

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING FEBRUARY 2010

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed during February 2010, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 10CW2 - PIONEER NATURAL RESOURCES USA, INC. ("Pioneer"), Attn: Ronald Schindler, Esq., 1401 Seventeenth Street, Suite 1200, Denver, CO 80202; XTO ENERGY, INC. ("XTO"), Attn: Taylor L. Pope, Esq., 810 Houston Street, Fort Worth, TX 76102; EL PASO E&P COMPANY, LP ("El Paso"), Attn: Daniel R. Cabianna, Senior Counsel, 1001 Louisiana St., Houston, TX 77002; and RED RIVER RANCH HOLDINGS, LLC ("Red River"), Attn: James Killean, Esq., Ireland Stapleton Pryor & Pascoe, PC, 1675 Broadway, Suite 2600, Denver, CO 80202 (Please direct all pleadings and correspondence to: Christopher L. Thorne and William H. Caile, Holland & Hart, LLP, Attorneys for Applicants Pioneer, XTO, and El Paso, P. O. Box 8749, Denver, CO 80201-8749; (393) 295-8000; and James J. Killean, Ireland Stapleton Pryor & Pascoe, P.C., Attorney for Applicant Red River, 1675 Broadway, Suite 2600, Denver, CO 80202-4675; (303) 623-2062)

Application for Approval of Plan for Augmentation, Including Exchanges

LAS ANIMAS COUNTY

Overview of Application. Applicants operate coalbed methane ("CBM") gas wells in the Central Raton Basin, which includes the drainages of the Purgatoire River and its tributaries generally above Trinidad Reservoir and portions of the Apishapa River. As part of the CBM extraction process, CBM gas wells typically produce small amounts of ground water ("produced water") from deep ground water aquifers. Produced water from some of the Applicants' CBM wells in the Central Raton Basin is tributary to surface streams. Pursuant to the decision of the Colorado Supreme Court in Vance, et al. v. Wolfe, 205 P.3d 1165 (Colo. 2009) and House Bill 09-1303, CBM wells that withdraw tributary produced water are subject to the water well permitting and water rights administration requirements of C.R.S. § 37-90-101, et seq., and C.R.S. 37-92-101, et seq. This Application requests approval of a plan for augmentation, including exchange, to replace out-of-priority depletions from Applicants' CBM wells within the Central Raton Basin that withdraw tributary produced water, in the time, location, and amount necessary to prevent injury to vested senior water rights. This Application also requests approval of various appropriate rights of exchange for use in operating the requested plan for augmentation. **FIRST CLAIM – APPROVAL OF PLAN FOR AUGMENTATION. Background on Tributary CBM Wells Located in the Central Raton Basin.** Applicants seek to augment

depletions from all of Applicants' CBM gas wells that withdraw tributary produced water in the Central Raton Basin. CBM wells in the Central Raton Basin are drilled into one or both of the Raton formation or the Vermejo formation. The map attached to the Application as Exhibit A-1 generally shows the portions of the Central Raton Basin that have been evaluated in connection with Applicants' CBM wells and the proposed plan for augmentation. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court.) Applicants' consultants constructed a calibrated, multi-layered, numeric ground water model of the ground water flow systems in the Central Raton Basin using the USGS's MODFLOW computer code (the "Model"). Using the Model, Applicants' consultants have evaluated the degree of surface and ground water interaction in the Central Raton Basin and have identified which of Applicants' existing CBM wells withdraw ground water from the Raton and/or Vermejo formations that is tributary to surface streams (areas where the withdrawal of ground water could, within one hundred years, deplete the flow of a natural stream, at an annual rate of greater than one-tenth of one percent of the annual rate of withdrawal). On January 8, 2010 Applicants filed a request with the State Engineer for a nontributary determination pursuant to Rule 17.5 of the Produced Nontributary Ground Water Rules (as published on the State Engineer's website on December 30, 2009) for the portions of the Raton and Vermejo formations in the Central Raton Basin which the Model indicates contain nontributary ground water. Applicants may amend or supplement this application in the future based upon a final decision with respect to Applicants' requested nontributary determination. Ground water production associated with CBM gas extraction typically follows a pattern of relatively high initial ground water production rapidly reaching a maximum production level, and then declining through a roughly 30-year period to very minimal or zero ground water production flow. Applicants' consultants have developed standardized water production curves based on actual ground water production data which are used in the Model. Work carried out in connection with the development of the Model demonstrates that stream contacts where CBM-related depletions can occur are generally limited to incised valleys where perennial flows comprised of baseflow contributions from the CBM-producing bedrock formations exist. These conditions exist along the mainstem and the North, Middle, and South Forks of the Purgatoire River and at Trinidad Reservoir. In addition, other streams identified in the National Hydrography Database ("NHD") as perennial and included in the Model include the tributaries of Burro Canyon, Reilly Canyon, Long Canyon, and two unnamed tributaries to the Purgatoire River; at certain areas along the Apishapa River and its tributary, Canyon del Agua; Guajatoya Creek and its tributaries; Raton Creek and McBride Creek; and perennial reaches of Gray Creek, San Miguel Creek, McCoy Canyon, San Francisco Creek, and Chicorica Creek and its tributaries. The Model was then used to determine the tributary areas within the Raton and Vermejo formations, which are those areas where the withdrawal of ground water would deplete the flow of a natural stream at an annual rate of greater than one-tenth of one percent of the annual rate of withdrawal within one hundred years, referred to as "Tributary

Zones.” Areas where the withdrawal would not deplete the flows at an annual rate of greater than one-tenth of one percent of the annual rate of withdrawal within one hundred years are considered nontributary, referred to as “Nontributary Zones.” The boundaries for the Tributary Zones and Nontributary Zones of the Raton and Vermejo formations, respectively, are shown on Exhibits A-2 and A-3 to the Application. Using the Model, Applicants have determined that of the existing approximately 2,949 CBM wells operated by Applicants within the Central Raton Basin, 1,790 of those existing wells withdraw tributary ground water (the “Tributary CBM Wells”), summarized as follows:

Producer and Completion Information	Pioneer	XTO	EI Paso	Red River	Total by Formation
Dually Completed: Both Raton and Vermejo Tributary	241	78	24	0	343
Dually Completed: Raton Nontributary / Vermejo Tributary	3	4	4	0	11
Dual Completed: Raton Tributary / Vermejo Nontributary	497	85	4	0	586
Raton Only Completed: Raton Tributary	17	27	0	0	44
Vermejo Only Completed: Vermejo Tributary	714	84	3	5	806
Total	1,472	278	35	5	1,790

Wells completed in the Raton and/or Vermejo formations are shown on Exhibit A-2 and A-3 to the Application, respectively. **Name of structures to be augmented.** 1,898 Tributary CBM Wells: Tributary CBM Wells completed in either the Raton or the Vermejo formation are listed in the attached Appendix 1-A. Tributary CBM Wells dually located in the Raton and Vermejo formations are listed in the attached Appendix 1-B. To the extent that areas that are claimed to be Nontributary Zones in this Application are ultimately determined to be located within tributary areas requiring augmentation of out-of-priority depletions, Applicants seek to cover any such wells within those areas pursuant to this plan for augmentation. These Appendices include 1,790 existing Tributary CBM Wells and approximately 108 new tributary wells that are anticipated to be constructed by Applicants and begin production during 2010, which are identified for purposes of this Application by an “N” followed by a unique number. *Is structure decreed?* The Tributary CBM Wells are not decreed. The Tributary CBM Wells are subject to permits issued by the Colorado Oil and Gas Conservation Commission (“COGCC”). Surface discharge of produced water from some of the Tributary CBM Wells is subject to discharge permits issued by the Colorado Department of Public Health and Environment, Water Quality Control Division (“CDPHE”). In addition, Applicants will file applications with the State Engineer’s Office for water well permits for all of their operating CBM wells in the Central Raton Basin. *Are there other water rights diverted from these structures?* No. *Legal description of structures.* The Tributary CBM Wells are located within Townships 31, 32, 33, 34, and 35 South, Ranges 64, 65, 66, 67, and 68 West, inclusive, of the 6th PM in Las Animas County, Colorado, as more particularly described in Appendices 1-A and 1-B. Maps showing the locations of the Tributary CBM Wells are attached to the Application as Exhibits B-1 through B-21. Future Additional Wells. Applicants may drill additional CBM wells in the Tributary Zones of the Raton and/or Vermejo formations in the future. Applicants

seek to have such future additional tributary CBM wells (“Additional Wells”) covered by this plan for augmentation, including all terms and conditions imposed in any final decree granted in this matter. Applicants propose to provide notice to the State and/or Division Engineer and other interested and appropriate parties prior to the operation of any Additional Wells under this plan which will set forth, among other things, the location of the Additional Well(s), the projected pumping rate and annual volume produced from such Additional Well(s) during its first year of operation (after which time actual pumping data will be used) and the Administrative Reach(es) (defined below) to which replacements of those depletions will be made, as well other information determined necessary. These Additional Wells will be included in an annual run of the Model to determine out-of-priority depletions and associated replacement requirements, as more particularly described below. Applicants will coordinate with the State and/or Division Engineer to develop a process for the inclusion of Additional Wells into this plan for augmentation. *Are the structures decreed?* The Additional Wells are not decreed and do not yet have associated water well permits from the State Engineer. Appropriate permits will be obtained as necessary at the time of construction and/or prior to operation of any Additional Wells under this plan. *Are there other water rights diverted from these structures?* No. *Legal description of structure.* The future Additional Wells to be included in this plan will be located within the Tributary Zones of the Raton and Vermejo formations or located within Townships 31, 32, 33, 34, and 35 South, Ranges 64, 65, 66, 67, and 68 West, inclusive, of the 6th PM in Las Animas County, Colorado, as generally depicted on Exhibits A-2 and A-3 attached to the Application. **Water rights to be used for augmentation:** Produced Water from Nontributary CBM Wells. Applicants currently operate 1,170 CBM wells in the Central Raton Basin which produce nontributary ground water from the Raton and Vermejo formations. Surface discharge of water from certain of these wells (the “Nontributary Augmentation Wells”) is subject to discharge permits issued by CDPHE. Applicants will file applications for water well permits with the State Engineer requesting approval of the use for augmentation purposes pursuant to the plan for augmentation described in this application, of water produced from the Nontributary Augmentation Wells to facilitate the production of CBM for the period of time during which CBM is being produced from such wells. The Nontributary Augmentation Wells are generally located in the upper portions of the Central Raton Basin and are generally depicted on Exhibits A-2 and A-3 attached to the Application. Additional information, including the legal descriptions, for Nontributary Augmentation Wells is included in Appendices 1-A and 1-B. Various permitted points of surface discharge of produced water from Applicants’ CBM Wells exist at multiple locations throughout the Central Raton Basin. The currently identified discharge points for use in this plan discharge either tributary and/or nontributary produced water are set forth in Table 1, below (collectively referred to as “Discharge Points”). Applicants’ consultants have estimated, based on recorded measurements, metering, or other relevant information, the portion of discharge attributable to nontributary ground water discharged from the Nontributary Augmentation Wells and the tributary ground water discharged from

Tributary CBM Wells for each Discharge Point, which are set forth in Table 1, below. The Discharge Points do not directly discharge to a flowing perennial surface stream, but do discharge to live flowing streams that reach perennial surface streams. Applicants propose to apply a transit loss to the discharge volumes.

Table 1 - Summary of Discharge Points

Discharge Point No.	Discharge Name	Receiving Stream	Portion of Tributary Discharge	Portion of Nontrib Discharge	Transit Loss (Mar – Nov. & Dec – Feb)	
1	Kennedy Discharge Pipe	Guajatoya Creek	100%	0%	25%	90%
2	Montoya #4	North Fork of Purgatoire	100%	0%	25%	90%
3	Montoya #5	North Fork of Purgatoire	100%	0%	25%	90%
4	Apache Canyon 50	South Fork of Purgatoire	100%	0%	30%	90%
5	Golden Eagle 43	South Fork of Purgatoire	69.6%	30.4%	15%	90%
6	Jaguar 183A	Burro Canyon	39.7%	59.3%	25%	90%
7	Ginetta 220A	Burro Canyon	13.5%	86.5%	25%	90%
8	Joyce 057A	Reilly Canyon	8.7%	91.3%	25%	90%

The location of the Discharge Points are shown on Exhibit C-1 attached to the Application. More detailed maps with each Discharge Point No. 1 through 8 and both the Nontributary Augmentation Wells and the Tributary CBM Wells discharging water to that Discharge Point are provided in Exhibits C-2 through C-7 attached to the Application. Legal descriptions for the Discharge Points are set forth in the following Table 2:

**Table 2
Legal Locations of Each Discharge Point**

Discharge Point	Quarter/Quarter	Section, Township, Range	Approx. Distance from N/S Section Line	Approx. Distance from E/W Section Line
Apache Canyon 50	SWSW	S 24, T34S, R68W	900 ft from N	685 ft from W
Ginetta 220A	SWNE	S 35, T32S, R66W	1495 ft from N	1940 ft from E
Golden Eagle 43	NESE	S 35, T33S, R67W	2360 ft from S	2440 ft from W
Jaguar 183A	SESE	S 35, T32S, R66W	410 ft from S	900 ft from E
Joyce 057A	SENE	S 30, T32S, R65W	1725 ft from N	2525 ft from W
Kennedy Discharge Pipe	SWSW	S 34, T32S, R68W	1075 ft from S	1310 ft from W
Montoya #4	SESE	S 1, T33S, R68W	1180 ft from S	2600 ft from W
Montoya #5	SWNE	S 1, T 33S, R68W	1730 ft from N	2670 ft from E

Note: In regions where official Township, Range, and Section lines do not exist, interpreted Township, Range and Section boundaries were used to determine legal locations.

The Nontributary Augmentation Wells that discharge into Discharge Point Nos. 5-8 from which produced water is claimed under this plan for augmentation are identified in Table 3. Legal descriptions of those Nontributary Augmentation

Wells are included in Appendices 1-A and 1-B. Tributary CBM Wells that discharge to each of the Discharge Points are also included in this Table 3, and are discussed below.

Table 3
Tributary CBM Wells and Nontributary Augmentation Wells Discharging to Discharge Points

List of CBM Wells Contributing to Discharge Points					
Name of Discharge Point	Contributing Wells	Well Number	API	Tributary/Nontributary Classification	Map ID
Apache Canyon 50	Apache Canyon 14-16V	05-071-07204-00		Tributary Vermejo	7204
	Apache Canyon 19-12	05-071-06347-00		Tributary Raton & Tributary Vermejo	6347
	Apache Canyon 19-14	05-071-08927-00		Tributary Raton & Tributary Vermejo	8927
	Apache Canyon 23-01	05-071-08822-00		Tributary Vermejo	8822
	Apache Canyon 23-09	05-071-06131-00		Tributary Vermejo	6131
	Apache Canyon 23-16	05-071-08686-00		Tributary Vermejo	8686
	Apache Canyon 24-02V	05-071-07186-00		Tributary Raton & Tributary Vermejo	7186
	Apache Canyon 24-03V	05-071-07188-00		Tributary Vermejo	7188
	Apache Canyon 24-04	05-071-08687-00		Tributary Raton & Tributary Vermejo	8687
	Apache Canyon 24-08	05-071-08820-00		Tributary Raton & Tributary Vermejo	8820
	Apache Canyon 24-10V	05-071-07187-00		Tributary Vermejo	7187
	Apache Canyon 24-12	05-071-06132-00		Tributary Vermejo	6132
	Apache Canyon 24-16	05-071-08926-00		Tributary Raton & Tributary Vermejo	8926
	Apache Canyon 25-03V	05-071-07439-00		Tributary Vermejo	7439
	Apache Canyon 25-01	05-071-09283-00		Tributary Raton & Tributary Vermejo	9283
	Apache Canyon 25-04	05-071-06133-00		Tributary Vermejo	6133
	Apache Canyon 25-11V	05-071-07557-00		Tributary Raton & Tributary Vermejo	7557
	Apache Canyon 26-01V	05-071-06134-00		Tributary Vermejo	6134
	Apache Canyon 26-02	05-071-08813-00		Tributary Raton & Tributary Vermejo	8813
	Apache Canyon 26-08V	05-071-07559-00		Tributary Vermejo	7559
Apache Canyon 26-16V	05-071-07558-00		Tributary Raton & Tributary Vermejo	7558	
Apache Canyon 30-05-34	05-071-09285-00		Tributary Raton & Tributary Vermejo	9285	
Apache Canyon 30-06	05-071-09282-00		Tributary Raton & Tributary Vermejo	9282	
Ginetta 220A	Ginetta 32-35	05-071-07453-00		Tributary Raton & Nontributary Vermejo	7453
Golden Eagle 43	Apache Canyon 35-05	05-071-08542-00		Tributary Raton & Nontributary Vermejo	8542
	Apache Canyon 35-06	05-071-08540-00		Tributary Raton & Nontributary Vermejo	8540
	Apache Canyon 34-08	05-071-08541-00		Tributary Raton & Nontributary Vermejo	8541
	Apache Canyon 35-07	05-071-09320-00		Tributary Raton & Nontributary Vermejo	9320
	Apache Canyon 35-10	05-071-09212-00		Tributary Raton & Nontributary Vermejo	9212
	Apache Canyon 35-12	05-071-09325-00		Tributary Raton & Nontributary Vermejo	9325
	Apache Canyon 35-14-02	05-071-09233-00		Tributary Raton & Nontributary Vermejo	9233
	Golden Eagle 34-07	05-071-08816-00		Tributary Raton & Nontributary Vermejo	8816
Jaguar 183A	Jaguar 44-35	05-071-06854-00		Nontributary Vermejo	6854
	Lamborghini 14-36	05-071-06839-00		Nontributary Vermejo	6839
	Rambler 23-36	05-071-09092-00		Tributary Raton & Nontributary Vermejo	9092
Joyce 057A	Christine Federal 23-19	05-071-09179-00		Nontributary Vermejo	9179
	Halibut Federal 22-25	05-071-09172-00		Nontributary Vermejo	9172

