

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING FEBRUARY 2016

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 2016, 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. 2016CW1; Previous Case No. 2009CW102 - LEADVILLE BACKCOUNTRY PHASE II, LLC, 1708 Mt. Lincoln West, Leadville, CO 80461; (719) 486-0126

Application to Make Absolute in Whole or in Part

LAKE COUNTY

Name of structure: West Pass Hut **Type:** Spring. **Describe conditional water right:**
A. Date of Original Decree: 2/22/2010; **Case No.:** 09CW102; **Court:** District Court, Water Div. 2, Colorado. **B. List all subsequent decrees awarding findings of diligence:** N/A. **C. Legal description:** SW ¼ SE ¼ Section 35, Township 10 South, Range 79 West, 6th P.M., Lake County, CO approximately 925' from the south line and 2,100' from the east line of Sec. 35. **UTM Coordinates (NAD83):** 4332013, 0397354. **D. Source of water:** Spring tributary to Big Union Creek, tributary to the Arkansas River. **E. Appropriation Date:** 8/17/09; **Amount:** 7.2 gpm conditional. **F. Use:** Domestic uses inside a single structure (a backcountry hut). **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:** Built a road to the spring. Dug out the spring and made a pit with a backhoe to have the spring flow through it. Lined the bottom of the pit with small boulders. Installed a 42" well casing on top of the rock base. Built a spring house over the well casing/pit. Expenditures: \$4750. **If claim to make absolute in whole or in part:** **A. Date water applied to beneficial use:** 7/1/2012; **Amount:** 7.2 gpm. **Use:** Use inside hut for non-potable use, washing dishes, cleaning. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant. **Remarks:** The location of the spring and hut are at approx. 11,900'. We cannot measure the actual flow rate until late spring or early summer. At that point we will measure it and send that measure into the Water Court in an affidavit.

CASE NO. 2016CW2 – MAREK SOLAK and IRMINA SOLAK.

Application for Surface and Storage Water Rights

FREMONT COUNTY

This application was filed during February 2016, but the Water Judge ordered that this application not be published until an amended application is filed. It is listed in the resume only for purposes of accounting for the case number in consecutive order.

CASE NO. 2016CW3008 – RED ROCK VALLEY WATER DISTRICT, c/o Ted D. Kerr, President, 2005 Twilight Canyon Road, Colorado Springs, CO 80926

(Please direct all correspondence to: Paul G. Anderson, Esq., Attorney for Applicant, P. O. Box 50631, Colorado Springs, CO 80949-0631)

Application to Amend Decreed Plan for Augmentation

EL PASO COUNTY

INTRODUCTION. By this Application, the Red Rock Valley Water District aka the South Colorado Springs Red Rock Valley Estates Water District (“District” or “Applicant”) seeks to include additional wells within the plan for augmentation decreed in Case No. 98CW136 and as amended in Case Nos. 05CW90 and 12CW98. Such wells currently serve a neighboring public water system at property known as Keeton Ranch and are decreed as additional alternate points of diversion for the District. The District also seeks to increase the total well pumping currently permitted and increase the number of taps that may be augmented under the District's decree in 98CW136.

APPLICATION TO AMEND PLAN FOR AUGMENTATION DECREE - CASE NO. 98CW136.

2. Name of ditch or structure: a. **Permit # 16541-F (ID # 1005214) aka Keeton Well No. 2:** i. Legal description: SW ¼ SE ¼ Section 2, Township 16 South, Range 67 West, 6th PM, approximately 1290 feet from the South section line and approximately 1660 feet from the West section line. ii. Source: Alluvial ground water. iii. Appropriation: September 25, 1973. iv. Amount: Per final decree in Case No. 81CW6, Water Division 2, 60 gallons per minute (“gpm”) as an alternate point of diversion to Permit # 11117-F, up to 40 acre-feet (“af”) per year in combination with Permit # 11117-F; and as an alternate point of diversion per the District's decrees in 05CW90 and 12CW98. v. Use: Municipal. b. **Permit # 24835-F (ID # 1005215) aka Keeton Well No. 3:** i. Legal description: SW ¼ SE ¼ Section 2, Township 16 South, Range 67 West, 6th PM, approximately 660 feet from the South section line and approximately 1980 feet from the West section line. ii. Source: Lyons formation ground water. iii. Appropriation: April 24, 1981. iv. Amount: Per final decree in Case No. 81CW6, Water Division 2, 60 gpm as an alternate point of diversion to Permit # 11117-F and only as a supplemental well to Permit #16541, up to 40 af per year in combination with permit # 16541-F; and as an alternate point of diversion per the District's decrees in 05CW90 and 12CW98. v. Use: Domestic and stock. **3.**

