

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING FEBRUARY 2011

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during February 2011, 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. 09CW56 – STATE OF COLORADO, Acting by and through the State Board of Land Commissioners, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008

(Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorneys for State Board of Land Commissioners, 1525 Sherman Street, 7th Floor, Denver, Colorado 80203. Telephone: (303) 866-5118)

Amended Application for Water Storage Right

PUEBLO COUNTY

Name of Structures and legal descriptions: J.H. Holland Reservoir No. 1. **Location:** Storage facility located in the NW1/4 SW1/4 S10. T18S, R63W, 6th P.M., 2110' from the S Section line and 1150' from the W Section line of said S 10. **GPS location in UTM format (Zone 13, Units set to meters, Datum NAD83, and Units set to true north)** Northing 4261127 Easting 549051. **Source:** Fed by Holland Springs. **Amount:** 55 acre feet, Absolute with the right to fill and refill at a rate of .70 cfs. **APP. Date:** 1877 by construction of a dam. **Use:** Irrigation of 91 acres, livestock water, waterfowl habitat, wildlife and fisheries and the right to store water for said uses. **Dam Height:** 11', **Length** 2,072'; **Total Capacity:** 55 AF.

CASE NO. 09CW58 – STATE OF COLORADO, Acting by and through the State Board of Land Commissioners, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008

(Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorneys for State Board of Land Commissioners, 1525 Sherman Street, 7th Floor, Denver, Colorado 80203. Telephone: (303) 866-5118)

Amended Application for Water Storage Right

PUEBLO COUNTY

Name of Structures and legal descriptions: J.H. Holland Reservoir No. 2. **Location:** Storage facility located in the SE1/4 NE 1/4 S9. T18S, R63W, 6th P.M., 1,400' from the N Section line and 400' from the E Section line of said S 9. **GPS location in UTM format (Zone 13, Units set to meters, Datum NAD83, and Units set to true north)** Northing 4261665 Easting 548602. **Source:** Fed by Headquarters Spring. **Amount:** total capacity 143 AF, Absolute, with the right to fill and refill while in priority at a rate of 0.30 cfs, Absolute. **APP. Date:** April 1965 by construction of a dam. **Use:** Irrigation of 91 acres, livestock water, waterfowl habitat, wildlife and fisheries. **Dam Height:** 16.9',

Length 675, **Total Capacity:** 143 AF; active capacity 39 acre feet, dead storage 104 acre feet.

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

Amended Application for Water Rights (Surface and Storage)

EL PASO COUNTY

AMENDED APPLICATION FOR WATER RIGHTS (SURFACE AND STORAGE). 2.

Name of structures: a. MSMD Diversion No. 1 (diversion structure). b. MSMD Diversion No. 2 (diversion structure). c. MSMD Diversion No. 3 (diversion structure). d. MSMD Diversion No. 4 (diversion structure). e. MSMD Reservoir (reservoir). **3. Legal description of each structure:**

See Figure 2 attached to the Amended Application for map of locations of structures. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) MSMD Diversion No. 1: Legal Description: El Paso County NW1/4 of the SW1/4 of Section 21 Township 12S Range 64W 6th P.M. Distance from section lines (section lines are typically not property lines) 1834 Feet from S and 987 Feet from W. Street Address: N/A. MSMD Diversion No. 2: Legal Description: El Paso County SW 1/4 of the SW 1/4 of Section 21 Township 12S Range 64W 6th P.M. Distance from section lines (section lines are typically not property lines) 430 Feet from S and 495 Feet from W. Street Address: N/A. MSMD Diversion No. 3: Legal Description: El Paso County: NE 1/4 of the SE 1/4 of Section 29 Township 12S Range 64W 6th P.M. Distance from section lines (section lines are typically not property lines) 2348 Feet from S and 780 Feet from E. Street Address: N/A. MSMD Diversion No. 4: Legal Description: El Paso County: SE 1/4 of the SW 1/4 of Section 29 Township 12S Range 64W 6th P.M. Distance from section lines (section lines are typically not property lines) 5 Feet from S and 2542 Feet from W. Street Address: N/A MSMD Reservoir: Legal Description: El Paso County: SE 1/4 and SW 1/4 of the NE 1/4 of Section 20 Township 12S Range 64W 6th P.M. Distance from section lines (section lines are typically not property lines): N/A. Street Address: N/A **4.**

Source: Unnamed tributary to the Upper Black Squirrel Creek. **5. A. Date of initiation of appropriation:** December 30, 2010. **B. How appropriation was initiated:**

Consultation report prepared by consulting engineer and filing of Application by Applicant. **C. Date water applied to beneficial use:** N/A. **6. Amount claimed in cubic feet per second (cfs) and acre feet (af):**

a. MSMD Diversion No. 1: 5 cfs (conditional). b. MSMD Diversion No. 2: 5 cfs (conditional). c. MSMD Diversion No. 3: 5 cfs (conditional). d. MSMD Diversion No. 4: 5 cfs (conditional). e. MSMD Reservoir: 169 af (conditional) (with right to fill and re-fill). **7. Use or proposed use:**

Diversion and storage of 169 acre feet in proposed reservoir and subsequent application to irrigation and municipal/domestic uses. A. Applicant serves and has a coterminous boundary with the Meridian Ranch development master-planned development, encompassing approximately 2,620 acres in portions of Sections 19, 20, 21, 28, 29, and 30 of Township 12 South, Range 64 West in Colorado as shown in map attached to the Amended Application as Figure 2 (general location of Applicant's boundary shown in Figure 1 attached to the Amended Application). Meridian Ranch is located

approximately 2.5 miles north of Falcon, Colorado, in El Paso County. Applicant will use the MSMD Diversion Nos. 1, 2, 3 and 4 and MSMD Reservoir to supply water throughout Meridian Ranch. **8. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.** Name of Owner: Meridian Ranch Investments, Inc. Mailing Address: P.O. Box 80036; San Diego, CA 92138-0036. Name of Owner: GTL, Inc. Mailing Address: 3575 Kenyon St.; San Diego, CA 92110-5333. **9. Remarks or any other pertinent information:** None.

CASE NO. 11CW5 – JAMES F. MOBLEY and PATRICIA D. MOBLEY, P. O. Box 947, Cedar Hill, TX 75106; (972) 291-3744

Application for Underground Water Right

HUERFANO COUNTY

Name of well and permit, registration, or denial number: Scoones; Permit No. 237881. **Legal description of well:** Huerfano County, SE ¼ of the SW ¼ Section 3, Township 29 South, Range 66 West, 6th P.M., 200 feet from the South line and 2400 feet from the West line. **Street Address:** 565 Cantel Rd., Walsenburg, CO 81089; **Subdivision:** Silver Spurs Ranch; **Lot:** 42; **Block:** Filing 3. **Source of water:** Groundwater. **Depth of well:** 167. **Date of appropriation:** 12/04/2001. **How appropriation was initiated:** Owner struck water while drilling for water. **Date water applied to beneficial use:** 12/04/2001. **Amount claimed:** 15 gpm Absolute. **If well is non-tributary: Name of aquifer into which the well is drilled:** Poison Canyon Aquifer. **Amount claimed in acre-feet annually:** 2. **Proposed use:** Fire protection, ordinary household purposes inside not more than three (3) single family dwellings, the irrigation of not more than one (1) acre of home gardens and lawns located on Lot 42, Silver Spurs Ranch, Filing 3, Huerfano County, Colorado, and the watering of domestic animals. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants. **Remarks:** This is the filing of a second application. The first application filed 12/30/2008, Case No. 08CW105 was not prosecuted to completion.

CASE NO. 11CW6 – COMPLAINT. This case is a complaint and is being listed in the resume to account for the case number in consecutive order.

CASE NO. 11CW7 - DONALD DEROWITSCH and TAMARA DEROWITSCH, 9288 West Arizona Avenue, Lakewood, Colorado 80232

(Julianne M. Woldridge, MacDougall, Woldridge & Worley, PC, Attorneys for Applicants, 530 Communication Circle, Suite 204, Colorado Springs, Colorado 80905, (719) 520-9288)

Application for Underground Water Right

HUERFANO COUNTY

2. Name of Well: Well 252931, Permit number 252931. **3. Legal Description of Well:** SE¼SE¼, Sec. 3, T.29S. R. 67W., 6th P.M., Huerfano County, CO, a distance of 1100

feet from the South section line and 650 feet from the east section line. 1401 Sunset Ridge Loop, Walsenburg, CO 81089, Lot 60 River Ridge Ranch Subdivision Filing 2. **3. Source of water:** tributary groundwater. Depth of Well: 600 feet. **5.A. Date of Appropriation:** September 5, 2003. **B.** The appropriation was initiated by the filing of an application for a well permit. Applicants claim a priority date for this well of September 5, 2003 pursuant to C.R.S. § 37-92-602 (4). **C.R.C.P. 89 Notice: The priority for this water right may antedate earlier adjudicated water rights. The water right claimed by this application may affect in priority any water right claimed or heretofore adjudicated within this division and owners of affected rights must appear to object and protest within the time provided by statute, or be forever barred.** **C.** Water was applied to beneficial use on December 18, 2003. **6. Amount claimed:** 15 g.p.m. absolute. **7. Use:** fire protection, domestic uses inside no more than three single-family dwellings, irrigation of not more than one acre of gardens and lawns on the subject property, and watering of domestic animals. **8. Names and addresses of owners of the land upon which the well sits:** Applicants. Applicants, therefore, request a decree adjudicating the underground water right described above and such other relief as the Court deems appropriate.

