

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING JANUARY 2009

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 2009, 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. 02CW28 - ROGER CISNEROS, 1332 East 3rd Street, Pueblo, CO 81001, 719-543-8823; GILBERT N. CISNEROS, 2730 Wyoming Avenue, Pueblo, CO 81004, 719-561-9164; RONALD N. CISNEROS, 2265 Chantala, Pueblo, CO 81006, 719-566-0135; and JAMES A. CISNEROS, 3231 Quintin Street, Pueblo, CO 81005, 719-214-3192

Second Amended Application for Water Rights (Surface)

HUERFANO COUNTY

Name of structure: Cisneros #3. **Legal description of each point of diversion:** Huerfano County, SW ¼ of the NW ¼ Section 30, Township 27 South, Range 70 West, 6th P.M., 1890 feet from the North line and 75 feet from the West line. **Source:** Palo Duro Creek. **Date of initiation of appropriation:** January 1955; **How appropriation was initiated:** Development of spring; **Date water applied to beneficial use:** January 1955. **Amount claimed:** 3 gpm Absolute. **Use or proposed use:** Domestic and livestock. **If non-irrigation, describe purpose fully:** Domestic - Since 1955 when the spring was originally developed, there have been numerous domestic and livestock uses for this spring. The primary domestic use has and will continue to be for drinking, bathing, cooking, washing, and cleaning for the park area. Located at Township 27, Range 70, Section 30, Lot 2 AKA SW4NW4 = 42.06 acres. Future domestic use will include 4 homes in the lower ranch. Livestock use will continue, past use included 30 to 40 head of cattle, 30 to 40 sheep and 8 horses. **Name(s) and address(es) of owner(s) 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 and Susan A. Galvez, 1814 Garwood, Pueblo, CO 81005; Anna M. Aragon, 1725 Harlow Ave., Pueblo, CO 81006; Cathy L. Trujillo, 1037 S. Avenida del Oro E., Pueblo West, CO 81007; Tina B. Lepik, 288 S. Massalino Dr., Pueblo West, CO 81007; Eloyda J. Vallejos, 4311 Wilderness Trail, Pueblo, CO 81008; Dolores J. Gomez, 1079 Della Lane, Pueblo, CO 81006; and Rebecca H. Wilson, 1043 Camino al Cielo, Pueblo West, CO 81007. **Remarks:** We are applying for ownership of this spring with the above owners' consent with the following conditions: The primary use has and will continue to be for drinking, bathing, cooking, washing, and cleaning for the park area. Located at Township 27, Range 70, Section 30, Lot 2 AKA SW4NW4 = 42.06 acres.

CASE NO. 08CW18 - LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION ("LAWMA"), c/o Donald F. Higbee, Manager, 307 Fifth Street, P. O. Box 1161, Lamar, CO 81052

(Richard J. Mehren and Patricia M. DeChristopher, Moses, Wittemyer, Harrison & Woodruff, P.C., P. O. Box 1440, Boulder, CO 80306-1440; (303) 443-8782)

Second Amended Application for Plan for Augmentation

BENT, PROWERS AND KIOWA COUNTIES

2. Purpose of application: LAWMA is a non-profit corporation organized for the purpose of, among other things, providing a means for its members to continue to make groundwater diversions from wells and other structures with junior priorities and to continue to make surface water diversions from structures with junior priorities in the Arkansas River water rights regime. The purpose of this application is to include twenty-five (25) additional wells or other structures in LAWMA's plan for augmentation, which was decreed on March 8, 2007 in Case No. 02CW181, Water Division No. 2 ("02CW181 Decree"). Seven structures of the 25 structures were included in the application filed in this matter on March 31, 2008. Nine additional structures (for a total of 16) were included in the amended application filed in this matter on April 24, 2008. Nine structures (for a total of 25) were added by the second amended application. Pursuant to paragraph 43 of the 02CW181 Decree, additional wells or structures may be added to the plan for augmentation by filing a new application with the Water Court. **3. Description**

