

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING DECEMBER 2011, INCLUDING REVISED ABANDONMENT LIST OF WATER RIGHTS IN WATER DIVISION 2 (AMENDED JANUARY 23, 2012, TO REFLECT NEW FILING FEES)  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications, amendments and Notice of Revised Abandonment List filed and ordered published during December 2011, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved description of ruling sought as reflected by said applications, or amendments, and notice of Revised Abandonment List are as follows:

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**CASE NO. 11CW80 (Water Div. 2) and CASE NO. 11CW250 (Water Div. 1) – JOHN M. ERICKSON and DENISE M. ERICKSON, 9525 Burgess Road, Black Forest, CO 80908** (Steven T. Monson, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation, as amended

**EL PASO COUNTY**

**II. Application for Underground Water Rights. A. Legal Description of Wells. 1.**

**Property Description.** All wells will be located on Applicants' property, consisting of 19.8 acres, more or less, located in the in the NE ¼ of Section 22, Township 12 South, Range 65 West of the 6th P.M., El Paso County, Colorado, ("Property") and being more particularly described in Exhibit A attached to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Property is generally shown on the Exhibit B map attached to the Application. **2. Existing Wells.** State Engineer well permit no. 99851 is an exempt domestic well currently located in the NW ¼ NE ¼ of Section 22, Township 12 South, Range 65 West, 6<sup>th</sup> P.M., approximately 800 feet from the north section line and 1400 feet from the east section line feet of said Section 22 ("Existing Well"). It is believed that this well produces water from the Dawson aquifer. **3. Additional Wells.** Two additional wells will be drilled into the not nontributary Dawson and/or Denver Aquifer underlying the Property. The current permitted Dawson aquifer well permit no. 99851 will be re-permitted as a nonexempt under the decree sought herein. Well permit applications for the wells to be drilled pursuant to this application and subsequent decree will be applied for prior to drilling wells into the Denver Basin aquifers which are the subject of this application. No exact location is requested for the proposed wells, as that information will be provided when the well permit applications are submitted. **B.**

**Water Source. 1. Not Nontributary.** Applicants' withdrawal of ground water from the Dawson and Denver aquifers of the Denver Basin underlying the Property is not nontributary. The Denver aquifer underlying the Property is more than one mile from any point of contact between any natural stream, including its alluvium. Pursuant to C.R.S. §37-90-137(9)(c), the augmentation requirements for wells into the Denver

aquifer will require the replacement to the affected stream system of a total amount of water equal to four percent of the water withdrawn on an annual basis. Pursuant to C.R.S. 37-90-137(9)(c), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. **2. Nontributary.** The ground water to be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers of the Denver Basin underlying the Property is nontributary. **C. Estimated Rates of Withdrawal and Ground Water Available.** **1. Estimated Rates of Withdrawal.** The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicants request the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. **2. Estimated Average Annual Amounts of Ground Water Available.** Applicants request an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4). The estimated average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers are based upon the Denver Basin Rules. Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

Aquifer	Saturated Thickness (Feet)	Depth (Feet)	Total Ground Water Storage (Acre Feet)	Annual Average Withdrawal (Acre Feet)
Dawson	310	700	1,230	12.3
Denver	320	1,600	1,080	10.8
Arapahoe	250	2,200	840	8.4
Laramie-Fox Hills	190	2,700	560	5.6

Pursuant to C.R.S. §37-92-305(11), the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **E. Requested Uses.** The Applicants request the right to use the ground water for beneficial uses upon the Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, and fire protection, by individual wells or a central water supply for such uses, and also for exchange and augmentation purposes. The Applicants also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicants shall only be entitled to construct a well or use water from the not nontributary Dawson or Denver aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such water from not nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c). **F. Well Field.** Applicants request that they be permitted to produce the full legal entitlement from the respective Denver Basin aquifers underlying the Property through any combination of wells constructed into each aquifer on the Property. Applicants request that these wells be treated as a

well field. Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed from the Denver Basin aquifers underlying Property, so long as the sum of the total withdrawals from all the wells in the aquifer does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever occurs first, multiplied by the average annual volume of water which Applicants are entitled to withdraw from the aquifer underlying Property.

**G. Description of Land Overlying Subject Ground Water:** The land overlying the ground water which is the subject of this Application is located in the Northeast Quarter of Section 22, Township 12 South, Range 65 West of the 6th P.M., El Paso County. The Property is more particularly described in Exhibit A containing an area of 19.8 acres, more or less.

**H. Name and Address of Owner of Land Upon Which Wells are to Be Located.** The owners of the overlying property are the Applicants, John M. and Denise M. Erickson, 9525 Burgess Road, Black Forest, Colorado, 80908.

**III. Plan for Augmentation.**

**A. Structures to be Augmented.** The structures to be augmented consist of up to three wells completed or to be completed in the not nontributary Dawson and/or Denver aquifers of the Denver Basin underlying the Property, including any replacement wells. Applicants request the right to have a central well system as an alternative for all or part of the water allotment for the individual wells.

**B. Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during plan pumping are the return flows of the not nontributary Dawson and Denver aquifer wells to be pumped as set forth in this plan for augmentation, together with water rights from the nontributary Arapahoe and Laramie-Fox Hills aquifers for replacement of post pumping depletions.

**C. Statement of Plan for Augmentation.**

**1. Diversions.** Three augmented wells are to be used for the water supply for up to three single family residences and/or commercial use upon the Property including irrigation of lawns, gardens and landscaping. The maximum annual pumping from the Existing Well will be 1.0 acre feet and the two remaining wells will have maximum pumping of each well for these uses of approximately 0.65 acre foot per year, for total diversions of approximately 2.3 annual acre feet for all three wells.

**2. Depletions.** The Applicants' consultant has operated the State Engineer's Denver Basin Ground Water Flow Model for the determination of stream depletions from Dawson aquifer well pumping. The actual stream depletions during the plan term are a maximum of approximately 34 percent of the Dawson aquifer well pumping, assuming 300 years of withdrawal under this plan. The actual stream depletions associated with the Dawson aquifer, assuming the three wells pumping at an annual rate of 2.3 acre feet, will therefore be a maximum of approximately 0.78 annual acre feet. Maximum depletions from the Denver aquifer under option one will be approximately 0.1 annual acre foot. Attached to the Application as Exhibit C are the ground water flow model Dawson aquifer stream depletion factors. To the extent Applicants utilize ground water in the Denver aquifer, four percent of the water withdrawn on an annual basis shall be replaced to the effected stream system. The diversion and depletions numbers are approximate and may vary based on final water availability.

**3. Replacement.** Applicants' augmentation water during the plan term will consist of septic return flows from in-building use. Wastewater from the in-house uses will be disposed of through non-evaporative septic systems that are determined to have return flows to the tributary stream system of 90 percent of the in-

house pumping of 0.3 annual acre foot per well. Therefore, return flows total 0.27 annual acre feet per unit, and 0.81 annual acre feet for all three units. These return flows during the period of the plan will augment the tributary stream system in an amount equal to the maximum actual stream depletion amount from the Dawson aquifer of 0.78 annual acre foot, and the maximum alternative stream depletions from the Denver aquifer of 0.1 annual acre foot, plus any other incidental consumption upon Applicant's property. Therefore, Applicants' return flows prevent material injury to other vested water rights. Applicants preserve their claim to all other return flows not used to meet depletions and do not waive their rights or claims thereto. **D. Filing in Both Water Divisions.** This Application is being filed in both Water Divisions 1 and 2 because ground water depletions will occur in both divisions under the State's ground water flow model. The return flows set forth above will accrue to only the Arkansas River system where most depletions occur. Applicants request that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. **E. Post-Pumping Depletions.** For the replacement of post-pumping depletions, Applicants will reserve up to 705 acre feet of water from the nontributary Arapahoe and Laramie-Fox Hills aquifers underlying the Applicants' Property, less the amount of actual stream depletions replaced during the plan pumping period. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Under the Court's retained jurisdiction Applicants seek to reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used, as so necessary, to replace any injurious post pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to file for and receive well permits for up to three Dawson and/or Denver aquifer wells for the uses in accordance with this Application. **IV. Additional Information.** 1. Applicants request a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested nontributary wells and by the requested not nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9). 2. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions will be determined as the average annual withdrawals for all wells through cessation of pumping and accrue only to the extent of actual pumping. 3. Applicants will comply with C.R.S. §37-90-137(9)(b) requiring the relinquishment of the right to consume no more than two percent of the amount of the nontributary ground water withdrawn. 4. Applicants will comply with C.R.S. §37-92-302(b) requiring this Application to be supplemented by evidence that the Applicants have, within ten days after filing the application, given notice of the application by registered or certified mail, return receipt requested, to every record owner of the overlying land and to every person who has a lien or mortgage on, or deed of trust to, the overlying land recorded in El Paso county in which the overlying land is located. 5. The Court will retain jurisdiction over this matter for those who object to the application to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local

aquifer characteristics from adequate information obtained from well drilling or test holes. 6. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 7. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 8. The Applicants intend to waive the 600 feet well spacing requirement for the wells to be located upon the Applicants' Property. Pursuant to C.R.S. §37-92-137(2)(b), 10 days prior to the filing of this Applicant, Applicants have provided notice of this Application to adjoining landowners whose well may be within 600 feet of existing and/or proposed augmented wells under this plan and will file a certificate of mailing of such notice.

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**CASE NO. 11CW81 – CITY OF AURORA, COLORADO, a municipal corporation of the counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise (“Aurora”), 15151 E. Alameda Pkwy., Ste 3600, Aurora, CO 80012-1555**

(John M. Dingess, Austin Hamre, and T. Daniel Platt, Duncan, Ostrander & Dingess, P.C., Attorneys for Applicant, 3600 S. Yosemite Street, Suite 500, Denver, CO 80237; (303) 779-0200)

Application for Appropriative Rights of Exchange

**LAKE AND CHAFFEE COUNTIES**

**2. Introduction:** The Columbine Ditch diverts water from the upper reaches of East Fork of the Eagle River in Eagle County, transporting such water across the Continental Divide into Chalk Creek (in northern Lake County), a headwaters tributary of the Arkansas River, for recapture at points downstream. Aurora owns an interest in the water rights diverted through the Columbine Ditch by virtue of its share ownership in the Fremont Pass Ditch Company, a mutual ditch company that owns the Columbine Ditch water rights. Aurora seeks judicial confirmation of appropriative rights of exchange by which Columbine Ditch water will be exchanged from the confluences of the Arkansas River mainstem with Lake Fork Creek, Lake Creek, and Clear Creek, into Turquoise Reservoir, Twin Lakes Reservoir and Clear Creek Reservoir, respectively. In addition, Columbine Ditch water stored in Clear Creek Reservoir may be released and exchanged into Box Creek Reservoir or Twin Lakes Reservoir, and Columbine Ditch water stored in Box Creek Reservoir may be released and exchanged into Twin Lakes Reservoir. **3. Name and Location of Points / Structures Defining Exchange Reaches:**

**3.1. Confluence of Lake Fork Creek and the Arkansas River (“LF/AR Confluence”):** This confluence is located in the SW ¼ of the SE ¼, Section 5, Township 10 South, Range 80 West, of the 6<sup>th</sup> P.M., in Lake County, Colorado, at a point that lies approximately 340 feet from the south line and 1810 feet from the east line of said Section 5. **3.2. Turquoise Reservoir:** Turquoise Reservoir, including the proposed Turquoise Lake Enlargement, is located in all or portions of Sections 7, 8, 17, 18, 19 and 20, Township 9 South, Range 80 West, and Sections 10, 11, 12, 13, 14 and 15, Township 9 South, Range 81 West, all from the 6<sup>th</sup> P.M., in Lake County, Colorado. The Turquoise Reservoir Dam axis and the centerline of Lake Fork Creek intersect at a

point whence the northwest corner of Section 16, Township 9 South, Range 80 West, 6<sup>th</sup> P.M., bears north 44° 46' 18" east a distance of 10344.35 feet which point is also described as a point in the SW ¼ of the NE ¼ of Section 19, Township 9 South, Range 80 West, 6<sup>th</sup> P.M. that lies 2110 feet from the north line and 1890 feet from the east line of Section 19.

3.3. Arkansas River Intake for Box Creek Reservoir: The Intake is to be located in Sections 22, 27 and 34, Township 10 South, Range 80 West and Section 3, Township 11 South, Range 80 West, of the 6<sup>th</sup> P.M., in Lake County, Colorado.

3.4. Derry Ditch No. 1 (diversion point for Box Creek Reservoir): The headgate for the Derry No. 1 Ditch is on the right (west) bank of the Arkansas River at a point whence the ¼ corner of Section 16, Township 10 South, Range 80 West, of the 6<sup>th</sup> P.M. bears south 22° 1' east 3753 feet, in Lake County, Colorado, which point is believed to lie approximately 790 feet from the south line and 1190 feet from the west line of Section 9, Township 10 South, Range 80 West.

3.5. Upper River Ditch (diversion point for Box Creek Reservoir): The point of diversion for the Upper River Ditch is on the west bank of the Arkansas River at point whence the Southeast corner of Section 16, Township 10 South, Range 80 West, of the 6<sup>th</sup> P.M. bears south 23° 28' east, 2008.5 feet, in Lake County, Colorado, which point is believed to lie approximately 1830 feet from the south line and 820 feet from the east line of said Section 16.

3.6. Confluence of Lake Creek and the Arkansas River ("LC/AR Confluence"): This confluence is located in the NW ¼ of the SE ¼, Section 24, Township 11 South, Range 80 West of the 6<sup>th</sup> P.M., in Lake County, Colorado, at a point that lies approximately 2560 feet from the south line and 1880 feet from the east line of said Section 24.

3.7. Twin Lakes Reservoir: Twin Lakes Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 Township 11 South, Range 80 West, and Sections 24 and 25, Township 11 South, Range 81 West, all from the 6<sup>th</sup> P.M., in Lake County, Colorado. The Twin Lakes dam axis and the centerline of Lake Creek intersect at a point whence the Southeast corner of Section 23, Township 11 South, Range 80 West of the 6<sup>th</sup> P.M. bears South 54° 13' 8" east, a distance of 3803.10 feet, which point is also described as a point in the NE ¼ of the SW ¼ of Section 23, Township 11 South, Range 80 West, 6<sup>th</sup> P.M. that lies 2160 feet from the south line and 2325 feet from the west line of Section 23.

3.8. Confluence of Clear Creek and the Arkansas River ("CC/AR Confluence"): This confluence is located in the SE ¼ of the NE ¼, Section 8, Township 12 South, Range 79 West, 6<sup>th</sup> P.M. in Chaffee County, Colorado, at a point that lies approximately 1620 feet from the north line and 1200 feet from the east line of said Section 8.

3.9. Clear Creek Reservoir: Clear Creek Reservoir is located on Clear Creek in Sections 7 and 8, Township 12 South, Range 79 West, and Section 12, Township 12 South, Range 80 West, all of the 6<sup>th</sup> P.M. in Chaffee County, Colorado.

**4. Applicant requests the following Appropriative Rights of Exchange:**

**4.1.** From the LF/AR Confluence to Turquoise Reservoir.

4.1.1. Rate of Exchange: 40 cfs total, of which 10 cfs is absolute, and 30 cfs is conditional.

**4.2.** From the LC/AR Confluence to Twin Lakes Reservoir.

4.2.1. Rate of Exchange: 100 cfs total, of which 18 cfs is absolute, and 82 cfs is conditional.

**4.3.** From the CC/AR Confluence to Clear Creek Reservoir.

4.3.1. Rate of Exchange: 50 cfs, conditional.

**4.4.** From the LC/AR Confluence to the Box Creek Reservoir points of diversion (Arkansas River Intake, Derry Ditch No. 1, and Upper River Ditch).

4.4.1. Rate of Exchange: 100 cfs, conditional.

**4.5.** From the CC/AR Confluence to the Box Creek Reservoir points of diversion (Arkansas River

Intake, Derry Ditch No. 1, and Upper River Ditch). 4.5.1. Rate of Exchange: 100 cfs, conditional. 4.6. From the CC/AR Confluence to Twin Lakes Reservoir. 4.6.1. Rate of Exchange: 100 cfs, conditional. **5. Initiation of Appropriation:** **5.1. The foregoing appropriations were initiated by:** 1] operation of those portions of the exchanges claimed as absolute in the preceding paragraph; 2] the adoption of Aurora City Council Resolution No. R 2011-76; 3] the filing of this Application; 4] field surveys and the posting of signs at the Exchange-From and Exchange-To Points. **5.1.1. Date of Appropriation:** 5.1.1.1. For the LF/AR Confluence to Turquoise Reservoir exchange, the date of appropriation is June 14, 2010. 5.1.1.2. For the LC/AR Confluence to Twin Lakes Reservoir exchange, the date of appropriation is May 25, 2010. 5.1.1.3. For all other exchanges described above, the date of appropriation is December 15, 2011. **5.2. Date water applied to beneficial use:** Beneficial use of the water derived from these exchanges began June 1, 2010, and is continuing. The date of beneficial use is not applicable to the exchanges described above that remain conditional. **6. Source of Substitute Supply:** Water imported into Water Division 2 via the Columbine Ditch. The water rights diverted through the Columbine Ditch are the following: **6.1. Senior appropriation:** Initially decreed in Civil Action No. 963, District Court for Eagle County, subsequently changed in Case No. 90CW340, Water Division 5 (Consolidated with Case No. 90CW052, Water Division 2), and a further change is pending in Case No. 09CW187, Water Division 5 (Consolidated with Case No. 09CW143, Water Division 2 and Case No. 09CW278, Water Division 1). **6.2. Junior appropriation:** Pending confirmation in Case No. 09CW188, Water Division 5. **7. Proposed Uses:** All uses for which the water given as substitute supply is decreed, and which can be made by Aurora, which will include the following: Municipal, domestic and industrial purposes including, but not limited to: fire protection; drought protection; irrigation of lawns, gardens, parks, private and municipal facilities; sanitary; commercial; manufacturing; mechanical use; recreational purposes; creation and maintenance of wetlands; stock watering; fish and wildlife propagation; snowmaking; reclamation; revegetation; dust suppression; storage and maintenance of storage reserves; reservoir evaporation replacement; augmentation; exchange; and replacement purposes, for use, reuse for successive uses, disposition following initial use, and reuse until extinction. **8. Place of Use:** The water rights that are the subject of this Application are intended for use in or for the benefit of Aurora's current and future service areas served by its municipal water supply and water reuse systems and any areas within the South Platte River Basin capable of being served by the Aurora municipal water supply system, including areas served by its connections with other systems, for any water supply contracts or obligations of Aurora. Currently, Aurora is located in Township 3 South, Ranges 64, 65, 66 and 67 West, 6<sup>th</sup> P.M. in Adams County; Townships 4 and 5 South, Ranges 65, 66 and 67 West, 6<sup>th</sup> P.M. in Arapahoe County; and Township 6 South, Ranges 65 and 66 West, 6<sup>th</sup> P.M. in Douglas County. Aurora's service area has changed from time to time and will continue to do so. Aurora may also use the water to meet replacement or delivery obligations in Water Division 2. **9. Names And Addresses Of Owners Of The Land Upon Which New Diversion Structures Will Be Built, and Upon Which Water Is Or Will Be Stored:** To the best of Aurora's knowledge, the owners of the underlying land on which the structures listed above are located are as set forth below. No modification of existing structures is contemplated in connection with this