CASE NO. 11CW8; Previous Case No. 00CW149 - TOWN OF LA VETA, PO Box 174, La Veta, CO 81055 (Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905, (719) 520-9288)

HUERFANO COUNTY

2. Name of Reservoir: La Veta Town Reservoir Enlargement. **3. A.** The La Veta Town Reservoir Enlargement was decreed in Case No. 00CW149 by the Water Court for Water Division 2 on March 28, 2005. **B.** This is the first application for a finding of diligence since the La Veta Town Reservoir Enlargement was first decreed. **C.** The legal description of the original La Veta Town Reservoir (of which the Enlargement will be a part) is as follows: "in the West Half (W 1/2) of the Southeast Quarter (SE 1/4) of Section 8, Township 29 South, Range 68 West, Huerfano County, Colorado." However, the actual location of the La Veta Town Reservoir is in Section 28, T. 29 S., R. 68 W., 6th P.M. The legal description was corrected to reflect its actual location in Case No. 00CW149. The point of diversion for this off-channel reservoir is as follows: Town of La Veta Pipeline, 2.98 cfs from the Cucharas River, point of diversion is "on the right bank of the Cucharas River bearing South 71°23' West 2862 feet from the East Quarter corner Section 5, Township 30 South of Range 68 West of the 6th P.M., Huerfano County, Colorado. A new structure named the Town of La Veta Pipeline No. 2 will be located at the same general location, and will have a flow rate of 5.0 cfs, conditional. **D. The source** is the Cucharas River. **E. Date of appropriation:** December 19, 2000. **F. Amount:** 150 acre feet. **4. Detailed outline of work, including expenditures.** The Town of La Veta has an integrated water system, such that work on one aspect of the system constitutes diligence on other aspects. During the past six years, the Town completed a change of water rights for its 2.0 cfs interest in the Mexican Ditch, which will eventually be stored in the La Veta Town Reservoir and La Veta Town Reservoir Enlargement. It is Applicant's position that this work constituted diligence for the La Veta Town Reservoir Expansion. During the same time frame, La Veta's water

resource engineer and water attorney participated as opposers in several water rights applications which had the potential to injure the Town's water rights. La Veta stipulated out of one such case during the diligence period, and three other cases continue. For these matters, and other miscellaneous matters associated with La Veta's water rights and water system, La Veta spent \$ 57,538.22 for legal fees and \$25,071.90 for engineering fees during the diligence period. **6. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure will be located.** The La Veta Reservoir is located on land owned by the Town of La Veta. The point of diversion for the La Veta Pipeline is located on land owned by Ewing Homestead, L.L.C., which has been sent a copy of this application by certified mail.

CASE NO. 11CW9 - HIGH FOREST RANCH HOMEOWNERS ASSOCIATION, 4541 High Forest Road, Colorado Springs, CO 80908 (Henry D. Worley, MacDougall, Woldridge & Worley, PC, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905 719-520-9288)

Application for Conditional and Absolute Water Storage Rights and for Approval of Plan for Augmentation

EL PASO COUNTY

I. APPLICATION FOR CONDITIONAL AND ABSOLUTE WATER STORAGE RIGHTS.

2. Names of Reservoirs: Upper Reservoir and Lower Reservoir. Applicant will change these names to something a little more imaginative after consultation with its members. **3. Information regarding Upper Reservoir:** **a. Location:** NE1/4 SE1/4 Section 26, T. 11 S., R. 66 W., 6th P.M., northing 39° 03' 43.8", easting 104° 44' 26.3". **b. Amount claimed (capacity):** not to exceed 4.5 acre feet, conditional. **c. Surface area:** not to exceed 1.0 acre. **d. Dam height:** 10 feet. **e. Date of appropriation:** February 24, 2011. **f. How appropriation was initiated:** By the filing of this application. **g. Uses claimed:** fish and wildlife, fire protection. **h. Other:** the claimed capacity and surface area are maximums; it is anticipated that the reservoir may be smaller when it is constructed. **4. Information regarding Lower Reservoir:** **a. Location:** SW1/4 SE1/4 Section 26, T. 11 S., R. 66 W., 6th P.M., Northing 39°E 03' 29.4", easting 104° 44' 48.6". **b. Amount claimed (capacity):** 1.53 acre feet, absolute. **c. Surface area:** 0.5 acre. **d. Dam height:** 10 feet. **e. Date of appropriation:** July 23, 2005. The pond is believed to have been constructed several years prior to that date, but the earliest verification that it was constructed by that date is its visible location on a Google Earth aerial photo taken on July 23, 2005. **f. How appropriation was initiated:** By initiation of construction of dam. **g. Uses claimed:** fish and wildlife, fire protection. A map showing the locations of the Upper and Lower Ponds 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.) **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.** **5. Names of structures to be augmented:** Upper Pond and Lower Pond. The appropriation dates, amounts, sources of water, decreed uses and locations of the Upper Pond and Lower Pond are set forth above. These structures are not yet decreed. **6. Water rights to be used for augmentation:** **A. Date of original and all relevant subsequent decrees.** Case No. 85CW131, Water Division 2, dated May 18, 1988. **Other relevant decree:**

Consolidated Case Nos. 99CW167 and 99CW237, Water Division 2, dated August 24, 2000. **B. Type of water right.** Case No. 95CW131 adjudicated water rights in the nontributary and nontributary Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers. **C. Source of water.** Fully augmented return flows from Dawson aquifer. **D. Appropriation date.** Not applicable. **Amount to be included in this augmentation plan:** 3.61 acre feet. **Current uses.** Water is currently used primarily for indoor uses and for landscape irrigation. Applicant intends to use fully augmented return flows from such uses. **7. Complete statement of plan for augmentation.** Applicant is the successor to Pulpit Rock Investments, LLC, which conveyed to Applicant the rights to 435 acre feet annually (43,500 acre feet total) of water rights in the Dawson aquifer, and 400 acre feet annually (40,000 acre feet total) of water rights in the Laramie-Fox Hills aquifer, both as decreed in Case No. 85CW131. The Dawson and Laramie-Fox Hills aquifer water rights were decreed for the following purposes: "...for all municipal purposes including domestic, industrial, commercial, irrigation, stock watering, recreational, fish and wildlife, fire protection and sanitary purposes.... *** The water will be produced for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from the use of this ground water or of water from other sources, and for augmentation purposes." In Consolidated Case Nos. 99CW167 and 99CW237, Applicant's predecessor obtained approval of a plan for augmentation for a proposed development which was projected to include 210 lots for individual houses, with associated indoor uses, landscape irrigation and livestock water. It also obtained the right to pump up to 19 acre feet annually for "open space," but did not indicate what use of the water would actually occur on the "open space." Based on the projections at the time, return flows from in-house uses were expected to equal 51.0 acre feet annually at full build-out, return flows from landscape irrigation were expected to equal 8.1 acre feet annually (based on 16% return flows from annual applications of 0.27 acre foot per lot), and no return flows were claimed from livestock water or open space. Annual pumping from the Dawson aquifer for all uses was restricted to 145 acre feet. The property was ultimately subdivided into 200 lots rather than 210 lots. Based on the same per-lot uses, at full build-out annual return flows from in-house uses are projected to equal 48.6 acre feet, and annual return flows from landscape irrigation are projected to equal 7.6 acre feet, for an annual total of 56.2 acre feet. Depletions during the 300 year pumping period were expected to rise from 0.5% of pumping during each of the first ten years of pumping, to a maximum of 22.59 percent of annual pumping in the 300th year, or $145 \times 0.226 = 32.76$ acre feet. Thus, based on projections, there will always be at least $56.2 - 32.76 = 23.44$ acre feet annually of fully augmented Dawson aquifer return flows which are excess to the requirements of the augmentation plan decreed in Consolidated Case Nos. 99CW167 and 99CW237. Due to the distance of the sources of the return flows (septic systems and landscape irrigation in the subdivision) from any perennial stream upon which there are adjudicated water rights, it is assumed that the return flows accrue to Black Squirrel Creek on a constant monthly basis of slightly less than 2.0 acre feet per month. These fully augmented Dawson aquifer return flows will be used to replace depletions associated with the Upper and Lower Ponds, as discussed below. Both ponds will capture precipitation and the Lower Pond in particular will capture some runoff; however, due to what is expected to be extremely infrequent

diversions from the ponds for fire fighting purposes, for all practical purposes there will be no diversions from the reservoirs. Thus, the only depletions ordinarily associated with both reservoirs will be those caused by evaporation. The Lower Pond is a stream bed reservoir. Applicant has chosen not to claim a credit against evaporation for the consumption by phreatophytes which occupied the reservoir location prior to its construction, but does claim a credit for effective precipitation during those months in which the ponds are not frozen (April through November). The Upper Pond is not a stream bed reservoir, and is not entitled to an offset for effective precipitation. Average monthly gross evaporation, precipitation, effective precipitation and the augmentation requirement for the 0.5 acre Lower Pond and the Upper Pond, at its maximum size of 1.0 acre of surface area, is as shown on Table 1.

