

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING
DECEMBER 2010

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 and/or ordered published during December 2010, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 08CW35 – RAY E. DAWSON, 10544 Hwy. 24 S., P. O. Box 1287, Leadville, CO 80461; (719) 486-0438

Amended Application for Surface Water Rights and Right of Exchange

LAKE COUNTY

Name of structures: Dawson Ditches 1-4. **Legal description of each point of diversion:** All points are located in Section 10, Township 10 South, Range 80 West, 6th P.M.:

Point of Diversion	GPS Coordinates	West Section Line (ft.)	North Section Line (ft.)	Q40	Q160
Ditch Headgate 1	0385825, 4339895	1,820	0	NE/4	NW/4
Ditch Headgate 2	0385473,4339542	698	1,156	NW/4	NW/4
Ditch Headgate 3	0385412,4339411	503	1,589	SW/4	NW/4
Ditch Headgate 4	0385363, 4339311	347	1,919	SW/4	NW/4

Source: Iowa Gulch. **Date of initiation of appropriation:** 1908 or earlier; **How appropriation was initiated:** Construction of ditches; **Date water applied to beneficial use:** 1908 or earlier. **Amount claimed in cfs:** 3 cfs total for all four ditches (Absolute). Ditches to serve as alternate points of diversion to each other. **Use:** Irrigation. **Number of acres historically irrigated:** 80; **proposed to be irrigated:** 80. **Legal description of acreage:** 35 acres of hay land and 45 of pasture land. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Maxine Reddy Trust (Moyer) (Ditch No. 1), c/o Porzak Browning & Bushong, LLP, 929 Pearl Street, Suite 300, Boulder, CO 80302. **Remarks:** Applicant also claims an absolute right of exchange from the confluence of Lake Creek and the Arkansas River up to Dawson Ditch No. 1 for 3 cfs and 100 acre-feet/year with an appropriation date of May 1, 2008. Appropriation was made by leasing water from the City of Aurora from Twin Lakes Reservoir and exchanging this water up to Dawson Ditches 1-4. "Exchange From" Point (Lake Creek and Arkansas River): NW/4 of the SW/4, Section 24, Township 11 South, Range 80 West, 6th PM, approximately 1,880 feet from the east section line and 2,525 feet from the south section line.

“Exchange To” Point (Dawson Ditch No. 1): NE/4 of the NW/4, Section 10, Township 10 South, Range 80 West, 6th P.M., approximately 1,820 feet from the west section line and 0 feet from the north section line.

CASE NO. 10CW24 – ANTHONY and JUDITH CUCUZZA, 10195 Kurie Road, Colorado Springs, CO 80908 (James J. Petrock and Kara N. Godbehere, Petrock & Fendel, P.C., Attorneys for Applicants, 700 Seventeenth Street, Suite 1800, Denver, CO 80202; (303) 534-0702)

Amended Application for Approval of Plan for Augmentation

EL PASO COUNTY

2. The original application requested approval for the withdrawal of 3 acre-feet per year for 300 years of not nontributary Dawson aquifer groundwater available underlying the Subject Property as decreed in Case No. 00CW84, District Court, Water Division 2. The Subject Property is comprised of approximately 70.8 acres of land which is generally located in part of Section 29, T12S, R65W of the 6th P.M., as described and shown on Attachment A to the Amended Application ("Subject Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The purpose of this amended application is to amend the augmentation plan for use of the Dawson aquifer water for a 100 year period, and to also allow use of not nontributary Denver aquifer groundwater underlying the Subject Property for a 200 year period. **3. Amended Request for Approval of Plan for Augmentation: A. Groundwater to be augmented:** 6.7 acre-feet per year for 100 years of not nontributary Dawson aquifer groundwater and 6.7 acre-feet per year for 200 years of not nontributary Denver aquifer groundwater underlying the Subject Property as decreed in Case No. 00CW84. **B. Water rights to be used for augmentation:** Return flows from the use of not nontributary Dawson and Denver aquifer groundwater and return flows and direct discharge of nontributary Laramie-Fox Hills aquifer groundwater underlying the Subject Property as also previously decreed in Case No. 00CW84. **C. Statement of plan for augmentation:** The subject Dawson and Denver aquifer groundwater may be used to serve up to twelve residential lots through individual wells, including existing Well Permit Nos. 228940 and 203335, for inhouse, irrigation and stockwatering use (approximately 0.56 acre-feet per well). In the alternative, all or parts of the Dawson and Denver aquifer groundwater may be used for commercial and irrigation use. Applicants reserve the right to amend the amounts and values based on final planning of the Subject Property without having to amend or republish this application. Sewage treatment for inhouse and commercial use will be provided by non-evaporative septic systems and consumptive use associated with that use will be approximately 10% of water used. Consumptive use associated with irrigation use will be approximately 90% of water used. **D.** Applicants will replace actual depletions to the affected stream system for pumping of the Dawson aquifer groundwater and 4% of the annual amount withdrawn for pumping of the Denver aquifer groundwater pursuant to Section 37-90-137(9)(c), C.R.S. Depletions occur to the Arkansas River and Monument Creek stream system. Return flows from use of the water will accrue

to the Arkansas River system systems and those return flows are sufficient to replace required depletions while the subject groundwater is being pumped. Applicants will reserve an equal amount of nontributary Laramie-Fox Hills aquifer groundwater as decreed in Case No. 00CW84 to meet post-pumping augmentation requirements.

CASE NO. 10CW75 – JAMES D. STETLER and LAURA L. AIELLO, P. O. Box 373, Walsenburg, CO 81089; (719) 244-8853

Amended Application for Underground Water Rights

HUERFANO COUNTY

Name of well and permit, registration, or denial number: 233286-A. **Legal description of well:** Huerfano County, NE ¼ of the NW ¼ Section 12, Township 29 South, Range 66 West, 6th P.M., 475 feet from the North line and 1902 feet from the West line. **Street Address:** 201 Hoofprint Ct., Walsenburg, CO 81089; **Subdivision:** Silver Spur; **Lot:** 68; **Filing:** #4. **Source of water:** Raton Basin. **Depth of well:** 550 ft. **Date of appropriation:** Permit to construct a well issued 4-13-2006. **How appropriation was initiated:** Arkansas Valley. **Date water applied to beneficial use:** 7-27-2006. **Amount claimed:** 15 gpm Absolute. **Proposed use:** Fire protection, ordinary household purposes inside not more than 3 single family residences, watering of poultry, domestic animals and livestock and not more than 1 acre of home gardens and lawn. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

CASE NO. 10CW78 – BRIAN and ANDREA MANNING, 57 Rowell Road, Walsenburg, CO 81089; (914) 439-7095

Amended Application for Underground Water Rights

HUERFANO COUNTY

Name of well and permit, registration, or denial number: Manning; Permit 259501. **Legal description of well:** Huerfano County, NE ¼ of the NW ¼ Section 2, Township 29 South, Range 66 West, 6th P.M., 360 feet from the North line and 1405 feet from the West line. **Street Address:** 57 Rowell Road, Walsenburg, CO 81089; **Subdivision:** Silver Spurs; **Lot:** 57; **Block:** 4. **Source of water:** Ground Water. **Depth of well:** 570 ft. **Date of appropriation:** 9/28/04. **How appropriation was initiated:** Drilled well. **Date water applied to beneficial use:** 6/24/2006. **Amount claimed:** 6 gpm Absolute. **Proposed use:** Domestic, fire protection, 1 acre lawn and garden, watering domestic animals. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

**CASE NO. 10CW83 – ORLIE WHITE, 4451 Silver Spurs Road, Walsenburg,
CO 81089; (845) 417-7905**

Application for Underground Water Right

HUERFANO COUNTY

Name of well and permit, registration, or denial number: Orlie; Permit No. 219376. **Legal description of well:** Huerfano County, NE ¼ of the SW ¼ Section 24, Township 29 South, Range 66 West, 6th P.M., 2310 feet from the South line and 2635 feet from the West line. **Street Address:** 4451 Silver Spurs Road, Walsenburg, CO 81089. **Subdivision:** Silver Spurs Ranch; **Lot:** 133. **Source of water:** Ground water. **Depth of well:** 380 feet. **Date of appropriation:** 7/12/2000; **How appropriation was initiated:** Well drilled. **Date water applied to beneficial use:** 7/12/2000. **Amount claimed:** 10 gpm Absolute. **Proposed use:** Household use only, 3 homes, domestic animals, 1 acre of lawn and garden irrigation. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

**CASE NO. 10CW84; Previous Case No. 04CW53 – MARY B. SAVAGE-
TIBBETTS, 3000 S. Jasmine Street, Denver, CO 80220; (303) 757-3117**

Application for Finding of Reasonable Diligence

PARK COUNTY

Name of structure: Hope Spring. **Date of Original Decree:** November 23, 2004 [Court records indicate the ruling of referee was filed on November 23, 2004, and the Decree was entered on December 21, 2004]; **Case No.:** 04CW53. **Court:** District Court Water Division 2. **Legal description:** Park County, NE ¼ of the SE ¼ Section 29, Township 14 South, Range 72 West, 6th P.M., 2,470 feet from the South line and 200 feet from the East line. **Street Address:** Old Kathleen Trail; **Subdivision:** Old Kathleen Ranch; **Lot:** 60. **Source of water:** Natural spring. **Appropriation Date:** July 16, 2004; **Amount:** 8 gpm. **Use:** Livestock, wildlife, fire protection and storage purposes as absolute uses; domestic purposes inside one home and one guest house, garden irrigation, and recreation as conditional uses. **Detailed outline of what has been done for completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed:** Depressed economy has prevented us from making any at this point in time. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

CASE NO. 10CW85 – LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION (“LAWMA”), c/o Donald F. Higbee, Manager, 310 South 6th Street, P. O. Box 1161, Lamar, CO 81052

(Richard J. Mehren and Aaron S. Ladd, Moses, Wittemyer, Harrison & Woodruff, P.C., Attorneys for Applicant, P. O. Box 1440, Boulder, CO 80306-1440; (303) 443-8782)

Application for Change of Water Rights

BENT AND PROWERS 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 water rights that are the subject of this application (“Water Rights”) are described in paragraph 3 below. The purpose of this application is to change the use of the Water Rights that are currently decreed for agricultural irrigation purposes to allow them to be used by LAWMA for augmentation purposes and all other beneficial uses. **CHANGE OF WATER RIGHTS**

3. Description of Water Rights to be changed:

A. Sisson Ditch: LAWMA is the owner of all 18.0 cfs of the Sisson Ditch water right. Historical diversions of the Sisson Ditch water right are shown on Exhibit A-1a and A-1b attached to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Sisson Ditch water right was historically used for agricultural irrigation purposes on the parcels depicted on Exhibit A-2 attached to the Application. (1) Appropriation Date, Priority No. and Amount: December 1, 1891, Priority No. 19 for 18.0 cfs. (2) Original Decree: Unnumbered adjudication titled “In the Matter of the Adjudication of Priorities of the Right to the Use of Water for Domestic and Irrigation Purposes in Water District No. 67” entered November 4, 1909 in the District Court in and for Bent County. (3) Decreed and Permitted Points of Diversion: By Order of the Colorado State Engineer on May 12, 1969, 7.0 cfs of the 18.0 cfs of the Sisson Ditch water right was permitted to be diverted by a pump or pumps along the Arkansas River. By decree of the District Court for Water Division No. 2 in Case No. W-3353, dated May 16, 1975, 5.5 cfs of the 18.0 cfs of the Sisson Ditch water right was decreed for diversion at Well No. 017759-F (SEO I.D. No. 6705809) and 5.5 cfs of the 18.0 cfs of the Sisson Ditch water right was decreed for diversion at Well No. 017760-F (SEO I.D. No. 6705808). Well No. 017759-F is located in the NW¼ of the NW¼ of Section 20, Township 23 South, Range 42 West of the 6th P.M., Prowers County, Colorado. Well No. 017760-F is located in the NW¼ of the SE¼ of Section 20, Township 23 South, Range 42 West of the 6th P.M., Prowers County, Colorado. Historical diversions of the Sisson Ditch water right through the said wells are shown on Exhibit A-1c to the Application. The location of the said wells are depicted on Exhibit A-2 to the Application along with the parcels historically irrigated with the Sisson Ditch water right. (4) Source: The Arkansas River and groundwater tributary to the Arkansas River. (5) Decreed use: Irrigation. (6) Amount to be changed by this application: 18.0 cfs. **B. Fort Bent**

Ditch: LAWMA is the owner of 144 shares of the 11,651.2 total shares outstanding of the capital stock of the Fort Bent Ditch Company. Historical diversions of the Fort Bent Ditch water rights are shown on Exhibit B-1a and B-1b attached to the Application. These shares were historically used for agricultural irrigation purposes on the lands depicted on Exhibit B-2 attached to the Application. (1) Appropriation dates, Priority Nos. and amounts: (a) April 1, 1886, Priority No. 6 for 27.77 cfs. (b) March 10, 1889, Priority No. 10 for 32.77 cfs. (c) September 11, 1889, Priority No. 12 for 11.7 cfs. (d) August 12, 1890, Priority No. 14 for 26.27 cfs. (e) January 1, 1893, Priority No. 1918-2 for 50 cfs. (f) December 31, 1900, Priority No. 1918-9 for 80 cfs. (2) Original Decree for Priority Nos. 6, 10, 12 and 14: Unnumbered adjudication titled “In the matter of the Adjudication of Priorities to the use of Water for Irrigation in District Number 67” entered: July 1, 1895 in the District Court in and for Bent County District Court. (3) Original Decree for Priority Nos. 1918-2 and 1918-9: Unnumbered adjudication titled “In the Matter of the Adjudication of Water Rights and priorities to the use of Water in Water District Number Sixty-seven, in the State of Colorado” on October 14, 1918 in the District Court in and for Bent County. (4) Decreed Point of Diversion: The decreed headgate location is at “a point on the South bank of the Arkansas River, which point is located as follows: at a point whence it is South 48°17' East 438 feet to the Southwest corner of Lot Four (4), in Section One (1), Township Twenty-three (23) South, Range Forty-nine (49) West of the Sixth Principal Meridian, in Bent County, Colorado.” (5) Source: The Arkansas River. (6) Decreed use: Irrigation. (7) Amount to be changed by this Application: LAWMA seeks to change a total of 144 shares of the 11,651.2 total shares outstanding of the capital stock of the Fort Bent Ditch Company. The 144 shares to be changed herein represent a pro rata interest in the Fort Bent Ditch Company water rights as follows: (a) Priority No. 6: 0.34 cfs of the 27.77 cfs. (b) Priority No. 10: 0.41 cfs of the 32.77 cfs. (c) Priority No. 12: 0.14 cfs of the 11.7 cfs. (d) Priority No. 14: 0.32 cfs of the 26.27 cfs. (e) Priority No. 1918-2: 0.62 cfs of the 50 cfs. (f) Priority No. 1918-9: 0.99 cfs of the 80 cfs.