appropriation. Box Creek Reservoir and its Arkansas River Intake are the only structures associated with this application that have not yet been constructed. Pursuant to C.R.S. § 37-92-302(2)(b), Aurora shall supplement this Application with evidence that Aurora has, within ten days of filing this Application, given notice of the Application by registered or certified mail, return receipt requested, to the following owners of land upon which water is or will be stored. 9.1. Turquoise Reservoir and Twin Lakes Reservoir are located on land owned by the U.S. Department of Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road, 18E, Loveland, CO 80537-9711. 9.2. Clear Creek Reservoir is located on land owned by the Board of Water Works of Pueblo, Colorado, Attn: Executive Director, 319 West Fourth Street, Pueblo, Colorado 81003, and the U.S. Forest Service, San Isabel National Forest, 2840 Kachina Drive, Pueblo, CO 81008. 9.3. Box Creek Reservoir and the Arkansas River Intake for that reservoir will be located on land owned by the Applicant, City of Aurora, the U.S. Forest Service (address stated above), and the State Land Board of the State of Colorado, 1127 Sherman St., Rm. 300, Denver, CO 80203. **10. Proposed Terms and Conditions:** Aurora proposes the following terms and conditions. 10.1. The water diverted by exchange shall take on all the legal characteristics of the water provided as substitute supply, and the water provided as substitute supply shall take on the legal characteristics of the water that was diverted by exchange. 10.2. Aurora will use appropriate measuring devices and accounting forms as required by the office of the Division Engineer for Water Division 2. Aurora's release of substitute supplies and diversions by exchange will be balanced on a daily basis. 10.3. Aurora will store water in the facilities identified as Exchange-To Points only when, and to the extent, it possesses a contractual right or property right that allows it to do so. **11. Remarks:** 11.1. Attached to the Application as Exhibit A is a map illustrating the location of the Exchange-From and Exchange-To Points described herein. Exhibit B to the Application is a map of Aurora's current municipal boundaries. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 11.2. Storage of water attributable to the Columbine Ditch senior appropriation in the reservoirs identified in this application was approved in Case No. 90CW340, Water Division 5, or is being sought in Case No. 09CW187, Water Division 5. Storage of water attributable to the Columbine Ditch junior appropriation in the reservoirs identified in this application is being sought in Case No. 09CW188, Water Division 5. 11.3. The appropriative rights of exchange for which confirmation is sought herein are necessary to allow Aurora to most efficiently use the water rights that will be used as substitute supply. The reservoirs into which water will be exchanged are used for the storage of numerous other water rights owned by Aurora and/or others. These exchange appropriations are one component of Aurora's extensive unified system for gathering, treatment and distribution of water for the benefit of its citizens or to satisfy its water supply contractual obligations. The use and operation of these exchange appropriations is not only dependent upon Aurora's system demand and stream exchange potential, but is also affected by the yield of other water rights and exchanges currently operated by Aurora. For the purposes of showing diligence and completion of the claimed rights of exchange, diligence as to any part of Aurora's water rights system which is used to operate or benefits from the exchange water rights herein requested



should be evidence of diligence as to the completion of the appropriative rights herein requested.

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**CASE NO. 11CW82 (Water Div. 2) and CASE NO. 11CW261 (Water Div. 1) – MELVIN and COY FREEMAN, 4140 Shoup Road, Black Forest, CO 80908** (Chris D.

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

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

**EL PASO COUNTY**

**II. Application for Underground Water Rights. A. Legal Description of Wells. 1.**

**Property Description.** All wells will be located on Applicants' Property described as the E1/2 SW1/4 SE1/4 SW1/4 of Section 11, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, which contains approximately 4.8 acres, more or less ("Applicants' Property"). Applicants' Property is depicted on the Exhibit A location map attached to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **2. Existing**

**Wells.** State Engineer Well Permit No. 71861 is an exempt household-use only well currently located on the Applicants' Property, permitted pursuant to C.R.S. §37-92-602(3)(b)(II)(A) in the SE1/4 SW1/4 of Section 11, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M., approximately 230 feet from the south section line and 1,900 feet from the west section line of said Section 11 ("Freeman Well #1"). **B. Water Source. 1.**

**Not Nontributary.** The ground water withdrawn from the Dawson aquifer of the Denver Basin underlying Applicants' Property is not-nontributary. Pursuant to C.R.S. 37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual out-of-priority stream depletions caused by such wells. Groundwater from the underlying Denver and Arapahoe aquifers is also not-nontributary. **2. Nontributary.** The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer of the Denver Basin underlying the Applicants' Property is nontributary. **C. Estimated Rates of Withdrawal and Ground Water Available. 1.**

**Estimated Rates of Withdrawal.** Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicants request the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. **2. Estimated Average Annual Amounts of**

**Ground Water Available.** Applicants request an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicants' Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4). Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

Aquifer	Saturated Thickness (Feet)	Depth of Aquifer Base (Feet)	Total Water Adjudicated (Acre Feet)	Annual Average Withdrawal (Acre Feet)
Dawson	137	370	132	1.32
Denver	466	1,260	380	3.80
Arapahoe	247	1,810	200	2.00
Laramie Fox Hills	187	2,500	135	1.35

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **D. Requested Uses.** The Applicants request the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, piscatorial and also for storage, exchange, and augmentation purposes associated with such uses. The Applicants also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicants shall only be entitled to construct a well or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c). **E. Well Fields.** Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants request that these wells be treated as a well field. Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicants' Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicants are entitled to withdraw from the aquifers underlying the Applicants' Property. **F. Name and Address of Owner of Land Upon Which Wells are to Be Located.** The land upon which the wells are and will be located is owned by Applicants. **III. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.** **A. Structures to be Augmented.** The structures to be augmented are Freeman Well #1 in the not-nontributary Dawson aquifer of the Denver Basin underlying the Applicants' Property, and any replacement wells therefore. There are to be no other water rights diverted from or into this structure. **B. Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during pumping are the pumping and return flows of the not-nontributary

Dawson aquifer from Freeman Well #1 as set forth in this plan for augmentation, together with water rights from the nontributary Laramie-Fox Hills aquifer for post pumping depletions. **C. Statement of Plan for Augmentation.** Applicants wish to provide for the augmentation of stream depletions caused by pumping the nontributary Dawson aquifer well proposed herein for one residential lot. Water use criteria and their consumptive use component for replacement of actual depletions for the lot is as follows: **1. Household Use Only:** 0.30 acre feet annually within one single family dwelling with a ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for this residence is therefore 0.03 acre feet, with resulting return flows of 0.27 annual acre feet. Any other type of waste water disposal shall require an amendment to this plan of augmentation. **2. Landscape Irrigation:** 0.047 acre feet annually per 1,000 square feet (2.0 acre feet per acre) per year, with a 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.040 acre feet. **3. Horses (or equivalent livestock):** 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. For purposes of example, were the Freeman Well #1 supplying the Applicants' Property to pump the full Dawson aquifer entitlement of 1.32 acre feet per year, such quantities pumped might be divided as follows: 0.30 acre feet for in-house use, 0.165 acre feet for watering of up to fifteen (15) head of livestock; with the remaining 0.855 acre feet utilized for the irrigation of up to 18,190 square feet of lawns and gardens. Septic return flows are calculated to be 0.27 acre feet annually, and under the above example, an additional 0.12 acre feet annually of lawn irrigation return flows might be expected. Applicants consultant has calculated that these septic return flows are sufficient to replace depletions occurring during the pumping life of Freeman Well #1 from the Dawson aquifer. Applicants propose to reserve a quantity of water from the nontributary Laramie-Fox Hills aquifer for replacement of post-pumping depletions. This Application is being filed in Water Divisions 1 and 2 because depletions may occur to both divisions. The return flows set forth above will accrue to the Arkansas River system where the majority of depletions occur. Applicants requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. **D. Augmentation of Depletions During Pumping.** Pursuant to C.R.S. §37-90-137(9)(c.5) Applicants are required to replace actual stream depletions attributable to pumping of the Freeman Well #1. Applicants' consultant has calculated maximum depletions during the 100 year pumping life of the Freeman Well #1 to be 10% of pumping. Based upon annual pumping of 1.32 acre feet per year, and the requested uses therefrom, Applicants may therefore be required to replace a maximum 0.132 acre feet annually. Applicants have determined that during pumping, septic system return flows from the residence should account for approximately 0.27 acre feet per year. Thus, there are sufficient return flows through the septic system to replace the estimated stream depletions during the pumping life of Freeman Well #1. **E. Augmentation for Post Pumping Depletions.** For the replacement of post-pumping depletions, Applicants will reserve up to 132 acre feet of water from the nontributary Laramie-Fox Hills aquifer underlying the Applicants' Property, less the amount of actual stream depletions replaced during the plan pumping period. Applicants also reserve the

right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, Applicants claim that post pumping depletions will be noninjurious and do not need to be replaced. Under the Court's retained jurisdiction, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to file for and receive an amended well permit for the Freeman Well #1 for the uses in accordance with this Application. **F. Remarks.** Additional remarks are as follows: 1. Applicants request a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary well upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). 2. The term of this augmentation plan is for 100 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. 3. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 4. Pursuant to C.R.S. §37-90-137, upon approval of the plan for augmentation requested herein, Applicants will file an application with the State Engineer's office to re-permit the existing well on Applicants' approximately 4.8 acre property (Permit No. 71861) for operation under the plan for augmentation. 5. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 6. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 7. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. 8. Applicants will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(l), and such notice will be sent within 10 days of the filing of this application.

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**CASE NO. 11CW83 – CONCERNING THE REVISED ABANDONMENT LIST OF WATER RIGHTS IN WATER DIVISION NO. 2 – DICK WOLFE, State Engineer, 1313 Sherman Street, Suite 818, Denver, CO 80203; (303) 866-3581; and STEVEN J. WITTE, Division Engineer, Water Division 2, 310 East Abriendo, Suite B, Pueblo, CO 81004; (719) 542-3368** (John J. Cyran, First Assistant Attorney General, 1525 Sherman Street, 7<sup>th</sup> Floor, Denver, CO 80203; (303) 866-5358)

Revised Abandonment List

**BACA, BENT, CHAFFEE, CHEYENNE, COSTILLA, CROWLEY, CUSTER, DOUGLAS, ELBERT, EL PASO, FREMONT, HUERFANO, KIOWA, LAKE, LAS ANIMAS, LINCOLN, OTERO, PARK, PROWERS, PUEBLO, SAGUACHE AND TELLER COUNTIES**

Notice is hereby given that pursuant to section 37-92-401(4) C.R.S. (2011), the Division Engineer for Water Division No. 2, in consultation with the State Engineer, has developed a revised abandonment list which contains those water rights that the Division Engineer has determined to have been abandoned in whole or in part. The revised abandonment list, when concluded by judgment and decree, shall be conclusive as to the water rights determined to have been abandoned.

Pursuant to section 37-92-401(4), C.R.S. (2011), the revised abandonment list may be inspected after December 31, 2011, at the offices of the State Engineer, Division Engineers, Water Commissioners, and the Clerk of the Water Court during regular office hours. Additionally, the revised abandonment list is available online at: <http://water.state.co.us/DWRDocs/Reports/Pages/Abandonment.aspx>. The Division Engineer will furnish or mail a copy of the Water Division No. 2 revised abandonment list to anyone requesting one upon payment of ten dollars (\$10.00).

Any person who wishes to protest the inclusion of any water rights on the revised abandonment list shall file a written protest with both the Water Clerk for the Division No. 2 Water Court and provide a copy to the Division Engineer in accordance with the procedures set forth in section 37-92-401(5), C.R.S (2011). A form for such protest is available at: <http://www.courts.state.co.us/Forms>. **All such protests shall be filed no later than June 30, 2012.** The fee for filing such a protest with the Water Clerk shall be thirty-five dollars (\$35.00), payable to the Water Clerk.

The State Engineer or Division Engineer may request the Division No. 2 Water Court order the physical abandonment of diversion structures no longer associated with any decreed water rights as a result of this revised abandonment list.

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**CASE NO. 11CW84; Previous Case Nos. 97CW110 and 05CW40 – STEVEN M. and LISA M. STEELE, 120 ½ E. Main Street, Florence, CO 81226; (303) 717-1977**

Application for Finding of Reasonable Diligence

**FREMONT COUNTY**

**Name of structure:** Antelope Spring. **Date of original Decree:** May 24, 1999; **Case No.:** 97CW110; **Court:** District Court Water Division 2. **Subsequent decrees awarding findings of diligence:** 05CW40; November 17, 2005. **Legal description:** Fremont County, NW ¼ of the SW ¼ Section 20, T16S, R73W, 6<sup>th</sup> P.M., 1500 feet from the South line and 1300 feet from the West line. **Street Address:** 0263 York Court; **Subdivision:** Autumn Creek, Lot 40. **Source of water:** Natural spring.

**Appropriation Date:** October 8, 1997; **Amount:** 3.266 gpm. **Use:** Fishpond. **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:** The spring site is located in a steep, rocky area that is not accessible by road. We have been developing the pond area using hand tools. Progress has been slow and steady. The recurring drought conditions since our last application continue to produce disappointingly sporadic water flow from the spring to the pond. Some years we have been able to divert enough water to the pond to maintain a reliable water level throughout the summer; other years it has gone completely dry when the spring flow dropped to a trickle. Our goal is to continue to deepen the pond to improve storage capacity. We will then be able to permanently put the water to beneficial use to provide a dependable habitat to support a fish population.

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**CASE NO. 11CW85; Previous Case Nos. 90CW28, 98CW95, and 05CW58 – SECURITY WATER DISTRICT, c/o Roy E. Heald, Manager, 231 Security Blvd., Colorado Springs, CO 80911** (David M. Shohet and Steven T. Monson, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Finding of Diligence

**EL PASO COUNTY**

**Name of Structure:** Exchange of Applicant’s sewered return flows from its allocation of Frying Pan Arkansas Project water, delivered via the Fountain Valley Conduit or Southern Delivery System. **3. Description of conditional water right:** **A. Date of Original Decree:** July 6, 1992. **Case No.:** 90CW28. **Court:** District Court, Water Division 2. **B. Legal Description:** The exchange is from the Applicant’s wastewater treatment outfall at its treatment facility discharging into Fountain Creek located in the NW 1/4 of Section 24, Township 15 S, Range 66 W, 6th P.M. The exchange is operated to the headgate of the Fountain Mutual Ditch located in the SW 1/4 of Section 20, Township 14 S, Range 66 W, 6th P.M. **C. Sources:** The source of the exchange water is the Applicant’s sewered return flows from Frying Pan Arkansas Project water which the Applicant is entitled to purchase and to deliver via the Fountain Valley Conduit or Southern Delivery System (“Project Water Sewered Return Flows”). Applicant’s Project Water Sewered Return Flows are used, in part, to augment the Applicant’s wells under decreed plans of augmentation including, without limitation, those plans decreed in Case Nos. 90CW28, 01CW149, 07CW51, 09CW92. The Project Water Sewered Return Flows not utilized by Security under any decreed plan for augmentation are available under this exchange. This case shall not in any manner expand the Applicant’s rights to the use of Frying Pan Arkansas Project Water, or return flows therefrom, beyond the terms of the Applicant’s existing decrees. **D. Appropriation Date:** June 29, 1990. **E. Amount claimed:** The amount of the exchange is for a diversion of up to 6.0 cfs at the headgate of the Fountain Mutual Ditch. **F. Uses:** The water under the plan of exchange is to be used, reused and successively used to extinction by recharge for the following beneficial uses: municipal, domestic, fire protection, sewage disposal, irrigation, manufacturing, industrial, commercial, augmentation, recharge, and exchange. Applicant is entitled to recharge and augment the Widefield Aquifer by exchanging the Project Water wastewater return

flows to a recharge facility in order to provide "effective recharge" to the Widefield Aquifer as required under the terms of the Widefield Aquifer Stipulation in Case No. W-116, and under the terms and conditions as decreed in Case No. 01CW149. **4. 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:** In Case No. 90CW28, the Applicant was awarded a 6 c.f.s. conditional water right for the exchange of its Project Water Sewered Return Flows from the point of its wastewater treatment plant discharging into Fountain Creek up to the headgate of the Fountain Mutual Ditch. Under agreement with the Southeastern Water Conservancy District, the Applicant is entitled to a right of first refusal to the use of these return flows. This exchange of Project Water Sewered Return Flows is for the use, reuse and successive use to extinction for such water by recharge to the Widefield Aquifer for municipal, domestic, fire protection, irrigation, manufacturing, industrial, commercial, augmentation, recharge, and exchange uses. This recharge will occur by infiltration of said return flow water to the Widefield Aquifer, as delivered by the Fountain Mutual Ditch and other means, constituting effective recharge under the terms of the Widefield Aquifer Stipulation. During this diligence period, the Applicant has obtained a final decree in Case No. 01CW149. The decree entered in Case No. 01CW149 amends and supplements Case No. 90CW28 by adding additional methods and points of recharge into the Widefield Aquifer for Applicant's Project Water Sewered Return Flows exchanged to the Fountain Mutual Ditch headgate under Case No. 90CW28. This case also added direct municipal use of the exchanged Project Water Sewered Return Flows, and also added two new points of diversion of the Project Water Sewered Return Flows from Fountain Creek within the original exchange reach. In addition to Case Nos. 90CW28 and 01CW149, the Applicant's recharge of the Widefield Aquifer is controlled by the terms of the Widefield Aquifer Stipulation entered in Case No. W-116. The Widefield Aquifer Stipulation is an agreement approved by the Water Court between the municipal water providers diverting ground water from the Widefield Aquifer. The Widefield Aquifer Stipulation allocates the annual aquifer yield based upon the established historical use of the parties' existing wells within the various production zones of the aquifer. Applicant, along with the other Widefield Aquifer Stipulation participants, obtained an Order from the Water Court in Case No. W-116, dated May 21, 2009, adopting a Restatement of Stipulations Concerning the Widefield Aquifer Management Plan allowing for updated management and pumping allotments from the Widefield Aquifer to participants, including additional terms regarding provision of effective recharge to the aquifer. Accordingly, Application has made significant efforts towards making the water exchanged under Case No. 90CW28 legally available for Applicant's decreed uses by obtaining the decree entered in Case No. 01CW149 and the order modifying the Widefield Aquifer Stipulation in Case No. W-116. During this diligence period, Applicant also participated as a member of the Widefield Aquifer Recharge Association ("WARA"). WARA is an unincorporated nonprofit association, under C.R.S. Section 7-30-101, et seq., consisting of Widefield Water and Sanitation District, the City of Fountain and the Applicant. Each member equally provides one third (1/3rd) of required operating capital of WARA. WARA was formed to plan, evaluate, design and study the financial feasibility of a public water treatment and supply project for the recharge of the Widefield Aquifer. The Association has the power

