that this Court enter a decree approving this plan for augmentation and determining that such plan for augmentation will not cause injury to the vested or decreed conditional water rights of others and will not violate the Arkansas River Compact.

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**CASE NO. 09CW131 - NANCY DOMINICK (“Dominick”), 6508 CR 105, Salida, CO 81201 and CITY OF SALIDA (“Salida”), c/o Jack D. Lewis, City Administrator, P. O. Box 417, Salida, CO 81201** (Stuart B. Corbridge, Vranesh and Raisch, LLP, Attorneys for Dominick, P. O. Box 871, Boulder, CO 80306-0871; (303) 443-6151; and James R. Montgomery and Patricia M. DeChristopher, Moses, Wittemyer, Harrison and Woodruff, P.C., Attorneys for Salida, P. O. Box 1440, Boulder, CO 80306-1440; (303) 443-8782)

Application for Change of Water Rights

**CHAFFEE COUNTY**

**2. Water rights sought to be changed:** Dominick is the owner of the following water rights to be changed to an alternate point of diversion: **A. Decreed name of structure for which change is sought:** Tensassee Ditch. **B. Decreed point of diversion:** The decreed headgate location is located on the South Arkansas River at a point North 47°47’ East 800.2 feet from the North 1/4 Corner of Section 7, Township 49 North, Range 9 East of the N.M.P.M., Chaffee County, Colorado. **C. Source:** South Arkansas River, a tributary to the Arkansas River. **D. Priority number, appropriation date and amount:**

Priority No.	Appropriation Date	Amount (cfs)	Owned By Dominick (cfs)
Priority 8	04/13/1866	5.4	0.1687
Priority 68	12/31/1878	2.4	0.0750

**E. Previous decree:** June 19, 1890, District Court of Chaffee County. **F. Historical use:** The water rights owned by Dominick are decreed for irrigation use and have been and are used by her for that purpose. A summary of diversion records for the Tensassee Ditch is attached to the Application as Exhibit A. A map showing the approximate location of the Tensassee Ditch and Dominick’s property is attached as Exhibit B. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Dominick owns a parcel of approximately 6 acres located in the N1/2 SE1/4 of Section 9, Township 49 North, Range 9 East of the N.M.P.M., at the street address set forth in paragraph 1, that has been historically irrigated by the water rights described herein. A map showing the approximate area of historical use is attached to the Application as Exhibit C. **3. Proposed change of water rights:** Dominick requests the Court to approve a change in point of diversion of her water rights decreed to the Tensassee Ditch so that those water rights may be diverted at an alternate point of diversion through a shallow well to be located on her property at a point approximately 1,192 feet from the east section line and 2,377 feet from the south section line of said Section 9. No well permit has been applied for or issued as of the filing of this application. The proposed well will be located within 100 feet of the South Arkansas River and, as such, may be administered as a “headgate” well under existing policy of the State Engineer’s Office. Dominick requests that the Court enter a decree authorizing the diversion and use of her Tensassee Ditch water rights through the proposed alternate point of diversion under the priorities of the Tensassee Ditch in which Dominick has an interest, and that the headgate well may be administered as an alternate point of diversion for said water rights. Dominick does not seek a change in the place or

type of use of the subject water rights. This change of water rights is proposed in order to implement a Stipulation between Salida and Dominick in Case No. 04CW125 in which Salida changed its majority interest in the Tensassee Ditch water right and proposes to discontinue operation of the lower half of the ditch, which historically delivered water to Dominick's land. As a result of the removal of Salida's water rights from the Tensassee Ditch, it is no longer practical to deliver the relatively small amount of water owned by Dominick through the ditch. This change is necessary to allow Dominick's historical use to continue. In accordance with the Stipulation, Salida has agreed to prosecute the change of water right and is therefore listed as an Applicant in this case. **4. Proposed terms and conditions:** A. Dominick's diversions at the alternate point of diversion shall be consistent with her pro rata interest in the Tensassee Ditch water rights described herein, and shall continue for the historical irrigation use on the Dominick property. B. Dominick shall divert the water rights described in paragraph 2 at the alternate point of diversion only when and to the extent they are in priority under the Tensassee Ditch priorities identified in paragraph 2.D. C. Measuring devices as may be reasonably required to account for use of the water rights as changed will be installed and maintained in accordance with the terms of the Stipulation. D. The well identified in paragraph 3 shall be administered as an alternate point of diversion for Dominick's water rights. **5. The names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversions 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:** Nancy Dominick. WHEREFORE, Applicants respectfully request that the Court grant the change of water rights requested herein, enter a decree for the change and any other relief deemed appropriate.

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**CASE NO. 09CW132 - STEVE FORD, 65 Stanwell, Colorado Springs, CO 80906** (William F. Smith, Attorney for Applicant, 134 F Street, Suite 205, Salida, CO 81201; (719) 539-4802)

Application for Water Rights (Surface)

**CHAFFEE COUNTY**

**Name of structure:** Raspberry Creek Diversion. **Legal description of each point of diversion:** SE ¼ of the SW ¼ Section 10, T51N, R7E, NMPM, Chaffee County, 162 feet from the South line and 58 feet from the East line. **Source:** Raspberry Creek. **Date of initiation of appropriation:** October 1, 2009; **How appropriation was initiated:** Diversion and pipe; **Date water applied to beneficial use:** October 1, 2009. **Amount claimed:** 25 gpm Conditional. **Use or proposed use:** Irrigation, livestock water, domestic, fire control, fish and wildlife. **If irrigation, complete the following: Number of acres historically irrigated:** 0; **proposed to be irrigated:** 15. **Legal description of acreage:** 15 acres in the South ½ of the SE ¼ of T51N, R7E, NMPM. **If non-irrigation, describe purpose fully:** Livestock water will be put in livestock tank on the property of applicant. Domestic water and fire control to cabin on property. Fish and wildlife on or near the ephemeral stream. **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:** Diversion is on the property of the Applicant. **Remarks:** Raspberry Creek is an ephemeral stream which dries up before it leaves Applicant's property.

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**CASE NO. 09CW133 - DAVID CAPP and RUTH M. HENNAGE, Box 897, Beverly Shores, IN 46301-0897; (219) 874-4686**

Application for Water Rights (Surface)

**HUERFANO COUNTY**

**Name of structures:** Silver Spring No. 3; Disert West Dike Dike Spring. **Legal description of each point of diversion:** Silver Spring No. 3: Huerfano County, SW ¼ of the SW ¼ Section 3, T28S, R69W, 6<sup>th</sup> P.M., 850 feet from South line and 750 feet from West Line. Disert West Dike Spring: Huerfano Coutny, NW ¼ of the NW ¼ Section 10, T28S, R69W, 6<sup>th</sup> P.M., whence the NW corner of Section 10 bears N 34° 30' W, 1165 feet from spring. **Subdivision:** Both springs are located on Lot 22, Phase 4, Majors Ranch. **Additional Description:** **GPS location information (UTM format, Zone 13, units in meters, NAD83 datum):** **Were points averaged?** Yes. **Northing** 4164920 **Easting** 490852. **Source:** Dry tributary to Huerfano River. **Date of initiation of appropriation:** Silver Spring No. 3: September 30, 1987 (96CW61); Disert West Dike Spring: Date unknown; application in Case No. W-3085 states date of initiation of appropriation in 1900. **How appropriation was initiated:** Unknown. **Date water applied to beneficial use:** Unknown. **Amount claimed:** Silver Spring No. 3: 0.9 gpm (amount measured in 96CW61) Conditional; Disert West Dike Spring: 2.0 gpm (amount measured in W-3085; same amount measured by Applicants) conditional. **Use or proposed use:** Domestic, fire protection, stock water and wildlife watering. **If non-irrigation, describe purpose fully:** We own the real estate on which both springs are located. We are developing our property. We have built an access road, drilled a well and have paid San Isabel to run power. We have finalized plans with an architect and will soon sign a contract with a local builder to build cabin. We plan to negotiate a cattle grazing lease with a local rancher as other owners on Majors Ranch have done. **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. **Remarks:** Red Creek Ranch, Inc. has rights on Silver Spring No. 3, pursuant to Case No. 96CW61. We purchased our property from Red Creek on March 14, 1997. Red Creek operated a grazing lease for a number of years, but that lease has not been utilized or extended over the past couple of years. As a result of no grazing lease, the Huerfano County Assessor, on May 1, 2009, changed the status on our land from "agricultural land" to "vacant land". This change in status resulted in a significant increase in our property taxes. We are developing our property and would like to make domestic

use and plan to also enter into our own grazing lease with a local rancher. If this application for conditional water rights is granted, we would rename Silver Spring No. 3 to Oak Springs West-North Spring. The USGS topographical map (Farisita) attached to the Application shows the location of Silver Spring No. 3 as shown by legal description and map filed in Case No. 96CW61. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. We have served notice of this application via e-mail and U.S. mail to Red Creek Ranch, Inc., c/o Mr. Joseph O'Brien, Red Creek Land Company, 131 South Main Street, Pueblo, CO 81003 and e-mail: [@redcreekland.com](mailto:@redcreekland.com). We are also seeking conditional water rights to Disert West Dike Spring, Case No. W-3085 and 81CW146 and will make the same use of that water. If this application for conditional water rights is granted, we would rename Disert West Dike Spring to Oak Springs West - South Spring. The USGS map attached to the application also shows the location of the Disert West Spring Dike as shown by the legal description and map filed in Case Nos. W-3085 and 81CW146. We have also identified location of the Disert West Spring Dike through UTM coordinates. It is not clear to us the interest, if any, of the United States of America in either of these springs. We have, however, served notice of this application via U.S. mail to the United States of America at United States Department of Justice, Environmental and Natural Resources Division, 1961 Stout Street, Denver, CO 80294.

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**CASE NO. 09CW134** – 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. 09CW135** – 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. 09CW136 - CROSSROADS LAND & CATTLE, LLC, a Colorado limited liability company, P. O. Box 540, Penrose, CO 81240** (Chris D. Cummins, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)  
Application for Underground Water Rights and Approval of Plan for Augmentation  
**FREMONT COUNTY**

**II. APPLICATION FOR UNDERGROUND WATER RIGHTS** **A. Name of Well:** Crossroads Well. **1. Legal Description.** The Crossroads Well is located upon the Applicant's Property in the SE1/4 NW1/4 of Section 7, Township 19 South, Range 68 West, in the 6<sup>th</sup> P.M. UTM coordinates are easting 496093.1, and northing 4251560.5, NAD 83, Zone 13. **2. Source.** The source for the well is the tributary, alluvial ground water of the Arkansas River. The depth of the well is approximately 658 feet. **3. Appropriation. a. Date of Initiation of Appropriation.** December 21, 2009. **b. How Appropriation Was Initiated.** The appropriation was initiated by the submission of this Application, along with rehabilitation of the existing well structure, all with Applicant's intent to appropriate underground water and apply the water to beneficial use as set forth herein. **4. Amount Claimed.** The amount of water claimed is the maximum

yield of the well which is estimated at 25 g.p.m., absolute. **5. Use.** The uses contemplated for the Crossroads Well No. 1 are commercial purposes (including commercial sanitary and drinking water, use in a restaurant/bar unit, and veterinary clinic uses), stock watering, domestic, and fire protection purposes. **6. Land Ownership.** The land upon which the Crossroads Well is located, and the ground water will be used, is owned by the Applicant. **7. Remarks.** The Crossroads Well is currently constructed and permitted as an “exempt commercial well” pursuant to Division of Water Resources Well Permit No. 274509-A. Applicant intends to repermit the Crossroads Well pursuant to C.R.S. §37-90-137, consistent with the terms and uses requested in this Application, and a request for approval of a Substitute Water Supply Plan for the operation of this well pending completion of this adjudication, upon decree. **III. REQUEST FOR APPROVAL OF PLAN FOR AUGMENTATION. A. Description of Plan for Augmentation. 1. Name of Structures to be Augmented:** One (1) well located on Applicant’s approximately 41.42 acre property (“Applicant’s Property”), generally located in the SE1/4 NW1/4 of Section 7, Township 19 South, Range 68 West, in the 6<sup>th</sup> P.M., as 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. **2. Plan for Augmentation:** Applicant seeks an augmentation plan covering the depletions caused by the pumping of one (1) well (the “Crossroads Well”) for commercial purposes, stock watering, domestic, and fire protection at the Crossroads Arena and Event Center and Hot Shot Bar and Grill, located just to the south of Penrose, Colorado. The Crossroads Well is currently constructed upon and will be utilized upon the Applicant’s Property, as more particularly described in Exhibit A. A location map of Applicants’ Property is attached to the Application as Exhibit B. Applicant’s Crossroads Well will withdraw water from ground water sources that are tributary to the Arkansas River. There are and will be no other water rights diverted from the Crossroads Well. Applicant proposes to augment depletions caused by the pumping and uses of water from Applicant’s Crossroads Well through two (2) shares of stock in the Twin Lakes Reservoir and Canal Company, Certificate Nos. 8627 and 8629. The Applicant’s Crossroads Well is currently constructed, and will be repermited pursuant to C.R.S. §37-90-137 upon decree of the Plan for Augmentation requested herein. Applicant currently maintains an exempt commercial well under Division of Water Resources Permit No. 274509-A for drinking and sanitary purposes within a commercial business, and has filed a request for Substitute Water Supply Plan contemporaneously with this Application in order to make uses similar to those requested herein during the pendency of this Application. Applicant intends to repermit Permit No. 274509-A for operation under the plan for augmentation requested herein when approved. **B. Water Rights to be Used for Augmentation.** Applicant proposes to augment depletions resulting from use of the Applicant’s Crossroads Well for commercial purposes (including commercial sanitary and drinking water, use in a restaurant/bar unit, and veterinary clinic uses), stock watering, domestic, and fire protection purposes, utilizing two (2) shares of stock in the Twin Lakes Reservoir and Canal Company (“Twin Lakes”).



A Twin Lakes Share represents 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, Colorado. Twin Lakes Shares consist of direct flow and storage rights which are available for 100 percent consumptive use and reuse and are available for augmentation. The water rights producing the pro rata interest of the Applicant are described as follows: 1. Colorado River Water Rights a. Decree: i. Case No. 3082, District Court, Garfield County, August 25, 1936. ii. 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, all tributaries of the Colorado River in Water Division 5, as more fully set forth in the above referenced Decrees. d. Use: Direct flow and storage purposes, for irrigation, domestic, commercial, industrial, municipal and all beneficial uses. e. Amount: Direct flow amount for diversion through transmountain tunnels of 625 cfs with an annual limit of 68,000 acre feet, a running ten year limit of 570,000 acre feet, and other limitations set forth in the Decrees. 2. Arkansas River Water Rights a. Decree: i. Original Decree, Case No. 2346, District Court, Chaffee County, Colorado July 14, 1913. ii. Modified, 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 tributary to 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 Reservoir which are capable of being served water by diversion from said Arkansas River. e. Amount: 54,452 acre feet (20,645.3 acre feet - Priority No. 3; 33,806.7 acre feet - Priority No. 4). **C. 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).** **1. Water Demand and Depletions.** Applicant seeks an augmentation plan covering depletions caused by the pumping of the Applicant's Crossroads Well for the projected commercial uses within the Crossroads Arena and Event Center and Hot Shot Bar and Grill (including commercial sanitary and drinking water, use in a restaurant/bar unit, and veterinary clinic uses), stock watering, domestic, and fire protection purposes. Total maximum depletions from the uses at the Crossroads Arena and Event Center and Hot Shot Bar and Grill will be approximately 1.44 acre-feet per year, as calculated by Applicant's professional engineering consultant. Such consumptive use calculation includes uses during various event scenarios, as well as during daily operations, and includes lavatory usage (10% consumptive), kitchen/bar usage (10% consumptive), ice making (100% consumptive), stock watering (100% consumptive), fire protection (100% consumptive), caretaker domestic use (10% consumptive), and general cleaning in a commercial business (100% consumptive). The various use scenarios considered by Applicant's consultant concerned (1) Weekday Event Water Use Scenario; (2) Special Event Water Use Scenario; and (3) Daily Water Use Scenario. Pumping is anticipated to be approximately 3.5 acre-feet annually. Charts depicting the various uses anticipated and their consumption are as follows:

a. Weekday Event Water Use Scenario:

Use	Base-Line Water Use (Gallons)	Uses Per Day	Operational Days	CU%	Total Consumed (Gallons)
Lower Level Concessions	2.5 gallons	50	72	10	900
Bathrooms	2.225	400	72	10	6,408
Ice-Maker	25	1	72	100	1,800
Stock Water	10	50	72	100	36,000
Total Consumed Gallons					45,108
Total Consumed Acre Feet					0.14

b. Special Event Water Use Scenario:

Use	Base-Line Water Use (Gallons)	Uses Per Day	Operational Days	CU%	Total Consumed (Gallons)
Lower Level Concessions	2.5	100	60	10	1,500
Bathrooms	2.225	900	60	10	12,016
Ice-Maker	25	1	60	100	1,500
Dishwasher	312	1	60	10	1,872
Bar & Grill	2.5	500	60	10	7,500
Stock Water	10	300	60	100	180,000
Total Consumed Gallons					204,388
Total Consumed Acre Feet					0.63

c. Daily Water Use Scenario:

Use	Base-Line Water Use (Gallons)	Uses Per Day	Operational Days	CU%	Total Consumed (Gallons)
Studio Apartment	100	2	365	10	7,300
Fire Protection	15,000	1	1	100	15,000
Stock Water	10	40	365	100	146,000

Bar and Grill	2.5	300	365	10	27,375
Dishwasher	312	1	365	10	11,300
Ice Maker	25	1	365	100	9,125
Total Consumed Gallons					216,100
Total Consumed Acre Feet					0.67
<b>Grand Total Consumed Acre Feet</b>					<b>1.44</b>

**2. Operation of Plan of Augmentation.** Pumping of the Crossroads Well will occur on a year round basis, resulting in year-round depletions. Applicant will augment depletions to the Arkansas River using augmentation water represented by its two (2) Twin Lakes Shares. The release of the augmentation water from the Twin Lakes Shares will be made to replace, in proper place, time and amount, those depletions as calculated in accordance with the analysis of Applicant's consultant, Charles F. DiDomenico, P.E., for diversions made from the Crossroads Well. At current administrative levels as considered by the Office of the State Engineer, each share of Twin Lake stock has a firm consumptive use yield of 0.78 annual acre-feet of water that can be used to replace depletions. Assuming maximum potential depletions for all uses of 1.44 annual acre-feet occur, Applicant's two (2) Twin Lakes Shares will be sufficient to replace all injurious depletions, and will need to be committed to this augmentation plan and released to cover those depletions. The Crossroads Well is located approximately 1/4 mile from the Arkansas River, and lagged depletions will occur. However, it is Applicant's consultant's professional opinion that an equilibrium will be reached following several years of pumping so that all depletions can be replaced in time, place and amount, and subsequent depletions may be deemed instantaneous. Applicant's Twin Lakes Shares will fully augment the maximum potential consumptive use for Applicant's Crossroads Well by replacing actual depletions in time, place, and amount. Applicant reserves the right to retain and exclude from this augmentation plan any portion of the Twin Lakes Shares not needed to replace depletions, should a portion of the share go unutilized as part of this augmentation plan, as may be determined by the Court. Applicant further reserves the right to commit additional Twin Lakes Shares to this augmentation plan, should the Court determine that the dedicated share is insufficient to augment depletions resulting from Applicant's uses.

**D. 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 Crossroads Well is 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.

**E. Additional Terms and Conditions that will Help in the Administration of This Augmentation Plan Include the Following:**

1. Compliance with the bylaws of the Twin Lakes Reservoir and Canal Company relative to the submission of the shares of stock for legending restrictions on sale or transfer, and a specific restriction that only that amount of water that is actually available for replacement purposes from the

shares of stock will be available for this plan. At the discretion of the Division Engineer, additional shares of stock in the Twin Lakes Reservoir and Canal Company may be added to this plan without amendment to the plan. 2. 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. 09CW137; Previous Case Nos. 86CW116, 96CW126 and 03CW27 - WATER RESOURCE DEVELOPMENT COMPANY ("WRDC"), c/o Roger A. DeKloe, 3 Widefield Boulevard, Colorado Springs, CO 80911** (Please direct all correspondence or inquiries regarding this matter to the attorneys for the Applicant: William B. Tourtillott, Carolyn F. Burr and James M. Noble, RYLEY CARLOCK & APPLEWHITE, 1999 Broadway, Suite 1800, Denver, Colorado 80202, Telephone: (303) 863-7500)

Application for Finding of Reasonable Diligence for Conditional Water Rights  
**EL PASO COUNTY**

**2. Description of Water Rights:** This is an application for diligence concerning the conditional exchanges originally decreed in Case No. 86CW116 to WRDC's predecessor, Widefield Homes Water Company (the "Subject Conditional Exchanges"). WRDC owns and manages the legal obligations of water rights used by Widefield Water and Sanitation District (the "District") in its municipal water system pursuant to an agreement between the District and WRDC's predecessor, Widefield Homes Water Company. The District, however, operates the water supply and waste water collection systems in order to provide water and wastewater services within the District's service area. The Subject Conditional Exchanges are an integral part of the District's unified water system master plan. Accordingly, activities of both WRDC and the District are evidence of the diligent efforts to perfect the Subject Conditional Exchanges.

**2.1 Previous Decrees:** The Subject Conditional Exchanges were originally decreed on August 17, 1990 in Case No. 86CW116, Water Division No. 2. This Court has previously found that Applicant has been diligent in the development of the Subject Conditional Exchanges and entered decrees accordingly in Case Nos. 96CW126 and 03CW027. **3. Description of Exchanges:** **3.1 Intake Structures:**

The following structures will divert the sources of substitute supplies delivered to Fountain Creek when the Subject Conditional Exchanges are being operated: **3.1.1. Fountain Mutual Facilities.** The following are structures in the Fountain Mutual Irrigation Company's ("FMIC") system, which derive their supply of water from surface flows on Fountain Creek. Canal No. 4 is the feeder ditch for Big Johnson Reservoir, an off-stream reservoir. Use of these facilities in the Subject Conditional Exchanges is contingent upon agreement and approval of FMIC. a. **Canal No. 4:** Canal No. 4 has a capacity of 70 c.f.s., and the headgate of the canal is located in the SW¼ of Section 20, Township 14 South, Range 66 West of the 6<sup>th</sup> P.M. b. **Big Johnson Reservoir.** Big Johnson Reservoir is decreed for 10,000 a.f. of storage, and is located in Sections 7, 8, 17, and 18, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M. **3.1.2. Widefield Aquifer Wells.** The following ground water rights are owned by Applicant and diverted

through wells operated by the District. They are located within and derive their supply from the Widefield Aquifer, which is hydraulically connected to Fountain Creek. These wells are collectively referred to hereinafter as the "Widefield Aquifer Wells." a. W-1: 1.760 cfs Located in the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 24, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 140 feet from the north line and 255 feet West from the center line. b. W-2: 2.595 cfs Located in the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 24, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 105 feet East from the center line and 610 feet from the north line. c. W-3: 9.691 cfs Located in the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 24, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 1290 feet from the north line and 500 feet West from the center line. d. W-4: 4.511 cfs Located in the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 24, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 795 feet West of the center line and 690 feet from the north line. e. W-5: 1.858 cfs Located in the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 25, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 917 feet from the East line and 25 feet from the North line. f. W-6: 0.623 cfs Located in the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 25, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 300 feet from the East line and 25 feet from the North line. g. W-7: 2.000 cfs Located in the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 24, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 1290 feet from the East line and 1770 feet from the South line. h. W-13: 0.220 cfs Located in the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 19, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., at a point 2240 feet from the South line and 2215 feet from the West line. i. W-14: 1.442 cfs. Decreed location is in the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 25, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M. j. E-1: 2.837 cfs Located in the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 24, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 550 feet from the South line and 1700 feet from the East line. k. E-2: 2.110 cfs Located in the SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 24, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 150 feet from the South line and 1150 feet from the East line. l. E-3: 2.110 cfs Located in the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 24, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 1000 feet from the South line and 2050 feet from the East line. m. C-1: 10.390 cfs Located in the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 24, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 1800 feet from the E line and 2346 feet from the South line. n. C-2: 6.450 cfs Located in the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 24, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 1980 feet from the East line and 1576 feet from the South line. o. C-3: 9.460 cfs Located in the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 24, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 2569 feet from the East line and 2381 feet from the South line. p. C-36: 7.380 cfs Located in the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 24, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 1924 feet from the West line and 1816 feet from the North line. q. C-4: 5.570 cfs Located in the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 24, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M., at a point 2340 feet from the West line and 2280 feet from the South line. **3.1.3. Jimmy Camp Creek Wells.** The following ground water rights are owned by Applicant and diverted through wells operated by the District. They are located within and

derive their supply from the alluvial aquifer of Jimmy Camp Creek, a tributary of Fountain Creek. These wells are collectively referred to hereinafter as the "Jimmy Camp Wells." a. JHW-1 1.114 cfs Located in the NW¼ of the SE¼ of Section 22, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., at a point 2510 feet from the South line and 2510 feet from the East line. b. JHW-2 1.337 cfs Located in the NW¼ of the SE¼ of Section 22, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., at a point 2075 feet from the South line and 1900 feet from the East line. c. JHW-6 0.850 cfs Located in the NE¼ of the SE¼ of Section 22, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., at a point 850 feet from the East line and 2610 feet from the South line. d. PVW-1 0.111 cfs Located in the NE¼ of the NE¼ of Section 27, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., at a point 170 feet from the East line and 250 feet from the North line. e. PVW-2 0.089 cfs Located in the SE¼ of the SE¼ of Section 22, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., at a point 25 feet from the South line and 130 feet from the East line. f. PVW-3 1.780 cfs Located in the NE¼ of the SE¼ of Section 22, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., at a point 1295 feet from the East line and 2615 feet from the South line. g. PVW-4 1.110 cfs Located in the NE¼ of the SE¼ of Section 22, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., at a point 1680 feet from the South line and 1150 feet from the East line. h. PVW-5 1.110 cfs Located in the NE¼ of the SE¼ of Section 22, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., at a point 2655 feet from the North line and 1062 feet from the East line. **3.2. Substitute Supply Delivery**