Table 1

Month	April	May	June	July	Aug	Sept	Oct	Nov.	Total
Gross Evap. (in)	3.38	4.69	5.81	6.00	4.88	4.13	2.81	1.50	
Precipitation (in)	3.09	2.52	2.51	2.79	3.03	1.62	1.34	1.41	
Effective precip (in)	2.16	1.76	1.76	1.95	2.12	1.13	0.94	0.99	
Lower Pond augmentation requirement (AF)	0.05	0.12	0.17	0.17	0.11	0.12	0.08	0.02	0.85
Upper Pond augmentation requirement (AF)	0.27	0.40	0.50	0.50	0.40	0.33	0.23	0.13	2.76
Combined augmentation requirement (AF)	0.32	0.52	0.67	0.67	0.51	0.45	0.31	0.15	3.61

Average monthly “excess” Dawson aquifer return flows of slightly less than 2.0 acre feet will greatly exceed the maximum monthly augmentation requirement of 0.67 acre foot. Applicant proposes to modify its annual accounting form to show that the augmentation obligation is being met through use of such return flows. Applicant uses well permit no. 055932-F to keep the Lower Pond at capacity when precipitation and surface inflow is insufficient to do so. Applicant currently intends to use permit no. 62040-F to keep the Upper Pond full, but requests the right to construct a new Dawson aquifer well nearer the Upper Pond, in the NE1/4 SE1/4 Section 26, T. 11 S., R. 66 W., 6th P.M., for that purpose. Any well permit for a new Dawson aquifer well will be limited to pumping of 145 acre feet annually in combination with all other Dawson aquifer wells in the subdivision. Any water pumped into the ponds will be attributable to the 19 acre feet of water allocated to open space in Consolidated Case Nos. 99CW167 and 99CW237. After the Upper Pond is constructed, either before or at the time of the necessity of filing an application for a finding of diligence or to make absolute, Applicant will file

documents with the court indicating the final configuration of the Upper Pond, and in particular its surface area, and will seek to finalize the augmentation requirement for the Upper Pond. The application in Consolidated Case Nos. 99CW167 and 99CW237 were filed in both Water Divisions 1 and 2, and were then consolidated in Water Division 2. Because no more water will be diverted from the Dawson aquifer on an annual basis than was allowed in Consolidated Case Nos. 99CW167 and 99CW237, there will be no increase in depletions to the South Platte drainage as a result of the operation of this plan for augmentation. For that reason, Applicant does not believe that notice of this application is required to be given in Water Division 1, and will move that Water Division 2 enter an order so holding.

CASE NO. 11CW10 (Water Division 2) and CASE NO. 11CW25 (Water Division 1) – DONALD WESCOTT FIRE PROTECTION DISTRICT, 15415 Gleneagle Drive, Colorado Springs, CO 80921 (Paul G. Anderson, Paul G. Anderson, LLC, Attorney for Applicant, P. O. Box 50631, Colorado Springs, CO 80949-0631; (719) 510-9420)

Application for Approval of Plan for Augmentation

EL PASO COUNTY, COLORADO

INTRODUCTION. The Applicant herein, the Donald Wescott Fire Protection District (“District”), currently leases property in northern El Paso County from the David A. Wismer and Mary Anne Wismer Trust (“Wismer Trust”). The District is planning construction of a new fire station on the lease property before the end of 2011. Under the lease agreement with Wismer Trust, the District has the right to use up to two (2) acre-feet of water from the not-nontributary Dawson aquifer underlying the lease property. In this area, the Wismer Trust owns 65 acre-feet per year of Dawson aquifer ground water. This ground water was decreed previously for various beneficial uses, including domestic, commercial, municipal, fire protection and augmentation, in Case No. 85CW31, Water Division 2, on May 18, 1988. Eventually, the Wismer Trust will gift the lease property to the District along with at least one (1) acre-foot of Dawson water and such amount of additional, non-tributary water as is necessary for approval of the plan for augmentation described herein. **APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION**

1. Name(s) and address(es) of owner(s) of land on which well is to be located: The David A. Wismer and Mary Anne Wismer Trust, 15555 Highway 83, Colorado Springs, CO 80921. Applicant has requested a letter from the Wismer Trust consenting to the District’s filing of this Application and will file a supplement hereto once the letter is received.

2. Name and address of Applicant: Donald Wescott Fire Protection District, 15415 Gleneagle Drive, Colorado Springs, CO 80921. Please direct all correspondence to the District’s counsel identified above. **3.**

Name of water right to be augmented: One or more wells to be constructed into the Dawson aquifer underlying the Property (as defined below), consistent with the terms of the decree in Case No. 85CW31 and the augmentation plan set forth herein. **4. Legal**

Description: Approximately 40 acres located in the NE¼ NE¼ Section 34, Township 11 South, Range 66 West of the 6th P.M. (the “Property”; see map attached to the Application). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **5. Diversion rate:** Up to 50 gallons per minute (gpm) and up to a maximum of two (2) acre-feet per year is proposed by this plan. Per the lease agreement with Wismer Trust as described above, the District is

entitled to annually withdraw up to two (2) acre-feet of ground water underlying the Property in the not non-tributary Dawson aquifer; however, the District anticipates its actual use may be less than this amount. **6. Describe the water rights to be used for augmentation:** The District proposes to replace depletions caused during pumping with non-evaporative septic system return flows. Return flows are estimated to be ninety percent (90%) of Dawson aquifer withdrawals, as there will be virtually no outside water use. The return flows will exceed the amount of stream depletion, which is estimated to be a maximum of twenty three percent (23%) of Dawson aquifer pumping, or 0.46 acre-feet per year if the maximum pumping equals 2.0 acre-feet per year over 300 years. These depletions are computed to occur in both the South Platte and the Arkansas River drainages as shown in Exhibit 1 attached to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). Water available in the non-tributary Arapahoe aquifer and Laramie-Fox Hills aquifer underlying Sections 34 and 35 is owned by the Wismer Trust. This water was adjudicated for augmentation use in Case No. 85CW31. As described above, the Wismer Trust will convey to the District as much of this ground water as is necessary for augmentation purposes, and in turn the District will reserve the non-tributary water to replace post-pumping depletions. The District also reserves the right to replace pumping or post-pumping depletions with any judicially-acceptable source of augmentation water. **7. Statement of plan of augmentation, covering all applicable matters under C.R.S. 1973, sections 37-92-103(9), 302(1) and 305(8) (give full details of plans):** As described above, the District has leased the Property from the Wismer Trust in northern El Paso County, Colorado. The District plans to construct a new fire station on the Property and will require a water supply for construction and station operation purposes. Water appropriated pursuant to the well permit to be issued and other potential wells will be used to supply these purposes. Water for fire suppression is not a part of this plan for augmentation. This augmentation plan presumes that the new fire station operations will result in a total water demand of up to 2.0 acre-feet per year. The majority of the District's water use will be for domestic-type, inside-use only water needs. Limited watering of xeriscape areas totaling 150 plants also occur. The annual xeriscape irrigation demand is anticipated to be a maximum of 15,000 gallons in the first year, and zero water thereafter. Because the xeriscape areas will be watered using a drip-irrigation system, the irrigation use is considered fully consumed. Inside water uses will include a maintenance and wash bay that directs wash water directly to the septic system planned to serve the new fire station. The total maximum annual water demand associated with this use is estimated to be 6,000 gallons. The remaining indoor uses will be domestic-type uses (personal hygiene, cooking and clothes washing). The District contemplates there will be four (4) firefighters housed at the new fire station year around, with a daily water requirement of 85 gallons per day per person. This will result in water use of up to 0.38 acre-feet annually. Additionally, the District anticipates sponsoring public and/or open-house events several times a year. To account for water use associated with these events, the District presumes an additional annual water demand of 0.6 acre-feet. All wastewater on the Property will be sewerred through non-evaporative septic systems. Consumptive use for the septic is estimated to be ten percent (10%). Of the total inside-use water demand of approximately 0.98 acre-feet annually, 15,000 gallons is