of structures to be augmented: Each of the wells and other structures described in Exhibit A to the Second Amended Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. A total of twenty-five (25) wells or other structures will be included in LAWMA's plan for augmentation through this application. The nine structures added to this Second Amended Application are: Name: Enstrom-Bristol Properties, LLC; SEO ID No.: Permit No.; Case No.: Enstrom Water Fowl Pond. Location: SE SW 26-22S-44W, 1000' from South line and 2600' from West line, Prowers County; Source: Arkansas River Valley Fill Aquifer. Name: Enstrom-Bristol Properties, LLC; SEO ID No.: Permit No.; Case No.: Enstrom Well. Location: SW SE 26-22S-44W, 1220' from South line and 2150' from East line, Prowers County; Source: Arkansas River Valley Fill Aquifer. Name: CDOC-VA Well No. 22; SEO ID No.: 6705078; Permit No.: 11767R; Case No.: 81CW200. Location: NW NW 4-23S-51W, 65' from North line and 1313' from West line, Bent County; Source: Arkansas River Valley Fill Aquifer. Name: CDOC-VA Well No. 249; SEO ID No.: 6705080; Permit No.: 22972F; Case No.: 81CW200. Location: SE NW 4-23S-51W, 2620' from North line and 2048' from West line, Bent County; Source: Arkansas River Valley Fill Aquifer. Name: CDOC-VA Well No. 381; SEO ID No.: 6705079; Permit No.: 11764R; Case No.: 81CW200. Location: NW NW 4-23S-51W, 78' from North line and 290' from West line, Bent County; Source: Arkansas River Valley Fill Aquifer. Name: CDOC-VA Well No. 396; SEO ID No.: 6705077; Permit No.: 11765R; Case No.: 81CW200. Location: SW NE 4-23S-51W, 1637' from North line and 1545' from East line, Bent County; Source: Arkansas River Valley Fill

Aquifer. Name: CDOC-VA Well No. 397; SEO ID No.: 6705076; Permit No.: 11766R; Case No: 81CW200. Location: SW NE 4-23S-51W, 1803' from North line and 1627' from East line, Bent County; Source: Arkansas River Valley Fill Aquifer. Name: J-S Farms, Inc.; SEO ID No.: 6705529; Permit No.: 19467V; Case No: W-2104. Location: SW NE 16-23S-43W, 2326' from North line and 2075' from East line, Prowers County; Source: Arkansas River Valley Fill Aquifer. Name: J-S Farms, Inc.; SEO ID No.: 6705531; Permit No.: 19467S; Case No: W-2104. Location: NW SE 16-23S-43W, 2308' from South line and 2442' from East line, Prowers County; Source: Arkansas River Valley Fill Aquifer. **4. Water rights and other sources of water to be used for augmentation:** Those water rights and other sources of water identified in paragraph 40 of the 02CW181 Decree. **5. Statement of plan for augmentation:** The amount, timing and location of depletions from the wells and other structures described in Exhibit A will be determined in accordance with the methodologies approved in the 02CW181 Decree. LAWMA intends to account for and fully replace all out-of-priority stream depletions caused by the wells and other structures described in Exhibit A with fully-consumable water in accordance with the terms and conditions of the 02CW181 Decree in a manner that protects Colorado senior surface water rights from injury and assures compliance with the Arkansas River Compact. This application does not seek to change any provisions of the 02CW181 Decree other than the inclusion of additional wells and structures. **6. Name and address of owners of land upon which any new diversion or storage structure, or modification to any existing diversion or storage structures or existing storage pool is or will be constructed or upon which water is or will be stored:** A. Tamarack Pit: Clodfelter Ranch, c/o Ty Clodfelter, 28175 County Road GG, Hasty, CO 81044. B. Butte Creek Pit and Butte Creek & River Reserve, GP Well: Butte Creek & River Reserve, GP, c/o William Broyles, P. O. Box 7, Lamar, CO 81052. C. Enstrom Well: Enstrom-Bristol Properties, LLC, c/o Rick Enstrom, 13393 W. LaSalle Circle, Lakewood, CO 80228. WHEREFORE LAWMA respectfully requests that this Court enter a decree approving this plan for augmentation and determining that such plan for augmentation will not cause injury to the vested or decreed conditional water rights of others and will not violate the Arkansas River Compact.

