

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING JANUARY 2004

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications, and certain amendments, filed during January 2004, 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. 03CW107 – REEVES and BETSY BROWN, 3R RANCH, 7100 3R Road, Beulah, CO 81023

Amended Application for Water Rights (Surface)

Pueblo County

2. Names of structures: Ferris Spring; South Meadow Spring; Indian Spring; Bailey Spring; Carr Spring; Fern Spring. **3. Legal Description of each point of diversion:** **Ferris Spring** – Pueblo County, NE ¼ of the SW ¼ Section 25, T23S, R68W, 6th P.M., 2060 feet from the South line and 2430 feet from the West line. GPS Location (UTM format; Zone 13; Units in meters; Datum NAD27(CONUS)): Points were averaged; Northing 4207547; Easting 13S504562. **South Meadow Spring** – Pueblo County, SE ¼ of the NW ¼ Section 29, T23S, R67W, 6th P.M., 3273 feet from the South line and 3750 feet from the East line. **Indian Spring** – Pueblo County, NE ¼ of the NE ¼ Section 32, T23S, R67W, 6th P.M., 50 feet from the North line and 1100 feet from the East line. **Bailey Spring** – Pueblo County, SW ¼ of the SE ¼ Section 21, T23S, R67W, 6th P.M., 212 feet from the South line and 1900 feet from the East line. **Carr Spring** – Pueblo County, SE ¼ of the NW ¼ Section 21, T23S, R67W, 6th P.M., 1795 feet from the North line and 2620 feet from the West line. **Fern Spring** – Pueblo County, NW ¼ of the NE ¼ Section 21, T23S, R67W, 6th P.M., 740 feet from the North line and 1637 feet from the East line. All springs are located at street address 7100 3R Road, Beulah, CO. **4. Source:** _____. **5. A. Date of initiation of appropriation:** _____; **B. How appropriation was initiated (as to all springs):** 1868; **C. Date water applied to beneficial use (as to all springs):** 1868. **6. Amount claimed:** Ferris Spring - .5 gpm Absolute; South Meadow Spring – 3 gpm Absolute; Indian Spring – 2 gpm Absolute; Bailey Spring – 4 gpm Absolute; Carr Spring – 2 gpm Absolute; Fern Spring – 1 gpm Absolute. **7. Use or proposed use (as to all springs):** Livestock. **8. Names and address of owners of the land upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicants.

(Amended Application, 18 pages)

CASE NO. 04CW1 – MISCELLANEOUS FILINGS. This case is an administrative case for miscellaneous filings for calendar year 2004. It is being listed in the resume to account for the case number.

CASE NO. 04CW2 – GLENN W. FARMER, 5302 Victor Street, Dallas, TX 75214

Application for Water Rights (Surface)

Huerfano County

2. Name of structure: Spring. **3. Legal description of each point of diversion:** Huerfano County, NE ¼ of the SW ¼ Section 5, Township 29 South, Range 69 West, 6th P.M., 1358 feet from the North line and 2291 feet from the East line. **Subdivision:** La Veta Ranch, Lot 37. **4. Source:** Unknown. **5. A. Date of initiation of appropriation:** June 2002. **B. How appropriation was initiated:** Installation of spring box and standpipe. **C. Date water applied to beneficial use:** Not yet being utilized. **6. Amount claimed:** Outflow varies (Conditional). **7. Use or proposed use:** Residential. **A. If irrigation, complete the following: Number of acres historically irrigated: __; proposed to be irrigated: __. Legal description of acreage: ____.** **B. If non-irrigation, describe purpose fully:** Provision of drinking water for household. **8. Name(s) and address(es) of the land upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicant. **9. Remarks:** Certified copy of plat of location of spring and standpipe is on file with the Application and is available for inspection at the Office of the Clerk for Water Division No. 2.

(Application, 3 pages; large plat)

CASE NO. 04CW3 – CAL PHILLIP MARTIN and KATHLEEN MARIE MARTIN, 6910 Juniper Drive, Colorado Springs, CO 80908 (Henry D. Worley, MacDougall, Woldridge & Worley, Attorneys for Applicants, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905)

Application for Adjudication of Denver Basin Ground Water and for Approval of Plan for Augmentation

El Paso County

I. APPLICATION FOR DENVER BASIN WATER RIGHTS

1. Names of wells and permit, registration, or denial numbers: Well permit 117772, an exempt Dawson aquifer well. **2. Legal description of wells:** Two wells in the Dawson, and one in each of the Denver, Arapahoe and Laramie-Fox Hills aquifers, plus all necessary additional and/or replacement wells, to be located anywhere on Applicant's 39.7 acre property in the S1/2 NW1/4 Section 17, T. 12 S., R. 65 W., 6th P.M. in El Paso County. The legal description is attached to the Application as Exhibit A. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The street address of the property is 12125 Black Forest Road, Colorado Springs, CO 80908-4012. The property is located in the Arkansas River basin. **3. Source:** Not nontributary Dawson aquifer; not nontributary Denver aquifer;

nontributary Arapahoe aquifer; nontributary Laramie-Fox Hills aquifer. **4.A. Date of appropriation:** Not applicable. **4.B. How appropriation was initiated:** Not applicable. **4.C. Date water applied to beneficial use:** Not applicable. **5. Amount claimed:** Dawson aquifer - 15 g.p.m. per well, 2,220 acre feet total, 22.2 annually, absolute; Denver aquifer - 100 g.p.m., 2,430 acre feet total, 24.3 acre feet annually, absolute; Arapahoe aquifer - 200 g.p.m., 1,690 acre feet total, 16.9 acre feet annually, absolute; Laramie-Fox Hills aquifer - 100 g.p.m., 1,130 acre feet total, 11.3 acre feet annually, absolute. The above amounts will be changed in any decree entered herein to take into account the State Engineer's Determination of Facts if they are completed within the statutory period. In any event, the water court will retain jurisdiction over such decree to enter a final determination of the amount of water available for appropriation from each aquifer based on geophysical logs for such wells. **6. Proposed uses:** Indoor residential and commercial, home gardens and landscaping, including decorative ponds and fountains, stock water and augmentation. **7. Name and address of owner of land on which well is located:** Same as applicant.