	Highlands 41-25	05-071-07059-00	Tributary Raton & Nontributary Vermejo	7059
	Jenners Pond Federal 13-19	05-071-09157-00	Nontributary Vermejo	9157
	Joyce 22-30	05-071-06437-00	Nontributary Vermejo	6437
	Joyce 22-30 Tr	05-071-06771-00	Tributary Raton & Nontributary Vermejo	6771
	Quickdraw 43-24	05-071-06510-00	Nontributary Vermejo	6510
	Rock Island 44-24	05-071-08154-00	Tributary Raton & Nontributary Vermejo	8154
	Rock Island 44-24 Tr	05-071-08680-00	Tributary Raton & Nontributary Vermejo	8680
	Rockfish 11-30	05-071-09595-00	Nontributary Vermejo	9595
	Rockfish 11-30 Tr	05-071-08585-00	Tributary Raton & Nontributary Vermejo	8585
	Toltek 31-25	05-071-09255-00	Nontributary Vermejo	9255
Kennedy Discharge Pipe	Kennedy 11-34	05-071-09019-00	Tributary Raton & Tributary Vermejo	9019
	Kennedy 14-21	05-071-08998-00	Tributary Vermejo	8998
	Kennedy 14-34	05-071-09541-00	Tributary Vermejo	9541
	Kennedy 21-28	05-071-09542-00	Tributary Vermejo	9542
	Kennedy 23-28	05-071-09052-00	Tributary Vermejo	9052
	Kennedy 43-28	05-071-09071-00	Tributary Vermejo	9071
Montoya #4	Cody 44-11R	05-071-08872-00	Tributary Vermejo	8872
	Cody 44-11V	05-071-08192-00	Tributary Vermejo	8192
	Montoya 24-1R	05-071-08875-00	Tributary Raton & Tributary Vermejo	8875
	Montoya 24-1V	05-071-08194-00	Tributary Vermejo	8194
	North Fork Ranch 11-12R	05-071-08265-00	Tributary Vermejo	8265
	North Fork Ranch 11-12V	05-071-08261-00	Tributary Vermejo	8261
	North Fork Ranch 14-1V	05-071-08871-00	Tributary Vermejo	8871
	Rullestad 13-12R	05-071-08968-00	Tributary Raton & Tributary Vermejo	8968
	Rullestad 13-12V	05-071-08967-00	Tributary Vermejo	8967
	Wood 43-2V	05-071-09008-00	Tributary Raton & Tributary Vermejo	9008
Montoya #5	Furu 23-6R	05-071-08266-00	Tributary Raton & Tributary Vermejo	8266
	Furu 23-6V	05-071-08270-00	Tributary Vermejo	8270
	Montoya 11-1V	05-071-08141-00	Tributary Vermejo	8141
	Montoya 11-6R	05-071-08884-00	Tributary Raton & Tributary Vermejo	8884
	Montoya 11-6V	05-071-08913-00	Tributary Vermejo	8913
	Montoya 14-6R	05-071-08242-00	Tributary Raton & Tributary Vermejo	8242
	Montoya 14-6V	05-071-08020-00	Tributary Vermejo	8020
	Montoya 21-1R	05-071-08957-00	Tributary Vermejo	8957
	Montoya 21-1V	05-071-08536-00	Tributary Vermejo	8536
	Montoya 22-1R	05-071-08537-00	Tributary Raton & Tributary Vermejo	8537
	Montoya 22-1V	05-071-08171-00	Tributary Vermejo	8171
	Montoya 31-6R	05-071-08826-00	Tributary Raton & Tributary Vermejo	8826
	Montoya 31-6V	05-071-08827-00	Tributary Vermejo	8827
	Montoya 41-1R	05-071-08876-00	Tributary Raton & Tributary Vermejo	8876
	Montoya 41-1V	05-071-08144-00	Tributary Vermejo	8144
	Montoya 42-1R	05-071-08883-00	Tributary Raton & Tributary Vermejo	8883
	Montoya 42-1V	05-071-08882-00	Tributary Vermejo	8882
	Montoya 44-1R	05-071-08239-00	Tributary Raton & Tributary Vermejo	8239
	Montoya 44-1V	05-071-08142-00	Tributary Vermejo	8142
	Silva 22-6V	05-071-08143-00	Tributary Raton & Tributary Vermejo	8143
	Silva 43-1R	05-071-08372-00	Tributary Raton & Tributary Vermejo	8372
	Silva 43-1V	05-071-08371-00	Tributary Vermejo	8371

Because actual water production from the Nontributary Augmentation Wells will vary from year to year over the useful life of those wells for CBM production, Applicants will measure or meter discharge from Discharge Point Nos. 5-8 and apply the percentages set forth in Table 1, to be updated annually, to determine the portion of total discharge associated with the Nontributary Augmentation Wells. This amount will then be available to replace out-of-priority depletions, either directly or by exchange, under this requested plan for augmentation. By way of example, Applicants' consultants calculated that a total of 46.41 acre-feet of nontributary discharge water was produced from Discharge Point Nos. 5-8, inclusive, during October 2008 - September 2009. Golden Eagle Mine Discharge (decreed nontributary). *Case Number & Adjudication Date:* Case No. 80CW110 (Water Div. 2), decree on December 19, 1986 *Name of Structure:* Golden Eagle Mine *Legal Description of the Point of Discharge:* Section 29, Township 33 South, Range 67 West of the 6th P.M., being 3620 feet south of the North line and 2720 feet west of the East line of Section 29. The decreed point of discharge on the Purgatoire River is shown on the map attached as Exhibit C-8 attached to the Application. *Source:* Mine water exiting the portal of the Golden Eagle Mine, being nontributary developed mine water. *Appropriation date:* none set forth in decree. *Amount:* 180 gpm, nontributary. Up to 214 gpm may be diverted at such time that the Mine is discharging at least 41 gpm, of which the first 34 gpm discharged from the mine are considered tributary to the Purgatoire River and are not decreed for diversion for beneficial use. *Use:* For use, reuse, and successive use to extinction, and for lease, sale or other disposition to other water users for the following beneficial uses: domestic, industrial, manufacturing, mining, and agricultural purposes. Pioneer and XTO Augmentation Ponds. In Case Nos. 09CW113 and 09CW114 (Water Div. 2), Pioneer and XTO, respectively, have requested approval of conditional water storage rights for ponds ("Augmentation Ponds") located in the central and upper portions of the Central Raton Basin. Water may be stored in the Augmentation Ponds either directly when water is available under their claimed 2009 water rights, or by exchange as requested below, or from any other legal source. The Augmentation Ponds are generally shown on Exhibit C-1 attached to the Application, and are more specifically described as follows: Mid Fork 1 Pond Legal Description: Located in the SW 1/4 of the SW 1/4 of Section 20, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 570 feet from the South Section Line and 1,290 feet from the West Section Line. Source: Water flowing in the Purgatoire River or by exchange (as requested herein). This pond may also be filled with nontributary ground water discharge from wells owned or controlled by Applicants either directly or from diversion of such nontributary ground water discharge from surface streams over which Applicants have maintained dominion and control. Point of Diversion: The planned point of diversion for Mid Fork 1 Pipeline is located in the NW 1/4 of the NW 1/4 of Section 29, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 300 feet from the North Section Line and 1,030 feet from the West Section Line. Appropriation date requested: September 30,

2009 Amounts claimed: 11.3 acre-feet (conditional), to be filled either via the Mid Fork 1 Pipeline at a rate of fill of 3 c.f.s. (conditional) or by exchange, with the right to fill and refill the pond without limitation when in priority. Proposed Uses: Commercial, mining, manufacturing, irrigation, domestic, construction, recreation, evaporation, augmentation, livestock watering, wildlife, piscatorial, fire protection, road construction and maintenance, dust suppression, and industrial uses, directly or by or exchange. Lopez Canyon Pond Legal Description: Located in the SW 1/4 of the SE 1/4 of Section 21, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 1,190 feet from the South Section Line and 1,530 feet from the East Section Line. Source: Water flowing in the Lopez Canyon streambed, tributary to the Purgatoire River or by exchange (as requested herein). This pond may also be filled with nontributary ground water discharge from wells owned or controlled by Applicants either directly or from diversion of such nontributary ground water discharge from surface streams over which Applicants have maintained dominion and control. Point of Diversion: The planned point of diversion for Lopez Canyon Pipeline is located in the SW 1/4 of the SE 1/4 of Section 21, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 1,270 feet from the South Section Line and 1,320 feet from the East Section Line. Appropriation date claimed September 30, 2009 Amounts claimed: 7.5 acre-feet (conditional), to be filled either via Lopez Canyon Pipeline with a capacity of 1 c.f.s (conditional) or by exchange, with the right to fill and refill the pond without limitation when in priority. Proposed Uses: See used claimed for Mid Fork 1 Pond above. South Fork 1 Pond Legal Description: UTM (meters) NAD83: 504177(x), 4102172(y). Source: An unnamed tributary that flows into the South Fork of the Purgatoire River. The pond may be filled either from water flowing in the streambed of the unnamed tributary or water diverted from the South Fork of the Purgatoire River, or by exchange (as requested herein). This pond may also be filled with nontributary ground water discharge from wells owned or controlled by Applicants either directly or from diversion of such nontributary ground water discharge from surface streams over which Applicants have maintained dominion and control. Point of Diversion: The point of diversion, in UTM (meters) NAD83, will be approximately 504156(x), 4102315(y). Appropriation date claimed: September 30, 2009 Amounts claimed: 11.3 acre-feet (conditional), to be filled either via South Fork 1 Pipeline with a rate of fill of 3 c.f.s. (conditional) or by exchange, with the right to fill and refill the pond without limitation when in priority. Proposed Uses: See used claimed for Mid Fork 1 Pond above. Tamburelli Pond Legal Description: Located in the SW 1/4 of the SE 1/4 of Section 3, Township 33 South, Range 65 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 1,035 feet from the South Section Line and 1,640 feet from the East Section Line. Source: Flows in Reilly Canyon, tributary to the Purgatoire River, diverted through the pipeline described below. This pond may also be filled with nontributary ground water discharge from wells owned or controlled by Applicants either directly or from diversion of such nontributary ground water discharge from surface streams over

which Applicants have maintained dominion and control. Point of Diversion: The planned point of diversion is the Tamburelli Pipeline, located in the NE 1/4 of the NW 1/4 of Section 10, Township 33 South, Range 65 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 300 feet from the North Section Line and 1,840 feet from the West Section Line. Appropriation date requested: September 30, 2009 Amounts claimed: 15.7 acre-feet (conditional), to be filled via the Tamburelli Pipeline at a rate of 1.c.f.s. (conditional) or by exchange, with the right to fill and refill the pond without limitation when in priority. Proposed Uses: See used claimed for Mid Fork 1 Pond above. Gregg Canyon Pond Legal Description: Located in the SW 1/4 of the NE 1/4 of Section 13, Township 32 South, Range 66 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 1,840 feet from the North Section Line and 2,130 feet from the East Section Line. Source: Gregg Canyon Pond is located in Gregg Canyon. The pond may be filled either from water flowing in the Gregg Canyon streambed or water diverted from Reilly Canyon, tributary to the Purgatoire River, through the pipeline described below. This pond may also be filled with nontributary ground water discharge from wells owned or controlled by Applicants either directly or from diversion of such nontributary ground water discharge from surface streams over which Applicants have maintained dominion and control. Point of Diversion: The planned point of diversion is the Gregg Canyon Pipeline, located in the NW 1/4 of the SE 1/4 of Section 13, Township 32 South, Range 66 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 2,380 feet from the South Section Line and 2,160 feet from the East Section Line. Appropriation date requested: September 30, 2009 Amounts claimed: 4.4 acre-feet (conditional), to be filled via the Gregg Canyon Pipeline at a rate of 1 c.f.s. (conditional) or by exchange, with the right to fill and refill the pond without limitation when in priority. Proposed Uses: See used claimed for Mid Fork 1 Pond above. King Pond Legal Description: Located in the SW 1/4 of the NW 1/4 of Section 13, Township 32 South, Range 66 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 2,340 feet from the North Section Line and 540 feet from the West Section Line. Source: The pond may be filled either from water flowing in the streambed of the adjacent unnamed tributary or water diverted from Reilly Canyon, tributary to the Purgatoire River, through the pipeline described below. This pond may also be filled with nontributary ground water discharge from wells owned or controlled by Applicants either directly or from diversion of such nontributary ground water discharge from surface streams over which Applicants have maintained dominion and control. Point of Diversion: The planned point of diversion for King Pipeline is located in the SW 1/4 of the NW 1/4 of Section 13, Township 32 South, Range 66 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 1,640 feet from the North Section Line and 1,240 feet from the West Section Line. Appropriation date requested: September 30, 2009 Amounts claimed: 7.0 acre-feet (conditional), to be filled via the King Pipeline at a rate of 1 c.f.s. (conditional) or by exchange, with the right to fill and refill the pond without limitation when in priority. Proposed Uses: See used claimed for

Mid Fork 1 Pond above. *Burro Canyon Pond* Legal Description/Point of Diversion: Located in the SW 1/4 of the SE 1/4 of Section 28, Township 32 South, Range 66 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 560 feet from the South Section Line and 1,970 feet from the East Section Line. Source: Water flowing in a small unnamed tributary to Burro Canyon, tributary to the Purgatoire River, or by exchange (as requested herein). This pond may also be filled with nontributary ground water discharge from wells owned or controlled by Applicants either directly or from diversion of such nontributary ground water discharge from surface streams over which Applicants have maintained dominion and control. Appropriation date requested: September 30, 2009 Amounts claimed: 4.4 acre-feet (conditional), to be filled at a rate of 1 c.f.s. (conditional) or by exchange, with the right to fill and refill the Reservoir without limitation when in priority. Proposed Uses: See used claimed for Mid Fork 1 Pond above. *Warren McDonald Pond* Legal Description/Point of Diversion: Located in the NE 1/4 of the SE 1/4 of Section 36, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 2,320 feet from the South Section Line and 1,360 feet from the East Section Line. Source: Water flowing in the Sarcillo Canyon streambed, tributary to the Purgatoire River, or by exchange (as requested herein). This pond may also be filled with nontributary ground water discharge from wells owned or controlled by Applicants either directly or from diversion of such nontributary ground water discharge from surface streams over which Applicants have maintained dominion and control. Appropriation date requested: September 30, 2009 Amounts claimed: 20.0 acre-feet (conditional), to be filled at a rate of 1 c.f.s. (conditional) or by exchange, with the right to fill and refill the pond without limitation when in priority. Proposed Uses: See used claimed for Mid Fork 1 Pond above. *Margery Pond* Legal Description: Located in the SW 1/4 of the SE 1/4 of Section 14, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 190 feet from the South Section Line and 1,665 feet from the East Section Line. Source: Water flowing in Sarcillo Canyon, tributary to the Purgatoire River, diverted through the pipeline described below. The pond may be filled either from water flowing in the streambed of the unnamed tributary or water diverted from Reilly Canyon, tributary to Purgatoire River, through the pipeline described below or by exchange (as requested herein). This pond may also be filled with nontributary ground water discharge from wells owned or controlled by Applicants either directly or from diversion of such nontributary ground water discharge from surface streams over which Applicants have maintained dominion and control. Point of Diversion: The planned point of diversion for Margery Pipeline is located in the SW 1/4 of the SE 1/4 of Section 14, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 850 feet from the South Section Line and 1,650 feet from the East Section Line. Appropriation date requested: September 30, 2009 Amounts claimed: 14.5 acre-feet (conditional), to be filled via the Margery Pipeline at a rate of 1 c.f.s. (conditional) or by exchange, with the right to fill and refill the pond without limitation when in

priority. Proposed Uses: See used claimed for Mid Fork 1 Pond above. Vermejo-Monaco Pond Legal Description/Point of Diversion: Located in the NW 1/4 of the NW 1/4 of Section 2, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 120 feet from the North Section Line and 1,410 feet from the West Section Line. Source: A small unnamed tributary to Sarcillo Canyon, tributary to the Purgatoire River, or by exchange (as requested herein). This pond may also be filled with nontributary ground water discharge from wells owned or controlled by Applicants either directly or from diversion of such nontributary ground water discharge from surface streams over which Applicants have maintained dominion and control. Appropriation date requested: September 30, 2009 Amounts claimed: 18.8 acre-feet (conditional), with a rate of fill of 1 c.f.s. (conditional) or by exchange, with the right to fill and refill the pond without limitation when in priority. Proposed Uses: See used claimed for Mid Fork 1 Pond above. Stage Coach Pond Legal Description: Located in the SE 1/4 of the NE 1/4 of Section 26, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 2,350 feet from the North Section Line and 530 feet from the East Section Line. Source: The pond may be filled either from water flowing in the streambed of the adjacent unnamed tributary, water diverted from Wet Canyon, tributary to the Purgatoire River, or by exchange (as requested herein). This pond may also be filled with nontributary ground water discharge from wells owned or controlled by Applicants either directly or from diversion of such nontributary ground water discharge from surface streams over which Applicants have maintained dominion and control. Point of Diversion: The point of diversion for Stage Coach Pipeline is located in the SE 1/4 of the NW 1/4 of Section 26, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 2,020 feet from the North Section Line and 1,940 feet from the West Section Line. Appropriation date claimed: September 30, 2009 Amounts claimed: 47.5 acre-feet (conditional), to be filled at a rate of 1.c.f.s. through the Stage Coach Pipeline, or by exchange, with the right to fill and refill the pond without limitation when in priority. Proposed Uses: See used claimed for Mid Fork 1 Pond above. Additional Sources as may be added in the future. Applicants request that this Court authorize the use of additional and alternative augmentation water sources for replacement of depletions under this plan for augmentation, so long as such source is decreed or lawfully available for such use. Inclusion of such additional augmentation sources into this plan for augmentation will be pursuant to a procedure developed in conjunction with the State and/or Division Engineer that provides sufficient notice and includes Division Engineer approval confirming that the use of such additional or alternative source(s) will protect other water rights from injury, without the need for Applicant to amend this plan for augmentation or to file for a new plan for augmentation. **Complete statement of plan for augmentation.** A. Determination of Depletions: The amount, timing, and location of stream depletions from the Tributary CBM Wells and any tributary Additional Wells will be calculated using the Model. Applicants propose to run the Model annually to obtain monthly depletion amounts for the upcoming year

using predominantly actual water production data from previous years for each Tributary CBM Well and Additional Well based on COGCC records, or in the case of wells for which no production data exists, the standardized water production curves. Applicants propose to calculate Model-estimated depletions using the 20 model zones set forth in Table 4 (“Model Zones”), which include all of the areas where a formation outcrops and a NHD perennial stream exists. A map showing the Model Zones is attached to the Application as Exhibit D.