to enter into contracts relating to the acquisition of real property, obtain necessary licenses and permits, and develop a financial structure and feasibility for recharge of the Widefield Aquifer. During this diligence period, Applicant has paid \$115,000.00 to WARA, which includes WARA's costs for engineering, legal, accounting, association manager, and payments to FMIC for use of FMIC's facilities. Applicant has also performed significant work within its service boundaries and on its municipal water system to develop the decreed exchange as part of its integrated municipal supply system. This work, without limitation, included drilling two new municipal wells (Well W-8, Well W-12) and the rehabilitation and upgrade work on five additional wells (Well S-8, Well S-15, Well S-7, Well S-14, and Well S-17). Applicant has also upgraded its monitoring and recording systems for its municipal wells, which includes the purchase of new SCADA equipment for the operation of its fully automated and integrated system. Security has expended approximately \$1,731,020.00 on the operation, repair, maintenance and capital improvements to its integrated water supply system. Applicant also completed several inclusion of parcels into its service area including, without limitation, lands owned by the Diocese of Colorado Springs, Pikes Peak Community Foundation, and St. Andrews Homes, LTD. All inclusions have been approved by orders entered by the District Court of El Paso County and Applicant has commenced work towards providing water service to these inclusions. In addition, Security has expended approximately \$4,274,510.00 during this diligence period in acquiring water rights for use in its water supply system. These water rights are to be used as a physical and legal water supply to these annexations as well as the Applicant's current and future demands. Applicant has also prosecuted numerous Water Court applications for changes of water rights and plan for augmentation during this diligence period to provide additional physical and legal water supply for the Applicant's current and future demands including, without limitation, those decrees entered in Case Nos. 01CW149, 07CW51, 06CW117, 06CW119, 06CW126, 09CW92. Several of these cases also involve use of the adjudicated consumptive use water for effective recharge of the Widefield Aquifer. Applicant has also expended substantial efforts during this diligence period towards the Southern Delivery System ("SDS"), a regional pipeline and storage project that will bring Applicant's Project Water from the Arkansas River to its service area for use and reuse, including aquifer recharge. The Applicant has also continued to participate with the Southeastern District for the use of excess capacity storage space and enlargement space in the Fryingpan-Arkansas Project for the delivery of water to Security's service area via SDS. This participation included cooperation in the prior Preferred Storage Option Plan as well as the subsequent excess capacity storage plan that is now in progress. Applicant has signed a Memorandum of Agreement with the Southeastern District to proceed with the environmental analysis and negotiations with the Bureau of Reclamation for its participation as a master excess capacity storage contract. Applicant has spent approximately \$2,230,632 on SDS during this diligence period. As the decreed exchange is part of the Applicant's integrated water supply system, work performed on behalf of one component of this integrated system constitutes diligence on behalf of all structures which are a part of this integrated system. Applicant expended a total of approximately \$14,504,587 on the work associated with its municipal water system during this diligence period, inclusive of the above amounts. Applicant has also



incurred legal, engineering, and administrative fees related to its water supply system consisting of, without limitation, water supply and distribution analysis, water rights planning, Water Court filings for the change of water rights and for the protection of its water rights, well permitting, and water rights administration matters. These amounts are further detailed in Security's annual budgets and audits during this diligence period.

**5. Claim to Make Absolute:** No part of the conditional water right is claimed to be made absolute at this time. **6. Name and address of the owners of land on which structure is located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Fountain Mutual Irrigation Company, c/o Gary Steen, P.E., 487 Anaconda Drive, Colorado Springs, CO 80919, owns the headgate and main canal of the Fountain Mutual Ditch.

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**CASE NO. 11CW86 – THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, COLORADO (“Lake County” or “County”), P. O. Box 964, 505 Harrison Avenue, Leadville, CO 80461**

(Please direct all communications concerning this matter to Applicant's attorneys at: Balcomb & Green, P.C., c/o David C. Hallford and Chad J. Lee, P. O. Drawer, 790, Glenwood Springs, CO 81602)

Application for Conditional Water Storage Rights

**LAKE AND CHAFFEE COUNTIES**

**SUMMARY:** This Application for Cond. Water Storage Rights seeks confirmation of two cond. water storage right approp. that will be used as sources of aug. releases under Applicant's pend. and to-be-amended Application for Plan for Aug. in Case No. 98CW173. Applicant anticipates filing an Amended Application incorporating these structures into Case No. 98CW173 in the near future. **CLAIMS FOR COND. STORAGE WATER RIGHTS Birdseye Gulch Reservoir** Legal desc.: NW ¼, SE ¼, Sec. 33, T 8 S, R 79 W, 6 P.M., 3,050 ft. from the W. line and 2,120 ft. from the S. line of Sec. 33, T 8 S, R 79 W, 6 P.M., see Exh. A of application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Ditch to fill reservoir:** Birdseye Gulch Ditch. **Legal desc. pt. of div. of Birdseye Gulch Ditch:** NW ¼, SE ¼, Sec. 33, T 8 S, R 79 W, 6 P.M., 2,920 ft. from W. line, 1,700 ft. from S. line, of Sec. 33. **Capacity Birdseye Gulch Ditch:** 1.5 cfs. **Approp.:** 12/19/2011. **Approp. initiated:** Formal auth. by the Lake County Board of County Commissioners to file this Application. **Amt.:** 20 AF, cond. Applicant claims the right to fill and continuously refill the Birdseye Gulch Reservoir to maintain its full capacity as necessary to replace seepage, evap. losses, and to make releases for beneficial use, include. aug. purposes in accordance with the plan for aug. claimed in Case No. 98CW173. **Rate of div.:** 1.5 cfs, cond., through the Birdseye Gulch Ditch as desc. **Uses:** Dom., mun., irr., creation. and maint. of wetlands, comm., ind., aesthetic, snowmaking, rec., livestock watering, pisc., fire prot., and aug. either directly or through storage in and release from the reservoir, including by exchange within Lake County. **Surface area:** 2 acres. **Vert. Ht. of dam:** 9.9 ft. **Length:** 370 ft. **Total capacity of reservoir in AF:** 20 AF. **Active capacity:** 20 AF. **Dead storage:** 0 AF. **Remarks:** Structure Located on Federal Land. **Source of Supply for Pend. Plan for Aug.:** Applicant intends to utilize this reservoir as a source of replacement water in its pend. request for approval of a plan for aug. in Case No. 98CW173. **Hayden Meadows Rec. Pond** Legal desc. SE ¼, NW ¼, Sec. 22, T 10 S, R 80 W, 6 P.M,

1,510 ft. from W. line, 2,120 ft. from N. line of Sec. 22, see Exh. B of application. **Ditch Used to Fill Reservoir:** Upper River Ditch. **Legal Desc. of Pt. of Div. of Upper River Ditch, Lake County Enl.:** NE ¼, SE ¼, Sec. 16, T 10 S, R 80 W, 6 P.M, 790 ft. from the E. line, 1,850 ft. from the S. line. **Capacity of feeder ditch:** 3.0 cfs. **Approp:** 12/19/2011. **Amt.:** 51 AF, cond. Applicant claims the right to fill and continuously refill the Hayden Meadows Rec. Pond to maintain its full capacity as necessary to replace seepage, evap. losses, and to make releases for beneficial use, including aug. purposes in accordance with the plan for aug. claimed in Case No. 98CW173. **Rate of div.:** 3.0 cfs, cond. **Uses:** Dom., mun., irr., creation and maint. of wetlands, comm., ind., aesthetic, snowmaking, rec., livestock watering, pisc., fire prot., and aug. either directly or through storage in and release from the reservoir, including by exchange within Lake County. **Surface area:** 7 acres. **Vert. Ht. of dam:** 9.9 ft. **Length:** 1,832 ft. **Total Capacity:** 51 AF. **Active capacity:** 49.2 AF. **Dead storage:** 1.8 AF. **Remarks:** **Landowners:** Birdseye Gulch Reservoir and Ditch: United States Department of Interior, Bureau of Land Management, 3170 E. Main Street, Canon City, Colorado 81212. Hayden Meadows Rec. Pond: Applicant. Upper River Ditch: City of Aurora, 15151 E. Alameda Parkway, Suite 3600, Aurora, Colorado.

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**CASE NO. 11CW87 – WINSTON H. CONKLING, P. O. Box 202650, Denver, CO 80220** (David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Surface Water Rights and Storage Rights

**FREMONT COUNTY, COLORADO**

**2. SUMMARY OF APPLICATION.** By a decree entered in Case No. 98CW175, District Court, Water Division 2, dated August 8, 2001 (the “Original Decree”), the Applicant was granted four conditional surface water rights and five conditional storage rights. By a decree entered in Case No. 07CW86, dated April 21, 2008, the Water Court found that the Applicant had been diligent towards perfecting the conditional water rights decreed in the Original Decree and continued the conditional water rights in good standing. By this application, Applicant seeks to add irrigation as a conditional use to a portion of the decreed conditional water rights in the Original Decree. Applicant will not divert more than 10 g.p.m. total of the surface water rights for irrigation. Applicant will also not irrigate more than 8 total acres of Applicant’s property. All irrigation will occur by pipeline, hand watering, drip irrigation or other efficient means. **3. APPLICATION FOR SURFACE WATER RIGHTS. A. Name of Structures:** i. Conklings Spring No. 1. ii. Conklings Spring No. 2. iii. Conklings Spring No. 3 and Seep. **B. Legal Description of Each Point of Diversion:** i. Conklings Spring No. 1: Located in the SW 1/4 Section 11, Township 20 South, Range 70 West of the 6th P.M., in a spring of water at a point whence the southwest corner of said Section 11, bears north two degrees and five minutes (2° 5’) east eighteen hundred ninety (1890) feet. ii. Conklings Spring No. 2: Located in the SW 1/4 Section 11, Township 20 South, Range 70 West of the 6th P.M. in and near the channel of South Oak Creek at a point whence the southwest corner of said Section 11 bears north forty-eight degrees seven minutes (48° 7’) east, a distance of fifteen hundred fifty eight (1558) feet. iii. Conklings Spring No. 3 and Seep: Located in the SW 1/4 Section 11, Township 20 South, Range 70 West of the 6th P.M., lying 660 feet north of the south section line and 600 feet east of the west section line of said

Section 11. **C. Source:** All spring structures sought to be adjudicated herein are spring waters tributary to South Oak Creek, tributary of Oak Creek, tributary to the Arkansas River. **D. Date of Initiation of Appropriation:** Applicant claims a date of appropriation of December 31, 2011, for all structures sought to be adjudicated herein by formation of intent to appropriate, field location and measurement of the nature and extent of the appropriation, and the filing of this application. **E. Amount Claimed:** i. Conkling Spring No. 1: 5 g.p.m., conditional. ii. Conkling Spring No. 2: 3 g.p.m., conditional. iii. Conkling Spring No. 3: 5 g.p.m., conditional. **F. Use or Proposed Uses:** All of the springs will be used for irrigation of lands lying in the North 1/2 of the Southwest 1/4 and in the South 1/2 of the Northwest 1/4, all in Section 11, Township 20 South, Range 70 West 6th P.M., not to exceed 8 acres. In addition, waters from the surface water rights will be diverted year round and stored in either the reservoirs sought to be adjudicated herein, in non-adjudicated structures or cisterns at or near the irrigated acreage. **IV. APPLICATION FOR WATER STORAGE RIGHTS. A. Name of Reservoir:** i. Conkling Reservoir No. 1. ii. Conkling Reservoir No. 2. iii. Conkling Reservoir No. 3. iv. Conkling Reservoir No. 4. v. Conkling Reservoir No. 6. **B. Legal Descriptions for Location of Each Reservoir's Dam:** i. Conkling Reservoir No. 1: In the SW 1/4, Section 11, Township 20 South, Range 70 West of the 6th P.M., Fremont County, Colorado, lying 40 feet north of the south section line and 530 feet east of the west section line of said Section 11. ii. Conkling Reservoir No. 2: In the SW 1/4, Section 11, Township 20 South, Range 70 West of the 6th P.M., Fremont County, Colorado, lying 1050 feet north of the south section line and 1320 feet east of the west section line of said Section 11. iii. Conkling Reservoir No. 3: In the SW 1/4, Section 11, Township 20 South, Range 70 West of the 6th P.M., Fremont County, Colorado, lying 2030 feet north of the south section line and 1690 feet east of the west section line of said Section 11. iv. Conkling Reservoir No. 4: In the SW 1/4, Section 11, Township 20 South, Range 70 West of the 6th P.M., Fremont County, Colorado, lying 2890 feet south of the north section line and 1990 feet east of the west section line of said Section 11. v. Conkling Reservoir No. 6: Conkling Reservoir No. 6 in the SW 1/4, Section 11, Township 20 South, Range 70 West of the 6th P.M., Fremont County, Colorado, lying approximately 1920 feet north of the south section line and 1240 feet east of the west section line of said Section 11. **C. Source:** Conkling Reservoir Nos. 1 - 4 are on stream reservoirs on South Oak Creek tributary to Oak Creek tributary to the Arkansas River. Conkling Reservoir No. 6 is an off channel reservoir to be filled by Conkling Reservoir Nos. 1 through 4, Conkling Springs Nos. 1 through 3, and natural precipitation. **D. Date of Appropriation:** For all reservoirs sought to be decreed by this Application, the date of appropriation is December 31, 2011, by formation of the intent to appropriate water field location and measurement of the proposed structures and the filing of this application. **E. Amounts Claimed:** i. Conkling Reservoir No. 1: 9.2 acre feet, conditional. ii. Conkling Reservoir No. 2: 8.6 acre feet, conditional. iii. Conkling Reservoir No. 3: 8.0 acre feet, conditional. iv. Conkling Reservoir No. 4: 1.8 acre feet, conditional. v. Conkling Reservoir No. 6: 10.0 acre feet, conditional. **F. Use:** All of the reservoirs will be used for irrigation of lands lying in the North 1/2 of the Southwest 1/4 and the South 1/2 of the Northwest 1/4 all in Section 11, Township 20 South, Range 70 West 6th P.M., not to exceed 8 total acres. In addition, Conkling Reservoir No. 6 will be used for domestic, livestock, piscatorial, wildlife habitat, and

erosion control. **V. REMARKS.** **A.** Applicant is the owner of 298.5 acres in the W 1/2 of Section 11, and NW 1/4 of Section 14, Township 20 South, Range 70 West of the 6th P.M., upon which all of the structures sought to be adjudicated herein are located and upon which the place of use of the water from all of the structures is intended. **B.** Diversions may be placed in lined or piped ditches to the irrigated fields and all irrigation will occur by pipeline, hand watering, drip irrigation or other efficient means. **C.** Applicant will obtain Water Commissioner approval for any diversions pursuant to C.R.S. §37-92-502(2)(a). **D.** Each of the reservoirs sought herein will be constructed with a suitable spillway to pass high water flows and an outlet pipe located such that each reservoir is capable of being drained and no dead storage will remain. **E.** In addition to the Conkling Reservoirs named above, Applicant may store water in an off-channel reservoir or cisterns located in the North ½ of the Southwest 1/4 of Section 11, Township 20 South, Range 70 West 6th P.M., near the irrigated fields for subsequent irrigation. **F.** Applicant seeks the right to divert a total of not more than 10 g.p.m. total of the Conkling Springs Nos. 1 through 3 year round for irrigation and for storage for such use.

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**CASE NO. 11CW88 – THOMAS GOODWIN and CONSTANCE S. GOODWIN, DAVID W. STEPHENS, JOYCE, L. STEPHENS, JoANNE R. ARY, DALE J. WOODARD and KARLA L. WOODARD, GREEN CENTENNIAL RANCH, LLC, C/O RICH GREEN, MICHAEL P. ADAMS, JR. IRREVOCABLE SUPPORT TRUST, C/O MIKE ADAMS, c/o Thomas Goodwin, 1530 Fourmile Lane, Canon City, CO 81212** (Please direct all correspondence to the Applicants' attorneys: Wilderson Lock & Hill, LLC, Marcus J. Lock and Kendall K. Burgemeister, 525 North Main Street, Gunnison, CO 81230; (970) 641-1903)

Application for A Change of Water Rights

**FREMONT COUNTY**

**Summary of Changes Requested:** Upon investigation by the Division of Water Resources, a discrepancy was discovered between the decreed points of diversion and the historical point of diversion for the three ditches that are the subject of this Application: The Murphey Ditch, the Craig-Beckham Ditch, and the Titsworth Ditch (the proportionate interests in the water rights decreed to these ditches are referred to herein as the "Water Rights"). The decreed and actual points of diversion are depicted on 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.) By this Application, the Applicants seek to correct the decreed points of diversion for these Water Rights so that the water court record will conform to the historical record. The discrepancies between the decreed and actual points of diversion are due to (1) surveying and / or clerical errors made at the time of the original decree; and (2) the moving of headgates due to a shifting stream channel caused by flash floods, pursuant to C.R.S. § 37-86-111. The Water Rights have historically been diverted at a common point of diversion (colloquially labeled the Titsworth Ditch) and used to irrigate the land underlying the Titsworth Ditch. There is substantial evidence that, prior to the entry of the original decree for the Water Rights, water diverted to the west of Four Mile Creek through the original Craig-Beckham Ditch was flumed across to irrigate land on the east side of Four Mile Creek and water diverted to the east through the Titsworth Ditch was

flumed across to irrigate land on the west side of Four Mile Creek. Additionally, water commissioner records from as early as 1896 indicate that the Craig-Beckham and Titsworth water rights were being diverted at a common point of diversion. Furthermore, the Four Mile Creek stream channel has shifted (generally westward) as a result of flash floods. Thus, land that was at one time on the west side of Four Mile Creek is now on the east side of Four Mile Creek. To the extent necessary to conform the decreed place of use to the changing stream bed conditions and historical practice, Applicants request a change in the place of use of the Water Rights. There are no intervening water rights between the decreed points of diversion and the historical point of diversion. Furthermore, Applicants are not seeking to change the beneficial use (irrigation) or the amount or timing of diversions. **Decreed water rights for which change is sought: MURPHEY DITCH. Original Decree:** The Murphey Ditch water right was originally decreed in the Decree of the District Court, Fremont County, dated February 3, 1894, in the Matter of the Adjudication of Water Rights in Water District No. 12 (the "February 3, 1894 Decree"). **Legal description of structure:** The February 3, 1894 Decree found that the headgate was located on the east side of Four Mile Creek, in the SW1/4NE1/4 of Section 10, Township 18 South, Range 70 West, at a point from which the middle of south line of said Section 10 is South 9 degrees and 30 minutes west, 47.5 chains. The decreed point of diversion, as converted to UTM coordinates by the water commissioner (13S 482022mE, 4261154mN, NAD83), is plotted on the map attached as Exhibit A to the Application. **Decreed source of water:** Four Mile Creek. **Decreed use:** Irrigation of 8 acres of land. **Applicants intend to change** 1.0 cfs of the total 1.0 cfs decreed to Arkansas River Priority 81 (Appropriation date January 1, 1872). **TITSWORTH DITCH. Original decree and relevant subsequent decrees:** The Titsworth Ditch water rights were originally decreed in the February 3, 1894 Decree. **Legal description of structure:** The February 3, 1894 Decree found that the headgate was located at a point in the SE1/4SE1/4 of Section 10, Township 18 South, Range 70 West, at a point on the east side of the creek distant 18 chains in the direction north 69 degrees west from the southeast corner of said section. The decreed point of diversion, as converted to UTM coordinates by the water commissioner (13S 482326mE, 4260346mN, NAD 83), is plotted on the map attached as Exhibit A to the Application. **Decreed source of water:** Four Mile Creek. **Decreed use:** Irrigation of 91 acres of land. **Applicants intend to change:** 0.187 cfs of the 1.0 cfs decreed to Arkansas River Priority 9 (appropriation date May 31, 1861), 0.415 cfs of the 1.56 cfs decreed to Arkansas River Priority 15 (appropriation date May 31, 1863), 0.32 cfs of the 0.32 cfs decreed to Arkansas River Priority 28 (appropriation date March 31, 1865), and 0.3 cfs of the 1.6 cfs decreed to Arkansas River Priority 83 (appropriation date February 28, 1872). The balance of each priority is owned by a third party and was changed to a different point of diversion in CA-3204. **CRAIG-BECKHAM DITCH. Original decree and relevant subsequent decrees:** The Craig-Beckham Ditch water rights were originally decreed in February 3, 1894 Decree. **Legal description of structure:** The February 3, 1894 Decree found that the headgate was located on the west bank of Four Mile Creek at a point 8.62 chains east of the center corner of Section 10, Township 18 South, Range 70 West, 6<sup>th</sup> P.M. The decreed point of diversion, as converted to UTM coordinates by the water commissioner (13S 482016mE, 4261042mN, NAD83), is plotted on the map attached as Exhibit A to the Application. **Decreed source of water:** Four Mile Creek. **Decreed**