II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.

8. Name of structures to be augmented: Two Dawson aquifer wells, one of which, permit no. 117772, is already constructed. No other water rights are or will be diverted from these wells. After entry of a decree, permit no. 117772 will be re-permitted consistent with the provisions of the decree and applicable statutes and regulations. **9. Previous decrees for water rights to be used for augmentation:** None. **10. Historic use:** Not applicable. **11. Statement of plan for augmentation:** Applicant intends to subdivide the Property into two lots, each of which will be served by individual on-lot wells which may pump no more than 0.9 acre feet annually, each. Water from well permit no. 117772 and from one additional Dawson aquifer well is expected to be used for indoor residential or commercial uses on each of the lots, for irrigation of up to 13,000 square feet of turf grass per lot, and for stock watering of up to four horses per lot, or the equivalent thereof, each "equivalent" consuming 10 gallons of water per day. Water use criteria for the most likely uses are as follows: indoor uses, 0.26 acre feet annually per single family dwelling, which is 10% consumptive based on the required use of Individual Sewage Disposal Systems ("ISDS"); horses (or horse equivalent), 0.011 acre feet annually per head, 100% consumptive; landscape irrigation, 2.0 acre feet per acre for turf grass, 85% consumptive. So long as a single family dwelling or commercial facility with bathrooms is located on each lot, and its wastewater is treated with an ISDS or a discharging type of central wastewater system, water pumped pursuant to the augmentation plan may be used for any beneficial use, because ISDS return flows alone will exceed maximum depletions during pumping. Change of the type of wastewater treatment to central sewage treatment with direct discharge to the stream shall not require an amendment to this plan for augmentation, but change to any other type of waste water disposal shall require an amendment to the plan for augmentation. Based upon computer modeling, depletions to the South Platte and Arkansas basins combined are expected to gradually increase to a maximum of approximately 27 % of pumping annually in the 310th year after

pumping begins, and will decline thereafter. Applicant proposes to replace depletions during pumping with return flows from the ISDS, and to replace injurious post-pumping depletions with the nontributary Arapahoe aquifer water decreed herein, 461 acre feet of which will be reserved for that purpose. However, Applicant shall reserve the right to replace such depletions with any judicially acceptable source of augmentation water. Applicant further proposes to aggregate all depletions and replace them to the Arkansas River drainage. Any final decree entered in this case shall provide that no more than 0.9 acre feet per year may be diverted from each of the two Dawson aquifer wells absent an amendment of this plan for augmentation. Because depletions will occur in both Water Divisions 1 and 2, this application is being published in both water divisions, and will be consolidated in Water Division 2.
(Application and attachments, 4 pages)

CASE NO. 04CW4 – PETE and CHRISTINA CESAR, 27500 Nicholson Road, Pueblo, CO 81006

Application for Water Rights (Surface)
Custer County

2. Name of structure: Spring. **3. Legal description of each point of diversion:** Custer County, SE ¼ of Section 23, Township 21 South, Range 71 West, 6th P.M., 909.10 feet from the South line and 2785.78 feet from the West line of Section 23. **Street Address:** Vacant land in Westcliffe. **4. Source:** Spring. **5. A. Date of initiation of appropriation:** April of 1966. **B. How appropriation was initiated:** Installed pipeline and water tank. **C. Date water applied to beneficial use:** 5/66. **6. Amount claimed:** 10 gal./min. Absolute. **7. Use or proposed use:** Agricultural use – water cattle. **A. If irrigation, complete the following:** N/A. **B. If non-irrigation, describe purpose fully:** Agricultural/livestock. **8. Name(s) and address(es) of the land upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicants.

(Application and attachments, 4 pages)

CASE NO. 04CW5 – THEODORE W. MORGAN and NORMA F. MORGAN, 0021 John Deere Road, Howard, CO 81233

Application for Water Rights (Surface)
Fremont County

2. Name of structure: Morgan Spring. **3. Legal description of each point of diversion:** Fremont County, NW ¼ of the NW ¼ Section 2, Township 48 North, Range 10 East, N.M.P.M., 1117 feet from the North line and 340 feet from the West line. **Street Address:** 0021 John Deere Road. **4. Source:** Natural spring. **5. A. Date of initiation of appropriation:** Nov. 1993 for pond; 01/20/04 for irrigation. **B. How appropriation was initiated:** By filing. **C. Date water applied to beneficial use:** Nov. 1993 for pond; not yet used for irrigation. **6. Amount claimed:** 3 gpm Absolute for pond; 3 gpm Conditional for irrigation. **7. Use or proposed use:** Irrigation of 2 acres and stock water. **A. If irrigation, complete the following:** **Number of acres historically irrigated:** 0;

proposed to be irrigated 2. **Legal description of acreage:** Parcel in: NW ¼ of NW ¼, Section 2, Township 48 North, Range 10 East, N.M.P.M. at a point 1100' N and 390' W of the NW corner of Section 2. **B. If non-irrigation, describe purpose fully:** Maintain pond water level. **8. Name(s) and address(es) of the land upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicants. **9. Remarks:** None.
(Application and attachments, 4 pages)