consumed in the first year through xeriscape irrigation and 600 gallons is consumed by the maintenance and wash bay use. At this rate, during pumping the augmentation requirement would slowly rise to 0.22 acre-feet annually through 300 years of pumping. To offer flexibility, this augmentation plan is for two (2) acre-feet per year or a maximum depletion of 0.46 acre-feet per year. Exhibit 1 to the Application illustrates the expected stream depletion factors as generated by the State Engineer's ground water flow model "DA02". Return flows credits from well pumping will augment the annual replacement requirement. The District seeks approval of a plan for augmentation allowing the District to aggregate all depletions and replace them to the Arkansas River. Once well pumping ceases, post-pumping depletions will continue to occur. The maximum post-pumping depletion factor is twenty three percent (23%) of the annual pumping rate. Presuming well pumping of 2.0 acre-feet per year for the entire period, the post-pumping depletion requirement is 0.46 acre-feet per year. The Wismer Trust owns land adjacent to the Property located within a portion of Section 34 and all of Section 35, Township 11 South, along with portions of Sections 2 and 3, Township 12 South, all in Range 66 West of the 6th PM. As decreed in Case No. 85CW131(A), the Wismer Trust owns 166 acre-feet per year of non-tributary water within the Arapahoe aquifer and 297 acre-feet per year in the Laramie-Fox Hills (L-FH) aquifer ground water underlying parts of this property. For this plan for augmentation, the Wismer Trust will convey to the District non-tributary water from either the Arapahoe or the L-FH aquifer ground water in an amount equal to the expected total post-pumping depletion, or up to 612 acre-feet over a 300-year period, including the two percent (2%) relinquished to the stream system as required by statute. **8. Proposed Terms and Conditions:** The District shall operate its well on the Property under the terms and conditions decreed in Case No. 85CW31, Water Division 2 and as contained herein. The District shall meter and record all well use for reporting purposes. The District shall use an accounting form acceptable to the Division Engineer to record actual annual use and associated depletions, and it will show how stream depletions are calculated and that return flows augment these depletions. The District shall use its well(s) consistent with the terms of the well permit(s) issued. At minimum, the District shall use non-evaporative septic systems for all wastewater service at the Property. The District shall replace all out-of-priority depletions that occur under this plan that result in material injury to senior vested water rights. The District shall reserve the non-tributary water in the Arapahoe and/or the Laramie-Fox Hills aquifers as made available by the Wismer Trust to replace post-pumping depletions that occur. Because depletions may accrue to the South Platte River drainage and to the Arkansas River drainage, the District is filing this Application in both Water Divisions 1 and 2 and will seek to consolidate the two cases in Water Division 2 pursuant to C.R.C.P. 42.1. **9. No Injury:** The District submits that the above plan and proposed terms and conditions comply with the requirements C.R.S. sections 37-92-103(9), 302(1) and 305(8). If administered as proposed, operation of the plan will not cause material injury to vested water rights on the Arkansas or South Platte Rivers.

CASE NO. 11CW11 – CHEROKEE METROPOLITAN DISTRICT, 6250 Palmer Park Boulevard, Colorado Springs, CO 80915

(Martha P. Whitmore, Jackson Kelly PLLC, Attorney for Applicant 1099 18th Street, Suite 2150, Denver, CO 80202; (303) 390-0003; and Kevin Donovan, Attorney for Applicant, 407 South Tejon, Colorado Springs, CO 80903; (719) 331-9797)

Application for Finding of Reasonable Diligence

EL PASO COUNTY

2. Name of Structures: Sweetwater Well No. 1 (Cherokee #13); Sweetwater Well No. 2 (Cherokee #19); Sweetwater Well No. 3 (Cherokee #16); Sweetwater Well No. 5; Sweetwater Well No. 8 (Cherokee #15); Sweetwater Well No. 9 (Cherokee #14); Sweetwater Well No. 11 (Cherokee #17); Sweetwater Well No. 13; Sweetwater Well No. 15; Sweetwater Well No. 16. **3. Prior Decrees:** Original April 28, 1972 Pueblo County District Court, Case No. 53483. Subsequent Case Nos. 84CW48, 84CW55, 88CW49, and Findings of Fact, Conclusions of Law, Judgment and Decree in 98CW80 which required an application for a finding of reasonable diligence be filed on or before March 31, 2005, and every six years thereafter. An Application for Sextennial Finding of Reasonable Diligence was filed in March 2005, Case No. 05CW20. That case was consolidated with 05CW06, an application to make portions of some of the wells absolute. The consolidated cases have been pending while the Water Court's ruling granting a motion to dismiss the application in 05CW06 was on appeal to the Colorado Supreme Court. As a result, no ruling on diligence in 05CW20 has been entered by the Water Court. This application is filed to demonstrate continuing diligence with respect to the conditional rights in 05CW20. The conditional water rights which are the subject of this application are underground water rights with points of diversion located within the boundaries of the Upper Black Squirrel Creek Designated Ground Water Basin ("UBS"). This Court, and not the Ground Water Commission, has jurisdiction over this proceeding pursuant to the decision in *Sweetwater Development Corp. v. Schubert Ranches, Inc.*, 188 Colo. 379, 535 P.2d 215 (1975). **4. Location:** Sweetwater Well No. 1, NW1/4NE1/4 of Sec. 24, T. 15 S., R. 63 W., 6th P.M., at a point 50 feet East and 3,000 feet South of the NW corner; Sweetwater Well No. 2, NW1/4NW1/4 of Sec. 25, T. 15 S., R. 63 W., 6th P.M., at a point 30 feet East and 30 feet South of the NW corner; Sweetwater Well No. 3, NW1/4NE1/4 of Sec. 35, T. 15 S., R. 63 W., 6th P.M., at a point 3,500 feet East and 50 feet South of the NW corner; Sweetwater Well No. 5, NW1/4SE1/4 of Sec. 24, T. 15 S., R. 63 W., 6th P.M., at a point 3,200 feet East and 3,000 feet South of the NW corner; Sweetwater Well No. 8, NE1/4NE1/4 of Sec. 35, T. 15 S., R. 63 W., 6th P.M. at a point 5,200 feet East and 50 feet South of the NW corner; Sweetwater Well No. 9, SE1/4SW1/4 of Sec. 23, T. 15 S., R. 63 W., 6th P.M., at a point 100 feet North and 2,400 feet East of the SW corner; Sweetwater Well No. 11, SW1/4SE1/4 of Sec. 35, T. 15 S., R. 63 W., 6th P.M. at a point 50 feet North and 2,700 feet East of the SW corner; Sweetwater Well No. 13, SW1/4SW1/4 of Sec. 23, T. 15 S., R. 63 W., 6th P.M. at a point 700 feet North and 1,100 feet East of the SW corner; Sweetwater Well No. 15, SE1/4NW1/4 of Sec. 25, T. 15 S., R. 63 W., 6th P.M. at a point 1,600 feet East and 2,500 feet South of the NW corner; Sweetwater Well No. 16, NW1/4NW1/4 of Sec. 36, T. 15 S., R. 63 W., 6th P.M. at a point 1,000 feet East and 50 feet South of the NW corner. **5. Source of Water:** The alluvium of the Upper Black Squirrel Creek Designated