**Structures:** The following structures will be used to deliver the sources of substitute supply to Fountain Creek during the operation of the Subject Conditional Exchanges: **3.2.1. Widefield Water & Sanitation District**

**Wastewater Treatment Plant:** located in the NE¼ of Section 25, Township 15 South, Range 66 West of the 6<sup>th</sup> P.M. **3.2.2. Fountain Sanitation District**

**Wastewater Treatment Plant:** a. The existing Fountain Sanitation District wastewater treatment plant is located in Sections 8 and 17, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. b. Fountain Sanitation District is constructing an additional wastewater treatment facility, which is estimated to be operational in 2011. The discharge point of the new facility will be in the NW¼ of Section 34, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. **3.2.3. Colorado Springs'**

**Wastewater Treatment Facilities:** a. Las Vegas Street Wastewater Treatment Facility: located in the SW¼ of the SW¼ of Section 20, Township 14 South, Range 66 West of the 6<sup>th</sup> P.M. b. Air Force Academy Wastewater Treatment Facility: located in the SW¼ of the SW¼ of Section 19, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M. c. Northern Water Reclamation Plant: located in Section 30, Township 13 South, Range 66 West of the 6<sup>th</sup> P.M. d. Other proposed Colorado Springs Facilities: as described in the decrees entered in Case Nos. 84CW202, 84CW203, 86CW118 and 89CW36. **3.2.4. Regional**

**Wastewater Treatment Plant:** to be located near the NW corner of Section 10, Township 17 South, Range 65 West of the 6<sup>th</sup> P.M. **3.3. Sources of**

**Replacement Water to be Used by Exchange:** **3.3.1. Fryingpan-Arkansas Project Water and Return Flows.** The District, through its participation in the Fountain Valley Authority, is allocated Fryingpan-Arkansas Project Water

("Project Water") and Project Water Return Flows consistent with the Allocation Principles of the Southeastern Colorado Water Conservancy District, and any contracts concerning the same. Approximately 900 a.f. of fully consumable Project Return Flows will be exchanged annually, pursuant to the terms of the Subject Conditional Exchanges as decreed in Case No. 86CW116. **3.3.2. Fully Consumable Return Flows from Colorado Springs.** The District entered into a Return Flow Agreement with Colorado Springs pursuant to which the District assigned to Colorado Springs 1,792 a.f. of its allocation of Project Water in exchange for Colorado Springs' delivery of legally reusable water in an amount equal to the return flows attributable to Colorado Springs' initial use of 1,792 a.f. of water. These fully consumable return flows will be exchanged pursuant to the terms decreed in Case No. 86CW116. **3.4. Operation of Exchanges:** 3.4.1. The Subject Conditional Exchanges will be operated by delivering reusable return flows from the Project Water and Project Water Return Flows described in paragraph 3.3.1, above, into Fountain Creek from one or more of the Substitute Supply Delivery Structures described in paragraph 3.2. The maximum rate of said deliveries shall not exceed 6.0 cfs on a cumulative basis. The same amount of water as is being delivered at the Substitute Supply Delivery Structures will simultaneously be diverted and/or stored at any one or more of the Intake Structures described in paragraph 3.1. 3.4.2. Applicant will receive credits for reusable water delivered into Fountain Creek from the fully consumable Colorado Springs return flows described in paragraph 3.3.2, and will simultaneously divert or store the same amount of water as is being delivered at the Substitute Supply Delivery Structures at any one or more of the Intake Structures described in paragraph 3.1. 3.4.3. Water diverted by exchange through the FMIC facilities described in paragraph 3.1.1 may be delivered directly or after storage in Big Johnson Reservoir to Cruse Gulch and/or Jimmy Camp Creek via the Fountain Mutual Ditch. Such water may be introduced into Cruse Gulch at a point or headgate on the Fountain Mutual Ditch located in the NE¼ of Section 19, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., and then exchanged to any of the Jimmy Camp Wells. Water introduced into the Widefield aquifer for recharge purposes or into Jimmy Camp Creek for exchange purposes shall be withdrawn within one week of recharge or exchange by wells in the vicinity of the recharge or exchange. **3.5. Amount of Exchange:** The maximum, cumulative rate of exchange through one or more structures is 6.0 cfs, conditional. **3.6. Appropriation Date:** February 6, 1981. **3.7. Affected Stream Reach:** The extent of the natural stream system that is affected by these conditional rights of exchange is Fountain Creek from a point located in the SW¼ of Section 20, Township 14 South, Range 66 West of the 6<sup>th</sup> P.M. and downstream therefrom to and including a point located in the NW¼ of Section 10, Township 17 South, Range 65 West of the 6<sup>th</sup> P.M. **3.8. Use of Exchanged Water:** The water diverted or stored pursuant to the Subject Conditional Exchanges will be used, reused and successively used to extinction for all of the following beneficial purposes: municipal, domestic, fire protection, sewage disposal, irrigation, manufacturing, industrial, commercial, augmentation, and exchange. The water may be introduced into the Widefield Aquifer for recharge purposes as provided

in the Stipulation entered in Case No. W-116. Fully consumable water will be reused and successively used pursuant to the exchanges described herein, and such exchanges shall continue until such water is totally consumed, to the extent that operational considerations permit such successive use. **3.9. Stipulation with Southeastern Colorado Water Conservancy District:** Pursuant to the Stipulation dated October 21, 1996 between Widefield Homes Water Company and Southeastern Colorado Water Conservancy District (“Southeastern”), the conditional water rights that are the subject of this application do not purport to give Applicant any rights of use of Project structures or any rights of ownership or rights to purchase or receive allocation of Project Water or return flows from Project Water, but do not alter any existing rights that Applicant may otherwise have or hereafter acquire. Return flows from the Fry-Ark Project will be utilized in Applicant’s exchanges only after they are purchased from Southeastern. **4. Evidence of Reasonable Diligence Towards Completing Appropriation:** 4.1. Since this Court’s entry of its Findings of Fact, Conclusions of Law, Ruling and Decree in Case No. 03CW027 on December 1, 2003, the following work directly related to the subject water rights and structures was performed: 4.1.1. The District’s consulting engineer, JDS-Hydro Constants, Inc., has developed a master water plan for upgrading, optimizing, and fully utilizing the above sources, which was completed in 2008. The plan is a phased plan that is expected to be completed over the next 10 to 15 years. The master plan includes what is known as “west to east improvements,” well upgrades and “manifolding.” 4.1.2. Easements have been identified for certain Phase One portions and efforts have been initiated to obtain those easements. 4.1.3. Upgrades have been designed and constructed in 2009 to Booster #2. Booster #2 is a pumping station/storage facility which transfers water from the Widefield Wells to the growth areas in the eastern portion of the service area. 4.1.4. The District in conjunction with the Colorado Department of Transportation made over \$1,000,000 in pipeline upgrades to the southern portion of the Widefield Well area, which will boost the transfer capacity from Wells E-1, 2, 3 and W-5, 6, and 14. 4.1.5. The District, in conjunction with Schlage, has designed an upgraded treatment facility to serve wells W-7, C-1, 2, and 3. 4.1.6. The District, in conjunction with Schlage, designed and constructed improvements to treatment facilities which serve Widefield Wells 1 and 2. 4.1.7. New chlorine analyzers were installed on W-3, W-7 and JHW-5 at a total cost of approximately \$12,000.00. 4.1.8. Structural improvements were made to W-3, W-7, JHW-3 and JHW-5 at a total cost of approximately \$8,000.00. 4.1.9. The District, through its engineer, JDS-Hydro Consultants, Inc., has developed a master water plan for upgrading, optimizing, and fully utilizing the Jimmy Camp Wells, which plan was completed in 2008. The plan is a phased plan that is expected to be completed over the next 10 years. The master plan also includes an element just undertaken in November by Leonard Rice and Associates to more fully evaluate the method of overall intake and pumping systems for the Jimmy Camp Creek well field. 4.1.10. Although the District currently is using the Jimmy Camp Wells, full and long term utilization is expected to require additional treatment. During the diligence period, advance planning for that treatment has been outlined and easements



have been defined and “set-aside” for the completion of that future treatment facility and expanded drilling within this well field. 4.1.11. During the diligence period, the District, in conjunction with developers, has designed and constructed pipelines to replace the existing transmission lines from the Jimmy Camp Wells and providing additional “loop” lines from these sources. 4.1.12. During the diligence period, significant maintenance and rehabilitation activities were performed on several of the Jimmy Camp wells and pumps. 4.1.13. The District and WRDC have begun negotiations with FMIC to finalize carriage and storage agreements that will enable water to be exchanged pursuant to the Subject Conditional Exchanges beginning in 2010. 4.2. The Subject Conditional Exchanges are an integral part of the water rights WRDC manages for the District’s unified municipal water supply system. Accordingly, diligence on part of the system serves as reasonable diligence for the entire project. Through the Subject Conditional Exchanges, water will be delivered to lands located within the District’s service area. The District’s water system is being constructed on a phased basis over time based upon the pace of growth within the District’s service area. The District’s service area currently includes approximately 9,642 acres of raw ground, which is scheduled for development of approximately 18,450 new, single-family residences. During the current diligence period (2003 through 2009), the following work has been performed and expenses incurred in relation to the District’s water system, of which the Subject Conditional Exchanges are a part: 4.2.1. Approximately 700 taps were added to the District’s water delivery system. 4.2.2. The District has incurred costs in excess of \$14,687,700.00 for the repair and maintenance of the District’s water system. 4.2.3. Costs in excess of \$656,000 have been incurred for capital expansion and improvements to the District’s water system, including: new hydrants and valves in various parts of the water system, upgrades to SCADA system, construction of 30 Inch Goldfield Outfall (2006); construction of 20 Inch South Powers Transmission Line (2007); installation of 8 through 18 inch lines along Mesa Ridge Corridor (2004); reconnection of Goldfield Tank Farm (2006). In addition, the District has overseen the design and construction of approximately 12 miles of developer-installed water distribution pipelines. 4.2.4. The costs for contract expenditures related to operation, management and maintenance of the District’s water system were over \$37,000. 4.2.5. Engineering consulting fees in excess of \$322,000 have been incurred in performing work related to the general development of the District’s integrated water system, including annual updates of water systems demands and projections; annual updates of needed near term and long term system improvements; development of capital facilities planning document that includes approximate costs and timing of improvements on a 5, 10 and 20 year scenario (updated annually); annual updates of ultimate water supply needs and proposed timing of growth projections; updates of certain master-planned elements; water rights accounting; Cruse Gulch augmentation water supply (the District portion); meter certification; engineering support related to water rights protection; maintenance of well permits and analysis of water storage needs; engineering support for the acquisition of additional water rights to be used for augmentation purposes and the work described in paragraph

4.2.2, above. 4.2.6. Pursuant to a stipulation entered into in Case No. W-116, the District's share of the costs related to the Widefield Aquifer Management Program, of which the Widefield Well No. 3, 4 and 13 water rights are a part, has been about \$245,000 during the diligence period. 4.2.7. During the diligence period, WRDC and the District participated as opposers in several cases filed in the Division No. 2 Water Court in defense of the Widefield municipal water rights, including the Subject Water Rights. An example of such cases includes Case No. 07CW47, Application of Colorado Centre Metropolitan District and Case No. 09CW6, Application of Cedar Lane Investments. Approximately \$74,000 has been incurred in defense of water rights used in the District's municipal system, including the Subject Water Rights. WHEREFORE, the Applicant requests that the Court enter a decree finding that reasonable diligence was performed during the diligence period in development of the conditional water rights that are the subject of this application.

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**CASE NO. 09CW138 - TOWN OF PONCHA SPRINGS, c/o Mark Thonhoff, Mayor, P. O. Box 190, Poncha Springs, CO 81242** (Steven T. Monson and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)  
Application for Appropriative Rights of Exchange  
**CHAFFEE COUNTY**

**III. Background and Summary of Application.** Town of Poncha Springs ("Town") has entered into an Annexation and Development Agreement with Friend Ranch Investors Group, LLC ("Friend Ranch Investors") for the annexation into the Town of Friend Ranch Investors' Chaffee County real property located in Sections 7, 8, and 18 in Township 49 North, Range 8 East of the N.M.P.M., as more particularly described in Exhibit A attached to the Application ("Friend Ranch"). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. As part of the annexation process, Friend Ranch Investors transferred to the Town certain surface water rights historically associated with the Friend Ranch diverted from the Pass Creek, Little Cochetopa Creek and Green Creek in Chaffee County, Colorado. Under the Town's pending water court case, Case No. 07CW111, the Town is seeking to change the historical consumptive use of the Friend Ranch Water Rights from irrigation use to municipal and augmentation uses for the Town's existing and future service areas. By this Application, the Town also requests an exchange of its allocation of water from the Fryingpan-Arkansas Project ("Project Water"), including non-sewered return flows after the municipal use of Project Water, as managed and operated by the Southeastern Colorado Water Conservancy District ("Southeastern District"). This exchange is to be from the confluence of South Arkansas River and Little Cochetopa Creek to diversion points on Little Cochetopa and Pass Creek for placement into storage located on Friend Ranch. The Town intends to utilize the Southeastern District's exchange decreed in Case No. 97CW160, to exchange its allocation of Project Water to the confluence of the South Arkansas River and Little Cochetopa Creek. In addition, the Town requests an exchange of its McPherson Ditch water rights,

as changed to municipal uses in Case No. 99CW183. This exchange is to be from the headgate of the McPherson Ditch on the South Arkansas River below the Town, and from the confluence of Poncha Creek and the South Arkansas River as released from O'Haver Reservoir, to the confluence of South Arkansas River and Little Cochetopa Creek. The exchange is then to operate to the same diversion points on Little Cochetopa Creek and Pass Creek for placement into storage. The Town also requests an exchange of certain Friend Ranch Water Rights located on Pass Creek from the confluence of Little Cochetopa Creek and Pass Creek to a diversion point on Little Cochetopa Creek for storage located on Friend Ranch. Friend Ranch Water Rights released from South Arkansas River leased storage space are also requested to be exchanged back into storage located upon the Friend Ranch.

**IV. Application for Appropriative Rights of Exchange.**

**A. Water to Be Exchanged.** The Town seeks to exchange of the following water rights:

**1. Project Water.** The Town's annual allocation of Project Water and non-sewered return flows after the Town's use of Project Water which is to be exchanged under this case are described as follows:

a. **West Slope Decrees:** The Fryingpan-Arkansas Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County. The principal water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County) dated June 20, 1958, and August 3, 1959; and were modified by the Decree in Case No. W-829-76 (District Court, Water Division No. 5) dated November 27, 1979; and were supplemented by the Decree in Case No. 83CW352 (District Court, Water Division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travel under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, and applied to beneficial use within Southeastern's District boundaries. Because the water is imported from another river basin, it is fully consumable in Water Division 2.

b. **East Slope Decrees:** The Fryingpan-Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court, Chaffee County) dated July 9, 1969; and Civil Action No. B-42135 (District Court, Pueblo County) dated June 25, 1962; and were modified and supplemented by the Decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for reuse and exchange for beneficial use within Southeastern's District boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir. Poncha is eligible to receive annual allocations of Project Water from the Southeastern District. Poncha is also eligible, and has the first right of refusal, to purchase any return flows generated from its use of Project Water therefrom. The Southeastern District allocates Project Water annually based on its principles,

policies, rules and regulations. Any and all use of Project Water and return flows will be pursuant to and subject to the above-referenced decrees for the Fryingpan-Arkansas Project, and to all lawful rules, regulations, policies, and contract obligations of the Southeastern District. Any decree entered in this case will not give Applicant any rights to use Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocations of Project Water or return flows therefrom, but will not alter the existing rights, including allocation rights, held by Applicant. Applicant will use Project Water and return flows therefrom only if, and when, and to the extent they have purchased Project Water after it is allocated to them by the Southeastern District. **2. McPherson Ditch Water Rights.** The McPherson Ditch was decreed on June 19, 1890, District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. The decreed point of diversion in the original decree for the McPherson Ditch is on the north bank of the South Arkansas River, a tributary to the Arkansas River, 400 feet due south of the quarter corner between Sections 9 and 10, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. The McPherson Ditch's source of water is out of the South Arkansas River, a tributary of the Arkansas River, Chaffee County, Colorado. By Decree Changing Point of Diversion dated July 5, 1956, in Case No. 4502, Chaffee County District Court, State of Colorado, the point of diversion for the entire 1.0 cfs of water decreed to the McPherson Ditch, was changed from the original decreed point of diversion, as set forth above, to the headgate of the Murray Ditch. The headgate of the Murray Ditch as fixed by decree dated February 1, 1902, Case No. 1735, in Chaffee County District Court, is described at a point located on the north bank of the South Arkansas River, a tributary to the Arkansas River, at a point whence the northeast corner of Section 10, Township 49 North, Range 8 East, of the N.M.P.M. bears north 39 degrees east, a distance of 5,200 feet in Chaffee County, Colorado. The Town, under Case No. 99CW183, changed the McPherson Ditch for dedication and use under the Town's existing plan for augmentation and exchange as previously decreed in Case No. 82CW104, District Court, Water Division 2, State of Colorado, for all municipal uses. The Court in Case No. 99CW183 found that the total consumptive use of the McPherson Ditch was 35.2 annual acre feet. The consumptive use from the McPherson water right was also changed for storage at O'Haver Reservoir for use under and in accordance under the Town's existing augmentation decree. O'Haver Reservoir is located near the center of Section 12, Township 48 North, Range 7 East, N.M.P.M. O'Haver Reservoir is an off-channel reservoir fed by Grays Creek, through the O'Haver Filler Ditch, whose headgate is in the NW 1/4 SW 1/4 of said Section 12, approximately 5,000 feet from the east line of said Section 12 and 1,400 feet from the south line of said Section 12. Grays Creek is tributary to Poncha Creek, tributary to the South Arkansas River, tributary to the Arkansas River. This reservoir was decreed on June 28, 1985 in Case No. 82CW205, District Court, Water Division 2 for 193 acre feet of storage for irrigation, municipal, industrial, recreational and

augmentation uses. The Town has a storage contract with the Upper Arkansas Water Conservancy District for the use of up to 100 acre feet of storage in O’Haver Reservoir and other South Arkansas River reservoirs. **3. Friend Ranch Pass Creek Water Rights**. The Town’s Friend Ranch Pass Creek Water Rights, which the Town is currently changing for augmentation and all municipal uses under Case No. 07CW111, is also to be exchanged under this case and is described as follows (collectively referred to as the “Pass Creek Water Rights”):

a. Name of Structure: Boone Ditch No. 2. i. Appropriation Dates: November 30, 1871 and June 1, 1899. ii. Adjudication Date: June 19, 1890 in Case No. CA1127 in the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11; and September 13, 1917, in the District Court of Chaffee County, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11, Case No. CA 2559. iii. Decreed Rates and Uses: 1.4 c.f.s., senior priority, and, 1.5 c.f.s., junior priority, for irrigation. iv. Priority Number: 33 for senior priority. v. Source: Pass Creek, tributary to Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. vi. Decreed Point of Diversion: North Bank of Pass Creek, about 200 feet from the junction of Pass Creek with Cochetopa Creek, Chaffee County, Colorado. A more modern description and actual location of the headgate is the NW1/4 NE1/4, Section 18, Township 49 North, Range 8 East, N.M.P.M., at a point 200 feet from the north line of said Section 18, and 2,450 feet from the east line of Section 18.

b. Name of Structure: Hensie Ditch No. 2. i. Appropriation Date: December 31, 1873. ii. Adjudication Date: June 19, 1890 in Case No. CA1127, in the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. iii. Decreed Rate and Use: 0.2 c.f.s. for irrigation. iv. Priority Number: 50. v. Source: Pass Creek, tributary to Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. vi. Decreed Point of Diversion: About one-half mile from Pass Creek’s junction with Cochetopa, in Section 7, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description and actual location of the headgate is the SE1/4 NE1/4, Section 13, Township 49 North, Range 7 East, N.M.P.M., at a point 1,680 feet from the north line of said Section 13, and 90 feet from the east line of Section 13.

c. Name of Structure: Velotta Ditch No. 2. i. Appropriation Dates: July 11, 1911. ii. Adjudication Date: August 31, 1912, in the District Court of Chaffee County, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11, Case No. CA 2310. iii. Decreed Rate and Use: 1.5 c.f.s. for irrigation. iv. Source: Pass Creek, tributary to Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. v. Decreed Point of Diversion: South bank of Pass Creek, at a point whence the West Quarter corner of Section 18 bears

South 84° 10' East, 2385 feet. d. Name of Structure: Velotta Ditch No. 1. i. Appropriation Dates: July 8, 1911 and December 31, 1950. ii. Adjudication Date: August 31, 1912 by the District Court of Chaffee County, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11, Case No. CA 2310, and July 9, 1969 by the District Court of Chaffee County, State of Colorado, In the Matter of Adjudication of Priorities of the Rights to the Use of Water for Irrigation and Non-Irrigation Uses in Water District 11, Case No. CA 5141. iii. Decreed Rates and Uses: 1.5 c.f.s., senior priority for irrigation, and 1.5 c.f.s., junior priority for irrigation and domestic. iv. Source: Pass Creek, tributary to Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. v. Decreed Point of Diversion: At a point on the north bank of Pass Creek, whence the East Quarter Corner of Section 13, Township 49 North, Range 7 East, of the N.M.P.M., bears South 74° 45' East, 1760 feet. e. Consolidated Decree: The water decreed to the Boone Ditch No. 2, Hensie Ditch No. 2, and the Vellota Ditch Nos. 1 and 2 described above (collectively referred to as the "Pass Creek Combined Ditches"), have also been consolidated by Case No. W-294, District Court, Water Division 2, decreed on January 23, 1974 and October 18, 1978. Case No. W-294 allows all of the water decreed to the Pass Creek Combined Ditches to be taken through the headgate of either the Hensie Ditch No. 2 or Velotta Ditch No. 1. f. Historical Use: Based on investigation by the Town's water resource engineer during a study period of 1978 through 2006, the Pass Creek Water Rights Combined Ditches have historically been used for the irrigation of 77.2 to 91 acres generally located in Sections 7 and 18, all in Township 49 North, Range 8 East of the N.M.P.M., with average annual diversions attributable to the Pass Creek Water Rights Combined Ditches of approximately 398 acre feet. Based upon the application of local climate data and crops grown to generally accepted consumptive use modeling, the combined historical diversions by the Pass Creek Water Rights resulted in average stream depletions of approximately 158.4 annual acre feet during the irrigation season of April through October which are to be quantified as decreed under Case No. 07CW111 and exchanged hereunder. **B. Exchange Right. 1. Project Water.** The Town requests an appropriate right of exchange on Little Cochetopa Creek and Pass Creek for its Project Water described above. The Town intends to use the Southeastern District's existing decree entered in Case No. 97CW160 to deliver its allocation of Project Water to the confluence of Little Cochetopa Creek and the South Arkansas located in the NE1/4 of the NW1/4, Section 8, Township 49 North, Range 8 East, N.M.P.M., in Chaffee County. The Town may also use releases of Project Water from its South Arkansas River storage, as described herein, to deliver Project Water to the confluence of Little Cochetopa Creek and the South Arkansas River. The Town requests an appropriate right of exchange from this point up Little Cochetopa Creek to (1) the headgate of the Henry Ditch located on the west bank of Cochetopa Creek, at a point from whence the South Quarter corner of Section 18, in Township 49 North, Range 8 East, N.M.P.M., in Chaffee County, Colorado, bears South 49 degrees and 10' East, 590 feet; and/or (2) the confluence of Little Cochetopa Creek and Pass Creek located in

the NW1/4 of the NE1/4, Section 18, Township 49 North, Range 8 East, N.M.P.M., then up Pass Creek to the headgate of the Velotta Ditch No. 1 as described herein. Poncha believes that 15 percent of Project Water used for irrigation of the golf course on Friend Ranch accrues to the South Arkansas River above the confluence of Little Cochetopa Creek and the South Arkansas as non-sewered Project Water return flows. The Town requests an appropriate right of exchange for these non-sewered Project Water return flows from this confluence to the same points on Little Cochetopa Creek and Pass Creek as described above. In addition, the non-sewered Project Water return flows are to also be exchanged from their point of accrual to the South Arkansas River up to the Town's direct diversion take out on the South Arkansas River located on Friend Ranch in the N1/2 of the NE1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M. The timing of the accrual of the Project Water return flows to the South Arkansas River will be determined by the Town's water resource engineer based on a Glover type of return flow analysis.