Proposed Amendment. The District seeks to add the above wells to the augmentation plan decreed in Case No. 98CW136, Water Division 2, as amended, so that all depletions resulting from the use of these wells by customers of the Keeton Ranch Water system are augmented, up to a maximum of 0.921 acre-feet of depletions per year. The District also seeks to increase the total number of taps that may be augmented under the District's decree from 88 taps to 105 taps and to increase the total

maximum annual well withdrawals from 26.34 af to 35.55 af. **4. Proposed Use:** Domestic and municipal. **5. Name and address of owner of land upon which wells are located:** Forest R. Trojanovich Revocable Trust, c/o Jimmie A. Keeton, 2612 Northridge Court, Fort Collins, CO 80521. **6. Remarks:** As noted above, Keeton Well Nos. 2 and 3 were decreed as alternate points of diversion in Case Nos. 81CW6 and as alternate points of diversion to the District's own wells as more fully described in the decrees entered in Case Nos. 05CW90 and 12CW98. The District, Jimmie A. Keeton and Keeton Ranch Water entered into an agreement dated November 17, 2015 under which the District will take over operation of the water system owned and currently operated by Keeton Ranch Water (hereafter the "Keeton water system") and augment this water system's associated depletions. The Keeton water system can serve up to a total of 17 residences. While these residences are part of the District's service area by inclusion, they remain customers of Keeton Ranch Water. Per the water system operations agreement, the District's obligation to augment the Keeton water system customers is contingent on a separate water lease agreement between the District, Mr. Keeton and Keeton Ranch Water remaining in effect. The augmentation requirement of 0.921 acre-feet per year is based on a maximum water demand of up to 3 million gallons, or 9.21 af, per year. A ten percent (10%) consumptive use factor is presumed for the Keeton water system customers' individual septic systems, resulting in a maximum depletion of 0.921 af per year. The District's water system currently serves 83 taps, and since 2000 the maximum annual water use within the District has been 24.67 af. Presuming the maximum well withdrawals of 26.34 af per under the District's current augmentation plan, total well pumping would need to increase up to a maximum of 35.55 af per year to account for the additional 9.21 af of pumping that may occur from serving the Keeton water system customers (26.34 af + 9.21 af = 35.55 af). The District has a total of 7 af of augmentation water available from the City of Fountain, with up to a maximum of 2.64 af required annually based on current well pumping limits established in Case No. 98CW136. Presuming maximum annual well withdrawals of 35.55 af, and 10% depletions, the new total augmentation requirement would equal 3.56 af as rounded. As such, the District has excess augmentation water available to replace the 0.921 af of depletions due to water use by the Keeton Ranch Water customers. In the course of operating the Keeton water system, the District will ensure that the total maximum water supplied to the Keeton Ranch Water customers will not exceed 9.21 af without further amendment of the augmentation plan decreed in 98CW136 or approval of a substitute water supply plan by this Court or the State Engineer. To this end, the District acknowledges that Keeton Ranch Water, Mr. Keeton or their successors may separately seek approval of a substitute water supply plan, using any augmentation source acceptable to the State Engineer or this Court, if the Keeton water system use might exceed 9.21 af in any given year or if the District's augmentation supply is ever insufficient to replace depletions due to water use by the Keeton water system customers. Otherwise, the District shall continue to operate the augmentation plan as required under the terms and conditions set forth in the final decree entered in Case No. 98CW136.

CASE NO. 2016CW3009; Previous Case Nos. W-514 (original), W-514(77), 1981CW93(W-514), 1985CW53(W-514), 1989CW31(W-514), 1995CW227(W-514), 2002CW69(W-514), 2009CW60(W-514) – WATER RESOURCES DEVELOPMENT COMPANY (“WRDC” or “Applicant”), c/o Mark Watson, President, 3 Widefield Boulevard, Colorado Springs, Colorado 80911. (Please direct all pleadings/communications to Sarah A. Klahn, and/or Courtney J. Krause, White & Jankowski, LLP, Attorneys for Applicant, 511 Sixteenth Street, #500, Denver, Colorado 80202; (303) 595-9441)

Application for Finding of Reasonable Diligence

EL PASO COUNTY, COLORADO

II. Remarks: a. WRDC is the successor in interest of Widefield Homes Water Company (“Widefield Homes”). Widefield Homes appropriated or acquired the water rights that are the subject of this diligence application, and WRDC now owns and maintains these water rights. The water rights described in section III, below, (referred to as “Subject Water Rights”) are used by the Widefield Water & Sanitation District (“WWSD”) under a Master Water Lease. WWSD maintains a municipal water and utility system not only for the benefit of its customers but also for the benefit of such extra-territorial water users that may be within its defined service area, consistent with contractual commitments and/or agency relationships. A map of Widefield’s service area is attached to the Application as Exhibit 1 (hereinafter referred to as “Widefield Service Area”). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) b. In the W-514 decree, numerous water rights appropriated or owned by Widefield Homes were adjudicated by the Division 2 Water Court. The W-514 decree was entered on June 26, 1973.¹ The two remaining conditional water rights and associated conditional enlargement rights are listed in section III below. c. The Subject Water Rights for which diligence is sought in this matter are part of WWSD’s integrated municipal water system which diverts, treats, stores, and delivers water to its municipal customers. WWSD and/or WRDC has engaged in activities that demonstrate a diligent effort to perfect these conditional water rights and has also engaged in diligence activities in support of WWSD’s integrated system. **III. Description of conditional water rights, including name and location of structures:** a. **Source:** Underground water from the alluvium of Fountain Creek, a tributary of the Arkansas River. b. **Use:** Municipal. c. **Enfield Well No. 1:** Located in the SW1/4 of the SE1/4 of Section 24, Township 15 South, Range 66 West of the 6th P.M., approximately 550 feet from the South line and approximately 1700 feet from the East line of Section 24 in El Paso County, Colorado. i. **Appropriation Date:** June 30, 1946. ii. **Depth:** 46 feet. iii. **Amount:** 0.557 cubic feet per second (“cfs”). d. **Enfield Well No. 1 (Enlargement):** Located in the SW1/4 of the SE1/4 of Section 24, Township 15 South, Range 66 West of the 6th P.M., approximately 550 feet from the South line and approximately 1700 feet from the East line of Section 24 in El Paso County, Colorado. i. **Appropriation Date:** March 21, 1972. ii. **Depth:** 46 feet. iii. **Amount:** 2.28 cfs. e. **Enfield Well No. 3:** Located in the SW1/4 of the SE1/4 of Section 24, Township 15 South, Range 66 West of the 6th P.M., approximately 1000 feet from the

¹ All prior decrees and case numbers awarding reasonable diligence to W-514 water rights: 81CW93(W-514); 85CW53(W-514); 89CW31 (W-514); 95CW227(W-514); 02CW69(W-514); and 09CW60(W-514).