Ground Water Basin. **6. Appropriation Dates:** Sweetwater No. 1 June 6, 1966; Sweetwater No. 2 June 6, 1966; Sweetwater No. 3 June 6, 1966; Sweetwater No. 5 December 31, 1965; Sweetwater No. 8 December 31, 1965; Sweetwater No. 9 June 6, 1966; Sweetwater No. 11 December 31, 1965; Sweetwater No. 13 July 14, 1964; Sweetwater No. 15 December 31, 1965; Sweetwater No. 16 December 31, 1965. **7. Amounts Decreed:** Sweetwater No. 1, 4.0 cfs; Sweetwater No. 2, 0.6 cfs; Sweetwater No. 3, 4.0 cfs; Sweetwater No. 5, 4.0 cfs; Sweetwater No. 8, 4.0 cfs; Sweetwater No. 9, 4.0 cfs; Sweetwater No. 11, 4.0 cfs; Sweetwater No. 13, 4.0 cfs; Sweetwater No. 15, 4.0 cfs; Sweetwater No. 16, 4.0 cfs. **8. Historic Use:** Irrigation, domestic, mechanical (municipal purposes) as part of a unified water supply project. **9. Proposed Change:** Since 1960 Cherokee Metropolitan District (“Cherokee”) has been the provider of a municipal supply of water to the citizens of Cimarron Hills on the easterly side of Colorado Springs, El Paso County, Colorado. Since November 1985 Cherokee has been the provider of a municipal supply of water to Falcon Air Force Base (“Shriever AFB”). These conditional rights along with other water and water rights, are included in a system-wide plan for providing water to customers for municipal, residential, recreational, lawn and golf course irrigation and industrial uses. As such, diligence on portions of the water system is considered diligence on the entire system. Activities and expenditures are first summarized and then discussed in more detail as follows: a) Cherokee has engaged in significant legal protection of water rights associated with Sweetwater decrees and Sweetwater wells proposed and constructed Nos. 1-16, with specific emphasis on Nos. 1-3 (Cherokee 13, 18, & 16) and Nos. 8, 9, and 11 (Cherokee 15, 14, and 17). Cherokee has accomplished work on a revised and economically affordable easement alignment and efforts to evaluate options that would allow Sweetwater Well No. 5 to be drilled, constructed and connected to Cherokee’s main distribution system; b) Operational costs and maintenance on Nos. 13-17 include power supply and generator back-up power and fuel, ongoing well head and pump maintenance, and assessment and rehabilitation pump and perforated well screen for No. 13; c) Following the 2003 URS Engineering infiltration pilot project and its 2004 analysis report, GMS Engineering and Entech worked together on the 2006-2007 infiltration design project and thereafter oversaw the 2008 construction of the eleven infiltration basin facility designed to return treated effluent to the alluvial aquifer of the UBS Basin; d) Work has continued on the engineering, hydrologic modeling and legal expenses associated with Cherokee’s effort to recharge the basin and gain second use access to a reasonable amount of its reusable water under a replacement plan - Sweetwater well field monitoring, modeling of return flows anticipated through the infiltration basins and their migration through the aquifer and legal expenses preparing and presenting the replacement plan at the Ground Water Commission; e) General water supply system infrastructure improvements include: *i)* Tipton Well - purchase and work to bring existing well online, while concurrently drilling a replacement well; *ii)* Ellicott booster pump station upgrades; *iii)* Non-potable water supply system (wells, pond, SWSP) designed to transition Cherokee’s Ridge Golf Course off of the potable water supply system and onto their own independent non-potable system, thereby relieving demands on the potable system and its UBS Basin source-water; *iv)* Acquisition of costly, but essential, short term supply contract from the City of Colorado Springs Utilities for a minimum of 500 AF/ year and up to 1000 AF/ year. In 2010,

Cherokee utilized this supply source in the amount of 505 AF at a cost of approximately \$2,000,000.00, plus additional costs for the necessary augmentation (\$37,500 of augmentation water to make up for non-consumptive use return flows that are not returned to Arkansas Basin because they are recharged into the UBS aquifer through Cherokee's WWTF.)(Cost of service through CSU led to a budget plan that implemented a two year increase to customer rates - an 87% increase to the per unit cost of water billed to customers in 2010 and thereafter a 70.5% increase to the base rate service availability fee for customers in their 2011 and beyond billings, from \$8.21 up to \$14.00 per customer per month.)(Approximately 300 AF of non-consumptive use return flows on non-native trans-mountain Arkansas River water delivered to the UBS Basin in the form of WWTF effluent through Cherokee's infiltration basins in 2010. This return flow, in addition to the other return flows exiting Cherokee's new wastewater treatment and reclamation facility since July 2010, amount to approximately 600 AF that has been infiltrated back to the UBS Basin alluvium.)(Cherokee customer billing historic increases and current rates web page link: Water rates increased by 6.6% in 2005, 18% in 2006, 35% in 2009, 87% in 2010 and then a 70.5% increase to the service availability fee in 2011: <http://www.cherokeemetro.org/watersewer/billingrates.htm>. Over that same period, wastewater rates have required substantial rate increases to comply with the construction and operation of a WWTF capable of providing recharge and replacement water to the UBS Basin; 7.1% increase in 2005, 40.5% increase in 2006, 44% increase in 2007, 10% increase in 2010 and an increase to the base service availability rate increase of 12%.); v) Cherokee Management and Board of Directors passed increases to Cherokee's water and wastewater tap fee schedule to better address the mandate that the growth pay for itself and pay for the necessary infrastructure that will allow Cherokee to provide professional service while maintaining compliance with its agreements. Cherokee increased its Wastewater Infrastructure Replacement Fee from \$600 to \$1,000 per tap and levied a new Water Infrastructure Replacement Fee of \$1,000 per tap and a Water Aquifer Recharge Infrastructure Fee of \$500 per tap. The manager advocated for these increases and was supported by the Board who are addressing the need to budget for future improvements and further infrastructure that can provide a balanced recharge of the UBS Basin; vi) The December 2, 2009 Court Order in 05CW6 mandated that Cherokee work diligently to "locate, negotiate, fund, budget, acquire and construct additional water supplies to replace amount the Court ordered abandoned." In a concerted effort to comply, efforts have been made: a) to acquire Guzzleman well from Mr. Poleson for the purpose of changing place of use to include the entire UBS Basin to support some demands at Schriever AFB and be a backup supply for the 350 AF served to Woodmen Hills Metro District and/or the Meridian Metropolitan Service District; b) to acquire a lease to purchase agreement on the Duncan Well with export permit within the UBS Basin boundary for municipal use inside the Cherokee service area (quiet title legal action and lease agreement execution and notice to UBS pending); c) to study potentially exportable water rights near the Cherokee delivery infrastructure inside and outside the political boundaries of the UBS Basin; d) to acquire leases on water from the Norris Ranches and State Land Board property immediately south of the UBS Basin political boundary that could allow for the development of water that would be a net import to the UBS Basin; e) to acquire up to 400 AF of fully consumable exportable municipally adjudicated water near Cherokee's

delivery infrastructure inside the UBS Basin boundary that would supplement Cherokee's municipal water supply; f) to evaluate the water resources of the Little Horse Creek Basin (LHC), its existing augmentation plan, historic diversion, possible consumptive use quantities, and the cost of potentially constructing water conveyance infrastructure capable of moving LHC water to the Cherokee system; g) to acquire the remainder of the Andy Kane first perpetual right to divert 200 AF of Sr. Sweetwater Rights ahead of all other Sweetwater rights and work with American National Bank, PLW Inc., and PLW Inc. (currently in Chapter 11 Bankruptcy) in a yet to be successful effort to obtain a re-drill permit for the Kane No. 1 wells structure, a currently unused Sweetwater decreed structure where Cherokee might obtain its Kane water right; h) to study and evaluate agricultural rights within the northern UBS Basin that could be bought and intentionally abandoned in order to protect Sr. rights and offered to UBS Basin as a potential short term starting point for Cherokee efforts to recharge the northern part of the UBS Basin; i) to engage and evaluate the Arkansas River water supply options including Super Ditch, Lower Arkansas Integrated Supply project, possible participation as a regional partner in the Southern Delivery System, evaluation of the Eastern Plains water supply project and other proposed sources of supply; j) to attend and participate in SE Conservancy District meetings and activities; k) to acquire a take or pay agreement on 1000 AF of fully consumable Denver Basin water from northern El Paso County and southern Elbert County; and l) to fully understand and educate staff and Board to Cherokee's obligation to use "best efforts" to recharge the UBS Basin and how that fits with Cherokee's need to access some level of return flows from fully consumable water rights and future sources of fully consumable water that Cherokee will likely acquire from outside the UBS Basin. On February 7, 2011, the Supreme Court ruled that the application of Cherokee in 05CW06 to the Water Court to make absolute certain of the Sweetwater rights was untimely filed, pursuant to the 1999 Stipulation with the UBS in Case No. 98CW80 and other objectors, resulting in an abandonment of those claimed absolute rights. The Supreme Court further ruled that the remaining conditional rights attributable to Well Nos. 14-17 were not abandoned by the Division 2 Water Court. The remaining conditional rights attributable to Well Nos. 14-17 are included in this Application. In the spring of 2010, with a newly elected Board of Directors, Cherokee has worked diligently to address outstanding issues in the District to comply with the December 2, 2009 Order to report every thirty days on "what efforts have been made to locate, negotiate, fund, budget, acquire and construct additional water supplies to replace the amount the Court ordered abandoned." The new manager renegotiated the service contract with Schriever AFB, which will result in an additional \$700,000 to \$850,000 per year in revenue and has negotiated with numerous holders of Denver Basin Water not located in the UBS jurisdiction as interim sources of water. The manager and accounting staff developed budget scenarios with and without early debt retirement, educated the Board and retired some outstanding debt obligations with capital reserves allowing for additional bonding capacity that will be used to acquire reusable to extinction water resources and to build delivery infrastructure when additional water is acquired. The additional bonding capacity (depending on rates) is \$10 to \$14 million dollars. The manager and professional consultants reviewed multiple water sources within the UBS and are currently negotiating lease options to purchase additional wells and water rights. The Board