**use:** Irrigation of 75 acres of land. **Applicants intend to change:** 1.56 cfs of the 2.32 cfs decreed to Arkansas River Priority 21 (appropriation date February 10, 1865), 1.0 cfs of the 1.0 cfs decreed to Arkansas River Priority 34 (appropriation date May 31, 1867), and 1.0 cfs of the 1.0 cfs (shared with priority 34) decreed to Arkansas River Priority 41 (appropriation date May 31, 1868). The balance of each priority is owned by a third party and was changed to a different point of diversion in CA-3204. **Description of proposed change: Change in Points of Diversion:** Applicants seek to change the decreed points of diversion for the Water Rights to reflect the actual historical point of diversion, which was reported by the water commissioner to be at the following coordinates: 13S 481991mE, 4261056mN (NAD 83), which is a point in the SW1/4NE1/4, Section 10, Township 18 South, Range 70 West, 6th P.M., 2620 feet from the north section line and 1989 feet from the east section line of said Section 10. This point of diversion is also plotted on Exhibit A to the Application. The actual historical point of diversion is approximately 337 feet from the decreed point of diversion for the Murphey Ditch. The discrepancy between the decreed point of diversion and the actual point of diversion appears to be a surveying error. The decreed point of diversion plots to the top of a hill high above the bed of Four Mile Creek. There are no water rights between the decreed point of diversion and the historical and proposed point of diversion. The actual historical point of diversion is on Four Mile Creek approximately 3000 feet upstream from the decreed point of diversion of the Titsworth Ditch. Although the legal descriptions of the historical point of diversion and decreed point of diversion differ, the historical and proposed future point of diversion is known as the Titsworth Ditch. Published maps label it as the Titsworth Ditch, and Division Engineer records for water taken at this point of diversion indicate that the water was diverted through the Titsworth Ditch. Also, there is evidence in the statements of claim and abstracts of testimony that the Titsworth Ditch was moved several hundred yards upstream from its original location in 1870. Additionally, the decreed point of diversion plots to a dry creek bed on the east side of the drainage. Four Mile Creek is now several hundred feet to the west of the decreed point of diversion. Numerous berms and other manmade improvements currently exist on the ground between the old creek bed and the existing channel to minimize future stream changes due to flash flood events. Thus, it seems the headgate was moved upstream pursuant to C.R.S. § 37-86-111 due to shifting stream conditions. There are no water rights between the decreed point of diversion and the historical and proposed point of diversion. The actual historical point of diversion is approximately 94 feet from the decreed point of diversion of the Craig-Beckham Ditch. There are no water rights between the decreed point of diversion and the historical point of diversion. **Change in place of use.** To the extent necessary to conform the decreed place of use to the historical place of use of the Water Rights, Applicants request a change in the decreed place of use of the Water Rights. The Water Rights have historically been diverted at a common point of diversion (colloquially labeled the Titsworth Ditch) and used to irrigate the land underlying the Titsworth Ditch. There is substantial evidence that, prior to the entry of the original decree for the Water Rights, water diverted to the west of Four Mile Creek through the original Craig-Beckham Ditch was flumed across to irrigate land on the east side of Four Mile Creek and water diverted to the east through the Titsworth Ditch was flumed across to irrigate land on the west side of Four Mile Creek. Additionally, water commissioner records from as early as

1896 indicate that the Craig-Beckham and Titsworth water rights were being diverted at a common point of diversion. Furthermore, the Four Mile Creek stream channel has shifted (generally westward) as a result of flash floods. Thus, land that was at one time on the west side of Four Mile Creek is now on the east side of Four Mile Creek. To the extent necessary to conform the decreed place of use to the changing stream bed conditions and historical practice, Applicants request a change in the place of use of the Water Rights. The Murphey Ditch, the Craig-Beckham Ditch, and the Titsworth Ditch water rights are collectively decreed for the irrigation of 174 acres of land. As set forth above, Applicants own the entire Murphey Ditch water right and pro rata interests in the Titsworth and Craig-Beckham water rights. The balance of these water rights was transferred to a different point of diversion by a third party in Civil Action No. 3204. Applicants' pro rata interest in these water rights (i.e. the "Water Rights") has historically been used to irrigate the 112.3 acres of land depicted on Exhibit B to the Application, which are located on the east side of Four Mile Creek in portions of the E1/2NE1/4 of Section 15, the W1/2NW1/4 and SW1/4 of Section 14, and Section 23, all in Township 18 South, Range 70 West, 6<sup>th</sup> P.M. (the "Historical Place of Use"). Applicants seek a change in the decreed place of use to allow the use of the Water Rights on the Historical Place of Use. Diversion records maintained by the Division of Water Resources for the Titsworth Ditch, which include recorded diversions of all of the Water Rights subject to this Application, are attached as Exhibit C to the Application. **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:** No new diversion structure, or modification to any existing diversion structure is proposed. However, the historical and proposed point of diversion is on land owned by Stuart and Susan J. Phelps, 1807 Red Canyon Rd., Canon City, CO 81212.

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**CASE NO. 11CW89 – THREE ELK CREEK ESTATES, INC., 32700 Lakeside Drive, Buena Vista, CO 81211** (Steven T. Monson, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)  
Application for Water Storage Right, Change of Water Right, Plan for Augmentation, and Exchange

**CHAFFEE COUNTY**

**III. Background and Summary of Application.** Three Elk Creek Estates, Inc. ("Applicant") is the owner of water rights in the Three Mile Ditch and the Harvard Ditch that are now diverted at the Harvard Ditch No. 2 out of Three Mile Creek, a/k/a Three Elk Creek, tributary to the Arkansas River in Chaffee County above Buena Vista. The Applicant seeks to adjudicate a water storage right for the Three Elk Pond owned by the Applicant and to change the historical consumptive use of its Harvard Ditch No. 2 water rights from irrigation use to augmentation, including storage in Applicant's pond, for the replacement of evaporative depletions from the impoundment of water within Three Elk Pond. Three Mile Creek has been administered as a futile call to the Arkansas River, but Applicant does not seek to decree a futile call. **IV. Application for Storage Right.**  
**A. Name of Structure.** The name of the structure is Three Elk Pond. **B. Legal Description.** Three Elk Pond is located in the NE 1/4 of NW 1/4 of Section 27,

Township 13 South, Range 79 West, 6<sup>th</sup> P.M., with the north end of the dam a distance of 750 feet south of the north section line of said Section 27 and 1,800 feet east of the west section line of said Section 27, as shown on the Exhibit A map attached to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **C. Source.** Three Elk Pond is an on channel pond. The source of the water stored in Three Elk Pond is Three Mile Creek, a/k/a Three Elk Creek, tributary to the Arkansas River. **D. Appropriation.** The appropriation was initiated on June 6, 1973 by the State's approval of Applicant's plans for the dam and the following construction of the pond on Three Mile Creek by Applicant and the impoundment of water into storage for the beneficial uses described below. **E. Amount of Storage Claimed.** (1) Acre Feet: The pond capacity is 8.0 acre feet of active storage, absolute, with the right to fill and refill. (2) Diversion Rate: The diversion rate for the filling, refilling and pass through flows of Three Mile Creek Pond is 2.0 cfs. **F. Uses.** The uses of the water stored in Three Elk Pond are for recreation, piscatorial, wildlife watering, aesthetic purposes, fire protection, and augmentation. **G. Reservoir Specifications.** The maximum surface area of Three Elk Pond at the normal high water line is 1.0 acre. The jurisdictional height of the dam is 26 feet and the length of the dam is 325 feet. **H. Capacity of Reservoir.** The total capacity of Three Elk Pond is 8.0 acre feet. **I. Land Ownership.** Three Elk Pond is located upon land owned by the Applicant. **J. Additional Information/Depletions.** Depletions for evaporation and pond fills associated with the maintenance of water levels in Three Elk Pond are to be replaced as set forth in the plan for augmentation and exchange requested herein. **V. Application for Changes of Water Right.** **A. Name of Structure.** The name of the structures for which the changes of water right are sought are the Three Mile Ditch and the Harvard Ditch, which are now diverted at the Harvard Ditch No. 2. **B. Information from Previous Decree.** **1. Date Entered.** The Three Mile Ditch and the Harvard Ditch were decreed on June 19, 1890 by the District Court of Chaffee County, In the Matter of Priority of Rights to the Use of Water for Irrigation in Water District No. 11, State of Colorado. By further Decree of the District Court of Chaffee County, Colorado, entered on December 23, 1908 in Case No. 2100, the decreed water rights under the Three Mile Ditch and the Harvard Ditch, and all priorities thereunder, were changed to a new point of diversion designated as the Harvard Ditch No. 2, also diverting out of Three Mile Creek. Copies of the decrees are attached to the Application as Exhibit B. **2. Decreed Point of Diversion.** The original decreed point of the diversion for the Three Mile Ditch is stated as located on the north bank of Three Mile Creek in the NE1/4 of the NW1/4 of Section 27, Township 13 South, Range 79 West of the 6<sup>th</sup> P.M., in Chaffee County Colorado. The original decreed point of diversion for the Harvard Ditch is stated as located on the north bank of Three Mile Creek at a point in the NW1/4 of the SE1/4 of Section 26, Township 13 South, Range 79 West of the 6<sup>th</sup> P.M., in Chaffee County Colorado, whence the east corner of said Section 26 bears north 71°2' east for 1,938 feet. In Case No. 2100 of the District Court of Chaffee County the points of the diversion for the Three Mile Ditch and the Harvard Ditch were changed to the Harvard Ditch No. 2 at a point on the north bank of Three Mile Creek from whence the NW corner of Section 26, Township 13 South, Range 79 West of the 6<sup>th</sup> P.M. bears North 1°29' West 2,106.7 feet, in the said County of Chaffee. **3. Source.** The source of water for the Three Mile Ditch and the Harvard Ditch water rights as diverted at the Harvard



Ditch No. 2 is Three Mile Creek, a/k/a Three Elk Creek, tributary to the Arkansas River.

**4. Appropriation Date/Amounts.** The appropriation dates and decreed amounts for the Subject Water Rights owned by Applicant are as follows:

<u>Water Right</u>	<u>Decree Date</u>	<u>Approp. Date</u>	<u>Div. 11 Priority</u>	<u>Total Water Rights</u>	<u>Subject Water Rights</u>
Three Mile Ditch	6/19/1890	11/30/1865	6	0.6 cfs	----
	6/19/1980	12/31/1868	27	2.6 cfs	0.228 cfs
Harvard Ditch	6/19/1890	9/21/1885	145	1.0 cfs	0.198 cfs
	6/19/1890	5/2/1888	168	<u>2.2 cfs</u>	<u>0.326 cfs</u>
Total				6.4 cfs	0.752 cfs

**C. Historical Use.** Based on investigation by the Applicant’s water resource engineer during a study period of 2000 through 2010, the Subject Water Rights have historically been used for the irrigation of an average of 10 of the 20 acres upon the Read McCulloch property with total average annual diversions at the McCulloch property headgate determined to be approximately 248 acre feet. The historical irrigation shown on Exhibit A has occurred under the ditch upon the property of Reed McCulloch, a co-owner of the Harvard Ditch No. 2 water rights, pursuant to the August 1999 Ditch Users Agreement (“Historically Irrigated Land”). Based upon the crop records and application of the modified Blaney Criddle analysis applied to the local climate data, the historical diversions to the 20 acres of irrigated property resulted in average consumptive use of approximately 26.52 annual acre feet, or 1.3 annual acre feet of consumptive use per acre, during the irrigation season of April through October. Applicant is entitled to one-half of this amount or 13.26 annual acre feet for its 10 acres of irrigation. A summary of the historical diversion records at the Harvard Ditch No. 2 headgate and the engineering determination of the Subject Water Rights at the McCulloch property headgate are attached to the Application as Exhibit C.

**D. Changes Sought.** The Applicant seeks to change the type of use and place of use of the historical consumptive use of the Subject Water Rights to allow those water rights to be used for augmentation to replace depletions from the Three Elk Pond, as set forth later in the plan for augmentation. The change in type of use of the Subject Water Right is from direct flow for irrigation to direct flow and storage for augmentation, exchange and replacement purposes. The quantified historical consumptive use is to be used, reused, and successively used to extinction by Applicant to fill and refill Three Elk Pond as set forth in Section IV of this Application. The change in place of use is to be from the 10 acres of Historically Irrigated Land upon the McCulloch property under the Harvard Ditch No. 2 in the NE1/4 NW1/4 of Section 26, Township13 South, Range 79 West, 6<sup>th</sup> P.M., as generally shown on Exhibit A to consumptive use stream credits in Three Mile Creek for augmentation and for placement into storage in Three Elk Pond by exchange.

**E. Additional Information.** The Applicant also seeks to decree that any historical consumptive use credits that are not needed as augmentation or exchanged into storage in Three Mile Creek in any given year may continue to be diverted down the Harvard Ditch No. 2 for irrigation after certification of dry up of the Historically Irrigated Property by the Division Engineer’s Office.

**F. Dry Up.** Applicant’s Subject Water Rights as changed herein for augmentation purposes will be permanently removed from their historical use for irrigation and the 10 acres of Applicant’s Historically Irrigated Property will no longer be irrigated with any water rights under the Harvard Ditch No. 2, except for use of the adjudicated consumptive use credits after certification of dry up as set forth in section E above. To implement this commitment, Applicant will execute a dry up covenant upon

the Historically Irrigated Property pursuant to the 1999 Ditch Users Agreement. **G. Names and Addresses of Owners of Land Upon Which Structures are Located.** The Harvard Ditch No. 2 is located upon land owned by Arthur Wallace Butler III, and Monette Scott Butler, whose address is 32700 Aspen Drive, Buena Vista, CO 81211.

**VI. Plan for Augmentation.** **A. Structure to be Augmented.** The structure to be augmented with the consumptive use from the Subject Water Rights is the Three Elk Pond as described in Section IV of this Application and as shown on Exhibit A. **B. Water Rights to be Used for Augmentation.** The water rights to be used for augmentation consist of the approximately 13.26 annual acre feet of consumptive use requested to be adjudicated for Applicant's purposes under the change of the Subject Water Rights in Section V. **C. Statement of Plan for Augmentation.** The consumptive use attributable to Applicant's Subject Water Rights shall be committed to the plan for augmentation to replace the fill, refill, pass through flows, and evaporative depletions from the maintenance of Three Elk Pond at the high water line. Evaporative depletions from Three Elk Pond have been determined by Applicant's engineer based on an application of local climate data to the standards of the State Engineer's Office for the determination of pond evaporation, including application of NOAA Technical Report and NWS33. The maximum surface of Three Elk Pond is 1.0 acre at its high water line and net evaporation was determined to be 2.65 annual acre feet per acre, with credit claimed for effective precipitation for the on channel pond but without any claim for pre-existing phreatophytes. Thus, the net annual evaporation for Three Elk Pond was determined to be 2.65 acre feet per year, which will be allocated on a monthly basis as generally shown on Exhibit D and those out-of-priority depletions will be replaced by the consumptive use stream credits as available from the Subject Water Rights changed hereunder. At times that there are insufficient consumptive use credits available from the Subject Water Rights to cover the out-of-priority evaporative depletions, the pond level will be reduced to reflect and suffer the unreplaced evaporative depletions. At times of consumptive use credits in excess of evaporative depletions, those excess consumptive use credits may be placed into storage into Three Elk Pond and the level of the pond maintained or increased thereby. Additional consumptive use credits available on a monthly basis in excess of evaporative depletions and the pond capacity, as set forth in Section V, are requested to be diverted at the Harvard Ditch No. 2 for irrigation purposes. **D. Administration.** Water available under the Applicant's Subject Water Rights will be diverted at the headgate of the Harvard Ditch No. 2 and measured and released back to Three Mile Creek at an augmentation station to be constructed as a waste return of the Harvard Ditch No. 2. The location of the augmentation station is shown on Exhibit A. For Applicant's pro rata share of diversions, monthly historical depletion percentages shall be applied to determine the consumptive use stream credit available for that month. The remaining diversions, being the complement of the monthly depletion percentage, shall be returned to Three Mile Creek to meet Applicant's return flow obligations. Adequate measuring devices will be installed on Three Elk Pond for purposes of administering this plan, including staff gaging and a reservoir capacity survey corresponding to the readings on the staff gage. Monthly accountings shall be made to the Division Engineer's Office demonstrating compliance with this augmentation plan, change of water right and exchange, including total diversions, consumptive use stream credits available, and the amount of augmentation credit

exchanged, applied to cover evaporation and pond fills, and the amount applied to irrigation. **E. Names and Addresses of Owners of Land Upon Which Structures are Located.** The Three Mile Creek Pond is located upon land owned by the Applicant. The Harvard Ditch No. 2 is located upon land owned by Arthur Wallace Butler, III, and Monette Scott Butler, whose address is 32700 Aspen Drive, Buena Vista, CO 81211.