CASE NO. 09CW1 - JIM and JEAN WHITE, 198 Sunset Ct., Walsenburg, CO 81089 (719) 250-8916

Application for Underground Water Right

HUERFANO COUNTY

Name of well and permit number: Jim White; Permit 234836-A. **Legal description of well:** Huerfano County, NW ¼ of the NE ¼ Section 11, Township 29 South, Range 66 West, 6th P.M., 585 feet from the North line and 2625 feet from the East line. **Street Address:** 198 Sunset Ct.; **Subdivision:** Silver Spurs; Lot 77. **Source:** Groundwater; **Depth:** 475 ft. **Date of appropriation:** 3/6/2006; **How appropriation was initiated:** Well permit; **Date water applied to beneficial use:** 4/28/2006. **Amount claimed:** 15 gpm Absolute. **Proposed**

use: Fire protection, ordinary household use, watering of domestic animals and irrigation of one acre home lawns and gardens.

CASE NO. 09CW2 - JIM and KAREN MORINE, 934 Boot Ct., Walsenburg, CO 81089; (719) 989-8078

Application, as amended, for Underground Water Right

HUERFANO COUNTY

Name of well and permit number: Permit 195330. **Legal description of well:** Huerfano County, SE ¼ of the SW ¼ Section 10, Township 29 South, Range 66 West, 6th P.M., 450 feet from the South line and 1800 feet from the West line. **Street Address:** 934 Boot Ct., Walsenburg, CO 81089; **Subdivision:** Silver Spurs Ranch; Lot 16, Filing 2. **Source:** Well; **Depth:** 240 ft. **Date of appropriation:** 5/15/1996; **How appropriation was initiated:** MH-28093 well construction and test report. **Date water applied to beneficial use:** 07-10-1996 Permit 195330 pump installation. **Amount claimed:** 12.5 gpm Absolute. **If well is non-tributary:** A. **Name of Aquifer:** Raton Basin Sandstone - Poison Canyon Aquifer. **Amount claimed in acre-feet annually:** 1/3. **Proposed use:** Domestic - 1 household; 750-1000 sq. ft. of lawn and garden irrigation.

CASE NO. 09CW3 - RICHARD N. BROWN AND CAROL A. BROWN, 11335 Garrett Road, Peyton, CO 80831-8122

(Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorneys for Applicants, 530 Communication Cir, Ste 204, Colorado Springs, CO 80905; (719) 520-9288)

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 **2. Names of wells and permit, registration, or denial numbers:** Permit No. 159118 in the Denver aquifer. **3. Legal description of wells:** Permit No. 159118 is located in the NW1/4 NE1/4 Section 24, T. 13 S., R. 65 W., 6th P.M., 250 feet from the north section line and 1980 feet from the east section line. Additional wells in the Denver and other aquifers may be constructed at any location on the Property. **4. Source:** not nontributary Denver aquifer; not nontributary Arapahoe aquifer, and nontributary Laramie-Fox Hills aquifer. **5.A. Date of appropriation:** Not applicable. **5.B. How appropriation was initiated:** Not applicable. **5.C. Date water applied to beneficial use:** Not applicable. **6. Amount claimed:** Denver aquifer, 18.37 AF/yr; Arapahoe aquifer, 15.03 AF/yr; Laramie-Fox Hills aquifer, 11.2 AF/yr, based on a 100 year pumping period. The Water Court will be asked to 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 from those or nearby wells in such aquifers. **7. Proposed use:** all beneficial uses except municipal. **8. Names and addresses of owners of land on which well is located:** Same as Applicants. **9. Remarks:** There is one lien against the Property. Notice to the lienor, Ent Federal Credit Union, is being given pursuant to C.R.S. 37-92-302(2)(b). A copy of the letter is attached to the Application. All exhibits mentioned herein are incorporated by reference and

may be inspected at the office of the Clerk of this Court. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION**

10. Name of structures to be augmented: The existing Denver aquifer well, currently permitted as 159118, plus three additional Denver aquifer wells. Permit 159118 will be re-permitted after entry of the decree.