directed the manager to work diligently to identify long term renewable and reusable water resources from surface water supplies that will be adequate for long term supply needs and diversify Cherokee's water rights portfolio from a source of supply and dependability perspective. Cherokee has implemented an extensive wastewater treatment related project with the ultimate goal of recharging the UBS Basin alluvial aquifer. The improvements have included a new 4.8 MGD water reclamation facility, a 24" diameter interceptor sewer, a 20" diameter non-potable water line, an 11 basin recharge facility and two sanitary sewage lift stations. Cherokee has undertaken a 16" and 18" diameter water line replacement project along Mark Sheffel Road within Cherokee's service area. The work began at Constitution Avenue and extended northerly approximately 5,565 lineal feet. Cherokee installed an alluvial well along the Middle Fork of Sand Creek together with a new variable frequency drive water booster station and has rehabilitated a water surface impoundment feature on Cherokee's golf course. These improvements have been undertaken to reduce the demands on Cherokee's potable water system through the use of this non-potable water for irrigation activities at Cherokee's golf course. Cherokee is in the process of addressing the issues raised by objectors to the augmentation plan that would ultimately result in the installation of a Sand Creek Augmentation Station that will use Fountain Mutual Irrigation Company water rights to offset consumptive use from the new Sand Creek Well. Cherokee has undertaken the installation of an additional alluvial well known as the Tipton Well (Cherokee Well No. 18). The work included the installation of the new well, equipping the existing well, and an interconnecting 10" diameter water transmission line that connected to Cherokee's northern well field system. The project also included an interconnection to the existing Meridian/Woodmen Hills 12" diameter raw water pipeline to allow Cherokee to utilize their exportable Guthrie alluvial water rights on a contract basis. Cherokee pursued a supplemental well to be installed under Sweetwater No. 2 (proposed Cherokee No. 19). Initial approval was received from the State Engineer's Office for the installation of the well. Based upon subsequent action undertaken by the Farmers, who own the absolute rights on Sweetwater No. 2, the installation of the supplemental well was ultimately denied, however it is Cherokee's intention to continue to work toward drilling a supplemental well. Given the complexity of Cherokee's water and wastewater systems, it has expended significant funds on its supervisory control and data acquisition (SCADA) system, breaking the SCADA system for the two utilities into two freestanding systems that have their own repeaters and communication links to Cherokee's main computer terminal. The system allows for remote monitoring, control and alarm functions. **10. Other Information:** The Supreme Court held in its recent opinion regarding the motion to dismiss in 05CW06, that the portions of the water rights for Cherokee Well Nos. 14-17 which were untimely claimed as absolute were abandoned. The Supreme Court also found that the remaining conditional rights associated with those wells had not been abandoned. Cherokee intends to make absolute the remaining conditional rights for Well Nos. 14-17, as well as the other conditional rights herein. Cherokee has not, as of the date of filing of this application, diverted water from Well Nos. 14-17 under the remaining conditional rights, however, when they are diverted, an appropriate application or amendment to this application will be filed in compliance with the 1999 Stipulation and the terms of the decree in 98CW80.

**CASE NO. 11CW12 – THE MUTUAL HYDE DITCH COMPANY, c/o Kenneth Seiling,
11750 State Hwy. 196, Lamar, CO 81052** (Donald L. Steerman, Shinn, Steerman &

Shinn, Attorneys for Applicant, P. O. Box 390, Lamar, CO 81052; (719) 336-4313

Application for Change of Water Right

PROWERS COUNTY, COLORADO

2. Decreed water right for which change is sought: **A. Name of structure:** Hyde Ditch. **B. Date of original and all relevant subsequent decrees:** July 1, 1895. Bent County District Court entitled in the Matter of the Adjudication of Priorities of Water Rights and found in the records of the Clerk of the District Court, Bent County, Colorado at C 295. The original Hyde decree provides for 23.44 cfs to be diverted from the headgate. The Hyde sought and received a decree on March 4, 1977 for an alternate point and method of diversion. The decree provided that a new point of diversion would be at Headgate No. 2 to be located in the NE ¼ of the NE ¼ of Section 28, T. 22 S., R. 46 West of the 6th P.M., Prowers County, Colorado. This decree also allowed the Hyde to divert by a lift pump into the Arkansas River by means insuring that ground water would not be intercepted. The Company is also the owner of the Ideal ditch right. The Ideal decree is General Adjudication Decree dated October 14, 1918 Bent County District Court entitled in the Matter of the Adjudication of Priorities of Right to use Water for Domestic and Irrigation Purposes in Water District 67 in the State of Colorado and assigned Appropriation Priority 1918-1 and found in the records of the Clerk of the District Court, Bent County, Colorado at F 310. A copy of the July 1, 1895 Decree is attached to the Application as Exhibit “A” and a copy of the March 4, 1977 decree is attached to the Application as Exhibit “B” and a copy of the October 14, 1918 Ideal Ditch Decree is attached to the Application as Exhibit “C”. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **C. Legal description of structure:** NW ¼ of the NE ¼ Section 28, Township 22 South, Range 46 West, 6th P.M., 600 feet from the North line and 500 feet from the East line. **GPS Location (UTM Format; Zone 13; Units – Meters; Datum – NAD83; Unit set to true North).** Were points averaged? No. Northing 4221062.7; Easting 712302.9. **D. Decreed source of water:** Arkansas River. **E. Appropriation Date:** July 1, 1895; **Total amount decreed to structure:** 23.44 cfs. **F. Decreed use or uses:** Irrigation; **G. Amount of water that applicant intends to change:** Alternate point of diversion only. **3. Detailed description of proposed change:** **A.** The Ideal Ditch runs into the mainstem of the Hyde canal upstream of the lift pump that the Hyde uses to divert its main priority from the Arkansas River. The point where it runs into the Hyde is the point where the Hyde is seeking the Alternate Point of Diversion for the Hyde 1895 Decreed Water right as shown by Exhibit “D” attached to the application. At times when the Ideal is not in priority, the water can be returned to the river at a waste gate located approximately 275 feet East downstream of the Hyde lift pump. At times when the Hyde 1895 Arkansas River decree is in priority and the Ideal Ditch is not in priority, The Hyde has the ability to take and measure such amounts that it may be in priority to receive from the Ideal Ditch rather than diverting said amounts from the Arkansas River and then returning water running from the Ideal Ditch back to the river at the waste gate located downstream from the Hyde Mainstem Lift Pump. The Hyde put in a measuring flume on the ditch approximately 475 feet East from the lift pump to

measure water running into the mainstem of the Hyde Ditch. The proposed change would allow the Hyde to take such amounts from the Ideal Ditch as it may be in priority to receive under its 1895 Arkansas River Diversion. Exhibit "D" is a topographic map showing the Ideal Ditch, the confluence of the Ideal Ditch and the Hyde Ditch, the Hyde Lift Pump and the Hyde measuring flume and waste gate. There are no diversions from the Hyde Ditch from the point where the Ideal Ditch runs into the Hyde to the measuring flume for the Hyde Ditch. The Mutual Hyde Ditch Company irrigates approximately 1575 acres in the area shown in Exhibits "E" and "F" attached to the application. However, no changes to the acreage irrigated is contemplated by this application. Further no change in type of use is requested. **B. If a change in point of diversion, provide legal descriptions of decreed location and actual or new location of structure:** NW ¼ of the NE ¼ Section 29, Township 22 South, Range 46 West, 6th P.M., 1290 feet from the North line and 900 feet from the East line. **GPS Location (UTM Format; Zone 13; Units – Meters; Datum – NAD83; Unit set to true North).** Were points averaged? No. Northing 4220802.7; Easting 710557.9. **4. Proposed terms and conditions:** Terms and conditions imposed on the alternate point of diversion shall include a requirement that the total amount diverted from both points of diversion shall be limited to the decreed amount. **5. Ownership of Property:** The relief requested under this application does not require any new or additional structures other than existing structures that have been in use. As such, no landowner notice is required. **6. No Other Changes:** Except for the change in point of diversion and alternate point of diversion, Applicant seeks no other changes to his decree. **WHEREFORE,** Applicant respectfully requests the Court grant the relief requested herein and such other relief as may be just and appropriate under the circumstances.