**2. McPherson Ditch.** The Town requests an appropriate right of exchange on the South Arkansas River, Little Cochetopa Creek and Pass Creek for the McPherson Ditch water rights as described above. The appropriate right of exchange would operate from the described headgate of the McPherson Ditch on the South Arkansas River to the confluence of Little Cochetopa Creek and the South Arkansas, and from this point up Little Cochetopa Creek to (1) the headgate of the Henry Ditch and/or (2) the confluence of Little Cochetopa Creek and Pass Creek, then up Pass Creek to the headgate of the Velotta Ditch No. 1. All of these exchange from points and exchange to points are described above. The Town also stores consumptive use water from the McPherson Ditch Water Rights in O'Haver Reservoir pursuant to the Town's McPherson Ditch decree in Case No. 99CW183. The Town can make releases of its stored consumptive use McPherson Ditch Water Rights to Poncha Creek which returns to the South Arkansas at the confluence with Poncha Creek located in the SW1/4 of the SW1/4, Section 10, Township 49 North, Range 8 East, N.M.P.M., which is above the McPherson headgate. The Town proposes to utilize the same appropriate right of exchange for any fully consumable McPherson Ditch Water Rights it stores and releases from O'Haver Reservoir.

**3. Pass Creek Water Rights.** The Town requests an additional appropriate right of exchange on Little Cochetopa Creek for its Pass Creek Water Rights described above. The appropriate right of exchange will operate from the confluence of Little Cochetopa Creek and Pass Creek to the headgate of the Henry Ditch, all as described above.

**4. Friend Ranch Water Rights.** Pursuant to the pending decree in Case No. 07CW111, the Friend Ranch Water Rights are intended to be exchanged into storage in North Fork Reservoir, Boss Lake, and O'Haver Reservoir under the Town's South Arkansas River storage contract with UAWCD. As those waters are released from such storage, they are also to be exchanged on the South Arkansas River (for O'Haver releases) and from the confluence of the South Arkansas River and Little Cochetopa Creek up Little Cochetopa Creek and Pass Creek (for O'Haver Reservoir, North Fork Reservoir, and Boss Lake releases) to the headgate of the Henry Ditch and the Velotta

Ditch No. 1, all as described above. **C. Uses.** The Town will use the exchanged water for all municipal uses as part of its integrated water supply system for the Town's existing and future service area, with such uses including, without limitation, domestic, irrigation, fire protection, recreational purposes, fish and wildlife propagation, commercial and industrial, and for augmentation, exchange and replacement purposes. Such uses may be for immediate application or placed into storage for subsequent beneficial use. These beneficial uses are to include use, reuse, and successive use to extinction. Places of storage would include, without limitation, the existing Friend Ranch Reservoir located in NE1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M., and the Henry Ditch Reservoir to be located within SE1/4 of the NW1/4, Section 18, Township 49 North, Range 8 East, N.M.P.M. **D. Appropriation Date.** The intent to appropriate the exchange was formed and the appropriation was initiated following the Town's approval of the filing of this application by resolution of the Board of Trustees at its properly noticed public meeting on November 23, 2009. **E. Amount of Exchange.** **1. Project Water.** The amount of the exchange of Project Water within the exchange reach on the South Arkansas River, Little Cochetopa Creek and Pass Creek is an annual maximum of 100 acre feet of water, at a maximum exchange rate of 2.0 cfs. All of the exchange amount is to be a conditional water right. **2. McPherson Ditch.** The amount of the exchange of McPherson Ditch Water within the exchange reach on the South Arkansas River, Little Cochetopa Creek, and Pass Creek is an annual maximum of 35.2 70.4 acre feet of water, at a maximum exchange rate of 2.0 cfs. All of the exchange amount is to be a conditional water right. **3. Pass Creek Water Rights.** The amount of the exchange of Pass Creek Water Rights within the exchange reach on Little Cochetopa Creek is an annual maximum of 40 acre feet (size of potential reservoir plus additional amounts for refill) of water, at a maximum exchange rate of 0.8 cfs. All of the exchange amount is to be a conditional water right. **4. Friend Ranch Water Rights.** The amount of the exchange of Friend Ranch Water Rights within the exchange reach of the South Arkansas River, Little Cochetopa Creek, and Pass Creek is an annual maximum of 100 acre feet of water, at a maximum exchange rate of 2.0 cfs. All of the exchange amounts are conditional. The total amount of all exchanges under this application shall not exceed a combined 100 annual acre feet which is the anticipated combined storage capacity of both the Friend Ranch Reservoir and the Henry Reservoir. **F. Terms and Conditions.** The operation of the exchange will be limited to the timing of the availability of the water rights to be exchanged within the exchange reaches. The exchanges may be operated only when there is a live stream maintained between the points of the initiation of the exchanges and the upstream terminus of the exchanges. The exchanges may only be operated to the extent that other vested water rights senior to this exchange within the exchange reaches are not deprived of water to which they would have been entitled in the absence of such exchanges. **V. Name and Address of Owners of Land on Which Structures are Located.** A. An upstream terminus of exchange described as the headgate of the Henry Ditch is located on land owned by Larry and Sharon Blanchard and Blanchard Ranch Land, LLC, whose



addresses are PO Box 725, Salida, Colorado 81201, and 7340 Brixham Circle, Castle Rock, Colorado 80108, respectively. The Henry Reservoir and Friend Ranch Reservoir are located on land owned by the Friend Ranch Investor Group, LLC, whose address is c/o Richard Chick, P.O. Box 429, Poncha Springs, Colorado 81242. The upstream terminus of exchange described as the Velotta Ditch No. 1 is located upon land owned by the Bureau of Reclamation, whose address is c/o Fred Ore, Area Manager, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, Colorado 80537-9711. Notices will be sent to these parties as required by statute.

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**CASE NO. 09CW139 - L. OTTO and JACQUE GOEMMER, P. O. Box 212, La Veta, CO 81055** (David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)  
Application for Changes of Water Right and Plan for Augmentation

**HUERFANO COUNTY**

**III. Background and Summary of Application.** The Applicants seek to change a portion of their interest in the Patterson Ditch, diverting from the Cucharas River in Huerfano County, Colorado to consumptive use credits, and request a plan for augmentation to augment the evaporative depletions of groundwater water exposed after December 31, 1980, associated with a gravel pit located on the Applicants' property. **IV. Application for Changes of Water Right.** **A. Name of Structure.** The name of the structure for which the change of water right is sought is the Patterson Ditch. **B. Information from Previous Decree.**

**1. Date Entered.** The Patterson Ditch was decreed on June, 12 1882, in an unnumbered decree known as the "Reed Decree" by the District Court of Huerfano County. **2. Decreed Point of Diversion.** The original decree for the Patterson Ditch locates the headgate in the Northwest 1/4 of the Northeast 1/4 of Section 5, Township 30 South, Range 68 West, 6<sup>th</sup> P.M. **3. Source.** The source of water for the Patterson Ditch is Cucharas River, tributary to the Arkansas River. **4. Appropriation Date/Amounts.** The original decree for the Patterson Ditch awards 5.1 c.f.s. for the irrigation of 255 acres with a priority date of April 20, 1873 and a Cucharas River Priority of No. 33. **C. Historical Use.** Based on investigation by the Applicants' water resource engineer, the Applicants' use of the Patterson Ditch has historically resulted in an annual irrigation consumptive use of 1.63 acre-feet per acre of land irrigated. **D. Changes Sought.** The Applicants seek to dry-up one acre of irrigated acreage on their property and claim 1.63 annual acre feet of credit to augment the evaporative depletions associated with exposed groundwater after December 31, 1980 created by a gravel pit located on their property. The change in type of use of the Patterson Ditch is from direct flow for irrigation use to direct flow and storage for the Applicants' purposes. The amount of changed historical consumptive use is to be used, reused and successively used to extinction. **E. Names and Addresses of Owners of Land Upon Which Structures are Located.** The headgate of the Patterson Ditch is located on land owned by the Applicants. **V. Plan for Augmentation.** **A. Structures to be Augmented.** The evaporative depletions associated with exposed groundwater from the Rocky Flat Gravel Pit.

The Rocky Flat Gravel Pit is located approximately 2 miles south of the Town of La Veta, in the Southwest ¼ of the Southeast ¼ and the Northwest ¼ of the Southeast ¼ of Section 32, Township 29 South, Range 68 West. It is estimated that during the months of November, December, January and February the total exposed water surface area is no more than 0.15 acres, while in the remaining months the exposed water surface transitions to a maximum of approximately 0.60 acres.

**B. Water Rights to be Used for Augmentation.** The water rights to be used to replace the evaporative depletions of the Rocky Flat Gravel Pit, consist 1.63 annual acre feet of credit of the from the dry-up of one acre of irrigated acre on the Applicants' property under the Patterson Ditch, or any other water rights owned by the Applicants.

**C. Statement of Plan for Augmentation.** The consumptive use attributable to one acre of dry up of the Patterson Ditch shall be committed to the plan for augmentation to replace the out of priority evaporative depletions associated with Rocky Flat Gravel Pit. Based on investigation by the Applicants' water resource engineer, evaporative depletions associated with Rocky Flat Gravel Pit cause an maximum annual evaporative depletion of 1.24 acre feet. Applicants have attached to the Application Exhibit A summarizing the net depletion computation. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Replacement of annual evaporative depletions will be made during the months of May, June and July through a reduction in the amount diverted at the ditch headgate over a single 12-hour period each month. Applicants may also store the consumptive use attributable to the Patterson Ditch for subsequent release.

**D. Names and Addresses of Owners of Land Upon Which Structures are Located.** The Rocky Flat Gravel Pit is located upon land owned by the Applicants.

**VI. Terms and Conditions.** The Applicants propose the following terms and conditions to prevent injury to other vested water rights.

A. Use of the Patterson Ditch under the change of water right and plan for augmentation is limited to the timing of the historic availability of those water rights under their historic irrigation practices.

B. Future diversions of the Patterson Ditch should be limited to the extent that water is determined to be physically and legally available at the Patterson Ditch headgate.

C. The Applicants' consumptive use entitlement under the Patterson Ditch during the irrigation season will be determined by historical depletions percentages applied to available in priority diversions. The portion of allowed diversions not associated with this historical consumptive use of the Paterson Ditch may remain in the Cucharas River.

D. Applicant will file for a well permit for the Rocky Flat Gravel Pit in accordance with the decree pursuant to this application.

E. The Applicant shall measure and provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation.

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**CASE NO. 09CW140 - WOODMOOR WATER AND SANITATION DISTRICT  
NO. 1, P. O. BOX 1407, MONUMENT, CO 80132**

(Veronica A. Sperling,  
Buchanan and Sperling, P.C., Attorneys for Applicant, 7703 Ralston Road,  
Arvada, CO 80002; (303) 431-9141)

Application for Approval of Appropriative Rights of Substitution and Exchange

**EL PASO, PUEBLO, OTERO, CROWLEY AND BENT COUNTIES**

**2. Names of substitutions and exchanges:** Arkansas Fountain Exchange No. 1, Arkansas Fountain Exchange No. 2, Arkansas Exchange No. 1, Arkansas Exchange No. 2. **3. Legal descriptions of exchange reaches and points of substitution and exchange:**

**A. Arkansas Fountain Exchange No. 1:** The exchange reach is on the Arkansas River and Fountain Creek, from the confluence of Chico Creek with the Arkansas River and from Pueblo Reservoir, both in Pueblo County, and thence upstream or downstream respectively, on the Arkansas River to the confluence of Fountain Creek with the Arkansas River, in Pueblo County, and thence upstream on Fountain Creek to the proposed point of diversion for the Fountain Diversion No. 1, in El Paso County, and includes the following-described points of diversion by exchange (exchange-to points) and points of introduction of substitute supply (exchange-from points) within this reach. Water diverted by exchange at the locations described below will be stored in the reservoirs described below for subsequent use. **1. Points of diversion by exchange (exchange-to points):**

a. **Fountain Diversion No. 1:** Located on the West bank of Fountain Creek in the SW1/4NW1/4 of Section 17, Township 16 South, Range 65 West, 6<sup>th</sup> P.M., El Paso County, Colorado, approximately 2,508 feet from the North section line and 1,274 feet from the West section line of said Section 17. Water diverted by exchange at the Fountain Diversion No. 1 will be stored in Fountain Reservoirs Nos. 1, 2 and 3, described below, for subsequent use. b. **Fountain Diversion No. 2:** Located on the West bank of Fountain Creek in the SW1/4NE1/4 of Section 4, Township 17 South, Range 65 West, 6<sup>th</sup> P.M., El Paso County, Colorado, approximately 1,690 feet from the North section line and 1,820 feet from the East section line of said Section 4. Water diverted by exchange at the Fountain Diversion No. 2 will be stored in Sundance Reservoir and/or Maytag Reservoir, described below, for subsequent use. c. **Fountain Diversion No. 3:** Located on the West bank of Fountain Creek in the NE1/4NE1/4 of Section 23, Township 17 South, Range 65 West, 6<sup>th</sup> P.M., El Paso County, Colorado, approximately 280 feet from the North section line and 960 feet from the East section line of said Section 23. Water diverted by exchange at the Fountain Diversion No. 3 will be stored in Maytag Reservoir, described below, for subsequent use. **2. Points of introduction of substitute supplies (exchange-from points):**

a. **Confluence of Chico Creek with the Arkansas River** in the NW1/4NW1/4 of Section 8, Township 21 South, Range 62 West, 6<sup>th</sup> P.M., Pueblo County, Colorado, approximately 500 feet from the North section line and 140 feet from the West section line of said Section 8. The substitute supplies will be released from Stonewall Springs Central Reservoir to Chico Creek and transported down Chico Creek to the confluence of Chico Creek with the Arkansas River. b. **Stonewall Springs Reservoir Outlet No.**

1 (to the Arkansas River): Located in the NW1/4SW1/4 of Section 6, Township 21 South, Range 62 West, 6<sup>th</sup> P.M., Pueblo County, Colorado, approximately 1,960 feet from the South section line and 180 feet from the West section line of said Section 6. The substitute supplies will be released from Stonewall Springs Central Reservoir to the Arkansas River through Stonewall Springs Reservoir Outlet No. 1. c. Excelsior Ditch: The Excelsior Ditch headgate is located in the SE1/4SE1/4 of Section 36, Township 20 South, Range 64 West, 6<sup>th</sup> P.M., Pueblo County, Colorado, approximately 310 feet from the South section line and 460 feet from the East section line of said Section 36. Water diverted at the headgate of the Excelsior Ditch will be returned to the Arkansas River from the Excelsior Ditch through structures located on the Excelsior Ditch at or below the headgate of the Excelsior Ditch, including but not limited to through the Excelsior Ditch Augmentation Station located in the SW1/4 of Section 34, Township 20 South, Range 63 West, 6<sup>th</sup> P.M., Pueblo County, Colorado, and this description of the Excelsior Ditch headgate also includes any such facilities constructed for such purposes. d. East Reservoir Outlet No. 1 (to the Arkansas River): Located in the SE1/4NW1/4 of Section 34, Township 20 South, Range 64 West, 6<sup>th</sup> P.M., Pueblo County, Colorado, approximately 2,530 feet from the North section line and 2,630 feet from the West section line of said Section 34. The substitute supplies will be released from East Reservoir No. 1 and/or East Reservoir No. 2 to the Arkansas River through East Reservoir Outlet No. 1. e. East Reservoir Outlet No. 2 (to the Arkansas River): Located in the SE1/4NE1/4 of Section 34, Township 20 South, Range 64 West, 6<sup>th</sup> P.M., Pueblo County, Colorado, approximately 2,010 feet from the North section line and 150 feet from the East section line of said Section 34. The substitute supplies will be released from East Reservoir No. 1 and/or East Reservoir No. 2 to the Arkansas River through East Reservoir Outlet No. 2. f. Northside Reservoir Outlet (to the Arkansas River): Located in the SE1/4SW1/4 of Section 32, Township 20 South, Range 65 West, 6<sup>th</sup> P.M., Pueblo County, Colorado, approximately 310 feet from the South section line and 2,210 feet from the West section line of said Section 32. The substitute supplies will be released from Northside Reservoir to the Arkansas River through the Northside Reservoir Outlet. g. Pueblo Reservoir: Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23 and 25, Township 20 South, Range 67 West, all in the 6<sup>th</sup> P.M., Pueblo County, Colorado. Pueblo Reservoir is an on-channel reservoir formed by the intersection of Pueblo Dam and the Arkansas River at a point in Section 36, Township 20 South, Range 66 West, 6<sup>th</sup> P.M., from which the Northeast corner of said Section bears North 61 degrees 21 minutes 20 seconds East, a distance of 2,511.05 feet, all as more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado. **B. Arkansas Fountain Exchange No. 2**: The exchange reach is on the Arkansas River and Fountain Creek, from the confluence of Horse Creek with the Arkansas River, in Bent County, Colorado, and thence upstream on the Arkansas River to the confluence of Fountain Creek with the Arkansas River, in Pueblo County, and

thence upstream on Fountain Creek to the Fountain Creek Diversion No. 1, in El Paso County, and includes the following-described points of diversion by exchange (exchange-to points) and points of introduction of substitute supply (exchange-from points) within this reach. Water diverted by exchange at the locations described below will be stored in the reservoirs described below for subsequent use. **1. Points of diversion by exchange (exchange-to points):** a. Fountain Diversion No. 1: Location of diversion point and location of storage as described in paragraph 3.A.1.a. above. b. Fountain Diversion No. 2: Location of diversion point and location of storage as described in paragraph 3.A.1.b. above. c. Fountain Diversion No. 3: Location of diversion point and location of storage as described in paragraph 3.A.1.c. above. **2. Points of introduction of substitute supplies (exchange-from points):** a. Confluence of Horse Creek with the Arkansas River in the SE1/4 SW1/4 of Section 2, Township 23 South, Range 53 West, 6<sup>th</sup> P.M., Bent County, Colorado, approximately 110 feet from the South section line and 2,160 feet from the West section line of said Section 2. The substitute supplies will be released from the Holbrook Canal, and from Holbrook Reservoir and/or from Dye Reservoir through the Holbrook Canal, to Horse Creek and transported down Horse Creek to the confluence of Horse Creek with the Arkansas River. b. Holbrook Reservoir Outlet (to the Arkansas River): Located in the NE1/4SE1/4 of Section 24, Township 23 South, Range 56 West, 6<sup>th</sup> P.M., Otero County, Colorado, approximately 1,660 feet from the South section line and 130 feet from the East section line of said Section 24. c. Confluence of Timpas Creek with the Arkansas River in the NE1/4 NW1/4 of Section 25, Township 23 South, Range 56 West, 6<sup>th</sup> P.M., Otero County, Colorado, approximately 220 feet from the North section line and 1,440 feet from the West section line of said Section 25. The substitute supplies will be released from the High Line Canal to Timpas Creek and transported down Timpas Creek to the confluence of Timpas Creek with the Arkansas River. d. Dye Reservoir Outlet (to the Arkansas River): Located in the NW1/4SE1/4 of Section 5, Township 23 South, Range 56 West, 6<sup>th</sup> P.M., Otero County, Colorado, approximately 1,960 feet from the South section line and 1,910 feet from the East section line of said Section 5. e. Holbrook Canal a/k/a Lake Canal: The Holbrook Canal headgate is located on the North bank of the Arkansas River in the SW1/4NE1/4 of Section 24, Township 22 South, Range 58 West, 6<sup>th</sup> P.M., Crowley County, Colorado, approximately 1,250 feet from the North section line and 1,950 feet from the East section line of said Section 24. Water diverted at the headgate of the Holbrook Canal will be returned to the Arkansas River from the Holbrook Canal and/or through structures located on the Holbrook Canal at or below the headgate of the Holbrook Canal and this description of the Holbrook Canal headgate also includes any such facilities constructed for such purposes. f. High Line Canal: The High Line Canal headgate is located in the NE1/4NE1/4 of Section 17, Township 21 South, Range 61 West, bearing 48 degrees 28 minutes West 459.36 feet from the corners of Sections 8, 9, 16 and 17, Township 21 South, Range 61 West, 6<sup>th</sup> P.M., Pueblo County, Colorado. Water diverted at the headgate of the High Line Canal will be returned to the Arkansas River from the High Line Canal and/or through structures located on the High Line Canal at

or below the headgate of the High Line Canal and this description of the High Line Canal headgate also includes any such facilities constructed for such purposes. g. Excelsior Ditch: As described in paragraph 3.A.2.c. above. **C. Arkansas Exchange No. 1**: The exchange reach is on the Arkansas River, from the confluence of Horse Creek with the Arkansas River in Bent County, Colorado, and thence upstream on the Arkansas River to the East Reservoir Diversion No. 1 in Pueblo County, Colorado, and includes the following-described points of diversion by exchange (exchange-to points) and points of introduction of substitute supplies (exchange-from points) within this reach. Water diverted by exchange at the locations described below will be stored in the reservoirs described below for subsequent use. **1. Points of diversion by exchange (exchange-to points)**: a. East Reservoir Diversion No. 1: Located on the North bank of the Arkansas River in the NW1/4SW1/4 of Section 34, Township 20 South, Range 64 West, 6<sup>th</sup> P.M., Pueblo County, Colorado, approximately 1,936 feet from South section line and 39 feet from West section line of said Section 34. Water diverted by exchange at the East Reservoir Diversion No. 1 will be stored in East Reservoir No. 1 and/or East Reservoir No. 2, described below, for subsequent use. b. East Reservoir Diversion No. 2: Located on the North bank of the Arkansas River in the SE1/4NW1/4 of Section 34, Township 20 South, Range 64 West, 6<sup>th</sup> P.M., Pueblo County, Colorado, approximately 2,530 feet from North section line and 2,630 feet from West section line of said Section 34. Water diverted by exchange at the East Reservoir Diversion No. 2 will be stored in East Reservoir No. 1 and/or East Reservoir No. 2, described below, for subsequent use. c. Excelsior Ditch: The Excelsior Ditch headgate is located on the North bank of the Arkansas River in the SE1/4SE1/4 of Section 36, Township 20 South, Range 64 West, 6<sup>th</sup> P.M., Pueblo County, Colorado, approximately 310 feet from the South section line and 460 feet from the East section line of said Section 36. Water diverted by exchange at the Excelsior Ditch headgate will be stored in Stonewall Springs Central Reservoir, described below, for subsequent use. **2. Points of introduction of substitute supplies (exchange-from points)**: a. Confluence of Horse Creek with the Arkansas River: As described in paragraph 3.B.2.a. above. b. Holbrook Reservoir Outlet (to the Arkansas River): As described in paragraph 3.B.2.b. above. c. Confluence of Timpas Creek with the Arkansas River: As described in paragraph 3.B.2.c. above. d. Dye Reservoir Outlet (to the Arkansas River): As described in paragraph 3.B.2.d. above. e. Holbrook Canal a/k/a Lake Canal: As described in paragraph 3.B.2.e. above. f. High Line Canal: As described in paragraph 3.B.2.f. above. g. Excelsior Ditch: As described in paragraph 3.A.2.c. above. **D. Arkansas Exchange No. 2**: The exchange reach is on the Arkansas River, from the confluence of Horse Creek with the Arkansas River in Bent County, Colorado, and thence upstream on the Arkansas River to Pueblo Reservoir in Pueblo County, Colorado, and includes the following-described points of diversion by exchange (exchange-to points) and points of introduction of substitute supplies (exchange-from points) within this reach. Water diverted by exchange at the locations described below will be stored in the reservoirs described below for subsequent use. **1. Points of diversion by exchange**

**(exchange-to points):** a. Pueblo Reservoir: Described in paragraph 3.A.2.g. above. b. West Pueblo Ditch: The headgate of the West Pueblo Ditch is located on the North bank of the Arkansas River at a point South 66 degrees 12 minutes West 35.45 chains from the Northeast corner of the SE 1/4 of Section 31, Township 20 South, Range 65 West, 6<sup>th</sup> P.M., Pueblo County, Colorado. Water diverted by exchange at the West Pueblo Ditch will be stored in Northside Reservoir, described below, for subsequent use.

**2. Points of introduction of substitute supplies (exchange-from points):** a. Confluence of Horse Creek with the Arkansas River: As described in paragraph 3.B.2.a. above. b. Holbrook Reservoir Outlet (to the Arkansas River): As described in paragraph 3.B.2.b. above. c. Confluence of Timpas Creek with the Arkansas River: As described in paragraph 3.B.2.c. above. d. Dye Reservoir Outlet (to the Arkansas River): As described in paragraph 3.B.2.d. above. e. Holbrook Canal a/k/a Lake Canal: As described in paragraph 3.B.2.e. above. f. High Line Canal: As described in paragraph 3.B.2.f. above. g. Confluence of Chico Creek with the Arkansas River: As described in paragraph 3.A.2.a. above. h. Stonewall Springs Reservoir Outlet No. 1 (to the Arkansas River): As described in paragraph 3.A.2.b. above. i. Excelsior Ditch: As described in paragraph 3.A.2.c. above. j. East Reservoir Outlet No. 1 (to the Arkansas River): As described in paragraph 3.A.2.d. above. k. East Reservoir Outlet No. 2 (to the Arkansas River): As described in paragraph 3.A.2.e. above. l. Northside Reservoir Outlet (to the Arkansas River): As described in paragraph 3.A.2.f. above. Maps showing the approximate locations of the substitution and exchange reaches, the points of diversion by exchange (exchange-to points), the points of introduction of substitute supplies (exchange-from points), and the locations of the reservoirs in which water diverted by exchange will be stored and/or released for exchange use are attached to the application and incorporated by this reference. Applicant will not use any structure not owned by it without first obtaining a legal right to use such structure.