**VII. Exchange. A. Exchange Requested.** The Applicant requests an exchange on Three Mile Creek from the location of the augmentation station to the upstream location of Three Elk Pond. **B. Water to be Exchanged.** The water rights to be exchanged are the consumptive use credits of the Subject Water Rights corresponding in amount and timing with the historical availability of those adjudicated consumptive use stream credits. **C. Exchange Right.** The exchange on Three Mile Creek is to be operated from the return of the historical consumptive use credits from the Harvard Ditch No. 2 augmentation station in the SW1/4 NW1/4 of Section 26, Township 13 South, Range 79 West of the 6<sup>th</sup> P.M. being 250 feet east of the west line of said Section 26 and 2,150 feet south of the north line of said Section 26. The exchange is from this location up Three Mile Creek to the terminus of the exchange at Three Elk Pond as described in Section IV and as also shown on Exhibit A. **D. Uses.** The Applicant requests to use the exchanged water for augmentation, recreation, piscatorial, pass through flows, fire control, and wildlife watering, including initial use, reuse and successive use until extinction. **E. Appropriation Date.** The appropriation date of this exchange is December 29, 2011 which is the date of the filing of this Application with the District Court for Water Division 2, thereby confirming, implementing and demonstrating the Applicant's intent and actions to initiate and appropriate this water right for the beneficial uses as set forth herein. **F. Amount of Exchange.** The amount of the exchange within the exchange reach is for an annual demand of 13.26 annual acre feet of water with a maximum exchange rate of 0.38 cfs. All of the exchange amount is requested as a conditional water right. **VIII. Terms and Conditions.** The Applicant proposes the following additional terms and conditions to prevent injury to other vested water rights.

A. Use of the Subject Water Rights under the change of water right, plan for augmentation and exchange will be limited in amount and timing to the in-priority physical availability of the historical consumptive use stream credits at the Harvard Ditch No. 2 augmentation station. B. Diversions available under the Subject Water Rights will be limited by a consecutive 10 year rolling average and will also be subject to monthly and annual maximum diversion limits based on historical diversions. C. The Applicant's consumptive use entitlement under the Subject Water Rights during the irrigation season will be determined by historical depletions percentages applied to available in priority diversions. The portion of allowed diversions not associated with this historical consumptive use shall remain in Three Mile Creek as return flow obligations. D. The exchange may be operated only when there is a live stream maintained between the Harvard Ditch No. 2 headgate and the Three Elk Pond, and senior intervening water rights are not deprived of legal in priority diversions that they would have been entitled to receive in the absence of the exchange, with consideration of the call of the Subject Water Rights.

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**CASE NO. 11CW90 – COLORADO DIVISION OF PARKS AND WILDLIFE AND THE  
PARKS AND WILDLIFE BOARD, 6060 Broadway, Denver, CO 80216** (Peter C.

Johnson, Assistant Attorney General, 1525 Sherman Street, 7<sup>th</sup> Floor, Denver, CO  
80203; (303) 866-5018)

Application for Absolute Water Right

**CHAFFEE COUNTY, COLORADO**

**2. Name of Structure:** Agnes Vaille Falls Ditch. **3. Legal Description of Point of**

**Diversion:** The point of diversion for Agnes Vaille Falls Ditch is located at the  
intersection of an unnamed tributary from Agnes Vaille Falls and the Wilsey Ditch, in the  
NE ¼ of the SE ¼ of Section 28, T. 15 S., R. 79 W. of the 6<sup>th</sup> PM, at a point 53.6 feet  
west of the east section line and 2304.9 feet north of the south section line. **4. Source:**

Unnamed tributary from Agnes Vaille Falls, tributary to Chalk Creek, tributary to the

Arkansas River. **5. Appropriation Date:** February 5, 2004. How appropriation was

initiated: In February of 2004, a storm event rerouted the unnamed tributary from Agnes

Vaille Falls into the Wilsey Ditch. CPW staff began using this flow to irrigate the

“Sharon Sue’s Meadow” on the Love Meadows SWA. This data was reported to the

Colorado Division of Water Resources. **Date of application to beneficial use:** May 6,

2004. **6. Use:** Irrigation, Wildlife Watering, and Wildlife Habitat. **a. Legal Description**

**of Irrigated Acreage:** The irrigated meadow commonly known as “Sharon Sue’s

Meadow” on Love Meadows State Wildlife Area and adjacent lands, consisting of

approximately 14 acres in the N ½ of the SW ¼ of Section 28, T. 15 S., R. 79 W. of the

6<sup>th</sup> PM. **7. Amount:** 3 cfs, absolute. **8. Name and address of owners of the land on**

**which structure is or will be located, upon which water is or will be stored, or**

**upon which water is or will be placed to beneficial use:** San Isabel National Forest

Salida Ranger District 325 West Rainbow Blvd. Salida, CO. 81201 Colorado Wildlife

Heritage Foundation, Inc. 6060 Broadway Denver, CO 80216 303-297-1192 Mayo,

Anthony Mayo, Kelly A. 2282 Vincennes Ct. Mansfield, OH. 44904-1679 Booth, Joseph

Warren Booth, John E. Rev. Trust P.O. Box 40 Nathrop, CO. 81236-0040 Eitelgeorge,

Janice Elaine 5239 Ann Arbor Drive Bokeelia, FL. 33922 **9. Map:** A map of the point

of diversion and irrigated acreage 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.) **10.** Pursuant to C.R.S. § 37-92-502(5), Applicant shall

install and maintain, at Applicant's expense, any additional measuring devices which the

Division Engineer determines to be necessary to administer the terms of this decree.

Applicant shall also report the readings from such additional measuring devices to the

Division Engineer as required by the Division Engineer for administration purposes. **11.**

Applicant will notify those persons and entities listed above in Paragraph 8 of its

Application for Absolute Water Right and certify to the Court that such notification has

been made no later than 10 days after filing this application.

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**CASE NO. 11CW91 – COLORADO MOUNTAIN JUNIOR COLLEGE DISTRICT (“CMC”), Timberline Campus, 901 South Highway 24, Leadville, CO 80461**

(Attorneys for Applicant: Jefferson V. Houpt, Glenn D. Chadwick, and Julie S. Hanson, Beattie, Chadwick & Houpt, LLP, 932 Cooper Avenue, Glenwood Springs, CO 81601; (970) 945-8659)

Application for Conditional Water Right and Approval of a Plan for Augmentation  
**LAKE COUNTY, COLORADO**

This Application seeks confirmation of a conditional underground water right for a well located on Applicant’s Hayden Homestead property southwest of Leadville and approval of a plan for augmentation for replacement of approx 5 af of annual depletions resulting from out-of-priority pumping of the well. Stream depletions occur to Box Creek, trib to Arkansas River. A component of the Hayden Homestead is the Sustainable Agronomy Center (“SAC”). CMC plans to use the SAC for greenhouse and outdoor growing plots to advance knowledge, research and instruction regarding sustainable agronomy in upland, wetland, riparian and lacustrine habitats, and as an outdoor laboratory for teaching natural resource management. Water from the well will be used in a proposed greenhouse facility and in outdoor nurseries. Out-of-priority depletions will be replaced under this plan with consumptive use water obtained by a lease between CMC and the Board of Water Works of Pueblo, Colorado (“PBWW”). **Structure:** CMC Agronomy Center Well. **Location:** NE¼ NE¼, Sec 3, T 11 S, R 80 W, 6<sup>th</sup> PM, 1,010 feet from N Sec line of Sec 3 and 980 ft from E Sec line of Sec 3. **Source:** Groundwater trib to Box Creek, trib to Arkansas River. **Estimated depth:** 65 ft. **Appropriation date:** 07/01/11. **Amount:** 200 gpm, conditional. **Uses:** Irrigation and commercial uses. **Max area irrigated:** Approx 2.36 acres within Applicant’s property in the NE¼ NE¼, Sec 3, T 11 S, R 80 W, 6<sup>th</sup> P.M. **Use:** Irrigation, commercial. **Structure to be augmented:** CMC Agronomy Center Well (“Well”). **Water rights to be used for augmentation:** CMC expects to enter into a 20 yr lease for delivery of up to 5 af per year of fully consumable water from the PBWW. The water rights to be used as sources for this leased water are PBWW’s ownership or contract rights in the Ewing Placer Ditch, the Warren E. Wurtz Ditch, the Busk-Ivanhoe System, the Homestake Project and the Independence Pass Transmountain Diversion System. CMC does not seek by this Application approval of a change of water right for any of the water rights it leases from PBWW. **The Ewing Placer Ditch (also known as the Ewing Ditch)** diverts water from Piney Creek a trib of Eagle River, and carries the water into Tennessee Creek for delivery to Arkansas River. The Ditch was decreed for 18.5 cfs on 11/13/1911, with an appropriation date of 06/01/1906, by the District Court, Eagle County, Civil Action No. 507. **Decreed point of diversion:** on the left bank of Piney Creek, whence the NW Corner of Sec 14, T 8 S, R 80 W, 6<sup>th</sup> PM, bears S 72°45' W 5,436 ft. **Decreed use:** municipal, domestic, irrigation, commercial, industrial, mechanical, power generation and cooling, waste water treatment, recreation, fish and wildlife, replacement, exchange, augmentation, substitution, and storage in aid of the foregoing purposes, together with the right to use, reuse, and successively use to extinction. **The Warren E. Wurtz Ditch (also known as the Warren E. Wurts Ditch)** diverts water from Bennett Creek, Mitchell Creek, and tributaries of those creeks, all of which are tributaries of the Eagle River and carries

water into West Tennessee Creek for delivery to the Arkansas River. The Ditch was decreed for a total of 85 cfs on 10/03/1936, with an appropriation date of 06/08/1929, by the District Court, Eagle County, Civil Action No. 963. **Decreed points of diversion:** Headgate No. 1 is on the right bank of Bennett Creek whence the SE corner of Sec 32, T 7 S, R 80 W, 6<sup>th</sup> PM bears S 66°58' E 3,307.9 ft. Headgate No. 2 on the right bank of the South Fork of Bennett Creek whence the SE corner of Sec 32, T 7 S, R 80 W, PM bears S 89°3' E 2,547 ft. Headgate No. 3 is on the right bank of Mitchell Creek whence the SW corner of Sec 8, T 8 S, R 80 W, 6<sup>th</sup> PM bears S 22°23' W 3,902 ft. Headgate No. 4 is on the right bank of a small trib of said Mitchell Creek whence the SW corner of Sec 8, T 8 S, R 80 W, 6<sup>th</sup> PM bears S 24°3' W 3,800 ft. Headgate No. 5 is on the right bank of the South Fork of said Mitchell Creek whence the SW corner of Sec 8, T 8 S, R 80 W, 6<sup>th</sup> PM bears S 50°48' W 2,799 ft. **Decreed use:** same uses decreed to the Ewing Ditch described above. **The Busk-Ivanhoe System** diverts from Hidden Lake Creek, Pan Creek, Lyle Creek, and Ivanhoe Creek, all tributaries of the Fryingpan and Roaring Fork Rivers, and carries such into the headwaters of the Arkansas River. The System was decreed in Case No. 2621 dated 01/09/1928 with appropriation dates differing for various components of the system as more fully set forth in the referenced decree. Other absolute decrees were entered in Civil Actions No. 3082 and 4033, District Court, Garfield County. The Board owns an undivided one-half interest in these water rights. This water is delivered into Turquoise Reservoir. **Appropriation Dates:** Ivanhoe Reservoir: 06/27/1921; Ivanhoe Tunnel: 06/27/1921; Lyle Ditch: 09/28/1924; Pan Ditch: 10/05/1924; Hidden Lake Creek Ditch: 08/30/1927. **Amounts:** Ivanhoe Reservoir: 1200 af; Ivanhoe Reservoir and Tunnel: 35 cfs; Lyle Ditch: 50 cfs; Pan Ditch: 25 cfs; Hidden Lake Creek Ditch: 70 cfs. **Decreed points of diversion: Ivanhoe Reservoir** is formed by a dam approx 21 ft high across the natural bed of Ivanhoe Creek, a trib of Frying Pan Creek, and situated in the SE¼ SW¼ of Sec 12 in T 9 S, R 82 W, 6<sup>th</sup> PM with the northeasterly end located at or about a point from which the SE Corner of Sec 13 in the township and range aforesaid bears S 26°45' E 7,021.3 ft, and by a bulkhead dam approx 10 ft high at the upper end of said reservoir situated in the SE¼ NE¼ of Sec 13 in the township and range aforesaid and with its southerly end located at or about a point from which the SE Corner of said Sec 13 bears S 8°11' E 2,739.2 ft, it overflows all or portions of the SE¼ SW¼ and SW¼ SE¼ of Sec 12 and the NE¼ NW¼ and NE¼ of Sec 13. The Lyle, Pan and Hidden Lake Creek Ditches, which divert from the points described below, all flow into Ivanhoe Reservoir. **Ivanhoe Tunnel:** has its westerly portal at or about a point from which the SE corner of Sec 13, T 9 S, R 81 W, 6<sup>th</sup> PM, bears S 8°11' E 2,739.2 ft, runs from thence S 54°25' E a distance of approx 9,400 ft to its easterly portal in the NE¼ SW¼ of Sec 20 in T 9 S, R 81 W, 6<sup>th</sup> PM crosses in its course all or parts of the SE¼ NE¼ and the NE¼ SE¼ of Sec 13 in T 9 S, R 82 W, 6<sup>th</sup> PM and the SW¼ and SW¼ SE¼ of Sec 18 and the NE¼ of Sec 19 and the S½ NW¼ and the N½ SW¼ of Sec 20 all in T 9 S, R 81 W, 6<sup>th</sup> PM. **Lyle Ditch:** diverts from Lyle Creek, a trib of Ivanhoe Creek at or about a point on the SE bank of said stream in the NW¼ NE¼ of Sec 2, T 9 S, R 82 W, 6<sup>th</sup> PM from which the SE Corner of Sec 13 in township and range aforesaid bears S 23°19' E 16,607.2 ft, runs from thence in southeasterly direction a distance of about 2 miles to said Ivanhoe Reservoir. **Pan Ditch:** diverts from Pan Creek, a trib of South Fryingpan Creek at the N bank of said stream in the NW¼ of NE¼ of Sec 24 in T 9 S, R 82 W, 6<sup>th</sup> PM from which the SE

Corner of Sec 13 in said township and range bears N 52°14' E 2,022.1 ft, will run thence in a northwesterly direction a distance of about 1.6 miles to said Ivanhoe Reservoir. **Hidden Lake Creek Ditch:** diverts from Hidden Lake Creek a trib of Ivanhoe Creek at the E bank of said stream in the NE¼ SW¼ of Sec 11, T 9 S, R 82 W, 6th PM from which the SE Corner of Sec 13 in said township and range bears S 46°14' E 11,392.5 ft, will run thence in a southeasterly direction a distance of about 1.1 miles to said Ivanhoe Reservoir. **Decreed use:** same uses decreed to the Ewing Ditch described above. The **Homestake Project** diverts water from the headwaters of tributaries of the Eagle River in Eagle County. The water rights were conditionally adjudicated by the decree in Civil Action No. 1193 (District Court, Eagle County) dated 06/08/1962 with an appropriation date of 09/22/1952. These water rights have been made absolute in part. The legal descriptions of certain of the remaining conditional water rights of the Homestake Project were corrected, and alternate points of diversion added, by the Decree entered by the District Court in and for Water Division No. 5 in Cases No. 85CW151, 85CW582 and 85CW583 on 08/10/1988. The Board has the annual right to receive 2,500 af of Homestake Project Water delivered at Turquoise Lake. **The Independence Pass Transmountain Diversion System (“IPTDS”)** diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County in Water Division No. 5, and delivers the same to Twin Lakes Reservoir in Water Division No. 2. The water rights were adjudicated by a decree in Civil Action No. 3082 (District Court, Garfield County) dated 08/25/1936, and were modified by a decree in Case No. W-1901 (District Court, Water Division No. 5), dated 05/12/1976. **Appropriation date:** 08/23/1930. The Board has the right to utilize a portion of such waters and the return flows therefrom by virtue of its ownership of shares of the Twin Lakes Reservoir and Canal Company. **Decreed points of diversion:** The Lincoln Gulch Diversion Dam is located at a point whence the SW Corner of Sec 6, T 11 S, R 82 W, 6<sup>th</sup> PM bears N 18°55' E 14,565.5 ft. The intake of Tunnel No. 1 is located at a point whence the SW Corner of Sec 6, T 11 S, R 82 W, 6<sup>th</sup> PM bears N 17°33' E 14,380.9 ft. The headgates of the New York Collection Canal are located as follows: Headgate No. 1 is located on the E bank of West Fork Gulch, a trib of Lincoln Creek, at a point whence the SW Corner of Sec 6, T 11 S, R 82 W, 6<sup>th</sup> PM bears N 58°06' E 24,724.6 ft. Headgate No. 2 is located on New York Gulch at a point whence the SW Corner of Sec 6, T 11 S, R 82 W, 6<sup>th</sup> PM bears N 57°24' E 23,997.4 ft. Headgate No. 3 is located on Tabor Gulch at a point whence the SW Corner of Sec 6, T 11 S, R 82 W, 6<sup>th</sup> PM bears N 51°32' E, 16,923.1 ft. The Roaring Fork Diversion Dam is located at a point whence the SW Corner of Sec 6, T 11 S, R 82 W, 6<sup>th</sup> PM bears S 80°09' E 6,946.3 ft. The headgate or point of intake of Tunnel No. 2 is located on the south bank of the Roaring Fork River at a point whence the SW Corner of Sec 6, T 11 S, R 82 W, 6<sup>th</sup> PM bears S 80°38' E 6,921.6 ft. The point of beginning of the Lincoln Gulch Connection Canal is located at the south end of Tunnel No. 2 at a point whence the SW Corner of Sec 6, T 11 S, R 82 W, 6<sup>th</sup> PM bears N 50°42' E 12,539.2 ft. The Lost Man Diversion Dam is located at a point whence the SW Corner of Sec 6, T 11 S, R 82 W, 6<sup>th</sup> PM bears S 58°42' E 6,473.2 ft. The headgate of the Lost Man Diversion Canal is located on the east bank of Lost Man Creek at a point whence the SW Corner of Sec 6, T 11 S, R 82 W, 6<sup>th</sup> PM bears S 58°18' E 6,871.2 ft. Twin Lakes Reservoir is located in Sections 15, 16, 17, 18, 19, 20, 21, 22, and 23, in T 11 S, R 80 W, 6<sup>th</sup> PM in Lake County on Lake Creek, a trib of Arkansas River. **Decreed use:** direct flow and storage

purposes, irrigation, domestic, commercial, industrial, municipal, and all beneficial uses. **Statement of plan for augmentation: Estimated depletions:** Greenhouse: Applicant plans for a greenhouse that will have approx 6,100 sf of plantable area. This greenhouse area will be used to propagate food crops and non-traditional crops such as tree seedling species and wetland vegetation. After propagation, forest and wetland species will be transplanted to outdoor plots to mature for later use and remediation and reforestation projects. The Greenhouse will also be used to extend the growing season to provide vegetable starts, etc. Water requirements of the greenhouse will vary with crop type and to be conservative, (*i.e.*, overestimating depletions), CMC's water resources consultant, Grand River Consulting Corporation, estimates annual evapo-transpiration depletion at the greenhouse of 0.56 af/yr. Outdoor nurseries: CMC proposes establishment of a 1.75 acre forestry nursery. It is anticipated this plot will be used to raise forest seedlings produced by the greenhouse. A delivery of 2.68 af of water per year to the forest nursery plots will be required. No return flow credit is claimed; thus total depletions for the forest nursery is 2.68 af/yr. Applicant also proposes a 1.2 acre area to be used as a wetlands nursery. The consumptive irrigation requirement will be 1.70 af on an annual basis. CMC's consultant estimates the total depletions from the irrigation well for greenhouse, forestry nursery and wetlands nursery will average less than 5 af/yr. Under the lease, 5 af of replacement water is deliverable by Pueblo each year at the confluence of Lake Creek and the Arkansas River. Depletions will be considered to be out-of-priority at all times and the Applicant shall replace said out-of-priority deletions. The Applicant shall maintain and submit its accounting as required by the Division Engineer, which accounting will include total pumping, all stream depletions and replacement water made available. Due to the relatively small amounts of depletions the plan will generate, discretion will be given to the State Water Administrators for requesting the amounts and timing of releases of replacement water.