C. Highland Canal (a/k/a “Highland Irrigation District Canal”): LAWMA is the owner of 2.75 cfs of the 62.5 cfs of the Highland Canal water rights. Historical diversions of the Highland Canal water rights are shown on Exhibit C-1 attached to the Application. The Highland Canal water rights owned by LAWMA were historically used for agricultural irrigation purposes on the parcels depicted on Exhibit C-2 attached to the Application. (1) Appropriation dates, Priority Nos. and amounts: (a) May 31, 1866, Priority No. 27 for 16.6 cfs. (b) April 1, 1884, Priority No. 97 for 7.4 cfs. (c) March 1, 1909, Priority No. 120 for 38.5 cfs. (2) Original decree for Priority Nos. 27 and 97: Unnumbered adjudication titled “In the Matter of the Adjudication of Priorities of Right to the Use of Water in Water District No. 19” entered August 10, 1903 in the District Court in and for Bent County. (3) Original Decree for Priority No. 120: Unnumbered adjudication titled “In the Matter of the Adjudication of Water Rights and Priorities to the Use of Water in Water District No. 17, Colorado,” entered August 30, 1922 in the District Court in and for Bent County. (4) Decreed point of diversion: The decreed headgate location is “at a point in the County of Bent, State of Colorado, on the West bank

of the Purgatoire or Las Animas River, whence the Southwest corner of Section 1, Township 25 South, Range 53 West of the Sixth P.M., bears South 38°45' West 2,395 feet.” (5) Source: The Purgatoire or Las Animas River. (6) Decreed use: Irrigation. (7) Amount to be changed by this application: (a) 0.73 cfs of the 16.6 cfs decreed to Priority No. 27. (b) 0.33 cfs of the 7.4 cfs decreed to Priority No. 97. (c) 1.69 cfs of the 38.5 cfs decreed to Priority No. 120.

4. Proposed changes: A. New types and places of uses: LAWMA requests that the type and place of use of the Water Rights be changed from agricultural irrigation purposes to use for irrigation, domestic, commercial, municipal, industrial, fire protection, recreation, fish and wildlife preservation and propagation, and all other beneficial uses of LAWMA and its members by means of augmentation or replacement of depletions in the Arkansas River or its tributaries. LAWMA also seeks the right to use and re-use to extinction the consumptive use credits associated with the Water Rights. LAWMA also requests approval to use the Water Rights for augmentation and replacement purposes in LAWMA’s plan for augmentation as decreed in Case No. 02CW181, District Court, Water Division No. 2, entered March 2, 2007. B. New points of diversion and/or storage: LAWMA requests the Highland Canal water rights described in Paragraph 3.C., above, be changed to allow diversion and/or storage in John Martin Reservoir including, without limitation, the Offset Account in John Martin Reservoir. John Martin Reservoir is formed by a dam, the center point of which is located in Section 8, Township 23 South, Range 49 West of the 6th P.M., approximately 3,600 feet west from the east section line, and 1,400 feet south from the north section line of said Section 8. The reservoir inundates portions of Sections 5, 6, 7, 8, 17 and 18, Township 23 South, Range 49 West; Sections 29, 31, 32, 33, 34 and 35, Township 22 South, Range 50 West; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20 and 21, Township 23 South, Range 50 West; Sections 25, 34, 35 and 36, Township 22 South, Range 51 West; and Sections 1, 2, 3, 4, 9 and 10, Township 23 South, Range 51 West, all of the 6th P.M., State of Colorado.

5. Resolution Concerning an Operating Plan for John Martin Reservoir adopted April 24, 1980, and amended May 10, 1984, December 11, 1984 and February 11, 2010 (“1980 Operating Plan”). The 1980 Operating Plan provides that 60% of the water attributable to conservation storage in John Martin Reservoir shall be for the Colorado Water District 67 ditches, including the Sisson Ditch water right described in Paragraph 3.A., above, and the Fort Bent Ditch water rights described in Paragraph 3.B., above, and 40% for Kansas (“Article II Storage Accounts”). LAWMA intends to use the Article II Storage Account water for the Sisson Ditch water right described in Paragraph 3.A., above and the Fort Bent Ditch water rights described in Paragraph 3.B., above, for the uses described in Paragraph 4., above.

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, including any modification to the existing storage pool: A. **John Martin Reservoir.** United States Army Corps. of Engineers, Reservoir Manager, 29955 County Road

25.75, Hasty, Colorado 81044. WHEREFORE, LAWMA respectfully requests this Court to enter a decree approving this change of water rights and granting all such other and further relief, whether legal or equitable, as the Court may determine necessary or desirable for the purpose of according full relief.

CASE NO. 10CW86; Previous Case Nos. 97CW56, 04CW49(97CW56) – WOODS AND TRAILS, INC., P. O. Box 1351, Leadville, CO 80461 (Robert F.

T. Krassa, Krassa & Miller, LLC, Attorney for Applicant, 2344 Spruce Street, Suite A, Boulder, CO 80302; (303) 442-2156

Application for Finding of Reasonable Diligence

LAKE COUNTY, COLORADO

2. Names of Structures: The conditional water rights which are the subject of this Application are the following wells: Parcel A Well and Parcel C Well. **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **a. Date of Original Decree:** Jul 28, 1988, Case 97CW56, Water Division No. 2. **b. Subsequent decrees awarding findings of diligence:** Case 04CW49 decree entered December 14, 2004. **c. Location of structures:** Parcel A Well is located in the SE 1/4 SE 1/4 Sec. 5, Township 11 South, Range 80 West of the 6th P.M. in Lake County, Colorado at a point 500 feet north of the south section line and 500 feet west of the east section line. The Parcel C Well is located in the SE 1/4 SE 1/4 Sec. 5, Township 11 South, Range 80 West of the 6th P.M. in Lake County, Colorado at a point 100 feet north of the south section line and 125 feet west of the east section line. Also described as Parcels A and C of Majestic Mountain Ranch Subdivision, Lake County, Colorado. Street addresses: Parcel A is 1385 CR 24, Twin Lakes, CO 81251, and Parcel C is 1284 CR 24, Twin Lakes, CO 81251. **d. Source:** groundwater tributary to Lake Creek, tributary to the Arkansas River. **e. Date of Appropriation:** April 14, 1997 for Parcel A and Parcel C Wells. **f. Amounts of Water:** Parcel A Well - 4 gallons per minute out of the total of 15 gallons per minute of the Parcel A well is still conditional, as 11 gallons per minute were made absolute in Case 04CW49. Parcel C well - 15 gallons per minute, conditional. **g. Use:** Water from the subject wells will be used for commercial, domestic, irrigation, and stock water purposes on the Majestic Mountain Ranch Subdivision, as described herein. **h. Depth of wells:** anticipated depth 150 to 200 feet each well. **4. Provide a detailed outline of what has been done toward completion or for completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** During the diligence period, Applicant has proceeded with development and marketing of the property, and has consulted with a local well driller in regard to increasing production of water from the Parcel A Well and in regard to drilling and equipping the Parcel C Well. Applicant has diligently tried to market Parcels A and C, and has those parcels listed for sale with reputable Realtors. These water rights constitute an important and valuable component of the value of the parcels, but until the parcels are sold, it will not be economically feasible to construct or operate the Parcel C well nor to obtain a hydrogeologic evaluation as to the best way to increase the production of water from the Parcel A well.

Due to the economic downturn, which is a circumstance beyond the control of Applicant, the parcels have not been sold, and it has not been economically reasonable to proceed with re-equipping or construction of the wells at this time. Applicant has in all respects diligently worked toward placing these water rights to beneficial use. **5. If claim to make absolute.** not applicable. **6. Names and addresses of owners of the land on which structures are or will be located:** Parcel A well: Applicant; Parcel C well: Applicant. WHEREFORE, Applicant requests that the Court find that Applicant has been reasonably diligent in regard to the subject conditional water rights, and that the Court continue the conditional right for the remaining 4 gpm for the parcel A well and for the entire 15 gpm conditional right of the Parcel C well.

CASE NO. 10CW87 – THE TOWN OF PALMER LAKE, c/o Mayor John Cressman, P.O. Box 208, Palmer Lake, Colorado 80133 (Harvey W. Curtis, Esq. and David L. Kueter, Harvey W. Curtis & Associates, Attorneys for Applicant, 8310 South Valley Highway, Suite 230, Englewood, Colorado 80202, Telephone: (303) 292-1144, hcurtis@curtis-law.com.)

Application for Approval for Appropriative Rights of Substitution and Exchange.

EL PASO COUNTY.

2. Exchange-To Points: The names and locations of structures through which or into which water will be diverted and/or stored by exchange and the sources of water at the exchange-to points are as follows: **2.a. Names and locations of exchange-to points:** **2.a.(1) Anchor Ditch (a/k/a Monument Ditch):** Historic point of diversion located on North Monument Creek, a/k/a Middle Monument Creek, in the SW 1/4 of the SE 1/4 of Section 6, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado. **2.a.(2) Palmer Lake Water System.** Historic point of diversion located on North Monument Creek, a/k/a Middle Monument Creek, in the SW 1/4 of the SE 1/4 of Section 6, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado. **2.a.(3) Glen Park Reservoir.** Located on North Monument Creek, a/k/a Middle Monument Creek, in the W 1/2 of the NW 1/4 of Section 7, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado. A map showing the approximate location of each of the structures described in Paragraph 2, above, is attached to this application as Figure 1 and incorporated herein by this reference. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **2.b. Source of water to be diverted at the exchange-to points:** North Monument Creek, a/k/a Middle Monument Creek, tributary to Monument Creek, tributary to Fountain Creek, tributary to the Arkansas River. **3. Name and Location of Exchange-From Point:** The point at which Applicant shall make substitute supplies available to allow diversion by exchange at the exchange-to points is the outfall to Monument Creek of the Tri-Lakes Wastewater Treatment Facility, located in the NW 1/4 of the NE 1/4 of Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, as the same now exists or may exist in the future. A map showing the location of the Town's boundaries and the Tri-Lakes Wastewater Treatment Facility is attached to this application as Figure 1 and

incorporated by this reference. **4. Sources of Substitute Supplies:** **4.a. Date decree entered:** October 26, 1987. **4.b. Case Number:** 86CW108. **4.c. Court:** District Court, Water Division No. 2, State of Colorado. **4.d. Sources of substitute supplies:** Nontributary ground water in the Arapahoe and Laramie Fox Hills aquifers, to be withdrawn by wells, including, but not limited to, the following locations in the decree in Case No. 86CW108: **4.d.(1) Arapahoe Aquifer:** **4.d.(1).A. Well No. A-1:** Located in the NE 1/4 of the SW 1/4 of Section 10, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1,450 feet from the South section line and 1,450 feet from the West section line of said Section 10. **Depth:** 1,800 feet. **Pumping rate:** 350 g.p.m. (0.78 c.f.s.). **Annual withdrawal:** 462 acre-feet. **Well Permit No.:** N/A. **4.d.(1).B. Well No. A-2:** Located in the SW 1/4 of the NW 1/4 of Section 4, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1,650 feet from the North section line and 700 feet from the West section line of said Section 4. **Depth:** 2,200 feet. **Pumping Rate:** 350 g.p.m. (0.78 c.f.s.). **Annual withdrawal:** 462 acre-feet. **Well Permit No.:** 056816-F. The actual location, according to the permit, is 1,510 feet from the North section line and 898 feet from the West section line of said Section 4. **4.d.(1).C. Well No. A-3:** Located in the NE 1/4 of the NE 1/4 of Section 8, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 400 feet from the North section line and 450 feet from the East section line of said Section 8. **Depth:** 1,930 feet. **Pumping Rate:** 350 g.p.m. (0.78 c.f.s.). **Annual withdrawal:** 462 acre-feet. **Well Permit No.:** N/A. **4.d.(2) Laramie Fox Hills Aquifer:** **4.d.(2).A. Well No. LFH-1:** Located in the NE 1/4 of the SW 1/4 of Section 10, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1,450 feet from the South section line and 1,500 feet from the West section line of said Section 10. **Depth:** 2,280 feet. **Pumping Rate:** 150 g.p.m. (0.33 c.f.s.). **Annual withdrawal:** 183 acre-feet. **Well Permit No.:** N/A. **4.d.(2).B. Well No. LFH-2:** Located in the SW 1/4 of the NW 1/4 of Section 4, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1,650 feet from the North section line and 750 feet from the West section line of said Section 4. **Depth:** 2,610 feet. **Pumping Rate:** 150 g.p.m. (0.33 c.f.s.). **Annual withdrawal:** 183 acre-feet. **Well Permit No.:** N/A. **4.d.(2).C. Well No. LFH-3:** Located in the NE 1/4 of the NE 1/4 of Section 8, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 450 feet from the North section line and 450 feet from the East section line of said Section 8. **Depth:** 2,330 feet. **Pumping Rate:** 150 g.p.m. (0.33 c.f.s.). **Annual withdrawal:** 183 acre-feet. **Well Permit No.:** N/A. **4.e. Amount of substitute supplies:** 1,386 acre-feet per year from the Arapahoe aquifer and 551 acre-feet per year from the Laramie- Fox Hills Aquifer, or such greater or lesser amount Applicant is entitled to withdraw each year as finally determined pursuant to the Court's retained jurisdiction under Paragraph 31 of the decree entered in Case No. 86CW108, less two percent of annual pumping to be relinquished pursuant to paragraph 27 of said decree. **4.f. Appropriation date for substitute supplies:** Not applicable. **4.g. Decreed**

uses for substitute supplies: All municipal purposes, including domestic, agricultural, industrial, commercial, irrigation, stockwatering, fire protection, recreation, fish and wildlife preservation and propagation and all other beneficial purposes. The water may be produced for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to §37-90-137(9)(b), C.R.S., and for all court-approved augmentation purposes. The rights include the right of reuse, successive use, and disposition by sale, exchange, or otherwise to extinction, of all such water, in accordance with §37-82-106, C.R.S., subject to the two percent (2%) relinquishment provisions of Paragraph 27 of the decree entered in Case No. 86CW108. **4.h.** A map showing the locations of the wells described in 4.d., above, is attached to the Application as Figure 2. Additional wells may be drilled, as needed, pursuant to paragraph 18 of the decree in Case No. 86CW108. **4.i.** As additional sources of substitute supply, Applicant claims the sources listed in the decree in Case No. 87CW069, entered on June 21, 1989, by the District Court for Water Division No. 2, State of Colorado. **5. Operation of Appropriative Rights of Substitution and Exchange.** **5.a.** Applicant owns 0.89 c.f.s of the water right decreed to the Anchor Ditch in Civil Action No. 751, El Paso County, Colorado, on February 15, 1882, with appropriation date of March 1, 1867; 2.19 c.f.s. decreed to the Palmer Lake Water System in Case No. 13801, El Paso County District Court, on February 8, 1954, with an appropriation date of February 1887; and 147.5 acre-feet decreed to the Glen Park Reservoir in Case No. 13801, El Paso County District Court, on February 8, 1954, with an appropriation date of November 25, 1904. The Anchor Ditch and Palmer Lake Water System water rights are decreed for use for domestic water supply for the inhabitants of the Town of Palmer Lake. The Glen Park Reservoir water right is decreed for domestic, municipal and industrial uses. The water rights described above are used to provide a water supply for residential, commercial, and industrial development within the Town of Palmer Lake. Water for the Town is supplied by a central water system utilizing the water from the sources described above. Sewer service is provided through a central collection and treatment system. Wastewater is treated at the Tri-Lakes Wastewater Treatment Facility, which discharges to Monument Creek at the location described in paragraph 3, above. Applicant estimates that at least 90% of the water diverted through the Palmer Lake municipal water system from all sources for in-house residential, commercial, industrial, and other uses will return to Monument Creek through the Tri-Lakes Wastewater Treatment Facility. **5.b.** At times and to the extent the water rights described in Paragraph 5.a., above, are not in priority, Applicant will continue to divert and/or store water by exchange at each of the exchange-to points described in Paragraph 2, above, and will provide replacement water from the sources described in Paragraph 4, above, and the sources described in Applicant's decree in Case No. 87CW069, at the exchange-from point described in paragraph 3, above. **5.c. Maximum rate of exchange:** 3.08 c.f.s., conditional. **5.d. Date of initiation of appropriation:** December 23, 2010. **5.e. How appropriation was initiated:** By the filing of the application herein. **5.f. Date**

water was applied to beneficial use: Not applicable. The rights of substitution and exchange sought in this Application are conditional water rights. **6. Names and addresses of owners of land on which structures are or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** **6.a. Exchange-to points:** Applicant. **6.b. Exchange-from point:** Tri-Lakes Wastewater Treatment Facility Outfall, is jointly owned by the following entities pursuant to the 1996 Amended Joint Use of Facilities Agreement: 6.b.(1) Woodmoor Water and Sanitation District No. 1, Post Office Box 1407, Monument, Colorado 80132. 6.b.(2) Monument Sanitation District, P.O. Box 205, Monument, CO 80132. 6.b.(3) Palmer Lake Sanitation District, 120 Middle Glenway, Palmer Lake, CO 80133. Additional information: 9 pages, including 2 pages of figures.