**4. Water and water rights to be used for substitution and exchange supply:**

**A.** Water rights represented by shares of stock in the Holbrook Mutual Irrigating Company, which owns and operates the Holbrook Canal a/k/a the Lake Canal, Dye Reservoir and Holbrook Reservoir a/k/a Reservoir No. 1 for the benefit of its shareholders. The water rights decreed to the Holbrook Canal include 155 cfs decreed for irrigation purposes on April 8, 1905 with an appropriation date of September 25, 1889 and 445 cfs decreed for irrigation purposes on April 8, 1905 with appropriation date of August 30, 1893. The water rights decreed to Dye Reservoir include 2,500 acre feet decreed for irrigation purposes on February 3, 1927 with an appropriation date of October 10, 1903, 3,486 acre feet decreed for irrigation purposes on February 3, 1927 with an appropriation date of September 3, 1909 and 2,000 acre feet decreed for irrigation purposes on February 3, 1927 with an appropriation date of September 15, 1909. The water rights decreed to Holbrook Reservoir a/k/a Reservoir No. 1 include 4,247 acre feet decreed for irrigation purposes on April 8, 1905 with an appropriation date of March 2, 1892, 2,000 acre feet decreed for irrigation purposes on February 3, 1927 with an appropriation date of October 10, 1903 and 1,196 acre feet decreed for irrigation purposes on February 3, 1927 with an appropriation date of September 15, 1909.

**B.** Water rights represented by shares of stock in the High Line Canal Company which owns and operates the High Line Canal for the benefit of its shareholders. The water rights decreed for diversion at the headgate of the High Line Canal include 40 cfs decreed on March 23, 1896 with an appropriation date of December 31, 1861; 0.6 cfs decreed on March 23, 1896 with an appropriation date of September 21, 1867; 16 cfs decreed on March 23, 1896 with an appropriation date of July 1, 1869; 32.5 cfs decreed on April 8, 1905 with an appropriation date of March 7, 1884; 30 cfs decreed on March 23, 1896 with an appropriation date of June 30, 1885; 2 cfs decreed on March 23, 1896 with an appropriation date of March 11, 1886; 378 cfs decreed on March 23, 1896 with an appropriation date of January 6, 1890 and 2.5 cfs decreed on March 23, 1896 with an appropriation date of December 31, 1890. **C.** Water rights represented by shares of stock in the Excelsior Ditch Company which owns and operates the Excelsior Ditch for the benefit of its shareholders. The water rights decreed to the Excelsior Ditch include 20 cfs originally decreed for irrigation purposes on March 23, 1896 with an appropriation date of May 1, 1887, and changed to include augmentation and recharge uses in Case No. 04CW62, District Court, Water Division 2, and 40 cfs originally decreed for irrigation purposes on March 23, 1896 with an appropriation date of January 6, 1890 and changed to include augmentation and recharge uses in Case No. 04CW62, District Court, Water Division 2. **D.** Other fully consumable water legally available to Applicant, originating from the Arkansas River and its tributaries, that can be delivered to the Arkansas River at the exchange-from points described above. The water and water rights described above will be used as substitute supplies in one or more of the appropriative rights of substitution and exchange described herein either directly or after storage in one or more of the following storage facilities: **E. Holbrook Reservoir a/k/a Reservoir No. 1:** Located in Sections 5, 6, 7 and 8, Township 23 South, Range 55 West, 6<sup>th</sup> P.M., and Sections 1 and 12, Township 23 South, Range 56 West, 6<sup>th</sup> P.M., Otero County, Colorado. **F. Dye Reservoir:** Located in Sections 4 and 5, Township 23 South, Range 56 West, 6<sup>th</sup> P.M., and Sections 32 and 33, Township 22 South, Range 56 West, 6<sup>th</sup> P.M., Otero County, Colorado. **G. Stonewall Springs Central Reservoir:** Located in Section 36, Township 20 South, Range 63 West, 6<sup>th</sup> P.M., Pueblo County, Colorado. **H. East Reservoir No. 2:** Located in the E1/2 of Section 34, Township 20 South, Range 64 West, 6<sup>th</sup> P.M., Pueblo County, Colorado. **I. East Reservoir No. 1:** Located in the W1/2 of Section 34, Township 20 South, Range 64 West, 6<sup>th</sup> P.M., Pueblo County, Colorado. **J. Northside Reservoir:** Located in the W1/2 and the SE1/4 of Section 32, Township 20 South, Range 65 West, 6<sup>th</sup> P.M., Pueblo County, Colorado. **K. Pueblo Reservoir:** Described in paragraph 3.A.2.g. above. **5. Source:** The source of the water to be diverted by exchange under the Arkansas Fountain Exchange No. 1 and the Arkansas Fountain Exchange No. 2 is Fountain Creek. The source of the water to be diverted by exchange under the Arkansas Exchange No. 1 and the Arkansas Exchange No. 2 is the Arkansas River. The water and water rights to be used for the substitution and exchange supply, described in paragraph 4 above, have the Arkansas River or its tributaries as their source of supply. **6.A. Date of initiation of appropriations:**



December 10, 2009. **B. How appropriations were initiated:** By formation of intent to appropriate followed by, among other actions, engineering analysis of exchange potential, investigation and analysis of structures and water rights to be used in the substitutions and exchanges, adoption of a motion by Applicant's Board of Directors confirming Applicant's intent to appropriate the substitutions and exchanges and authorizing the filing of the application herein, and filing of the application herein. **C. Date water applied to beneficial use:** Not applicable. **7. Amount claimed:** **A. Arkansas Fountain Exchange No. 1:** 20 cfs CONDITIONAL. **B. Arkansas Fountain Exchange No. 2:** 20 cfs CONDITIONAL. **C. Arkansas Exchange No. 1:** 50 cfs CONDITIONAL. **D. Arkansas Exchange No. 2:** 50 cfs CONDITIONAL. **8. Use or proposed use:** All municipal purposes, including without limitation domestic, agricultural, industrial, commercial, irrigation, stock watering, fire protection, recreation, fish and wildlife preservation and propagation, and all other beneficial purposes, including without limitation recharge of Denver Basin aquifers, exchange purposes, replacement of historical return flows, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to §37-90-137(9)(b), C.R.S., and all augmentation purposes. The water diverted by substitution and exchange will, if fully consumable, be used, reused, successively used and completely disposed of for the above-described purposes. **9. Description of Exchanges:** The appropriative rights of substitution and exchange described herein will be used primarily, but not exclusively, to store water in Fountain Reservoirs Nos. 1, 2 and 3, Sundance Reservoir, Maytag Reservoir and/or Pueblo Reservoir for subsequent beneficial use within Applicant's existing and future service area. The locations of the above-described reservoirs are as follows: **A. Fountain Reservoir No. 1:** Located in the S1/2 of Section 12, the N1/2 and the SE1/4 of Section 13 and the NE1/4 of Section 24, Township 16 South, Range 66 West, 6<sup>th</sup> P.M., El Paso County, Colorado. **B. Fountain Reservoir No. 2:** Located in the SW1/4 of Section 7, Section 18 and the N1/2 of Section 19, Township 16 South, Range 65 West, 6<sup>th</sup> P.M., El Paso County, Colorado. **C. Fountain Reservoir No. 3:** Located in the S1/2 of Section 7, Section 18 and the SW1/4 of Section 17, Township 16 South, Range 65 West, 6<sup>th</sup> P.M., El Paso County, Colorado. **D. Sundance Reservoir:** Located in the E1/2 of Section 9, the W1/2 and the SE1/4 of Section 10, the W1/2 and the SE1/4 of Section 14, the E1/2 and the NW1/4 of Section 15, the E1/2 of Section 22 and the W1/2 of Section 23, Township 17 South, Range 65 West, 6<sup>th</sup> P.M., El Paso County, Colorado. **E. Maytag Reservoir:** Located in the S1/2 and the NE1/4 of Section 23, the SW1/4 of Section 24, the NW1/4 of Section 25, and Section 26, Township 17 South, Range 65 West, 6<sup>th</sup> P.M., El Paso County, Colorado. **F. Pueblo Reservoir:** Described in paragraph 3.A.2.g. above. Water so stored will be delivered to Applicant's service area primarily, but not exclusively, by means of a pipeline or pipelines from the above-referenced reservoirs. Applicant's current service area is located in all or portions of Sections 1, 2, 11, 12, 13, 14, 23, and 24, Township 11 South, Range 67 West and Section 7, 18 and 19, Township 11 South, Range 66 West, 6<sup>th</sup> P.M., El Paso County, Colorado. Such water may also be used at any place capable of being served from the exchange-to points described herein. **10. Names and**

**addresses of owners of land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored:**

High Line Canal: The High Line Canal Company, 963 Elm Avenue, Rocky Ford, Colorado 81067; Holbrook Canal, Holbrook Reservoir a/k/a Reservoir No. 1 and Dye Reservoir: The Holbrook Mutual Irrigating Company, Cheraw, Colorado 81030; Excelsior Ditch and Excelsior Ditch Augmentation Station: The Excelsior Ditch Company, c/o Dorothy K. Morgan, 902 Weber Drive, Alamosa, Colorado 81101; Stonewall Springs Central Reservoir and Stonewall Springs Reservoir Outlet No. 1: Mark Morley, 20 Boulder Crescent, 2<sup>nd</sup> Floor, Colorado Springs, CO 80903; East Reservoirs Nos. 1 and 2, East Reservoir Diversions Nos. 1 and 2 and East Reservoir Outlets Nos. 1 and 2: Transit Mix, c/o Jerry Schnabel, 444 E. Costilla, Colorado Springs, Colorado 80903; Northside Reservoir: Valco, Inc., 200 S. 17<sup>th</sup> Street, Box 550, Rocky Ford, Colorado 81087; Northside Reservoir Outlet: Colorado State Parks, 1313 Sherman Street, Suite 618, Denver, Colorado 80203; West Pueblo Ditch: Pueblo Board of Water Works, 319 W. 4<sup>th</sup> Street, Pueblo, Colorado 81003-3210; Pueblo Reservoir: United States Department of Interior, Bureau of Reclamation, 11056 West County Road, 18E, Loveland, Colorado 80537-9711; Fountain Diversion No. 1: Christi LeHouillier, 11960 Old Pueblo Road, Fountain, Colorado 80817-3538; Fountain Diversion No. 2: Jerri R. and Michael L. Nelson, 16990 Old Pueblo Road, Fountain, Colorado 80817-3705; Fountain Reservoir No. 1: Schmidt Construction, Inc., 2635 Delta Drive, Colorado Springs, Colorado 80910; Fountain Reservoir No. 2: LaFarge North America, c/o Meg McDonald, 10170 Church Ranch Way, Suite 200, Westminster, Colorado 80021; Fountain Reservoir No. 3: Kiewit Construction, 3527 Wabash Street, Colorado Springs, Colorado 80906; Sundance Reservoir and Fountain Diversion No. 2: Sundance Investment, c/o Mike Drabing, 900 W. Castleton Road, Suite 115, Castle Rock, Colorado 80109; Maytag Reservoir and Fountain Diversion No. 3: Sam Guadagnoli, 20 N. Tejon Street, Colorado Springs, Colorado 80903. **11.**

**Remarks:** Applicant does not by this application seek to change the use of any of the water rights described as sources of substitute supply. To the extent such changes of use are required prior to use of such water rights as sources of substitute supply in the appropriative rights of substitution and exchange that are the subject of this application, such changes of use will be the subject of a separate application or applications.

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**CASE NO. 09CW141 - KIM BARICKMAN, 8140 Zorn Road, P. O. Box 581,**

**Rye, CO 81069** (Michael J. Gustafson and James G. Felt, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Surface Water Rights and Storage Rights

**PUEBLO COUNTY, COLORADO**

**II. APPLICATION FOR SURFACE WATER RIGHTS. A. Mount Baldy Ditch.**

**1. Name of Structure:** Mount Baldy Ditch. **2. Legal Description of Point of Diversion:** In the SW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>, Section 35, Township 24S, Range 68W, of the 6<sup>th</sup>

P.M., more particularly described by GPS location in UTM format, Zone 13, NAD 83, unit set to True North: Northing 503032, Easting 4196638, Pueblo County, Colorado. **3. Source**: Spring and surface flows in unnamed tributary to Greenhorn Creek, tributary to the St. Charles River, tributary to the Arkansas River. **4. a. Date of Initiation of Appropriation**: June 29, 2009. **b. How Appropriation was Initiated**: Diverting water into ditch with approval of Water Commissioner and irrigation of five acres of hay meadow. **c. Date Water Applied to Beneficial Use**: June 29, 2009. **5. Amount Claimed**: 0.15 cfs absolute; 0.15 conditional for irrigation; 0.3 conditional for stockwater, fish propagation, fire protection, wildlife, recreation and storage for those uses. **6. Use or Proposed Use**: Irrigation and stockwater for absolute claim, irrigation, stockwater, fish propagation, fire protection, wildlife, recreation and storage for those uses for conditional claim. **a. Number of Acres Historically Irrigated**: 5 acres; 20 acres proposed to be irrigated. **b. Legal Description of Acreage Irrigated and to be Irrigated**: In the SE $\frac{1}{4}$  NE $\frac{1}{4}$  and NE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 35, Township 24S, Range 68W, 6<sup>th</sup> P.M., Pueblo County, Colorado. **c. If Nonirrigation, Describe Purpose Fully**: Storage in Kim's Pond adjudicated herein for the uses described herein. **7. Remarks**: Applicant will obtain Water Commissioner approval for any diversions into the Mount Baldy Ditch pursuant to C.R.S. §37-92-502(2)(a). **B. Kimberly's Spring**. **1. Name of Structure**: Kimberly's Spring. **2. Legal Description of Point of Diversion**: In the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 35, Township 24S, Range 68W, 6<sup>th</sup> P.M., more particularly described by surveyed coordinates as follows: 37.91346 North Latitude and 104.96010 West Longitude, Pueblo County, Colorado. **3. Source**: Natural seeps and spring tributary to Graneros Creek, tributary to Greenhorn Creek, tributary to the St. Charles River, tributary to the Arkansas River. **4. a. Date of Initiation of Appropriation**: September 19, 2007. **b. How Appropriation was Initiated**: Diverting water from spring into ditch to Bear Pond for stockwater purposes. **c. Date Water Applied to Beneficial Use**: September 19, 2007. **5. Amount Claimed**: 10 g.p.m. absolute for stockwater, 10 g.p.m. conditional for all other uses. **6. Uses**: Stockwater for absolute claim, fish propagation, fire protection, wildlife, recreation, and storage for those uses for conditional claim. **7. Remarks**: Applicant will obtain Water Commissioner approval for any diversions from Kimberly's Spring pursuant to C.R.S. §37-92-502(2)(a). **III. APPLICATION FOR WATER STORAGE RIGHTS. A. Bear Pond**. **1. Name of Structure**: Bear Pond. **2. Legal Description of Dam Center Line**: Bear Pond is located in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 35, Township 24S, Range 68W, 6<sup>th</sup> P.M., more particularly being 500 feet from the east section line and 1,300 feet from the south section line of said Section 35, Pueblo County, Colorado. **3. Source**: Kimberly's Spring tributary to Graneros Creek, tributary to Greenhorn Creek, tributary to St. Charles River, tributary to Arkansas River. **4. a. Date of Initiation of Appropriation**: September 19, 2007 **b. How Appropriation was Initiated**: By diversion of water from Kimberly's Spring into storage. **c. Date Water Applied to Beneficial Use**: September 19, 2007. **5. Amount Claimed**: 0.005 acre feet (1,600 gallons) absolute for stockwater, conditional for all other uses with a rate of diversion into storage of 10 g.p.m. from Kimberly's Spring. **6.**

**Uses:** Stockwater for absolute claim, fish propagation, fire protection, wildlife and recreational for conditional claim. **7. Surface Area of High Water Line:** 0.018 acres (800 ft<sup>2</sup>). **a. Vertical Height of Dam:** 6 feet. **b. Length of Dam:** 40 Feet. **8. Total Capacity of Reservoir in Acre Feet:** 0.005 acre feet. **a. Active Capacity:** 0. **b. Dead Storage:** 0.005 acre feet. **B. Kim's Pond.** **1. Name of Reservoir:** Kim's Pond. **2. Legal Description of Location of Dam Center Line:** In the SE¼ NE¼, Section 35, Township 24S, Range 68W, 6<sup>th</sup> P.M., Pueblo County Colorado more particularly being 300 feet from the east section line and 1,950 feet from the north section line of said Section 35, Pueblo County, Colorado. **3. Source:** Mount Baldy Ditch and Kimberly's Spring the sources and legal descriptions of which are as set forth herein. **4. a. Date of Appropriation:** July 6, 2008. **b. How Appropriation was Initiated:** By commencement of construction of pond. **c. Date Water Applied to Beneficial Use:** November 23, 2009 for absolute claim, water for conditional claim has not yet been placed to beneficial use. **5. Amount Claimed:** 0.36 acre foot absolute and 0.54 acre foot conditional, at a diversion rate through the Mount Baldy Ditch of 0.3 cfs and from Kimberly's Spring at 10 g.p.m. **6. Use:** Storage for fire protection, stockwater, fish propagation, wildlife, and recreation. **7. Surface Area of High Water Line:** 0.26 acres. **a. Vertical Height of Dam:** Ten (10) feet. **b. Length of Dam:** 180 feet. **8. Total Capacity of Reservoir in Acre Feet:** 0.9. **a. Active Capacity:** 0.72. **b. Dead Storage:** 0.18. **9. Remarks:** All structures sought to be adjudicated herein and all places of use are on property owned by Applicant. Attached to the Application as Exhibit A is a USGS Map showing the location of all structures. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court.

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**CASE NO. 09CW142 - BUSK-IVANHOE, INC., a Colorado Corporation, Principle Office Street Address: 15151 East Alameda Parkway, Suite 3600, c/o Utilities Administration, Aurora, CO 80012-1555; Principle Office Mailing Address: 17850 Road JJ, Rocky Ford, CO 81067** (John M. Dingess and T. Daniel Platt (Special Counsel), Duncan, Ostrander & Dingess, P.C., Attorneys for Applicant, 3600 South Yosemite Street, Suite 500, Denver, CO 80237-1829; (303) 779-0200)

Application for Change of Water Rights

**CHAFFEE AND LAKE COUNTIES, COLORADO**

The City of Aurora, Colorado, a municipal corporation of the counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise, ("Aurora") is the sole owner of the capital stock of Applicant Busk-Ivanhoe Inc. Busk-Ivanhoe, Inc. owns an undivided one-half (1/2) interest in the water rights of the Busk-Ivanhoe System. The Board of Water Works of Pueblo, Colorado ("PBWW") is the owner of the other undivided one-half interest in the Busk-Ivanhoe System water rights. **2. DECREE WATER RIGHTS FOR WHICH CHANGE IS SOUGHT:** **A. Name of Structure:** Busk-Ivanhoe System. The Busk-Ivanhoe System is comprised of the Ivanhoe Reservoir, an on-channel reservoir on Ivanhoe Creek, that collects water from Ivanhoe Creek, the Lyle Ditch, the Pan Ditch and the Hidden Lake Creek Ditch in the Colorado River Basin on the

western slope of Colorado, and the Ivanhoe Tunnel a/k/a Carlton Tunnel, that carries water from the Colorado River Basin through the Continental Divide to the Arkansas River Basin on the eastern slope of Colorado. The Busk-Ivanhoe System is depicted on 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.

**B. Date of Original and All Relevant Subsequent Decrees:** 1. The Busk-Ivanhoe System water rights, including Ivanhoe Reservoir and Tunnel, Lyle Ditch, Pan Ditch, and Hidden Lake Creek Ditch, were originally adjudicated by the District Court, Garfield County, Colorado, Cause No. 2621, on January 9, 1928. 2. The water rights of the Pan Ditch and the Hidden Lake Creek Ditch were made partially absolute by the District Court, Garfield County, Cause No. 3082, on August 25, 1936. 3. The water rights of the Pan Ditch and the Hidden Lake Creek Ditch were further made partially absolute by the District Court, Garfield County, Cause No. 4033, on October 24, 1952. The amounts stated in subparagraph 2.F, below, are decreed absolute water rights. All remaining conditional water rights for these structures adjudicated on January 9, 1928 have been canceled. 4. PBWW changed its one-half interest in the Busk-Ivanhoe System water rights in District Court, Water Division 5, Case No. 90CW340 (consolidated with District Court, Water Division 2, Case No. 90CW52), decree entered November 15, 1993. PBWW's interest in the Busk-Ivanhoe System is not claimed in, is not the subject of, and is not affected by, this Application.

**C. Legal Descriptions of Structures.** 1. Ivanhoe Reservoir. Ivanhoe Reservoir is formed by a dam approximately 21 feet high across the natural bed of Ivanhoe Creek, a tributary of Frying Pan Creek, and situated within the SE/4 of the SW/4 of Section 12, T9S, R82W, 6th P.M., Pitkin County, Colorado, with its northeasterly end located at or about a point from which the southeast corner of Section 13, T9S, R82W, 6th P.M., bears south 26°45' east, 7,021.3, feet, which point is also described as a point in the SE/4 of the SW/4 of Section 12, T9S, R82W, 6th P.M. that lies 930 feet from the south line and 2,050 feet from the west line of Section 12, and by a bulkhead dam approximately 10 feet high at the upper end of said reservoir situated in the SE/4 of the NE/4 Section 13, T9S, R82W, 6th P.M., with its southerly end located at or about a point from which the southeast corner of Section 13 bears south 8°11' east, 2,739.2 feet, which point is also described as a point in the SE/4 of the NE/4 of Section 13, T9S, R82W, 6th P.M. that lies 2,680 feet from the south line and 425 feet from the east line of Section 13, and overflows all or portions of the SE/4 of the SW/4 and SW/4 of the SE/4 of Section 12 and the NE/4 of the NW/4 and NE/4 of Section 13, all of T9S, R82W, 6th P.M. The Lyle, Pan and Hidden Lake Ditches, which divert from the points described below, all flow into Ivanhoe Reservoir. 2. Ivanhoe Tunnel. The Ivanhoe Tunnel has its westerly portal at or about a point from which the southeast corner of Section 13, T9S, R82W, 6th P.M., Pitkin County, Colorado, bears south, 8°11' east 2,739.2 feet, which point is also described as a point in the SE/4 of the NE1/4 of Section 13, T9S, R82W, 6th P.M. that lies 2,680 feet from the south line and 425 feet from the east line of Section 13, and runs from thence south 54°25' east a distance of approximately 9,400 feet to its easterly portal in the NE/4 of the SW/4 of Section 20, T9S,

R81W, 6th P.M., Lake County, Colorado, which point is also described as a point in the SE/4 of the NW/4 of Section 20, T9S, R81W, 6th P.M. that lies 2,605 feet from the north line and 2,065 feet from the west line of Section 20. The Ivanhoe Tunnel crosses in its course all or parts of the SE/4 of the NE/4 and the NE/4 of the SE/4 of Section 13 in T9S, R82W, 6th P.M., the SW/4 and the SW/4 of the SE/4 of Section 18, the NE/4 of Section 19, and the S/2 of the NW/4 and the N/2 of the SW/4 of Section 20, all in T9S, R81W, 6th P.M.

3. Lyle Ditch. The Lyle Ditch diverts from Lyle Creek, a tributary of Ivanhoe Creek, at or about a point on the southeast bank of said stream in the NW/4 of the NE/4 of Section 2, T9S, R82W, 6th P.M., Pitkin County, Colorado, from which the southeast corner of Section 13, T9S, R82W, 6th P.M., bears south 23°19' east, 16,607.2 feet, which point is also described as a point in the SW/4 of the NE/4 of Section 2, T9S, R82W, 6th P.M. that lies 1,155 feet from the north line and 1,470 feet from the east line of Section 2, and runs from said point in a southeasterly direction a distance of about 2 miles to Ivanhoe Reservoir.

4. Pan Ditch. The Pan Ditch diverts from Pan Creek, a tributary of South Frying Pan Creek, at a point on the north bank of said stream in the NW/4 of the NE/4 of Section 24, T9S, R82W, 6th P.M., Pitkin County, Colorado, from which the southeast corner of Section 13, T9S, R82W, 6th P.M., bears north 52°14' east, 2,022.1 feet, which point is also described as a point in the NW/4 of the NE/4 of Section 24, T9S, R82W, 6th P.M. that lies 1,280 feet from the north line and 1,585 feet from the east line of Section 24, and runs from said point in a northwesterly direction a distance of 1.6 miles to Ivanhoe Reservoir.

5. Hidden Lake Creek Ditch. The Hidden Lake Creek Ditch diverts from Hidden Lake Creek, a tributary of Ivanhoe Creek, at a point on the east bank of said stream in the NE/4 of the SW/4 of Section 11, T9S, R82W, 6th P.M. in Pitkin County, Colorado, from which the southeast corner of Section 13, T9S, R82W, 6th P.M., bears south 46°14' east, 11,392.5 feet, which point is also described as a point in the NE/4 of the SW/4 of Section 11, T9S, R82W, 6th P.M. that lies 2,455 feet from the south line and 2,255 feet from the west line of Section 11, and runs from said point in a southeasterly direction a distance of about 1.1 miles to Ivanhoe Reservoir.

**D. Decreed Sources of Water:** Sources of water are Ivanhoe Creek, Hidden Lake Creek, Pan Creek and Lyle Creek, all tributary to the Frying Pan River, tributary to the Colorado River.

**E. Appropriation Dates:** Ivanhoe Reservoir: June 27, 1921; Ivanhoe Tunnel: June 27, 1921; Lyle Ditch: September 28, 1924; Pan Ditch: October 5, 1924; Hidden Lake Creek Ditch: August 30, 1927;

**F. Total Amounts Decreed Absolute to Structures:** Ivanhoe Reservoir: 1,200 acre-feet; Ivanhoe Reservoir and Tunnel: 35 cubic feet per second; Lyle Ditch: 50 cubic feet per second; Pan Ditch: 25 cubic feet per second; Hidden Lake Creek Ditch: 70 cubic feet per second;

**G. Decreed Use or Uses.** The Busk-Ivanhoe System Water Rights were originally decreed for the irrigation of lands in the State of Colorado lying along Lake Fork Creek and the Arkansas River and susceptible of irrigation therefrom.