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**CASE NO. 11CW92 – LAWRENCE FAMILY RANCH CORPORATION, c/o Jane Lawrence, 1336 Apple Lane, Penrose, CO 81240** (Attorneys for Applicant: Douglas M. Sinor, Trout, Raley, Montano, Witwer & Freeman, P.C., 1120 Lincoln Street, Suite 1600, Denver, CO 80203; (303) 861-1963)

Application for Water Storage Right

**CUSTER COUNTY**

**2. Name of Reservoir:** Lawrence Meadow Pond. **3. Legal description of reservoir:** The Lawrence Meadow Pond is located generally in the NW ¼ of the NE ¼ of Section 27, Township 46 North, Range 12 East, N.M. P.M., Custer County, Colorado. A point on the west bank of the Pond is located 854 feet from the North line and 1426 feet from the East line of said Section 27. The location of the pond is shown on the map attached to the Application as Exhibit 1. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **4. Source:** Unnamed spring. The flow rate is estimated at 0.05 cfs. **5. A. Date of appropriation:** April 1, 1968. **B. How appropriation was initiated:** By construction of the pond. **C. Date water applied to beneficial use:** June 1, 1968. **6. Amount claimed:** A. 1.6 acre-feet, with the right to one refill, absolute. B. Rate of diversion for filling pond: 0.05 cfs. **7. Use:** Irrigation of meadow; and piscatorial, wildlife, and recreational purposes



within and around the pond. A. Number of acres historically irrigated: approximately 25 acres. B. Total number of acres proposed to be irrigated: approximately 25 acres. C. Legal description of acreage irrigated or to be irrigated: Approximately 25 acres of meadow located generally in the NE ¼ of the NE ¼ of Section 27 and the NW ¼ of the NW ¼ of Section 26, all in Township 46 North, Range 12 East, N.M. P.M., Custer County, Colorado. The meadow is shown on the map attached to the application as Exhibit 1. **8. Surface area of high water line**: approximately 0.5 acre. A. Vertical height of dam in feet measured vertically from the elevation of the lowest point of the natural surface of the ground where that point occurs along the longitudinal centerline of the dam up to the crest of the emergency spillway of the dam: 9 feet. B. Length of dam in feet: 300 feet. **9. Total capacity of reservoir in acre feet**: 1.6 acre-feet. Active capacity: approximately 1.6 acre-feet. **10. Name and address of owner of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.** Applicant.

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**CASE NO 11CW93 - ACA PRODUCTS, INC. P. O. Box 1887, Buena Vista, CO 81211.** (Direct all pleadings and correspondence to David C. Lindholm, Esq., P.O. Box 18903, Boulder, Colorado 80308-1903, (303) 415-2502)

Application for Approval of a Plan for Augmentation and Exchange Right

**LAKE COUNTY**

**2. Names of Structures to be Augmented:** Pine Ridge Pit and Pine Ridge Well No.

1. **A. Are Structures Decreed?** No. **B. Legal Descriptions of Structures:** **(1)**

**Pine Ridge Pit:** The Pine Ridge Pit is a sand and gravel mining operation and a concrete batch plant, which is located on a 102.4 acre parcel of property in the S 1/2 SE 1/4 of Section 7, Township 10 South, Range 80 West, 6th P.M., Lake County. The address of the property is 881 County Road 11A, Leadville, Colorado 80461. **(2)**

**Pine Ridge Well No. 1:** The Pine Ridge Well No. 1 is located at the Pine Ridge Pit in the SE 1/4 SE 1/4 of Section 7, Township 10 South, Range 80 West, 6th P.M., Lake County, at a point approximately 1,300 feet from the South Section line and 600 feet from the East Section line of Section 7. **3. Water Rights to be Used for Augmentation Purposes:**

a. The source of augmentation water will be water in the Twin Lakes Reservoir and Canal Company ("Twin Lakes"), that Applicant leases from owners of Twin Lakes shares, including but not limited to the City of Pueblo. b. A Twin Lakes share represents a pro-rata interest in native Arkansas River diversions and the Independence Pass Transmountain Diversion System. The water associated with Twin Lakes shares is available for one hundred percent consumptive use and reuse, including augmentation purposes. The Twin Lakes water rights are more particularly described as follows: i. Colorado River Water Rights: The Independence Pass Transmountain Diversion System diverts water from the headwaters of Roaring Fork Creek and its tributaries in Pitkin County. The System was decreed by the District Court for Garfield County in Civil Action No. 3082, on August 25, 1936, with a date of appropriation of August 23, 1930, for direct flow and storage purposes, irrigation, domestic, commercial, industrial, municipal and all beneficial uses. The original Decree for the System was modified by the Decree entered by the District Court for Water Division 5 in Case No.

W-1901, on May 12, 1976. Water is carried through the Continental Divide for delivery to Lake Creek, a tributary of the Arkansas River, at a decreed rate of 625 cfs, with an annual limit of 68,000 acre feet, a running ten year limit of 570,000 acre feet and other limitations set forth in the Decrees. ii. Arkansas River Water Rights: Water in Lake Creek, a tributary of the Arkansas River, is stored in Twin Lakes Reservoirs pursuant to the Decree entered by the District Court for Chaffee County in Civil Action No. 2346, on July 14, 1913, with dates of appropriation of December 15, 1896, for 20,645.2 acre feet, and March 25, 1897, for 33,806.7 acre feet. The original Decree was modified by the District Court for Water Division 2 in Case No. W-3965, dated April 19, 1974. Twin Lakes Reservoirs are on-stream reservoirs located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 of Township 11 South, Range 80 West, 6th P.M., Lake County. The water is decreed for storage for irrigation, domestic, commercial, industrial and municipal purposes on any sites in the Arkansas River Basin of Colorado below Twin Lakes Reservoir, which are capable of being served water by diversion from said Arkansas River. c. The State Engineer has acknowledged that the average consumptive use yield of each Twin Lakes share is approximately 0.94 of an acre-foot of water per year. **4. Statement of Plan for Augmentation, Covering all Applicable Matters under C.R.S. §37-92-103(9), §302(1)(2) and §305(8):** a. Applicant owns the Pine Ridge Pit, as described above. The facility is located in the Halfmoon Creek drainage basin approximately 1.25 miles Southwest of the confluence of Halfmoon Creek and Lake Fork. The Pine Ridge Pit property is depicted on Exhibit "A" attached to the Application. b. The sand and gravel deposits at Pine Ridge Pit are located above the ground water table. Therefore, no ground water is exposed during mining operations and a well permit for the Pit itself is not required. c. Mined aggregates are washed prior to sale using water stored in on-site ponds, ("wash ponds"). The elevation of the bottom of the wash ponds is above the ground water table. As a consequence, the ponds do not intercept ground water. Fines released from aggregate materials during the washing process have largely sealed the wash ponds. d. The source of water for the wash ponds is Twin Lakes water that is exchanged to the headgate of the Templeton Ditch on Halfmoon Creek. Only consumptive use water is stored in the wash ponds. The headgate of the Templeton Ditch is located on the South bank of Halfmoon Creek at a point approximately 900 feet from the South Section line and 900 feet from the West Section line of Section 7, Township 10 South, Range 80 West, 6th P.M., Lake County. e. Water for the concrete batch plant is obtained from the Pine Ridge Well No. 1. The Well is located approximately 3,250 feet to the South of Half Moon Creek and adjacent to the Templeton Ditch. It was constructed under Permit No. 269719 as a monitoring hole. The Well is 171 feet deep and diverts water that is tributary to Halfmoon Creek. The maximum rate of diversion from the Well is 15 gallons per minute. Water from the Pine Ridge Well No. 1 is also used to supply the sanitary needs of the workers at the Pine Ridge Pit. f. Engineering studies conducted for the Applicant indicate that water consumed at the Pine Ridge Pit consist of the following components. (a) Water is required to fill or top off the wash ponds at the beginning of each season; (b) Water is required to replenish the wash ponds as a result of evaporation losses from the open water surface of the ponds, seepage from the sides and bottom of the ponds and moisture entrainment in the washed aggregate; (c) Water is required in the batching of concrete; and (d) Water is required for the sanitary needs

of workers. g. Based on an evaluation of the historic operation of the Pine Ridge Pit and other sand and gravel mines and concrete batch plants in Colorado, the water projected to be consumed at Pine Ridge Pit is as follows: i. The volume of the wash ponds is approximately 10 acre-feet. The ponds have a surface area of 2 acres when full. Each year upon startup, and depending on whether the wash ponds were operated the previous year, between 4 and 10 acre-feet are required to fill the ponds. ii. Evaporation losses from the open water surface of the wash ponds have been estimated using criteria approved in prior plans for augmentation in Water Division 2. Evaporation between May 1 and August 31 is 19 inches. Assuming a constant surface area of 2 acres the entire period, maximum pond evaporation is 3.2 acre-feet per year. iii. Water entrained in the washed aggregate will be calculated as a percentage of gross aggregate weight. The maximum annual export of aggregate mined from the Pine Ridge Pit is anticipated to be 70,000 tons. Using the State Engineer's 2009 Guidelines for Substitute Water Supply Plans for Gravel Pits, which assume a water loss for washed aggregate mined above the ground water table to be 2% by weight, the volume of water consumed via moisture entrainment in the washed aggregate is 1 acre foot per year. iv. Applicant has documented the volume of water needed to batch concrete to be 0.098 of an acre-foot per 1,000 cubic yards. The maximum amount of concrete anticipated to be batched at the Pine Ridge Pit is 25,000 cubic yards, resulting in water consumption from the Pine Ridge Well No. 1 of 2.45 acre feet per year. v. The volume of water required from the Pine Ridge Well No. 1 for sanitary uses has been computed by multiplying the number of working days per month by eight employees, at an assumed average of 15 gallons per employee per day. This results in a projected usage of less than 0.01 of an acre-foot per month. For purposes of this augmentation plan, it has been assumed that all of the water used for sanitary purposes is consumed. The maximum volume of water projected to be consumed at the Pine Ridge Pit is 17 acre-feet per year, of which less than 3.0 acre feet is attributable to pumping of the Pine Ridge Well No. 1. h. Twin Lakes water will be used as the augmentation source, as described in Paragraph No. 3, above. Water released from the Twin Lakes Reservoirs will be delivered to the Arkansas River and exchanged upstream to Lake Fork and Halfmoon Creek for diversion at the Templeton Ditch headgate. Water will only be delivered to the wash ponds when the exchange of Twin Lakes water can be operated in priority. At all other times, the washing of aggregate materials will be accomplished using previously stored consumptive use water. i. Based on historic operation, it has been documented that a significant portion of the water conveyed in the Templeton Ditch, between the point of diversion of the Ditch on Halfmoon and the intersection of the Ditch with the wash ponds, infiltrates into the ground. The length of the Ditch is approximately 4,300 feet as shown on Exhibit "A." The water lost from the Ditch returns to Halfmoon Creek in the form of subsurface return flows. Depending upon the year, as much as 20 acre feet of the water exchanged to the headgate of the Templeton Ditch returns to Halfmoon Creek, thereby enhancing the native flow of water in the Creek during low flow conditions. In order to confirm the amount of future ditch loss, water exchanged to the Templeton Ditch headgate will be measured using the existing Parshall Flume. Water reaching the wash ponds at the Pine Ridge Pit will be measured using a second Parshall Flume. Operation of the Pine Ridge Well No. 1 will be limited to days when Twin Lakes water is being exchanged to the Templeton Ditch and the

volume of ditch loss is equal to or greater than the volume of water diverted from the Well. To the extent that ditch losses exceed the volume of water pumped from the Well each year, the Pine Ridge Well No. 1 may be operated after the exchange ceases to operate, provided the total volume of water diverted from the Well each year does not exceed the documented loss of consumptive use water from the Templeton Ditch. The Well will be equipped with a totalizing flow meter and ground water withdrawals will be monitored. j. Applicant requests the adjudication of an appropriative right of substitute supply and exchange pursuant to C.R.S. §37-80-120 and §37-92-302(1)(a). Water released from the Twin Lakes Reservoirs will be carried in Lake Creek to the confluence of Lake Creek and the Arkansas River, located in the NE 1/4 SE 1/4 of Section 24, Township 11 South, Range 80 West, 6th P.M., Lake County. From there, the water will be exchanged up the Arkansas River to its confluence with Lake Fork in the SW 1/4 SE 1/4 of Section 5, Township 10 South, Range 80 West, 6th P.M.; thence up Lake Fork to its confluence with Halfmoon Creek in the SW1/4 SE 1/4 of Section 5, Township 10 South, Range 80 West, 6th P.M.; and thence up Halfmoon Creek to the headgate of the Templeton Ditch as above described. The exchange will be administered with a priority date of June 1, 2007, at a maximum flow rate of 3.0 cubic feet per second. **4. Name and Address of Owner of Land on which New Structures will be Located:** N/A. WHEREFORE, Applicant requests the entry of a decree approving this Application.

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**CASE NO. 11CW94 - TRWC, INC. d/b/a TWO RIVERS WATER COMPANY, Annex Building, Suite 420, 2000 S. Colorado Blvd., Denver, CO 80222** (Robert F. T. Krassa, Krassa & Miller, LLC, Attorneys for Applicant, 2344 Spruce Street, Suite A, Boulder, CO 80302, 303-442-2156)

Application for Appropriative Rights of Exchange and for Approval of Plans for Augmentation, as corrected

**IN HUERFANO AND PUEBLO COUNTIES**

**2. Source of water for exchange or augmentation.** The water to be exchanged or to be used for augmentation pursuant to this application will be any totally or fully reusable water released or delivered by the Board of Water Works of Pueblo, Colorado ("Board") pursuant to the Water Lease Agreement between the Board and Applicant dated September, 2011 and approved September 20, 2011 by the Board ("Water Lease"), or any other reusable water which may be made available by the Board by spot sales or otherwise. The Water Lease provides for delivery of 500 acre feet of water during each contract year with the point of delivery at or near the confluence of the Arkansas River and the Huerfano River. The Water Lease contract years run from April 1 through March 31 of the next year. The said confluence (herein "the Confluence") is located in the SW 1/4 Section 8, T. 21 S., R. 61 W. of the 6th P.M. in Pueblo County, Colorado. The water to be delivered under the Water Lease may be any of the water rights described in the decrees entered in Case 84CW177 (copy of decree attached as Exhibit B to the Application), Case 86CW111 (copy of decree attached as Exhibit C to the Application) and paragraph 25.B of the decree in Case 93CW86 (copy of decree attached as Exhibit D to the Application), or any other water rights owned or controlled by the Pueblo Board of Water Works which are totally or fully reusable. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

**3. Description of Structures Involved in this Application** (all shown on map attached

to the Application as Exhibit A). a. TRWC Pueblo Well No. 1 will be located in the SW/4SE/4 Section 24, T. 22S., R. 63 W of the 6th P.M. in Pueblo County. b. TRWC Pueblo Well No. 2 will be located in the NW/4NE/4 Section 35, T. 22S., R. 63 W of the 6th P.M. in Pueblo County. c. TRWC Pueblo Well No. 3 will be located in the NE/4NW/4 Section 31, T. 22S., R. 62 W of the 6th P.M. in Pueblo County. d. TRWC Huerfano Well No. 1 will be located in the NW/4SW/4 Section 20, T. 25S., R. 66 W of the 6th P.M. in Huerfano County. e. TRWC Huerfano Well No. 2 will be located in the NE/4NE/4 Section 20, T. 25S., R. 66 W of the 6th P.M. in Huerfano County. f. TRWC Huerfano Well No. 3 will be located in the NW/4SW/4 Section 16, T. 25S., R. 66 W of the 6th P.M. in Huerfano County. g. Huerfano Valley Ditch a/k/a Huerfano Valley Canal diversion structure, located on the left (west) bank of the Huerfano River in the NE1/4 of the SW1/4 of Section 32, T. 23 S., R. 63 W. of the 6th P.M., Pueblo County, Colorado, approximately 2175 feet from the South Section line of said Section and 1860 feet from the West Section line of said section, at a point located by G.P.S. by the Division of Water Resources during a field inspection at NAD 83, 13S-546281 East, 13S-4206098 North. h. Cucharas Reservoir. Said reservoir is an on stream reservoir on the Cucharas River, located in Sections 25, 35 and 36, T. 26S, R. 65 W, Sections 30 and 31, T. 26 S., R. 64 W, Section 6, T. 27 S. R. 64 W., and Sections 1, 2, 11 and 12, T. 27 S., R. 64 W., in Huerfano County, CO. The dam of said reservoir is located on the Cucharas River in the SW1/4 of the SE1/4, Section 30, T. 26 S., R. 64 W. of the 6th P.M in Huerfano County. i. Orlando Reservoir No. 2. Said reservoir is located in Sections 17 and 20, T. 26 S., R. 66 W. of the 6th P.M. in Huerfano County, Colorado and can take water from the Huerfano River through the headgate of the Orlando Canal No. 3 located on the North bank of the Huerfano River at a point whence the West quarter corner of Section 25, T. 26 S., R. 67 W. of the 6th P.M. bear North 5 degrees 3 minutes East 2920 feet, said canal having a carrying capacity of 1500 cfs. (The headgate of the Orlando Canal No. 3 is erroneously described in its decree as being in Range 66 W due to a typographic error in said decree; the rest of the relevant location information in the decree is correct.) j. Bradford Lake Reservoir. Said reservoir has a capacity of 6000 acre feet and is located in Sections 25 and 36 of T. 26 S., R. 66 W. of the 6th P.M. and Sections 30 and 31, T. 26 S., R. 65 W. of the 6th P.M. in Huerfano County, Colorado and can take water from the Huerfano River through the headgate of the Orlando Canal No. 1 a/k/a Bradford Lake Canal whose headgate is located in the NE ¼ of the NW ¼ of Section 30, T. 26 S., R. 66 W. of the 6<sup>th</sup> P.M. at a point on the south bank of the Huerfano River approximately 730 feet from the North Section line of said Section and 1600 feet from the West Section line of said section, said canal having a carrying capacity of 1200 cfs. k. Huerfano Valley Reservoir. Said reservoir has a capacity of approximately 2000 acre feet and is located in Section 12, T. 22S, R. 63 W. of the 6th P.M. in Pueblo County, and can take water from the Huerfano River through the Huerfano Valley Ditch described above. l. Butte Valley Ditch, whose headgate is located on the Huerfano River in the NE1/4 of the NW1/4 of Section 30, T. 26 S., R. 66 W. of the 6th P.M., Huerfano County, Colorado, approximately 730 feet from the North Section line of said Section and 1600 feet from the West Section line of said section.