Table 4- Summary of Model Zones

Model Zone	Model Zone Description
1	Guajatoya Creek and Tributaries
2	North Fork to Purgatoire
3	Middle Fork to Purgatoire
4	South Fork above Apache Canyon 50
5	South Fork below Apache Canyon 50 to Purgatoire
6	Purgatoire River from North Fork to Golden Eagle Mine
7	Purgatoire River from Golden Eagle Mine to South Fork
8	Purgatoire from South Fork to Burro Canyon
9	Purgatoire from Burro Canyon to Trinidad Reservoir
10	Trinidad Reservoir
11	Unnamed Tributary 1
12	Burro Canyon
13	Unnamed Tributary 2
14	Reilly Canyon
15	Long Canyon
16	Sarcillo Canyon
17	Raton/McBride Creeks above Hawton and Romero Ditch
18	Raton Creek below Hawton and Romero Ditch
19	Apishapa River
20	Canyon del Agua

The resultant Model-estimated depletion amounts will reflect the total amount of produced water that is tributary to a surface stream. However, because a large portion of the produced tributary water is not consumed and is returned to surface streams through the Discharge Points, Applicants propose to reduce the Model-estimated depletions by the amount of tributary water discharged from the Discharge Points to arrive at actual (net) depletions, as discussed below. These net depletions will then be replaced in time, location, and amount pursuant to this plan for augmentation. Applicants’ Model shows lagged depletions occurring after the cessation of CBM production from the Tributary CBM Wells. Annual runs of the Model will continue to include Tributary CBM Wells that are no longer pumping, but from which lagged depletions continue to accrue to the stream system to ensure replacement of those depletions. Following cessation of CBM production from all Tributary CBM Wells, including Additional Wells, covered under this plan, Applicants will calculate the remaining obligation to replace lagged depletions for a period of time into the future as necessary to replace these lagged depletions in location, time and amount sufficient to prevent injury to vested senior water rights pursuant to this plan for augmentation. 1) Credit for

Tributary Ground Water Discharge: A portion of the water produced from Tributary CBM Wells and any Additional Wells is discharged to the surface and returns directly to surface streams pursuant to CDPHE permits (“Tributary Discharge”). In determining the replacement water requirement (net depletions) under this plan for augmentation, Applicants propose to measure, account, and take a credit for the amount of Tributary Discharge that is returned to surface streams and available to satisfy the requirements of vested senior water rights, so long as such amount of Tributary Discharge is also available at the time and location to prevent injury to such vested senior water rights. As explained above, the Discharge Points identified in Table 1 discharge water from both Nontributary Augmentation Wells and from Tributary CBM Wells. Tributary CBM Wells that discharge to each of the Discharge Points are set forth in Table 3, above, and are legally described in Appendices 1-A and 1-B. Applicants propose to annually calculate, based on actual production and discharge data and metered discharges from the prior year, the anticipated volume of Tributary Discharge available as a credit against Model-estimated depletions for the upcoming augmentation year. A process for doing so will be developed in cooperation with the Water Commissioner and Division Engineer. By way of example, for the period of October 2008 through September 2009, Applicants’ consultants have calculated that 372.57 acre-feet of Tributary Discharge was released and returned to the various surface streams from the Discharge Points. 2) No Credit for Salvaged Water. In conformance with C.R.S. § 37-92-103(9) and the standard recently articulated by the Colorado Supreme Court in *City of Aurora v. Simpson*, 105 P.3d 595 (Colo. 2005), Applicants do not claim in this Application any credit or water right for any salvaged water that may be determined to result from operation of Applicants’ CBM wells in the Central Raton Basin. B. Administrative Reaches: Based on the location where stream depletions occur according to the Model, Applicants propose to provide augmentation water to various locations within or upstream of individual stream segments (“Administrative Reaches”), which specific location may be adjusted within each Administrative Reach based on the location of then-calling senior water rights. Administrative Reaches with legal descriptions of their upstream and downstream extents are set forth in Table 5, below and are based on the locations of diversion points for vested senior water rights, discharge points, replacement sources, and locations of depletions. The Administrative Reaches do not exactly match the Model Zones, because there are not vested senior water rights in each Model Zone that will require replacement of out-of-priority depletions under this plan for augmentation. Therefore, in some cases, more than one Model Zone has been combined to create an Administrative Reach for purposes of making replacements of out-of-priority depletions under this plan. Applicants propose the following Administrative Reach Nos. A through N:

Table 5

Legal Locations of Upstream and Downstream Points of Each Administrative Reach

Reach	Defined Point	Quarter/ Quarter	Section, Township, Range	Approx. Distance from N/S Section Line	Approx. Distance from E/W Section Line
A	Upstream	SESE	S32, T32S, R68W	780 ft from S	1360 ft from E
	Downstream	SENE	S24, T33S, R68W	2465 ft from N	780 ft from E
B	Upstream	SWSE	S20, T33S, R68W	670 ft from S	1480 ft from E
	Downstream	SENE	S24, T33S, R68W	2465 ft from N	780 ft from E
C	Upstream	NWNW	S28, T34S, R68W	910 ft from N	1260 ft from W
	Downstream	SENE	S36, T33S, R67W	1370 ft from N	875 ft from W
D	Upstream	SENE	S24, T33S, R68W	2465 ft from N	780 ft from E
	Downstream	NENW	S29, T33S, R67W	125 ft from N	2290 ft from W
E	Upstream	NENW	S29, T33S, R67W	125 ft from N	2290 ft from W
	Downstream	SENE	S36, T33S, R67W	1370 ft from N	875 ft from W
F	Upstream	SENE	S36, T33S, R67W	1370 ft from N	875 ft from W
	Downstream	SWSW	S35, T33S, R65W	440 ft from S	220 ft from W
G	Upstream	SWSW	S35 T33S, R65W	440 ft from S	220 ft from W
	Downstream	SWNW	S36, T33S, R65W	2360 ft from N	520 ft from W
H	Upstream	NWSE	S6, T33S, R65W	2250 ft from S	430 ft from W
	Downstream	SWSW	S35, T33S, R65W	440 ft from S	220 ft from W
I	Upstream	SWNE	S4, T33S, R65W	2490 ft from N	2095 ft from E
	Downstream	NWNW	S31, T33S, R64W	120 ft from N	515 ft from W
J	Upstream	SESE	S22, T34S, R65W	290 ft from S	825 ft from E
	Downstream	SENE	S31, T33S, R64W	2330 ft from N	370 ft from E
K	Upstream	SWNW	S36, T33S, R65W	2360 ft from N	520 ft from W
	Downstream	SENE	S27 T33S, R64W	2330 ft from N	1680 ft from W
L	Upstream 1	NESE	S7, T35S, R63W	1610 ft from S	1020 ft from E
	Upstream 2	SWNE	S8, T35S, R63W	2010 ft from N	2510 ft from E
	Downstream	SENE	S11, T34S, R64W	1400 ft from N	270 ft from E
M	Upstream	SENE	S11, T34S, R64W	1400 ft from N	270 ft from E
	Downstream	NWNW	S26, T33S, R64W	640 ft from N	1060 ft from W
N	Upstream	NWSE	S24 T31S, R66W	2430 ft from S	1670 ft from E
	Downstream	SWNE	S34, T30S, R65W	1545 ft from N	1640 ft from E

Note: In regions where official Township, Range, and Section lines do not exist, interpreted Township, Range and Section boundaries were used to determine legal locations.

A map showing the Administrative Reaches is attached to the Application as Exhibit E. C. Replacement of Depletions: On a monthly basis or as otherwise determined by the Division Engineer, Applicants propose to make replacement to such appropriate location within an affected Administrative Reach(es) using the various augmentation sources set forth above, directly and/or by exchange, as claimed below, in amount, timing, and location necessary to prevent material injury to vested water rights. This will include releases made of: (1) nontributary ground water at the Discharge Points for the Nontributary Augmentation Wells; (2) water available under the water right decreed for the Golden Eagle Mine Discharge; (3) water stored in the Augmentation Ponds, either directly or by

exchange; and/or (4) additional augmentation sources as set forth above. For any locations where Applicants' augmentation sources do not directly discharge or are not available for replacement by exchange, Applicants propose to deliver replacement water via tanker truck as directed by the Water Commissioner, and pursuant to tanker truck operation agreements among the Applicants, as may be reasonably necessary to protect vested senior water rights from injury.

D. Accounting, Projection: Applicants will maintain a monthly accounting for the augmentation plan during the April-October months and once during the November-March months, and will make regular reports as required by the State/Division Engineers. In order to ensure that sufficient replacement water will be available to replace all future out-of-priority depletions from the Tributary CBM Wells and Additional Wells, Applicants will develop and maintain a projection of such future depletions matched with available replacement sources. On a monthly basis, Applicants will compare actual water production, by formation, to the estimated water production. So long as estimated tributary water production exceeds the actual tributary water production and replacements have been made to meet those estimated depletions, no injury will occur. In the event that actual pumping exceeds the projected pumping volume in any month, the calculation of depletions using the Model will be updated based on actual Tributary CBM pumping and revised depletion projections will be used for the remainder of the year. These revised depletions projections shall include the replacement of depletions owed from the prior month in the next month or as otherwise directed by the Water Commissioner and/or Division Engineer. Any water due to the stream will be replaced as required by the Water Commissioner and/or Division Engineer.

SECOND CLAIM – APPROPRIATIVE RIGHTS OF EXCHANGE

Background. Applicants claim appropriative rights of exchange in the Purgatoire River and its tributaries, as described herein. Applicants are requesting these appropriative rights of exchange for use as a part of Applicant's proposed plan for augmentation. Applicants generally seek the right to operate exchanges for two purposes: (1) to replace depletions accruing upstream of the location of available replacement water sources, to any Administrative Reaches where augmentation may be required to prevent injury resulting from out-of-priority depletions; and (2) to divert water available from the Golden Eagle Mine water right into storage in the Augmentation Ponds when water is available by exchange at the points of diversion for those various ponds.

Exchange Reaches. Discrete appropriative rights of exchange are requested from each of the "Exchange From Points" to each of the "Exchange To Points," as more particularly described below. These Exchange From and Exchange To Points are shown on the map attached to the Application as Exhibit F and more particularly described in Appendix 2 attached hereto, which also specifies the proposed rates of exchange.

Exchange From Points, including source of exchanged water. *Nontributary groundwater discharged from Discharge Point Nos. 5 through 8*, the locations of which are set forth and legally described in Table 2, above. This nontributary water from the Nontributary Augmentation Wells (identified in Table 3) and discharged from the Discharge Points is available to Applicants pursuant to C.R.S. § 37-90-137(7) and is more particularly

described above. *Golden Eagle Mine Discharge water right*, more particularly described above, which is discharged at a point in Section 29, Township 33 South, Range 67 West of the 6th P.M., being 3620 feet South of the North line and 2720 feet West of the East line of Section 29. The decreed point of discharge for this water right is shown on the map attached to the Application as Exhibits C-1 and C-8. *Augmentation Ponds*, the locations of which are more particularly described above. These Exchange From Points and sources of exchange water may include the following additional Exchange From Points located downstream of those identified above, see also Appendix 2 attached hereto, identified and legally described as follows:

Additional Downstream Exchange From Points	Quarter/Quarter	Section, Township, Range	Approx. Distance from N/S Section Line	Approx. Distance from E/W Section Line
Confluence of Burro Canyon with Purgatoire	SWSW	S 35, T33S, R65W	440 ft from S	220 ft from W
Confluence of Long Creek with Purgatoire	SENE	S 31, T33S, R64W	2330 ft from N	370 ft from E
Confluence of Raton Creek with Purgatoire	SESE	S 22, T33S, R64W	100 ft from S	560 ft from E
Confluence of Reilly Canyon with Purgatoire	NWNW	S 31, T33S, R64W	120 ft from N	515 ft from W
Confluence of Sarcillo Canyon with Purgatoire	SWSE	S 34, T33S, R66W	1000 ft from S	1340 ft from E
Confluence of South Fork with Purgatoire	SENW	S 36, T33S, R67W	1370 ft from N	875 ft from W
Confluence of Lopez Canyon with Purgatoire	NWSW	S 27, T33S, R67W	1700 ft from S	1180 ft from W
Confluence of unnamed tributary with Purgatoire	NENW	S 36, T33S, R67W	890 ft from N	2650 ft from E

Exchange To Points. *Augmentation Ponds*, the locations of which are set forth above. *The highest extent of each Administrative Reach A through M*, or such other point within each Administrative Reach at which depletions covered by the augmentation plan requested herein must be replaced to prevent injury to vested senior water rights. The legal descriptions of the upstream and downstream extent of each Administrative Reach are set forth in Table 5. **Rate of Exchange:** A separate appropriative right of exchange is requested for an exchange between each of the Exchange To Points and the Exchange From Points that are identified in Appendix 2, with the requested rate of exchange for that Exchange. The number contained in parentheses following the exchange rate on Appendix 2 is the exchange number identifier by which that individual right of exchange may be referenced. **Date of Appropriation.** January 29, 2010, as to all Exchanges. The claimed date of appropriation for all of the exchanges claimed herein is the date of filing of this application. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.** A. Tributary CBM Wells & Nontributary Augmentation Wells feeding Discharge Point Nos. 5-8: See

Appendices 3 and 4 attached hereto. B. Augmentation Ponds: (i) Applicant Pioneer, see above (ii) Applicant XTO, see above (iii) Brent and Patricia Tamburelli, 137 E. Plum, Trinidad, CO 81082 (iv) Charlie Hagen, 2425 E. Main, Trinidad, CO 81082 (v) Warren McDonald, 16403 County Road 41.7, Weston, CO 81091 (vi) Colorado Division of Wildlife Attn: Michael Trujillo, Area Wildlife Manager 600 Reservoir Road Pueblo, Colorado 81005

CASE NO. 10CW3 - BONNIE BELL, 4962 CR 16, Cotopaxi, CO 81223; (719) 942-5353; Previous Case Nos. 03CW95 and 04CW23

Application to Make Absolute

FREMONT COUNTY

Name of structures: Zayitbranch I, Zayitbranch II, Zayitpond Spring, Zayit Pond, Zayit Pond II. **Describe conditional water rights: Date of Original Decrees:** 3-16-04 (Zayitbranch I, Zayitbranch II, Zayitbranch Spring, Zayit Pond); Case No. 03CW95, Water Division 2. 8-20-04 (Zayitbranch I, Zayitbranch II, Zayitbranch Spring; Zayitpond II); Case No. 04CW23, Water Division 2. **Legal description:** Zayitbranch I: SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ Section 29, Township 50 North, Range 12 East, N.M.P.M., Fremont County, Colorado, 1,025 feet from the South line and 8 feet from the East line of Section 29. Zayitbranch II: SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 29, Township 50 North, Range 12 East, N.M.P.M., Fremont County, Colorado, 835 feet from the South line and 1,292 feet from the East line of Section 29. Zayitpond Spring: SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ Section 29, Township 50 North, Range 12 East, N.M.P.M., 959 feet from the South line and 1,300 feet from the East line of Section 29. Zayitpond: SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 29, Township 50 North, Range 12 East, N.M.P.M., Fremont County, Colorado, 959 feet from the South section line and 1,300 feet from the East section line of said Section 29. Zayitpond II: SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 29, Township 50 North, Range 12 East, N.M.P.M., Fremont County, Colorado, 1,045 feet from the South section line and 12 ft. from the East section line of said Section 29. **Source:** Zayitbranch I, Zayitbranch II and Zayitpond Spring are all natural springs and provide the source of water for Zayitpond and Zayitpond II. **Appropriation Date and Amount:** Zayitbranch I: October 31, 2003 for 2.3 gpm; March 31, 2004 for 25 gpm; Zayitbranch II: October 31, 2003 for 1.3 gpm and March 31, 2004 for 25 gpm; Zayitpond Spring: October 31, 2003 for 3.3 gpm and March 31, 2004 for 25 gpm. **Use:** Domestic purposes for a single-family residence, watering of livestock and domestic animals, lawn and garden irrigation, commercial purposes (construction of greenhouse for purposes of growing plants for sale), irrigation of up to 15 acres upon Lot #27, Montana Verde Subdivision (within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29, T50N, R12E, N.M.P.M.), and storage in Zayitpond and Zayitpond II. **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:** Since 2004 I have dug and put in water lines that connect to stock tanks from the springs and run water lines from ponds to stock tanks which also is used to bring water for irrigation and also the springs are used to funnel to garden areas. I have a well which is used for in-house use. **Claim to make absolute: Date water applied to beneficial**

use: 3/2008; **Amount and use:** As indicated above. **Description of place of use where water is applied to beneficial use:** 4962 CR16, Cotopaxi, CO; Lot #27, Montana Verde Subdivision, Fremont County, Colorado. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

CASE NO. 10CW4 - LOWER ARKANSAS VALLEY WATER CONSERVANCY DISTRICT, Attn: Jay Winner, General Manager, 801 Swink Avenue, Rocky Ford, CO 81067; and LOWER ARKANSAS VALLEY SUPER DITCH COMPANY, INC., Attn: John Schweizer, President, c/o Lower Arkansas Valley Water Conservancy District, 801 Swink Avenue, Rocky Ford, CO 81067 (Co-Counsel for Lower Arkansas Valley Water Conservancy District and Counsel for Lower Arkansas Valley Super Ditch Company, Inc., Peter D. Nichols, Doug Sinor, and Lisa Thompson, Trout, Raley, Montañó, Witwer & Freeman, P.C., 1120 Lincoln Street, Suite 1600, Denver, Colorado 80203 (303) 861-1963); Co-Counsel for Lower Arkansas Valley Water Conservancy District, H. Barton Mendenhall, Mendenhall & Malouff, 805 Chestnut Ave., Rocky Ford, CO 81067 (719) 254-7606)

Application for Approval of Conditional Appropriative Rights of Substitution and Exchange

ARKANSAS RIVER BASIN IN CROWLEY, OTERO, BENT AND PUEBLO COUNTIES, COLORADO

2. Description of Application and Exchanges: **A. Definitions.** The following words and phrases when used in this Application shall have the meaning as stated below: i. *Lower Ark District* means the Lower Arkansas Valley Water Conservancy District. ii. *Super Ditch* means the Lower Arkansas Valley Super Ditch Company, Inc. iii. *Lower Valley Ditch(es)* means ditch(es) in the Lower Valley that diverts in the reach from Pueblo Reservoir to John Martin Reservoir, including the Fort Lyon Canal, the Fort Lyon Storage Canal, the Holbrook Canal, the Catlin Canal, the Otero Canal, the Oxford Farmers Ditch, the Rocky Ford High Line Canal, and the Bessemer Ditch. iv. *Lower Valley* means the geographic area of the Lower Ark District. v. *Lessor(s)* means shareholder(s) of a Lower Valley Ditch who voluntarily enters into a lease of Lease Water for use by Lessees. vi. *Lessee(s)* means municipal and/or other water user(s), including Lower Valley irrigator(s) and others Lessor(s), who enter into leases with Lessor(s). vii. *Lease Water* means the Lessor's(s') pro-rata share of the water right(s) adjudicated to their respective ditch(es) in which such Lessor(s) holds shares that such Lessor(s) leases for use by Lessee(s). viii. *Rule 14 Plan(s)* means plans approved for the replacement of ground water depletions pursuant to the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin, Colorado approved in Case No. 95CW211, Water Div. No. 2, April 30, 1996. ix. *Rule 10 Compact Compliance Plan(s)* means plans approved for the replacement of water

pursuant to the Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin in Colorado, Case No. 09CW110, Water Div. No. 2. x. *HydroBase* means the Colorado Division of Water Resources' data tool that allows users to access information on all structures, stations, well permits, and water rights. **B. Description of Application.** Shareholders of Lower Valley Ditches incorporated the Super Ditch to negotiate voluntary water leases on their behalf with municipal and other water users, including Colorado Springs Utilities, members of the Pikes Peak Regional Water Authority (including, among others, the City of Fountain, the Town of Monument, the Town of Palmer Lake, Cherokee Metropolitan District, Donala Water & Sanitation District, and Triview Metropolitan District), and the City of Aurora. The Super Ditch and potential Lessees have reached conceptual agreement on many key terms and conditions, including the responsibility of the Super Ditch to deliver Lease Water into Pueblo Reservoir, where the Lessees will take delivery. In addition, Lessors desire to be able to lease water to and from other irrigators in the Lower Valley for maximum utilization of water for irrigation and agricultural productivity. Applicants seek to adjudicate appropriative rights of substitution and exchange for these purposes. **Adjudication of changes in the type and place of use of the water and water rights used for substitution and exchange is not a purpose of and not requested in this Application.** The Applicants anticipate that they will file one or more applications in the future to change the type and place of use and to quantify the consumptive use of the Lessors' Lease Water. **C. Description of Exchanges.** The conditional appropriative rights of substitution and exchange requested in this Application will be used primarily to store Lease Water in Pueblo Reservoir, Lake Henry Reservoir, Lake Meredith Reservoir, Holbrook Reservoir, Holbrook Dye Reservoir, Thursten Reservoir, Horse Creek Reservoir, Adobe Creek Reservoir, and Excelsior Ditch storage (Stonewall Springs Reservoir) to facilitate the delivery of such Lease Water to municipal and other Lessees of the Super Ditch, including irrigators in the Lower Valley for Rule 14 Plans for ground water and Rule 10 Compact Compliance Plans for improvements to surface irrigation systems, and to replace historical return flows from the substitution and exchange of the water rights described in this Application. The claimed exchanges are physical exchanges. Applicants will operate the exchanges so that they do not injure the rights of others. Specifically, Applicants will operate the exchanges when there is exchange potential available between the exchange-from and exchange-to points, that is, when the amount of water available in the exchange reach exceeds the amount of water necessary to satisfy senior water rights between the exchange-from and exchange-to points. Applicants may operate exchanges continuously for a few hours or days whenever exchange potential is available, which will generally be during spring run-off and following major precipitation events. Applicants may also operate the exchanges by diverting natural flow at exchange-to points and releasing a substitute supply above the calling water right. The amount of water diverted at the exchange-to point will not exceed the amount of water physically and legally available at the exchange-from point. The substitute supply will be of a quality

and continuity to meet the senior appropriators' normal use. Applicants will quantify the substitute supplies necessary to ensure that the exchanges do not injure vested water rights downstream of the exchange-to points in future applications to change the type and place of use of the Lessor's Lease Water used for substitution and exchange. Quantification and accounting for actual substitutions and exchanges will use existing, improved and new structures and measuring devices at or associated with the exchange-from and exchange-to points. The use, improvement of existing, or construction of new structures and measuring devices will not interfere with normal structure and device operations, or the delivery of water to irrigators who do not voluntarily choose to participate in water leasing. The Applicants will seek the concurrence of the owners of such structures and measuring devices for their use and appropriately compensate such owners for such use. The maximum instantaneous claimed exchange-to rates equal the maximum historical diversions for each exchange-to point reported by HydroBase. The maximum instantaneous claimed exchange-from rates for ditches and canals equal the total decreed direct flow water rights for such exchange-from points. The maximum instantaneous claimed exchange-from rates for lakes and reservoirs equal the outlet capacities of such lakes and reservoirs reported by HydroBase. The claimed exchange rates will allow all shareholders of all Lower Valley Ditches an equal opportunity to voluntarily lease their water. The total annual exchange volume claimed (58,000 acre-feet) equals the maximum amount of water requested by potential Lessees to meet their reasonably anticipated water demands, assuming their maximum respective demands occur in the same year. The following table (reproduced from **Exhibit A**) summarizes the claimed exchanges and rates