South line and approximately 2050 feet from the East line of Section 24, in El Paso County, Colorado. **i. Appropriation Date:** September 2, 1964. **ii. Depth:** 45 feet. **iii. Amount:** 20 gallons per minute (“gpm”). **f. Enfield Well No. 3 (Enlargement):** Located in the SW1/4 of the SE1/4 of Section 24, Township 15 South, Range 66 West of the 6th P.M., approximately 1000 feet from the South line and approximately 2050 feet from the East line of Section 24, in El Paso County, Colorado. **i. Appropriation Date:** March 21, 1972. **ii. Depth:** 45 feet. **iii. Amount:** 1.67 cfs. **IV. Detailed outline of what has been done to perfect and put to beneficial use the above-named conditional water rights consistent with their decrees, including expenditures.** The Subject Water Rights are integral to WWSD’s unified municipal water supply system. Accordingly, diligence on part of the system serves as reasonable diligence on the entire system. Applicant will use the remaining conditional amounts on lands located within the Widefield Service Area. WWSD and WRDC have spent approximately \$3 million dollars on planning, design, site acquisitions, legal, and construction efforts related to water system facilities to meet anticipated demands from residential and commercial growth within the WWSD. Activities and expenditures that demonstrate diligence development of the Subject Water Rights: 1. During the diligence period, WWSD has added approximately 1,300 water taps. 2. Approximately 640 acres of property has been finalized for addition to the Widefield Service Area. Approximately 2,400 single family equivalent homes are anticipated for this additional area of development. Efforts and expenditures include engineering to develop preliminary service plans, development of reimbursement agreements, and definition and negotiation of easements for off-site pipelines. Legal costs have included efforts in drafting inclusion agreements, service agreement, and reimbursement agreement. 3. WWSD reviewed and approved designs and inspected facilities associated with over three miles of new distribution lines constructed within the WWSD’s primary growth areas, including the Glen, Mesa Ridge, and Lorson areas. 4. Consistent with its Master Water Plan, WWSD completed the design and permitting of a line extension known as the E-Manifold. In addition to the overall benefits of the E-Manifold to the WWSD water system, it was specifically designed to link wells E-1, E-2, and E-3. 5. WWSD has continued to expand and upgrade its electrical system to improve the reliability of well operations. 6. WWSD has continued to expand and upgrade west to east water potable transmission lines. This west to east transmission system is a phased expansion of the WWSD’s ability to continue to utilize more water available from its rights associated with the Widefield Aquifer to serve the growth occurring in the eastern growth areas of the WWSD (“West to East System”). All of the wells in this filing are impacted by this expansion. 7. During the diligence period approximately \$0.5 million was spent in acquisition of easements which included acquiring and demolishing a single family home as well as all engineering necessary for completion of Phases 3 and 4 of the Lower West to East System. These costs include actual acquisition, engineering, and legal costs. 8. WWSD completed ongoing and annual engineering efforts related to system expansion, water rights acquisition, and facility upgrades. These engineering and construction efforts required expenditure of approximately \$1.5 million. 9. WWSD engaged in negotiations and water planning efforts to supply water to the new Southern Colorado National Military Cemetery to be located within the Widefield Service Area.

**CASE NO. 2016CW3010 - COMANCHE RESOURCES, LLC, c/o Gary Smith,
Manager, P.O. Box 25068, Colorado Springs, CO 80936** (Please address all

pleadings and correspondence to: Steven T. Monson, Ryan W. Farr, Monson, Cummins & Shohet, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Amendment of Plan for Augmentation