CASE NO. 10CW88 – DEWEY R. PATRICK, 9520 S. Field Way, Littleton, CO 80127; (303) 904-3864

Application for Change of Water Right
PROWERS COUNTY

Decreed water right for which change is sought: **Name of structure:** The Lyman French Pump Location; **Date of original and all relevant subsequent decrees:** December 08, 1952. **Acceptance No.:** 19148. **Court:** District Court, Water Div. No. 2; 1-8-1982; Case No. 81CW48. **Legal description of structure:** Prowers County, SE ¼ of the NW ¼ Section 18, Township 22 South, Range 43 West, 6th P.M., whence the West quarter corner bears S. 86 degrees 26 minutes West 2989 feet. **Decreed source of water:** Buffalo Creek. **Appropriation Date:** Oct. 8 1952; **Total amount decreed to structure:** 2.6 cfs or 1170 gpm. **Decreed use or uses:** Irrigation of not more than 40 acres. **Amount of water that applicant intends to change:** 2.6 cfs. **Detailed description of proposed change:** Correct decreed point of diversion to actual historic point of diversion. Original decree was in error (81CW48). No change in place or type of use is sought. **If a change in point of diversion, provide legal descriptions of decreed location and actual or new location of structure:** Prowers County, SE ¼ of the NW ¼ Section 18, Township 22 South, Range 43 West, 6th P.M., 2,376 feet from the North line and 1,334 feet from the West line. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

CASE NO. 10CW89 – COLORADO WATER CONSERVATION BOARD, 1313 Sherman Street, Suite 721, Denver, CO 80203 (Jennifer Mele, Assistant Attorney General, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5033)

Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree
HUERFANO COUNTY, COLORADO

2. Name of natural stream: The Huerfano River tributary to the Arkansas River

3. Location: a. **Legal description of the stream segment through which an instream flow is claimed:** The natural stream channel from the confluence with an unnamed tributary at latitude 37° 41' 2.04"N and longitude 105° 24' 8.54"W as the upstream terminus and extending to the confluence with the Stanley Creek at latitude 37° 42' 33.49"N and longitude 105° 22' 16.12"W as the downstream terminus, being a distance of approximately 2.6 miles. This segment can be located on the Mosca Pass U.S.G.S. quadrangle. b. For administrative purposes only: Upper Terminus = NE SE S23 T27S R72W 6th PM, 961' West of the East Section Line, 1963' North of the South Section Line. UTM North: 4170820.1; UTM East: 464521.6. Lower Terminus = SW SE S7 T27S R71W 6th PM, 2169' West of the East Section Line, 515' North of the South Section Line. UTM North: 4173627.2 UTM East: 467286.3

4. Date of initiation of appropriation and beneficial use: January 26, 2010. Under section 37-92-103(4), C.R.S. (2010), the definition of beneficial use includes "the appropriation by the state of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree." Section 37-92-102(3)(c) states that the CWCB "shall determine that the natural environment will be preserved to a reasonable degree by the water available for the appropriation" to be made. Section 37-92-102(4)(a) states that the CWCB, "in its discretion, may determine whether or not to appropriate minimum stream or lake levels" to preserve the environment to a reasonable degree. Thus, the appropriation of an instream flow right "in the manner prescribed by law," and the "beneficial use" of an instream flow right under section 37-92-103(4) both occur when the CWCB declares its intent to appropriate. In this case, the CWCB declared its intent to appropriate instream flow water rights during its public meeting on January 26, 2010.

5. Amount of water claimed (ABSOLUTE): Instream flow of 5.75 cfs (April 1 – October 31) and 2.75 cfs (November 1 – March 31).

6. Remarks: The purpose of this appropriation by the State of Colorado is to preserve the natural environment to a reasonable degree. At its regular meeting on November 16, 2010, the Board determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the Board's water right herein, if granted; and that such environment can exist without material injury to water rights.

7. This Application is for an instream flow water right, exclusive to the CWCB pursuant to section 37-92-102(3) C.R.S., and as such there are no proposed diversion structures or storage involved, nor does it affect ground water described in section 37-90-137(4), C.R.S.. See City of Thornton By and Through Utilities Bd. v. City of Fort Collins, 830 P.2d 915, 931 (Colo.,1992) ("A minimum stream flow does not require removal or control of water by some structure or device. A minimum stream flow between two points on a stream or river usually signifies the complete absence of a structure or device."). Therefore, the notice requirements in section 37-92-302(2)(b) do not apply.

CASE NO. 10CW90 – COLORADO WATER CONSERVATION BOARD, 1313 Sherman Street, Suite 721, Denver, CO 80203 (Jennifer Mele, Assistant Attorney General, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5033)

Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree

HUERFANO COUNTY, COLORADO

2. Name of natural stream: The Huerfano River tributary to the Arkansas River

3. Location: a. Legal description of the stream segment through which an instream flow is claimed: The natural stream channel from the outlet of Lilly Lake at latitude 37° 35' 40.21"N and longitude 105° 29' 21.93"W as the upstream terminus and extending to the confluence with the Central Branch of Huerfano Creek at latitude 37° 40' 15.95"N and longitude 105° 25' 16.32"W as the downstream terminus, being a distance of approximately 8.2 miles. This segment can be located on the Mosca Pass U.S.G.S. quadrangle. b. For administrative purposes only: Upper Terminus = SW SE S24 T28S R73W 6th PM, 1596' West of the East Section Line, 909' South of the North Section Line. UTM North: 4160938.4 UTM East: 456794.0. Lower Terminus = SE NE S27 T27S R72W 6th PM, 1052' West of the East Section Line, 2627' South of the North Section Line. UTM North: 4169407.1; UTM East: 462855.0. **4. Date of initiation of appropriation and beneficial use:** January 26, 2010. Under section 37-92-103(4), C.R.S. (2010), the definition of beneficial use includes "the appropriation by the state of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree." Section 37-92-102(3)(c) states that the CWCB "shall determine that the natural environment will be preserved to a reasonable degree by the water available for the appropriation" to be made. Section 37-92-102(4)(a) states that the CWCB, "in its discretion, may determine whether or not to appropriate minimum stream or lake levels" to preserve the environment to a reasonable degree. Thus, the appropriation of an instream flow right "in the manner prescribed by law," and the "beneficial use" of an instream flow right under section 37-92-103(4) both occur when the CWCB declares its intent to appropriate. In this case, the CWCB declared its intent to appropriate instream flow water rights during its public meeting on January 26, 2010. **5. Amount of water claimed (ABSOLUTE):** Instream flow of 4.1 cfs (May – October 31) and 2.7 cfs (November 1 – April 30). **6. Remarks:** The purpose of this appropriation by the State of Colorado is to preserve the natural environment to a reasonable degree. At its regular meeting on November 16, 2010, the Board determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the Board's water right herein, if granted; and that such environment can exist without material injury to water rights. **7.** This Application is for an instream flow water right, exclusive to the CWCB pursuant to section 37-92-102(3) C.R.S., and as such there are no proposed diversion structures or storage involved, nor does it affect ground water

described in section 37-90-137(4), C.R.S.. See City of Thornton By and Through Utilities Bd. v. City of Fort Collins, 830 P.2d 915, 931 (Colo.,1992) ("A minimum stream flow does not require removal or control of water by some structure or device. A minimum stream flow between two points on a stream or river usually signifies the complete absence of a structure or device."). Therefore, the notice requirements in section 37-92-302(2)(b) do not apply.

CASE NO. 10CW91 - LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION ("LAWMA"), c/o Donald F. Higbee, Manager, 310 South 6th Street, P. O. Box 1161, Lamar, CO 81052

(Richard J. Mehren, Aaron S. Ladd, Moses, Wittemyer, Harrison and Woodruff, P.C., Attorneys for Applicant, P. O. Box 1440, Boulder, CO 80306-1440, (303) 443-8782).

Application for Plan for Augmentation

PROWERS, LINCOLN 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 7 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"). 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:** **Name:** Raymond Dechant; **SEO ID NO.:** Dechant Pond; **Legal:** NW ¼ SW ¼ Sec. 21, T22S, R46W, 6th P.M., Prowers County, 2100 feet from the South line and 1270 feet from the West line; **Source:** Arkansas River Valley Fill Aquifer. **Name:** Dale Mitchek, LLC; **SEO ID No.:** 6706221; **Permit No.:** 12033F; **Legal:** SE ¼ SW ¼ Sec. 20, T14S, R46W, 6th P.M., Cheyenne County, 620 feet from the South line and 2580 feet from the West line. **Source:** Eureka Creek Alluvium. **Name:** Lawrence A. and Charlene K. Monks; **SEO ID No.:** 6706288; **Permit No.:** 20165R; **Legal:** SW ¼ SW ¼ Sec. 8, T10S, R55W, 6th P.M., Lincoln County, 450 feet from the South line and 410 feet from the West line. **Source:** Big Sandy Creek Aluvium. **Name:** Colorado Division of Wildlife; **SEO ID No.:** Shop Well; **Permit No.:** 284065; **Legal:** NW ¼ SE ¼ Sec. 36, T22S, R46W, 6th P.M., Prowers County, 1880 feet from the South line and 1545 feet from the East line; **Source:** Cheyenne Aquifer. **Name:** J-S Farms, Inc.; **SEO ID No.:** Jagers Pond; **Case No.:** 01CW37; **Legal:** SW ¼ SE ¼ Sec. 16, T22S, R47W, 6th P.M., Prowers County, 500 feet from the South line and 2600 feet from the East line. **Source:** Arkansas River Valley Fill Aquifer. **Name:** Butte Creek & River Reserve, GP; **SEO ID No.:** 6705808; **Permit No.:** 17760F; **Case No.:** W-3353; **Legal:** NE ¼ SW ¼ Sec. 20, T23S, R42W, 6th P.M., Prowers County, 1680 feet from the South line and 2600 feet from the West line; **Source:** Arkansas River Valley Fill Aquifer. **Name:** Butte Creek & River Reserve, GP; **SEO ID No.:** 6705809; **Permit No.:** 17759F; **Case No.:** W-3353; **Legal:** NW ¼ NW ¼ Sec. 20, T23S, R42W, 6th P.M., Prowers

County, 1220 feet from the North line and 100 feet from the West line; **Source:** Arkansas River Valley Fill Aquifer. A total of 7 additional wells or other structures will be included in LAWMA's plan for augmentation through this application. A map of the structures is provided as Exhibit B to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **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 above 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 above 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 structures are or will be located:**

Owner	SEO ID No.	Address	City	State	ZIP
Raymond Dechant	Dechant Pond	9053 Highway 196	Lamar	CO	81052
Dale Mitchek, LLC	6706221	P O Box 447	Cheyenne Wells	CO	80610
Lawrence A. and Charlene K. Monks	6706288	47016 County Road 26	Limon	CO	80828
Colorado Division of Wildlife	Shop Well	6060 Broadway	Denver	CO	80216
J-S Farms, Inc.	Jagers Pond	P O Box 1418	Lamar	CO	81052
Butte Creek & River Reserve, GP	6705808	P O Box 7	Lamar	CO	81052
Butte Creek & River Reserve, GP	6705809	P O Box 7	Lamar	CO	81052

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.