Super Ditch Exchange Matrix

From	To										
	Max Rate (cfs) ¹	Pueblo Res ²	Bessemer Ditch	Excelsior Ditch ³	Colorado Canal	Rocky Ford High Line Canal	Oxford Farmers Canal	Otero Canal	Catlin Canal	Holbrook Canal	Fort Lyon Storage Canal
Fort Lyon Canal	933	933	444	77	756	725	195	175	385	1001	1428
Holbrook Res ⁴	448	448	444	77	448	448	195	175	385	448	448
Holbrook Dye Res ⁵	132	132	132	77	132	132	132	132	132	132	132
Lake Meredith Outlet	500	500	444	77	500	500	195	175	385	500	500
Fort Lyon Storage Canal	1466	1466	444	77	756	725	195	175	385	1001	
Holbrook Canal	600	600	444	77	600	600	195	175	385		
Catlin Canal	345	345	345	77	345	345	195	175			
Otero Canal	458	458	444	77	458	458	195				
Oxford Farmers Canal	129	129	129	77	129	129					
Rocky Ford High Line Canal	502	502	444	77	502						
Stonewall Springs Outlet ⁶	500	500	444								
Bessemer Ditch	435	435									

Notes

1. All Rates based upon decreed water rights, outlet capacities except for Stonewall Springs
2. Pueblo does not have a max rate of exchange to.
3. Excelsior exchange to based upon Max-Q recorded in 2000, Exchange from estimated Outlet capacity of Stonewall Springs
4. Outlet volume based upon Max-Q in 2008
5. Outlet volume based upon Diversion Comments in Hydrobase for June 1-5, 1960
6. Proposed Outlet Capacity not specified, estimated at 500 cfs

Exhibit B is a map which illustrates the exchange-from and exchange-to points. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **3. Names of substitutions and exchanges:** A. Super Ditch Fort Lyon Canal Exchange. B. Super Ditch Holbrook Reservoir Exchange. C. Super Ditch Holbrook Dye Reservoir Exchange. D. Super Ditch Lake Meredith Outlet Exchange. E. Super Ditch Fort Lyon Storage Canal Exchange. F. Super Ditch Holbrook Canal Exchange. G. Super Ditch Catlin Canal Exchange. H. Super Ditch Otero Canal Exchange. I. Super Ditch Oxford Farmers Ditch Exchange. J. Super Ditch Rocky Ford High Line Canal Exchange. K. Super Ditch Stonewall Springs Exchange. L. Super Ditch Bessemer Ditch Exchange. **4. Legal descriptions of exchange reaches and points of substitution and exchange:** **A. Super Ditch Fort Lyon Canal Exchange:** The exchange reach is on the Arkansas River from the headgate of the Fort Lyon Canal upstream to Pueblo Reservoir, including intermediate exchange-to points at the headgates of specified intervening canals and ditches. i. Exchange-From Point (Point of Introduction of Substitute Supplies): Fort Lyon Canal. The headgate of the Fort Lyon Canal is located on the north bank of the Arkansas River in the SE ¼ of Section 29, Township 23 South, Range 55 West of the 6th P.M., Otero County, Colorado. The location is approximately 130 feet from the South Section line and 1,775 feet from the East Section line. The decreed location of the headgate “is located on the north bank of the Arkansas River in the Northeast quarter of Section 32 Township 23 South of Range 55 West of the Sixth P.M. in Otero County, Colorado” as decreed in Decree dated April 8, 1905, Bent County District Court. ii. Exchange-To Points and Maximum Instantaneous Exchange Rates: a. Fort Lyon Storage Canal, maximum instantaneous exchange rate: 933 c.f.s. The headgate is located in SE ¼ of Section 20, Township 22 South, Range 57 West of the 6th P.M., in Crowley County, Colorado. The location is approximately 1,940 feet from the South Section line and 1,800 feet from the East Section line. The decreed headgate location “is located at a point in the County of Crowley, State of Colorado, on the North bank of the Arkansas River, in the Northwest Quarter of the Southeast Quarter of Section 20, Township 22 South, Range 57 West of the Sixth P.M., whence the Northeast corner of said Section 20 bears North 34°10' East 3,770 feet” as decreed in Decretal Order dated August 30, 1922, Bent County District Court. b. Holbrook Canal (a.k.a. Lake Canal), maximum instantaneous exchange rate: 933 c.f.s. The point of diversion is on the north bank of the Arkansas River in the Northeast ¼ of Section 24, Township 22 South, Range 58 West of the 6th P.M., in Crowley County, Colorado. Location is 1,260 feet from the North Section line and 1,940 feet from the East Section line. The decreed headgate location is “located on the north bank of the Arkansas River in the Northeast Quarter of Section 24 Township 22 South, of Range 58 West of the 6th P.M. in Otero County, Colorado” as decreed in Decree dated April 8, 1905, Bent County District Court. c. Catlin Canal, maximum instantaneous exchange rate: 385 c.f.s. The point of diversion is on the south bank of the Arkansas River immediately below the confluence of the Apishapa and Arkansas Rivers, in NW ¼ of Section 19 of Township 22 South, Range 58 West of the 6th P.M., in Otero

County, Colorado. Location is 825 feet from the North Section line and 1,965 feet from the West Section line. The decreed location of the headgate is on the “east bank of the Apishapa River, about 60 feet from its confluence with the Arkansas River in the Southeast Quarter of the Southeast Quarter of Section 7, Township 22 South of Range 59 West of the 6th P.M. in Otero County, Colorado” as decreed in Decree dated April 8, 1905, Bent County District Court (see Petition to Correct Clerical Error in Decree, Case No. 09CW35). d. Otero Canal, maximum instantaneous exchange rate: 175 c.f.s. The headgate of the Otero Canal is located on the South bank of the Arkansas River in the NE ¼ of Section 18, Township 22 South, Range 59 West of the 6th P.M., in Otero County, Colorado. The location is approximately 50 feet from the North Section line and 1,090 feet from the East Section Line. The decreed location of the headgate is “located on the South bank of the Arkansas River in the Northeast Quarter of Section 17 Township 22 South of Range 59 West of the 6th P.M. in Otero County, Colorado” as decreed in Decree dated April 8, 1905, Bent County District Court. e. Oxford Farmers Ditch, maximum instantaneous exchange rate: 195 c.f.s. The point of diversion is located on the south bank of the Arkansas River in the NW ¼ of Section 31, Township 21 South, Range 60 West of the 6th P.M., in Pueblo County, Colorado. This location is approximately 345 feet from the West Section line and 5 feet from the North Section line. The decreed location is “on the South bank of the Arkansas River in the N.E. ¼ of the N.W. ¼ of Sec. 31, T. 21 S., R. 60 W. at a point N. 14° 50' E. 4544.1 feet from the S.W. section corner of Section 31, same T. and R., in Pueblo County, Colorado” as decreed in Case No. 2535, dated March 23, 1896, Pueblo County District Court. f. Rocky Ford High Line Canal, maximum instantaneous exchange rate: 725 c.f.s. The headgate is located in the NE ¼ of Section 17, Township 21 South, Range 61 West of the 6th P.M., Pueblo County, Colorado. The location is approximately 370 feet from the North Section line and 400 feet from the East Section line. The decreed location is “located on the South bank of the Arkansas River in Pueblo County, Colorado in the northeast ¼ of the northeast ¼ of Section 17 Township 21 South, Range 61 West of the 6th P.M., bearing south 48° 28' West, 459.36 feet from the corners of Sections 8, 9, 16, and 17 in Township 21 South, Range 61 West of the 6th P.M.” as decreed in Case No. W-65, dated October 15, 1971, in Water Division No. 2. g. Colorado Canal, maximum instantaneous exchange rate: 756 c.f.s. The present location of the Colorado Canal is located in the NE ¼ of the NE ¼ Section 10, Township 21 South, Range 62 West of the 6th P.M., Pueblo County, Colorado. The decreed location of the headgate “is located on the North bank of the Arkansas River in the N.E. ¼ of the N.E. ¼ Sec. 10, T. 21 S., R. 62 W., bearing 6.0° 58' W. 426 feet from the S.W. corner of Sec. 2, T. 21 S., R. 62 W., in Pueblo County, Colorado” as decreed in Case No. 2535, dated March 23, 1896, in Pueblo County District Court. h. Excelsior Ditch, maximum instantaneous exchange rate: 77 c.f.s. The headgate is located in the SE ¼ of Section 36, Township 20 South, Range 64 West of the 6th P.M., Pueblo County, Colorado. The location is approximately 330 feet from the South Section line and 545 feet from the East Section line. The decreed location of the headgate is “located on the North bank of the Arkansas River, at a point bearing S. 16° W.

and 1246 feet distant from the north quarter corner of Sec. 32, T. 20 S, R. 63 W., in Pueblo County, Colorado” as decreed in Case No. 2535, dated March 23, 1896, in Pueblo County District Court. i. Bessemer Ditch, maximum instantaneous exchange rate: 444 c.f.s. The headgate of the Bessemer Ditch is located at the Pueblo Dam at Pueblo Reservoir in the SE ¼ of Section 36, Township 20 South, Range 66 West of the 6th P.M., Pueblo County, Colorado. The location of headgate is approximately 600 feet from the South Section line and 2,400 feet from the East Section line. The decreed location is “on the right bank of the Arkansas River, at Meadows Station, on the D. & R.G.R.R., in the N.W. ¼, Sec. 33, T. 20 S., R. 66 W., being north 70°, 3' West, 96.25 feet from the south-east corner of Sec. 24, in Pueblo County, Colorado” as decreed in Case No. 2535, dated March 23, 1896, in Pueblo County District Court. j. Pueblo Reservoir, maximum instantaneous exchange rate: 933 c.f.s. A point at the intersection of Pueblo Dam axis and the Arkansas River whence the NE corner of Section 36, Township 20 South, Range 66 West of the 6th P.M., bears North 61°21'20" East a distance of 2,511.05 feet. Said reservoir will inundate all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 20 South, Range 66 West of the 6th P.M., Sections 1, 2, 3, 4, 5, 9, 10, and 11, Township 21 South, Range 66 West of the 6th P.M., and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, Township 20 South, Range 67 West of the 6th P.M. The decreed location is “the bed of the Arkansas River adjacent to and immediately upstream from a dam, the axis of which will be easterly of the present flood control barrier dam. Said reservoir will extend upstream to approximately the Swallows and will inundate all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 20 South, Range 66 West of the 6th P.M., Sections 1, 2, 3, 4, 5, 9, 10, 11 and 14, Township 21 South, Range 66 West of the 6th P.M., and Sections 5, 6, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, Township 20 South, Range 67 West of the 6th P.M.” as decreed in Case No. B-42135, in Pueblo County District Court.

B. Super Ditch Holbrook Reservoir Exchange: The exchange reach is on the Arkansas River from the outlet of Holbrook Reservoir upstream to Pueblo Reservoir, including intermediate exchange-to points at the headgates of specified intervening canals and ditches. i. Exchange-From Point (Point of Introduction of Substitute Supplies): Holbrook Reservoir Outlet. Water is delivered through its outlet ditch, which is about three miles in length and has a carrying capacity of 448 c.f.s. according to the Colorado Division of Water Resources' HydroBase, into the Arkansas River at a point in the SE ¼ of Section 24, Township 23 South, Range 56 West, in Otero County, Colorado. ii. Exchange-To Points and Maximum Instantaneous Exchange Rates: a. Fort Lyon Storage Canal, maximum instantaneous exchange rate: 448 c.f.s. Legal description included in paragraph 4.A.ii.a. above. b. Holbrook Canal, maximum instantaneous exchange rate: 448 c.f.s. Legal description included in paragraph 4.A.ii.b. above. c. Catlin Canal, maximum instantaneous exchange rate: 385 c.f.s. Legal description included in paragraph 4.A.ii.c. above. d. Otero Canal, maximum instantaneous exchange rate: 175 c.f.s. Legal description included in paragraph 4.A.ii.d. above. e. Oxford Farmers Ditch, maximum instantaneous

exchange rate: 195 c.f.s. Legal description included in paragraph 4.A.ii.e. above.

f. Rocky Ford High Line Canal, maximum instantaneous exchange rate: 448 c.f.s. Legal description included in paragraph 4.A.ii.f. above.

g. Colorado Canal, maximum instantaneous exchange rate: 448 c.f.s. Legal description included in paragraph 4.A.ii.g. above.

h. Excelsior Ditch, maximum instantaneous exchange rate: 77 c.f.s. Legal description included in paragraph 4.A.ii.h. above.

i. Bessemer Ditch, maximum instantaneous exchange rate: 444 c.f.s. Legal description included in paragraph 4.A.ii.i. above.

j. Pueblo Reservoir, maximum instantaneous exchange rate: 448 c.f.s. Legal description included in paragraph 4.A.ii.j. above.

C. Super Ditch Holbrook Dye Reservoir Storage Exchange: The exchange reach is on the Arkansas River from the outlet of the Holbrook Dye Reservoir upstream to Pueblo Reservoir, including intermediate exchange-to points at the headgates of specified intervening canals and ditches.

i. Exchange-From Point (Point of Introduction of Substitute Supplies): Holbrook Dye Reservoir. Water is delivered through its outlet ditch, which has a carrying capacity of 132 c.f.s. according to the Colorado Division of Water Resources' HydroBase, into the Arkansas River, at a point in the NW ¼ of the SW ¼ of Section 4, Township 23 South, Range 56 West of the 6th P.M., Otero County, Colorado.

ii. Exchange-To Points and Maximum Instantaneous Exchange Rates:

a. Fort Lyon Storage Canal, maximum instantaneous exchange rate: 132 c.f.s. Legal description included in paragraph 4.A.ii.a. above.

b. Holbrook Canal, maximum instantaneous exchange rate: 132 c.f.s. Legal description included in paragraph 4.A.ii.b. above.

c. Catlin Canal, maximum instantaneous exchange rate: 132 c.f.s. Legal description included in paragraph 4.A.ii.c. above.

d. Otero Canal, maximum instantaneous exchange rate: 132 c.f.s. Legal description included in paragraph 4.A.ii.d. above.

e. Oxford Farmers Ditch, maximum instantaneous exchange rate: 132 c.f.s. Legal description included in paragraph 4.A.ii.e. above.

f. Rocky Ford High Line Canal, maximum instantaneous exchange rate: 132 c.f.s. Legal description included in paragraph 4.A.ii.f. above.

g. Colorado Canal, maximum instantaneous exchange rate: 132 c.f.s. Legal description included in paragraph 4.A.ii.g. above.

h. Excelsior Ditch, maximum instantaneous exchange rate: 77 c.f.s. Legal description included in paragraph 4.A.ii.h. above.

i. Bessemer Ditch, maximum instantaneous exchange rate: 132 c.f.s. Legal description included in paragraph 4.A.ii.i. above.

j. Pueblo Reservoir, maximum instantaneous exchange rate: 132 c.f.s. Legal description included in paragraph 4.A.ii.j. above.

D. Super Ditch Lake Meredith Outlet Exchange: The exchange reach is on the Arkansas River from the outlet of Lake Meredith upstream to Pueblo Reservoir, including intermediate exchange-to points at the headgates of specified intervening canals and ditches.

i. Exchange-From Point (Point of Introduction of Substitute Supplies): Lake Meredith. Waters released from Lake Meredith Reservoir are carried through the Outlet Canal to a point in the South ½ of Section 21, Township 22 South, Range 57 West of the 6th P.M., Crowley County, Colorado; where they can be released to the Holbrook Canal and/or discharged into the Fort Lyon Storage Canal whence they are carried southeasterly approximately one-half mile in the Fort Lyon Storage Canal to a point at which they either continue in said Fort Lyon Storage Canal or are

discharged through a headgate on its Southerly bank in the Range 57 west of the 6th P.M., Crowley County, Colorado; to discharge into the Arkansas River in the NW ¼ of the SE ½ of Section 22, Township 22 South, Range 57 West of the 6th P.M., Otero County, Colorado.

ii. Exchange-To Points and Maximum Instantaneous Exchange Rates:

a. Fort Lyon Storage Canal, maximum instantaneous exchange rate: 500 c.f.s. Legal description included in paragraph 4.A.ii.a. above.

b. Holbrook Canal, maximum instantaneous exchange rate: 500 c.f.s. Legal description included in paragraph 4.A.ii.b. above.

c. Catlin Canal, maximum instantaneous exchange rate: 385 c.f.s. Legal description included in paragraph 4.A.ii.c. above.

d. Otero Canal, maximum instantaneous exchange rate: 175 c.f.s. Legal description included in paragraph 4.A.ii.d. above.

e. Oxford Farmers Ditch, maximum instantaneous exchange rate: 195 c.f.s. Legal description included in paragraph 4.A.ii.e. above.

f. Rocky Ford High Line Canal, maximum instantaneous exchange rate: 500 c.f.s. Legal description included in paragraph 4.A.ii.f. above.

g. Colorado Canal, maximum instantaneous exchange rate: 500 c.f.s. Legal description included in paragraph 4.A.ii.g. above.

h. Excelsior Ditch, maximum instantaneous exchange rate: 77 c.f.s. Legal description included in paragraph 4.A.ii.h. above.

i. Bessemer Ditch, maximum instantaneous exchange rate: 444 c.f.s. Legal description included in paragraph 4.A.ii.i. above.

j. Pueblo Reservoir, maximum instantaneous exchange rate: 500 c.f.s. Legal description included in paragraph 4.A.ii.j. above.