11. Previous decrees for water rights to be used for augmentation: None.

12. Historic use: Not applicable.

13. Statement of plan for augmentation:

A. Water Demand. The Property will be subdivided into four lots for single family residences and perhaps a guest cottage or detached home office on each lot. Water from the Denver aquifer wells will most likely be used in some combination of the following ways: for indoor uses for drinking and sanitary purposes, for livestock watering and for landscape irrigation, hot tubs and/or swimming pools. Annual pumping from the Dawson aquifer will be limited to 0.75 acre foot annually per lot, or 3.0 acre feet for all four lots. Indoor water usage for each house is expected to equal 0.30 acre foot per house. A typical hot tub may require approximately 1,400 gallons (0.004 acre foot) per year; landscape irrigation, annual applications of 2.5 acre feet per acre, or 0.057 acre foot per 1,000 square feet; livestock watering, ten gallons per horse per day, or 0.011 acre foot per horse per year. Uses by swimming pools varies based on the size of the pool, whether it is heated, whether it is typically covered when not in use, and the length of time during the year when it is filled. The decree will limit annual diversions to 0.75 acre foot per lot, but will not otherwise restrict the types of uses which may occur. Applicants for well permits will designate how they intend to “allocate” their 0.75 acre foot on their well permit applications, based on the above criteria, or based upon criteria agreed to with the State Engineer for any uses not specified above.

B. Water Consumption and Return Flows. It is generally accepted that no more than ten percent of water used indoors in residences using non-evaporative septic systems and leach fields for wastewater disposal is consumed, with 90 percent returning to the stream system. Although there will be some return flows from other uses, Applicants will rely only on return flows from septic systems and leach fields for replacement of depletions during pumping, except as provided in paragraph 13.C below.

C. Replacement of Stream Depletions During Pumping. Based on computer modeling, stream depletions will occur to tributaries of the Arkansas River. Computer modeling indicates that during pumping, stream depletions will gradually increase to a maximum of 56.25 percent of annual pumping in the 300th year, or 1.69 acre feet based on annual pumping of 3.0 acre feet. Applicant proposes to replace a portion of those depletions with septic system return flows, which will equal 0.27 acre foot annually from each of the four houses, or 1.04 acre feet total. Septic system return flows will exceed stream depletions during pumping during the first 150 years of pumping. Thereafter, Applicants’ successors shall be required to construct a well in the nontributary Laramie-Fox Hills aquifer, from which water shall be pumped in amounts sufficient to replace the difference between the modeled stream depletions and the 1.04 acre feet replaced by septic system return flows. Based on assumed pumping of 3.0 acre feet annually, the amount of water which would need to be pumped from the Laramie-Fox Hills aquifer from years 150 through 300 would be a total of 54.5