CASE NO. 10CW92; Previous Case Nos. 87CW61, 01CW48(87CW61) – CITY OF SALIDA (“City”), c/o Jack Lewis, 448 East First Street, #112, Salida, CO 81201 (James R. Montgomery and Aaron S. Ladd, Moses, Wittemyer, Harrison & Woodruff, P.C., Attorneys for Applicant, P. O. Box 1440, Boulder, CO 80306-1440; (303) 443-8782)
 Application for Finding of Reasonable Diligence
CHAFFEE COUNTY

2. Name of structure: City of Salida North Fork Reservoir Exchange. **3. Describe conditional water right (as to each structure) including the following information from the Referee's Ruling and Judgment and Decree:**

a. Date of original decree: September 19, 1988 in Case No. 87CW61 in the District Court, Water Division No. 2, State of Colorado. That decree approved a conditional appropriative right of exchange to allow storage by exchange of applicant's allocation of Fryingpan-Arkansas Project water and excess augmentation credits available under the 1987 decree in Case No. 84CW158 in North Fork Reservoir. **b. Subsequent decrees awarding findings of diligence:** December 23, 2004 in Case No. 01CW048 in the District Court, Water Division No. 2. That decree continued the 56.4 cfs conditional North Fork Reservoir Exchange appropriative right in full force and effect until the end of December 2010. **c. Legal description:** The appropriative right of exchange operates between the confluence of the Arkansas River and the South Arkansas River near the City of Salida and the North Fork Reservoir. The upper terminus of the exchange is the North Fork Reservoir which is located on the North Fork of the South Arkansas River in the SE1/4 of Section 5, Township 50 North, Range 6 East of the N.M.P.M., the northeasterly point of contact of the dam axis with the existing ground being situated whence the northwest corner of Section 21, Township 50 North, Range 7 East, N.M.P.M. bears South 68°50' East a distance of 31,920 feet; said point being further described by bearing on the Peak of Granite Mountain of North 23°28' West and by bearing on the Peak of Calico Mountain of North 37°03' East, thence south 15°30' west a distance of 500 feet to the southwesterly point of contact of the dam axis with existing ground. The location of the North Fork Reservoir is further described by the following UTM coordinates (NAD 83): Northing 4274282; Easting 384890.40. The downstream terminus is the confluence of the South Arkansas River with the Arkansas River located in the SW1/4 SE1/4 of Section 4, Township 49 North, Range 9 East of the N.M.P.M., at a point approximately 300 feet North of the south section line and 2,300 feet west of the east section line of Section 4. The exchange reach is shown in Exhibit A to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **d. Source of water:** The source of exchange water is from the Fryingpan-Arkansas Project, pursuant to lawful rules, regulations and policies of the Southeastern Colorado Water Conservancy District, and from excess augmentation credits available under the City's plan for augmentation decreed in Case No. 84CW158. Water stored by exchange in North Fork Reservoir is water accruing to the drainage of the North Fork of the South Arkansas River upstream of the location of said reservoir as described above. **e. Appropriation date:** December 21, 1987. **f. Use:** Municipal, including incidental irrigation. Augmentation credits exchanged to North Fork Reservoir under the subject exchange retain all uses for which they were decreed in Case No. 84CW158, including replacement of out-of-priority depletions under said decree. **g. Amount:** 56.4 cfs, conditional (by filling and refilling in exchange for an equivalent amount of project water or excess augmentation credits released to the Arkansas River). 3.6 cfs of the 60 cfs conditionally decreed on

September 19, 1988 in Case No. 87CW61 were made absolute pursuant to the decree entered June 1, 1995 in Case No. 94CW58. The City filed its application for finding of reasonable diligence in this case to obtain a finding of reasonable diligence on the remaining 56.4 cfs conditional exchange right. **h. Depth (if well):** Not applicable. **4.** A detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, is contained in the application. **5. If claim to make absolute:** Not applicable. **6. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structures, 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:** No modification of North Fork Reservoir is required to operate the subject exchange. North Fork Reservoir is located on land owned by the United States Forest Service, P.O. Box 25127, Lakewood, Colorado 80225. The reservoir is owned by Chaffee County, 104 Crestone Avenue, Salida, Colorado 81201, and managed and operated under a contract with Chaffee County by the Upper Arkansas Water Conservancy District, 339 East Highway 50, Salida, Colorado 81201.

CASE NO. 10CW93 – JOSEPH COGAN, Box 113, Nathrop, CO 81236; (719) 395-2339

Application for Water Rights (Surface)

CHAFFEE COUNTY

Name of structure: Cogan power plant (hydro-electric plant). **Legal description of each point of diversion:** Chaffee County, NE ¼ of the NE ¼ Section 4, Township 15 South, Range 78 West, 6th P.M., 1284 feet from the North line and 1180 feet from the East line. **GPS location in UTM Format:** 13S 0403297; 4292681. **Source:** Tributary to the Arkansas River (Dry Creek) aka Thompson Creek. **Date of initiation of appropriation:** 1919; **How appropriation was initiated:** Hydro-electric plant was installed; **Date water applied to beneficial use:** 1919. **Amount claimed in cubic feet per second:** 3.3 cfs Absolute. **Use or proposed use:** To power existing hydro-electric plant. Water is diverted from Dry Creek and carried in the existing Huey 1 ditch for about 350 yards. It then enters a pipeline and flows 700 feet to a turbine on the bank of Dry Creek and is returned at this point. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant. **Remarks:** This is a non-consumptive use. It was first used in 1919 for electrical production. The plant was modernized in 1981, but the point of diversion and the ditch have not changed and have been in constant use since 1919 for this purpose. The ditch, land, and structures are owned by the applicant.

CASE NO. 10CW94 – MYRON STRATTON HOME, 555 Gold Pass Heights, Colorado Springs, CO 80906 (Jack F. Ross and Mark T. Valentine, Dufford & Brown, P.C., Attorneys for Applicant, 1700 Broadway, Suite 2100, Denver, CO 80290-2101; (303) 861-8013)

Application for an Appropriative Right of Exchange

EL PASO COUNTY, COLORADO

Name of structure: Spring Run Reservoir No. 2. **The legal descriptions of the exchange from point and the exchange to point are set forth below:**

Description of the Exchange Reach. The Exchange Reach consists of: a) originating at the effluent outfall to the Fountain Creek stream system from the Colorado Springs Las Vegas Street Wastewater Treatment Facility Outfalls located in the southwest quarter of the southwest quarter of Section 20, said outfall discharges to the Fountain Creek System downstream in the Effluent Release Canal approximately 2,000 feet to the confluence with Fountain Creek located in the southwest quarter of the northeast quarter of Section 29; b) downstream on Fountain Creek approximately 800 feet to the confluence with Spring Run Creek located in the southwest quarter of the northeast quarter of Section 29; and c) exchange upstream on Spring Run Creek approximately 12,000 feet from the confluence of Fountain Creek and Spring Run Creek to Spring Run Reservoir No. 2, located in the northwest quarter of the northwest quarter of Section 31, all located in Township 14 South, Range 66 West of the Sixth Principal Meridian, El Paso County, Colorado. **The specific descriptions of the facilities involved, follow:**

The location of Colorado Springs source: Colorado Springs Las Vegas Street Wastewater Treatment Facility Outfalls located in El Paso County in the southwest quarter of the southwest quarter of Section 20, Township 14 South, Range 66 West of the Sixth Principal Meridian, said outfall discharges to the Fountain Creek system. The decreed location of Spring Run Reservoir No. 2: The left or northwest abutment of Spring Run Reservoir No. 2 is located at a point whence the northwest corner of Section 31, Township 14 South, Range 66 West of the Sixth Principal Meridian, bears north 59°, 51 minutes west for a distance of 490.1 feet. **Source:** Reusable transmountain effluent discharged from the Colorado Springs wastewater outfall into the Fountain Creek System in exchange for otherwise out of priority storage of inflows from Spring Run Creek into Spring Run Reservoir No. 2. **Date of initiation of appropriation:** January 2, 2009. **How appropriation was initiated:** By application to Colorado Springs Utilities for use of its transmountain effluent. **Dates water applied to beneficial use:** From the week ending July 4, 2010 through the week ending August 22, 2010, a total of 17.5 acre feet delivered to Spring Run Reservoir No. 2 at a rate of delivery of 0.30 cfs.

Amounts claimed: 50 acre-feet per year, at a maximum exchange rate of 1.00 cfs. Absolute: 17.5 acre feet at a rate of flow of 0.30 cfs, and Conditional: 33.5 acre feet at a rate of flow of up to 1 cfs. **Use or proposed use:** The irrigation of land historically irrigated by water stored in the exercise of the water rights decreed to Spring Run Reservoir No. 2. **Name(s) and address(es) of owner(s) upon which any structure is or will be located, upon which water is or will**

be stored, or upon which water is or will be placed to beneficial use: Myron Stratton Home, 555 Gold Pass Heights, Colorado Springs, CO 80906, (719) 579-0930. **Remarks:** Exchanges will be administered and accounted for following procedures and under the supervision of the Division Engineer of Water Division No. 2 who provided approval for the exchange on May 13, 2009, and the Water Commissioner of Water District No. 10.

CASE NO. 10CW95 – MERIDIAN SERVICE METROPOLITAN DISTRICT, Attn: Tim Hunker, 12311 Rex Road, Peyton, CO 80831 (Wayne B. Schroeder and Thomas N. George, Grimshaw & Harring, P.C., 1700 Lincoln Street, Suite 3800, Denver, CO 80203; (303) 839-3800)

Application for Water Rights (Surface and Storage)

EL PASO COUNTY

Name of structures: a. MSMD Diversion No 1 (diversion structure); b. MSMD Diversion No. 2 (diversion structure); c. MSMD Diversion No. 3 (diversion structure); d. MSMD Diversion No. 4 (diversion structure); e. MSMD Reservoir (reservoir). **Legal description of each structure:** See Figure 2 attached to the Application for map of locations of structures. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **MSMD Diversion No. 1:** El Paso County, NW ¼ of the SW ¼ of Section 21, Township 12 South, Range 64 West, 6th P.M., 1834 feet from the South line and 987 feet from the West line. **MSMD Diversion No. 2:** El Paso County, SW ¼ of the SW ¼ of Section 21, Township 12 South, Range 64 West, 6th P.M., 430 feet from the South line and 495 feet from the West line. **MSMD Diversion No 3:** El Paso County, NE ¼ of the SE ¼ of Section 29, Township 12 South, Range 64 West, 6th P.M., 2348 feet from the South line and 780 feet from the East line. **MSMD Diversion No. 4:** El Paso County, SE ¼ of the NE ¼ of Section 29, Township 12 South, Range 64 West, 6th P.M., 5 feet from the South line and 2542 feet from the West line. **MSMD Reservoir:** El Paso County, SE ¼ of the NE ¼ of Section 22, Township 12 South, Range 64 West, 6th P.M. **Source:** Unnamed tributary to the Upper Black Squirrel Creek. **Date of initiation of appropriation:** December 30, 2010. **How appropriation was initiated:** Consultation report prepared by consulting engineer and filing of Application by Applicant. **Date was applied to beneficial use:** N/A. **Amount claimed in cubic feet per second (cfs) and acre feet (af):** a. **MSMD Diversion No. 1:** 5 cfs (conditional); b. **MSMD Diversion No. 2:** 5 cfs (conditional); c. **MSMD Diversion No. 3:** 5 cfs (conditional); d. **MSMD Diversion No. 4:** 5 cfs (conditional); e. **MSMD Reservoir:** 169 af (conditional) (with right to fill and re-fill). **Use or proposed use:** Diversion and storage of 169 acre feet in proposed reservoir and subsequent application to irrigation and municipal/domestic uses. Applicant serves and has a coterminous boundary with the Meridian Ranch development master-planned development, encompassing approximately 2,620 acres in portions of Sections 19, 20, 21, 28, 29, and 30 of Township 12 South, Range 64 West in Colorado as shown in map attached to the Application as Figure 2 (general location of Applicant's boundary shown in Figure 1 attached to the Application). Meridian Ranch is located approximately

2.5 miles north of Falcon, Colorado, in El Paso County. Applicant will use the MSMD Diversion Nos. 1, 2, 3 and 4 and MSMD Reservoir to supply water throughout Meridian Ranch. **Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Meridian Ranch Investments, Inc., P. O. Box 80036, San Diego, CA 92138-0036 and GTL, Inc., 3575 Kenyon Street, San Diego, CA 92110-5333.

CASE NO. 10CW96 – ROCKY MOUNTAIN MATERIALS & ASPHALT, INC., c/o Stephen J. Schnurr, President, 1910 Rand Avenue, Colorado Springs, CO 80906 (Steven T. Monson and Michael J. Gustafson, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903, (719) 471-1212)

Application for Changes of Water Right and Plan for Augmentation
FREMONT AND PUEBLO COUNTIES.

III. Background and Summary of Application. Rocky Mountain Materials and Asphalt, Inc. (“Applicant”) is the user of 400 shares in the Union Ditch and Water Company, a Colorado mutual ditch company (“Subject Water Rights”). The Subject Water Rights are owned by the Steven J. Schnurr Living Trust under Certification No. 4195 of the Union Ditch and Water Company and the Trust has consented to this Application. Applicant seeks to change the type of use and place of use of the Subject Water Rights from irrigation use to commercial, industrial, replacement, and augmentation uses in association with Applicant’s existing gravel mining operation located near Florence, Colorado and future gravel mining operations by Applicant in Fremont County, Colorado, and to also adjudicate augmentation and replacement credits to the Arkansas River for lease or use by Applicant or other parties contracting with Applicant. Applicant also seeks approval of an augmentation plan allowing it to use the historical depletions of the Subject Water Rights, as placed into storage, with other sources of leased fully consumable water, to replace out-of-priority depletions to the Arkansas River from its gravel mining operation. Applicant currently supplies the demands of the existing mining operation with consumptive use of the Subject Water Rights and leased fully consumable water pursuant to a substitute water supply plan approved by the Division Engineer under C.R.S. §37-92-308(4). **IV. Application for Changes of Water Right.** **A. Name of Structure.** The name of the structure for which the changes of water right are sought is the Union Ditch. **B. Information from Previous Decree.** **1. Date Entered.** The Union Ditch was decreed on February 3, 1894 by the District Court of Fremont County in the Matter of the Adjudication of Water Rights in District No. 12, State of Colorado. **2. Point of Diversion.** The decree for the Union Ditch provides that the headgate is located on the south bank of the Arkansas River at a point north 41 degrees and 28 minutes west fifteen and nine tenths chains from the center of Section 7, Township 19 South, Range 69 West, 6th P.M. The Union Ditch water rights are diverted at the headworks of the Minnequa Canal which is

located on the south bank of the Arkansas River in the NW 1/4 NW 1/4 Section 7, Township 19 South, Range 69 West, 6th P.M. in Fremont County, Colorado at a point approximately 750 feet from the west line and 1200 feet from the north line of said Section 7. **3. Source.** The source of water for the Union Ditch is the Arkansas River. **4. Appropriation Date/Amounts.** The Union Ditch has an appropriation date of November 30, 1861 for 48 cfs for the irrigation of 1,200 acres of land (“Union Ditch Water Right”). **C. Historical Use. 1. Historical Use of the Union Ditch Company Irrigation Shares:** On July 19, 2010, the District Court, Water Division 2, entered its decree in Case No. 99CW149 approving a change in type of use from irrigation to municipal use and change in place of use of 1,256.63 shares in the Union Ditch Company for the City of Florence, the Town of Coal Creek, and the Town of Williamsburg (“Florence Change Decree”). The Florence Change Decree included the following findings regarding the history and historical use of the Union Ditch Water Right under the mutual ditch company. The Florence Change Decree found that a total of 29,998 shares of stock in the Union Ditch Company have been issued. CF&I Steel, LP (“CF&I”) historically owned 20,752 of the Union Ditch Company shares (“CF&I Shares”) and 17,448 of the CF&I Shares were carried through the Minnequa Canal for industrial use at CF&I’s steel mill in Pueblo, Colorado. Of the remaining 12,550 Union Ditch Company shares, 11,612 shares (“Irrigation Shares”), including Applicant’s 400 shares, have historically been used to irrigate up to 1,200 acres of land located under the ditch within the area shown on the map 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.) Attached to the Application as Exhibit B is a summary of diversions of the Irrigation Shares for the period of 1983 through 1999, which was the period of study in the ditch wide analysis in the Florence Change Decree. The Florence Change Decree included a ditch-wide analysis of the Irrigation Shares and found that the Irrigation Shares totaled 38.7 percent of the shares in the Union Ditch Company and that it was appropriate to apply that percentage to the 48 cfs decreed flow rate, and to thereby allocate the corresponding flow rate of 18.6 cfs to the historical use of water for irrigation under the Irrigation Shares. The Florence Change Decree also found that the duty of water for the Irrigation Shares is 64.5 acres per cfs and that the historical consumptive use percentage of water diverted under the shares was 30.2 percent. Applicant intends, without limitation, to rely on these res judicata findings in the Florence Change Decree regarding the flow rate and the historical diversions and consumptive use of the Irrigation Shares. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997). **2. Historical Use of Subject Water Rights:** The 400 Union Ditch shares of the Subject Water Rights proportionately represent a flow rate of 0.64 cfs of the 18.6 cfs of the Union Ditch water right allocated to the 11,612 Irrigation Shares. Such a flow rate provided a duty of water sufficient to irrigate approximately 40 acres of land. Applicant has an Agreement with CF&I dated April 10, 2007 and a Dry-up Covenant with Fremont County dated November 4, 2007 (“Dry-up Agreements”) under which 40 acres of land historically irrigated with the Irrigation Shares (“Dry-up Land”) have been dried