CASE NO. 04CW6(97CW11) – RON D. VELARDE, 423 W. Mayfield Drive, Grand Junction, CO 81503 and ANTHONY VELARDE, 910 Penn Avenue, Walsenburg, CO 81089

Application for Finding of Diligence
Huerfano County

2. Name of structures: Shaw Spring #1, Shaw Spring #2. **3. Describe conditional water right (as to each structure) giving the following from the Referee's Ruling and Judgment and Decree:** Shaw Spring No. 1: 5 gpm. Absolute for livestock and wildlife watering use, conditional for domestic. Shaw Spring No. 2: 5 gpm. Absolute for livestock and wildlife watering use, conditional for domestic. **A. Date of Original Decree:** July 1, 1952; **Case No.:** 97CW11; **Court:** Water Division District No. 2. **B. Legal description:** Shaw Spring #1: Huerfano County, NW ¼ of the SW ¼ Section 10, Township 28 North (Court records indicate Township 28 South), Range 70 West, 6th P.M., 2850 feet from the North line and 1000 feet from the West line. Shaw Spring #2: Huerfano County, NW ¼ of the SW ¼ Section 10, Township 28 North (Court records indicate Township 28 South), Range 70 West, 6th P.M., 2880 feet from the North line and 1100 feet from the West line. **C. Source:** _____. **D. Appropriation Date:** July 1, 1952; **Amount:** 5 gpm. **E. Use:** Livestock, wildlife and domestic. **4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** The springs have been cleaned. Channels have been cleaned and diverted to one channel. Both springs are piped so that source of each spring is now diverted to single outlet at each spring. **5. If claim to make absolute – Water applied to beneficial use:** **A. Date:** ____; **Amount:** ____; **Use:** _____. **B. Description of place of use where water is applied to beneficial use:** The water will be used on the Velarde Pass Creek Ranch located in Huerfano County. **6. Name(s) and address(es) of owner(s) of land on which structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** The Velarde Ranch, Pass Creek, Huerfano, CO
(Application and attachments, 3 pages)

CASE NO. 04CW7(96CW222) – COLORADO COMMUNITIES CORPORATION,
c/o David M. Brown, President, 2164 East Broadway, Suite 300, Tempe, AZ
85282

(William A. Paddock and Karl D. Ohlsen, Carlson, Hammond & Paddock,
Attorneys for Applicant 1700 Lincoln Street, Suite 3900, Denver, CO 80203)

Application to Make Conditional Water Rights Absolute, in Part, and for Finding
of Reasonable Diligence

Huerfano County, Colorado

The Colorado Communities Corporation seeks to make conditional water rights
absolute, in part, and seeks a sexennial finding of reasonable diligence for rights
of storage, ground water diversion and exchange decreed on January 8, 1998, in
Case No. 96CW222, Water Division No. 2.

I. APPLICATION FOR FINDING OF REASONABLE DILIGENCE. 1. Name of

Structures: A. Storage Rights: (1) Echo Canyon Ranch Pond No. 1. (a)

SE ¼ NW ¼ Section 29, Township 30 South, Range 68 West of the 6th P.M. (b)

0.70 acre-feet conditional (0.50 acre-feet decreed absolute in Case No.

96CW222). **(2) Echo Canyon Ranch Pond No. 2.** (a) SE ¼ NW ¼ Section

29, Township 30 South, Range 68 West of the 6th P.M. (b) 0.45 acre-feet

conditional (1.25 acre-feet decreed absolute in Case No. 96CW222). **(3) Echo**

Canyon Ranch Pond No. 3. (a) NE ¼ SW ¼ Section 29, Township 30 South,

Range 68 West of the 6th P.M. (b) 0.50 acre-feet conditional (0.30 acre-feet

decreed absolute in Case No. 96CW222). **(4) Echo Canyon Ranch Pond No.**

4. (a) NE ¼ NW ¼ Section 29, Township 30 South, Range 68 West of the 6th

P.M. (b) 1.50 acre-feet conditional. **(5) Date of original decree:** January 8,

1998, Case No. 96CW222, District Court, Water Division No. 2, State of

Colorado. **(6) Source:** Echo Creek. **(7) Appropriation Date:** December 30,

1996. **(8) Beneficial Use:** All beneficial uses in connection with and located

upon the Echo Canyon Ranch for recreation, fish and wildlife, stock watering,

augmentation, and fire protection purposes. Augmentation use is conditionally

decreed and the remaining uses are absolute. **B. Ground Water Right: (1)**

Echo Canyon Ranch Well No. 1. (2) Date of original decree: January 8,

1998, Case No. 96CW222, District Court, Water Division No. 2, State of

Colorado. **(3) Location:** SE ¼ NW ¼ of Section 29, Township 30 South, Range

68 West of the 6th P.M., 2,600 feet from the north section line and 2,440 feet from

the west section line; Well Permit No. 49282-F. **(4) Source:** Ground water

tributary to Echo Creek, Huerfano County, Colorado. **(5) Date of**

appropriation: December 30, 1996. **(6) Amount:** 50 g.p.m. **(7) Depth:** 120

feet. **(8) Beneficial Use:** Beneficial uses in connection with and located upon