EL PASO COUNTY

Summary of Application. Comanche Resources, LLC (“Applicant”) is the owner of 166 shares (“Subject Shares”) of stock in Fountain Mutual Irrigation Company (“FMIC”). Currently, the Subject Shares are dedicated to provide augmentation water to original and supplemental plans for augmentation decreed in Case Nos. 99CW146, 00CW152, and 02CW112, District Court, Water Division 2 (collectively, “Plan for Augmentation”). The Subject Shares represent an amount of augmentation water dedicated to the Plan for Augmentation that is in excess of the amount of augmentation water needed to fully replace the depletions from the development served and to be served by the Plan for Augmentation. As such, Applicant is seeking to remove the Subject Shares from the Plan for Augmentation so that the removed shares may be used for other purposes free and clear of the Plan for Augmentation. **Amendment of Decrees. Existing Decrees.** In Case No. 99CW146, District Court, Water Division 2, Applicant obtained a groundwater right for Midway Ranches POA Well No. 1 (DWR Permit No. 56724-F) and a plan for augmentation in order to supply replacement water for out-of-priority depletions caused by the diversions from this well (“99CW146 Case”). The 99CW146 Case utilized 314 FMIC shares as the augmentation source for the replacement of stream depletions from the pumping of Midway Ranches POA Well No. 1, which serves homes within Applicants’ service area as described in Exhibit A attached to the Application (“Service Area”). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) In the 99CW146 Case, the court found that the each share of FMIC stock yielded on average 0.7 annual acre-feet of consumptive use water. Therefore, the 314 shares of FMIC stock yielded 219.8 annual acre-feet of replacement water for Midway Ranches POA Well No. 1. In Case No. 00CW152, District Court, Water Division 2, Applicant obtained a groundwater right for CR Well No. 1 (DWR Permit No. 64950-F) and supplemented the original 99CW146 plan for augmentation with the addition of 103 FMIC shares owned by the Applicant. In the 00CW152 case, Fountain Valley Power, LLC (“Fountain Valley”) also obtained a groundwater right for its FVP Well Nos. 1, 2, and 3 to provide a physical supply of water to its power plant. In order to augment the out-of-priority depletions caused by the diversions of FVP Well Nos. 1, 2, and 3, Fountain Valley entered into a Water Supply Agreement with Applicant for the Applicant to supply augmentation water to Fountain Valley (“Water Supply Agreement”). The additional 103 FMIC shares were added to the Plan for Augmentation in total to replace the of out-of-priority diversions caused by the pumping of CR Well No. 1, Midway Ranches POA Well No. 1, and the FVP Well Nos. 1, 2, and 3. The additional 103 shares of FMIC stock yielded 72.1 annual acre-feet of additional replacement water bringing the total amount of replacement water under the Plan for Augmentation to 291.9 annual acre-feet. In Case No. 02CW112, District Court, Water Division 2, Applicant obtained two additional

groundwater rights for Midway Ranches Well No. 1 and CR Well No. 1 and further supplemented the Plan for Augmentation by committing an additional 145 shares of FMIC stock owned by the Applicant to the plan for the replacement of ground water depletions for water users within the Exhibit A Service Area. The additional 145 shares of FMIC stock yielded 101.5 annual acre-feet of additional replacement water. The total number of Applicant's FMIC shares dedicated to the Plan for Augmentation from the 99CW146 Case, the 00CW152 Case, and the 02CW112 Case is 562 shares. These 562 FMIC shares provide for a total of 393.4 annual acre-feet of augmentation water for the Plan for Augmentation for the provision of water service within the Service Area. The Plan for Augmentation does not claim return flows from groundwater diversions and therefore 100 percent of diversions are replaced under the Plan for Augmentation.

Water Commitments. Pursuant to the Water Supply Agreement, 244 of the 562 FMIC shares in the Plan for Augmentation are committed to replace depletions resulting from the diversions from FVP Well Nos. 1, 2, and 3. This application does not impact the FVP Wells as the Subject Shares to be withdrawn are not within the FMIC shares committed to the Water Supply Agreement. Wigwam Mutual Water Company ("Wigwam") operates and administers the Plan for Augmentation and provides water to the water users within the Service Area. There are currently 270 residential taps or equivalents within the Service Area and there are an additional 136 residences proposed to be constructed within the Service area in the future. Comanche further has included 50 taps or equivalent surplus for potential addition to the Service Area over and above current and future plans. Each residence in the Service Area is classified as an Equivalent Development Unit ("EDU") and requires, and is limited by historical practices and rules and regulations of Wigwam, to 0.23 acre-feet of diversions annually. As such, a total of 104.88 acre-feet of augmentation water is necessary to fully augment all of the 456 current, proposed, and potential EDUs. At the yield of 0.7 acre-feet of consumptive use per share, 104.88 acre-feet of needed augmentation water is met through the utilization of 150 FMIC shares. Applicant therefore intends to leave 152 FMIC shares for use by Wigwam within the Plan for Augmentation to augment the depletions associated with the current and future EDUs. Wigwam service within the Service Area will be capped at the 152 FMIC shares.

Requested Modification. Since the entry of the final decree in the 02CW112 Case, the planned scope and buildout of the development within the Service Area has been reduced. This reduction in development reduces the groundwater withdrawals needed to provide a water supply for the Service Area. Altogether, the Plan for Augmentation requires the dedication of 396 FMIC shares to supply the necessary amount of replacement water, being 244 FMIC shares for FVP and FMIC Shares 152 for Wigwam. This leaves 166 FMIC shares that are over and above the needed amount to serve the Plan for Augmentation. Therefore, these 166 Subject Shares are available to be removed from the Plan for Augmentation which can be done without injury to other water users. Applicant requests that the Subject Shares be changed and permanently withdrawn from the Plan for Augmentation, but still remain changed for augmentation uses whose use will be determined in future Water Court applications.

Result of Modification. The result of the modification of the Plan for Augmentation will be for Wigwam to control 152 shares of FMIC stock under the Plan for Augmentation in order to meet the augmentation demands of the current 270 EDUs and up to 186 additional EDUs; 244 shares of FMIC

stock will remain to meet the augmentation demands of Fountain Valley; and the 166 Subject Shares will be permanently removed from the Plan for Augmentation by the Applicants and shall retain their changed status for augmentation uses as future water court cases may determine. **Ownership of Structures.** Applicant is the owner of sixty-five percent of Midway Ranches POA Well No. 1 with Midway Ranches Property Owners Association owning the remaining thirty-five percent. This Application only concerns Applicant's interest in Midway Ranches POA Well No. 1. Midway Ranches POA Well No. 1 is located on land owned by South 750, LLC, whose address is 16650 Midway Ranch Road, Fountain, Colorado 80817. The Applicant has an easement for use of Midway Ranches POA Well No. 1. CR Well No. 1 is owned by the Applicant and the land where it is located is also owned by the Applicant.