up. The Dry-up Land is located in the SE 1/4 SE1/4 of Section 7, the NW 1/4 SW 1/4, SW 1/4 SW 1/4, and SE 1/4 SE 1/4 of Section 8, the NE 1/4 NE 1/4 of Section 17, NW 1/4 NW 1/4 of Section 16, and the SW 1/4 SW 1/4 of Section 9, all in Township 19 South, Range 69 West of the 6th P.M., Fremont County, Colorado. A map depicting the location of the Dry-up Land is attached to the Application as Exhibit C. Pursuant to the Dry-Up Agreements, the Dry-up Land will not be irrigated with water diverted under the Irrigation Shares, including the Subject Water Rights. Based upon findings in the Florence Change Case in Case No. 99CW149, annual diversions per share for the Irrigation Shares under the Union Ditch were determined to be 0.6523 acre feet over a 17 year period with a maximum diversion of 0.8003 acre feet in any single year. Based upon the ditch wide depletion percentage of 30.2 percent of diversions, the annual consumptive use per share of the Irrigation Shares were determined to average 0.197 acre feet over a running seventeen year period with a maximum consumptive use of 0.2270 acre feet in any single year. Applicant intends, without limitation, to rely on these per share findings and the depletion percentages as res judicata. Applicant claims its pro rata share of diversions and entitlements under the Irrigation Shares. The Applicant's average annual diversions and average annual consumptive use available under its 400 shares would therefore be 260.92 acre feet and 78.8 acre feet, respectively. **D. Changes Sought.** Applicant seeks the following change in place of use and change in type of use of the consumptive use of the Subject Water Rights: **1. Change in Place of Use:** Applicant requests a change in place of use of the historical consumptive use of the Subject Water Rights from the historically irrigated land under the Union Ditch to Applicant's existing gravel mining operation located in Sections 18, 19, 20, 29, 30, 31, and 32, Township 19 South, Range 68 West, 6th P.M. and Sections 5 and 6, Township 20 South, Range 68 West, 6th P.M. in Fremont County, Colorado. The general location of the mining operation is shown on the Exhibit D map. Applicant is currently in negotiations for the lease or purchase of additional property in Fremont County that it will use for gravel mining operations. Applicant also requests that the changed place of use of the historical consumptive use of the Subject Water Rights include the location of its future gravel mining operations in Fremont County, Colorado, tributary to the Arkansas River. **2. Change in Type of Use:** Applicant requests a change in type of use of the historical consumptive use of the Subject Water Rights from direct use for irrigation use to direct use, reuse, and successive use to extinction for commercial, industrial, replacement, and augmentation uses, and placement into storage for such uses. The historical consumptive use of the Subject Water Rights will be used in association with Applicant's existing and future gravel mining operations in Fremont County, Colorado. Such use of the historical consumptive use credits in the mining operations will include, but not be limited to, gravel sorting, gravel washing, dust control, and replacement of losses from settling pond evaporation and seepage. Any consumptive use credits from the Subject Water Rights that are not needed for Applicant's gravel mining operations ("Excess Consumptive Use Credits") are requested to be made available in the Arkansas River for replacement and augmentation use by entities

such as the Arkansas Ground Water Users Association (“AGUA”). Applicant and AGUA currently have an agreement under which Applicant provides AGUA with a portion of Applicant’s Excess Consumptive Use Credits, pursuant to Applicant’s existing substitute water supply plan, for use in AGUA’s replacement plans. In exchange, AGUA stores a portion of the Excess Consumptive Uses Credits on behalf of Applicant for later use by Applicant as augmentation and replacement water. AGUA’s places of storage include lease of storage space in Pueblo Reservoir located in the S1/2 of Section 36, Township 20 South, Range 66 West of the 6th P.M.

3. Description of Use of Changed Water Rights. Applicant’s existing gravel mining operations are located above the groundwater table, and therefore, mining operations do not expose any groundwater at the site. Water is required in the operation for, among other uses, gravel sorting, washing, dust control, and replacement of losses from settling pond evaporation and seepage. Water requirements for the operation will depend upon gravel production, water lost with the mined product, pond evaporation, and spray losses. Applicant anticipates that its operations will require a maximum of approximately 60 annual acre-feet of water. The water demands of the mining operation will primarily be met with direct diversions of the consumptive use water associated with the Subject Water Rights changed in this case and delivered to the mining operation by the Minnequa Canal pursuant to a Water Carriage Agreement between Applicant and Rocky Mountain Steel Mills, the owner and operator of the Minnequa Canal. Applicant will divert its pro-rata entitlement of water under the Subject Water Rights at the headgate of the Minnequa Canal. The diversions into the Minnequa Canal will travel down the Minnequa Canal a short distance to the headgate of the Union Ditch where the volume of diversions not historically consumed for irrigation, being return flows, and any Excess Consumptive Use Credits will be sent down the Union Ditch and returned to the Arkansas River through Applicant’s existing augmentation station that is located along the ditch in Section 16, Township 19 South, Range 69 West, 6th P.M. The historical consumptive use of the Subject Water Rights necessary for Applicant’s mining operation will be delivered from the Minnequa Canal to the mining operation by a diversion structure and pumphouse that has been constructed along the southern bank of the Minnequa Canal, approximately 9 miles below its main headgate on the Arkansas River. The volume of the historic consumptive use available for use at the existing mining site will be reduced based on appropriate transit losses in the same manner as the existing substitute water supply plan.

IV. Plan for Augmentation.

A. Structures to be Augmented. The structure to be augmented is the Union Ditch diverting from the headgate of the Minnequa Canal as previously set forth herein.

B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation consist of the historical consumptive use of the Subject Water Rights changed in this case, including as placed into storage. To the extent necessary, augmentation water will also be provided by fully consumable water leased from entities such as AGUA, Pueblo Board of Water Works (“PBWW”), or the Lower Arkansas Valley Water Conservancy District (“LAVWCD”), as Applicant has used in the past for replacement water for its mining operations under its substitute water supply

plans and administrative exchanges approved by the Division of Water Resources (“Leased Water”). The adequacy of the Leased Water will be subject to approval by the Division Engineer’s Office. **C. Statement of Plan for Augmentation.** The water demands of the mining operation will be met by the direct diversion of the historical consumptive use of the changed Subject Water Rights as set forth in §IV.D. above. Applicant also requests that the water demands of the mining operation be supplied by direct diversions and delivery of fully consumable Leased Water by the Minnequa Canal pursuant to the CF&I Carriage Agreement. Leased Water will only be used after approval by the Division Engineer. The volume of Leased Water available for use at the existing mining site will vary from year to year and will be reduced based on appropriate transit losses. To the extent not met by the consumptive use of the Subject Water Rights or Leased Water, the mining operation’s water demands will be supplied by out-of-priority diversions under the Union Ditch that are also to be delivered to the mining site and the pumping station described above. Uses of water at the mining operation are currently considered to be fully consumptive and all out-of-priority diversions at the Union Ditch to meet those depletions will be fully replaced to the Arkansas River above the calling water right located below the Union Ditch. The volume of water diverted out-of-priority available for use in the existing mining operation will also be reduced based on appropriate transit losses. Applicant will use releases of the consumptive use of the Subject Water Rights as stored by AGUA, or other entity on behalf of Applicant, and the release of Leased Water to replace the depletions consisting of its out-of-priority diversions from the Arkansas River via the Union Ditch and Minnequa Canal. Such replacement water will be made available in time, location, and quantity necessary to prevent injury to vested water rights. **V. Terms and Conditions.** Applicant proposes the following terms and conditions to prevent injury to vested water rights. A. Use of the historical consumptive use of the Subject Water Rights under the changes of water right is limited to the timing of the historic availability of those water rights under their historic irrigation practices. B. Future diversions of the Subject Water Rights and depletion credits claimed thereunder should be limited to the extent that water is determined to be physically and legally available at the Union Ditch as diverted at the Minnequa Canal Headgate. C. Diversions and depletion credits available under the Subject Water Rights will be limited on an annual and monthly basis by a consecutive seventeen year rolling average based on averages of historical in-priority diversions and depletion percentage, including as determined in the Florence Change Case. D. The Applicant’s consumptive use entitlement under the Subject Water Rights will be determined by historical depletion percentage applied to available in-priority diversions. The portion of allowed diversions not associated with this historical consumptive use, constituting return flows, shall be returned to the Arkansas River through the augmentation station. E. Applicant will replace historical winter return flow obligations of the Subject Water Rights from releases of Excess Consumptive Use Credits and Leased Water Rights subject to approval by the Division Engineer’s Office. F. Applicant shall only make out-of-priority diversions from the Arkansas River to meet the demands of the mining operation to the

extent that it has consumptive credits under the Subject Water Rights in storage and/or has Leased Water available in sufficient quantities to replace those depletions. G. Measuring devices will be installed as necessary to allow accurate monitoring of the requested augmentation plan and changes of water right, and monthly accountings shall be made to the Division Engineer demonstrating compliance with the terms of the requested changes of water right and augmentation plan, including diversions, deliveries of historical consumptive use and Leased Water to the mining site, volume of Excess Consumptive Use Credits, replacement of historical return flows, total stream depletions, available sources of augmentation water, and volume and timing of augmentation water provided. **VI. Names and Addresses of Owners of Land Upon Which Structures are Located.** The Minnequa Canal and its headgate is owned by Rocky Mountain Steel Mills whose address is 1612 E. Abriendo Ave, Pueblo, CO 81004. The Union Ditch is owned by the Union Ditch and Water Company whose address is PO Box 71, Florence, CO 81226. The augmentation station is owned by Applicant and is located on land owned by the City of Florence, whose address is 600 West 3rd Street, Florence, CO 81226. Pueblo Reservoir is located on land owned by the United States of America, Bureau of Reclamation, whose address is Attn: Fred Ore, Area Manager, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, Colorado, 80537-9711. Storage is currently to be made in structures under the control or lease of AGUA, whose address is P.O. Box 11446, Pueblo, CO 81001. Applicant owns the pump house and diversion structure on the Minnequa Canal.

CASE NO. 10CW97 – BARRY F. O’NEILL, P. O. Box 785, Trinidad, CO 81082 and O’NEILL FAMILY LTD. PARTNERSHIP, 42 Sunset Drive, Englewood, CO 80113 (Stephen H. Leonhardt and Joshua D. McMahon, Burns Figa & Will, P.C, Attorneys for Applicants, 6400 S. Fiddlers Green Circle, Suite 1000, Greenwood Village, CO 80111; (303) 796-2626)

Application for Appropriative Right of Exchange and Surface Water Rights

LAS ANIMAS COUNTY, COLORADO

2. Introduction: In Case No. 97CW158 by Decree entered February 28, 2000, the Water Court approved a conditional appropriative right of exchange to exchange a specified water right from the mouth of Long Canyon at Trinidad Reservoir to two decreed upstream diversion points owned by Applicants. This application requests an appropriative right of exchange to the same two points (described below) for water leased or owned by the Applicants that is stored in Trinidad Reservoir. Applicants seek a decree confirming an absolute appropriative right to divert water by exchange, using the same exchange reach as decreed in Case No. 97CW158, upstream from the mouth of Long Canyon at Trinidad Reservoir to the diversion points decreed in Case No. 97CW158, in exchange for Applicants’ delivery of an equivalent amount of water that is stored in Trinidad Reservoir at times necessary to satisfy calling senior water rights. This application also requests confirmation of Applicants’ absolute surface water rights to divert water from the same two diversion points decreed in Case No. 97CW158 that flows through two existing off-channel ponds and returns

unconsumed to the stream a short distance downstream. **1. Claim for Appropriative Right of Exchange.** **3. Exchange Reach:** a. The upstream termini of the exchange reach are the diversion points for the Applicants' ponds decreed in Case No. 97CW158 (described below). b. The downstream terminus of the exchange reach is the confluence of Long Canyon with the Purgatoire River at Trinidad Reservoir (described below). **4. Exchange From Point:** The confluence of Long Canyon with the Purgatoire River at Trinidad Reservoir, which is located in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 31, Township 33 South, Range 64 West, approximately 1,470 ft from the north section line and 160 ft from the east section line. The Trinidad Reservoir Dam outlet is located in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 27, Township 33 South, Range 64 West, approximately 2,250 ft from the south section line and 2,140 ft from the west section line. **a. Owner of Land and Facilities:** Trinidad Reservoir is owned by the United States Army Corps of Engineers. **5. Exchange To Points** (shown on Figures 1 and 2 attached as Exhibit A to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.): **a.** A diversion from Colorow Canyon by means of a pump station, shown on Figure 1 of Exhibit A, located in unsurveyed territory at UTM X = 534012, UTM Y = 4101720, where water is pumped into an off-channel pond. **i. Owner of Structure:** The pump station and off-channel pond are on property owned by Barry F. O'Neill. **b.** A diversion from Long Canyon by means of a pump station, shown on Figure 2 of Exhibit A, located at UTM X = 530368, UTM Y = 4101540, and further described as being located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 27, Township 34 South, Range 65 West, approximately 1,210 ft from the north section line and 2,620 ft from the west section line, where water is pumped into an off-channel pond. **i. Owner of Structure:** The pump station and off-channel pond are on property owned by the O'Neill Family Ltd. Partnership. **6. Source of Water Rights Used for Substitute Supply by Exchange:** a. The substitute supply water used for this exchange is up to 15 acre-feet per year from any water rights decreed for use in Water Division 2 and lawfully stored in Trinidad Reservoir, that may be used for exchange pursuant to decree or statutorily authorized administrative approval (including but not limited to such approval as authorized by C.R.S. §§ 37-92-308, 37-92-309, 37-80-120, 37-80.5-101, *et seq.* or 37-83-101, *et seq.*), and which are leased or owned by the Applicants, including but not limited to 15 acre-feet per year of those water rights owned by the City of Trinidad and changed in Case No. 88CW61 (Water Div. 2), which is made available in Trinidad Reservoir for Applicants' use pursuant to Water Lease Agreements between the City of Trinidad and Barry F. O'Neill, dated December 2, 2005, and July 6, 2010, and any extension or renewal of such agreements. b. This application does not seek to adjudicate or confirm any particular source of substitute supply water other than the water rights leased from the City of Trinidad as described above, which are decreed for exchange use by this Court's Decree in Case No. 88CW61. Any other source of substitute supply water, as described above, may be used for exchange only if such use is authorized, either by decree or statutorily authorized administrative approval. **7. Appropriative Right of Exchange:** **a. Sources:** Long Canyon, a tributary to