Echo Canyon Ranch, including commercial, domestic, irrigation, fire protection,

and stock watering. **C. Appropriative Right of Exchange: (1) Date of**

original decree: January 8, 1998, Case No. 96CW222, District Court, Water

Division No. 2, State of Colorado. **(2) Appropriation date:** December 30,

1996. **(3) Source of water for exchange:** Calf Pasture Ditch Priority No. 2,

tributary to the Cucharas River. (a) The Calf Pasture Ditch Priority No. 2 out of

the Cucharas River for 1.5 c.f.s. decreed for irrigation uses in an unnumbered

decreed designated the "Read Decree" in the District Court in and for Huerfano

County, entered on June 12, 1889, with an appropriation date of June 15, 1863. The decreed headgate location is in the Cucharas River in the NW ¼ SW ¼, Section 21, Township 29 South, Range 68 West of the 6th P.M. Consumptive use was quantified for the Calf Pasture Ditch in Case No. 82CW132 and 85CW10, Water Division 2. The Applicant has leased 0.0161 c.f.s. of this right to be used in the exchange, with up to 3 acre-feet of consumptive use per year. **(4) Location of Exchange Reach:** The stream reach covered by this exchange extends from the decreed point of diversion of the Calf Pasture Ditch, described above, upstream on the Cucharas River to the confluence of the Cucharas River and Echo Creek, then upstream on Echo Creek to the structures to be augmented. **(5) Rate of exchange:** Maximum rate of exchange is 0.0161 c.f.s. **(6) Beneficial use:** All beneficial uses for which the waters to be exchanged are decreed, including the uses decreed in Case No. 96CW222, augmentation of out-of-priority depletions and storage. **2. Provide a detailed outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures.**

A. Storage Rights: (1) Due to topographical constraints, the Applicant will not expand Pond Nos. 1-3. The Applicant hereby abandons all claims to the conditional water storage rights decreed to these three ponds in Case No. 96CW222. (2) During the Diligence Period, the Applicant began construction on Pond No. 4. After initial construction, flooding destroyed the pond and dam. After extensive analysis, the Applicant determined that in order to avoid flood damage in the future, Pond No. 4 needed to be constructed as two contiguous, interconnected ponds, Pond No. 4A and Pond No. 4B. The total cumulative storage capacity for Pond No. 4A and Pond No. 4B is less than 1.50 acre-feet. Pond No. 4A has a total surface area of 0.1058 acres (4,609 sq. ft.) and Pond No. 4B has a total surface area of 0.1242 acres (5,412 sq. ft.), for a total of 0.23 acres. The Applicant completed construction of Pond No. 4A and Pond No. 4B during the Diligence Period and has filled the two ponds by exchange upstream from the Calf Pasture Ditch Priority No. 2. **B. Ground Water Rights:** Colorado Communities Corporation received Well Permit No. 049282-F on December 1, 1997, to drill Echo Canyon Ranch Well No. 1. On October 23, 1998, Applicant received an extension of time to drill the well until December 1, 1999. Well No. 1 was drilled on February 18, 1999. The Applicant installed a pump on March 29, 1999, a totalizing flow meter on March 27, 1999. The first date of beneficial use was March 30, 1999. A Statement of Beneficial Use was filed on April 20, 1999. The Applicant has used water from Echo Canyon Ranch Well No. 1 to supply the domestic water and irrigation water requirements for the development. **C. Appropriative Right of Exchange:** During the Diligence Period, the Applicant has operated the exchange to augment depletions from operation of Well No. 1, to replace evaporative depletions in the four ponds, and to fill Pond Nos. 1-3, 4A, and 4B when those ponds were not in priority. The Applicant has stored excess historical consumptive use credit from the Calf Pasture Ditch Priority No. 2 right in the Ponds by operation of the exchange when the available historical consumptive use exceeded the amount of out-of-priority depletions. **D. System-Wide Diligence:** The decree in Case No. 96CW222 was entered to provide a

consistent water supply to the Echo Canyon Ranch at full development. When the decree was entered, the Ranch consisted of a seven-unit lodge, two three-bedroom cottages, a single family home (caretaker's residence), a small barn, Pond Nos. 1-3, and a small conference center with three attached living units. During the Diligence Period, the Applicant has added Pond Nos. 4A and 4B. The development now includes the manager's cabin with two guest rooms, the seven-unit lodge, three cabins totaling eleven guest rooms, the barn with two wranglers' quarters and four trailers for staff use. The Applicant has developed plans to add four additional cabins with a maximum capacity of eight guests combined. The total capacity of these improvements at full occupancy is eighty people. During the Diligence Period, the Applicant has spent in excess of \$20,000 on labor, equipment and construction of Well No. 1 and Pond Nos. 4A and 4B. The Applicant has constructed an extensive plumbing and delivery system for the full development of the water rights and has dedicated a great deal of labor to address and prevent flood damage through the development by revising the pond structure without increasing evaporative depletions or storage capacity. The Applicant has constructed water storage tanks for fire protection and irrigation at a cost of \$38,000. **APPLICATION TO MAKE CONDITIONAL RIGHT ABSOLUTE IN PART. A. Ground Water Right.** Since March 30, 1999, the Applicant has used withdrawals from Well No. 1 to supply domestic water for the development. The water has been used to irrigate up to 5,000 square feet of landscape. The maximum annual diversion since was 2.133 acre-feet in 2003, with a maximum depletion of 0.354 acre-feet. The maximum rate of diversion was 16.9 g.p.m., on March 29, 1999. The Applicant hereby requests the Court to enter a decree making the conditional ground water right decreed in Case No. 96CW222 absolute at a rate of 16.9 g.p.m., with 33.1 g.p.m. remaining conditional. **B. Appropriative Right of Exchange:** Since Well No. 1 began diverting water on March 30, 1999, the Applicant has exercised the appropriative right of exchange upstream from the Calf Pasture Ditch Priority No. 2 to replace out-of-priority depletions due to well pumping. The Applicant has exercised the exchange to replace out-of-priority evaporative losses from Pond Nos. 1, 2, 3, 4A and 4B. The Applicant exercised the exchange to fill excess storage capacity in the four Ponds. The maximum rate at which the exchange was exercised occurred in July 2000, at which time the Applicant filled Pond Nos. 4A and 4B at a rate of 0.0161 c.f.s. The Applicant hereby requests the Court to enter a decree making the conditional appropriative right of exchange decreed in Case No. 96CW222 absolute in the amount of 0.0161 c.f.s. **RELIEF REQUESTED.** The Applicant seeks to make the amounts set forth in paragraphs 3(a) and 3(b) absolute. Except to the extent the storage, ground water and exchange rights are claimed to be and are made absolute in this proceeding, or are hereby expressly abandoned, the Applicant seeks a finding of reasonable diligence for the full amount of all remaining conditional storage, ground water and exchange rights decreed in Case No. 96CW222. The Applicant hereby requests the Court to enter a decree: Making absolute, in part, the ground water rights diverted through Echo Canyon Ranch Well No. 1 in an amount of 16.9 g.p.m.; making absolute the appropriative right of exchange in the amount of 0.0161 c.f.s.;