E. Super Ditch Fort Lyon Storage Canal Exchange: The exchange reach is on the Arkansas River from the headgate of the Fort Lyon Storage Canal upstream to Pueblo Reservoir, including intermediate exchange-to points at the headgates of specified intervening canals and ditches.

i. Exchange-From Point (Point of Introduction of Substitute Supplies): Fort Lyon Storage Canal. Legal description included in paragraph 4.A.ii.a. above.

ii. Exchange-To Points and Maximum Instantaneous Exchange Rates:

a. Holbrook Canal, maximum instantaneous exchange rate: 1,001 c.f.s. Legal description included in paragraph 4.A.ii.b. above.

b. Catlin Canal, maximum instantaneous exchange rate: 385 c.f.s. Legal description included in paragraph 4.A.ii.c. above.

c. Otero Canal, maximum instantaneous exchange rate: 175 c.f.s. Legal description included in paragraph 4.A.ii.d. above.

d. Oxford Farmers Ditch, maximum instantaneous exchange rate: 195 c.f.s. Legal description included in paragraph 4.A.ii.e. above.

e. Rocky Ford High Line Canal, maximum instantaneous exchange rate: 725 c.f.s. Legal description included in paragraph 4.A.ii.f. above.

f. Colorado Canal, maximum instantaneous exchange rate: 756 c.f.s. Legal description included in paragraph 4.A.ii.g. above.

g. Excelsior Ditch, maximum instantaneous exchange rate: 77 c.f.s. Legal description included in paragraph 4.A.ii.h. above.

h. Bessemer Ditch, maximum instantaneous exchange rate: 444 c.f.s. Legal description included in paragraph 4.A.ii.i. above.

i. Pueblo Reservoir, maximum instantaneous exchange rate: 1,466 c.f.s. Legal description included in paragraph 4.A.ii.j. above.

F. Super Ditch Holbrook Canal (a.k.a., Lake Canal) Exchange: The exchange reach is on the Arkansas River from the headgate of the Holbrook Canal upstream to Pueblo Reservoir, including intermediate exchange-to points at the headgates of specified intervening canals and ditches.

i. Exchange-From Point

(Point of Introduction of Substitute Supplies): Holbrook Canal. Legal description included in paragraph 4.A.ii.b. above. ii. Exchange-To Points and Maximum Instantaneous Exchange Rates: a. Catlin Canal, maximum instantaneous exchange rate: 385 c.f.s. Legal description included in paragraph 4.A.ii.c. above. b. Otero Canal, maximum instantaneous exchange rate: 175 c.f.s. Legal description included in paragraph 4.A.ii.d. above. c. Oxford Farmers Ditch, maximum instantaneous exchange rate: 195 c.f.s. Legal description included in paragraph 4.A.ii.e. above. d. Rocky Ford High Line Canal, maximum instantaneous exchange rate: 600 c.f.s. Legal description included in paragraph 4.A.ii.f. above. e. Colorado Canal, maximum instantaneous exchange rate: 600 c.f.s. Legal description included in paragraph 4.A.ii.g. above. f. Excelsior Ditch, maximum instantaneous exchange rate: 77 c.f.s. Legal description included in paragraph 4.A.ii.h. above. g. Bessemer Ditch, maximum instantaneous exchange rate: 444 c.f.s. Legal description included in paragraph 4.A.ii.i. above. h. Pueblo Reservoir, maximum instantaneous exchange rate: 600 c.f.s. Legal description included in paragraph 4.A.ii.j. above. **G. Super Ditch Catlin Canal Exchange**: The exchange reach is on the Arkansas River from the headgate of the Catlin Canal upstream to Pueblo Reservoir, including intermediate exchange-to points at the headgates of specified intervening canals and ditches. i. Exchange-From Point (Point of Introduction of Substitute Supplies): Catlin Canal. Legal description included in paragraph 4.A.ii.c. above. ii. Exchange-To Points and Maximum Instantaneous Exchange Rates: a. Otero Canal, maximum instantaneous exchange rate: 175 c.f.s. Legal description included in paragraph 4.A.ii.d. above. b. Oxford Farmers Ditch, maximum instantaneous exchange rate: 195 c.f.s. Legal description included in paragraph 4.A.ii.e. above. c. Rocky Ford High Line Canal, maximum instantaneous exchange rate: 345 c.f.s. Legal description included in paragraph 4.A.ii.f. above. d. Colorado Canal, maximum instantaneous exchange rate: 345 c.f.s. Legal description included in paragraph 4.A.ii.g. above. e. Excelsior Ditch, maximum instantaneous exchange rate: 77 c.f.s. Legal description included in paragraph 4.A.ii.h. above. f. Bessemer Ditch, maximum instantaneous exchange rate: 345 c.f.s. Legal description included in paragraph 4.A.ii.i. above. g. Pueblo Reservoir, maximum instantaneous exchange rate: 345 c.f.s. Legal description included in paragraph 4.A.ii.j. above. **H. Super Ditch Otero Canal Exchange**: The exchange reach is on the Arkansas River from the headgate of the Otero Canal upstream to Pueblo Reservoir, including intermediate exchange-to points at the headgates of specified intervening canals and ditches. i. Exchange-From Point (Point of Introduction of Substitute Supplies): Otero Canal. Legal description included in paragraph 4.A.ii.d. above. ii. Exchange-To Points and Maximum Instantaneous Exchange Rates: a. Oxford Farmers Ditch, maximum instantaneous exchange rate: 195 c.f.s. Legal description included in paragraph 4.A.ii.e. above. b. Rocky Ford High Line Canal, maximum instantaneous exchange rate: 458 c.f.s. Legal description included in paragraph 4.A.ii.f. above. c. Colorado Canal, maximum instantaneous exchange rate: 458 c.f.s. Legal description included in paragraph 4.A.ii.g. above. d. Excelsior Ditch, maximum instantaneous exchange rate: 77 c.f.s. Legal description included in paragraph 4.A.ii.h. above. e. Bessemer Ditch, maximum

instantaneous exchange rate: 444 c.f.s. Legal description included in paragraph 4.A.ii.i. above. f. Pueblo Reservoir, maximum instantaneous exchange rate: 458 c.f.s. Legal description included in paragraph 4.A.ii.j. above. **I. Super Ditch Oxford Farmers Ditch Exchange:** The exchange reach is on the Arkansas River from the headgate of the Oxford Farmers Ditch upstream to Pueblo Reservoir, including intermediate exchange-to points at the headgates of specified intervening canals and ditches. i. Exchange-From Point (Point of Introduction of Substitute Supplies): Oxford Farmers Ditch. Legal description included in paragraph 4.A.ii.e. above. ii. Exchange-To Points and Maximum Instantaneous Exchange Rates: a. Rocky Ford High Line Canal, maximum instantaneous exchange rate: 129 c.f.s. Legal description included in paragraph 4.A.ii.f. above. b. Colorado Canal, maximum instantaneous exchange rate: 129 c.f.s. Legal description included in paragraph 4.A.ii.g. above. c. Excelsior Ditch, maximum instantaneous exchange rate: 77 c.f.s. Legal description included in paragraph 4.A.ii.h. above. d. Bessemer Ditch, maximum instantaneous exchange rate: 129 c.f.s. Legal description included in paragraph 4.A.ii.i. above. e. Pueblo Reservoir, maximum instantaneous exchange rate: 129 c.f.s. Legal description included in paragraph 4.A.ii.j. above. **J. Super Ditch Rocky Ford High Line Canal Exchange:** The exchange reach is on the Arkansas River from the headgate of the Rocky Ford High Line Canal upstream to Pueblo Reservoir, including intermediate exchange-to points at the headgates of specified intervening canals and ditches. i. Exchange-From Point (Point of Introduction of Substitute Supplies): Rocky Ford High Line Canal. Legal description included in paragraph 4.A.ii.f. above. ii. Exchange-To Points and Maximum Instantaneous Exchange Rates: a. Colorado Canal, maximum instantaneous exchange rate: 502 c.f.s. Legal description included in paragraph 4.A.ii.g. above. b. Excelsior Ditch, maximum instantaneous exchange rate: 77 c.f.s. Legal description included in paragraph 4.A.ii.h. above. c. Bessemer Ditch, maximum instantaneous exchange rate: 444 c.f.s. Legal description included in paragraph 4.A.ii.i. above. d. Pueblo Reservoir, maximum instantaneous exchange rate: 502 c.f.s. Legal description included in paragraph 4.A.ii.j. above. **K. Super Ditch Stonewall Springs Exchange:** The exchange reach is on the Arkansas River from the outlet of any storage structure(s) filled via the Excelsior Ditch upstream to Pueblo Reservoir, including intermediate exchange-to points at the headgates of specified intervening canals and ditches. i. Exchange-From Point (Point of Introduction of Substitute Supplies): Stonewall Springs Outlet. The outlet to the River is proposed to be to the Arkansas River in the SW ¼ of Section 6, Township 21 South, Range 62 West of the 6th P.M., Pueblo County, Colorado. ii. Exchange-To Points and Maximum Instantaneous Exchange Rates: a. Bessemer Ditch, maximum instantaneous exchange rate: 444 c.f.s. Legal description included in paragraph 4.A.ii.i. above. b. Pueblo Reservoir, maximum instantaneous exchange rate: 500 c.f.s. Legal description included in paragraph 4.A.ii.j. above. **L. Super Ditch Bessemer Ditch Exchange:** The exchange reach is on the Arkansas River from the headgate of the Bessemer Ditch to Pueblo Reservoir. i. Exchange-From Point (Point of Introduction of Substitute Supplies): Bessemer Ditch. Legal description included in paragraph 4.A.ii.i.

above. ii. Exchange-To Points and Maximum Instantaneous Exchange Rates: a. Pueblo Reservoir, maximum instantaneous exchange rate: 435 c.f.s. Legal description included in paragraph 4.A.ii.j. above. **5. Water and water rights to be used for substitution and exchange supply**: the Lessors' pro-rata share of the following described water rights: **A. Fort Lyon Canal; Thursten Reservoir**: i. Case No.: Decree of April 8, 1905, Bent County District Court. ii. Legal Description: Refer to 4.A.i. iii. Source: Arkansas River. iv. Adjudication Date: April 8, 1905. v. Amount Claimed: a. 164.64 c.f.s. Appropriation Date: April 15, 1884, priority no. 4. b. 597.16 c.f.s. Appropriation Date: March 1, 1887, priority no. 6. c. 171.20 c.f.s. Appropriation Date: August 31, 1893, priority no. 25. d. Thursten Reservoir (formerly known as Prince Reservoir); 66,000,000 cubic feet (1,515 acre-feet) (direct flow 355.2 c.f.s.). Appropriation Date: August 12, 1889, reservoir priority no. 1. vi. Decreed Use: Irrigation and Storage. **B. Holbrook Canal; Holbrook Reservoir; Holbrook Dye Reservoir**: i. Case No.: Decree of April 8, 1905, Bent County District Court. a. Legal Description: Refer to 4.A.ii.b. b. Source: Arkansas River. c. Adjudication Date: April 8, 1905. d. Amount Claimed: 1) 155 c.f.s. Appropriation Date: September 25, 1889, priority no. 10. 2) 445 c.f.s. Appropriation Date: August 30, 1893, priority no. 24. 3) Holbrook Reservoir: 4,247 acre-feet (direct flow of 600 c.f.s.). Appropriation Date: March 2, 1892, reservoir priority no. 2. e. Decreed Use: Irrigation, storage. ii. Case No.: Decree of February 3, 1927, Bent County District Court. a. Legal Description: Dye Reservoir is "located in Sections 4 and 5, Township 23 South, Range 56 West of the Sixth P.M. And Sections 32 and 33, Township 22 South, Range 56 West of the Sixth P.M. in Otero County, Colorado." Holbrook Reservoir (aka Reservoir No. 1) is "located in Section 5, 6, 7 and 8, in Township 23 South, Range 55 West of the Sixth P.M. And in Sections 1 and 12, in Township 23 South, Range 56 West of the Sixth P.M., Otero County, Colorado." b. Source: Arkansas River. c. Adjudication Date: February 3, 1927. d. Amount Claimed: 1) Holbrook Reservoir: 2,000 acre-feet (600 c.f.s. direct flow). Appropriation Date: October 10, 1903, reservoir priority no. 20 (transferred from Dye Reservoir in Case No. W-3905). 2) Holbrook Reservoir Enlargement: 1,196 acre-feet (direct flow of 600 c.f.s.). Appropriation Date: September 15, 1909, reservoir priority no. 49 (originally decreed for 3,196 acre-feet; 2,000 acre-feet transferred to Dye Reservoir in Case No. W-3905). 3) Dye Reservoir: 2,500 acre-feet (600 c.f.s. direct flow). Appropriation Date: October 10, 1903, priority no. 20 (originally decreed for 4,500 acre-feet; 2,000 acre-feet transferred to Holbrook Reservoir in W-3905). 4) Dye Reservoir Enlargement: 3,486 acre-feet (direct flow of 400 c.f.s.). Appropriation Date: September 3, 1909, priority no. 43. 5) Dye Reservoir: 2,000 acre-feet (600 c.f.s. direct flow). Appropriation Date: September 15, 1909 (transferred from Holbrook Reservoir in Case No. W-3905). e. Decreed Use: Storage, irrigation. **C. Fort Lyon Storage Canal; Horse Creek Reservoir; Adobe Reservoir**: i. Case No.: Decree of November 8, 1928, Bent County District Court. a. Legal Description: Refer to 4.A.ii.a. b. Source: Arkansas River. c. Adjudication Date: November 8, 1928. d. Amount Claimed: 1) 840 c.f.s. Appropriation Date: January 25, 1906, reservoir priority no. 27.5 (for storage in Horse and Adobe Creek Reservoirs). 2) 840 c.f.s. Appropriation Date: June 12,

1908, reservoir priority no. 37 (for storage in Horse Creek Reservoirs). 3) 840 c.f.s. Appropriation Date: December 29, 1908, reservoir priority no. 41 (for storage in Adobe Creek Reservoirs). 4) 1,466 c.f.s. Appropriation Date: March 1, 1910, reservoir priority no. 50 (for storage in Horse and Adobe Creek Reservoirs). 5) Horse Creek Reservoir: 11,400 acre-feet. Appropriation Date: August 15, 1900, reservoir priority no. 10. 6) Horse Creek Reservoir First Enlargement: 15,487 acre-feet. Appropriation Date: January 25, 1906, reservoir priority no. 27.5. 7) Horse Creek Reservoir Second Enlargement: 1,113 acre-feet. Appropriation Date: June 12, 1908, reservoir priority no. 37. 8) Adobe Creek Reservoir: 61,575 acre-feet. Appropriation Date: January 25, 1906, reservoir priority no. 24.5. 9) Adobe Creek Reservoir Enlargement: 25,425 acre-feet. Appropriation Date: December 29, 1908, reservoir priority no. 41. e. Decreed Use: Storage, irrigation. **D. Catlin Canal** i. Case No.: Decree of April 8, 1905, Bent County District Court. a. Legal Description: Refer to 4.A.ii.c. b. Source: Arkansas River. c. Adjudication Date: April 8, 1905. d. Amount Claimed: 1) 22 c.f.s. Appropriation Date: April 10, 1875, priority no. 2 (transferred to the Catlin Canal by Las Animas Consolidated Canal Company by Transfer Decree No. 62). 2) 226 c.f.s. Appropriation Date: December 3, 1884, priority no. 5 (originally decreed for 248 c.f.s.; 22 c.f.s. transferred to the Jones Ditch under Transfer Decree No. 62). 3) 97 c.f.s. Appropriation Date: November 14, 1887, priority no. 7. e. Decreed Use: Irrigation. **E. Otero Canal** i. Case No.: Decree of April 8, 1905, Bent County District Court. a. Legal Description: Refer to 4.A.ii.d. b. Source: Arkansas River. c. Adjudication Date: April 8, 1905. d. Amount Claimed: 123 c.f.s. Appropriation Date: March 3, 1890, priority no. 13. e. Decreed Use: Irrigation. ii. Case No.: Decretal Order dated August 30, 1922. a. Legal Description: Refer to 4.A.ii.d. b. Source: Arkansas River. c. Adjudication Date: August 30, 1922. d. Amount Claimed: 1) 334.92 c.f.s. Appropriation Date: February 2, 1903, priority no. 62. e. Decreed Use. Irrigation, domestic. **F. Oxford Farmers Ditch** i. Case No.: CA 2535 (March 23, 1896) Water Dist. 14, Pueblo County District Court. a. Legal Description: Refer to 4.A.ii.e. b. Source: Arkansas River. c. Adjudication Date: March 23, 1896. d. Amount Claimed: 1) 13.4 c.f.s. Appropriation Date: September 21, 1867, priority no. 20 (Enterprise Ditch). 2) 116 c.f.s. Appropriation Date: February 26, 1887, priority no. 53. e. Decreed Use: Irrigation. **G. Rocky Ford High Line Canal** i. Case No.: CA 2535 (March 23, 1896) Water Dist. 14, Pueblo County District Court. a. Legal Description: Refer to 4.A.ii.f. b. Source: Arkansas River. c. Adjudication Date: March 23, 1896. d. Amount Claimed: 1) 40 c.f.s. Appropriation Date December 31, 1861; priority no. 4 (transferred from Excelsior Ditch CA 9530) 2) 0.6 c.f.s. Appropriation Date: September 21, 1867, priority no. 20 (Enterprise Ditch). 3) 16 c.f.s. Appropriation Date: July 1, 1869, priority no. 25 (Ballow Hill Ditch). 4) 30 c.f.s. Appropriation Date: June 30, 1885, priority no. 48 (Enlargement of Ballow Hill Ditch). 5) 2 c.f.s. Appropriation Date: March 11, 1886, priority no. 50 (Allen Ditch). 6) 378 c.f.s. Appropriation Date: January 6, 1890, priority no. 60 (originally decreed for 418 c.f.s.; 40 c.f.s. transferred to Excelsior Ditch Company in CA 9532). 7) 2.5 c.f.s. Appropriation Date: January 6, 1890, priority no. 61 (Allen Ditch). e. Decreed Use: Irrigation. ii. Case No.: Decree of April 8, 1905. a. Legal