**H. Amount of Water that Applicant Intends to Change.** Applicant shall change all of the water rights associated with its one-half interest in the Busk-Ivanhoe System.

**3. DETAILED DESCRIPTION OF PROPOSED CHANGE:**

**A. Complete Statement of Proposed Change.** The Applicant

seeks approval of a change for additional types and places of use of the water rights of the Busk-Ivanhoe System and additional places of storage as more fully described below. Historically, the one-half interest in the water rights of the Busk-Ivanhoe System owned by Applicant and its predecessors in interest has been diverted across the continental divide and used for irrigation purposes pursuant to the decree in District Court, Garfield County, Cause No. 2621. The water was historically used for irrigation of lands owned by the shareholders of the Highline Canal Company and of Busk-Ivanhoe, Inc. The location of the High Line Canal is identified on Exhibit B-1 attached to the Application. In addition to historic irrigation uses, following acquisition by Aurora of shares of stock in Busk-Ivanhoe Inc., the water has been used to satisfy Aurora's service obligation within the Arkansas River basin and within areas served by Aurora's municipal water supply and water reuse systems within the South Platte River Basin. A map of Aurora's current municipal boundaries is attached to the Application as Exhibit B-2. The historical diversion of the water rights of the Busk-Ivanhoe System transmountain from the Colorado River basin to the Arkansas River and the South Platte River basins constituted a 100% depletion with respect to the basin of origin. The water delivered by the Busk-Ivanhoe System to the Arkansas River and South Platte River basins is foreign water that, pursuant to C.R.S. § 37-82-106, may be used, reused and successively used to extinction. Therefore, no analysis of historic consumptive use or return flows is required for approval of the changes of type and place of use and places of storage requested herein. Notwithstanding the foregoing, the record of transmountain diversions for Busk-Ivanhoe, Inc. for the period 1925 through 2009 is attached to the Application as Exhibit C.

**1. Change of Type of Use.** The Applicant Busk-Ivanhoe, Inc., requests a decree confirming that Aurora may use water derived from Applicant's one-half interest in the Busk-Ivanhoe System for all municipal and domestic purposes, including but not limited to fire protection, sanitary, irrigation, commercial, manufacturing, mechanical and industrial use, recreational purposes, creation and maintenance of wetlands, stock watering, fish and wildlife propagation, allowable in stream uses, if any, snowmaking, revegetation, storage and maintenance of storage reserves, and for augmentation, exchange and replacement purposes, together with the right to use, reuse, and successively use to extinction the water as foreign, imported water pursuant to C.R.S. § 37-82-106.

**Change of Place of Use.** The Applicant Busk-Ivanhoe, Inc., seeks a change of place of use of the water derived from Applicant's one-half interest in the Busk-Ivanhoe System to Aurora's current and future service obligations within the Arkansas River Basin and current and future service areas served by its municipal water supply and water reuse systems and any areas within the South Platte River Basin area capable of being served by the Aurora municipal water supply, including areas served by its connections with other systems, for any current or future water supply contracts or obligations of Aurora. Currently, Aurora is located in Township 3 South, Ranges 64, 65, 66 and 67 West, 6th P.M. in Adams County; Townships 4 and 5 South, Ranges 65, 66 and 67 West, 6th P.M. in Arapahoe County; and, Township 6 South, Ranges 65 and 66 West, 6th P.M. in Douglas County. Aurora's service area has changed from time to time

and will continue to do so. **3. Places of Storage in the Arkansas River Basin.**

To the extent transmountain diversions of Busk-Ivanhoe System water rights are stored in the Arkansas River Basin, Applicant Busk-Ivanhoe, Inc., requests a decree confirming the right to store water, without limitation as to location, in the following reservoirs: a. Turquoise Reservoir. Turquoise Reservoir, including the proposed Turquoise Lake Enlargement, is located in all or portions of Sections 7, 8, 17, 18, 19 and 20, T9S, R80W, and Sections 10, 11, 12, 13, 14 and 15, T9S, R81W, all from the 6th P.M., in Lake County, Colorado. The Turquoise Reservoir Dam axis and the centerline of Lake Fork Creek intersect at a point whence the northwest corner of Section 16, T9S, R80W, 6th P.M., bears north  $44^{\circ}46'18''$  east of a distance of 10,344.35 feet, which point is also described as a point in the SW/4 of the NE/4 of Section 19, T9S, R80W, 6th P.M. that lies 2,110 feet from the north line and 1,890 feet from the east line of Section 19, all as more particularly described in the decree in Civil Action No. 5141, District Court, Chaffee County, Colorado. b. Twin Lakes Reservoir. Twin Lakes Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T11S, R80W, 6th P.M., Lake County, Colorado. Twin Lakes Dam axis and the center line of Lake Creek intersect at a point whence the southeast corner of Section 23, T11S, R80W, 6th P.M. bears south  $54^{\circ}13'8''$  east, a distance of 3,803.10 feet, which point is also described as a point in the NE/4 of the SW/4 of Section 23, T11S, R80W, 6th P.M. that lies 2,160 feet from the south line and 2,325 feet from the west line of Section 23, or as more particularly described in the decree in Civil Action No. 5141, District Court, Chaffee County, Colorado. c. Box Creek Reservoir. Box Creek Reservoir is to be located in all or portions of Sections 32 and 33, T10S, R80W, and Sections 4 and 5, T11S, R80W, all from the 6th P.M., in Lake County, Colorado. The exact location of Box Creek Reservoir Dam is not yet established. The Box Creek dam axis may intersect the approximate centerline of the Box Creek valley at a point approximately 2,000 feet west and 300 feet south of the northeast corner of Section 4, T11S, R80W, 6th P.M. The Arkansas River Intake to Box Creek Reservoir is to be located in Sections 22, 27 and 34, T10S, R80W; and Section 3, T11S, R80W, 6th P.M., in Lake County, Colorado. d. Clear Creek Reservoir. Clear Creek Reservoir is located on Clear Creek in Sections 7 and 8, T12S, R79W, and Section 12, T12S, R80W, all of the 6<sup>th</sup> P.M. in Chaffee County, Colorado. The Places of Storage in the Arkansas River Basin are located on Exhibit D-1 attached to the Application.

**4. Places of Storage in the South Platte River Basin.**

To the extent transmountain diversions of Busk-Ivanhoe System water rights are stored in the South Platte River Basin, Applicant Busk-Ivanhoe, Inc., requests a decree confirming the right to store water, without limitation as to location, in the following reservoirs: a. Spinney Mountain Reservoir. Spinney Mountain Reservoir is constructed on the South Platte River, with the dam forming the reservoir located in the S/2 of Section 25, T12S, R74W, 6th P.M. in Park County, Colorado, with the left abutment of the dam located at a point whence the southwest corner of Section 36, T12S, R74W, 6th P.M. bears south  $23^{\circ}26'$  west, 8,314.3 feet, which point is also described as a point in the NW/4 of the SE/4 of Section 25, T12S, R74W, 6th P.M. that lies 2,300 feet from the south line and 2,590 feet from the east line of



Section 25. b. Strontia Springs Dam and Reservoir Complex. Strontia Springs Dam is constructed on the South Platte River in Douglas County, with east-end of dam (right) abutment located at a point from whence the northwest corner of Section 21, T7S, R69W, 6th P.M. bears north 52° west a distance of 1,300 feet, which point is also described as a point in the NW/4 of the NW/4 of Section 21, T7S, R69W, 6th P.M. that lies 845 feet from the north line and 995 feet from the west line of Section 21. The right abutment is at approximate latitude 39°25'56" north, longitude 105°07'31" west. c. Chatfield Reservoir. Chatfield Reservoir is located in Sections 1, 2, 11, 12, 14 and 23, T6S, R69W, 6<sup>th</sup> P.M. and Sections 6 and 7, T6S, R68W, 6<sup>th</sup> P.M. in Douglas and Jefferson Counties, Colorado. Chatfield Reservoir is on the main stem of the South Platte River and the main stem of Plum Creek. The southeast-end of dam (right) abutment is located at a point from whence the southeast corner of Section 7, T6S, R68W, 6th P.M. bears south 64° east a distance of 2,064 feet, which point is also described as a point in the SW/4 of the SE/4 of Section 7, T6S, R68W, 6th P.M. that lies 890 feet from the south line and 1,845 feet from the east line of Section 7. The approximate (right) abutment is latitude 39°32'20" north, and longitude 105°02'33" west. d. Aurora Rampart Reservoir. Rampart Reservoir is an off-channel reservoir located in the SW/4 of the SW/4, SE/4 of the SW/4, and SW/4 of the SE/4 of Section 12, and the NW/4 of the NE/4, NE/4 of the NW/4, and NW/4 of the NW/4 of Section 13, T7S, R69W, 6th P.M., Douglas County, Colorado. The approximate (right) abutment is latitude 39°26'57" north and longitude 105°03'41" west, which point is also described as a point in the SW/4 of the SE/4 of Section 12, T7S, R69W, 6th P.M. that lies 40 feet from the south line and 1,915 feet from the east line of Section 12. e. Quincy Reservoir. Quincy Reservoir is an off-channel reservoir located in the NE/4, E/2 of the NW/4, and N/2 of the SE/4 of Section 9, and the S/2 of the NW/4, N/2 of the SW/4 of Section 10, T5S, R66W, 6th P.M., in Arapahoe County, Colorado. The approximate (right) abutment is latitude 39°38'15" north, and longitude 104°46'36" west, which point is also described as a point in the NE/4 of the NE/4 of Section 9, T5S, R66W, 6th P.M. that lies 370 feet from the north line and 1,145 feet from the east line of Section 9. f. Aurora Reservoir. The Aurora Reservoir is an off-channel reservoir located upon Senac Creek, an intermittent stream, in Sections 15, 16, 20, 21 and 22, T5S, R65W, 6th P.M., Arapahoe County, Colorado. The east-end of the dam (right) abutment is located at a point from whence the northwest corner of Section 15, T5S, R65W, 6th P.M. bears north 45° west a distance of 2,970 feet, which point is also described as a point in the SE/4 of the NW/4 of Section 15, T5S, R65W, 6th P.M. that lies 2,110 feet from the north line and 2,105 feet from the west line of Section 15. The approximate (right) abutment is latitude 39°37'06" north, and longitude 104°39'11" west. g. East Reservoir Complex. The East Reservoir will be located in one or more of the following off-channel locations: Site 1: Site 1A: In Sections 14 and 23 and the N/2 of Section 26, T4S, R65W, 6th P.M. in Arapahoe County, Colorado. Site 1B: In Sections 9, 10 and 15 and S/2 of Sections 3 and 4 and N/2 of Section 16, T4S, R65W, 6th P.M. in Arapahoe County, Colorado. Site 2: Site 2B: In Section 26 and 27 and N/2 of Sections 34, 35 and 36, T4S, R65W, 6th P.M., in Arapahoe County, Colorado. h.

Aquifer Recharge and Recovery Facility B (“ARR-B”) and Aurora Tucson South-South Platte Storage Facility Subunits (“Tucson South”). ARR-B and Tucson South will occupy all or portions of the N/2 of the SE/4, the SW/4 of the SE/4, and the SW/4, all in Section 1, T1S, R67W, 6th P.M., in Adams County, Colorado. i. Challenger Gravel Pit Reservoir. The Challenger Gravel Pit Reservoir will occupy a portion of the NW/4 of Section 1, T1S, R67W, 6th P.M., in Adams County Colorado. j. Kirby-Dersham Gravel Pit Reservoir. The Kirby-Dersham Gravel Pit Reservoir will occupy portions of the NW/4 of the SE/4, the SW/4 of the SE/4, and the NE/4 of the SE/4, of Section 36, T1N, R67W, 6th P.M., in Weld County, Colorado. k. Robert W. Walker Reservoir (“Walker South”). Walker South is located in the E/2 of Section 31, T1N, R66W, 6th P.M. in Weld County, Colorado. l. Stillwater Ranch Reservoir (“Walker North”). Walker North is located in the E/2 of Section 31, T1N, R67W, 6th P.M. in Weld County, Colorado. m. Aquifer Recharge and Recovery Facility A (“ARR-A”). ARR-A will occupy all or portions of the S/2 and NW/4 of the SE/4, and the SW/4, all in Section 13, and the N/2 of the NW/4 of Section 24, T1N, R67W, 6th P.M., in Weld County, Colorado. n. Fort Lupton Reservoir No. 1. Fort Lupton Reservoir No. 1 is a group of interconnected gravel pits that will occupy portions of the E/2 of the NW/4 of Section 25, T2N, R67W, 6th P.M., and portions of the NW/4 of the NW/4, the SW/4 of the NW/4, and the SE/4 of the NW/4 of Section 30, T2N, R66W, 6th P.M., in Weld County, Colorado. o. Fort Lupton Reservoir No. 2. Fort Lupton Reservoir No. 2 is a group of interconnected gravel pits that will occupy portions of the NW/4 of the NW/4, the NE/4 of the NW/4, and the SW/4 of the NE/4 of Section 30, T2N, R66W, 6th P.M., in Weld County, Colorado. The Places of Storage in the South Platte River Basin are located on Exhibits D-2, D-3 and D-4 attached to the Application. **B. No Correction of Well Location.** The Applicant does not seek to correct the location of a well in an existing decree. **C. No Change in Points of Diversion.** The Applicant does not seek to change the point of diversion of the Busk-Ivanhoe System water rights. **4. NAMES AND ADDRESSES OF 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:** Pursuant to C.R.S. § 37-92-302(b), Applicant shall supplement this application with evidence that the Applicant has, within ten days of filing this Application, given notice of the Application by registered or certified mail, return receipt requested, to the following owners of the diversion and storage structures identified in this Application: A. The diversion and storage structures that comprise the Busk-Ivanhoe System (Ivanhoe Reservoir and Tunnel, Lyle Ditch, Pan Ditch and Hidden Lake Creek Ditch) are owned by Board of Water Works of Pueblo, Colorado, Attn: Alan C. Hamel, Executive Director, 319 West Fourth Street, Pueblo, Colorado 81003. The Busk-Ivanhoe System is located on land where the underlying fee interest is owned by United States Forest Service, White River National Forest, 900 Grand Ave. P.O. Box 948, Glenwood Springs, Colorado 81602. B. The Box Creek Reservoir site and Arkansas River Intake are

located on land where the underlying fee interest is owned by City of Aurora, c/o Director of Utilities, 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado 80012, and the U.S. Forest Service, San Isabel National Forest, 2840 Kachina Drive Pueblo, Colorado 81008. C. The Strontia Springs Dam and Reservoir Complex are owned by the City and County of Denver, acting by and through its Board of Water Commissioners, 1600 West 12th Avenue, Denver, Colorado 80204-3412. D. Spinney Mountain Reservoir, Aurora Rampart Reservoir, Quincy Reservoir, Aurora Reservoir, and ARR-A are owned by the City of Aurora, c/o Director of Utilities, 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado 80012. E. The East Reservoir sites are owned by the parties listed on the Exhibit E attached to the Application. F. The ARR-B and Tucson South sites are located on land where the underlying fee interest is owned by Aggregate Industries – WCR, Inc., 1707 Cole Boulevard, Suite 100, Golden, Colorado 80401; Thomas Z. and Elsie J. Mars, 3400 East 56th Avenue, Commerce City, Colorado 80022-3620; Amy Horiuchi, 16315 Tucson Street, Brighton 80602; and Robert L. Seltzer Family Trust, 33641 WCR 83, Briggsdale, Colorado 80611. G. The Challenger Gravel Pit reservoir site is located on land where the underlying fee interest is owned by Front Range Aggregates, LLC, 1161 S. Perry Street, Suite 110, Castle Rock, Colorado 80104. H. The Kirby Dersham Gravel Pit Reservoir and the Robert W. Walker Reservoir are located on land where the underlying fee interest is owned by HIBE, LLC, 301 Centennial Drive, Milliken, Colorado 80543. I. The Stillwater Ranch Reservoir is located on land where the underlying fee interest is owned by Carl F. Eiberger, 303 South Broadway B-200, Denver, Colorado 80209 and Peter L. Baurer and Cynthia S. Baurer, 810 Saturn St., #16, Jupiter, Florida 33477. J. Fort Lupton Reservoir Nos. 1 and 2 are located on land where the underlying fee interest is owned by LG Everist, Inc., 7321 E. 88th Avenue, Suite 200, Henderson, Colorado 80640. K. Chatfield Reservoir is owned by the United States Army Corps of Engineers, Attn: Tim Carey, Division Manager, 9307 South Platte Canyon Road, Littleton, Colorado 80128. **5. REMARKS.** A. The water delivered by the Busk-Ivanhoe System to the Arkansas River and South Platte River basins is foreign, imported water which, pursuant to C.R.S. § 37-82-106, Aurora, as sole shareholder of Applicant Busk-Ivanhoe, Inc., is entitled to use, reuse and make successive use to extinction. B. The water rights that are the subject of this matter were previously transferred out of the Colorado River basin by transmountain diversion. So far as appropriators of water from the Colorado River and its tributaries are concerned, use of water from the Busk-Ivanhoe System by Aurora, as sole shareholder of Applicant Busk-Ivanhoe, Inc., is 100% consumptive. Twin Lakes Reservoir and Canal Co. v. City of Aspen, 193 Colo. 478, 568 P.2d 45, 50 (1977). C. Appropriators of water from the Arkansas River and its tributaries have no vested rights to the continued import of foreign water from the Busk-Ivanhoe System in the Colorado River basin. Brighton Ditch Co. v. City of Englewood, 124 Colo. 366, 237 P.2d 116, 122 (1951). D. Pursuant to C.R.S. § 37-83-101 and other applicable law, Applicant claims the right to recapture and store water diverted under the Busk-Ivanhoe System water right at other locations in the Arkansas River and South Platte River basins to the extent Aurora then has the right to use

such other facilities and can demonstrate dominion over the water imported into those basins. E. On the date of this Application Busk-Ivanhoe Inc. has simultaneously filed Applications identical in content with the Water Clerk for the District Court, Water Division 1 (South Platte River Basin); the Water Clerk for the District Court, Water Division 2 (Arkansas River Basin); and the Water Clerk for the District Court, Water Division 5 (Colorado River Basin). The only difference between the Applications filed in each Water Division is the caption, and only to the extent the caption identifies the District Court for the appropriate Water Division and the Counties within each Water Division affected by the Application. When the time for filing statements of opposition has expired pursuant to C.R.S. § 37-92-302, the Applicant will seek to consolidate the Applications pursuant to C.R.C.P. Rule 42.1. **6. PRAYERS FOR RELIEF.** A. Applicant respectfully requests this Court grant a decree for the requested changes of use of Applicant Busk-Ivanhoe, Inc.'s one-half interest in the Busk-Ivanhoe System water rights for use in Aurora's municipal service area in the South Platte River Basin and for the requested alternate places of storage in the Arkansas and South Platte River Basins as described in paragraph 3 of this Application. B. Applicant requests this Court also grant such additional relief that it deems necessary and appropriate to further the purposes of the change of water right requested herein. Attachments: Exhibits A, B-1, B-2, C, D-1, D-2, D-3, D-4, E.

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**CASE NO. 09CW143 – FREMONT PASS DITCH COMPANY, a Colorado Mutual Ditch Company, Principle Office Street and Mailing Address: 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80012-1555** (Attorneys for

Applicant: John M. Dingess, Austin Hamre, T. Daniel Platt (Special Counsel), Duncan, Ostrander & Dingess, P.C., 3600 South Yosemite Street, Suite 500, Denver, CO 80237; (303) 779-0200; and Brian M. Nazarenius, Olivia D. Lucas, Ryley, Carlock & Applewhite, P.C., 1999 Broadway, Suite 1800, Denver, CO 80202; (303) 863-7500)

Application for Change of Water Rights

**CHAFFEE AND LAKE COUNTIES, COLORADO**

The Fremont Pass Ditch Company ("FPDC" or "Applicant") was formed pursuant to C.R.S. § 7-42-101, et seq. and § 7-121-101, et seq. The shareholders of the FPDC are the City of Aurora, Colorado, a municipal corporation of the counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise ("Aurora"), and the Climax Molybdenum Company, a Delaware Corporation ("Climax"). **2. DECREED WATER RIGHT FOR WHICH CHANGE IS SOUGHT:**

**2.1. Name of Structure:** Columbine Ditch. **2.2. Date of Original and All Relevant Subsequent Decrees:** 2.2.1. The water right of the Columbine Ditch was originally adjudicated in District Court, Eagle County, Civil Case No. 963, decree entered October 3, 1936. 2.2.2. The water right of the Columbine Ditch was changed for use by the Board of Water Works of Pueblo in Case No. 90CW340, District Court, Water Division 5 (consolidated with Case No. 90CW052, District Court, Water Division 2), decree entered November 15, 1993. **2.3. Legal Description of Structure: 2.3.1 Columbine Ditch:** The Columbine

Ditch is located in portions of Sections 4, 5, 6 and 9, Township 8 South, Range 79 West, 6th P.M. in Eagle and Lake Counties, Colorado, as more fully 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. As depicted in Exhibit A, the Ditch starts at Headgate No. 1, which is the furthest northwest, and runs generally southeast to Headgate No. 2, then to Headgate No. 3, then across the Continental Divide at Columbine Pass and discharges the collected waters into the West Branch of Chalk Creek, a tributary of the Arkansas River. Surface runoff is diverted by the ditch along its entire course. Three unnamed branches of the East Fork of the Eagle River are intercepted by the ditch at the following points of diversion:

2.3.1.1. Headgate No. 1 is situated at a point from whence the southeast corner of Section 5, T8S, R79W, 6th P.M. bears south 55°39' east a distance of 7127.6 feet, in Eagle County, Colorado. The UTM coordinates of this headgate are in Zone 13 North and are as follows: Northing 4360235m, Easting 392178m.

2.3.1.2 Headgate No. 2 is situated at a point from whence the said southeast corner of Section 5, T8S, R79W, 6th P.M. bears south 57°29' east a distance of 4957.3 feet in Eagle County, Colorado. The UTM coordinates of this headgate are in Zone 13 North and are as follows: Northing 4359871.841m, Easting 392690.277m.

2.3.1.3. Headgate No. 3 is situated at a point from whence the said southeast corner of Section 5, T8S, R79W, 6th P.M. bears south 65°38' east a distance of 1091 feet in Eagle County, Colorado. The UTM coordinates of this headgate are in Zone 13 North and are as follows: Northing 4359186.678m, Easting 393634.282m.

**2.4. Decreed Source of Water.** Three unnamed branches of the East Fork of the Eagle River, as well as snowmelt, sheet flow and surface runoff tributary to the East Fork above the line of the Columbine Ditch and from other water along the course of the ditch.

**2.5 Appropriation Date:** June 21, 1930.

**2.6. Total Amount Decreed to Structure:**

2.6.1. Civil Case No. 963. The decree in Civil Case No. 963 limited the amount of water diverted by the Columbine Ditch to 60 cfs absolute, diverted from the respective headgates in the following quantities: Headgate No. 1: 10 c.f.s.; Headgate No. 2: 20 c.f.s.; Headgate No. 3: 30 c.f.s.

2.6.2. Case No. 90CW340. In Case No. 90CW340 the following season of use and volumetric limitations were placed on the water rights of the Columbine Ditch:

2.6.2.1. Season of Use: April 28 to October 21, except that water diverted in compliance with the seasonal limitation may be stored for subsequent use.

2.6.2.2. 60-Year Volumetric Limitation: In any 60 year period: 80,220 acre-feet.

2.6.2.3. 20-Year Volumetric Limitation: In any 20 year period: 36,400 acre-feet.