confirming that the Applicant maintains a single unified and integrated water supply system and that diligence on any feature of that system shall be considered in finding reasonable diligence in the development of all conditional features of the system, including the storage, ground water and conditional exchange rights that are the subject of this Application; confirming the abandonment of the conditional water rights for Echo Canyon Ranch Pond Nos. 1-3; finding that the Applicant has shown reasonable diligence in development of the remaining conditional rights decreed in Case No. 96CW222. To the extent that such rights are not made absolute, the Applicant seeks a finding that it has met all applicable legal requirements and is entitled to a decree continuing the conditional rights in good standing and fixing a date when the next application for a finding of reasonable diligence is required.
 (Application, 9 pages)

CASE NO. 04CW8 – ST. CHARLES MESA WATER DISTRICT, 1397 Aspen Road, Pueblo, CO 81006 (Anne J. Castle and Leah A. Kukowski, Holland & Hart, Attorneys for Applicant, 555 Seventeenth Street, Suite 3200, P. O. Box 8749, Denver, CO 80201-8749)

Application for Change in Water Rights
 Pueblo County

Applicant St. Charles Mesa Water District (“Applicant” or “District”) submits this application for change in water rights as follows: **1. Name, address, and telephone number of applicant:** St. Charles Mesa Water District, 1397 Aspen Road, Pueblo, CO 81006, (719) 542-4380. Please direct all correspondence to Anne J. Castle, Leah A. Kukowski, Holland & Hart, LLP, P.O. Box 8749, Denver, CO, 80201-8749, (303) 295-8000. **2. Water Rights to be Changed:** Applicant owns 1794.204 shares of the 19,738.593 outstanding shares in the Bessemer Irrigating Ditch Company (“Bessemer”). By decree dated April 28, 1972 in Case No. W-374, Water Division 2, domestic use was approved and added to the decreed uses for water represented by 166.745 shares of the Applicant’s shares in Bessemer. In this Application, Applicant seeks a change in use of the water represented by the remaining 1627.459 shares in Bessemer owned by Applicant. Bessemer owns the following water rights (the “Bessemer Water Rights”):

Bessemer Water Rights

Identification of Water Right	Date Original Decree Entered	Date Transfer Decree Entered*	Amount owned by Bessemer	Decreed Use	Appropriation Date
Warrant, Barnes & Baxter	May 9, 1892	November 28, 1903	2.0	Irrigation	April 30, 1861
Excelsior	May 9, 1892	September 15, 1905	20.0	Irrigation	Dec. 31, 1861
Canon City & Oil Creek	Feb. 3, 1894	Feb. 3, 1894	3.74	Irrigation and Domestic	May 31, 1864
Rogers	March 23, 1896	May 21, 1898	3.0	Irrigation	June 30, 1866
Arkansas Ditch	March 23, 1896	May 10, 1923	2.5	Irrigation and Domestic	Jan. 8, 1867

Canon City & Oil Creek	Feb. 3, 1894	Feb. 3, 1894	5.13	Irrigation and Domestic	May 31, 1867
Hamp-Bell	May 9, 1892 (modified and confirmed March 23, 1896)	Oct. 3, 1903	1.47	Irrigation	Nov. 30, 1870
Barnum	May 9, 1982	**	3.4	Irrigation	Dec. 31, 1870
Cape Horn Ranch	Dec. 22, 1896	**	2.0	Irrigation	Sept. 18, 1873
Cape Horn Ranch	Dec. 22, 1896	**	2.5	Irrigation	Dec. 31, 1876
Cape Horn Ranch	March 23, 1896	May 10, 1923	0.5	Irrigation and Domestic	Dec. 31 1876
Hamp-Bell	May 9, 1892 (modified and confirmed Match 23, 1896)	Oct. 3, 1903	0.41	Irrigation	Dec. 31, 1878
Collier	March 23, 1896	**	14.0	Irrigation	May 4, 1881
I.N. Sater	March 23, 1896	**	2.0	Irrigation	June 20, 1881
Collier	March 23, 1896	**	8.0	Irrigation	March 31, 1882
Bessemer Flood Right	March 23, 1896	N/A	322.0	Irrigation	May 1, 1887

* Indicates date of decree transferring water right to the Bessemer Ditch.