Description: Refer to 4.A.ii.f. b. Source: Arkansas River. c. Adjudication Date: April 8, 1905. d. Appropriation Date: March 7, 1884 (priority no. 3) e. Amount Claimed: 32.5 c.f.s. (originally decreed for 38 c.f.s. in April 8, 1905 Decree to Town Ditch of West Las Animas; transferred 32.5 c.f.s. in Case No. W-65 to Rocky Ford High Line Canal). f. Decreed Use: Irrigation. **H. Bessemer Ditch** i. Case No.: CA 2535 (March 23, 1896), Water Dist. 14, Pueblo County District Court. a. Legal Description: Refer to 4.A.ii.i. b. Source: Arkansas River. c. Adjudication Date: March 23, 1896. d. Amount Claimed: 1) 2.0 c.f.s. Appropriation Date: April 1, 1861, priority no. 2 (Warrant Barnes and Baxter; Transfer Decree 32, dated November 28, 1923). 2) 20.00 c.f.s. Appropriation Date: December 31, 1861, priority no. 4 (Excelsior; CA 9531). 3) 3.00 c.f.s. Appropriation Date: June 30, 1866, priority no. 16.5 (Rogers; CA 2535). 4) 2.5 c.f.s. Appropriation Date: January 8, 1867, priority no. 18 (Arkansas Ditch; CA 17983). 5) 3.74 c.f.s. Appropriation Date: May 31, 1864, priority no. 20 (Canon City & Oil Creek; CA 3657). 6) 1.47 c.f.s. Appropriation Date: November 30, 1870, priority no. 27 (Hamp-Bell; CA 8135). 7) 3.4 c.f.s. Appropriation Date: December 31, 1870, priority no. 28 (Barnum). 8) 2.0 c.f.s. Appropriation Date: September 18, 1873, priority no. 33.5 (Cape Horn Ranch Ditch). 9) 5.13 c.f.s. Appropriation Date: May 31, 1867, priority no. 34 (Canon City & Oil Creek; CA 3657). 10) 2.5 c.f.s. Appropriation Date: December 31, 1876, priority no. 34.5 (Cape Horn Ranch Ditch). 11) 0.5 c.f.s. Appropriation Date: December 31, 1876, priority no. 34.5 (Cape Horn Ranch Ditch Transfer Decree 17983). 12) 0.41 c.f.s. Appropriation Date: December 31, 1878, priority no. 36 (Hamp-Bell; CA 8135). 13) 14.00 c.f.s. Appropriation Date: May 4, 1881, priority no. 40 (Collier Ditch). 14) 2.00 c.f.s. Appropriation Date: June 20, 1881, priority no. 41 (I.N. Sater Ditch). 15) 8.00 c.f.s. Appropriation Date: March 31, 1882, priority no. 42.5 (Cawfield No. 2 Ditch). 16) 322 c.f.s. Appropriation Date: May 1, 1887, priority no. 55. e. Decreed Use: Irrigation. **I. Winter Water Storage**. The so-called Winter Water Storage Decree permits all major ditches on the mainstem of the Arkansas River between Pueblo Reservoir and John Martin Reservoir (except the Otero Ditch and the Rocky Ford Ditch) to store river flows from November 15 to March 15 in excess of the amount necessary to supply senior priorities not participating in the winter water storage program. Applicants herein claim the right of substitution and exchange of the Lessors' pro-rata share of the water and water rights to be used for substitution and exchange listed in paragraphs 5.A through 5.H above that have been previously exchanged and stored pursuant to the Winter Water Storage Decree. i. Case No.: 84CW179 District Court, Water Div. No. 2. ii. Legal Descriptions: Holbrook Reservoir (4.B.i); Holbrook Dye Reservoir (4.C.i); Lake Meredith Reservoir (4.D.i.); and Pueblo Reservoir (4.A.ii.j.). iii. Source: Arkansas River. iv. Adjudication Date: November 10, 1987. v. Amount claimed: The Decree permits participating ditches to store river flows from November 15 to March 15 in excess of the amount necessary to supply senior priorities not participating in the winter water storage program in Pueblo Reservoir, John Martin Reservoir, and off-channel storage facilities of such ditches. vi. Decreed Use: Under the decreed change, substitution and exchange, no changes of use were requested. Each applicant retained its own decreed

purpose or uses. **J.** This application does not seek to adjudicate any source of exchange water. Any source of exchange water, as described above, may be used for exchange only if such use is authorized, either by decree or statutorily authorized administrative approval, including but not limited to, such approval as authorized by C.R.S. §§ 37-92-308, 37-92-309, or 37-83-101 *et seq.*

6. Details of appropriations for exchange:

A. Date of initiation of appropriations: May 7, 2008. This was the date of incorporation of the Super Ditch.

B. How appropriations were initiated: By formation of intent to appropriate supported by, among other actions:

- i. Engineering, economic and legal analyses, negotiations with potential Lessees, and other activities to establish a voluntary land-fallowing water-leasing program in the Lower Valley.
- ii. Incorporation of Super Ditch to provide water services by which shareholders of Valley Ditch Companies may voluntarily lease water for use by others (May 7, 2008);
- iii. Authorization by Applicants' Boards of Directors for counsel and engineers to prepare and file this Application (December 20, 2009);
- iv. Affidavits of intent from shareholders of each Lower Valley Ditch to lease water through the Super Ditch (January 2010); and
- v. Adoption of resolutions by Applicants' Boards of Directors confirming Applicants' intent to appropriate the substitutions and exchanges described herein and authorizing the filing of this Application (Super Ditch Board, January 20, 2010; Lower Ark District Board, January 28, 2010).

The Lower Ark District has expended in excess of \$1 million on the above actions to establish a voluntary land-fallowing water-leasing program in the Lower Valley.

C. Date water applied to beneficial use: Not applicable.

7. Amount claimed:

A. The conditional instantaneous rates of exchanges claimed are summarized in the matrix in paragraph 2.C and Exhibit A to the application and set forth in detail in paragraphs 4.A – 4.L above.

B. The total annual volume of exchanges claimed is 58,000 acre-feet (conditional). The total annual exchange volume claimed is equal to the maximum amount of water that may be requested by the Lessees assuming their maximum respective demands occur in the same year.

8. Proposed uses and places of use of exchanged water:

A. Substitution and exchange to prevent injury to vested water rights diverting in exchange reaches described in paragraphs 4.A – 4.L above.

B. Replacement of historical return flows.

C. Domestic, irrigation and stock watering on lands served by the Fort Lyon Canal, Fort Lyon Storage Canal, Holbrook Canal (a.k.a. Lake Canal), Catlin Canal, Otero Canal, Oxford Farmers Ditch, Rocky Ford High Line Canal, Bessemer Ditch, Pueblo Reservoir, Excelsior Ditch, Colorado Canal, Lake Meredith Reservoir, Dye Reservoir, and Holbrook Reservoir. Replacement of depletions resulting from the use of water from other sources, including, but not limited to, Rule 14 Plans and Rule 10 Compact Compliance Plans.

D. All irrigation and municipal purposes, including without limitation, domestic, agricultural, industrial, commercial, irrigation, stock watering, fire protection, recreation, fish and wildlife preservation and propagation, and all other beneficial purposes within the service area of the City of Colorado Springs, the service areas of members of the Pikes Peak Regional Water Authority (including, among others, the City of Fountain, the Town of Monument, the Town of Palmer Lake, Cherokee Metropolitan District, Donala Water & Sanitation District, and Triview

Metropolitan District), and the service area of the City of Aurora, as such service areas exist now and in the future. E. Recharge of Arkansas River Basin ground water, recharge of Denver Basin aquifers, including relinquishment pursuant to C.R.S. §37-90-137(9)(b), and recharge of the Upper Black Squirrel Creek alluvial aquifer. F. Augmentation purposes. G. The water diverted by substitution and exchange may be used, reused, and successively used to extinction for the above purposes to the extent such water is decreed or administratively approved for such reuse and succession of use. **9. Relation Back:** Pursuant to C.R.S. § 37-92-306.1, Applicants seek to relate back the filing date of this application for exchange rights to December 2009, based on the exchange application filed in Case No. 09CW140. **10. Names and addresses of owners of land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored:** A. Fort Lyon Canal: Fort Lyon Canal Company 750 Bent Avenue Las Animas, CO 81054 B. Fort Lyon Storage Canal: Fort Lyon Canal Company 750 Bent Avenue Las Animas, CO 81054, C. Holbrook Reservoir: Holbrook Mutual Irrigation Company 23207 Hwy 266 Rocky Ford, CO 81067 D. Holbrook Dye Reservoir: Holbrook Mutual Irrigation Company 23207 Hwy 266 Rocky Ford, CO 81067 E. Holbrook Canal (a.k.a. Lake Canal): Holbrook Mutual Irrigation Company 23207 Hwy 266 Rocky Ford, CO 81067 F. Lake Meredith: Colorado Canal Company: P.O. Box 8 Ordway, CO 81063 G. Colorado Canal: Colorado Canal Company: P.O. Box 8 Ordway, CO 81063 H. Catlin Canal: Catlin Canal Company 917 Elm Rocky Ford, Colorado 81067 I. Otero Canal: Otero Canal Company P.O. Box 239 La Junta, CO 81050 J. Oxford Farmers Ditch: The Oxford Farmers Ditch Headgate and Augmentation Station are owned by the Oxford Farmers Ditch Company, 200 Main St., Fowler, Colorado 81039. According to the real property records of Pueblo County, Colorado, portions of the land underlying the diversion point for the Oxford Farmers Ditch are owned by Daniel J. & Barbara J. Gaudreault, P.O. Box 69, Elizabeth, Colorado 80107. K. Rocky Ford High Line Canal: High Line Canal Company 963 Elm Rocky Ford, CO 81067 L. Stonewall Springs: Mark Morley 20 Boulder Crescent, 2nd Floor Colorado Springs, CO 80903 M. Excelsior Ditch: Excelsior Ditch Company c/o Dorothy K. Morgan 902 Weber Dr. Alamosa, CO 81101 N. Bessemer Ditch: Bessemer Irrigation Ditch Company 503 N. Main St #216 Pueblo, CO 81003 O. Pueblo Reservoir: United States Department of Interior, Bureau of Reclamation 11056 West County Road 18E Loveland, CO 80537-9711 **11. Remarks:** The description of or reference to structures and water rights herein, other than the proposed exchanges described in this application, does not seek to amend or limit the decrees for those structures and water rights, and errors and omissions in such descriptions and references shall not prejudice the owners of those structures and water rights. **12. Map:** A map showing the approximate locations of the exchange-from and exchange-to points is attached to the Application as Exhibit B. WHEREFORE, Applicants request that this Court enter a decree that: 1. Approves the exchanges and dates of appropriations requested herein; 2. Finds that there will be no injury to any owner of or persons entitled to use water under a vested

water right or decreed conditional right; and 3. Granting such other and further relief as the Court deems proper.

CASE NO. 10CW5; Previous Case No. 03CW61 - RANDY J. PHEMISTER and LAUREL A. PHEMISTER, 20 Turtle Crossing, Canyon, TX 79015; (806) 236-8642

Application to Make Absolute

HUERFANO COUNTY

Name of structure: Phemister Spring. **Describe conditional water right (as to each structure) giving the following from the Referee's Ruling and Judgment and Decree: Date of Original Decree:** 03/25/2004; **Case No.:** 03CW61; **Court:** District Court, Water Division 2, Colorado. **Legal description:** Huerfano County, SE ¼ of the SW ¼ Section 30, Township 29 South, Range 69 West, 6th P.M., 220 feet from the South line and 3000 feet from the East line. **Subdivision:** La Veta Ranch, Lot 22. **Source:** Natural spring tributary to South Middle Creek. **Appropriation Date:** 6/2/2002; **Amount:** 3 gpm. **Use:** Domestic - for cabin and shed. **Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed:** Our cabin has been built: the outside is complete and the interior is in progress. The plumbing for the 2 bathrooms and kitchen is complete and in use. Water from the spring is pumped to a 2500 gallon storage tank and then gravity fed through pipes to the cabin. The spring also furnishes water to a small work shed (previously used for camping). We began using the cabin around May 2008. Approximate cost of the plumbing/storage tank is \$4000. **If claim to make absolute – Water applied to beneficial use: Date:** 05/01/2008. **Amount:** 3 gpm. **Use:** Domestic - 2 bathrooms and a kitchen, and a work shed. **Description of place of use where water is applied to beneficial use:** n/a. **Name(s) and address(es) of owner(s) of land on which structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicants.

CASE NO. 10CW6 - EAGLEPICHER TECHNOLOGIES HOLDINGS, LLC ("Eagle-Picher"), c/o Bill Ideker, C & Porter Streets, Joplin, MO 64801; and STRATMOOR HILLS WATER DISTRICT ("Stratmoor"), c/o Ralph Ravenscroft, 1811 B Street, Colorado Springs, CO 80906

(Copies of all pleadings to: Charles B. White, David S. Hayes and Nicole L. Johnson, Petros & White, LLC, Attorneys for Eagle-Picher, 1999 Broadway, Suite 3200, Denver, CO 80202; (303) 825-1980); and William B. Tourtillott and Susan M. Curtis, Ryley, Carlock & Applewhite, Attorneys for Stratmoor, 1999 Broadway, Suite 1800, Denver, CO 80202; (303) 863-7500)

Application for Amended Plan for Augmentation

EL PASO COUNTY, COLORADO

Overview of Application: Since approximately April 1994, Eagle-Picher has operated a groundwater corrective measures workplan ("Remediation Project") to remove nitrates from the groundwater underlying property located in Section 2,

Township 15 South, Range 66 West of the 6th P.M., El Paso County, Colorado. A map identifying the general location of the property is attached to the application as Exhibit A, and available for inspection at the office of the Water Court or via LexisNexis CourtLink. Originally, the Remediation Project utilized a single well operating pursuant to substitute water supply plans approved by the State Engineer. In accordance with a Colorado Department of Public Health and Environment (“CDPHE”) approval dated September 26, 2002, Eagle-Picher expanded the Remediation Project to include a total of nine wells. Specifically, the expanded Remediation Project utilizes the Remediation Wells identified in Paragraph 3 of this Application to divert groundwater tributary to the Widefield Aquifer, which is tributary to Fountain Creek. Upon withdrawal, the groundwater extracted by the Remediation Wells is treated through air stripping and clarifying processes and then discharged to Fountain Creek from the Security Wastewater Treatment Plant. The expanded Remediation Project began operation on November 18, 2002, and was, at that time, anticipated to operate for a period of six years. The CDPHE has, however, mandated three years of additional pumping. Pumping is presently scheduled to continue through November 17, 2011. From November 2011 through November 2019 depletions from prior pumping are expected to occur in Fountain Creek. This Application seeks to amend the augmentation plan adjudicated in Case No. 03CW09 to extend the operation of the augmentation plan an additional three years through November 2019. Upon cessation of the Remediation Project and full replacement of all out-of-priority depletions associated with operation of the Remediation Wells, the water rights adjudicated in Case No. 03CW09 and the amended plan for augmentation sought herein shall terminate. **Structures to be augmented:** The following described wells previously adjudicated in Case No. 03CW09, collectively referred to as the “Remediation Wells”:

A. Eagle-Picher Well EX-1: Permit No. 48633-F; located in the SE1/4 NE1/4, Section 2, Township 15 South, Range 66 West, 6th P.M., El Paso County, Colorado, at a point 1000 feet from the East Section Line and 2600 feet from the North Section Line; Date of Appropriation: November 18, 2002 by application to beneficial use; Depth: 55 feet; Maximum Pumping Rate: 3 g.p.m., absolute.

B. Eagle-Picher Well EX-2: Permit No. 59062-F; located in the SE1/4 NE1/4, Section 2, Township 15 South, Range 66 West, 6th P.M., El Paso County, Colorado, at a point 1130 feet from the East Section Line and 2185 feet from the North Section Line; Date of Appropriation: November 18, 2002, by application to beneficial use; Depth: 43 feet; Maximum Pumping Rate: 3 g.p.m., absolute.

C. Eagle-Picher Well EX-3: Permit No. 59063-F; located in the SE1/4 NE1/4, Section 2, Township 15 South, Range 66 West, 6th P.M., El Paso County, Colorado, at a point 1075 feet from the East Section Line and 2230 feet from the North Section Line; Date of Appropriation: November 18, 2002, by application to beneficial use; Depth: 46 feet; Maximum Pumping Rate: 3 g.p.m., absolute.

D. Eagle-Picher Well EX-4: Permit No. 59064-F; located in the SE1/4 NE1/4, Section 2, Township 15 South, Range 66 West, 6th P.M., El Paso County, Colorado, at a point 1110 feet from the East Section Line and 2310 feet from the North Section Line; Date of Appropriation: November 18, 2002, by application to beneficial use; Depth: 45

feet; Maximum Pumping Rate: 3 g.p.m., absolute. E. Eagle-Picher Well EX-5: Permit No. 59065-F; located in the SE1/4 NE1/4, Section 2, Township 15 South, Range 66 West, 6th P.M., El Paso County, Colorado, at a point 1040 feet from the East Section Line and 2375 feet from the North Section Line; Date of Appropriation: November 18, 2002, by application to beneficial use; Depth: 45 feet; Maximum Pumping Rate: 3 g.p.m., absolute. F. Eagle-Picher Well CP-1: Permit No. 59058-F; located in the SE1/4 NE1/4, Section 2, Township 15 South, Range 66 West, 6th P.M., El Paso County, Colorado, at a point 1020 feet from the East Section Line and 2275 feet from the North Section Line; Date of Appropriation: November 18, 2002, by application to beneficial use; Depth: 46.5 feet; Maximum Pumping Rate: 1 g.p.m., absolute. G. Eagle-Picher Well CP-2: Permit No. 59059-F; located in the SE1/4 NE1/4, Section 2, Township 15 South, Range 66 West, 6th P.M., El Paso County, Colorado, at a point 950 feet from the East Section Line and 2235 feet from the North Section Line; Date of Appropriation: November 18, 2002, by application to beneficial use; Depth: 46.5 feet; Maximum Pumping Rate: 1 g.p.m., absolute. H. Eagle-Picher Well CP-3: Permit No. 59060-F; located in the SE1/4 NE1/4, Section 2, Township 15 South, Range 66 West, 6th P.M., El Paso County, Colorado, at a point 915 feet from the East Section Line and 2330 feet from the North Section Line; Date of Appropriation: November 18, 2002, by application to beneficial use; Depth: 60 feet; Maximum Pumping Rate: 1 g.p.m., absolute. I. Eagle-Picher Well CP-4: Permit No. 59061-F; located in the SE1/4 NE1/4, Section 2, Township 15 South, Range 66 West, 6th P.M., El Paso County, Colorado, at a point 875 feet from the East Section Line and 2130 feet from the North Section Line; Date of Appropriation: November 18, 2002, by application to beneficial use; Depth: 44 feet; Maximum Pumping Rate: 1 g.p.m., absolute. No other water rights are diverted from these structures. **Source:** The source of groundwater for all of the Remediation Wells is groundwater tributary to the Widefield Aquifer, tributary to Fountain Creek. **Amounts:** The cumulative maximum pumping rate of the Remediation Wells is 19 gallons per minute, and the cumulative maximum annual volume to be withdrawn from the Remediation Wells is 20 acre-feet. **Use:** The water withdrawn by the Remediation Wells is to be used, reused, and successively used for the beneficial purposes of groundwater remediation, irrigation, municipal, industrial, augmentation, replacement and exchange, and all other beneficial uses. **Water rights to be used for augmentation:** A. Eagle-Picher and Co-Applicant, Stratmoor, have entered a Second Amended Water Lease Agreement effective November 17, 2008, to provide Eagle-Picher with up to twenty acre-feet per year of augmentation water to Fountain Creek from among the following sources (the "Stratmoor Sources"): i. Fryingpan-Arkansas Project: Stratmoor has the right to purchase and receive delivery of an allocation of the water of the Fryingpan-Arkansas Project ("Fry-Ark"), and the right to purchase return flows therefrom. The Fry-Ark project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and its tributaries in Pitkin County. The principal water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County) dated June 20, 1958, and August 3, 1959, and were modified by the Decree in Case No. W-829-76 (District