the Purgatoire River at Trinidad Reservoir; and Colorow Canyon, a tributary to Long Canyon. The sources of substitute supply water are described in paragraph 6 above. **b. Date of Initiation of Appropriation:** December 2, 2005, by entering a Water Lease Agreement with the City of Trinidad for a source of substitute supply water as described in paragraph 6 above. **c. Date Water Applied to Beneficial Use:** March 31, 2010, pursuant to administrative exchange approved by the Division Engineer. **d. Amount Claimed:** Cumulative exchange rate of 1.57 c.f.s., absolute. Each exchange-to point, as described in paragraph 5 above, is limited to 0.785 c.f.s. Applicants' annual exchange of water pursuant to this application is limited to 15 acre-feet per year, which amount was fully exchanged and used in 2010. **e. Uses:** The water is used for immediate application to beneficial use, for storage and subsequent application to beneficial use, and for replacement of depletions associated with the operation of the two existing off-channel ponds and uses decreed in Case No. 97CW158. Water also is diverted for fish and wildlife enhancement and water quality improvement purposes by providing freshening flows in the two existing off-channel ponds described above. **8. Description of Exchange:** Applicants seek to adjudicate an existing appropriative right of exchange. The purpose of the exchange is to store water in two off-channel ponds on the Applicants' properties for the uses stated in paragraph 7.e. above. The exchange has been exercised and is needed to supplement the exchange decreed in Case No. 97CW158 in order to maintain Applicants' off-channel ponds at times when the water right changed in Case No. 97CW158 is not available in priority. The water diverted by exchange upstream to Applicants' points of diversion is replaced by delivery of an equivalent amount of water leased or owned by the Applicants that is stored in Trinidad Reservoir, at times necessary to satisfy calling senior water rights. Consistent with C.R.S. § 37-92-305(10), this is an existing exchange of water, the original priority date for which shall be recognized and preserved, consistent with the manner in which the exchange has been administered. **9. Applicants propose the following terms and conditions to assure that no injury to senior vested water rights will occur by operation of this exchange:** a. The exchange decreed herein will operate only at times when the substitute water supply decreed for exchange in Case No. 97CW158 is unavailable, either due to a senior downstream call or because Applicants have reached the monthly consumptive use credits decreed in Case No. 97CW158. b. The exchange decreed herein will only operate when water that is leased or owned by the Applicants is physically available at Trinidad Reservoir. c. The exchange decreed herein shall be limited in operation to times when a live stream exists over the entire length of the stream reach over which water is being exchanged. d. Applicants will install and maintain such measuring devices as the Division Engineer may reasonably require for the administration of the water right decreed herein. **II. Claim for Surface Water Rights. 10. Colorow Canyon Diversion:** **a. Source:** Colorow Canyon, a tributary to Long Canyon. **b. Diversion Point:** The pump station described in paragraph 5.a. above. **c. Date of Initiation of Appropriation:** July 1, 2006, the pump described in paragraph 5.a. above was installed. **d. Date Water Applied to Beneficial Use:** April 30, 2008, 0.785 c.f.s.

was diverted from Colorow Canyon at the pump station described in paragraph 5.a. above, through the off-channel pond, and released from that pond to Colorow Canyon a short distance downstream. **e. Amount Claimed:** 0.785 c.f.s., absolute. **f. Uses:** This water is for immediate application to beneficial use for fish and wildlife enhancement and water quality improvement purposes by providing non-consumptive, flow-through freshening flows in the existing off-channel pond described above. **11. Long Canyon Diversion:** **a. Source:** Long Canyon, a tributary to the Purgatoire River at Trinidad Reservoir. **b. Diversion Point:** The pump station described in paragraph 5.b. above. **c. Date of Initiation of Appropriation:** October 1, 2006, the pump described in paragraph 5.b. above was installed. **d. Date Water Applied to Beneficial use:** April 30, 2010, 0.785 c.f.s. was diverted from Long Canyon at the pump station described in paragraph 5.b. above, through the off-channel pond, and released from that pond to Long Canyon a short distance downstream. **e. Amount Claimed:** 0.785 c.f.s., absolute. **f. Uses:** This water is for immediate application to beneficial use for fish and wildlife enhancement and water quality improvement purposes by providing non-consumptive, flow-through freshening flows in the existing off-channel pond described above. **12.** Applicants propose the following terms and conditions to assure that no injury to senior vested water rights will occur by appropriation of this surface water right: a. These water rights may be diverted when sufficient water is available in the stream without requiring a plan for augmentation, even when there is a senior downstream call, by operating as a non-consumptive, flow-through surface water right, with the water fully returned to the stream at the same rate at which it is diverted. b. The evaporative losses associated with these surface water diversions and operation of the associated ponds will be replaced by the exchange decreed in Case No. 97CW158 and by the exchange applied for herein.

CASE NO. 10CW98 - THE CITY OF VICTOR, a Colorado municipal corporation, P.O. Box 86, Victor, CO 80860 and CRIPPLE CREEK & VICTOR GOLD MINING COMPANY, 100 N. 3rd Street, Victor, CO 80860 (Julianne M. Woldridge, MacDougall, Woldridge & Worley, P.C., 530 Communication Circle, Suite 204, Colorado Springs, CO 80905, (719) 520-9288, attorneys for City of Victor; and Michael D. Shimmin and Nathan B. Rand, Vranesh & Raisch, LLP, 1720 14th St., Suite 200, Boulder, CO 80203, (303) 443-6151, attorneys for Cripple Creek & Victor Gold Mining Company).

Application for Approval of Appropriative Rights of Exchange,

PUEBLO, FREMONT, AND TELLER COUNTIES

2. Applicants request adjudication of two appropriative rights of exchange, described as follows: **a. Altman Exchange:** **1). Location:** The lower terminus of the exchange reach shall be Pueblo Reservoir, located in Pueblo County as described below. The exchange reach shall extend up the Arkansas River to its confluence with Beaver Creek located in Township 19 South, Range 68 West, 6th P.M., Fremont County, then up Beaver Creek to its confluence of Beaver Creek and West Beaver Creek, then up West Beaver Creek. The upper terminus of the exchange reach shall be the Altman Pump Station, located in the

NE¼NW¼ Section 15, Township 15 South, Range 69 West, 6th P.M. The exchange may be operated from and to any point on the streams within this reach, including but not limited to the Altman Pump Station. **2). Source of water to be exchanged:** any water obtained by either Applicant that can be exchanged and used by either Applicant, and that has been stored in Pueblo Reservoir, including but not limited to: a). fully consumable water owned or controlled by the Board of Water Works of Pueblo, Colorado (“BWWP”) that is leased by Victor (Victor leased 100 acre-feet of fully consumable water from this source on February 20, 2009). The source of such water is unspecified, but is generally described as water stored in Twin Lakes Reservoir (located in all or portions of Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T.11S., R.81W., 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19, and 20, T.9S., R.80W., 6th P.M. and Sec. 10, 11, 12, 13, 14, and 15, T.9S., R.81W., 6th P.M., in Lake County), Clear Creek Reservoir (located in Sec. 7 and 8, T.12S., R.79W., and Sec. 12, T.12S., R.80W., 6th P.M. in Chaffee County, and Pueblo Reservoir (located in Sec. 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, T.20S., R.66W., and Sec. 1, 2, 3, 4, 5, 9, 10 and 11, in T.21S., R.66W., and Sec. 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, in T.20S., R.67W., 6th P.M. in Pueblo County), and reusable return flows. Such water may include water available from Twin Lakes Reservoir & Canal Co. (“Twin Lakes”), including without limitation storage and direct flow rights for water diverted from another basin available for 100 percent consumptive use and reuse and for augmentation. The water rights producing Twin Lakes water are: 1). Colorado River Water Rights: Case No. 3082, District Court, Garfield County, August 25, 1936 and Case No. W-1901, District Court, Water Div. No. 5, May 12, 1976; priority: August 23, 1930, No. 431; source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Div. No. 5; use: direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal, and all beneficial uses; amount: direct flow amount for diversions through transmountain tunnels of 625 c.f.s., with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre-feet; and 2). Arkansas River Water Rights: Case No. 2346, District Court, Chaffee County, July 14, 1913 as modified in Case No. W-3965, District Court, Water Div. No. 2, April 19, 1974; priorities: December 15, 1896, No. 3 and March 25, 1897, No. 4; source: Lake Creek and its tributaries, tributary to the Arkansas River; 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 by water by diversion from said Arkansas River; amount: 54,452 acre-feet (20,645.3 acre-feet for Priority No. 3 and 33,806.7 acre-feet for Priority No. 4). BWWP water may also include water rights as decreed in Case Nos. 84CW177, 84CW177(B), 86CW111(B), 86CW111(A), 90CW53, 90CW55, W-76, and W-145, Water Div. No. 2, and Case No. CA2535, Pueblo County District Court, and Decree of water rights in Water District 12 dated Feb. 3, 1894. b). fully consumable water owned or controlled by Pueblo West Metropolitan District and obtained by Victor (Victor’s most recent purchase was 8/1/2009 for 94 acre-feet). The source of such water is

unspecified, but could include, without limitation water from Twin Lakes Reservoir & Canal Co. shares, as described above, return flows from Pueblo West's service area, and water rights as decreed in Case No. 85CW134, Div. No. 2, and Case No. 01CW152, Div. No. 12, (Pioneer Ditch, Gas Creek Ditch, Princeton Ditch, Willowdale Ditch, Pike Ditch, and Bowen Ditch); c). fully consumable water purchased from Colorado Springs Utilities (CC&V's most recent purchase as dated 4/12/2010 in the amount of 300 acre-feet). **3). Amount:** 3.8 c.f.s., of which 1.89 c.f.s. shall be absolute and 1.91 c.f.s. shall be conditional. **4). The date of appropriation** is April 17, 2008. **C.R.C.P. 89 Notice: The priority for this exchange right may antedate earlier adjudicated water rights. The water right claimed by this application may affect in priority any water right 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.** The appropriation was initiated on April 17, 2008 by Victor's council passing Resolution 2008-04-17.4 Authorizing Approval of Contract No. 08XX6C0026 with United States Department of Interior Bureau of Reclamation, approving a contract for storage of Applicant's water in Pueblo Reservoir. Victor exercised an administratively approved exchange on May 23, 2009 to the extent of 1.89 c.f.s. and the water was placed to beneficial use. Cripple Creek & Victor Gold Mining Company exercised an administratively approved exchange using water purchased from Colorado Springs on various dates in 2010, at flow rates of less than 1.89 c.f.s. **5). Uses:** All uses for which the exchange water is legally useable, by direct diversion and/or storage, including but not limited to municipal, industrial, replacement, augmentation and exchange, and recreation. Applicants will develop and operate this exchange as part of Victor's integrated water system, of which Cripple Creek & Victor Gold Mining Company is a customer. The place of use of the exchanged water is generally described as within and around the City of Victor, including but not limited to areas capable of being served by Victor's water system, generally described as Sections 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, T.15S., R.69W., 6th P.M., Teller County, Colorado, and CC& V's Victor mine and Cresson Project. A map of the general area 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.) **b. Reservoir Exchange:**
1). Location: The lower terminus of the exchange reach shall be Pueblo Reservoir, located in Pueblo County as described below. The exchange reach shall extend up the Arkansas River to its confluence with Beaver Creek located in Township 19 South, Range 68 West, 6th P.M., Fremont County, then up Beaver Creek to its confluence of Beaver Creek and West Beaver Creek, then up West Beaver Creek to its confluence with the East Fork of West Beaver Creek, then up the East Fork of West Beaver Creek. The upper terminus of the exchange reach shall be the Bison Park Reservoir Intake located on the East Fork of West Beaver Creek at a point which is North 5 degrees 25 minutes West a distance of 6125 feet from the quarter corner common to Sec. 2 and 11, T.15S., R.69W., 6th P.M. The exchange may be operated from and to any point on the streams within this reach, including but not limited to the Altman Pump Station located in

the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 15, T.15S., R.69W., 6th P.M., the Victor Pipeline located in the dam of Victor Reservoir No. 2, the Victor Reservoir No. 2 and the Bison Park Reservoir Intake and Bison Park Reservoir, located as described below. **2). Source of water to be exchanged:** any water obtained by either applicant that can be exchanged and used by either applicant, including without limitation that water described in section 2. a. 2). above. **3). Amount:** 12.5 c.f.s., absolute. **4). The date of appropriation** is April 17, 2008. **C.R.C.P. 89 Notice: The priority for this exchange right may antedate earlier adjudicated water rights. The water right claimed by this application may affect in priority any water right 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.** The appropriation was initiated on April 17, 2008 by Victor's council passing Resolution 2008-04-17.4 Authorizing Approval of Contract No. 08XX6C0026 with United States Department of Interior Bureau of Reclamation, approving a contract for storage of Applicant's water in Pueblo Reservoir. Victor exercised an administratively approved exchange on May 23-27, 2009 to the extent of 107.9 acre-feet and a rate of 12.5 c.f.s. and the water was placed to beneficial use. Cripple Creek & Victor Gold Mining Company exercised an administratively approved exchange using water purchased from Colorado Springs on various dates in 2010, at flow rates of less than 12.5 c.f.s. **5). Uses:** All uses for which the exchange water is legally useable, by direct diversion and/or storage, including but not limited to municipal, industrial, replacement, augmentation and exchange, and recreation. Applicants will develop and operate this exchange as part of Victor's integrated water system, of which Cripple & Creek & Victor Gold Mining Company is a customer. The place of use of the exchanged water is generally described as within and around the City of Victor, including but not limited to areas capable of being served by Victor's water system, generally described as Sections 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, T.15S., R.69W., 6th P.M., Teller County, Colorado, and CC& V's Victor mine and Cresson Project. A copy of the general area is attached to the application as Exhibit A. **3. Location of exchange structures:** a. Pueblo Reservoir: in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, in Township 20 South, Range 67 West, all in the 6th P.M. in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section bears North 61° 21' 20" East, a distance of 2,511.05', all more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado, in Pueblo County; b. Altman Pump Station: NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 15, Township 15 South, Range 69 West, 6th P.M.; c. Victor Reservoir No. 2: SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, Township 15 South, Range 69 West, 6th P.M.; and d. Bison Park Reservoir: SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2, and NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, Township 15 South, Range 69 West, 6th P.M. **4. Proposed terms and conditions:** The

exchanges will be operated only at times when there is a live stream between the discharging facilities and the receiving facilities. The exchanges will involve facilities in the Fryingpan-Arkansas Project (“Project”). Applicants acknowledge that entry of a decree in this matter in and of itself does not create any right, title or interest in the use of Project facilities. Any use of Project facilities must be pursuant to contracts with the United States and/or Southeastern Colorado Water Conservancy District and Applicant. **5. Names and addresses of owners of land upon which exchanged water may be stored:** a. Pueblo Reservoir, Turquoise Reservoir, and Twin Lakes Reservoir are owned by the United States Department of the Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18-E, Loveland, CO 80537; b. Altman Pump Station, Victor Reservoir No. 2, and Bison Park Reservoir: City of Victor. Applicants, therefore, request a decree approving the appropriative rights of exchange requested herein and such other relief as the Court deems appropriate.