**CLAIM FOR APPROPRIATIVE RIGHTS OF EXCHANGE 4. Nature of Claims.** Applicant seeks to adjudicate the following appropriative rights of exchange pursuant to the relevant provisions of the law, including but not limited to §37-80-120, §37-83-104,

§37-92-302(1)(a) and §37-92-305(10), C.R.S. The source of water for such exchanges is described in paragraph 2 above. The appropriative rights of exchange will operate on the Huerfano River from its confluence with the Arkansas River upstream to the upstream termini described below. **5. Termini of Exchanges.** (Please see map attached to the Application as Exhibit A). a. **Downstream terminus:** water will be released or delivered by the Board to the Confluence, which is the downstream terminus of each of the subject exchanges. Water so delivered or released will be measured at the point of such delivery or release and then stream losses as reasonably assessed by the Division Engineer will be applied to determine the amount of water delivered to the Confluence. b. **Upstream termini:** the administrative upstream termini of the subject exchanges will be the point on the Huerfano River closest to each of TRWC Pueblo Wells 1, 2, and 3, each of TRWC Huerfano Wells 1, 2 and 3, the Diversion Structure of the Huerfano Valley Ditch, the dam of Cucharas Reservoir as described above and the diversion structures of Orlando Canal #3 and the Bradford Inlet Canal a/k/a Orlando Canal No. 1 and the Butte Valley Ditch, all as described above. In addition, Applicants intend to exchange to any other location within the exchange reach, which is defined as the reach between the confluence and the most upstream structure described in above paragraph 3. **6. Appropriation date:** December 22, 2011. **How appropriation was initiated:** by action of TRWC's Board of Directors (herein the "Board") expressing the intent to appropriate an exchange priority as herein described. **7. Amount Claimed.** Maximum rate of exchange to each of the structures mentioned in above paragraph 3 will be as follows: Pueblo Wells 1 - 3 and Huerfano Wells 1-3 3 cfs. Orlando and Bradford Inlet Canals 1200 cfs. Cucharas Reservoir 2000 cfs. Huerfano Valley Ditch 160 cfs. Butte Valley Ditch 6 cfs. **8. Use.** Irrigation, augmentation and all other beneficial uses for which the exchange source water has been decreed. **9. Description of exchange operation:** The principle governing the exchanges shall be that Applicant may operate the exchanges so long as any other water rights in the exchange reach which (i) are senior to the exchange, (ii) are in-priority and (iii) have a lawful requirement for water according to their respective priorities are satisfied, without any additional requirements for live stream conditions. a. Exchanges may be made to wells to the maximum extent permitted by law. b. Water exchanged to wells or to direct flow will be used immediately. c. Water exchanged to storage will be stored and may be subsequently released for irrigation, augmentation and all other beneficial uses for which the exchange source water has been decreed. Such releases will be subject to reasonable stream loss assessed by the Division Engineer. d. Water exchanged to the Bradford Inlet Canal, the Orlando Canal No. 3 or the Huerfano Valley Ditch may be carried through such ditches or canals and then stored in Bradford Lake Reservoir, Orlando Reservoir No. 2 or Huerfano Valley Reservoir respectively, and subsequently released for irrigation, augmentation and all other beneficial uses for which the exchange source water has been decreed. **PLAN FOR AUGMENTATION** **10. Names of Structures to be augmented:** TRWC Pueblo Wells 1, 2, and 3, TRWC Huerfano Wells 1, 2 and 3, the Huerfano Valley Ditch and the Butte Valley Ditch. **11. Decrees for structures to be augmented.** a. TRWC Pueblo Wells 1, 2 and 3 and TRWC Huerfano Wells 1, 2 and 3 are not decreed at this time. b. The Huerfano Valley Ditch has direct flow water rights out of the Huerfano River for irrigation use decreed in the Killian Decree February 23, 1898 by the Huerfano County District Court for 42 cfs with

appropriation date February 2, 1888, and as decreed in the Atwood Decree October 3, 1921 by the Huerfano County District Court for 18 cfs with appropriation date May 1, 1905. The Huerfano Valley Ditch diversion structure also carries the water storage right of the Huerfano Valley Reservoir, an off-channel reservoir, for irrigation use decreed in the Killian Decree February 23, 1898 by the Huerfano County District Court for 2016.873 acre feet out of the Huerfano River with appropriation date February 2, 1888.

c. The Butte Valley Ditch has direct flow water rights out of the Huerfano River for irrigation use decreed in the Reed Decree dated June 12, 1889 for 1.2 cfs with appropriation date May 15, 1862, for 1.8 cfs with appropriation date May 15, 1865 and for 3 cfs with appropriation date May 15, 1886, and also as decreed in the Killian Decree February 23, 1898 by the Huerfano County District Court for an additional 3 cfs with appropriation date May 15, 1886. **12. Previous decrees for water rights to be used for augmentation** are as stated in paragraph 2 above. **13. Historic use:** Historic use is not relevant as the subject water provided by the Board will be totally consumable under Colorado law. **14. Statement of plan for augmentation:** The plan will use the totally consumable water derived from the water rights listed in paragraph 2 hereof to replace any injurious stream depletions caused by diversions of water at the structures described in paragraph 11 hereof. No claim is made in this application for any return flow credit from the augmented use of such water, although Applicant reserves the right to make a later application under the resume-notice procedure to claim such credit and modify the presently proposed plan for augmentation consistently therewith.

a. Augmentation water may be provided by first storing the water rights listed in paragraph 2 by exchange under the claim for appropriative rights of exchange set out above. Water will then be released as necessary to replace any injurious stream depletions caused by diversions of water at the structures listed in paragraph 11 above.

b. Augmentation water may also be provided to the mainstem of the Arkansas River by releasing sufficient amount of the water rights listed in paragraph 2 at the Confluence to prevent injury to any water rights on the mainstem of the Arkansas River located downstream of the Confluence.

c. In the case of the wells listed in paragraph 11, upon construction of each well, or by suitable testing of each existing well, the Applicant will determine the aquifer characteristics and if any of such wells are not considered to be "headgate wells" pursuant to State and Diversion Engineer guidelines, Applicant will calculate appropriate lag factors using the Glover method or other appropriate hydrological methodology, and will submit the results to the Division Engineer for approval prior to operating such wells under the requested plan for augmentation.

d. No augmentation water is required to be provided to calling rights when delivery of augmentation water would be futile due to circumstances not caused by Applicant.

e. No augmentation is required to be provided to senior rights which are owned by Applicant or with which Applicant has entered into suitable agreements.

f. Wells shall require augmentation only to the extent their depletions accrue to the stream at times or in amounts not replaced by the above described exchanges. Any augmentation shall be required only to the extent needed to prevent legal injury to other water rights.

**GENERAL ALLEGATIONS 15. Ownership of structures.** Applicant owns or has the right to use all structures involved in this case. This application does not contemplate any new diversion or storage structures other than TRWC Pueblo Wells 1, 2 and 3 and the TRWC Huerfano Wells 1, 2 and 3 which will be located on land owned by Applicant.

Pursuant to C.R.S. 37-92-302(2)(b), the records of the County Assessors indicate that the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored, that is not owned by the Applicants, may be owned by the following: TRW Orlando Water Assets, LLC, Annex Building, Suite 420, 2000 S. Colorado Blvd, Denver, CO 80222, Bruce S. & Maureen P. Kleinman 245 North Kenilworth Oak Park, IL 60302, Tom Sikes P.O. Box 19001 Colorado City, CO 81019, Norman & Joann Abair P.O. Box 805 Canon City, CO 81215, Paul J. Domblesky & Billie Jean Wilson P.O. Box 164 Wagon Town, PA 19376, John Vucetich 773 County Road 103 Walsenburg, CO 81089, Matt M. & Becky Maune P.O. Box 361 Syracuse, KS 67878, James & Rhonda Hribar 1187 County Road 640 Walsenburg, CO 81089, Sig Sporleder & Company, c/o Eric Sporleder, P.O. Box 642 Walsenburg, CO 81089, State Land Board 1127 Sherman St., Ste. 300 Denver, CO 80203, Bureau of Land Management 3028 E. Main Street Canon City, CO 81212, Ashoor & Waletin Yousif 7518 Keystone Avenue Skokie, IL 60076, Edmundsen Ranches, LLC P.O. Box 128 Walsenburg, CO 81089, Michael & Velma Rinks 42235 Bush Road Avondale, CO 81022, Bar Nothing Ranches LLC, P. O. Box 100, Avondale, CO 81022, Huerfano Cucharas Irrigation Company ("HCIC"), c/o Two Rivers Water Company, Garald Barber, President and Chief Operating Officer, Annex Building, Suite 420, 2000 S. Colorado Blvd, Denver, CO 80222. Stroh Ranch, c/o Jack Stroh, #30 Sporleder Heights, Walsenburg, CO 81088, Pierce Investment Corporation, c/o Rebecca Pierce Bowland, President, P.O. Box 218, Craig, CO 81626 Tom and Sandy McKenna, 1251 North Roosevelt Rd. B.C., Taiban, NM 88134, David & Cindy Driscoll, 902 Rinks Land, Savannah, TN 38372, Bureau of Land Management, 3028 E. Main Street, Canon City, CO 81212, State Land Board, 1127 Sherman St., Ste. 300, Denver, CO 80203.

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**CASE NO. 11CW95 – LANCE O. VERHOEFF and VERHOEFF FARMS, INC., 27354 County Road JJ, McClave, CO 81057** (Julianne M. Woldridge and Jeffrey B. Cullers, MacDougall, Woldridge & Worley, P.C., Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905)

Application for Changes of Water Rights and for Storage Rights

**BENT COUNTY, COLORADO**

**2. Decreed water rights to be changed: A. Lyvere Ditch.** 1. Date of original decree: June 3, 1922, District Court, Bent County, CO. 2. Legal description of decreed location of structure or point of diversion: As described in the original decree, the ditch takes its supply from seepage, percolation, and overflow from lands lying north and northwest of the land to be irrigated and sloping toward the headgate. The decreed location of the headgate was a point 7° 30' West 2165 feet from the Southeast corner of Sec. 29, T.22S., R.49W., 6th P.M., Bent County, CO. 3. Decreed source of water: seepage, percolation, and overflow described as West Prowers Arroya, tributary of the Arkansas River. 4. Appropriation date: April 11, 1915. 5. Amount: 2 c.f.s. absolute. 6. Decreed use: Irrigation and domestic. 7. Detailed description of change: Applicants seek to change the decreed location of the headgate to reflect the actual location of the headgate for at least 50 years. The actual headgate is located at UTM Zone 13N, Easting 681,971m Northing 4,219,733m, roughly on the section line between Secs. 28 and 29, T. 22S., R. 49W., 6<sup>th</sup> P.M., Bent County, CO. (All UTM coordinates



were made with a GPS device). This is approximately 610 feet from the decreed headgate location. The decreed and actual headgate locations are 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.) In addition, Applicants seek to change the water right to include storage in the Verhoeff Reservoir located in Secs. 27 and 28, T.22S., R.49W., 6<sup>th</sup> P.M., Bent County, CO, in addition to the current uses by direct application. A storage right for this reservoir was decreed in Case No. CA 418, District Court, Bent County, CO on April 21, 1959 for 229 a.f. for irrigation and domestic uses, for water from East Prowers Arroya, with an appropriation date of May 1, 1945. This change will allow the storage of this water right from West Prowers Arroya to be stored in this reservoir. Applicants are not changing the type of use or place of use of the water right or the number of acres that can be irrigated. The approximate location of historical and future use of the water right is shown on Exhibit B. A summary of records of actual diversions of the water right is attached to the Application as Exhibit C.

**B. James Cushny Ditch.** 1. Date of original and subsequent decrees: June 3, 1922, District Court, Bent County, CO, and decree making absolute, November 7, 1924, District Court, Bent County, CO. 2. Legal description of decreed location of structure or point of diversion: a point on the West bank of West Prowers Arroya, whence the NW corner of Sec. 33, T.22S., R.49W., 6<sup>th</sup> P.M. bears North 89° 41' West, a distance of 1827.4 feet. 3. Decreed source of water: West Prowers Arroya, tributary of the Arkansas River. 4. Appropriation date: September 25, 1920. 5. Amount: 5.3 c.f.s. 6. Decreed use: Irrigation and domestic. 7. Detailed description of change: Applicants seek to adjudicate the Lyvere Ditch headgate, described above, as an alternate point of diversion for the entire amount of the James Cushny water right. This is approximately 3,303 feet from the James Cushny Ditch headgate. In addition, Applicants seek to change the water right to include storage in the Dingwall Ditch Regulating Reservoir and the Verhoeff Reservoir, the locations of which are described below, in addition to the current uses by direct application. Applicants are not changing the type of use or place of use of the water right or the number of acres that can be irrigated. The headgate locations are shown on the map attached to the Application as Exhibit A. The approximate location of historical and future use of the water right is shown on Exhibit B. A summary of records of actual diversions of the water right is attached to the Application as Exhibit C.

**C. Swallow Seepage Ditch.** 1. Date of original decree: June 3, 1922, District Court, Bent County, CO. 2. Legal description of decreed location of structure or point of diversion: a point on the East bank of the West Fork of Prowers Arroya North 61° 30' West 1675 feet from the North quarter corner of Sec. 33, T.22S., R.49W., 6<sup>th</sup> P.M., Bent County, CO. 3. Decreed source of water: Prowers Arroya, tributary of the Arkansas River. 4. Appropriation date: April 15, 1915. 5. Amount: 2 c.f.s. 6. Decreed Use: Irrigation and domestic. 7. Detailed description of change: Applicants seek to change the decreed location of the headgate to the Lyvere Ditch headgate, described above, which is the actual location of the headgate for the Swallow Seepage Ditch for at least 50 years. This is approximately 2,245 feet from the decreed headgate location. The decreed and actual headgate locations are shown on the map attached to the Application as Exhibit A. Applicants also seek to adjudicate the James Cushny Ditch headgate, described above, as an alternate point of diversion for the entire amount of

the Swallow Seepage Ditch water right. This is approximately 1,052 feet from the decreed headgate location. In addition, Applicants seek to change the water right to include storage in the Verhoeff Reservoir located in Secs. 27 and 28, T.22S., R.49W., 6<sup>th</sup> P.M., Bent County, CO, in addition to the current uses by direct application. A storage right for this reservoir was decreed in Case No. CA 418, District Court, Bent County, CO on April 21, 1959 for 229 a.f. for irrigation and domestic uses, for water from East Prowers Arroya, with an appropriation date of May 1, 1945. This change will allow the storage of this water right from West Prowers Arroya to be stored in this reservoir. Applicants are not changing the type of use or place of use of the water right or the number of acres that can be irrigated. The approximate location of historical and future use of the water right is shown on Exhibit B. A summary of records of actual diversions of the water right is attached to the Application as Exhibit C. **D. Dudley Ditch No. 1.** 1. Date of original decree: June 3, 1922, District Court, Bent County, CO. 2. Legal description of decreed location of structure or point of diversion: As described in the original decree, the ditch takes its supply from seepage, percolation, and overflow from land lying north, northwest, and northeast of the land to be irrigated, known as the West Branch of the East Branch of Prowers Arroya. The decreed location of the headgate was a point whence the corners of Sections 21, 22, 27, and 28 bear South 89° West 1336 feet, in T.22S., R.49W., 6<sup>th</sup> P.M., Bent County, CO. 3. Decreed source of water: seepage, percolation, and overflow described as West Branch of the East Branch of Prowers Arroya, tributary of the Arkansas River. 4. Appropriation date: April 12, 1915. 5. Amount: 2 c.f.s. absolute. 6. Decreed use: Irrigation and domestic. 7. Detailed description of change: Applicants seek to change the decreed location of the headgate to reflect the actual location of the headgate for at least 50 years. The actual headgate is located at UTM Zone 13N, Easting 683,230m Northing 4,222,128m, approximately the NE¼NE¼ of Sec. 21, T. 22S., R. 49W., 6<sup>th</sup> P.M., Bent County, CO. This is approximately 5,660 feet from the decreed headgate location. The decreed and actual headgate locations are shown on the map attached to the Application as Exhibit A. Applicants are not changing the type of use, place of use, or the number of acres that can be irrigated. The approximate location of historical and future use of the water right is shown on Exhibit B. A summary of records of actual diversions of the water right is attached to the Application as Exhibit C. **E. Dingwall Ditch.** 1. Date of original decree: June 3, 1922, District Court, Bent County, CO. 2. Legal description of decreed location of structure or point of diversion: a point whence the corner to Sections 27, 28, 33, and 34 bears North 825 feet, T.22S., R.49W., 6<sup>th</sup> P.M., Bent County, CO. 3. Decreed source of water: Prowers Arroya, a tributary of the Arkansas River. 4. Appropriation date: April 14, 1915. 5. Amount: 11 c.f.s. absolute. 6. Decreed use: Irrigation and domestic. 7. Detailed description of change: Applicants seek to change the decreed location of the headgate to reflect the actual location of the headgate for at least 50 years. The actual headgate is located at UTM Zone 13N, Easting 683,422m Northing 4,218,747m, in the NE¼ of Sec. 33, T. 22S., R. 49W., 6<sup>th</sup> P.M., Bent County, CO. This is approximately 575 feet from the decreed headgate location. In addition, Applicants seek to change the water right to include storage in the Dingwall Ditch Regulating Reservoir, the location of which is described below, in addition to the current uses by direct application. The decreed and actual headgate locations are shown on the map attached to the Application as Exhibit A. Applicants are not changing the type