Court, Water Division No. 5) dated November 27, 1979, and were supplemented by the Decree in Case No. 83CW352 (District Court, Water Division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957, with the transmountain tunnel originally decreed in the amount of 900 cubic feet per second and enlarged to 963 cubic feet per second absolute and 37 cubic feet per second conditional. Transmountain diversions are further limited to 120,000 acre feet in any one year, and to 2,352,800 acre feet in any period of 34 years reckoned in continuing progressive series starting with the first full year of diversions, and are subject to various other limitations recited in the Decrees. Stratmoor's purchase and use of Fry-Ark water and use of return flows from Fry-Ark water is subject to contract(s) with and the decrees and Allocation Principles of the Southeastern Colorado Water Conservancy District. ii. Laughlin Ditch: Stratmoor owns the right to 5.616 cfs from Fountain Creek decreed to the Laughlin Ditch with an appropriation date of December 31, 1862, being Priority No. 10 in former Water District No. 10. In addition, Stratmoor has the right to 1.736 cfs decreed to the Laughlin Ditch Enlargement with an appropriation date of December 31, 1863, being Priority No. 17 in former Water District No. 10. The rights to Priority Nos. 10 and 17 were adjudicated by the District Court of El Paso County, entered in the first general adjudication of water rights in former Water District No. 10 on February 15, 1882. The Laughlin Ditch headgate is located in Section 25, Township 14 South, Range 66 West of the 6th P.M., El Paso County, Colorado. In Case Nos. W-3935 and W-4237, District Court, Water Division No. 2, Stratmoor obtained the right to use its Laughlin Ditch water rights for direct diversion and use, recharge, replacement, storage, and substitution. **10. Historic use**: The Stratmoor Sources have historically been used for the decreed purposes within Stratmoor's service area. **Statement of plan for augmentation**: During the Remediation Project's nine-year term of operation, the Remediation Wells have pumped and will pump up to 20 acre-feet per year of groundwater tributary to the Widefield Aquifer. To prevent injury to entities utilizing water from the Widefield Aquifer, Stratmoor will continue to forego, pursuant to its agreement with Eagle-Picher, pumping of an equal amount of water from the Widefield Aquifer that Stratmoor would otherwise be entitled to pump pursuant to its annual pumping allotment under the Widefield Aquifer Management Plan, approved by Stipulation in Case No. W-116, District Court, Water Division No. 2. The table attached as Exhibit B to the Application, and available for inspection at the office of the Water Court or via LexisNexis CourtLink, provides actual annual net stream accretions and depletions and estimates of future accretions and depletions, associated with operating the Remediation Wells. Pumping and return flows prior to the expanded phase of the Remediation Project are incorporated into Exhibit B. Column 5 of Exhibit B identifies that estimated depletions are expected to occur to Fountain Creek during the three additional years that the Remediation Wells are expected to operate. These depletions will be more than offset by the treated water discharges resulting from the operation of the Remediation Project. The point of discharge will be the outfall of the Security Wastewater Treatment Plant, located in the NW¹/₄ NW¹/₄ of Section 24, Township 15 South, Range 66 West of the 6th

P.M. Eagle-Picher will maintain dominion and control over water pumped from the Remediation Wells during the treatment process and all net stream accretions resulting from discharge of treated water from the Remediation Wells, and claims the right of reuse and successive use of that water. Upon cessation of the operation of the Remediation Wells, estimated depletions to Fountain Creek attributable to the pumping of the Remediation Wells will continue in the amounts identified in Column 5 of Exhibit B. These depletions will be replaced by water from the Stratmoor Sources. The depletions identified in Exhibit B are estimated based on currently available data. Actual depletions will be determined based on data included in accounting forms prepared by Eagle-Picher in order to administer this plan in a manner to prevent injury to other water rights. Eagle-Picher has installed measuring devices and devised accounting forms to record all diversions, depletions, and replacements made pursuant to this plan for augmentation. **No injury:** The plan for augmentation requested for approval in this Application will not result in injury to any vested water right or decreed conditional water right. **Remarks:** Pursuant to the Stipulation entered by Applicants and Southeastern Colorado Water Conservancy District in Case No. 03CW09, any decree entered in this case shall include the following provisions: The decree in this case does not give Applicants any rights of use of Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocation of Fryingpan-Arkansas Project Water or return flows from Fryingpan-Arkansas Project Water, but does not alter any existing rights either Applicant may otherwise have. Fryingpan-Arkansas Project Water or return flows therefrom may be used in Applicants' augmentation plan only if, and to the extent such water is allocated by Southeastern to either Applicant, and is purchased from Southeastern. Applicants' purchase and use of Fryingpan-Arkansas Project Water and of return flows therefrom shall be consistent with the Allocation Principles of the Southeastern Colorado Water Conservancy District (as they may from time to time be amended), and the lawful rules, regulations, policies, procedures, contracts, charges and terms as may be lawfully determined from time to time by Southeastern in its discretion. This decree does not modify Southeastern's Fryingpan-Arkansas Project water rights decrees. Applicants will utilize Fryingpan-Arkansas Project Water or return flows therefrom only within Southeastern District boundaries, as a supplemental supply for the uses decreed herein. Applicants' augmentation use of such water will be only to augment or replace depletions resulting from Applicants' beneficial use of water within Southeastern District boundaries. In the event either of these provisions is inadvertently omitted from any such future decree, Applicants agree that such omission shall be deemed to be a clerical error warranting correction by the Water Court. **Names and addresses of owners of land on which the structures will be located or upon which water will be placed to beneficial use:** The Remediation Wells are located and used on land owned by Eagle-Picher. The Security Wastewater Treatment Plant is owned by the Security Water District, 231 Security Boulevard, Colorado Springs, CO 80911. WHEREFORE, Applicants respectfully request that the Court enter a decree approving the amended plan for augmentation described herein, and specifically

determining that the vested or conditionally decreed water rights of others will not be materially injured by the withdrawals of groundwater and the plan for augmentation proposed herein.

CASE NO. 10CW7 - THE CITY OF ROCKY FORD, 203 S. Main Street, Rocky Ford, CO 81067 (Please direct all correspondence, motions and pleadings in this matter to the Applicant's attorneys: David C. Hallford and Scott A. Grosscup, Balcomb & Green, P.C., Post Office Drawer, 790, Glenwood Springs, CO 81602; (970) 945-6456)

Application for Change of Water Rights and Plan for Augmentation

OTERO AND PUEBLO COUNTIES

Summary of Application: Applicant, or "City," has agreed to provide treated water to a residential subdiv. outside of the existing city boundary. The City seeks Ct. approval (1) of changing its decreed underground water rights to add that service area as a place of use for those rights; (2) of changing its water rights that are decreed for mun. and aug. uses to add the Hancock Water Co.'s service area as a place of use for those rights; and (3) of a plan for aug. using City aug. sources to augment the depletions from its trib. wells in supplying that service area. **Description of Water Rights to be Changed:** **Rocky Ford Wells**

No. 1, 2 and 3: **Rocky Ford Well No. 1** (a/k/a Rocky Ford Well # 4455) decreed in Case No. W-1090 Dist. Ct., Water Div. 2, for mun. uses in the amount of 1.67 c.f.s., absolute, and 0.11 c.f.s., cond. The well draws water from the Arkansas River alluvium and is located in the NE1/4 of the NW1/4, of Sec. 6, T. 23 S., R. 56 W., 6th P.M. at a pt. 2638 ft. from the W. line and 116 ft. from the N. line of said Sec. 6. **Rocky Ford Well No. 2** (a/k/a Rocky Ford Well # 4456) decreed in Case No. W-1090 Dist. Ct., Water Div. 2, in the amount of 2.05 c.f.s. for mun. uses. The well draws water from the Arkansas River alluvium and is located in the SE1/4, SW1/4, Sec. 31, T. 22 S., R. 56 W., 6th P.M. at a pt. 2039 ft. from the W. line and 256 ft. from the S. line of said Sec. 31. **Rocky Ford Well No. 3** decreed in Case No. 05CW76 Dist. Ct., Water Div. 2. as an unconstructed alternate pt. of div. for Rocky Ford Wells No. 1 and 2, and the three wells serve as reciprocal alternate pt. of div. for the total 3.72 c.f.s. decreed to Wells No. 1 and 2. Rocky Ford Well No. 3 will draw water from the Arkansas River alluvium and will be used for mun. purposes. The well is located in Otero County in the NE1/4, NW1/4, Sec. 6, T. 23 S., R. 56 W., 6th P.M. at a pt. 432 ft from the N. line and 1990 ft. from the W. line of said Sec. 6. **Limitations:** Div. from Rocky Ford Wells No. 1, 2 and 3 are limited to not more than 1,122 AF annually pursuant to the decree in Case No. 05CW76. The Wells are augmented for use within the City's current service area by the decree entered in this Ct. Case No. 06CW49. Service to the Hancock Water Co.'s service area as desc. in the changes of water rights desc. herein will be included within the max.1,122 AF of allowed annual div. **Catlin Canal Rights:** The City owns water rights represented by 218.3 shares of the Catlin Canal Co., which rights were previously and recently changed, as desc. below, to include mun., aug. and other uses by the decree entered in this Ct. Case No. 06CW49. The City also owns other Catlin Canal water rights represented by other shares, but those rights have not been

changed to allow mun. and aug. uses and they are not involved in this Application. The following water rights are decreed to the Catlin Canal: 22 cfs in the water right assigned Priority No. 2 by the Decree of 4/8/1905, with an approp. date of 4/10/1875. Pursuant to Reorganized Catlin Consol. Canal Co. v. Hinderlider, 80 Colo. 522, 253 P. 389 (1927), this 22 c.f.s. interest is required to be administered as junior to the Priority No. 4 Water Right, as desc. in the Decree of 4/8/1905; 226 c.f.s. in the water right assigned Priority No. 5 by the Decree of 4/8/1905, with an approp. Date of 12/3/1884; 97 c.f.s., which is the entire water right assigned Priority No. 7 by the Decree of 4/8/1905, with an approp. date of 11/14/1887. **Case No.:** In re Adjud. of Priorities of Right to the Use of Water for Irr. in Water Dist. No. 17, Bent County Dist. Ct. **Pt. of Div.:** The decreed pt. of div. was changed in Case No. 689, Water Dist. 17, 11/28/1955, due to the flood of 1955 that destroyed the div. dam. The new location was decreed to be: N1/2, NW1/4, Sec. 19, T. 22 S., R. 59 W., 6th P.M. on the S. bank of the Arkansas River at a pt. 1300 ft. E. of, or downstream from the original pt. of div. fixed by decree of the Ct. on the S. bank of the Arkansas River at the confluence of said river and the Apishapa River in said Sec. 18. However, Case No. 689 contained an error concerning the pt. of div. That decree incorrectly lists R. 59 W. instead of 58 W. of the 6th P.M., but is correct in all other location details. The reference made to the confluence with the Apishapa River in Case No. 689 indicates that the pt. of div. as originally located was erroneously desc. and fixed in the decree. The actual location of the headgate div. is on the S. bank of the Arkansas River, N1/2, NW1/4, Sec. 19, T. 22 S., R. 58 W., 6th P.M., 1401 ft. from the W. line and 270 ft. from the N. line of Sec. 19. A petition to correct the decreed pt. of div. was filed by the Catlin Canal Co. and is pending in Case No. 09CW35, Dist. Ct., Water Div. 2. **Source:** Arkansas River. **Use:** Irr. **Note:** In addition to the water rights assoc. with the foregoing priorities, the shareholders of Catlin Canal Co. also own a 6/7th interest in the in the 2743 acre ft. decreed to Mount Pisgah Reservoir. Mount Pisgah Reservoir was decreed on 1/13/1928 with an approp. date of 10/15/1907 in Case No. 4796, In re Priority of Water Rights in Water Dist. No. 12 of the State of Colo., Fremont County Dist. Ct. The Mount Pisgah Reservoir is an on-channel reservoir located on Four Mile Creek, a trib. of the Arkansas River in Teller County, Colorado, and being in the E1/2, NW1/4, Sec. 31, T. 14 S., R. 70 W. 6th P.M. It is decreed for irr. of more than 80,000 acres of land lying below the reservoir and along Four Mile Creek and the Arkansas River. The Catlin Canal Co. relies upon this water source as a supply for the Catlin Canal shareholders, and Applicant receives a pro rata share of Catlin's supply from this source. Mount Pisgah water rights are not being changed to new uses by this application and will continue to be used for their decreed uses. **Applicant's Ownership.** The water rights represented by the City's 218.3 shares involved in this case represent rights to divert 4.04 c.f.s., being approx. 1.2 percent, of the total water rights decreed for div. by the Catlin Canal. **Prior Changes:** **Type of Use.** This Ct. entered a decree in Case No. 06CW49 changing the type of use of the City's Catlin Canal water rights assoc. with the 218.3 of its shares included in this Application to include use for irr., dom., and mun. uses, and for aug. of the mun. use provided through the Rocky

Ford Wells. Storage. Those Catlin Canal rights were also changed to include storage in the City's two existing terminal storage ponds generally located in the SW1/4, SW1/4 of Sec. 18, T. 22 S., R. 56 W., 6th P.M. The ponds allow the City to store up to 40 AF of water for processing through its water treatment plant for dist. through the mun. system or for del. to City raw water irr. and in Crystal Lake is located in the N1/2, SW1/4, Sec. 7, T. 23 S., R. 56 W., 6th P.M., and it has an est. capacity of 92 AF. **Rocky Ford Ditch Rights:** The City owns water rights represented by 8.7 shares of the Rocky Ford Ditch, which rights were previously and recently changed, to include mun., aug. and other uses by the decree entered in Case No. 06CW49. The City also owns other Rocky Ford Ditch water rights represented by other shares, but those rights have not been changed to allow mun. and aug. uses and they are not involved in this Application. **Water right decreed to the Rocky Ford Ditch, Priorities No. 1 and 14:** Priority No. 1: 5/15/1874. Amt: 111.76 c.f.s. Priority No. 14: 5/6/890. Amt: 96.54 c.f.s. **Case No.:** In re Adjudication of Priorities of Right to the Use of Water for Irr. in Water Dist. No. 17, Bent County Dist. Ct. **Pt. of div.:** The decreed location for the headgate of the Rocky Ford Ditch is on the S. bank of the Arkansas River, NW1/4, NE1/4, Sec. 30 in T. 22, S. of R. 57 W., 6th P.M. in Otero County, Colo. **Use:** Irr. **Applicant's Ownership.** The water rights represented by the City's 8.7 shares involved in this case represent the right to divert 1.22 c.f.s., being approx. 1.10 percent, of Priority No. 1 decreed for div. by the Rocky Ford Ditch. Pursuant to the decree entered in Case No. 06CW049, the City abandoned its pro-rata portion of Priority No. 14. **Prior Changes:** **Type of Use.** Case No. 06CW49 changed the type of use of the City's Rocky Ford Ditch water rights assoc. with the 8.7 of its shares included in this Application to include use for irr., dom., ind., aesthetic, rec., pisc. and mun. uses, and for aug. of the mun. use provided through the Rocky Ford Wells. Those Rocky Ford Ditch rights were also changed to include storage in the City's two existing terminal storage ponds and in the City's Crystal Lake as desc. above. **Proposed Change of Place of Use:** This application seeks to change the Rocky Ford Wells and City's Rocky Ford Ditch and Catlin Canal water rights that were previously changed in Case No. 06CW49 to allow such water rights to also be used within the Hancock Water Co.'s service area. The City has contracted to deliver treated water to the subDiv. through its mun. water treatment plant and treated water distribution system and has the contractual right to acquire the water system of the Hancock Water Co., a partially developed area located adjacent to the City boundary on its W. edge. The service area comprises approximately 370 acres of land located generally in Sec. 13, the E. 1/2 of the E. 1/2 of Sec. 14, the N.E. 1/4 of the N.E. 1/4 of Sec. 23, and the N. 1/2 of the N. 1/2 of Sec. 24, T.23 S., R. 57 W., 6th P.M. It is depicted on Exhibit A attached to application. **Change:** In addition to use of the water rights approved in Case No. 06CW49, the City proposes to provide mun. water service within the Hancock Water Co.'s service area. **Proposed Plan for Aug.:** **Area to be Served:** The service area of the Hancock Water Co. identified above. **Structures to be augmented:** Rocky Ford Wells No. 1, 2, and 3, desc. above. **Water Demands for Service:** Current water demand for the Hancock Water Co. is approx. 15.74 AF per year and is projected to grow to a demand of

approx. 20.00 AF per year in 2050. Water delivered by the City will be accounted for at the delivery pt. through master meters. **Water Depletions.** The residences have been and continue to be serviced for treatment of wastewater by individual septic disposal systems. It is possible that in the future the SubDiv. may be connected to the City's central waste water collection and treatment system. The depletions and locations from in-house use therefore may change, and both methods are addressed in this application. **Current Wastewater Treatment Method.** Wastewater within the SubDiv. is currently treated through individual septic discharge systems (ISDS). Wastewater return flows generated from in-house use following treatment through these ISDS will be used to offset well depletions. **Potential Future Wastewater Treatment Method.** Future wastewater treatment may include utilization of the City's central waste water collection and treatment facility. The City's lagoon system currently discharges to a drainage that flows into and currently enters the Arkansas River in the SE1/4, SW1/4, Sec. 9, T. 23 S., R. 56 W., 6th P.M. In the event wastewater is delivered to the City's wastewater treatment facility, these return flows will also be applied to offset depletions from the City's wells. **Sources of Aug. Supply: Rocky Ford Ditch.** The City's Rocky Ford Ditch water rights assoc. with 8.7 shares of the Rocky Ford Ditch Co. as changed to include aug. use in Case No. 06CW49. The City's use is limited to Mar. 1 through Nov. 30 corresponding to the hist. months with positive net stream depletions. Case No. 06CW49 decreed max. annual, max. monthly, and ten-year limits for the City's net depletions credits and also specific return flow obligations. **Catlin Canal.** The City's Catlin Canal water rights assoc. with 218.3 shares of the Catlin Canal Co. as described in Sec. 3 B. above and as changed to include aug. use in Case No. 06CW49. The City's use is limited to the season of Mar. 15 through Nov. 14 corresponding to the hist. months with positive net stream depletions. Net depletion credits are limited to max. annual, max. monthly, and ten-year limits, and use is subject to specific return flow obligations. **Project Water.** Water available to the City from the Fryingpan-Arkansas Project pursuant to allocation by the SECWCD, including rights to use return flows for aug. that the City may acquire from SECWCD. **Methods of Replacement.** Out of priority depletions from use of the Rocky Ford Wells will be replaced using the aug. sources and several methods of replacement. Stream depletions assoc. with operation of the City's Wells affect the reach of the river at or near the location of the City wells and above the Fort Lyon Canal headgate. The City may utilize various structures or methods to deliver or return water to the Arkansas River. These may include the following: **Release from Aug. Stations:** Rocky Ford Ditch Headgate - NW1/4, NE1/4, Sec. 30 T. 22 S., R. 57 W., 6th P.M., subject to ditch Co. approval. Aurora's Rocky Ford Aug. Station - N1/2, NE1/4, Sec. 30, T. 22 S., R. 57 W., 6th P.M., just below Rocky Ford Ditch Rating Flume. Aug. station at Crystal Lake - N1/2, SW1/4, Sec. 7, T. 23 S., R. 56 W., 6th P.M. Catlin Canal Headgate - N1/2, NW1/4, Sec. 19, T. 22 S., R. 58 W., 6th P.M., subject to ditch Co. approval. Catlin Canal Aug. Station at Timpas Creek - SW1/4, Sec. 18, T. 24 S., R. 56 W., 6th P.M. **Mun. Return Flows.** Treated sewage return flows accruing to the Arkansas River in the reach from the Fort Lyon Storage Canal headgate (NW1/4, SE1/4, Sec. 20, T. 22 S., R.