CASE NO. 2016CW3011 – PRAIRIE SUN VILLAGE, LLC c/o Dave Hatch, 390 Hollyberry Lane, Boulder, CO 80305 and FOUNTAIN MUTUAL IRRIGATION COMPANY, 325 Haversham Drive, Colorado Springs, CO 80906 (Co-Applicants)

(Please address all pleadings and correspondence to: Chris D. Cummins, Monson, Cummins & Shoheit, LLC, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Underground Water Right and Approval of Plan for Augmentation

EL PASO COUNTY

General Statement of Plan Applicant is a Colorado limited liability company that owns real property in El Paso County, Colorado located in the S1/2 SE1/4 and the S1/2 SW1/4 of Section 19 and the NE1/4 NW1/4 of Section 30, and the NW1/4 of Section 31, Township 14 South, Range 64 West, 6th P.M., which property is more particularly described in Exhibit A attached to the Application ("Applicant's Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Applicant's Property is approximately 385 acres, and Applicant is planning a residential development on the Applicant's Property, and this plan for augmentation is intended to provide a mechanism for use of individual wells on each lot to the not-nontributary Laramie-Fox Hills aquifer in said residential development, along with several community wells. Co-Applicant is the Fountain Mutual Irrigation Company ("FMIC"), a mutual ditch company in which Applicant owns shares, said shares to be utilized for replacement of any injurious post-pumping depletions, under the requested Plan for Augmentation. FMIC is a Co-Applicant in this case only for purposes of protecting the company's interests under the proposed use of the FMIC shares.

Application/Ratification of Denver Basin Ground Water Rights. Relevant Background: Applicant seeks adjudication of a plan for augmentation for utilization of not-nontributary Denver Basin groundwater in the Laramie-Fox Hills aquifer underlying Applicant's Property as described above and as more particularly described in Exhibit A to the Application. The subject Denver Basin groundwater was previously quantified in Case No. 87CW08, Water Division 2, and Applicant believes such quantified Laramie-Fox Hills aquifer groundwater to have survived the Order of Cancellation in that matter dated March 2, 2007, whereby associated conditional water rights in the "Pierre Shale"²

² Based upon opinion of Applicant's consultants, Applicant believes this formation was incorrectly identified in the 87CW08 matter, and should have referenced the shallow "Laramie Shale"

formation was cancelled for failure to apply for reasonable diligence thereon. To the extent the Laramie-Fox Hills aquifer groundwater quantified and decreed in Case No. 87CW08 may be deemed to have been cancelled along with the conditional water rights subject of that decree, Applicant seeks to quantify and determine such water rights herein. Applicant has acquired 15 shares in FMIC, which will be dedicated to replacement of any injurious post-pumping depletions as part of the plan for augmentation requested herein (the "FMIC Shares"). The FMIC Shares are currently dedicated to a plan for augmentation decreed in Case Nos. 99CW146, 00CW152 and 02CW112, which is pending amendment in Case No. 16CW3010, Water Division No. 2 (collectively the "Comanche Case"), to remove said FMIC Shares therefrom and thereby allow the use of the FMIC Shares in the plan for augmentation sought herein. Applicant acknowledges that a decree of the plan for augmentation sought herein is and shall be preconditioned on the availability of the FMIC Shares, and therefore their removal from dedication in the Comanche Case. **Permitted Wells:** 1. There are four (4) permitted wells currently located or constructed upon the Applicant's Property. Of these wells, at least one is constructed to the not-nontributary Laramie-Fox Hills aquifer, Division of Water Resources Permit No. 294861, which has recently been rehabilitated by Applicant. The remainder of the existing wells, DWR Permit Nos. 21716-A, 78683, and 28689, may be constructed to the Laramie Shale formation underlying Applicant's Property (referenced as "Pierre Shale" in the prior 87CW08 matter), or to the very upper reaches of the Laramie-Fox Hills aquifer. All existing permitted wells are of an "exempt" nature, being permitted pursuant to C.R.S. §37-92-602 *et seq.* Division of Water Resources Permit No. 294861, constructed to the Laramie-Fox Hills aquifer, along with any other wells deemed to be constructed to the Laramie-Fox Hills aquifer, will either be abandoned or re-permitted as augmented structures, upon entry of a decree in this matter. Exempt wells to the Laramie Shale formation may be maintained, to the extent statutory requirements for such wells are continued through the subdivision process. 2. Applicant may, consistent with the Plan for Augmentation requested herein, construct up to 68 wells to the not-nontributary Laramie-Fox Hills aquifer of the Denver Basin underlying the Applicant's Property, as necessary to withdraw Applicant's full entitlement from said aquifer. Applicant requests that such wells be considered a Well Field, and requests waiver of the 600 foot spacing rule with regards to wells to be located solely on Applicant's Property. **Water Source:** The ground water that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicant's Property is not-nontributary. **Estimated Rates of Withdrawal and Ground Water Available:** **Estimated Rates of Withdrawal.** The pumping rates for wells to be completed to the Laramie-Fox Hills aquifer are estimated to be between 5 g.p.m. and 200 g.p.m. The actual pumping rate for each well will vary according to aquifer conditions and well production capabilities. The Applicant asserts the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts, which may be less than or exceed the above estimates. The actual depth of each well to be constructed within the respective aquifers will be determined by actual aquifer conditions. **Estimated Average Annual Amounts of Ground Water Available.** As previously decreed in Case No. 87CW08, Applicant asserts an absolute water right for the withdrawal of all

formation which overlies the Laramie-Fox Hills aquifer – the "Pierre Shale" formation is actually a deeper formation underlying the Laramie-Fox Hills aquifer.