** Indicates water right was transferred to Bessemer Ditch prior to the Transfer Statute of 1899.

Applicant's pro rata entitlement to the Bessemer Water Rights represented by its 1627.459 shares in Bessemer that were not subject to the change in Case No. W-374 is hereinafter referred to as the "Subject Water Rights." **A. Point of Diversion for Bessemer Water Rights:** The Bessemer Water Rights are diverted at the outlet of Pueblo Reservoir. The Pueblo Reservoir Dam axis and the centerline of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West, 6th P.M., from which the Northeast corner of said Section 36 bears North 61° 21' 20" East, a distance of 2,511.05 feet, all as more particularly described in the decree in Case No. B-42135, District Court, Pueblo County. **B. Source for Bessemer Water Rights:** Arkansas River. **3. Background Information:** Applicant is a municipal water provider currently serving approximately 4,200 equivalent residential units ("EQRs") located within the District boundaries. To serve its growing population, Applicant must increase its supply of municipal water. Applicant operates two reservoirs, Reservoir No. 1 and Reservoir No. 2, that have water storage capacity of 90 acre feet and 600 acre feet, respectively, and are used by Applicant to store municipal water prior to delivery to its customers. Applicant is in the process of enlarging Reservoir No. 2 to increase its storage capacity by 1,200 acre feet, to a total capacity of 1,800 acre feet. **4. Description of Proposed Change:** Applicant requests a change in the type of use of the Subject Water Rights to add municipal use and storage to the decreed uses. Applicant is not requesting a new point of

diversion, nor a change in the place of use. The Subject Water Rights will continue to be diverted from the decreed point of diversion, the Bessemer Ditch Headgate, and will be delivered to Reservoir No. 2 via the Bessemer Ditch for storage prior to treatment and delivery to District customers. The Subject Water Rights have historically been used to irrigate lands located within the District, as more particularly described in paragraph 5, below, and will continue to be used within the District. **5. Place of Use:** The District's service area is divided into two zones. Zone 1 is generally located along the south side of the Arkansas River and north of the Bessemer Ditch, extending from downtown Pueblo eastward. Zone 2 is located south and east of Zone 1 and south of the Bessemer Ditch, extending east to the Huerfano River. A map depicting the District's boundaries and the location of Zones 1 and 2 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. Since acquiring the Subject Water Rights, the District has leased portions of them to various farmers for irrigation of lands located within the District. Much of the acreage irrigated by the Subject Water Rights is owned by Applicant and leased to farmers in conjunction with the lease of the Subject Water Rights. Storage of the Subject Water Rights will take place in Reservoir No. 2. From the Reservoir, the water will be treated in the District's water treatment plant and distributed to the District's customers. The municipal and storage use of the Subject Water Rights will be limited to Zone 1 of the District. By limiting municipal use of the Subject Water Rights to Zone 1, all return flows will continue to accrue to the Arkansas River in a manner substantially similar in timing and location as has historically occurred, as described in paragraph 7 below. **6. Historical Consumptive Use:** The Subject Water Rights were historically used to irrigate 112 parcels of land totaling approximately 1,779 acres. Applicant has undertaken an engineering analysis to determine the historical consumptive use of the Subject Water Rights based on river headgate diversions and crop consumptive use calculations. Diversion data from the Colorado Division of Water Resources indicates that the Bessemer Ditch has diverted an annual average of 2.99 acre feet per share from 1963 to 2002. The analysis of historical consumptive use for the Subject Water Rights indicates a value of 1.68 acre feet per acre. Applicant will use the Subject Water Rights as part of its municipal water supply. To the extent that the consumptive use credit attributable to the Subject Water Rights is not applied to municipal use or used for irrigation, Applicant claims credit for the remaining consumptive use. No other use of the excess consumptive use credit will be made without further application to this Court and approval of such additional use. Applicant claims the right to reuse, successively use, and dispose of such credits, so long as it retains dominion and control over such water. **7. Return Flows:** Applicant has undertaken an engineering analysis to determine the effect of the proposed change of use as a result of changes in the location, quantity, or timing of return flows to the Arkansas River to the vested water rights of others. *Location of Return Flows:* Historical return flows from the irrigation use of the Subject Water Rights have generally accrued to a reach of the Arkansas River located between Fountain

Creek and the Huerfano River, depicted on Exhibit A as “Historical Return Flow Reach.” Use of the Subject Water Rights for municipal use within Zone 1 of the District will result in return flows that generally accrue to a smaller reach located in the upstream portion of the Historical Return Flow Reach, just east of Fountain Creek and extending to a point West of Chico Creek, depicted on Exhibit A as “Future Return Flow Reach.” Therefore, the location of future return flows under the requested change of use will overlap the upstream portion of the Historical Return Flow Reach and the requested change will not cause injury to downstream water users. *Quantity and Timing of Return Flows:* At present, there are three sanitation districts (Blende, Salt Creek, and St. Charles Mesa Sanitation Districts) that provide wastewater treatment service to a portion of Applicant’s customers. Wastewater flows from each of these sanitation districts are sent to the Pueblo Wastewater Treatment Plant for treatment and discharge into the Arkansas River at a point immediately upstream of Zone 1. The sanitation districts currently serve a relatively small portion of the District’s customers. At present, the remainder of the District’s existing customers are served by individual septic systems. Applicant has calculated the quantity and timing of future return flows with no additional central wastewater treatment service, as well as future return flows with full central wastewater treatment service. Applicant’s engineering analysis demonstrates that the change of the Subject Water Rights to include municipal use, both with and without future additional central wastewater treatment service, will result in a greater volume of return flows to the Arkansas River immediately downstream of Zone 1 in every month of the year. Therefore, the requested change will not result in injury to the owners of vested water rights or decreed conditional water rights. **8. Continued Irrigation Use of Bessemer Shares:** Applicant requests a change of the Subject Water Rights to add municipal use and storage to the decreed uses. Currently, annual water usage within Zone 1 of the District does not require use of all Subject Water Rights for municipal use. A portion of the Subject Water Rights are now and will continue to be used for irrigation. However, Applicant anticipates that the population of the District will increase, requiring additional supplies of municipal water. Applicant intends to continue irrigation use of the portion of the Subject Water Rights that are not currently required for municipal use. Applicant requests that any delays by Applicant in putting all the Subject Water Rights to municipal and storage uses not be deemed to constitute an abandonment of those uses. **9. Terms and Conditions Proposed to Prevent Injury:** Applicant proposes the following terms and conditions to prevent injury to vested water rights and decreed conditional water rights: **A.** The point of diversion of the Subject Water Rights shall remain as currently decreed. **B.** The rate of diversion for the Subject Water Rights shall not exceed 32.4 c.f.s., which is the pro rata entitlement of the Subject Water Rights when all Bessemer Water Rights are in priority. If all Bessemer Water Rights are not in priority, the rate of diversion shall be limited to the pro rata entitlement of the in-priority diversion, or 8.24% of the total diversion. **C.** Applicant will report diversion of its pro rata entitlement of the Bessemer Ditch Water Rights to the Division Engineer on a monthly basis in a manner acceptable to the Division Engineer. **D.** Applicant will