CASE NO. 10CW99 – CITY OF FOUNTAIN, COLORADO (“Fountain”), c/o Larry Patterson, Utilities Director, 116 South Main Street, Fountain, CO 80817 (Direct all pleadings to: Cynthia F. Covell and Andrea L. Benson, Alperstein & Covell, P.C., 1600 Broadway, Suite 2350, Denver, CO 80202; (303) 894-8191)

Application for Change of Water Rights and Plan for Augmentation, Including Exchange

EL PASO AND PUEBLO COUNTIES, COLORADO

2. Background. Fountain is a municipal water provider, and delivers water through a central water distribution system to a population of approximately 20,000. Fountain has experienced unprecedented growth, and anticipates the demand for water service will continue to increase. Current planning studies project Fountain’s population to exceed 37,000 by 2020, with a projected average daily demand of 6.9 MG. Fountain currently supplies water to its customers from wells tributary to Fountain Creek and Jimmy Camp Creek, in El Paso County, Colorado and from Fryingpan-Arkansas Project water (“Project Water” or “Fry-Ark Project Water”) purchased from the Southeastern Colorado Water Conservancy District (“Southeastern”) through the auspices of the Fountain Valley Authority, a water authority public entity of the State of Colorado of which Fountain is a member. In Case No. 2009CW103, Fountain seeks to add to its municipal water supplies the approximately 252.5 annual acre feet of fully consumable water available to it from 10.25 shares of the Chilcott Ditch Company, quantified in Case No. 2006CW119, and changed for direct municipal uses, storage, exchange and augmentation. The decree in Case No. 2006CW119 quantified the yield of all shares of the Chilcott Ditch Company based on a ditch-wide analysis. Fountain has acquired an additional 13.0 shares of the Chilcott Ditch Company, and seeks in this application to change these 13 shares to include, in addition to irrigation, direct municipal uses, storage, exchange and augmentation, and to include the additional 319.93 acre-feet of fully consumable water available from these shares in its municipal water

supplies. Fountain also requests that any decree entered upon this application authorize inclusion of additional shares of the Chilcott Ditch Company pursuant to such notice provisions and other terms and conditions as are included in such decree, provided, however, that any inclusion of additional shares of the Chilcott Ditch Company will be subject to prior approval of the Chilcott Ditch Company as provided in its bylaws. **Change of Water Rights.** **3. Decreed Name of Structure for which Change is Sought:** Chilcott Ditch. **4. Description of Previous Decrees.** **4.1 Original adjudication proceeding,** former Water District 10, District Court, El Paso County, decreed on February 15, 1882, as Fountain Creek Priority No. 27, for 27.0 cfs with an appropriation date of March 21, 1866. In that same adjudication proceeding, former Water District 10, District Court, El Paso County, decreed on February 15, 1882, as Fountain Creek Priority No. 39, for 20.63 cfs with an appropriation date of March 21, 1874. In Case No. 10146, District Court, El Paso County, decreed on June 2, 1919, as Fountain Creek Priority No. 172, for 30.95 cfs with an appropriation date of December 18, 1905. Fountain agreed in Case No. 2006CW119 to abandon its interest in this priority. In Case No. 2006CW119, Water Court, Water Division No. 2, decreed on August 11, 2009, average annual historic consumptive use of the Chilcott Ditch was quantified at 24.61 acre-feet per share for all shares of the Chilcott Ditch, based on a ditch-wide consumptive use analysis. **4.2 Decreed Point of Diversion.** The point of diversion is located at a point on the north bank of Fountain Creek in the SE1/4 of Section 25, Township 15 South, Range 66 West of the 6th P.M. in El Paso County, Colorado. **4.3 Source.** Fountain Creek, tributary to the Arkansas River. **4.4 Appropriation Dates.** March 21, 1866, in the amount of 27.0 cfs; March 21, 1874 in the amount of 20.63 cfs; and December 18, 1905 in the amount of 30.95 cfs. **4.5 Historic Use.** The water rights decreed to the Chilcott Ditch and described above (“Chilcott Ditch Water Rights”) were quantified in the decree in Case No. 2006CW119. Information regarding the historically irrigated lands and the Chilcott Ditch diversion records are not included with this application as the historic consumptive use associated with all shares of the Chilcott Ditch Company was decreed in Case No. 2006CW119, and is res judicata in this case. **5. Proposed Changes.** **5.1 Change of Use.** Fountain purchased an additional 13.0 shares out of 105 shares in the Chilcott Ditch Company, which owns the Chilcott Ditch. Fountain seeks to change the water rights represented by the 13 shares of the Chilcott Ditch Company (“Subject Water Rights”) to add, in addition to the existing irrigation use, all municipal uses by the City of Fountain, including but not limited to domestic, irrigation, commercial, industrial, recreational, fishery, piscatorial, wildlife, augmentation, replacement and substitution and exchange. The Subject Water Rights may be used directly for beneficial use or first stored and then beneficially used. Fountain may re-use, successively use and use to extinction all return flows (including but not limited to lawn irrigation return flows and sewer return flows) after initial use of the consumptive use portion of the Subject Water Rights. **5.2 Plan of Operation.** Diversions under the Subject Water Rights will continue to be made at the headgate of the Chilcott Ditch and released back to Fountain Creek at the Chilcott augmentation station. Fountain will take delivery and

measure its share of the Subject Water Rights at the Chilcott Ditch augmentation station, subject to ditch losses. The measured water will then be returned to Fountain Creek to replace historic return flows, and the consumptive use portion, calculated as provided in the decree in Case No. 2006CW119, will be used directly, stored for later beneficial use, or used as augmentation credits as herein provided. **5.3 Change in Place of Use.** The Subject Water Rights will be used to meet Fountain's present and future municipal needs, within Fountain's service area as it may exist from time to time, or extraterritorially by contract. **5.4 Return Flows.** Return flows from the Subject Water Rights have historically been to Fountain Creek. Consistent with the decree in Case No. 2006CW119, Fountain will replace historical return flows from the Subject Water Rights in time, location and amount as necessary to prevent injury to other water rights. **6. Effect of Ditch-Wide Historic Use Determination.** Fountain's consumptive use credits available from the Subject Water Rights will be determined as set forth in the decree in Case No. 2006CW119. In that case, the ditch-wide historic average annual consumptive use per share of the Chilcott Ditch Company was decreed to be 24.61 acre-feet per year. This per-share average annual historic consumptive use results in an average annual consumptive use of 319.93 acre-feet for the 13 shares that make up the Subject Water Rights. The amount of historic consumptive use from the Subject Water Rights will vary from year to year, depending on the amount of water available for diversion under the Chilcott Ditch Water Rights. The historic consumptive use of the Chilcott Ditch, as determined in Case No. 2006CW119, is res judicata in future proceedings such as this case involving the Chilcott Ditch Water Rights, pursuant to Williams v. Midway Ranches Property Owners Assoc., 938 P.2d 515, 521 (Colo. 1997). All of the terms, conditions, and limitations contained in the decree in Case No. 2006CW119 will apply to the Subject Water Rights in any decree entered upon this application. **PLAN FOR AUGMENTATION. 7. Names and Relevant Information Regarding Structures to be Augmented.** The Subject Water Rights will be used, together with Fountain's other legally-available augmentation supplies, including other shares of the Chilcott Ditch, to augment well depletions from the following described wells, including replacements thereof. Said wells, including replacements, are herein referred to as the "Wells." **7.1 Wells included in Fountain's Decreed Augmentation Plans.** The wells included in Case Nos. W-4396 and W-4559, decreed by the Water Court, Water Division No. 2, on April 20, 1981 ("Augmentation Plan I") are located in Sections 5 and 6, Township 16 South, Range 65 West of the 6th P.M., and Section 24, Township 15 South, Range 66 West of the 6th P.M., all in El Paso County, Colorado. The School Well, decreed in Case No. 91CW21, as an amendment to Case No. 85CW110 ("Augmentation Plan II") is located in the NE1/4 SE1/4 of Section 8, Township 16, South, Range 65 West of the 6th P.M., in El Paso County. A list of the wells included in the foregoing cases, together with permit numbers and specific locations, 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.) The wells are shown on the map attached to the Application as Exhibit C. These wells are decreed for municipal, domestic, fire

protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and small gardens, manufacturing and industrial purposes. Copies of the well permits for the wells shown on Exhibit A have not been filed as this application does not seek any changes pertaining to these wells. **7.2 Other Wells included in Pending Applications.** Wells included in Fountain's pending application for Plan for Augmentation in Case No. 2001CW146 ("Augmentation Plan III") are located in Sections 5, 6, 8 and 16 of Township 16 South, Range 65 West and Section 4, Township 17 South, Range 65 West of the 6th P.M. The Venetucci Wells, included in the Venetucci Augmentation Plan (Case No. 2007CW68) are located in Section 11, Township 15 South, Range 66 West of the 6th P.M. The Cumberland Green Well, included in the Cumberland Green Augmentation Plan (Case No. 2007CW123), is located in Section 33, Township 15 South, Range 65 West of the 6th P.M. A list of the wells included in the foregoing pending applications is attached to the Application as Exhibit B. These wells are shown on the map attached as Exhibit C. Copies of the well permits for the wells described on Exhibit B have not been filed as this application does not seek any changes pertaining to these wells. **7.3 Wells to be acquired or constructed in the future, and replacements thereof.** Wells constructed or acquired by Fountain and not identified in this Plan for Augmentation may be augmented by the Subject Water Rights pursuant to the terms of the decree entered upon this application, or by subsequent water court decree or approved substitute water supply plan. **8. Previous Decrees for Water Rights to be used for Augmentation.** The Subject Water Rights, described in paragraph 4 above, will be used for augmentation of the Wells, along with other augmentation supplies now available to Applicant, and supplies that will be available to Applicant in the future. Fountain also requests that any decree entered upon this application authorize inclusion of additional shares of the Chilcott Ditch Company pursuant to such notice provisions and other terms and conditions as are included in such decree. **9. Statement of Plan for Augmentation and Exchange. 9.1 Continued Operation of Wells and Water Distribution System.** Fountain will continue to deliver water to its customers through its water distribution system, including any extensions or expansions thereof, using any or all of the Wells, as well as Project Water and other water delivered via the Fountain Valley Conduit and the Southern Delivery Pipeline System, when completed. Fountain also delivers untreated water from some Wells for a variety of municipal uses, including, by way of example and not by way of limitation, commercial uses and irrigation of certain playing fields. **9.2 Determination of Well Augmentation Requirements. 9.2.1 Calculation of Well Depletions (Augmentation Plans I, II and III).** All of the returns from wastewater effluent discharges and irrigation return flows accrue to the Fountain Creek system within the reach of Fountain Creek bounded on the upstream terminus by a point located in the NE1/4 of Section 25, T. 15 S., R. 66 W. of the 6th P.M. and on the downstream terminus by a point located in the NW 1/4 of Section 10, T. 17 S., R. 65 W. of the 6th P.M. In accordance with the decrees in Augmentation Plans I and II, Fountain replaces all depletions from the Wells by providing replacement water to balance the well depletions on the basis of schedules which determine depletions as a percentage

of diversions by the Wells. Well depletions from Fountain's wells included in Augmentation Plans I and II will continue to be calculated using the depletion factors applied when wastewater treatment does not include use of sewage lagoons, as is the case. Well depletions from Fountain's wells included in Augmentation Plan III will be calculated in the same manner, provided, however, that depletions from any wells not connected to Applicant's treated municipal water distribution system will be calculated as set forth in Section 9.2.4 below.

9.2.2 Calculation of Wastewater Return Flows (Augmentation Plans I, II, and III).

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

9.2.3 Calculation of Lawn Irrigation Return Flows (Augmentation Plans I, II and III).

A portion of the return flows from Fountain's municipal treated water deliveries accrue to the Fountain Creek alluvium as return flows from irrigation of lawns, parks and open spaces. Lawn irrigation return flows will continue to be calculated in accordance with the decrees in Augmentation Plans I, II and III. To the extent lawn irrigation return flows include fully-consumable water originating from the Subject Water Rights, those return flows will be calculated in accordance with, and will be subject to the applicable terms and conditions of the decrees in Augmentation Plans I, II and III.

9.2.4 Calculation of Depletions from Certain Wells.

9.2.4.1 Wells Not Connected to Treated Water Distribution System

The Aragon Well, Cumberland Green Well, Well No. 20, Delbert Wells Well Nos. 1 and 2, and the Racetrack Well Nos. 7 and 11 are not connected to Applicant's municipal treated water distribution system. Unless and until they are so connected, depletions will be calculated as set forth in this paragraph. The Aragon Well has operated as an irrigation well pursuant to a Rule 14 Plan, and later, a substitute water supply plan. Return flows from this well will be calculated as 16.65% of the amount pumped, and the timing of

depletions will be calculated from monthly factors. No return flow credit is claimed for Well No. 20, and depletion factors based on a calculated stream depletion factor (“SDF”) of 207 days will be applied to total withdrawals from this well. The Delbert Wells will be used for irrigation of common areas within a subdivision, and return flows will be calculated at 16.65% of the amount pumped. Timing of lagged depletions are calculated using an SDF of 68 days for Delbert Wells Well No. 1 and 45 days for Delbert Wells Well No. 2. Withdrawals from the Racetrack Wells are considered fully consumptive, and depletions will be fully replaced. Lagged depletions are estimated using an SDF of 81 days. The Cumberland Green Well is used for irrigation. Return flows will be calculated as 16.65% of the water applied, and depletion factors as determined by Applicant’s consulting engineers will be applied. At such time as these wells are connected to Applicant’s municipal treated water distribution system, depletions will be calculated as set forth in sections 9.2.1 - 9.2.3 above. **9.2.4.2 Venetucci Wells.** The Venetucci Wells are located in the Widefield Aquifer, and depletions associated with these wells will be calculated as set forth in any decree entered in Case No. 07CW68. **9.3 Calculation of Replacement Credits from Subject Water Rights.** The available replacement credits from the decreed historic consumptive use of the Chilcott Ditch will be calculated as provided in the decree in Case No. 2006CW119 and this paragraph 9.3. **9.3.1 Case No. 2006CW119 Limits.** Case No. 2006CW119 imposes volumetric limitations on the Chilcott Ditch shares included in that case. These limitations will be applied to the Subject Water Rights on the same per-share basis, with limitations on the 13 shares as follows:

Month	Maximum Delivery to Augmentation Station (acre-feet)	20-Year Average Delivery to Augmentation Station (acre-feet)	Maximum Consumptive Use (acre-feet)	20-Year Average Consumptive Use (acre-feet)
November 1-14	64.0	32.3	30.4	15.2
November 15-30	0.0	0.0	0.0	0.0
December	0.0	0.0	0.0	0.0
January	0.0	0.0	0.0	0.0
February	0.0	0.0	0.0	0.0
March 1-15	0.0	0.0	0.0	0.0
March 16-31	72.9	36.1	33.0	16.5
April	127.5	63.4	71.0	35.5
May	190.9	95.1	123.0	61.5
June	140.8	69.8	91.3	45.7
July	146.5	72.9	98.9	49.5
August	130.0	64.7	86.2	43.1
September	89.4	45.0	54.5	27.3
October	104.0	52.6	64.7	32.3
Annual Limits	799.7	532.0	490.8	326.6

9.3.2 Determination of Available Replacement Credits. Case No. 2006CW119 decreed the ditch-wide historic average consumptive use per share of the Chilcott Ditch Company to be 24.61 acre-feet per year. The Subject Water Rights therefore yield average annual consumptive use of 319.93 acre-feet. The

amount of historic consumptive use varies from year to year, depending on the amount of water available for diversion under the Chilcott Ditch Water Rights. Subject to the limitations set forth above, Applicant’s available replacement credits will be calculated by multiplying the amount of in-priority diversions under the Subject Water Rights delivered to Fountain Creek through the Chilcott augmentation station by the following monthly depletion factors:

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

The terms and conditions from Case No. 2006CW119, including those set forth above, will determine the amount of fully-consumable water available for use by Fountain from the Subject Water Rights at any given time. Such amounts are referred to as “Fountain Chilcott Ditch Replacement Credits.” **9.4 Use of Fountain Chilcott Ditch Replacement Credits for Augmentation and Exchange to Wells.** The Fountain Chilcott Ditch Replacement Credits may be used as an augmentation supply to augment depletions from the Wells. Such Fountain Chilcott Ditch Replacement Credits will be an augmentation supply in addition to any other augmentation supplies that are now or may be legally available to Fountain in the future. The Subject Water Rights will be diverted at the Chilcott Ditch headgate and the Fountain Chilcott Ditch Replacement Credits will be released at the Chilcott Ditch augmentation station currently located in the NW 1/4 of Section 31, T. 15 S, R. 65 W. of the 6th P.M., as described in Case No. 2006CW119. The augmentation station is shown on Exhibit C. The Wells described on Exhibit A (except those identified as A.7, A.8, and A.9) and the wells described on Exhibit B at B.2 - B.16 are located downstream of the Chilcott Ditch augmentation station. Fountain Chilcott Ditch Replacement Credits released from the Chilcott Ditch augmentation station can be delivered directly to the points of depletion from these Wells. In addition, Fountain Chilcott Ditch Replacement Credits can be exchanged to these Wells as provided in paragraph 13. The Wells described on Exhibit B at B.17 - B.23 (“Venetucci Wells”) and the wells described on Exhibit A at A.7, A.8 and A.9 cause depletions to Fountain Creek upstream of the Chilcott Ditch augmentation station. The Fountain Chilcott Ditch Replacement Credits will be exchanged to the locations of these depletions as described in paragraph 13 below. The Well described on Exhibit B at B.24

("Cumberland Green Well") causes depletions to Jimmy Camp Creek. The Fountain Chilcott Ditch Replacement Credits will be exchanged to the locations of depletions from this Well as described in paragraph 13. The recordkeeping and accounting for use of the Fountain Chilcott Ditch Replacement Credits will be integrated into the recordkeeping and accounting for Fountain's augmentation plans, and provided to the Division Engineer as required by those plans. **DIRECT MUNICIPAL USE.** 10. Fountain seeks to use the Fountain Chilcott Ditch Replacement Credits for direct municipal use by delivering such credits from the Chilcott Ditch augmentation station to its water treatment facilities or by storage of such credits as described in paragraph 11 below, and subsequent delivery to Fountain's water treatment facilities. Fully consumable wastewater effluent and lawn irrigation return flows originating from such direct municipal use of the Fountain Chilcott Ditch Replacement Credits will be quantified in the manner described in Augmentation Plans I, II and III, and may be reused, stored and exchanged as provided in those plans and as described in sections 11 - 13 of this application. **STORAGE AND EXCHANGES OF FOUNTAIN CHILCOTT DITCH REPLACEMENT CREDITS.** **11. Storage.** When and to the extent Fountain does not use available Fountain Chilcott Ditch Replacement Credits for augmentation of Well depletions, such credits may be stored in reservoirs legally available to Fountain for such storage. Water stored in such reservoirs in the Fountain Creek drainage basin or on the Arkansas River or its tributaries may be later released for direct municipal use or augmentation or for exchange, as described in paragraphs 12 and 13. Among other storage locations, Fountain anticipates storing water in a reservoir to be constructed at a site along Fountain Creek generally described as portions of Sections 7, 18 and 19, Township 16 South, Range 65 West of the 6th P.M. in El Paso County, and at sites available to Fountain pursuant to any decree entered in Case No. 2006CW120, which provides for storage to be shared among parties to the Intergovernmental Agreement among the Cities of Pueblo, Fountain, Colorado Springs and Aurora, the Southeastern Colorado Water Conservancy District and the Board of Water Works of Pueblo, effective May 27, 2004, as such agreement may be amended from time to time ("Regional IGA"). **12. Exchange of Fountain Chilcott Ditch Replacement Credits to Pueblo Reservoir.** **12.1 Relationship to Case No. 2001CW108:** The application in the instant case adds Fountain Chilcott Ditch Replacement Credits to the water rights that may be exchanged to Pueblo Reservoir pursuant to Fountain's Pueblo Reservoir exchange pending in Case No. 2001CW108. The exchange will be operated consistent with the decree in Case No. 2001CW108, and the terms and conditions set forth below. **12.2 Appropriation Date:** December 28, 2006 (for exchange of Fountain Chilcott Ditch Replacement Credits.) **12.3 How Appropriation Initiated:** The intent to appropriate an exchange was first formed and the appropriation was initiated by meeting with representatives of the U.S. Geological Survey (USGS) and others to make arrangements to modify the Fountain Creek transit loss model in order to properly implement the exchange of reusable Project Water return flows and other water rights. The intent to exchange the Fountain Chilcott Ditch Replacement Credits was formed at the time Fountain acquired its interest in the

Fountain Chilcott Ditch Right, and filed an application to quantify the consumptive use in Case No. 2006CW119 for augmentation and exchange purposes, followed by the filing of the application in this case. **12.4 Amount claimed:** up to 19 cfs, conditional, to be included within the 19 cfs exchange rate applied for in Case No. 2001CW108. **12.5 Exchange reach.** **12.5.1 Downstream Terminus:** The downstream terminus of the exchange reach is the confluence of Fountain Creek and the Arkansas River, in the NE 1/4 of Section 6, Township 21 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. **12.5.2 Upstream Terminus:** The upstream terminus of the exchange reach is located on the Arkansas River at Pueblo Reservoir in the S1/2 of Section 36, Township 20 South, Range 66 West of the 6th P.M. in Pueblo County, Colorado. **12.6 Uses.** Water from the Fountain Chilcott Ditch Replacement Credits may be exchanged to storage in Pueblo Reservoir pursuant to the exchange to be decreed in Case No. 2001CW108, and may be delivered from storage in Pueblo Reservoir back to Fountain via the Fountain Valley Conduit and/or the Southern Delivery Pipeline system to be used for all municipal purposes, including domestic, irrigation, recreation, storage, piscatorial, commercial, industrial, replacement, substitution, augmentation, and further reuse and exchange to extinction, storage and release from storage for all of the foregoing purposes. **12.7 Locations Where Water From the Fountain Chilcott Ditch Replacement Credits Will Be Released for Exchange.** Water from the Fountain Chilcott Ditch Replacement Credits will be delivered to Fountain Creek from the Chilcott Ditch augmentation station, lawn irrigation return flows, and/or the wastewater treatment plants described in paragraphs 9.2.2 and 9.2.3. Water from the Fountain Chilcott Ditch Replacement Credits that is stored in other structures on Fountain Creek or the Arkansas River may be released from those structures and exchanged to Pueblo Reservoir as provided in Case No. 2001CW108 and any other decrees that may govern such exchanges. **12.8 Operation of Exchange.** To the extent the Fountain Chilcott Ditch Replacement Credits are not used for direct municipal use or augmentation when delivered to Fountain Creek, such Fountain Chilcott Ditch Replacement Credits may be included with the “Excess Augmentation Credits” as described in Case No. 2001CW108. That case provides that if and to the extent Excess Augmentation Credits are available, they may be exchanged to storage in Pueblo Reservoir. The exchange herein applied for authorizes Excess Augmentation Credits attributable to Fountain Chilcott Ditch Replacement Credits to be exchanged to Pueblo Reservoir subject to the same terms and conditions as will be imposed in the decree in Case No. 2001CW108. Operation of the exchange of Fountain Chilcott Ditch Replacement Credits to Pueblo Reservoir is also subject to Fountain’s obligations under the Regional IGA and to the requirements for operation of Pueblo Reservoir imposed by Southeastern Colorado Water Conservancy District and the United States Bureau of Reclamation, and the requirements of the Fountain Valley Authority. In addition, the operation of this exchange will be limited by the timing and availability of the Fountain Chilcott Ditch Replacement Credits to be exchanged within the exchange reach. The exchange will be operated only when there is a live stream maintained between the point of delivery of water for exchange and the upstream terminus of the

exchange. The exchange will only be operated to the extent that other vested water rights senior to this exchange are not deprived of water to which they would have been entitled in the absence of such exchange, considering the call of the Chilcott Ditch Water Right. **13. Exchange of Fountain Chilcott Ditch Replacement Credits to Augment Well Depletions.** **13.1 Appropriation Date:** December 28, 2006. **13.2 How Appropriation Initiated:** The intent to exchange the Fountain Chilcott Ditch Replacement Credits was formed at the time Fountain acquired its interest in the Fountain Chilcott Ditch Right, and filed an application to quantify the consumptive use in Case No. 2006CW119 for augmentation purposes, followed by the filing of the application in this case. **13.3 Amount claimed:** 2.8 cfs, conditional. **13.4 Exchange reach.** **13.4.1 Downstream Terminus:** The downstream terminus of the exchange reach is the regional wastewater treatment plant described in paragraph 9.2.2. **13.4.2 Upstream Termini:** The upstream termini of the exchange reach are (a) the point of depletion of the Venetucci Wells, located on Fountain Creek generally in Section 11, Township 15 South, Range 66 West of the 6th P.M. and (2) the point of depletion of the Cumberland Green Well, located on Jimmy Camp Creek generally in Section 33, Township 15 South, Range 65 West of the 6th P.M. in El Paso County. **13.5 Uses.** Water from the Fountain Chilcott Ditch Replacement Credits may be exchanged to the points of depletion of the Wells located within the exchange reaches to augment depletions from those wells. **13.6 Operation of Exchange.** The operation of this exchange will be limited by the timing and availability of the Fountain Chilcott Ditch Replacement Credits to be exchanged within the exchange reach. The exchange will be operated only when there is a live stream maintained between the point of the exchange and the upstream terminus of the exchange. The exchange will only be operated to the extent that other vested water rights senior to this exchange are not deprived of water to which they would have been entitled in the absence of such exchange, considering the call of water rights decreed for diversion through the Chilcott Ditch as of the date of this application, including the Chilcott Ditch Water Rights, Calhan Reservoir (Reservoir Priority 51), decreed in Case No. 10146, El Paso County District Court, June 2, 1919, Miller Ditch rights (Priorities 16 and 30) decreed for diversion through the Chilcott Ditch headgate in Case No. 80CW100 (and subsequently quantified in Case No. 2003CW59), portions of the Liston & Love North Ditch water rights (Priorities 14 and 33), the Lock Ditch rights (Priority 15) and Lock Ditch No. 2 water rights (Priorities 22 and 45), all decreed for diversion through the Chilcott Ditch headgate in Case No. 85CW38. **14. Terms and Conditions.** **14.1. Terms and Conditions from Previous Decrees.** Terms and conditions in the decrees for Augmentation Plans I, II, III, the Venetucci Augmentation Plan and the Cumberland Green Augmentation Plan will apply to use of the Wells, and calculation of well depletions, wastewater effluent, lawn irrigation return flows, and well augmentation requirements. The Fountain Chilcott Ditch Replacement Credits will be incorporated into Fountain's water rights accounting, and will be used and accounted for as required by such accounting, as it may be amended from time to time. Records shall be maintained and reports made to the Division Engineer as required by the decrees

in Augmentation Plans I, II and III, the Venetucci Augmentation Plan and the Cumberland Green Augmentation Plan, and, with regard to the exchange to Pueblo Reservoir, the terms and conditions of any decree entered in Case No. 2001CW108. **14.2 Fountain Creek Transit Loss Model.** Fountain is participating, and agrees to continue participating, in a combined and coordinated effort with various stakeholders to update and maintain the existing USGS Fountain Creek transit loss model from the point of the USGS Colorado Springs gage to the confluence of Fountain Creek and the Arkansas River in order to improve the administration of water rights and stream flow in Fountain Creek by including existing and future water uses, water rights, exchanges and plans for augmentation in the framework of the transit loss model. If not already included in the transit loss model, the Chilcott Ditch headgate (where the Subject Water Rights are diverted) and the Chilcott Ditch augmentation station (where the Subject Water Rights are released) will be included in the transit loss model, and Fountain will be responsible for its appropriate share of the costs as provided in the December 20, 2007, Fountain Creek Transit Loss Memorandum of Understanding among the City of Colorado Springs, the Fountain Mutual Irrigation Company, and the El Paso County Water Authority (of which Fountain is a member.) **14.3 No Injury.** So long as, and to the extent that Fountain operates the plan for augmentation and exchanges herein sought consistent with the requirements of Augmentation Plans I, II and III, and Case Nos. 2007CW68 and 2007CW123, the terms and conditions of any decree entered in Case No. 2001CW108, and the terms and conditions described in this application, the use of Fountain Chilcott Ditch Replacement Credits as described in this application will not injure vested water rights or decreed conditional water rights. **11. Names and addresses of owners of land on which any new diversion or storage structure or modification to any existing diversion or storage structure or storage pool is or will be constructed or upon which water is or will be stored.** No new structures or modifications to existing structures are contemplated by this application. Inasmuch as water from the Fountain Chilcott Ditch Right has not been stored in Pueblo Reservoir, the landowner may be entitled to notice pursuant to C.R.S. § 37-92-302(b)(II). The name and address of the owner of the land on which Pueblo Reservoir is located is: United States Department of Interior, Bureau of Reclamation, 11056 West County Road 18E, Loveland, CO 80537.

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 2011, (forms available at Clerk's office or at www.courts.state.co.us, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 7th day of January, 2011.



Mardell R. DiDomenico

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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