legally available ground water in the not-nontributary Laramie-Fox Hills aquifer underlying the Applicant's Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4), but withdrawals must be limited to the 300-year subdivision water supply requirements of El Paso County. Applicant estimates that the supply of water underlying Applicant's Property, consisting of only the Laramie-Fox Hills aquifer, is approximately 86 acre feet, as set forth in the table below. Therefore, based on withdrawal of water for a 300 year period, Applicant may pump a maximum of 28 acre feet per year, subject to the limitations of the augmentation plan sought herein. The above amounts may be changed in any decree entered herein to conform to the State Engineer's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. The estimated average annual amounts of ground water available for withdrawal from the underlying Laramie-Fox Hills aquifer were decreed based upon the Denver Basin Rules, and per the decree in Case No. 87CW08, and Applicant's consultant's analysis, the following values and average annual amounts were estimated to be representative of amounts underlying the Applicant's Property:

<u>Aquifer</u>	<u>Avg. Saturated Thickness (Feet)</u>	<u>Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)</u>
Laramie-Fox Hills(NT)	150	8600	86 ³

Pursuant to C.R.S. §37-92-304(11), the Applicant requests that the Court continue to retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from the Laramie-Fox Hills aquifer. **Decreed Uses:** The Denver Basin groundwater in the Laramie-Fox Hills aquifer underlying the Applicant's Property has been adjudicated for domestic, industrial, commercial, irrigation, stock watering, recreational and fish and wildlife purposes and "any other beneficial purposes" (see Decree in Case No. 87CW08) and Applicant requests confirmation of the same from the Court, herein. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Applicant shall only be entitled to construct wells or use water from the non-nontributary Laramie-Fox Hills aquifer pursuant to the augmentation plan to be decreed herein, covering the stream depletions from such not-nontributary aquifer in accordance with C.R.S. §37-90-137(9)(c). **Well Fields:** Applicant requests that it be permitted to produce the full legal entitlement from the Laramie-Fox Hills aquifer underlying the Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifer does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifer underlying the Applicant's Property.

³ Based upon a 100-year aquifer life. A 300 year allocation as required by El Paso County Land Development Code results in a total annual allocation of 28 annual acre feet.

Description of Land Overlying Denver Basin Ground Water to be Augmented: The land overlying the Denver Basin ground water which is the subject of this section of this Application consists of approximately 385 acres in El Paso County, Colorado, as more specifically described in Exhibit A attached to the Application (“Applicant’s Property”).

Remarks. The uses of not-nontributary groundwater which Applicant seeks to augment herein, is located in El Paso County, Colorado and is anticipated to provide a physical and legal water supply to support the residential development on the Applicant’s Property. **Name and address of the owner of the overlying land and upon which any wells are to be located:** The Applicant, as set forth above, is the owner of Applicant’s Property, and all lien-holders thereon have been or will be provided timely notice of this Application consistent with statute. **Plan for Augmentation. Structures to be Augmented:** Applicant seeks approval for a plan for augmentation to replace any injurious out-of-priority depletions which may result from Applicant’s withdrawal of ground water from up to sixty-five (65) residential wells, and up to three (3) additional community wells as described herein, to the not-nontributary Laramie-Fox Hills aquifer underlying the Applicant’s Property, as more particularly described on Exhibit A potential and depicted in Exhibit B as part of a prospective subdivision to be completed thereon. **Water Rights to be Used for Augmentation:** The water rights to be used for augmentation during pumping are septic return flows from individual septic disposal systems (“ISDS”) to be utilized on 65 residential lots on the Applicant’s Property, such flows originating from in-house uses of water derived from withdrawals from the not-nontributary Laramie-Fox Hills aquifer wells as set forth in this plan of augmentation. Said ISDS return flows will accrue to an unnamed tributary to Jimmy Camp Creek, tributary to Fountain Creek, tributary to the Arkansas River. The water rights to be used for augmentation of any injurious post-pumping depletions resulting from pumping from the not-nontributary wells described herein is Applicant’s 15 shares in FMIC, as described in more detail below. **Statement of Plan for Augmentation:** Applicants wish to provide for the augmentation of stream depletions caused by pumping the not nontributary Laramie-Fox Hills aquifer wells proposed herein for up to 65 residential lots. Water use criteria for each of the lots is as follows: **Household Use Only:** 0.30 acre feet annually per single family dwelling and utilizing non-evaporative Individual Septic Disposal Systems (“ISDS”) for wastewater disposal. Any other type of waste water disposal shall require an amendment to this plan of augmentation. **Horses (or equivalent livestock):** 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. **Landscape Irrigation:** 0.046 acre feet annually per 1,000 square feet (2.0 acre feet per acre) per year, with a 90% assumed consumptive use rate. Based on these consumptive use components and a three hundred year aquifer life, each of the 65 residential lots should be able to pump 0.37 acre feet per year which is sufficient to support in house purposes, the watering of up to two horses, and the irrigation of approximately 1,000 square feet of lawn or garden. Total pumping for 65 residences will therefor be a maximum of 24.05 acre feet, and the remaining 3.95 acre feet of pumping will be made through the community wells referenced herein, for community gardens, stockwater, and other lawful uses. **Augmentation of Depletions During Pumping:** Through computer groundwater flow modeling, it has been theoretically demonstrated that pumping the Laramie-Fox Hills wells proposed in this augmentation plan over one hundred years, will deplete surface