limit the municipal use of its Bessemer Ditch shares to use within the current boundaries of Zone 1 of the District. **E.** Applicant will calculate and monitor the monthly return flows from the municipal system and compare them against the monthly return flows from the historical condition. If, at any time, the municipal return flows exceed 95% of the historical return flows, Applicant will take necessary steps to limit future lawn irrigation from new development within the District, to ensure that the vested water rights of others are not injured. **F.** The rights of the District as a shareholder in the Bessemer Irrigating Ditch Company shall be in no way changed by the requested change of water right or any decree entered in this proceeding. Such rights are subject to the bylaws of the Bessemer Irrigating Ditch Company, particularly Article VI, Section 5, as follows: "No stockholder shall be permitted to change the point of diversion of water or to transfer water from one tract of land to another tract of land, except upon the written order and approval of the Board of Directors first had and obtained and further that no such transfer of water shall be allowed on a request received after May 15, 1959 for the current year and for subsequent years on a request after March 31 of each year." And Article IX, Section 1, 2, and 3 as follows: "Section 1. Each holder of capital stock of the Company shall be entitled to receive from the Company's main ditch a proportionate share of the Company's water flowing therein, which share shall be the proportion which the number of shares of the stock held by such stockholder bears to the entire outstanding stock of the Company, and in order that the water may be equitably distributed among the stockholders, the directors and persons entrusted by them with the management of the ditch are empowered to rotate water among stockholders, or to divide the ditch into districts for the distribution of water, or to adopt such other methods as in their judgment may from time to time become necessary to secure all stockholders their proportionate share of water. Section 2. The Company shall not be considered as guaranteeing to the holders of stock the use at all times of the full amount of water to which they are respectively entitled, and if in the distribution of water any stockholder may at any time fail to receive his, her or its proportionate share, the Company shall not be liable to such stockholder in damages if such failure was caused by an error in judgment on the part of those charged with the distribution of water or by reason of circumstances beyond the control of such persons, but shall only be liable in case such failure to distribute water equally was the result of some willful discrimination against such stockholders on the part of the directors or those charged by the directors with the distribution of water. Section 3. No stockholder shall be permitted to waste water and in case of any such waste, the Board of Directors shall take such steps as it deems necessary to prevent or punish the same." **10. Name and address of owner of land on which places of use are located:** Irrigation use of Subject Water Rights takes place on Property owned by the following: A. Applicant (see address above). B. Gerald Fowler (as lessee of a portion of Subject Water Rights), 2304 40th Lane, Avondale, CO 81022. Municipal use of Subject Water Rights will take place within the boundaries of Zone 1 of the District, described in paragraph 5 above, and depicted in Exhibit A to the Application. The owners of the land within Zone 1 are the customers and residents of the St. Charles Mesa

Water District. **11. Names and addresses of owners of land on which structures are located:** A. Bessemer Ditch Headgate: U.S. Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18E, Loveland, CO 80537-9711. B. St. Charles Lateral and Reservoir No. 2 Headgate: Bessemer Ditch Irrigating Company, 711 Thatcher Building, Pueblo, CO 81003. **12. Names and addresses of owners of land on which water will be stored:** Applicant (see address above). WHEREFORE, Applicant prays for an Order of this Court: **A.** Approving the requested change of use of the Subject Water Rights and adding municipal and storage uses to the decreed uses for the Subject Water Rights. **B.** Finding that the requested change of use will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right. **C.** Finding that any delays by Applicant in putting all the Subject Water Rights to municipal and storage uses will not be deemed to constitute an abandonment of those uses. **D.** Finding that Applicant is entitled to claim credit for the historical consumptive use associated with the Subject Water Rights, and to use, reuse, successively use, and dispose of such credits, so long as it retains dominion and control over such water.