of use or place of use of the water right. The approximate location of historical and future use of the water right is shown on Exhibit B. A summary of records of actual diversions of the water right is attached to the Application as Exhibit C. **4. Applicants seek to adjudicate an absolute storage right for the Dingwall Ditch Regulating Reservoir.** a. Legal description: The dam is located in the SE¼ of Sec. 28 and the SW¼ of Sec. 27, T.22S., R.49W., 6<sup>th</sup> P.M., Bent County, CO. The place of storage is the E½ of Sec. 28 and the W½ of Sec. 27, T.22S., R.49W., 6<sup>th</sup> P.M. as shown on the map attached to the Application as Exhibit A. b. Source: Seepage, percolation, and overflow from lands above the reservoir, and waters from what is commonly known as West Prowers Arroya, East Prowers Arroya, or Prowers Arroya. Water from seepage, percolation and overflow enter the reservoir from lands surrounding the reservoir. Water may also be diverted into the reservoir from West Prowers Arroya at a structure located in the Verhoeff Ditch in the SE¼ of Sec. 28, T.22S., R.49W., 6<sup>th</sup> P.M., UTM Zone 13N, Easting 683,156m Northing 4,218,998m. Water from East Prowers Arroya may be diverted into the reservoir from overflows from and flows through the Verhoeff Reservoir described above. Subject to changes of the James Cushny Ditch and Dingwall Ditch water rights, water from these ditches, described above, may be used to fill this storage right. c. Date of appropriation: January 7, 1964. The appropriation was initiated by the filing of a Map and Statement with the State Engineer. Water was first applied to beneficial uses on or around January 7, 1964. d. Amount: 372.12 a.f. absolute, with the right to fill and refill. e. Uses: Irrigation, domestic, livestock, recreational, including commercial recreation, fish and wildlife. Applicants have and propose to continue to irrigate and use the water on lands generally described on Exhibit A. f. Surface area of high water line: 2,750,868.83 square feet. The vertical height of the dam is approximately 13 feet. The dam is approximately 2418 feet in length. g. Total capacity of reservoir: 461.03 a.f. all of which is active. **5. Applicants seek to adjudicate an absolute storage right for the Verhoeff Reservoir Enlargement.** a. Legal description: The dam is located in the E½ of Sec. 28 and the W½ of Sec. 27, T.22S., R.49W., 6<sup>th</sup> P.M., Bent County, CO. The place of storage is the E½ of Sec. 28 and the W½ of Sec. 27, T.22S., R.49W., 6<sup>th</sup> P.M. as shown on the map attached to the Application as Exhibit A. b. Source: Seepage, percolation, and overflow from lands above the reservoir, and waters from what is commonly known as West Prowers Arroya, East Prowers Arroya, or Prowers Arroya. Water from seepage, percolation and overflow enter the reservoir from lands surrounding the reservoir. Subject to changes of the Lyvere Ditch, Swallow Seepage Ditch, and James Cushny Ditch water rights, described above, water from these ditches may be used to fill this storage right. c. Date of appropriation: May 18, 1963. The appropriation was initiated by construction enabling the expanded capacity and use of the water. Water was first applied to beneficial uses on or around May 18, 1963. d. Amount: 80 a.f. absolute, with the right to fill and refill. e. Uses: Irrigation, domestic, livestock, recreational, including commercial recreation, fish and wildlife. Applicants have and propose to continue to irrigate and use the water on lands generally described on Exhibit A. f. Surface area of high water line: 3,287,478.97 square feet. The vertical height of the dam is approximately 18.2 feet. The dam is approximately 964 feet in length. g. Total capacity of reservoir: The total capacity of the reservoir is 309.08 a.f. all of which is active. There is an existing storage right for 229 a.f. in this reservoir decreed in Case

No. CA 418, District Court, Bent County, CO on April 21, 1959 for irrigation and domestic uses, for water from East Prowers Arroya, with an appropriation date of May 1, 1945. The Enlargement right of 80 a.f. is the capacity of the reservoir over and above the 229 a.f. storage capacity. **6. Names and addresses of owner of land upon which new or existing 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:** Applicant, Lance O. Verhoeff owns the land where the Lyvere ditch headgate, the Dudley Ditch headgate, and the Dingwall Ditch headgate are located. Applicant, Verhoeff Farms, Inc. owns the land where the James Cushny ditch headgate is located. Lance O. and Norma J. Verhoeff (same address as Applicants) own the land where the Dingwall Ditch Regulating Reservoir and the Verhoeff Reservoir Enlargement store water. **7. Remarks:** a. Unless subject to a futile call or free river determination, diversions through the Lyvere Ditch headgate at any given time will be limited to one of the three water rights decreed to that point. b. Out-of-priority diversions into the Dingwall Ditch Regulating Reservoir and the Verhoeff Reservoir Enlargement shall be replaced pursuant to an approved plan for augmentation or administratively approved substitute supply or replacement plan. Currently, these structures are the subject of the application in Case No. 08CW18 to include structures within LAWMA's augmentation plan decreed in Case No. 02CW181 as amended.

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**CASE NO. 11CW96 – TRWC, INC., d/b/a TWO RIVERS WATER COMPANY and ORLANDO RESERVOIR NO. 2 COMPANY, LLC, Annex Building, Suite 420, 2000 S. Colorado Blvd., Denver, CO 80222** (Robert F. T. Krassa, Krassa & Miller, LLC, Attorneys for Applicants, 2344 Spruce Street, Suite A, Boulder, CO 80302; (303) 442-2156)

Application for Change of Water Rights

**HUERFANO AND PUEBLO COUNTIES**

**FIRST CLAIM - CHANGE OF WATER RIGHTS** **2. Decreed name of structure for which change is sought:** Robert Rice Ditch **3. From previous decrees for the water rights of Robert Rice Ditch: A. Dated entered:** June 12, 1889 (no case number, known as Reed Decree), and diversion location corrected by decree entered May 19, 1992 in Case 91CW39, District Court for Water Division 2. **B. Decreed Point of Diversion as corrected by decree in 91CW39:** in the SW1/4 Section 10, T. 26 S, R. 66 W. of the 6th P.M. in Huerfano County, Colorado, being approximately 1700 feet from the west line and 550 feet from the south line of said Section 10. (see also map Exhibit A. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The actual location per GPS is at latitude 37 degrees 47.010 minutes North, longitude 104 degrees 46.430 minutes West which is in the NW/4SW/4 Section 15, T. 26 S, R. 66 W. of the 6th P.M. which is 50 feet from the West line and 2275 feet from the South line of said Section 15. **C. Decreed source:** Huerfano River. **D. Appropriation Date:** March 1, 1867 **E. Amount:** 3.0 cfs **F. Decreed use of water:** irrigation **G. Amount of water that Applicants intend to change:** all **4. Historic Use:** The water rights listed in paragraph 2 of this Application have historically been used for irrigation purposes. The area historically irrigated is shown on map attached to the Application as Exhibit B. Summaries of diversion records are attached to the Application as Exhibit C. Applicants request quantification of the

transferable historic consumptive use of this water right. **5. Proposed Change of Type and Location of Use:** Applicant proposes to change the use of the subject water to municipal, domestic, industrial, agricultural, commercial, truck washing, irrigation, stock watering, recreation, fish and wildlife, fire protection and other beneficial uses including augmentation, substitution and exchange. Such water may be immediately applied to beneficial use, or stored and subsequently applied to beneficial use, all from or through any of the structures described herein or at any locations downstream thereof, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for all other augmentation purposes. By way of example and not by way of limitation, Applicant intends to: **a.** Store the subject water in the Orlando Reservoir No. 2 for later use for any of the above purposes. Said reservoir is located in Sections 17 and 20, T. 26 S., R. 66 W. of the 6th P.M. in Huerfano County, Colorado and can take water from the Huerfano River through the headgate of the Orlando Canal No. 3 located on the North bank of the Huerfano River at a point whence the West quarter corner of Section 25, T. 26 S., R. 67 W. of the 6th P.M. bear North 5 degrees 3 minutes East 2920 feet, said canal having a carrying capacity of 1500 cfs. (The headgate of the Orlando Canal No. 3 is erroneously described in its decree as being in Range 66 W due to a typographic error in said decree; the rest of the relevant location information in the decree is correct.) Said reservoir and inlet canal are also shown on map attached to the Application as Exhibit A. Applicants request that the Orlando Canal No. 3 be approved as an alternate point of diversion of the water rights of the Robert Rice Ditch. **b.** Store the subject water in the Bradford Lake Reservoir for later use for any of the above purposes. Said reservoir has a capacity of 6000 acre feet and is located in Sections 25 and 36 of T. 26 S., R. 66 W. of the 6th P.M. and Sections 30 and 31 of T. 26 S., R. 65 W. of the 6th P.M. in Huerfano County, Colorado and can take water from the Huerfano River through the headgate of the Orlando Canal No. 1 a/k/a Bradford Lake Canal whose headgate is located at a point on the south bank of the Huerfano River from whence the northeast corner of Section 30, T. 26 S., R. 66 W. of the 6th P.M. bears North 80 degrees 25 minutes East 3110 feet. Said reservoir and the inlet canal are also shown on map attached to the Application as Exhibit A. Applicants request that the Bradford Inlet Canal be approved as an alternate point of diversion of the water rights of the Robert Rice Ditch. **c.** Divert said water through the Huerfano Valley Ditch a/k/a Huerfano Valley Canal and use the same for irrigation of any lands which can be irrigated through the said Huerfano Valley Ditch, whose headgate is located on the left (west) bank of the Huerfano River in the NE1/4 of the SW1/4 of Section 32, T. 23 S., R. 63 W. of the 6th P.M., Pueblo County, Colorado, approximately 2175 feet from the South Section line of said Section and 1860 feet from the West Section line of said section, at a point located by G.P.S. by the Division of Water Resources during a field inspection at 546281 mE, 4206098 mN, Zone 13S, NAD 1983. Said lands are shown on map attached to the Application as Exhibit D. Applicants request that the Huerfano Valley Ditch be approved as an alternate point of diversion of the water rights of the Robert Rice Ditch. **d.** Divert said water through the Butte Valley Ditch and use the same for irrigation of any lands which can be irrigated through the Butte Valley Ditch, whose headgate is located on the Huerfano River in the NE1/4 of the NW1/4 of Section 30, T. 26 S., R. 66 W. of the 6th P.M., Huerfano County, Colorado, approximately 730 feet from the North Section line of said Section and 1600 feet from

the West Section line of said section. Said lands are shown on map attached to the Application as Exhibit E. Applicants request that the Butte Valley Ditch headgate be approved as an alternate point of diversion of the water rights of the Robert Rice Ditch.

**e.** Use the subject water for all municipal purposes (including domestic, industrial, commercial, manufacturing, stock watering, recreational, piscatorial, fish and wildlife, fire protection, and street washing) pursuant to a Service Agreement with The Orlando Reservoir No. 2 Company, LLC and Marksheffel-Woodmen Investments, LLC dated January 28, 2011, a memorandum of which was recorded April 11, 2011 at reception number 390722, records of Huerfano County, on approximately 7000 acres of land located as follows (all in Huerfano County): Case/Edmundsen Parcel All or portions of Sections 14, 20-23, 27-34 of T. 25 S., R. 65 W., Sections 3, 4, 5 and 6 of T. 26 S., R. 65 W all in Huerfano County, Colorado. Schaffer Ranch All or portions of Sections 7, 17-20 and 28-33, T. 25 S., R. 66 W. of the 6th P.M. Seifert Ranch All or portions of Sections 5-8, T. 26 S., R. 66 W. of the 6th P.M. and Section 12, T. 26 S., R. 67 W. Other Case Lands All or portions of Sections 16-21, T. 26 S., R. 66 W. of the 6th P.M. Said lands (herein "the Case lands") are shown on map(s) or plats attached to the Application as Exhibit F. The subject water may also be used for irrigation of the Case Lands, and for truck washing on those lands. **f.** Use the subject water to augment depletions from any wells used to provide water for irrigation, municipal and truck washing purposes on the Case Lands, which wells may be located on the Case Lands.

**SECOND CLAIM - CORRECTION OF PREVIOUS DECREES** **6.** Applicants request correction of the following two errors in previous decrees. This Claim simply seeks to confirm the actual and historical diversion locations of the Orlando Canal No. 3 and the Robert Rice Ditch to the exact locations as determined by GPS technology. By this Claim, the Applicants do not seek a change in use from the historic irrigation, the amount of diversions, or the location of the historically irrigated acres. **a.** As described in paragraph 3.b above, the location of the headgate of the Robert Rice Ditch as corrected by the decree in Case 91CW39 was still in error by about 500 feet and should be corrected as stated in said paragraph 3.b. **b.** As described in paragraph 5.a above, the location of the headgate of the Orlando Canal No. 3 was set out in the Atwood Decree as being in Range 66 W. instead of Range 67 W. The other location information in that decree regarding said canal is correct. **c.** Upon information and belief these water rights have always been administered at the correct location. **d.** No change is requested under this Claim other than correction of the said errors in the previous decrees. No quantification or historic use determination is requested by this Claim as to said Orlando Canal No. 3 or the Robert Rice Ditch, nor would such determinations be necessary or appropriate. **THIRD CLAIM - APPROPRIATIVE RIGHT OF EXCHANGE** **7. Appropriative Right of Exchange.** Applicant seeks to adjudicate the following appropriative right of exchange pursuant to the relevant provisions of the law, including but not limited to §37-80-120, §37-83-104, §37-92-302(1)(a) and §37-92-305(10), C.R.S. The water to be exchanged will be any water diverted under the above described water right of the Robert Rice Ditch, including any water derived from that right stored in and subsequently released from above described Orlando No. 2 Reservoir or Bradford Lake Reservoir. The exchanged water may be used for any of the purposes mentioned in foregoing paragraph 5. **8. Termini of Exchange.** (Please see map attached to the Application as Exhibit A). **a. Downstream termini:** water will be quantified and

administered as delivered to the stream at one or more of the following locations: the present diversion works of the Robert Rice Ditch, the diversion works of Orlando Canal #3, or stored in and subsequently released from Orlando Reservoir No. 2 whose outlet canal reaches the Huerfano River at a point in the NE 1/4 of the NE 1/4 of Section 20, T. 26 S., R. 66 W. of the 6th P.M. approximately 1000 feet from the east line and 400 feet from the north line of said Section 20, which point is determined by GPS to be at latitude 37 degrees 46.581 minutes North and longitude 104 degrees 47.739 minutes West. b. Upstream termini: the administrative upstream termini of this exchange will be (i) The headgate of the Orlando Canal No. 3 to carry such water to storage in Orlando Reservoir No. 2. The headgate of the Orlando Canal No. 3 is located as described in para. 5.a above. (ii) The headgate of the Bradford Lake Canal to carry such water to storage in Bradford Lake Reservoir. The headgate of the Bradford Lake Canal is located as described in para. 5.b above. (iii) The headgate of the Butte Valley Ditch which is located as described in paragraph 5.d above. In addition, Applicants intend to exchange to any other location within the exchange reach, which is defined as the reach between the above described downstream termini and the most upstream structure described herein. **9. Appropriation date**: December 22, 2011. How appropriation was initiated: by action of TRWC's Board of Directors (herein the "Board") expressing the intent to appropriate an exchange priority as herein described. **10. Rate of exchange**: 3.0 cfs, conditional, for water quantified at the existing diversion structure of the Robert Rice Ditch, and 85.4 cfs for water released from storage in Orlando Reservoir No. 2 or Bradford Lake Reservoir. **11. Description of exchange operation**: Applicant may operate the described exchange, so long as any senior water rights in the exchange reach with a lawful requirement for water according to their respective priorities are satisfied, without any additional requirements for live stream conditions. Upon information and belief, there are no such existing water rights in the exchange reach. Water exchanged to direct flow will be used immediately for irrigation, augmentation or other beneficial uses. Water exchanged to storage will be stored and may be subsequently released for irrigation, augmentation or other beneficial uses. Lands to be irrigated include any lands which can be irrigated by water released from the Orlando No. 2 Reservoir, Bradford Lake Reservoir, or Huerfano Valley Reservoir, any land under the Butte Valley Ditch or the Huerfano Valley Ditch, and the Case lands. Such lands may be irrigated directly or by water from wells augmented by such released water. **GENERAL ALLEGATIONS** **12. Proposed Provisions under § 37-92-304(3.5)**. Not applicable as the Robert Rice Ditch is not a mutual ditch. **13. Ownership of structures**. Applicant owns or has the right to use all structures involved in this case. This application does not contemplate any new diversion or storage structures. Pursuant to C.R.S. 37-92-302(2)(b), the records of the County Assessors indicate that the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored, that is not owned by the Applicants, may be owned by the following: TRW Orlando Water Assets, LLC, Annex Building, Suite 420, 2000 S. Colorado Blvd, Denver, CO 80222 Bruce S. & Maureen P. Kleinman 245 North Kenilworth Oak Park, IL 60302, Tom Sikes P.O. Box 19001 Colorado City, CO 81019, Norman & Joann Abair P.O. Box 805 Canon City, CO 81215, Paul J. Domblesky & Billie Jean Wilson P.O. Box 164 Wagon Town, PA 19376, John Vucetich 773 County Road 103 Walsenburg, CO

81089, Matt M. & Becky Maune P.O. Box 361 Syracuse, KS 67878, James & Rhonda Hribar 1187 County Road 640 Walsenburg, CO 81089, Sig Sporleder & Company, c/o Eric Sporleder, P.O. Box 642 Walsenburg, CO 81089, State Land Board 1127 Sherman St., Ste. 300 Denver, CO 80203, Bureau of Land Management 3028 E. Main Street Canon City, CO 81212, Ashoor & Waletin Yousif 7518 Keystone Avenue Skokie, IL 60076, Edmundson Ranches, LLC P.O. Box 128 Walsenburg, CO 81089, Michael & Velma Rinks 42235 Bush Road Avondale, CO 81022, Bar Nothing Ranches LLC 6916 Broadacre Rd, Avondale CO 81022-9720, Carl W. & M. Joan Reagan, 6800 Burnt Mill Road, Beulah, CO 81023

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

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of February 2012, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$130.00). 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.

YOU ARE FURTHER NOTIFIED that any person who wishes to protest the inclusion of any water rights on the revised abandonment list shall file a written protest with the Water Clerk for the Division 2 Water Court and provide a copy to the Division Engineer in accordance with the procedures set forth in section 37-92-401(5), C.R.S (2011). A form for such protest is available at: <http://www.courts.state.co.us/Forms>. All such protests shall be filed no later than June 30, 2012. The fee for filing such a protest with the Water Clerk shall be thirty-five dollars (\$35.00), payable to the Water Clerk.

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Witness my hand and the seal of this Court this 23rd day of January, 2012.



*Mardell R. DiDomenico*

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

(Court seal)

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