water flows at a greater rate than 0.1 percent of the pumping rate. Using the State Engineer's aquifer database, Applicant's consultants have opined that the modeling demonstrates that total stream depletions are 34 percent of pumping after three hundred years of well pumping. Were Applicant to pump the entire average 28 annual acre feet of supply available from the Laramie Fox Hills, total maximum stream depletions would be approximately 9.52 acre feet at year 300. During pumping, septic system return flows from the 65 residences should account for approximately 17.55 acre feet per year. Thus, there is more than enough return flows through the septic system alone to replace the estimated stream depletions during the 300-year pumping life of the wells. **Augmentation for Post Pumping Depletions: Augmentation to Fountain Creek:** Once pumping ceases, it is assumed that there would be no return flows to meet any injurious post-pumping stream depletion obligations. Applicants' wells are remote from any live flows in the unnamed tributary to Jimmy Camp Creek and Fountain Creek. Applicant proposes that post-pumping depletions be replaced to Fountain Creek, tributary to the Arkansas River. Applicants will dedicate fifteen (15) shares of FMIC common stock to replace any injurious post-pumping depletions which may occur to the Arkansas River and its tributaries as a result of the pumping of Laramie-Fox Hills wells on the Applicant's Property. **Augmentation Use of FMIC Shares:** The State Engineer's model predicts maximum post pumping depletions of approximately 34.0 percent of maximum historic pumping, or 9.4 acre feet, after cessation of pumping. A FMIC share has been determined in many cases to produce 0.7 acre feet per year of replacement water. Applicant's fifteen (15) shares of FMIC stock shall be dedicated to such replacement purposes after up to three hundred years of pumping. Said FMIC shares total approximately 10.5 acre feet of augmentation supply, and therefor exceed the forecast maximum post-pumping depletion. **Previous decrees for water rights to be used for augmentation:** The water rights decreed to FMIC are as follows:

DIRECT FLOW

Fountain Creek Priority No. 1	Priority Date	Decree Date	Total Decree (cfs)
4	9/21/1861	3/6/1882	9.84 (f.38) ⁴
7	4/1/1862	3/6/1882	1.125
11	2/1/1863	3/6/1882	16.69
17	12/31/1863	3/6/1882	4.25 (2.125) ⁵

⁴ FMIC's interest in Priority No. 4 is 5.38 cfs. The amount of 1.73 cfs was changed on application of Security Water District in Case No. 90CW28. In addition to the 5.38 cfs, FMIC claims the right to divert any of the remaining 2.73 cfs decreed to this priority which is not used by the other owners thereof.

⁵ Priority No. 17 is referred to as the Janitell's right and FMIC has used ½ of the water, or 2.125 cfs, in return for the carriage of the other 2.125 cfs to its owner through the FMIC ditch. By Decree Authorizing Change in Point of Diversion in Civil Action No. 38180, entered July 29, 1959, the point of diversion for this 4.25 cfs of Priority No. 17 of the Laughlin Ditch was changed to the headgate of the Fountain Mutual Ditch.

21	12/31/1864	3/6/1882	4.65
28	12/31/1866	3/6/1882	8.48
29	12/31/1867	3/6/1882	9.68
41	9/21/1874	3/6/1882	17.05
168	1/31/1903	6/2/1919	343.2

STORAGE

Fountain Creek Priority No.	Priority Date	Decree Date	Total Decree (cfs)
Fountain	3/18/1903	6/2/1919	10,000

All of these rights are diverted through the Fountain Mutual Ditch from Fountain Creek, at its headgate located in the SW1/4 of Section 20, Township 14 S., Range 66 West of the 6th P.M. the original use for all of these rights was irrigation. **Historic Use:** FMIC water rights have been decreed for augmentation/replacement use in numerous other changes of water rights and plans of augmentation. In those previous cases, this Court has determined that each share of FMIC has historically yielded on the average the equivalent of 0.7 acre feet of net replacement or consumptive use water each year, which number represents a portion of the farm headgate delivery. These findings have been previously established by this Court, without limitation, in the decrees in Case Nos. 90CW28, 95CW3, 90CW7 (entered November 13, 2000), 99CW146 (entered November 15, 2000), 00CW152 (entered August 29, 2001), 01CW153 (entered May 15, 2002), and 01CW66 (entered January 14, 2003), Water Division 2. The replacement of augmentation credit allowed to FMIC water rights, as also determined in these prior cases, is a percentage of the FMIC actual delivery to its shareholders computed on the basis of the following table:

FMIC REPLACEMENT CREDIT
Replacement Credit as a Percentage
of Farm Headgate Delivery

<u>Month</u>	
January	47
February	58
March	70
April	70
May	70
June	70
July	72
August	72
September	74
October	66
November	40
December	49

This historic consumptive use of FMIC shares has been used in several prior cases, which findings are binding as a matter of *res judicata*. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997). There have been no

material changed circumstances since the last decree to modify these historic consumptive use determinations. Applicant requests that the Court again find that each FMIC share has historically yielded on the average the equivalent of 0.7 acre feet of net replacement or consumptive use water each year, which number represents a portion of the farm headgate delivery. The total amount of consumptive use under the FMIC water rights varies from year to year based upon the amount of water available for diversion under those rights. Therefore, the actual consumptive use available from such shares shall be based on actual in-priority diversions applied to the above monthly replacements credits schedule. Since FMIC relies upon these prior determinations, diversion records and a map are not submitted. **Remarks:** Additional remarks are as follows: Applicant requests a finding that it has complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). The term of this augmentation plan is for 300 years, however the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. Before any new wells are constructed, applications for well permits will be filed with the State Engineer's office, and well permits shall be granted in accordance with the decree pursuant to this application. All exempt wells in the Laramie-Fox Hills formation, including DWR Permit No. 294861, will be re-permitted upon approval of this Application consistent with the terms and conditions of the plan for augmentation, or properly abandoned. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. The Applicant intends to waive the 600 feet well spacing requirement for the wells to be located upon the Applicant's Property. Applicant will comply with all applicable lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 10 days of the filing of this application.