(Application, 8 pages; large map)

CASE NO. 04CW9(90CW54) – PUBLIC SERVICE COMPANY, d/b/a XCEL ENERGY, INC., c/o Donald Halffield, Jr., Water Resources, Coors Technology Center, 4653 Table Mountain Road, Golden, CO 80403 (Brian M. Nazareus and Roger T. Williams, Friedlob Sanderson Paulson & Tourtillott, LLC, Attorneys for Applicant, 1775 Sherman Street, Suite 2100, Denver, CO 80203)

Application for Finding of Reasonable Diligence and for a Determination that a Portion of the Conditional Right has been Made Absolute
Pueblo County

2. Name of Structures: St. Charles River/Arkansas River Exchange. **3. Description of Conditional Water Rights:** **A Original Decree:** January 14, 1998, Case No. 90CW054, Water Court for Water Division No. 2. **B. Description:** The St. Charles River/Arkansas River Exchange is an exchange up the Arkansas River from the St. Charles River to the Comanche Station Pumping Plant and/or the Pueblo Reservoir **1. The Comanche Station Discharge:** The Comanche Station Discharge is located on the St. Charles River in the Southwest quarter of the Northwest quarter of Section 28, Township 21 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. **2. The Comanche Station Pumping Plant:** The Comanche Station Pumping Plant is located near the Pueblo Dam on the south bank of the Arkansas River in the Southwest quarter of Section 31, Township 20 South, Range 65 West of the 6th P.M. in Pueblo County, Colorado. The pumping plant consists of three (3) 4,000 gpm lift pumps for a total of 12,000 gpm. **3. The Comanche Station Pipeline.** The Comanche Station Pipeline runs approximately twelve (12) miles and conveys water from the Comanche Station Pumping Plant to the Comanche Station Raw Water Reservoir. The pipeline has a normal operating capacity of

26.7 cfs. **4. The Comanche Station Raw Water Reservoir:** The Comanche Station Raw Water Reservoir is located adjacent to the Comanche Station in the West half of Section 20, Township 21 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. The capacity of the reservoir is 853 acre feet. Water stored in the reservoir is ultimately delivered to the Comanche Station for beneficial use. **5. Pueblo Reservoir:** The point of diversion for Pueblo Reservoir is at a point at the intersection of the Pueblo Dam axis and the Arkansas River whence the Northeast corner of Section 36, Township 20 South, Range 66 West of the 6th P.M., bears North 61 degrees 21'20" East a distance of 2,511.05 feet. The reservoir inundates all or portions of Sections 7, 18-22 and 25-36, Township 20 South, Range 66 West of the 6th P.M.; Sections 1-5 and 9-11, Township 21 South, Range 66 West of the 6th P.M.; and Sections 5, 8, 9, 13-16, 22, 23, and 25, Township 20 South, Range 67 West of the 6th P.M., all in Pueblo County, Colorado. **C. Sources:** The sources of substitute supply for the St. Charles River/Arkansas River Exchange shall be water discharged at the Comanche Station Discharge which may be reused and successively used. Said sources include: **1.** Transmountain water from the Independence Pass Transmountain Diversion System, which diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County. The water rights were adjudicated by a decree entered in Civil Action No. 3082 (District Court, Garfield County) dated August 25, 1936 and were modified by a decree in Case No. W-1901 (District Court, Water Division No. 5) dated May 12, 1976. These water rights have an appropriation date of August 23, 1930. PSCo has the right to utilize a portion of such waters by virtue of its ownership of shares in the Twin Lakes Reservoir and Canal Company; **2.** Water attributable to Applicant's Comanche Station Pipeline water right decreed by this Court in Case No. 90CW049 on October 12, 1994; **3.** Water attributable to Applicant's Comanche Station Raw Water Reservoir storage right decreed by this Court in Case No. 90CW050 on October 12, 1994; **4.** Transmountain water leased by Applicant from the Pueblo West Metropolitan District, attributable to 5,732.41 shares owned by the District out of the 49,588.965 shares issued and outstanding in the Twin Lakes Reservoir and Canal Company, including, but not limited to, the lease or purchase by Applicant of measured return flows from such water rights which are the subject of the decree entered by this Court in Case No. 85CW134(A); **5.** Water delivered to the Comanche Station under the St. Charles River/Arkansas River Exchange but not fully consumed at the Comanche Station. **6.** Reusable water from the water rights of Pueblo that is delivered to the Applicant pursuant to its January 18, 1972, Water Service Contract with Pueblo, as amended, may be used by the Applicant as a source of substitute supply for the St. Charles River/Arkansas River Exchange only upon Pueblo's express written consent. **D. Appropriation Date and Amount:** **1. Appropriation Date:** October 30, 1990. **2. Rate of Exchange:** 14.20 cfs, conditional. **E. Use of Water Diverted by Exchange:** All industrial purposes associated with the generation of electrical energy, including, without limitation: power generation, cooling, evaporation replacement, domestic, potable domestic, piscatorial, dust suppression, irrigation of lawns, trees, and gardens adjacent to the Comanche

Station, and fire prevention purposes. The water may be used and reused to extinction at the Comanche Station, and water that has not been fully consumed may be successively used as a source of substitute supply for the St. Charles River/Arkansas River Exchange. **4. Outline of Actions Taken Towards Completion of the Exchange:** **A.** The Applicants paid significant legal and engineering fees over the diligence period in part to develop or defend the water rights that are the subject of this application. Said fees total approximately \$160,000. **B.** The Applicant paid significant property taxes during the diligence period for the properties and water rights that are the subject of this Application. **5. Conditional Water Right Made Absolute:** **A. Date:** April 2002. **B. Amount:** Exchange Rate: 4.11 c.f.s. **C. Type and Place of Use:** Consistent with paragraph 3.E. WHEREFORE, Public Service Co., d/b/a. Xcel Energy Inc., requests that the Court enter a decree finding that reasonable diligence was performed during the diligence period in development of the conditional water rights which are the subject of this application. PSCo further requests that the Court enter a determination that 4.11 c.f.s. of the St. Charles River/Arkansas River Exchange has been made absolute.
(Application, 6 pages).

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 March 2004, (forms available at Clerk's office, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$70.00). 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 5th day of February, 2004.

Mardell R. DiDomenico, Clerk
District Court Water Div. 2
203 Judicial Bldg., 320 W. 10th Street
Pueblo, CO 81003 Tel. 583-7048

(Court seal)
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