2.6.2.4. Annual Maximum Volumetric Limitation: In any one year: 3,148 acre-feet.

**2.7. Decreed Use or Uses.** The Columbine Ditch water rights were decreed in Civil Case No. 963 “for irrigation purposes upon various tracts of land situated along the Arkansas River.” In addition to its originally decreed purposes, in Case No. 90CW340 the Board of Water Works of Pueblo changed the use of its interest in the Columbine Ditch water rights for all beneficial uses related to the Board’s operation, including municipal, domestic, irrigation, commercial, industrial, mechanical, power generation and cooling, waste water treatment, recreation, fish and wildlife, replacement, exchange, augmentation, substitution

and storage in aid of the foregoing purposes, together with the right to use, reuse, and successively use to extinction the water changed as foreign water pursuant to C.R.S. § 37-82-106. The decree in Case No. 90CW340 identified Twin Lakes Reservoir, Turquoise Lake, Clear Creek Reservoir and Pueblo Reservoir as places of storage for water diverted transmountain. **2.8. Amount of Water that Applicant Intends to Change.** Applicant shall continue to divert water at the rate of 60 cfs as decreed in Civil Case No. 963, limited to the seasonal and volumetric limitations decreed in Case No. 90CW340, as set forth above. **3. DETAILED DESCRIPTION OF PROPOSED CHANGE:** The Applicant seeks approval of a change for additional types and places of use of the Columbine Ditch water rights for the shareholders of the Freemont Pass Ditch Company, and additional places of storage as more fully described below. Historically, the water rights of the Columbine Ditch have been diverted across the continental divide and used for irrigation purposes pursuant to the decree in Civil Case No. 963 and for all beneficial uses related to the operation by the Board of Water Works of Pueblo pursuant to the decree in Case No. 90CW340. A map of the service area of the Board of Water Works of Pueblo is attached to the Application as Exhibit B. The historical diversion of Columbine Ditch water transmountain from the Colorado River basin to the Arkansas River basin constituted a 100% depletion with respect to the basin of origin. The water delivered by the Columbine Ditch to the Arkansas River basin is foreign water that, pursuant to C.R.S. § 37-82-106, may be used, reused and successively used to extinction. Because the use of the transmountain Columbine Ditch water rights was changed in Case No. 90CW340 subject to season of use and volumetric limitations described in paragraph 2.6, above, no analysis of historic consumptive use or return flows is required for approval of the changes of type and place of use, and places of storage requested herein. Notwithstanding the foregoing, the record of diversions for the Columbine Ditch for the period 1947 through 2008 is attached to the Application as Exhibit C. **3.1. Changes for Additional Types and Places of Use for Aurora.** **3.1.1. Changes for Additional Types of Use for Aurora.** The Applicant seeks a change of type of use of the Columbine Ditch water rights confirming that in addition to types of use decreed in Civil Action No. 963 and Case No. 90CW340, Aurora may use water derived from the Columbine Ditch water right for municipal and domestic purposes including, but not limited to, fire protection, irrigation of lawns, gardens, parks, private and municipal facilities, sanitary, commercial, manufacturing, mechanical and industrial use, recreational purposes, creation and maintenance of wetlands, stock watering, fish and wildlife propagation, allowable instream uses, if any, snowmaking, revegetation, storage and maintenance of storage reserves, reservoir evaporation replacement, augmentation, exchange and replacement purposes, for use, reuse for successive uses, disposition following initial use, and reuse until extinction as foreign, imported water pursuant to C.R.S. § 37-82-106. **3.1.2. Changes for Additional Places of Use for Aurora.** The Applicant seeks a change of place of use of the water derived from the Columbine Ditch water rights confirming the addition of Aurora's current and future service obligations within the Arkansas River Basin and current and future

service areas served by its municipal water supply and water reuse systems and any areas within the South Platte River Basin area capable of being served by the Aurora municipal water supply, including areas served by its connections with other systems, for any current or future water supply contracts or obligations of Aurora. Currently, Aurora is located in Township 3 South, Ranges 64, 65, 66 and 67 West, 6th P.M. in Adams County; Townships 4 and 5 South, Ranges 65, 66 and 67 West, 6th P.M. in Arapahoe County; and Township 6 South, Ranges 65 and 66 West, 6th P.M. in Douglas County. Aurora's service area has changed from time to time and will continue to do so. Aurora's current municipal boundaries are depicted on the Exhibit D-1 attached to the Application. **3.1.3. Additional Places of Storage in the Arkansas River Basin for Aurora.** To the extent transmountain diversions of Columbine Ditch water rights are stored in the Arkansas River Basin, Applicant requests a decree confirming the additional right to store water in: 3.1.3.1. **Box Creek Reservoir.** Box Creek Reservoir is to be located in all or portions of Sections 32 and 33, T10S, R80W, and Sections 4 and 5, T11S, R80W, all from the 6th P.M., in Lake County, Colorado. The exact location of Box Creek Reservoir Dam is not yet established. The Box Creek dam axis may intersect the approximate centerline of the Box Creek valley at a point approximately 2,000 feet west and 300 feet south of the northeast corner of said Section 4, T11S, R80W, 6th P.M. The Arkansas River Intake to Box Creek Reservoir is to be located in Sections 22, 27 and 34, T10S, R80W; and Section 3, T11S, R80W, 6th P.M., in Lake County, Colorado. Box Creek Reservoir is located on Exhibit D-2 attached to the Application. **3.1.4. Additional Places of Storage in the South Platte River Basin for Aurora.** To the extent transmountain diversions of Columbine Ditch water rights are stored in the South Platte River Basin, Applicant requests a decree confirming the additional right to store water, without limitation as to location, in the following reservoirs: 3.1.4.1. **Spinney Mountain Reservoir.** Spinney Mountain Reservoir is constructed on the South Platte River, with the dam forming the reservoir located in the S/2 of Section 25, T12S, R74W, 6th P.M. in Park County, Colorado, with the left abutment of the dam located at a point whence the southwest corner of Section 36, T12S, R74W, 6th P.M. bears south 23°26' west, 8,314.3 feet, which point is also described as a point in the NW/4 of the SE/4 of Section 25, T12S, R74W, 6th P.M. that lies 2,300 feet from the south line and 2,590 feet from the east line of Section 25. 3.1.4.2. **Strontia Springs Dam and Reservoir Complex.** Strontia Springs Dam is constructed on the South Platte River in Douglas County, with east-end of dam (right) abutment located at a point from whence the northwest corner of Section 21, T7S, R69W, 6th P.M. bears north 52° west a distance of 1,300 feet, which point is also described as a point in the NW/4 of the NW/4 of Section 21, T7S, R69W, 6th P.M. that lies 845 feet from the north line and 995 feet from the west line of Section 21. The right abutment is at approximate latitude 39°25'56" north, longitude 105°07'31" west. 3.1.4.3. **Chatfield Reservoir.** Chatfield Reservoir is located in Sections 1, 2, 11, 12, 14 and 23, T6S, R69W, 6th P.M. and Sections 6 and 7, T6S, R68W, 6th P.M. in Douglas and Jefferson Counties, Colorado. Chatfield Reservoir is on the main stem of the South Platte River and the main stem of Plum Creek. The southeast-end of dam (right) abutment is located at a

point from whence the southeast corner of Section 7, T6S, R68W, 6th P.M. bears south 64° east a distance of 2,064 feet, which point is also described as a point in the SW/4 of the SE/4 of Section 7, T6S, R68W, 6th P.M. that lies 890 feet from the south line and 1,845 feet from the east line of Section 7. The approximate (right) abutment is latitude 39°32'20" north, and longitude 105°02'33" west.

3.1.4.4. Aurora Rampart Reservoir. Rampart Reservoir is an off-channel reservoir located in the SW/4 of the SW/4, SE/4 of the SW/4, and SW/4 of the SE/4 of Section 12, and the NW/4 of the NE/4, NE/4 of the NW/4, and NW/4 of the NW/4 of Section 13, T7S, R69W, 6th P.M., Douglas County, Colorado. The approximate (right) abutment is latitude 39°26'57" north and longitude 105°03'41" west, which point is also described as a point in the SW/4 of the SE/4 of Section 12, T7S, R69W, 6th P.M. that lies 40 feet from the south line and 1,915 feet from the east line of Section 12.

3.1.4.5 Quincy Reservoir. Quincy Reservoir is an off-channel reservoir located in the NE/4, E/2 of the NW/4, and N/2 of the SE/4 of Section 9, and the S/2 of the NW/4, N/2 of the SW/4 of Section 10, T5S, R66W, 6th P.M., in Arapahoe County, Colorado. The approximate (right) abutment latitude 39°38'15" north, and longitude 104°46'36" west, which point is also described as a point in the NE/4 of the NE/4 of Section 9, T5S, R66W, 6th P.M. that lies 370 feet from the north line and 1,145 feet from the east line of Section 9.

3.1.4.6. Aurora Reservoir. The Aurora Reservoir is an off-channel reservoir located upon Senac Creek, an intermittent stream, in Sections 15, 16, 20, 21 and 22, T5S, R65W, 6th P.M., Arapahoe County, Colorado. The east-end of the dam (right) abutment is located at a point from whence the northwest corner of Section 15, T5S, R65W, 6th P.M. bears north 45° west a distance of 2,970 feet, which point is also described as a point in the SE/4 of the NW/4 of Section 15, T5S, R65W, 6th P.M. that lies 2,110 feet from the north line and 2,105 feet from the west line of Section 15. The approximate (right) abutment is latitude 39°37'06" north, and longitude 104°39'11" west.

3.1.4.7. East Reservoir Complex. The East Reservoir will be located in one or more of the following off-channel locations: Site 1: Site 1A: In Sections 14 and 23 and the N/2 of Section 26, T4S, R65W, 6th P.M. in Arapahoe County, Colorado. Site 1B: In Sections 9, 10 and 15 and S/2 of Sections 3 and 4 and N/2 of Section 16, T4S, R65W, 6th P.M. in Arapahoe County, Colorado. Site 2: Site 2B: In Section 26 and 27 and the N/2 of Sections 34, 35 and 36, T4S, R65W, 6th P.M., in Arapahoe County, Colorado.

3.1.4.8. Aquifer Recharge and Recovery Facility B ("ARR-B") and Aurora Tucson South-South Platte Storage Facility Subunits ("Tucson South"). ARR-B and Tucson South will occupy all or portions of the N/2 of the SE/4, the SW/4 of the SE/4, and the SW/4, all in Section 1, T1S, R67W, 6th P.M., in Adams County, Colorado.

3.1.4.9. Challenger Gravel Pit Reservoir. The Challenger Gravel Pit Reservoir will occupy a portion of the NW/4 of Section 1, T1S, R67W, 6th P.M., in Adams County Colorado.

3.1.4.10. Kirby-Dersham Gravel Pit Reservoir. The Kirby-Dersham Gravel Pit Reservoir will occupy portions of the NW/4 of the SE/4, the SW/4 of the SE/4, and the NE/4 of the SE/4, of Section 36, T1N, R67W, 6th P.M., in Weld County, Colorado.

3.1.4.11. Robert W. Walker Reservoir ("Walker South"). Walker South is located in the E/2 of Section 31, T1N, R66W, 6th P.M. in Weld County, Colorado.

3.1.4.12. Stillwater Ranch



Reservoir("Walker North"). Walker North is located in the E/2 of Section 31, T1N, R67W, 6th P.M. in Weld County, Colorado. 3.1.4.13. Fort Lupton Reservoir No. 1. Fort Lupton Reservoir No. 1 is a group of interconnected gravel pits that will occupy portions of the E/2 of the NW/4 of Section 25, T2N, R67W, 6th P.M., and portions of the NW/4 of the NW/4, the SW/4 of the NW/4, and the SE/4 of the NW/4, of Section 30, T2N, R66W, 6th P.M., in Weld County, Colorado. 3.1.4.14. Fort Lupton Reservoir No. 2. Fort Lupton Reservoir No. 2 is a group of interconnected gravel pits that will occupy portions of the NW/4 of the NW/4, the NE/4 of the NW/4, and the SW/4 of the NE/4 of Section 30, T2N, R66W, 6th P.M., in Weld County, Colorado. The Additional Places of Storage in the South Platte River Basin for Aurora are located on Exhibits D-3, D-4 and D-5 attached to the Application. **3.2. Additional Changes for Type and Place of Use by Climax.** 3.2.1. Additional Change of Type of Use for Climax. The Applicant seeks a change of type of use of the Columbine Ditch water rights confirming that in addition to types of use decreed in Civil Action No. 963 and Case No. 90CW340, Climax may use water derived from the Columbine Ditch water right for use, reuse, successive use, and disposition for the following beneficial purposes: mining purposes; milling purposes, including but not limited to flotation, drying, and in scrubbers and to transport tailing slurry to the Robinson, Tenmile and Mayflower tailings impoundments, and in processing waste rock and to settle out tailing in the decant water pool; concrete batching; mechanical use; recreational purposes; creation and maintenance of wetlands; stock watering; fish and wildlife propagation; allowable instream uses, if any; snowmaking; reclamation; revegetation; dust suppression; storage and maintenance of storage reserves; reservoir evaporation replacement; domestic; irrigation; agricultural and any other beneficial purpose associated with the Climax Mine. Additionally Applicant requests that the water derived from the Columbine Ditch water right may be produced for an immediate use, for storage and subsequent use, for exchange purposes, for replacement of depletions resulting from the use of water from this or other sources, and for augmentation purposes; provided, however, that any such exchanges or augmentation plans shall be approved by the Division Engineer or otherwise decreed by the Water Court. **3.2.2. Additional Change of Place of Use for Climax**. The Applicant seeks a change in place of use of the Columbine Ditch water rights confirming that in addition to the places of use decreed in Civil Action No. 963 and Case No. 90CW340, water will be used at the Climax Mine and its ancillary facilities, including the Jones Gravel Pit. The Climax Mine presently consists of approximately 22 square miles located at the headwaters of Tenmile Creek, the East Fork Arkansas River, and the East Fork of the Eagle River, in parts of Sections 7, 18, 19, and 31, Township 7 South, Range 78 West, 6th. P.M.; Sections 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, Township 7 South, Range 79 West, 6th. P.M.; Sections 6, 7, and 18, Township 8 South, Range 78 West, 6th. P.M.; and Sections 1, 2, 3, 4, 5, 10, 11, 12, 13, and 14, Township 8 South, Range 79 West, 6th. P.M. in Lake, Summit and Eagle counties. The Jones Gravel Pit is located in the E/2 of Township 9 South, Range 80 West, 6th P.M., approximately two miles northwest of the town of Leadville, in Lake County, Colorado. **3.2.3. Additional**

**Places of Storage by Climax.** 3.2.3.1. Robinson Reservoir. Robinson Reservoir is a 3,136 acre foot reservoir located in the SE/4 of Section 33 and the SW/4 of Section 34, both in T7S, R79W, 6th P.M., in Eagle County, Colorado. 3.2.3.2. Chalk Mountain Reservoir. Chalk Mountain Reservoir is a 204.1 acre foot reservoir located in the SW/4 of Section 34, T7S, R79W, 6th P.M., in Eagle County, Colorado. 3.2.3.3. Buffehr's Lake. Buffehr's Lake is a 102.8 acre foot reservoir located in the SW/4 of Section 2, T8S, R79W, 6th P.M., in Summit County, Colorado. 3.2.3.4. Climax Mine Underground Levels. The Climax Mine Underground Levels have a storage capacity of approximately 1,223 acre feet and are located beneath the S/2 of Section 1, and the N/2, the SE/4, and the N/2SW/4 of Section 12, all in T8S, R79W, 6th P.M., in Lake County, Colorado. 3.2.3.5. Mayflower Pond. The Mayflower Pond presently is an approximately 7,960 acre foot tailings pond in the SW/4 of Section 13, the SE/4 of Section 14, the NW/4 of Section 24, and most of Section 23, all in T7S, R79W, 6th P.M., in Summit County, Colorado. The size of the Mayflower Pond may be expanded or reduced in the future as a result of mining and milling operations. 3.2.3.6. Tenmile Pond. Tenmile Pond presently is an approximately 4,730 acre foot tailings pond in most of Section 26, the E/2 of Section 27, the NE/4 of Section 34, and the N/4 of Section 35, all in T7S, R79W, 6th P.M., in Summit County, Colorado. The size of Tenmile Pond may be expanded or reduced in the future as a result of mining and milling operations. 3.2.3.7. Robinson Pond. Robinson Pond presently is an approximately 500 acre foot tailings pond in the SW/4 of Section 27, the NW/4 and the E/2 of Section 34, and the W/2 of Section 35, all in T7S, R79W, 6th P.M.; also in the E/2 of Section 3 and the W/2 of Section 2, both in T8S, R79W, 6th P.M., all in Summit County, Colorado. The size of Robinson Pond may be expanded or reduced in the future as a result of mining and milling operations. The Additional Places of Storage by Climax are located on Exhibit D-6 attached to the Application. **3.3. No Correction of Well Location.** The Applicant does not seek to correct the location of a well in an existing decree. **3.4. No Change in Points of Diversion.** The Applicant does not seek to change the point of diversion of the Columbine Ditch water right. **4. NAMES AND ADDRESSES OF 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:** Pursuant to C.R.S. § 37-92-302(2)(b), Applicant shall supplement this Application with evidence that the Applicant has, within ten days of filing this Application, given notice of the Application by registered or certified mail, return receipt requested, to the following owners of land upon which water is or will be stored: 4.1. The Box Creek Reservoir site and Arkansas River Intake are located on land where the underlying fee interest is owned by City of Aurora, c/o Director of Utilities, 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado 80012, and the U.S. Forest Service, San Isabel National Forest, 2840 Kachina Drive Pueblo, Colorado 81008. 4.2. The Strontia Springs Dam and Reservoir Complex are located on land where the underlying fee interest is owned by the City and

County of Denver, acting by and through its Board of Water Commissioners 1600 West 12th Avenue, Denver, Colorado 80204-3412. 4.3. Spinney Mountain Reservoir, Aurora Rampart Reservoir, Quincy Reservoir, Aurora Reservoir, and ARR-A are located on land where the underlying fee interest is owned by the City of Aurora, c/o Director of Utilities, 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado 80012. 4.4. The East Reservoir sites are located on land where the underlying fee interest is owned by the parties listed on Exhibit E attached to the Application. 4.5. The ARR-B and Tucson South sites are located on land where the underlying fee interest is owned by Aggregate Industries - WCR, Inc., 1707 Cole Boulevard, Suite 100, Golden, Colorado 80401; Thomas Z. and Elsie J. Mars, 3400 East 56th Avenue, Commerce City, Colorado 80022-3620; Amy Horiuchi, 16315 Tucson Street, Brighton 80602; and Robert L. Seltzer Family Trust, 33641 WCR 83, Briggsdale, Colorado 80611. 4.6. The Challenger Gravel Pit reservoir site is located on land where the underlying fee interest is owned by Front Range Aggregates, LLC, 1161 S. Perry Street, Suite 110, Castle Rock, Colorado 80104. 4.7. The Kirby Dersham Gravel Pit Reservoir and the Robert W. Walker Reservoir are located on land where the underlying fee interest is owned by HIBE, LLC, 301 Centennial Drive, Milliken, Colorado 80543. 4.8. The Stillwater Ranch Reservoir is located on land where the underlying fee interest is owned by Carl F. Eiberger 303 South Broadway B-200, Denver, Colorado 80209 and Peter L. Baurer and Cynthia S. Baurer 810 Saturn St., #16, Jupiter, Florida 33477. 4.9. Fort Lupton Reservoir Nos. 1 and 2 are located on land where the underlying fee interest is owned by LG Everist, Inc., 7321 E. 88th Avenue., Suite. 200, Henderson, Colorado 80640. 4.10. Chatfield Reservoir is located on land where the underlying fee interest is owned by the United States of America, United States Army Corps of Engineers, Attn: Tim Carey, Division Manager, 9307 South Platte Canyon Road, Littleton, Colorado 80128. 4.11. Robinson Reservoir, Chalk Mountain Reservoir, Buffehr's Lake, Climax Mine Underground Levels, Mayflower Pond, Tenmile Pond, Robinson Pond and Jones Reservoir are all owned by Climax Molybdenum Company, 1742 County Road 202, P.O. Box 68, Empire Colorado 80436. **5. REMARKS** 5.1. The water delivered by the Columbine Ditch to the Arkansas River and South Platte River basins is foreign, imported water which, pursuant to C.R.S. § 37-82-106, Applicant is entitled to use, reuse and make successive use to extinction. 5.2. The water rights that are the subject of this matter were previously transferred out of the Colorado River basin by transmountain diversion. So far as appropriators of water from the Colorado River and its tributaries are concerned, use of water from the Columbine Ditch in the Arkansas River and South Platte River basins, is 100% consumptive. Twin Lakes Reservoir and Canal Co. v. City of Aspen, 193 Colo. 478, 568 P.2d 45, 50 (1977). 5.3. Appropriators of water from the Arkansas River and its tributaries have no vested rights to the continued import of foreign water from the Columbine Ditch in the Colorado River basin. Brighton Ditch Co. v. City of Englewood, 124 Colo. 366, 237 P.2d 116, 122 (1951). 5.4. Pursuant to C.R.S. § 37-83-101 and other applicable law, Applicant claims the right to recapture and store water diverted under the Columbine Ditch water right at other locations in the Arkansas River and South Platte River basins

to the extent Aurora then has the right to use such other facilities and can demonstrate dominion over the water imported into those basins. 5.5. On the date of this Application FPDC simultaneously filed Applications identical in content with the Water Clerk for the District Court, Water Division 1 (South Platte River Basin); the Water Clerk for the District Court, Water Division 2 (Arkansas River Basin); and the Water Clerk for the District Court, Water Division 5 (Colorado River Basin). The only difference between the Applications filed in each Water Division is the caption, and only to the extent the caption identifies the District Court for the appropriate Water Division, the Counties within each Water Division affected by the Application, and the case numbers. When the time for filing statements of opposition has expired pursuant to C.R.S. § 37-92-302, the Applicant will seek to consolidate the Applications pursuant to C.R.C.P. Rule 42.1. 5.6. The Board of Water Works of Pueblo maintains a continuing right to use water delivered by the Columbine Ditch as decreed in Case No. 90CW340 pursuant to an agreement with the Applicant. 5.7. No wells will be drilled for diversion of the Columbine Ditch water rights to be changed in this Application. 5.1. The source of water of the Columbine Ditch is not located within a designated ground water basin. **6. PRAYERS FOR RELIEF** 6.1. Applicant respectfully requests this Court grant a decree for the requested changes of type and place of use, and places of storage of the Columbine Ditch water rights requested herein. 6.2. Applicant requests this Court also grant such additional relief that it deems necessary and appropriate to further the purposes of the change of water right requested herein. Attachments to Application: Exhibits A, B, C, D-1, D-2, D-3, D-4, D-5, D-6, E.

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**CASE NO. 09CW144 – PETER G. BERTRAM and MARGARET H. BERTRAM  
AS TRUSTEES OF THE PETER G. AND MARGARET H. BERTRAM TRUST,  
UTD MARCH 19, 1996, 3815 Tapadero Drive, Colorado Springs, CO 80921**

(Henry D. Worley, MacDougall, Woldridge & Worley, Attorneys for Applicants, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905-1743)

Application for Water Storage Rights and for Approval of Plan for Augmentation  
**EL PASO COUNTY**

**I. APPLICATION FOR WATER STORAGE RIGHTS. 2. Name of reservoir:** Bertram Pond. **A. Location of dam:** NE1/4 SW1/4 Section 33, T. 11 S., R. 67 W., 6<sup>th</sup> P.M., El Paso County, UTM\_X (meters) 508743; UTM\_Y (meters) 4322075. **B. Source:** Hay Creek. **C. Date of appropriation:** May 25, 1989. **How appropriation was initiated:** completion of dam. **Date water applied to beneficial use:** May 25, 1989. Note: the reservoir was in existence when Applicants purchased the property on May 25, 1989. Applicants have no personal knowledge of actual age of dam. **D. Use:** recreational, wildlife and fish raising purposes. **E. Surface area of high water line:** 0.09 acre; **maximum height of dam:** 6 feet; **length of dam:** 78 feet; **capacity of reservoir:** 0.1 acre foot; **active capacity:** 0 acre feet; **dead storage:** 0.1 acre foot. **F.** The Bertram Pond is located on land owned by Applicants. **II. PLAN FOR AUGMENTATION. Names of structures to be augmented:** Bertram Pond. **4. Previous decrees for water rights to be used for augmentation:** A. Case No. 81CW213,

entered by the Water Court, Water Division 2, on July 18, 1984, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Dillon Well, permit no. 17483-FR, the location of which is in the NW1/4 NE1/4 Section 35, T. 11 S., R. 67 W., 6<sup>th</sup> P.M. The amount decreed is 400 acre feet annually. "The water which is the subject of the rights claimed herein may be used for municipal, domestic, commercial and irrigation purposes. The right to apply such water to the above-specified beneficial uses shall include the right of successive use pursuant to C.R.S. §37-82-106 and the right to use, reuse, and successively use all such water to extinction and to dispose of such water, free of any limitation, restriction, or requirement as to the place of use, the amount of discharge after such use, and as to its reuse, successive use or disposition. The water may be produced for immediate application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes." B. Case No. 83CW142, entered by the Water Court, Water Division 2, on September 25, 1987, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Arapahoe Well, permit no. 63496-F, the location of which is in the NW1/4 SE1/4 Section 27, T. 11 S., R. 67 W., 6<sup>th</sup> P.M., 2100 feet from the south section line and 2050 feet from the east section line. The amount permitted to be pumped through the Arapahoe Well is 451.3 acre feet annually, of which Applicant is in the process of purchasing the right to withdraw 0.02 acre foot annually. "Said water may be produced for immediate application to all municipal purposes and domestic, industrial, livestock, irrigation, commercial, and recreational uses, for storage and subsequent application to said uses, for exchange purposes, or replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes." C. **Source:** for both decreed water rights, nontributary Arapahoe aquifer. **Appropriation date:** not applicable. **D. Historic use:** Not applicable. **E. Land ownership:** The Bertram Pond is located on land owned by Applicants.