**CASE NO. 2016CW3012 - TIMOTHY KUNAU, SANDRA KUNAU, KUNAU'S
GRANDVIEW MOBILE HOME PARK, LLC, 23945 Lucky Lane, Calhan, CO 80808**

(Please address all correspondence to: Henry D. Worley, Worley Law Firm, LLC, Attorney for Applicants, 611 North Weber, Suite 104, Colorado Springs, CO 80903; (719) 634-8330)

Application for Underground Water Rights

EL PASO COUNTY

Applicants seek a decree adjudicating water in the Laramie-Fox Hills aquifer underlying approximately 280 acres of land in the W1/2 Section 22 and the NW1/4 Section 27, T. 13 S., R. 61 W., 6th P.M. They request that it be decreed for all beneficial uses except municipal uses, and that its use be approved for use at any location, subject to the requirement that two percent of the water pumped on an annual basis be relinquished to the Horse Creek drainage, tributary to the Arkansas River, and that each Laramie-Fox Hills well permitted and constructed pursuant to this decree be approved for pumping of up to 200 gpm. Applicants Tim and Sandra Kunau previously divided part of the W1/2 Section 22 and the NW1/4 Section 27, T. 13 S., R. 61 W., 6th P.M. into 13 tracts of land, each of which consists of rectangles measuring approximately 585 feet north to south by 2608 feet east to west, containing at least 35 acres each. They are numbered 1 - 13, from north to south. This application includes Tracts 4 and 5, which are assessed together, Tract 6, 7, 9, 10, 11, and 12, which are depicted on Figure 1 to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Mr. and Mrs. Kunau own Tracts 4, 5, 7, 9, and 10. Kunau's Grandview Mobile Home Park owns Tract 6. Tract 8, which is implicated by but is not included in this application, is owned by Scott Svitak. Tracts 11 and 12 are owned by Marvin Walton. When they sold Tracts 11 and 12 to Mr. Walton in 2015, Mr. and Mrs. Kunau assigned their inchoate right to appropriate 1.0 acre foot per year per tract (or 200 acre feet, total) to Mr. Walton, but reserved their inchoate right to appropriate all remaining Laramie-Fox Hill underlying Tracts 11 and 12. The legal description of the tracts is attached to the Application as Exhibit A. A copy of the Kunaus' assignment and reservation is attached to the Application as Exhibit B. **3.** Tracts 4, 5, 6, and 7 form one contiguous parcel. Tracts 9, 10, 11, and 12 form another contiguous parcel. Those two contiguous parcels are separated by Tract 8. Applicants claim that the cylinder of appropriation from a well in one parcel will overlap onto the other parcel, so that such single well shall be allowed to withdraw the entire decreed amount pursuant to Rule 11.B. of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7. Applicants seek to appropriate all of the water in the Laramie-Fox Hills aquifer underlying the Property, except for 200 acre feet total (2.0 acre feet annually for 100 years) underlying Walton's Tract 11 and 12. The State Engineer's aquifer determination tool indicates that there are 197.5 feet of saturated thickness in the Laramie-Fox Hills aquifer, so the total amount to be appropriated is calculated as 280 acres X 0.15 specific yield X 197.5 feet of saturated thickness, or approximately 8,295 acre feet total, minus the 200 acre feet assigned to Walton, for a total of approximately 8,095 acre feet, or 81.0 acre feet annually. However, Applicants agree to any different saturated thickness contained in the State Engineer's Determination of Facts for this case, subject to the Court's retained jurisdiction to finally determine the amount of water

available based on analysis of well logs. There is one lien against the Property owned by Applicants, and Applicants are sending a letter by certified mail informing the lienor, Farmers State Bank, of this application. A copy is attached to the Application as Exhibit C. Applicants do not know whether there is a lien or encumbrance against Tracts 11 or 12 owned by Mr. Walton, but any such lienor would have placed its lien on that property subject to the reservation by Applicants of all but 1.0 acre foot annually for 100 years for each of the two tracts of land. Applicants will specify in any final decree that they do not currently have the right to construct a well on Tracts 11 and 12, and that any Laramie-Fox Hills wells they construct pursuant to a decree entered herein will not be located within 600 feet of any Laramie-Fox Hills well located on Tracts 8, 11, and 12. **6.** Applicants will cause a copy of this application to be served on Mr. Svitak by ICCES and on Farmer's State Bank and on Mr. Walton by certified mail. A copy of the letter to Mr. Walton is attached to the Application as Exhibit D.

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 2016, (forms available at Clerk's office or at www.courts.state.co.us, 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, 2016.



Mardell R. DiDomenico

Mardell R. DiDomenico, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8832

(Court seal)
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