CASE NO. 11CW13 - CITY OF LA JUNTA, c/o Joe Kelley, P.O. Box 489, La Junta, CO 81050 (Julianne M. Woldridge, MacDougall, Woldridge & Worley, P.C., Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905)

Application for Change of Water Rights and Appropriative Right of Exchange

OTERO, PUEBLO AND CROWLEY COUNTIES

2. Water Rights to Be Changed: Applicant owns 883.7 shares in the Holbrook Mutual Irrigating Company ("Holbrook"). Applicant proposes to change its pro rata share of water from the water rights owned or controlled by Holbrook. These Holbrook water rights include the following, which are also included in the Winter Water Storage Program change, exchange, and substitution decreed in Case No. 84CW179, District Court, Water Div. No. 2 on November 10, 1987 as made final on November 10, 1990: a. Holbrook Canal (a/k/a Lake Canal), decree dated April 8, 1905, District Court, Bent County, Colorado, appropriation date September 25, 1889, 155 c.f.s., Arkansas River, point of diversion in NE¼ Sec. 24, T.22S., R.58W., 6th P.M., Crowley County, CO, for irrigation (and possibly domestic) uses; b. Holbrook Canal (a/k/a Lake Canal), decree dated April 8, 1905, District Court, Bent County, Colorado, appropriation date August 30, 1893, 445 c.f.s., Arkansas River, NE¼, Sec. 24, T.22S., R.58W., 6th P.M., Otero County, CO, for irrigation (and possibly domestic) uses; c. Holbrook Canal/Holbrook Reservoir storage right (a/k/a Reservoir No. 1), decree dated April 8, 1905, District Court, Bent County, Colorado, appropriation date March 2, 1892, 600 c.f.s. and 185,001,980 cubic feet (4,247.01 a.f.), Arkansas River, the point of diversion is the

Holbrook Canal in NE¼, Sec. 24, T.22S., R.58W., 6th P.M., Otero County, CO, the reservoir is located in Sec. 5, 6, 7, and 8, T.23S., R.55W. and Sec. 1 and 12, T. 23S., R.56W, 6th P.M., Otero County, Colorado, for irrigation (and possibly domestic) uses; d. Holbrook Canal/Holbrook Reservoir storage right (a/k/a/ Reservoir No. 1), decree dated February 3, 1927, District Court, Bent County, Colorado, appropriation date September 15, 1909, 600 c.f.s. and 3,196 a.f., Arkansas River, the point of diversion is the Holbrook Canal in NE¼, Sec. 24, T.22S., R.58W., 6th P.M., Otero County, CO, the reservoir is located in Sec. 5, 6, 7, and 8, T.23S., R.55W. and Sec. 1 and 12, T. 23S., R.56W, 6th P.M., Otero County, Colorado, for irrigation (and possibly domestic) uses, 2,000 a.f. of which was transferred to the Dye Reservoir, Case No. W-3905, decree dated September 23, 1974; e. Holbrook Canal/Dye Reservoir storage right, decree dated February 3, 1927, District Court, Bent County, Colorado, appropriation date October 10, 1903, 600 c.f.s and 4,500 acre-feet, Arkansas River, the point of diversion is the Holbrook Canal in NE¼, Sec. 24, T.22S., R.58W., 6th P.M., Otero County, CO, reservoir is located in Sec. 4 and 5, T.23S., R.56W., and Sec. 32 and 33, T.22S., R.56W., 6th P.M., Otero County, Colorado, for irrigation (and possibly domestic) uses, 2,000 a.f. of which was transferred to the Holbrook Reservoir, Case No. W-3905, decree dated September 23, 1974; f. Holbrook Canal/Dye Reservoir storage right, decree dated February 3, 1927, District Court, Bent County, Colorado, appropriation date September 3, 1909, 400 c.f.s. and 3,486.00 acre-feet, Arkansas River, the point of diversion is the Holbrook Canal in NE¼, Sec. 24, T.22S., R.58W., 6th P.M., Otero County, CO, reservoir is located in Sec. 4 and 5, T.23S., R.56W., and Sec. 32 and 33, T.22S., R.56W., 6th P.M., Otero County, Colorado, for irrigation (and possibly domestic) uses; and g. Holbrook exchanges, original decree dated February 3, 1927, District Court, Bent County, CO and decree dated August 16, 1983, Case No. 81CW39, District Court, Water Division No. 2, 595 c.f.s. exchange from Dye Reservoir to Holbrook headgate and 230 c.f.s. exchange from Holbrook Reservoir to Holbrook headgate with original priority dates of exchange recognized as March 2, 1891 for 4,247 a.f., September 15, 1909 for 3,196 a.f., October 10, 1903 for 4,500 a.f., and September 3, 1909 for 3,486 a.f., for irrigation and domestic uses. **3. Historic use:** Applicant's water has been used to irrigate four farms located under the Holbrook Canal, as described below: a. 256.2 shares have been used to irrigate approximately 238.7 acres located in the NW1/4, W1/2NE1/4, NE1/4NE1/4, and SE1/4NE1/4 of Sec. 18, T.22S., R.54W., 6th P.M., Otero County (generally shown on Exhibit A-1, attached to the application); (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.); b. 204.4 shares have been used to irrigate approximately 178.6 acres located in the NW1/4 of Sec. 30 and the SW1/4 of Sec. 19, T.22S., R.54W, 6th P.M., Otero County (generally shown on Exhibit A-2, attached to the application); c. 280.3 shares have been used to irrigate approximately 246.1 acres located in the NW1/4 of Sec. 34 and the SE1/4 of Sec. 27, T. 22S., R.55W., 6th P.M. Otero County (generally shown on Exhibit A-3, attached to the application); and d. 142.8 shares have been used to irrigate approximately 111.3 acres in the NW1/4 of Sec. 26, T.22S., R.55W., 6th P.M., Otero County (generally shown on Exhibit A-4, attached to the application). A summary of historic diversions for the Holbrook water rights is attached to the application as Exhibit B. In addition, some portion of the water from Applicant's pro-rata share of these water rights has been used for replacement

purposes in Colorado Water Protective and Development Association's Rule 14 Plan.

4. Proposed Change: Applicant is a municipal entity with a central water supply system. Applicant's pro rata share of the water rights may continue to be diverted at the Holbrook facilities described above and used for currently decreed irrigation and domestic uses within the Holbrook Company's service area (Applicant has leased its shares and the associated water for continued irrigation until placed to use within Applicant's system). In addition, Applicant's pro rata share of the water rights may be used for municipal, irrigation, industrial, commercial, recreational, and domestic uses within Applicant's service area as such may be amended from time to time (a map of Applicant's current service area is attached to the application as Exhibit C), and for augmentation and replacement of all beneficial uses pursuant to separately decreed or approved augmentation, replacement, or substitute water supply plans (including but not limited to replacement plans administered by Colorado Water Protective and Development Association). Applicant's water may be used by direct diversion, by storage pursuant to the storage decrees described above and later release, and/or by exchange into storage and later release, including but not limited to the exchange described below, the Holbrook exchanges described above, exchanges approved for Colorado Water Protective and Development Association replacement plans, and the exchange described in Case No. 06CW8, Application of Southeastern Colorado Water Conservancy District, once approved.

5. Applicant requests an appropriative right of exchange described as follows:

a. Location: The lower terminus of the exchange will be the Holbrook Outlet Canal's confluence with the Arkansas River, located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 24, T.23S., R.56W., 6th P.M. The exchange will extend up the Arkansas River to Pueblo Reservoir, located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, in Township 20 South, Range 67 West, all in the 6th P.M. in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section bears North 61° 21' 20" East, a distance of 2,511.05'.

b. Source of water to be exchanged: Applicant's pro-rata share of the water rights described in Section 2 above.

c. Amount: the maximum amount of the exchange shall be Applicant's pro-rata share of the total instantaneous flow rates decreed for the above-referenced water rights, with a maximum annual volume of 450 acre-feet, conditional.

d. Date of Appropriation: February 28, 2011. The appropriation was initiated by the filing of this application with the Water Court.

e. Uses: all uses to which the water to be exchanged may be placed.

6. Proposed terms and conditions to prevent injury:

a. When used for currently decreed irrigation uses, the water will continue to be diverted, stored, and used pursuant to the existing decrees described above. When used for changed uses, the water will be delivered through the Holbrook Canal headworks and returned to the Arkansas River for use through recharge pits located on the historically irrigated land described above or through an augmentation station located on the Holbrook Canal system or another similarly located augmentation station, or for exchange as described herein.

b. Applicant will limit deliveries of the water for currently decreed uses to maximum monthly amounts based on historic usage.