57 W., 6th P.M.) to the Fort Lyon Canal headgate (NE1/4, Sec. 32, T. 23 S., R. 55 W., 6th P.M.) or as otherwise may be determined in the future. The City's lagoon system discharges to a drainage that flows into and enters the Arkansas River in the SE1/4, SW1/4, Sec. 9, T. 23 S., R. 56 W., 6th P.M. Project Storage Releases. The Fryingpan-Arkansas Project water is the subject of numerous decrees entered in Water Div.s 2 and 5. Applicant may make annual requests for both mun. first-use and return flow water from SECWCD for delivery of Project water. Additionally, the City may store water in an If and When Account in Pueblo Reservoir. Water from the City's conversion of Catlin Canal Winter Water is stored in this account. Project Water and/or water attributable to the City's conversion of Catlin Canal Winter Water is delivered to the Arkansas River from Pueblo Reservoir. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a pt. in Sec. 36, T. 20 S., R. 66 W. of the 6th P.M., from which the N.E. Corner of said Sec. bears N. 61 deg. 21 min. 20 sec. E., a dist. of 2,511.05 ft., all as more particularly desc. in the decree in Case No. B-42135, Dist. Ct., Pueblo County, Colo. and Case No. 80CW6, Water Div. 2. ISDS and LIRF Returns. Return flows generated from ISDS within the service area may be utilized to offset well depletions. Additionally, application to lawn irr. within the service area will generate return flow that may be utilized to offset well depletions. To the extent return flows are generated either from the ISDS or lawn irr. the City will claim and apply this water to offset well depletions. **Terms and Cond.** The terms and cond. decreed in Case No. 06CW49 shall apply to the to the changes requested herein. In addition, the City will track and account for deliveries to the Hancock Water Co.'s service area at delivery pt. using master meters. Based on metered deliveries, the City can thereby account for in-house and lawn irr. uses. Return flows: The City will track and account for ISDS and LIRF return flows pursuant to methodologies and requirements of the Ct. decree as a cond. for crediting any such return flows against out-of-priority well depletions to provide service pursuant to the plan. **Land ownership**. Rocky Ford Well No. 3 And Aug. Station, City of Aurora, 15151 E. Alameda Parkway, First Floor, Aurora, CO 80012; Headgate for the Rocky Ford Ditch, Rocky Ford Ditch Co., 17850 RD JJ, Rocky Ford, CO 81067; Headgate for the Catlin Canal, Catlin Canal Co., P.O. Box 174, Manzanola, CO, 81058; Pueblo Reservoir Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Rd. 18E, Loveland, CO 80537-9711.

CASE NO. 10CW8; Previous Case Nos. W-665, W-665(76), 81CW134(W-665), 85CW84(W-665), 89CW46(W-665), 96CW13(W-665), and 02CW135(W-665) - THE CITY OF COLORADO SPRINGS, Colorado Springs Utilities, c/o Brett W. Gracely, P. O. Box 1103, Mail Code 0930, Colorado Springs, CO 80947-0930 (Mark D. Shea, City Attorney's Office - Utilities Division, Attorney for Applicant, P. O. Box 1103, MC 940, Colorado Springs, CO 80947-0940)
Application for Finding of Reasonable Diligence

EL PASO COUNTY, COLORADO

Name of structures: Chancellor Well No. 1 and Chancellor Well No. 2.
Describe conditional water rights including the following information from

the Referee's Ruling and Judgment and Decree: Date of Original Decree: Aug. 15, 1977; Case No. W-665, District Court, Water Division 2. **Subsequent decrees awarding findings of diligence:** W-665(76), Sep. 30, 1977; 81CW134, Feb. 3, 1982; 85CW84, Feb. 14, 1986; 89CW46, Jan. 11, 1990; 96CW13, Sep. 10, 1996; 02CW135, Feb. 25, 2004. **Legal description:** **Decreed Location:** Chancellor Well No. 1: at a point whence the NW corner of Sec. 31, T15S, R65W, 6th P.M. bears N 17° W, 6,301 feet. Chancellor Well No. 2: At a point whence the NW corner of Sec. 31, T15S, R65W, 6th P.M., bears N 20°30' W 950 feet. **Preferred Legal Description:** Chancellor Well No. 1: in the NW ¼ of the NW ¼ of Sec. 31, T. 15 S., R. 65 W., 6th P.M., 468 ft. from the N sec. line and 270 ft. from the W. sec. line. Chancellor Well No. 2: in the NW ¼ of the NW ¼ of Sec. 31, T. 15 S., R. 65 W. of the 6th P.M. at a point 893 ft. from the N. sec. line and 312 ft. from the W sec. line. **Typographical Error in Legal Description:** The legal description for the Chancellor Well No. 1, as described in Decreed Location above, and set forth in the Decree of the District Court, Water Division No. 2, entered on Dec. 5, 1972, in Case W-665 contains a typographical error. The correct location of the well is at a point whence the NW corner of Sec. 31, T15S, R65W, 6th P.M. bears N 30° W, 540 ft. Applicant will seek a change of water right to correct this error. **Source of water:** groundwater (Fountain Valley Aquifer). **Appropriation Date:** Chancellor Well No. 1: June 22, 1964; Amount: 650 g.p.m. or 1.44 c.f.s.; Chancellor Well No. 2: August 11, 1964; Amount: 1150 g.p.m. or 2.56 c.f.s. **Use:** municipal, industrial, irrigation, commercial and domestic. **Depth:** Chancellor Well No. 1: 34 feet; Chancellor Well No. 2: 35 feet. **Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** A. The wells are a part of an integrated water supply system owned and operated by the City of Colorado Springs to provide municipal water supply and service to the City and surrounding areas served by the City's water supply system, including an integrated well system in the Fountain Aquifer owned and controlled by the City of Colorado Springs. During the last diligence period, the City has continued to pursue development of its groundwater rights and groundwater systems for both potable and nonpotable use. The City has expended approximately \$316 million in capital expenditures in connection with development of its water supply system of which these water rights form a part. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Charles L. and Mary Jo Durbin, 1 Durbin Lane, Fountain, CO 80817-2855.

CASE NO. 10CW9 - THE CATAMOUNT CENTER, 740 West Caramillo Street, Colorado Springs, CO 80907; and HOWARD DROSSMAN and JULIE FRANCIS, 1624 North Tejon Street, Colorado Springs, CO 80907 (Henry D.

Worley, MacDougall, Woldridge & Worley, Attorneys for Applicants, 530 Communication Circle, #204, Colorado Springs, CO 80905; (719) 520-9288)

Amended Application for Change of Water Rights

TELLER COUNTY

Applicants are successors to the interests of Paul Francis and Muriel C. Francis, the applicants in Case No. 97CW163, which was decreed on May 29, 2003.

Decreed water rights for which changes are sought: Well No. 2. **Date of original and all relevant subsequent decrees.** Conditionally decreed in Case No. 97CW163, Water Division 2, May 29, 2003; diligence found in Case No. 09CW77, Water Division 2, January 20, 2010. **Legal description of structure:** NW1/4 Section 15, T. 13 S., R. 69 W., 6th P.M.; 110 feet from the North section line, 510 feet from the West section line. **Decreed source of water:** groundwater tributary to Crystola Creek. **Appropriation date:** December 8, 1997, but this is intended to be an exempt well. **Total amount decreed to structure:** none indicated in decree, but for uses described in C.R.S. 37-92-602 (1)(b), should be 2.5 acre feet annually. **Decreed use or uses:** those permitted by C.R.S. 37-92-602 (1)(b); i.e., ordinary household purposes, fire protection, the watering of poultry, domestic animals, and livestock and for the irrigation of not more than one acre of home gardens and lawns but not used for more than three single-family dwellings. **Amount of water that applicants intend to change:** none; this is done for the purpose of correcting the legal description of the parcel of land upon which Well No. 2 is to be located.

Decreed water rights for which changes are sought: Well No. 3. **Date of original and all relevant subsequent decrees.** Conditionally decreed in Case No. 97CW163, Water Division 2, May 29, 2003; diligence found in Case No. 09CW77, Water Division 2, January 20, 2010. **Legal description of structure:** NW1/4 Section 15, T. 13 S., R. 69 W., 6th P.M.; 580 feet from the North section line, 2020 feet from the West section line. **Decreed source of water:** groundwater tributary to Crystola Creek. **Appropriation date:** December 8, 1997, but this is intended to be an exempt well. **Total amount decreed to structure:** none indicated in decree, but for uses described in C.R.S. 37-92-602 (1)(b), should be 2.5 acre feet annually.

Decreed use or uses: those permitted by C.R.S. 37-92-602 (1)(b); i.e., ordinary household purposes, fire protection, the watering of poultry, domestic animals, and livestock and for the irrigation of not more than one acre of home gardens and lawns but not used for more than three single-family dwellings. **Amount of water that applicants intend to change:** none; this is done for the purpose of changing the decreed location of Well No. 3. **Detailed statement of change:** The decree in Case No. 97CW163 indicated that Well No. 2 is to be located on a tract of land described as the W1/2 W1/2 NW1/4 Section 15, T. 13 S., R. 69 W., 6th P.M., Teller County, Colorado. The only change sought herein for Well No. 2 is to change the legal description of the land upon which Well No. 2 is to be located to generally the North 600 feet of the NW1/4 Section 15, T. 13 S., R. 69

W., 6th P.M., Teller County, Colorado. A metes and bounds description is attached to the Application as Exhibit A. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The legal description of Well No. 2 itself will not change. The change in the legal description of the property upon which Well No. 2 is to be located would result in Well No. 3 being located on the same 35+ acre parcel. To avoid that result, the location of Well No. 3 is sought to be changed to the NW1/4 NW1/4 Section 15, T. 13 S., R. 69 W., 6th P.M., 800 feet from the North Section line and 2100 feet from the West section line. This is on a 105 acre parcel of land owned by The Catamount Center. The approximate boundary locations and locations of the “old” and “new” Well No. 3 are shown on Exhibit B to the Application. (The Catamount Center also owns a contiguous 35 acre parcel of land in Section 16 which is not involved in this application.) If necessary, 35 acres in the 105 acre parcel will be “assigned” to Well No. 3. The name and address of the owner of the land upon which Well No. 2 is to be located is the same as that of the co-applicants, Howard Drossman and Julie Francis. The name and address of the owner of the land upon which Well No. 3 is to be located is the same as that of the co-applicant, The Catamount Center.

CASE NO. 10CW10 - TURKEY CANON RANCH WATER COMPANY, LLC, 20 Boulder Crescent, Colorado Springs, CO 80903 (James G. Felt and Michael

J. Gustafson, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Modification of Decree

EL PASO COUNTY

II. MODIFICATION OF DECREE. A. Existing Decree. On December 17, 1997, Applicant, Turkey Canon Ranch Water Company, LLC’s (“Turkey Canon Water”) predecessor in interest, Turkey Canon Ranch, LLC, received a final decree adjudicating two conditional groundwater rights and a plan for augmentation for a 60¹ lot subdivision in District Court, Water Division 2, Case No. 94CW6². The subdivision is located in a portion of the SE 1/4 Sec. 32, the SW 1/4 Sec. 33, T16S, R67W, and the NW 1/4 Sec. 4 and a portion of Sec. 5, T 17S, R 67W, of the 6th P.M. in El Paso County. The Decree in Case No. 94CW6 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. At the time of the decree, Turkey Canon Ranch, LLC was the owner of 19 shares of stock in Twin Lakes Reservoir and Canal Company that are currently dedicated to the augmentation plan decreed in Case No. 94CW6 to replace depletions resulting from the pumping of two wells - TCR Well No. 1 and TCR Well No. 2 (collectively “TCR Wells”). The decree in Case No. 94CW6 provides that 3 of the 19 Twin Lakes shares are permanently dedicated to the augmentation plan to replace the consumptive use associated with pumping the TCR Wells. The remaining 16 Twin Lakes shares are dedicated to the augmentation plan to replace depletions associated with pumping the TCR Wells, until such time as credit can be claimed for septic system return flows. Turkey Canon Ranch Water District (“Turkey Canon District”) is the current owner of the

augmentation plan and the groundwater rights decreed in Case No. 94CW6³. Turkey Canon District is also the owner of the 3 Twin Lakes shares permanently dedicated to the augmentation plan. Turkey Canon Water is the owner of the remaining 16 Twin Lakes shares currently dedicated to the augmentation plan in Case No. 94CW6⁴. Eighty-eight percent of the lots in the subdivision are located in the Red Creek drainage, tributary to Beaver Creek, tributary to the Arkansas River, and twelve percent of the lots in the subdivision are located in the Turkey Creek drainage, directly tributary to the Arkansas River. The water pumped from the TCR Wells is supplied to the houses, for in-house use only, through a central water system with sewage disposal by way of individual septic disposal systems on each lot. The decree in Case No. 94CW6 found that since each of the homes would have its own septic leach field, return flows from each home will go to the stream drainage in which the home is located and that the net depletion to each drainage which needed to be replaced under the plan for augmentation would be equal to the stream depletion to each drainage less return flows accruing to each drainage from the septic systems. **B. Return Flows.** The decree in Case No. 94CW6 also provides that credit for return flows from the septic leach fields could be taken once a saturated condition and a hydrologic gradient towards the affected stream drainages was established in the surficial soils hydrologically connected to Red Creek and Turkey Creek. The decree also provided that after saturation was established, a request could be made to the Division Engineer for release of all or a portion of the 16 Twin Lakes shares from dedication to augmentation plan, such shares no longer being necessary for the provision of augmentation water in light of septic return flow credit. In consultation with the Division Engineer, Turkey Canon Water set up a monitoring program, in September of 1998, to evaluate whether a saturated condition had developed. This program consisted of three monitoring wells drilled below the septic system for lot 30 and three monitoring wells drilled below the septic system for lot 54. In the over eleven years since the monitoring program has been in place, it has become apparent that due to geologic conditions it is unlikely that a saturated condition will develop. On June 16, 2009 and November 19, 2009, the Division Engineer's staff conducted field investigations of the monitoring wells drilled on lots 30 and 54 of the subdivision to determine if a saturated condition in the alluvium exists and whether any secondary consumption of septic system return flows is occurring from vegetation or other surface losses. The Division Engineer's staff determined that no saturated alluvial condition exists on the two lots with monitoring wells, that a saturated condition is unlikely to develop, and that there was no evidence of secondary consumption of the septic system return flows. Turkey Canon Water's engineers have determined that, even without a saturated condition in the soils, return flows from the septic leach fields are accruing to the stream drainages in which each septic system is located. Specifically, the engineers believe that water entering the leach fields is percolating downward into the weathered bedrock zone and that the water travels vertically in the weathered bedrock zone until still lower vertical permeability materials are encountered. At this point the water travels horizontally towards the local drainage. The water then enters the alluvium of the

Red Creek or Turkey Creek drainage and continues down gradient within the alluvium as contemplated in the decree. **III. REQUESTED MODIFICATIONS TO DECREE.** A. Turkey Canon Water requests that the decree in Case No. 94CW6 be amended such that a saturated condition in the surficial soils hydrologically connected to Red Creek and Turkey Creek no longer be required before credit for septic system return flows can be claimed. Specifically, Turkey Canon Water requests that paragraph 25 of the decree in Case No. 94CW6 be amended to allow credit for return flows to be taken after sufficient evidence has been submitted for the Division Engineer to his satisfaction that return flows are accruing to the Red Creek and Turkey Creek drainages. Turkey Canon Water also requests that paragraph 25 of the decree in Case No. 94CW6 be amended to allow the Division Engineer to release all or a portion of Turkey Canon Water's 16 Twin Lakes shares from dedication to the augmentation plan once the Division Engineer is satisfied that return flows from the septic leach fields are accruing to the Red Creek and Turkey Creek drainages. B. Turkey Canon Water also requests that paragraph 33 of the decree in Case No. 94CW6 be deleted in its entirety as the monitoring plan set forth therein is no longer necessary under the revisions requested herein. C. All of the terms and conditions of the decree in Case No. 94CW6 other than those mentioned above will remain in full force and effect. **IV. OWNERSHIP OF STRUCTURES.** The augmented wells are owned by the Turkey Canon Ranch Water District, whose address is c/o Kurt Schroeder, President, 15580 Cala Rojo Dr., Colorado Springs, CO 80926.

¹ Fifty-nine of the lots were for single-family residences with the remaining lot containing a community fire station.

² By decree entered on November 6, 1998, in District Court, Water Division 2, Case No. 97CW171, the decree in Case No. 94CW6 was amended to allow Turkey Canon Water to provide in-house water to three additional residences and commercial use water to one restaurant, all of which are located outside the boundaries of the subdivision, through the central water supply system for the subdivision. The Court in Case No. 97CW171 also found that the subdivision only contained 59 lots, 58 of which were for single family residences and 1 for the community fire station. The decree in Case No. 97CW171 did not make any changes to the procedure for claiming return flow credit and requesting release of the 16 Twin Lakes shares set forth in the decree in Case No. 94CW6, as discussed herein.

³ By an Assignment dated February 9, 2009, Turkey Canon Water assigned all of its right, title and interest in the Decree in Case No. 94CW6, the TCR Well, and the 3 permanently dedicated Twin Lakes shares to Turkey Canon District.

⁴ In Case No. 02CW11, Water Court, Water Division 2, Turkey Canon Water obtained a decree awarding TCR Well No. 1 an absolute water right in the amount of 3.06 annual acre feet for in-house domestic use, commercial use for the fire station and replacement at a flow rate of 100 gpm. Turkey Canon Water was also awarded a finding of reasonable diligence for the remaining 17.59 acre foot conditional water right for TCR Well No. 1 and a finding of reasonable diligence for the conditional water right awarded to TCR Well No. 2 in Case No. 94CW6. In Case No. 09CW16, pending in District Court, Water Division 2, Turkey Canon District is seeking to make absolute the conditional water right for TCR Well No. 1 in the amount of 7.23 annual acre feet in addition to the 3.06 acre feet decreed absolute in Case No. 02CW11 and to maintain the remaining conditional water right for TCR Well No. 1 in the amount of 10.36 annual acre feet and the entire conditional water right decreed to TCR Well No. 2

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 April 2010, (forms available at Clerk's office or at www.courts.state.co.us, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 9th day of March, 2010.

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)
Published: March _____, 2010