**5. Statement of plan for augmentation.** A. Applicants will augment all net out-of-priority depletions caused by evaporation from the reservoir's surface. Because the reservoir will rarely be in priority, and evaporation under futile call conditions is uncertain, Applicants have made arrangements to purchase augmentation water in the amount of average annual net evaporative losses. Applicants' consulting hydrologist, Peter Boddie, has determined that the net annual evaporation, taking into account a phreatophyte credit for this on-stream reservoir, is 0.02 acre foot. Net monthly evaporation is as follows: January, 0.00 AF; February, 0.00 AF; March, 0.01 AF; April, 0.01 AF; May, 0.00 AF; June, 0.00 AF; July, 0.00 AF; August, 0.00 AF; September, 0.00 AF; October, 0.00 AF; November, 0.00 AF; December, 0.00 AF. B. Applicants have reached an agreement in principle with Forest Lakes, LLC to purchase 0.02 acre foot of nontributary Arapahoe water decreed in Case No. 83CW142 to replace 0.02 acre foot of annual depletions. It is anticipated that the agreement will be executed in January 2010. C. Applicants have also reached an agreement in principle with

Forest Lakes Metro District to pump the purchased water, or substitute water owned by Forest Lakes Metro District and decreed in Case No. 81CW213, which will be traded to Applicant for Applicants' water rights and pumped through the Dillon Well, at the District's option, into Beaver Creek. Replacement may be made either into Bristlecone Lake No. 2 (Bristlecone Reservoir), from which it shall be released in a timely fashion, or into the reservoir's spillway, which flows directly into Beaver Creek. The location of Bristlecone Reservoir is in the SE1/4 SW1/4 Section 27, T. 11 S. R. 67 W., 6<sup>th</sup> P.M.; its south abutment is at a point approximately 2500 feet from the west section line and 20 feet from the south section line. Such replacements will be made no less than monthly during months in which there is a net stream depletion. D. Rather than seeking a decree for an appropriative right of exchange from the confluence of Hay Creek and Beaver Creek, Applicants shall instead augment the depletions at the confluence of those two streams in the SE1/4 NE1/4 Section 34, T. 11 S., R. 67 W., 6<sup>th</sup> P.M.. Nothing herein is intended to prevent the Applicants from seeking administrative approval of occasional exchanges from Beaver Creek up Hay Creek to the Applicants' reservoir.

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**CASE NO. 09CW145 - DIAMONDBACK RANCH, LLC, Attn: H. L. Hisgen, 4585 Diamondback Drive, Colorado Springs, CO 80921** (Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905 (719) 520-9288)  
Application for Water Storage Rights and For Approval of Plan for Augmentation  
**EL PASO COUNTY**

**I. APPLICATION FOR WATER STORAGE RIGHTS. 2. Name of reservoir:** Diamondback Pond. **A. Location of dam:** NW1/4 NE1/4 Section 32, T. 11 S., R. 67 W., 6<sup>th</sup> P.M., El Paso County, UTM\_X (meters) 507398; UTM\_Y (meters) 4322974. **B. Source:** South Beaver Creek. **C. Date of appropriation:** September 29, 1999. **How appropriation was initiated:** completion of dam. **Date water applied to beneficial use:** September 29, 1999. Note: the reservoir is visible on an aerial photograph dated September 29, 1999. Applicant has no personal knowledge of actual age of dam. **D. Use:** recreational, wildlife and fish raising purposes. **E. Surface area of high water line:** 0.29 acre; **maximum height of dam:** 12 feet; **length of dam:** 131 feet; **capacity of reservoir:** 0.7 acre foot; **active capacity:** 0 acre feet; **dead storage:** 0.7 acre foot. **II. PLAN FOR AUGMENTATION. 3. Names of structures to be augmented:** Diamondback Pond. **4. Previous decrees for water rights to be used for augmentation:** A. Case No. 81CW213, entered by the Water Court, Water Division 2, on July 18, 1984, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Dillon Well, permit no. 17483-FR, the location of which is in the NW1/4 NE1/4 Section 35, T. 11 S., R. 67 W., 6<sup>th</sup> P.M. The amount decreed is 400 acre feet annually. "The water which is the subject of the rights claimed herein may be used for municipal, domestic, commercial and irrigation purposes. The right to apply such water to the above-specified beneficial uses shall include the right of successive use pursuant to C.R.S. §37-82-106 and the right to use,

reuse, and successively use all such water to extinction and to dispose of such water, free of any limitation, restriction, or requirement as to the place of use, the amount of discharge after such use, and as to its reuse, successive use or disposition. The water may be produced for immediate application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes.” B. Case No. 83CW142, entered by the Water Court, Water Division 2, on September 25, 1987, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Arapahoe Well, permit no. 63496-F, the location of which is in the NW1/4 SE1/4 Section 27, T. 11 S., R. 67 W., 6<sup>th</sup> P.M., 2100 feet from the south section line and 2050 feet from the east section line. The amount permitted to be pumped through the Arapahoe Well is 451.3 acre feet annually, of which Applicant is in the process of purchasing the right to withdraw 0.08 acre feet annually. “Said water may be produced for immediate application to all municipal purposes and domestic, industrial, livestock, irrigation, commercial, and recreational uses, for storage and subsequent application to said uses, for exchange purposes, or replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes.” **C. Source:** for both decreed water rights, nontributary Arapahoe aquifer. **Appropriation date:** not applicable. **D. Historic use:** Not applicable. **E. Land ownership.** The Diamondback Pond is located on land owned by Applicant. **5. Statement of plan for augmentation.** A. Applicant is required to augment all out-of-priority depletions caused by evaporation from the reservoir’s surface. Because the reservoir will rarely be in priority, Applicant has made arrangements to purchase augmentation water in the amount of average annual net evaporative losses. Applicant’s consulting hydrologist, Peter Boddie, has determined that the net annual evaporation, taking into account a phreatophyte credit for this on-stream reservoir, is 0.08 acre foot. Net monthly evaporation is as follows: January, 0.00 AF; February, 0.00 AF; March, 0.02 AF; April, 0.03 AF; May, 0.00 AF; June, 0.00 AF; July, 0.00 AF; August, 0.00 AF; September, 0.00 AF; October, 0.02 AF; November, 0.01 AF; December, 0.00 AF. B. Applicant has reached an agreement in principle with Forest Lakes, LLC to purchase 0.08 acre foot of nontributary Arapahoe water decreed in Case No. 83CW142 to replace 0.08 acre foot of annual depletions. It is anticipated that the agreement will be executed in January 2010. C. Applicant has also reached an agreement in principle with Forest Lakes Metro District to pump the purchased water, or substitute water owned by Forest Lakes Metro District and decreed in Case No. 81CW213, which will be traded to Applicant for Applicant’s water rights and pumped through the Dillon Well, at the District’s option, into Beaver Creek. Replacement may be made either into Bristlecone Lake No. 2 (Bristlecone Reservoir), from which it shall be released in a timely fashion, or into the reservoir’s spillway, which flows directly into Beaver Creek. The location of Bristlecone Reservoir is in the SE1/4 SW1/4 Section 27, T. 11 S. R. 67 W., 6<sup>th</sup> P.M.; its south abutment is at a point approximately 2500 feet from the west section line and 20 feet from the south

section line. Such replacements will be made no less frequently than monthly during months in which there is a net stream depletion. D. Rather than seeking a decree for an appropriative right of exchange, Applicant shall instead augment the depletions at the point of discharge into Beaver Creek. Nothing herein is intended to prevent the Applicant from seeking administrative approval of occasional exchanges from Bristlecone Reservoir up Beaver Creek and South Beaver Creek to the Applicant's reservoir. E. It is Applicant's understanding that the Welty Ditch water right is owned by Colorado Springs, Monument and the Dellacroce family, and that entitlements by those entities, as well as decreed exchanges owned by Forest Lakes Metro District, are based on readings at a gauge on Beaver Creek upstream from the point of replacements. It is Applicant's opinion that Applicant's replacement amounts are too small to affect the administration of the Welty Ditch, and Applicant does not propose to account for its depletions in terms of the administration of the Welty Ditch. However, if desired by those entities, Applicant will consent to a term or condition of any final decree which provide that the amount of replacement water from the Applicant's reservoir, in the average monthly flow rate, be added into the flow at the Beaver Creek gauge, for the purposes of administration of the Welty Ditch right. (The location of replacements is upstream from any actual diversion points on the Welty Ditch.)

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**CASE NO. 09CW146 - DANIEL R. MEYLAN AND KATHY E. MEYLAN, 3860 Tapadero Drive, Colorado Springs, Colorado 80921** (Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorneys for Applicants, 530 Communication Circle, Suite 204, Colorado Springs, Colorado 80905, (719) 520-9288)

Application for Water Storage Rights and For Approval of Plan for Augmentation  
**EL PASO COUNTY**

**I. APPLICATION FOR WATER STORAGE RIGHTS. 2. Name of reservoir:** Meylan Pond. **A. Location of dam:** NE1/4 SW1/4 Section 33, T. 11 S., R. 67 W., 6<sup>th</sup> P.M., El Paso County, UTM\_X (meters) 508571; UTM\_Y (meters) 4322014. **B. Source:** Hay Creek. **C. Date of appropriation:** September 29, 1999. **How appropriation was initiated:** completion of dam. **Date water applied to beneficial use:** September 29, 1999. Note: the reservoir is visible on an aerial photograph dated September 29, 1999. Applicants have no personal knowledge of actual age of dam. **D. Use:** recreational, wildlife and fish raising purposes. **E. Surface area of high water line:** 0.29 acre; **maximum height of dam:** 7 feet; **length of dam:** 143 feet; **capacity of reservoir:** 0.35 acre foot; **active capacity:** 0 acre feet; **dead storage:** 0.35 acre foot. **II. PLAN FOR AUGMENTATION. 3. Names of structures to be augmented:** Meylan Pond. **4. Previous decrees for water rights to be used for augmentation:** A. Case No. 81CW213, entered by the Water Court, Water Division 2, on July 18, 1984, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Dillon Well, permit no. 17483-FR, the location of which is in the NW1/4 NE1/4 Section 35, T. 11 S., R. 67 W., 6<sup>th</sup> P.M. The amount decreed is 400 acre feet annually. "The



water which is the subject of the rights claimed herein may be used for municipal, domestic, commercial and irrigation purposes. The right to apply such water to the above-specified beneficial uses shall include the right of successive use pursuant to C.R.S. §37-82-106 and the right to use, reuse, and successively use all such water to extinction and to dispose of such water, free of any limitation, restriction, or requirement as to the place of use, the amount of discharge after such use, and as to its reuse, successive use or disposition. The water may be produced for immediate application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes.” B. Case No. 83CW142, entered by the Water Court, Water Division 2, on September 25, 1987, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Arapahoe Well, permit no. 63496-F, the location of which is in the NW1/4 SE1/4 Section 27, T. 11 S., R. 67 W., 6<sup>th</sup> P.M., 2100 feet from the south section line and 2050 feet from the east section line. The amount permitted to be pumped through the Arapahoe Well is 451.3 acre feet annually, of which Applicant is in the process of purchasing the right to withdraw 0.14 acre foot annually. “Said water may be produced for immediate application to all municipal purposes and domestic, industrial, livestock, irrigation, commercial, and recreational uses, for storage and subsequent application to said uses, for exchange purposes, or replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes.” C. **Source:** for both decreed water rights, nontributary Arapahoe aquifer. **Appropriation date:** not applicable. **D. Historic use:** Not applicable. **E. Land ownership:** The Meylan Pond is located on land owned by Applicants.

**5. Statement of plan for augmentation.** A. Applicants will augment all out-of-priority depletions caused by evaporation from the reservoir’s surface. Because the reservoir will rarely be in priority, and evaporation under futile call conditions is uncertain, Applicants have made arrangements to purchase augmentation water in the amount of average annual net evaporative losses. Applicants’ consulting hydrologist, Peter Boddie, has determined that the net annual evaporation, taking into account a phreatophyte credit for this on-stream reservoir, is 0.14 acre foot. Net monthly evaporation is as follows: January, 0.00 AF; February, 0.00 AF; March, 0.02 AF; April, 0.03 AF; May, 0.01 AF; June, 0.02 AF; July, 0.01 AF; August, 0.00 AF; September, 0.01 AF; October, 0.03 AF; November, 0.01 AF; December, 0.00 AF. B. Applicants have reached an agreement in principle with Forest Lakes, LLC to purchase 0.14 acre foot of nontributary Arapahoe water decreed in Case No. 83CW142 to replace 0.14 acre foot of annual depletions. It is anticipated that the agreement will be executed in January 2010. C. Applicants have also reached an agreement in principle with Forest Lakes Metro District to pump the purchased water, or substitute water owned by Forest Lakes Metro District and decreed in Case No. 81CW213, which will be traded to Applicant for Applicant’s water rights and pumped through the Dillon Well, at the District’s option, into Beaver Creek. Replacement may be made either into Bristlecone Lake No. 2 (Bristlecone Reservoir), from which it

shall be released in a timely fashion, or into the reservoir's spillway, which flows directly into Beaver Creek. The location of Bristlecone Reservoir is in the SE1/4 SW1/4 Section 27, T. 11 S. R. 67 W., 6<sup>th</sup> P.M.; its south abutment is at a point approximately 2500 feet from the west section line and 20 feet from the south section line. Such replacements will be made no less frequently than monthly during months in which there is a net stream depletion. D. Rather than seeking a decree for an appropriative right of exchange from the confluence of Hay Creek and Beaver Creek, Applicants shall instead augment the depletions at the confluence of those two streams in the SE1/4 NE1/4 Section 34, T. 11 S., R. 67 W., 6<sup>th</sup> P.M.. Nothing herein is intended to prevent the Applicants from seeking administrative approval of occasional exchanges from Beaver Creek up Hay Creek to the Applicants' reservoir.

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**CASE NO. 09CW147 - EARL PATTERSON and PATRICIA PATTERSON, 4125 Green Mountain Drive, Colorado Springs, Colorado 80921** (Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorney for Applicants, 530 Communication Circle, Suite 204, Colorado Springs, Colorado 80905, (719) 520-9288)

Application for Water Storage Rights and For Approval of Plan for Augmentation  
**EL PASO COUNTY**

**I. APPLICATION FOR WATER STORAGE RIGHTS. 2. Name of reservoir:** Patterson Pond. **A. Location of dam:** SW1/4 SW1/4 Section 33, T. 11 S., R. 67 W., 6<sup>th</sup> P.M., El Paso County, UTM\_X (meters) 508306; UTM\_Y (meters) 4321808. **B. Source:** Hay Creek. **C. Date of appropriation:** December 31, 1986. **How appropriation was initiated:** completion of dam. **Date water applied to beneficial use:** December 31, 1986. Note: the reservoir is shown on the Palmer Lake, Colo. USGS 7.5' quadrangle map dated 1986. Applicants have no personal knowledge of actual age of dam. **D. Use:** recreational, wildlife and fish raising purposes. **E. Surface area of high water line:** 0.28 acre; **maximum height of dam:** 11 feet; **length of dam:** 192 feet; **capacity of reservoir:** 0.6 acre foot; **active capacity:** 0 acre feet; **dead storage:** 0.6 acre foot. **II. PLAN FOR AUGMENTATION. 3. Names of structures to be augmented:** Patterson Pond. **4. Previous decrees for water rights to be used for augmentation:** A. Case No. 81CW213, entered by the Water Court, Water Division 2, on July 18, 1984, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Dillon Well, permit no. 17483-FR, the location of which is in the NW1/4 NE1/4 Section 35, T. 11 S., R. 67 W., 6<sup>th</sup> P.M. The amount decreed is 400 acre feet annually. "The water which is the subject of the rights claimed herein may be used for municipal, domestic, commercial and irrigation purposes. The right to apply such water to the above-specified beneficial uses shall include the right of successive use pursuant to C.R.S. §37-82-106 and the right to use, reuse, and successively use all such water to extinction and to dispose of such water, free of any limitation, restriction, or requirement as to the place of use, the amount of discharge after such use, and as to its reuse, successive use or disposition. The water may be produced for immediate application to beneficial use, for storage

and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes.” B. Case No. 83CW142, entered by the Water Court, Water Division 2, on September 25, 1987, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Arapahoe Well, permit no. 63496-F, the location of which is in the NW1/4 SE1/4 Section 27, T. 11 S., R. 67 W., 6<sup>th</sup> P.M., 2100 feet from the south section line and 2050 feet from the east section line. The amount permitted to be pumped through the Arapahoe Well is 451.3 acre feet annually, of which Applicants are in the process of purchasing the right to withdraw 0.2 acre foot annually. “Said water may be produced for immediate application to all municipal purposes and domestic, industrial, livestock, irrigation, commercial, and recreational uses, for storage and subsequent application to said uses, for exchange purposes, or replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes. **C. Source:** for both decreed water rights, nontributary Arapahoe aquifer. **Appropriation date:** not applicable. **D. Historic use:** Not applicable. **E. Land ownership:** The Patterson Pond is located on land owned by Applicants. **5. Statement of plan for augmentation.** A. Applicants will augment all out-of-priority depletions caused by evaporation from the reservoir’s surface. Because the reservoir will rarely be in priority, and evaporation under futile call conditions is uncertain, Applicants have made arrangements to purchase augmentation water in the amount of average annual net evaporative losses. Applicants’ consulting hydrologist, Peter Boddie, has determined that the net annual evaporation, taking into account a phreatophyte credit for this on-stream reservoir, is 0.19 acre foot. Net monthly evaporation is as follows: January, 0.00 AF; February, 0.00 AF; March, 0.01 AF; April, 0.03 AF; May, 0.02 AF; June, 0.03 AF; July, 0.03 AF; August, 0.01 AF; September, 0.02 AF; October, 0.03 AF; November, 0.01 AF; December, 0.00 AF. B. Applicants have reached an agreement in principle with Forest Lakes, LLC to purchase 0.19 acre foot of nontributary Arapahoe water decreed in Case No. 83CW142 to replace 0.19 acre foot of annual depletions. It is anticipated that the agreement will be executed in January 2010. C. Applicants have also reached an agreement in principle with Forest Lakes Metro District to pump the purchased water, or substitute water owned by Forest Lakes Metro District and decreed in Case No. 81CW213, which will be traded to Applicant for Applicants’ water rights and pumped through the Dillon Well, at the District’s option, into Beaver Creek. Replacement may be made either into Bristlecone Lake No. 2 (Bristlecone Reservoir), from which it shall be released in a timely fashion, or into the reservoir’s spillway, which flows directly into Beaver Creek. The location of Bristlecone Reservoir is in the SE1/4 SW1/4 Section 27, T. 11 S. R. 67 W., 6<sup>th</sup> P.M.; its south abutment is at a point approximately 2500 feet from the west section line and 20 feet from the south section line. Such replacements will be made at least once a month. D. Rather than seeking a decree for an appropriative right of exchange from the confluence of Hay Creek and Beaver Creek, Applicants shall instead augment the depletions at the confluence of

those two streams in the SE1/4 NE1/4 Section 34, T. 11 S., R. 67 W., 6<sup>th</sup> P.M.. Nothing herein is intended to prevent the Applicants from seeking administrative approval of occasional exchanges from Beaver Creek up Hay Creek to the Applicants' reservoir.

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**CASE NO. 09CW148 - KIM PEDRIE, 3707 Hay Creek Road, Colorado Springs, Colorado 80821** (Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, Colorado 80905, (719) 520-9288)

Application for Water Storage Rights and For Approval of Plan for Augmentation  
**EL PASO COUNTY**

**I. APPLICATION FOR WATER STORAGE RIGHTS. 2. Name of reservoir:** Pedrie Pond. **A. Location of dam:** NW1/4 SE1/4 Section 33, T. 11 S., R. 67 W., 6<sup>th</sup> P.M., El Paso County, UTM\_X (meters) 509034; UTM\_Y (meters) 4322123. **B. Source:** Hay Creek. **C. Date of appropriation:** September 29, 1999 **How appropriation was initiated:** completion of dam. **Date water applied to beneficial use:** September 29, 1999. Note: the reservoir is visible on an aerial photograph dated September 29, 1999. Applicant has no personal knowledge of actual age of the dam. **D. Use:** recreational, wildlife and fish raising purposes. **E. Surface area of high water line:** 0.24 acre; **maximum height of dam:** 8 feet; **length of dam:** 181 feet; **capacity of reservoir:** 0.35 acre foot; **active capacity:** 0 acre feet; **dead storage:** 0.35 acre foot. **II. PLAN FOR AUGMENTATION. 3. Names of structures to be augmented:** Pedrie Pond. **4. Previous decrees for water rights to be used for augmentation:** A. Case No. 81CW213, entered by the Water Court, Water Division 2, on July 18, 1984, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Dillon Well, permit no. 17483-FR, the location of which is in the NW1/4 NE1/4 Section 35, T. 11 S., R. 67 W., 6<sup>th</sup> P.M. The amount decreed is 400 acre feet annually. "The water which is the subject of the rights claimed herein may be used for municipal, domestic, commercial and irrigation purposes. The right to apply such water to the above-specified beneficial uses shall include the right of successive use pursuant to C.R.S. §37-82-106 and the right to use, reuse, and successively use all such water to extinction and to dispose of such water, free of any limitation, restriction, or requirement as to the place of use, the amount of discharge after such use, and as to its reuse, successive use or disposition. The water may be produced for immediate application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes." B. Case No. 83CW142, entered by the Water Court, Water Division 2, on September 25, 1987, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Arapahoe Well, permit no. 63496-F, the location of which is in the NW1/4 SE1/4 Section 27, T. 11 S., R. 67 W., 6<sup>th</sup> P.M., 2100 feet from the south section line and 2050 feet from the east section line. The amount permitted to be pumped through the Arapahoe Well is 451.3 acre feet annually,

of which Applicant is in the process of purchasing the right to withdraw 0.06 acre foot annually. "Said water may be produced for immediate application to all municipal purposes and domestic, industrial, livestock, irrigation, commercial, and recreational uses, for storage and subsequent application to said uses, for exchange purposes, or replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes." **C. Source:** for both decreed water rights, nontributary Arapahoe aquifer. **Appropriation date:** not applicable. **D. Historic use:** Not applicable. **E. Land ownership:** The Pedrie Pond is located on land owned by Applicant. **5. Statement of plan for augmentation.** A. Applicant will augment all out-of-priority depletions caused by evaporation from the reservoir's surface. Because the reservoir will rarely be in priority, and evaporation under futile call conditions is uncertain, Applicant has made arrangements to purchase augmentation water in the amount of average annual net evaporative losses. Applicant's consulting hydrologist, Peter Boddie, has determined that the net annual evaporation, taking into account a phreatophyte credit for this on-stream reservoir, is 0.06 acre foot. Net monthly evaporation is as follows: January, 0.00 AF; February, 0.00 AF; March, 0.01 AF; April, 0.02 AF; May, 0.00 AF; June, 0.00 AF; July, 0.00 AF; August, 0.00 AF; September, 0.00 AF; October, 0.02 AF; November, 0.01 AF; December, 0.00 AF. B. Applicant has reached an agreement in principle with Forest Lakes, LLC to purchase 0.06 acre foot of nontributary Arapahoe water decreed in Case No. 83CW142 to replace 0.06 acre foot of annual net depletions. It is anticipated that the agreement will be executed in January 2010. C. Applicant has also reached an agreement in principle with Forest Lakes Metro District to pump the purchased water, or substitute water owned by Forest Lakes Metro District and decreed in Case No. 81CW213, which will be traded to Applicant for Applicant's water rights and pumped through the Dillon Well, at the District's option, into Beaver Creek. Replacement may be made either into Bristlecone Lake No. 2 (Bristlecone Reservoir), from which it shall be released in a timely fashion, or into the reservoir's spillway, which flows directly into Beaver Creek. The location of Bristlecone Reservoir is in the SE1/4 SW1/4 Section 27, T. 11 S. R. 67 W., 6<sup>th</sup> P.M.; its south abutment is at a point approximately 2500 feet from the west section line and 20 feet from the south section line. Such replacements will be made not less frequently than monthly during months in which there is a net stream depletion. D. Rather than seeking a decree for an appropriative right of exchange from the confluence of Hay Creek and Beaver Creek, Applicant shall instead augment the depletions at the confluence of those two streams in the SE1/4 NE1/4 Section 34, T. 11 S., R. 67 W., 6<sup>th</sup> P.M.. Nothing herein is intended to prevent the Applicant from seeking administrative approval of occasional exchanges from Beaver Creek up Hay Creek to the Applicant's reservoir.