c. Applicant will

limit deliveries of the water for changed uses to monthly maximum amounts based on historic usage. d. Applicant will limit diversions of its water for changed uses to historic consumptive use amounts and amounts necessary to maintain historic return flows. e. Applicant will maintain ditch losses and surface and subsurface return flows from use of the water for the changed uses in appropriate time, amount, and location. f. Applicant will limit future diversions of the water for changed uses to March 15th through November 15th, except for such water as may be diverted pursuant to the Winter Water Storage Program. g. Prior to use of Pueblo Reservoir, Applicant will obtain all necessary and required authorizations and contracts for use of that facility. **7. Owners or reputed owners of 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 modification to the existing storage pool:** a. Pueblo Reservoir: United States Department of the Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18-E, Loveland, CO 80537; b. Holbrook Canal: land underlying the headgate may be owned by the Holbrook Mutual Irrigating Company, P.O. Box 34, Cheraw, CO 81030 and/or Eric M. Larson, 23901 Co. Rd. 2, Fowler, CO 81039. The Holbrook Outlet Canal outlet may be located on land owned by Larry and Nancy McElroy, P.O. Box 471, Swink, CO 81077; c. Holbrook Reservoir: land inundated by the reservoir and its outlet may be owned by the Holbrook Mutual Irrigating Company, P.O. Box 34, Cheraw, CO 81030, Quarter Circle LT Inc., 3646 Lane 16, Ordway, CO 81063, The State of Colorado (no address was provided, c/o Attorney General, 1525 Sherman St., 5th Floor, Denver, CO 80203), Dale H. and Muriel M. McClelland, 14102 E. Linvale Place, Apt. 112, Aurora, CO 80014; d. Dye Reservoir: land inundated by the reservoir and its outlet may be owned by the Holbrook Mutual Irrigating Company, P.O. Box 34, Cheraw, CO 81030, Quarter Circle LT Inc., 3646 Lane 16, Ordway, CO 81063, Raymond E. and Frances A. Carter, 30235 Rd. 22, Rocky Ford, CO 81067, Frank Minor and Darlene R. Blackford, P.O. Box 293, La Junta, CO 81050; and e. Potential recharge pits: Applicant. Applicant, therefore, requests a decree changing its pro rata share of the subject water rights and adjudicating the appropriative right of exchange described above. (21 pages)

CASE NO. 11CW14 – ELVIRA A. GRUENLOH, 9565 Hwy. 196, Lamar, CO 81052; and SHANNON O’BRYAN AND DAWNI O’BRYAN, 6585 Rodeo Drive, Lamar, CO 81052 (Donald L. Steerman, Shinn, Steerman & Shinn, Attorneys for Applicant, P. O. Box 390, Lamar, CO 81052; (719) 336-4313

Application for Change of Water Right

PROWERS COUNTY, COLORADO

2. Decreed water right for which change is sought: **A. Name of structure:** Sayler and Nowells Ditch. **B. Date of original and all relevant subsequent decrees:** General Adjudication Decree dated October 14, 1918, Bent County District Court, entitled in the Matter of the Adjudication of Priorities of Right to use Water for Domestic and Irrigation Purposes in Water District 67, in the State of Colorado and assigned Appropriation Priority 1918-18 and found in the records of the clerk of the District Court, Bent County, Colorado at F 338. **C. Legal description of structure:** The original point of diversion as set forth in the decree is at a point in the Southwest Quarter of

Section 8, Twp. 22 South, Range 46 West of the 6th P.M., whence the Southwest corner of said Section 8 bears South 89 degrees West 10.61 Chains, said point being the outlet to the Saylor and Nowells Reservoir. **Preferred Legal Description (PLSS):** Prowers County, SW ¼ of the SW ¼ Section 8, Township 22 South, Range 46 West, 6th P.M., 30 feet from the South line and 700 feet from the West line. **GPS Location (UTM Format; Zone 13; Units – Meters; Datum – NAD83; Unit set to true North).** Were points averaged? No. Northing 4224413.6; Easting 709329.7. **D. Decreed source of water:** May Valley Seepage. **E. Appropriation Date:** May 26, 1908; **Total amount decreed to structure:** 6 cfs. **F. Decreed use or uses:** Irrigation. **G. Amount of water that applicant intends to change:** 3.6 cfs. **3. Detailed description of proposed change:** **A. Background:** Applicant Gruenloh purchased a 2/3rd share of the subject water right with her husband James A. Gruenloh by Warranty Deed dated September 27th, 1963 given by J. W. DUEWALL and Marjorie L. DUEWALL and recorded in the Records of the Prowers County Clerk and Recorder on September 27, 1963 at Book 445, page 234. In that deed and a subsequent joint tenancy deed dated March 3, 1981 given by James A. Gruenloh and Elvira A. Gruenloh and recorded in the Records of the Prowers County Clerk and Recorder on March 5, 1981 at Book 536, Page 798, she purchased Lots 1, 2, and 3, E1/2NE1/4, N1/2SE1/4 of Section 21, Township 22 South, Range 46 West of the 6th P.M. Copies of the abstract of the 1963 deed and a copy of the 1981 deed is attached to the Application as Exhibits “A” and “B” and incorporated herein. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) James A. Gruenloh died on the 1st day of July, 2009 leaving applicant as the sole owner as set forth above. Applicants O’Bryan purchased a 1/3rd share of the subject water right by Quitclaim Deed dated August 1, 2008 given by James G. Rogers and recorded of record in the Records of the Prowers County Clerk and Recorder at Reception No. 518408 as applied on property described therein described as a part of Indian Claim #27, Commencing at Northeast Corner of Said Indian Claim #27 and Lot 1, except a tract in Section 28, Township 22 South, Range 46 West of the 6th P.M. This property encompasses a portion of Sections Twenty-one (21) and Twenty-eight (28), Township Twenty-two (22) South, Range 46 West of the 6th P.M., Prowers County, Colorado. Applicants O’Bryan purchased the real property where this water right had been applied by Warranty Deed dated August 1, 2008, given by Philip A. Camera and recorded in the records of the Prowers County Clerk and Recorder on August 5, 2008 at Reception No. 518409. The deeds are attached to the Application as Exhibits “C” and “D”. The decree provides for the irrigation of approximately 500 acres of land. The approximate acreage of irrigated land located on the above-described Gruenloh property is 120.5 acres and the acreage of irrigated land on the above-described O’Bryan Property is 60 acres. A topographical map showing the approximate location of the properties is attached to the Application as Exhibit “E” and an aerial map of said properties is attached to the Application as Exhibit “F”. The Decree indicates the water was taken at the headgate of the Saylor and Nowells Ditch above described and conveyed by a ditch as described therein and conveyed to the irrigated property running along the Amity Canal right-of-way. A copy of the Decree is attached to the Application as Exhibit “G” and incorporated herein by reference. On or about July 30, 1918 T.J. Saylor entered into an agreement with the Arkansas Valley Sugar Beet & Irrigated Land Company (herein referred to as its

successor in interest Amity Mutual Irrigation Company "Amity" for a carriage agreement of the Saylor and Nowells water right. A copy of said agreement is attached to the Application as Exhibit "H" and incorporated herein. Said Agreement recited that said T. J. Saylor was the owner of said water right together with one Nowells for a priority of 6 cfs from the May Valley and that he had historically diverted and applied said water rights on the lands of applicants, specifically described therein. Said agreement recites that the portion of said water rights belonging to said T. J. Saylor was a 3/5th ownership interest in the Saylor and Nowells water right totaling 3.6 cfs of said water right. Said agreement provided that said T. J. Saylor would abandon his present system of conveying his water rights to the properties and would instead run it into the Amity Canal. In the event that the full 6 cfs of the Saylor and Nowells water right was in priority, the Amity would deliver 2 cfs to an existing headgate 2.93 miles more or less, downstream from the confluence of the May Valley Seep Ditch and the Amity Canal. The agreement provided that the water right was to specifically service said properties with the surplus to go to the use of the company. Said agreement also provided that said Saylor would not be entitled to any other water right or interest in the Amity and the purpose of the agreement was merely a carriage agreement. In the event the Saylor and Nowells right was not in priority at its full 6 cfs, then in that event the amount of water delivered to the headgate would be proportionately reduced at the same ratio with 2 parts to Saylor and 1.6 parts to the Amity. Said agreement has been honored by Saylor and his successors and the Amity since that time with adjustments to the costs of the assessments due under the agreement. A topographical map showing the decreed point of diversion, the Confluence of the Amity and May Valley Seep and the headgate are attached to the Application as Exhibit "I". The Application is more accurately an application for change of method of delivery rather than a change for point of diversion. The decreed point of diversion is fairly close to the confluence of the Amity and May Valley Drain. The method of delivery does appear to have changed in 1918 from the ditch as described in the Decree. **B. If a change in point of diversion, provide legal descriptions of decreed location and actual or new location of structure:** NW ¼ of the NW ¼ Section 17, Township 22 South, Range 46 West, 6th P.M., 350 feet from the North line and 790 feet from the West line. **GPS Location (UTM Format; Zone 13; Units – Meters; Datum – NAD83; Unit set to true North).** Were points averaged? No. Northing 4224278.6; Easting 709349.7. **4. Proposed terms and conditions:** Terms and conditions imposed should be imposed consistent with the Saylor-Amity agreement. **5. Ownership of Property:** The relief requested under this application does not require any new or additional structures other than existing structures that have been in use. As such, no landowner notice is required. **6. No Other Changes:** Except for the change in point of diversion and method of delivery, Applicants seek no other changes to their decree. **WHEREFORE,** Applicants respectfully request the Court grant the relief requested herein and such other relief as may be just and appropriate under the circumstances.

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

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



Mardell R. DiDomenico

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

(Court seal)

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