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**CASE NO. 09CW149 - PARKVILLE WATER DISTRICT, Attn: Greg Teter, General Manager, PO Box 45, Leadville, Colorado 80461** (Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorneys for Applicant, 530 Communications Circle, Suite 204, Colorado Springs, Colorado 80905, (719) 520-9288)

Application for Change of Water Rights, Conditional Underground Water Rights, For Conditional Appropriative Exchange Right and For Approval of Plan for Augmentation

**LAKE COUNTY**

**I. APPLICATION FOR CHANGE OF WATER RIGHTS. 2. Decreed name of structure:** Canterbury Tunnel. **A. Historical information:** i. Decree for Stevens and Leiter Ditch entered September 10, 1904 in Civil Action No. 1856 by the District Court of the Eleventh Judicial District sitting in and for the County of Chaffee; decree changing point of diversion of 3.0 cfs of the Stevens and Leiter Ditch right to Canterbury Tunnel was entered June 14, 1960 in Case No. 4918, Chaffee County District Court. **ii. Appropriation date:** September 1, 1873. **iii. Source:** For Stevens and Leiter Ditch, East Branch of the Arkansas River; for Canterbury Tunnel, ground water tributary to the East Branch of the Arkansas River. **iv. Amount and Use:** 36 cfs for placer mining, power, manufacturing, domestic, fire protection and milling purposes and other uses incident thereto, of which 3.0 cfs was transferred to the Canterbury Tunnel in Case No. 4918, Chaffee County District Court on June 14, 1960, and 1.5 cfs of that 3.0 cfs was changed to include the Arkansas Wells Nos. 1, 2 and 3 as additional points of diversion in Consolidated Case Nos. 88CW58 and 95CW6, Water Division 2, October 20, 1999. **v. Decreed Point of Diversion:** Stevens and Leiter Ditch - from a point in the NE1/4 SW1/4 Section 33, T. 8 S., R. 79 W., 6<sup>th</sup> P.M., whence the West quarter corner of Section 33, T. 8 S., R. 79 W. bears North 84 degrees 45' West 2038.9 feet; Canterbury Tunnel - the portal of the Canterbury Tunnel, at a point which bears approximately South 65 degrees 35' East 207.42 feet from Corner No. 7 of the Cass Placer, which Corner No. 7 is 660 feet East of the internal quarter corner of Section 12, T. 9 S., R. 80 W. of the 6<sup>th</sup> P.M. **B. Proposed changes:** i. Change of use to include augmentation as beneficial use. ii. Change of place of use/storage: (1) Big Evans Reservoir No. 2: located in the E1/2 SW1/4 Section 15,, T. 9 S., R. 79 W., 6<sup>th</sup> P.M. (2) Mountain Lake Reservoir: located in the SW1/4 of Section 15 and the NW1/4 of Section 22, T. 9 S., R. 79 W., 6<sup>th</sup> P.M. (3) Big Evans Reservoir: located in NE1/4 NW1/4 Section 19, T. 9 S., R. 69 W., 6<sup>th</sup> P.M. iii. Change of point of diversion from portal of Canterbury Tunnel to either or both of two new wells: (1) Canterbury Well No. 1, located in the NE1/4 SE1/4 Section 12, T. 9 S., R. 80 W., 6<sup>th</sup> P.M., Lake County, at a point 1,980 feet north of the south section line and 480 feet west of the east section line; (2) Canterbury Well No. 2, located in the NE1/4 SE1/4 Section 12, T. 9 S., R. 80 W., at a point 1,900 feet north of the south section line and 220 feet west of the east section line. The proposed locations of the Canterbury Well Nos. 1 and 2 are on land owned by Evergreen Land Co., L.P., 100 Crescent Court, Suite 1150, Dallas Texas 75201. It has been provided a copy of this

application. Big Evans Reservoir, Big Evans Reservoir No. 2 and Mountain Lake Reservoir are all located on land owned by Applicant. **C. Detailed description of proposed change:** Applicant's predecessor in interest as the owner of the water rights to be changed was Leadville Water Company, which in 1960 obtained a change in point of diversion for 3.0 cfs of the Stevens and Leiter Ditch to the portal of the Canterbury Tunnel in Case No. 4918 in Chaffee County District Court. Applicant now owns that water right, and diverted water from the portal of the Canterbury Tunnel for use in its municipal service area until 2003, when a series of collapses of the Canterbury Tunnel greatly diminished the flow of water from the tunnel. Applicant seeks to construct one or two new points of diversion for this water right by drilling vertically into the Canterbury Tunnel, thereby accessing the water which is backed up behind the cave-in. Applicant's calculated and measured annual diversions of this water right averaged 815 acre feet from 1987 through the end of 2002. The maximum annual amount was 1,003.8 acre feet in 1994. Applicant proposes to limit annual pumping to 1003.8 acre feet, and to limit pumping over a ten year running average to 8,150 acre feet. A summary of diversions 1987 through 2002 is attached to the Application as Exhibit A. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Consumptive use has not yet been determined, but it is anticipated that consumption from uses of all water rights diverted by Applicant does not exceed 35 percent of diversions, and consumptive use of water from the Canterbury Tunnel would be the same as for all other water rights owned by Applicant. Ordinarily, Applicant will pump water from Canterbury Well No. 1 and/or 2 and deliver it directly for treatment and immediate use in its municipal water system. However, if Applicant needs less than all of the water for immediate use, Applicant proposes to pump water in excess of its then-current demand, but within the monthly and annual limits, and deliver it into Big Evans Reservoir. The consumptive use component of the amount so delivered may then be stored in Big Evans Reservoir or stored by exchange at Big Evans Reservoir No. 2 or Mountain Lake Reservoir; the non-consumptive component will be released from Big Evans Reservoir into Evans Gulch for delivery to the East Branch Arkansas River. **II. APPLICATION FOR CONDITIONAL RIGHT OF EXCHANGE.** **3. A. Name of "structure":** Parkville Evans Gulch Exchange. **B. Location:** From Big Evans Reservoir, whose location is described above, up Evans Gulch to Big Evans Reservoir No. 2 and to Mountain Lake Reservoir, whose locations are also described above. **C. Amount:** 1.0 cfs, conditional. **D. Appropriation date:** December 30, 2009, the date of filing of this application. **III. APPLICATION FOR UNDERGROUND WATER RIGHTS.** **4. Comments:** There is a legal position which appears to be gaining acceptance, that a structure whose diversions are made possible only through a plan for augmentation, and not through in-priority diversions, cannot obtain an independent appropriation for such structure unless and until it diverts water in-priority. Because Applicant is not certain how this legal issue will ultimately be resolved, as a precautionary measure, Applicant hereby seeks a decree for underground water rights as follows: **A. Structure:** Canterbury Well No. 1. **i. Location:** located in the NE1/4 SE1/4 Section 12, T. 9 S., R. 80 W., 6<sup>th</sup>

P.M., Lake County, at a point 1,980 feet north of the south section line and 480 feet west of the east section line. **ii. Amount:** 3.0 cfs, conditional. **iii. Use:** All beneficial uses, including augmentation and including storage for subsequent release and use. **iv. Appropriation date:** December 30, 2009, by the filing of this application. **B. Structure:** Canterbury Well No. 2: **i. Location:** located in the NE1/4 SE1/4 Section 12, T. 9 S., R. 80 W., at a point 1,900 feet north of the south section line and 220 feet west of the east section line. **ii. Amount:** 3.0 cfs, conditional. **iii. Use:** All beneficial uses, including augmentation and including storage for subsequent release and use. **iv. Appropriation date:** December 30, 2009, by the filing of this application. **V. APPLICATION FOR PLAN FOR AUGMENTATION. 5. A. Name of structure to be augmented:** Canterbury Well No. 1 and/or 2, as discussed above. Neither of these structures is currently decreed. Applicant seeks to obtain a conditional decree for both structures, which will divert water decreed to the Stevens and Leiter Ditch and to the Canterbury Tunnel portal, as discussed in Part I above, in a combined or individual amount not to exceed 3.0 cfs. **B. Date decree entered:** September 10, 1904 in Civil Action No. 1856 by the District Court of the Eleventh Judicial District sitting in and for the County of Chaffee; decree changing the point of diversion for 3.0 cfs of that water right to the Canterbury Tunnel was entered June 14, 1960 in Case No. 4918. **C. Appropriation date:** September 1, 1873. **D. Source:** For Stevens and Leiter Ditch, East Branch of the Arkansas River; for Canterbury Tunnel, ground water tributary to East Branch of the Arkansas River. **E. Amount and Use:** 36 cfs for placer mining, power, manufacturing, domestic, fire protection and milling purposes and other uses incident thereto, of which 3.0 cfs was transferred to the Canterbury Tunnel in Case No. 4918, Chaffee County District Court on June 14, 1960, and 1.5 cfs of that 3.0 cfs was changed to include the Arkansas Wells Nos. 1, 2 and 3 as additional points of diversion in Consolidated Case Nos. 88CW58 and 95CW6, Water Division 2, October 20, 1999. **F. Decreed Point of Diversion:** Stevens and Leiter Ditch - from a point in the NE1/4 SW1/4 Section 33, T. 8 S., R. 79 W., 6<sup>th</sup> P.M., whence the West quarter corner of Section 33, T. 8 S., R. 79 W. bears North 84 degrees 45' West 2038.9 feet; Canterbury Tunnel - the portal of the Canterbury Tunnel, at a point which bears approximately South 65 degrees 35' East 207.42 feet from Corner No. 7 of the Cass Placer, which Corner No. 7 is 660 feet East of the internal quarter corner of Section 12, T. 9 S. R. 80 W. of the 6<sup>th</sup> P.M. **6. Complete statement of plan for augmentation:** For the most part, Applicant intends to utilize its Canterbury Well diversions exactly as it used the Canterbury Tunnel diversions in the past. Because the use will be the same as prior to the cave-in (i.e., municipal uses within the Applicant's service area), the amount of consumptive use and timing of stream depletions will not change. Historical consumptive use associated with use at the Canterbury Tunnel will be used to replace stream depletions associated with the same uses of water pumped from the Canterbury Well Nos. 1 and/or 2. In addition, there will be times when Applicant pumps water from the Canterbury Well Nos. 1 and/or 2 in excess of its immediate needs. The consumptive use portion of such water, currently estimated to not exceed 35 percent of diversions, can be piped directly to and



stored in Big Evans Gulch Reservoir, from whence it can also be stored in Big Evans Reservoir No. 2 and Mountain Lake Reservoir by exchange. At times when the Stevens and Leiter Ditch right is out of priority, the ongoing depletions caused by pumping ground water will be replaced by releasing to Big Evans Gulch the stored “consumptive use water” in the amount necessary to replace depletions from any combination of Big Evans Reservoir, Big Evans Reservoir No. 2 and Mountain Lake Reservoir. Any such water released from Big Evans Reservoir No. 2 or Mountain Lake Reservoir will be ushered down Evans Gulch through the lower reservoirs, rather than captured therein, so that it flows into the East Branch of the Arkansas River. Applicant also claims the right to use such augmentation water in other augmentation plans within or without its boundaries, and to lease or sell such water for use in other augmentation plans, to the extent that the augmentation water so stored is considered to be excess to Applicant’s needs in this plan for augmentation. Use of any such “excess” stored augmentation water will occur only pursuant to a substitute water supply plan approved by the State Engineer, or to a court-approved plan for augmentation.

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**CASE NO. 09CW150 – HUMBOLDT PEAK PARTNERS, LLC (“Applicant”),  
c/o Buck Blessing, 102 N. Cascade Ave., 5<sup>th</sup> Floor, Colorado Springs, CO  
80903** (Copies of all pleadings to: Charles B. White, Nicole L. Johnson, Petros  
& White, LLC, Attorneys for Applicant, 1999 Broadway, Suite 3200, Denver, CO  
80202; (303) 825-1980)

Application for Conditional Water Right, Change of Water Right, and Plan for  
Augmentation

**CUSTER COUNTY, COLORADO**

**OVERVIEW.** The Humboldt Peak Ranch Planned Unit Development (“Ranch  
PUD”) includes 80 acres in the NW1/4 SE1/4 and the SW1/4 NE1/4 of Section  
13, T. 23 S., R. 73 W., of the 6<sup>th</sup> P.M. in Custer County, Colorado. The purpose  
of this application is to adjudicate: (a) a conditional water storage right for a pond  
to be constructed on the Ranch PUD (“Humboldt Peak Pond” or “Pond”); (b) a  
change of water right for a portion of the William Conradts Ditch No. 1; and (c) a  
plan for augmentation that will replace depletions from: (1) the pumping of  
groundwater through a well (the “Humboldt Peak Well” or “Well”) that will serve  
three residential cabins located on the Ranch PUD (depicted on the map shown  
on Exhibit A, attached to the application and available for inspection at the office  
of the Water Court or on LexisNexis File and Serve, and incorporated by this  
reference, as cabins 1, 2, and 3) and a cookhouse/common facility; and (2)  
evaporation loss from the Pond. **I. CONDITIONAL WATER STORAGE RIGHT.**

**Name of structure:** Humboldt Peak Pond. **a. Pond Description:** The Pond is  
to be constructed by excavation and a non-jurisdictional earthen embankment  
720 feet in length, with a constructed height of 10.5 feet and a jurisdictional  
height of 8.0 feet. The Pond will be lined, preventing interception of groundwater.  
**i. Legal description:** The Pond is located in the SW1/4 SW1/4 NE1/4 and the  
NW1/4 NW1/4 SE1/4 of Section 13, T. 23S., R. 73W., of the 6<sup>th</sup> P.M. in Custer  
County, Colorado, and is depicted on Exhibits A and B, attached to the  
application and available for inspection at the office of the Water Court or on

LexisNexis File and Serve, and incorporated by this reference. A point on the centerline of the dam at the location of the outlet is approximately 2,785 feet from the North line and 1,980 feet from the East line of said Section 13. **ii. Source:** Macey Creek, tributary to Grape Creek, which is tributary to the Arkansas River; and precipitation and runoff in the watershed tributary to the Pond, which is tributary to Stanton Creek, tributary to the Arkansas River. **iii. Diversion Structure:** The Pond will be filled by diversions through the William Conradts Ditch No. 1, which has a capacity of 1.61 c.f.s. and diverts on the north bank of Macey Creek in the SE1/4 NE1/4, Section 23, T. 23S., R. 73W., of the 6th P.M., Custer County, Colorado, at a point approximately 820 feet from the East line and 2,340 feet from the North line of said Section 23. Its general course is northeast. **iv. Surface Area of Pond:** 1.67 acres. **v. Capacity of Pond:** 10.5 acre-feet, including approximately 3 acre-feet of dead storage. **b. Conditional Water Storage Right:** **i. Date of appropriation:** August 28, 2009, by formation of the requisite intent to appropriate and by completion of substantial steps in furtherance of such intent, including, but not limited to, filing of a Notice of Intent to Construct a Non-Jurisdictional Water Impoundment Structure with the Office of the State Engineer, Division of Water Resources. **ii. Amount claimed:** 10.5 acre-feet, conditional. **iii. Rate of diversion:** 1.61 c.f.s., conditional. **iv. Proposed :** Aesthetic, piscatorial, recreation, wildlife habitat, and fire suppression **II. CHANGE OF WATER RIGHT.** The Applicant seeks approval of the alternate use of replacement and augmentation, and an alternate manner of use for storage in the Pond, of the portion of the William Conradts Ditch No. 1 water right that will be removed from irrigation pursuant to the augmentation plan described above. **a. Name of Structure:** William Conradts Ditch No. 1, as decreed on March 12, 1896 and April, 1893, by the Fremont County District Court. **b. Amounts, Priorities and Appropriation Dates:**

Priority No.	Total Decreed Amount (c.f.s.)	Appropriation Date
3A	0.2	07/01/1869
4A	0.89	09/01/1869
61A	0.21	06/01/1873
177	0.31	05/01/1876

**c. Type:** Surface water right. **d. Source:** Macey Creek, tributary to Grape Creek, tributary to the Arkansas River. **e. Legal Description of Point of Diversion:** The decreed location of the point of diversion of the William Conradts Ditch No. 1 is on the north bank of Macey Creek, at a point whence the SW corner NW1/4 NW1/4 Section 24, Township 23 South, Range 73 West bears North 40 degrees East 1350 feet, and in the NE1/4 NE1/4 Section 13. The point of diversion can also be described as located on the north bank of Macey Creek in the SE1/4 NE1/4, Section 23, T. 23S., R. 73W., of the 6th P.M., Custer County, Colorado, at a point approximately 820 feet from the East line and 2,340 feet from the North line of said Section 23. Its general course is northeast. **f. Decreed Use:** Irrigation of 90 acres of land lying in the SW1/4 NE1/4 and NW1/4 SE1/4, Section 13, and the North 1/2 SW1/4, Section 13, Township 23 South, Range 73 West, 6<sup>th</sup> P.M. **g. Historic Use:** Based upon historic records

maintained by the State and Division Engineer, the average annual diversion from the William Conradts Ditch No. 1 for the period 1975 through 2008 was 165.1 acre feet. A table summarizing those diversions is included as Exhibit C, attached to the application and available for inspection at the office of the Water Court or on LexisNexis File and Serve, and incorporated by this reference. The William Conradts Ditch No. 1 has historically been and continues to be used to irrigate 65 acres of land located in said Section 13, as depicted on Exhibits A and B. The number of acres irrigated was determined by field inspections and examination of aerial photographs of the area. Historic consumptive use on the subject 65 acres was calculated for the period of record 1975 through 2008. For this analysis, the assumed ditch loss for the William Conradts Ditch No. 1 is 10%. Maximum irrigation efficiency for the William Conradts Ditch No. 1 is 60%. Average annual stream depletions attributable to irrigation of 65 acres of meadow grass were 77.2 acre-feet, or 1.19 acre-feet per acre. A table summarizing those depletions is attached as Exhibit D, attached to the application and available for inspection at the office of the Water Court or on LexisNexis File and Serve, and incorporated by this reference. **h. Amount of Water Right to be** : As discussed in Paragraphs 5 through 7, a total of 4.24 acres, representing 6.5% of the 65 acres of the land historically irrigated by the William Conradts Ditch No. 1 water right, is expected to be removed from irrigation. The Applicant seeks approval of the alternate use of replacement and augmentation, and an alternate manner of use for storage, of the following portions of each priority of the William Conradts Ditch No. 1 water rights, representing 6.5% of each priority:

Priority No.	Portion To Be Changed (c.f.s.)
3A	0.013
4A	0.0579
61A	0.0137
177	0.0202

a. If more or less than 4.24 acres of land historically irrigated by the William Conradts Ditch No. 1 is removed from irrigation, the portion of each of the foregoing priorities to be changed will be adjusted accordingly. **III. PLAN FOR AUGMENTATION. Structures to be Augmented:** **a. Humboldt Peak Cookhouse Well:** **i. Legal Description:** The Well will be located in the NW1/4 NW1/4 SE1/4 of Section 13, T. 23 S., R. 73 W., of the 6<sup>th</sup> P.M. in Custer County, Colorado at a point approximately 2,375 feet from the East line and approximately 2,770 feet from the North line of said Section 13, and is depicted on Exhibit A. **ii. Source:** Alluvial groundwater tributary to Stanton Creek, tributary to Grape Creek, tributary to the Arkansas River. **iii. Maximum pumping rate:** 15 g.p.m. **iv. Total diversions:** 1.76 acre-feet per year. The estimated diversions are based on the following assumptions: 100% occupancy of 3.5 persons year round in each of the three residential cabins to be served by the Well, per capita water use of 100 gallons per day, total water use in the cookhouse of 300 gpd (year round), 2,000 square feet of irrigation per cabin site and an irrigation requirement of 21 inches per year. See Exhibit E, attached to

the application and available for inspection at the office of the Water Court or on LexisNexis File and Serve, and incorporated by this reference, for a summary of the monthly demands. v. **Consumptive use:** 0.35 acre-feet per year. Domestic waste water from the three cabins and cookhouse/common facility will be treated using conventional septic tank and leach field facilities, and are assumed to be 10% consumptive. The irrigation uses are assumed to be 80% consumptive. vi. **Return Flows:** Water pumped from the Well that is not consumed by domestic use or irrigation demands will return as domestic wastewater and irrigation return flows to the Stanton Creek stream system. Because the cabins are to be located in close proximity to Stanton Creek, ninety percent of return flows from domestic use and lawn irrigation are expected to reach the stream within the same month of diversion and all return flows are expected to reach the stream within two months of diversion. b. **Humboldt Peak Pond:** i. **Description:** See Paragraph 3 for a description of the Pond. ii. **Consumptive Use:** 4.67 acre-feet annual evaporative loss based on an annual evaporation rate of 33.56 inches (2.80 acre-feet per year), assuming the Pond is full throughout the year, and after adjusting for ice cover from November 15 through March 15. See Exhibit E for a summary of monthly evaporation losses. Upon completion of the new pond, the total surface area measured at the normal high water line will be determined by survey. If the surface area is greater than 1.67 acres, the evaporation loss from the Pond will be estimated using the acreage of the surveyed high water line multiplied by 2.8 acre-feet/acre. **Water Rights to be Used for Augmentation:** William Conradts Ditch No. 1, see Paragraph 4 for a complete description of the water right. a. **Statement of Augmentation Plan:** The total annual augmentation requirement is estimated to be 5.03 acre-feet. If the surface area of the Pond is greater than 1.67 acre-feet, the total annual augmentation requirement (“X”) shall be the sum of 0.35 acre-feet of domestic consumptive use plus annual evaporation loss from the Pond, the latter being estimated using the acreage of the surveyed high water line multiplied by 2.8 acre-feet/acre. b. Based on the historic irrigation depletions of 1.19 acre-feet per acre, the Applicant will augment depletions associated with evaporative loss from the Pond and groundwater pumping for domestic water use by removing from irrigation 4.24 acres of land in the Stanton Creek drainage historically irrigated under the William Conradts Ditch No. 1 water rights described in Paragraph 4 above. If the surveyed surface area of the Pond is greater than 1.67 acre-feet, the Applicant will augment its actual out-of-priority depletions by removing from irrigation “T” acres of land, as determined by the formula:  $T = X/1.19$ , where X is the total annual augmentation requirement (see Paragraph 6.a). c. The approximately 2.5 acres of land which is the proposed footprint of the Pond and dam embankment was historically irrigated by the William Conradts Ditch No. 1 water rights, and its removal from irrigation will result in augmentation credits of 2.97 acre-feet annually (2.5 acres x 1.19 ac-ft/acre). The actual acreage removed from production by construction of the Pond (“P”) will be determined by survey upon completion of the Pond and will include the Pond water surface area, together with the area occupied by the dam embankment. d. As part of the planned development, the Applicant will

construct new roads to provide access to the building sites over ground currently irrigated by the William Conradts Ditch No. 1. The construction of these roads would remove about 0.5 acres from irrigation, resulting in augmentation credits of 0.59 acre-feet annually (0.5 acres x 1.19 ac-ft/acre). Upon completion of the roads, the final, "as-built" road acreage ("R") will be determined by survey. e. As part of the planned development, the Applicant will construct up to 6 new residential cabins and a cookhouse/common facility over historically irrigated ground. Three of these cabins may be located partially or entirely within the 65 acres historically irrigated by the William Conradts Ditch No. 1 water right, as will the cookhouse/common facility. Upon completion of each structure the final building area located within the historically irrigated acreage ("B") will be determined by survey. f. In addition to the removal from irrigation resulting from construction of the pond, roads and buildings, approximately 1.24 acres of historically irrigated land under the William Conradts Ditch No. 1 will be removed from production, resulting in augmentation credits of 1.47 acre-feet/year. If there are changes in the surface area of the Pond or estimated dry-up from construction of the Pond, new roads, or new buildings, the additional dry-up acreage necessary to achieve the total annual augmentation requirement will be determined by the following formula:  $D = (X - ((P + R + B) * 1.19)) \div 1.19$  where D is the additional dry-up acreage necessary to achieve the total annual augmentation requirement; X is the total annual augmentation requirement (see Paragraph 6.a); P is the total pond footprint (see Paragraph 6.c); R is the total road footprint (see Paragraph 6.d); and B is the total building footprint (see paragraph 6.e). g. The "dry-up" area will be located in the NE ¼ SW ¼ and the NW ¼ SW ¼ of Section 13, Township 23 South, Range 73 West, 6<sup>th</sup> P.M. ("the Dry-Up Parcel") and is depicted on Exhibit A, attached to the application and available for inspection at the office of the Water Court or on LexisNexis File and Serve, and incorporated by this reference. The Dry-Up Parcel will not be irrigated in the future unless and until (a) the Pond and the Well are abandoned and the Ruling and Decree entered in this Case is modified accordingly by petition to the Court and upon notice to objectors; or (b) a separate appropriation of water or change of water rights allowing irrigation of the Dry-Up Parcel is confirmed or approved by separate judgment and decree of the District Court for Water Division No. 2, State of Colorado. The Dry-Up Parcel is not naturally sub-irrigated. The Applicant will execute and record a dry-up covenant against the Dry-Up Parcel. h. The Applicant will limit headgate diversions at the William Conradts Ditch No. 1 to the historic volume and time of diversions as follows: diversions will be made only (A) when the water right is legally and physically in priority; (B) from May 1 through October 1; (C) up to a maximum annual diversion of 358 acre-feet; and (D) up to a maximum diversion of 3,300 acre-feet in any consecutive 20-year period. i. The removal from irrigation of 4.24 acres historically irrigated by the William Conradts Ditch No. 1 will fully offset the consumptive use of 5.03 acre-feet on an annual basis. If consumptive use is greater than 5.03 acre-feet, the total acreage historically irrigated by the William Conradts Ditch No. 1 to be removed from irrigation ("T") will be increased to fully offset the total consumptive use ("X") on an annual basis. As shown on Exhibit

E, attached to the application and available for inspection at the office of the Water Court or on LexisNexis File and Serve, and incorporated by this reference, there will be excess augmentation credits during June and July and small shortages from March through May, and August through November. The Applicant is proposing to fully replace its annual consumptive use during the summer irrigation season from May through October. j. Water will continue to be diverted at the William Conradts Ditch headgate in the manner and amounts as was the historic practice and as limited by Paragraph 7.h. Replacement credits will accrue to this augmentation plan as a result of the removal from irrigation of the Dry-Up Parcel, the pond footprint, road footprints, and new building footprints. Replacement water in the amount of 4.67 acre-feet, or that amount necessary to offset total evaporation loss if the surface area of the Pond is greater than 1.67 acres, will be diverted into the Pond. The remaining replacement water will reach Stanton Creek by carriage through the ditch or seepage from the ditch, to replace groundwater diversions from the Well tributary to Stanton Creek. k. The foregoing calculations of water diversions, depletions, and consumptive use credits are estimates that may be modified in any decree to be submitted to the Court without amendment of this application. l. This plan for augmentation will allow the construction and use of the Pond and Well, under the terms and conditions described herein, in a manner that will prevent injury to vested water rights and decreed conditional water rights. **Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant. WHEREFORE, Applicant respectfully requests that the Court enter a decree awarding the conditional water right claimed herein and approving the change of water right and plan for augmentation described herein, and specifically determining that the vested or conditionally decreed water rights of others will not be materially injured thereby.

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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 2010, (forms available at Clerk's office or at [courts.state.co.us](http://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, 2010.



*Mardell R. DiDomenico*

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Mardell R. DiDomenico, Clerk  
District Court, Water Div. 2  
Pueblo County Judicial Building  
320 W. 10th Street  
Pueblo, CO 81003; (719) 583-7048

(Court seal)

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