acre feet, including the 2 percent relinquishment requirement, which amount shall be reserved for this purpose. **D. Replacement of Stream Depletions After Cessation of Pumping.** Applicants agree to replace depletions for the shortest of the following periods: the period provided by the Colorado Legislature, should it eventually specify one and if the Applicants obtain water court approval for such modification, the period determined by the State Engineer, should the State Engineer lawfully establish such a period; the period established through rulings of the Colorado Supreme Court in relevant cases; or until Applicants petition the water court and after notice to parties in the case proves that it has complied with all statutory requirements. Applicants will reserve adequate water from the Laramie-Fox Hills aquifer underlying the Property for the replacement of post-pumping depletions, unless and until such time as any of the above conditions occurs which terminates the obligation to replace post-pumping depletions, or unless Applicants obtain judicial approval of another source of replacement water for post-pumping depletions. It is Applicants' present estimate that based on pumping 3.0 acre feet annually, post-pumping depletions will equal 597 acre feet. If that figure is not revised, Applicants shall reserve an additional 609 acre feet of Laramie-Fox Hills aquifer water to replace such depletions, and shall make post-pumping replacements annually as required to replace modeled stream depletions. All depletions shall be replaced to the Jimmy Camp Creek drainage. **E. Miscellaneous.** Applicants will establish restrictive covenants on the Property which: (a) restrict total pumping from the Denver aquifer to no more than 1.0 acre foot annually per well; (b) require the use of non-evaporative septic systems for wastewater treatment; (c) require that a house be occupied while other water-using activities are occurring on the Property; (d) reserve adequate nontributary Laramie-Fox Hills aquifer water for replacement of depletions both during and after pumping, which reservation may be voided upon the occurrence of any of the events specified above eliminating the need for such reservation; (e) require annual reporting of the amount pumped from each Denver well; and (f) which inform the future homeowners that they will be required to construct a well into the Laramie-Fox Hills aquifer underlying the Property for replacement of some depletions occurring after 150 years of pumping as well as for replacement of post-pumping depletions, if the source of augmentation water is unchanged. Restrictive covenants otherwise restricting the water used on the Property are unnecessary because the limitation to 1.0 acre foot of annual pumping per lot, and the requirement that non-evaporative septic systems be used, coupled with the requirement that water from the Laramie-Fox Hills aquifer be used to supply additional augmentation water after the 150th year, when septic system return flows alone are insufficient, ensures that depletions will be replaced throughout the 300 year pumping period.

CASE NO. 09CW4 - SCOTT BILLSTRAND, 101 Greenhorn View Lane, Walsenburg, CO 81089; (719) 251-5597

Application for Underground Water Right

HUERFANO COUNTY

Name of well and permit number: Permit 268180. **Legal description of well:** Huerfano County, NE ¼ of the NE ¼ Section 22, Township 29 South, Range 66 West, 6th P.M., 242 feet from the North line and 389 feet from the East line. **Street Address:** 101 Greenhorn View Ln., Walsenburg, CO 81089; **Subdivision:** Silver Spurs Ranch; Lot 145, Filing 6. **GPS Location information in UTM format, Zone 13; Units in meters; NAD83 Datum; Unit set to true north:** Northing 4151840; Easting 512282. **Source:** __; **Depth:** 410'. **Date of appropriation:** 5/2/06; **How appropriation was initiated:** Well drilled. **Date water applied to beneficial use:** 07-27-06. **Amount claimed:** 3 gpm. **Proposed use:** household - one single family dwelling; domestic livestock.

CASE NO. 09CW5 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 09CW6 - CEDAR LANE INVESTMENTS, LLC, c/o Barry Martin, Manager, 111 S. Tejon St., Suite 222, Colorado Springs, CO 80903; FOUNTAIN MUTUAL IRRIGATION COMPANY ("FMIC"), Co-Applicant, c/o Gary L. Steen, P.E., P. O. Box 75292, Colorado Springs, CO 80906 (Steven T. Monson and Michael J. Gustafson, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212

Application for Conditional Water Right, Changes of Water Right and Plan for Augmentation

EL PASO COUNTY

II. GENERAL STATEMENT OF PLAN. Applicant is a Colorado Limited Liability Corporation that intends to develop a piece of property located in unincorporated El Paso County in the Southeast 1/4 of Section 33, Township 14 South, Range 66 West, 6th P.M., which property is more particularly identified in the Exhibit A map 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. The legal description of Applicant's Property is included in Exhibit B to the Application. Applicant plans on providing water for future in-building, commercial, industrial and landscape irrigation uses on the property by drilling a well into the Fountain Creek alluvium. By this Application, the Applicant seeks to adjudicate a conditional groundwater right for the Cedar Lane Well and to then augment the depletions associated with pumping from the well through the use and commitment of two shares in Fountain Mutual Irrigation Company ("FMIC"). 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. **III. APPLICATION FOR CONDITIONAL GROUNDWATER RIGHTS. A. Name of Structure.** Cedar Lane Well. **B. Legal Description.** The Cedar Lane Well is to

be drilled on Applicant's Property located in the Southeast 1/4 of Section 33, Township 14 South, Range 66 West, 6th P.M., as shown on the Exhibit A map. The location of the Cedar Lane Well will be determined by Applicant's engineer.

C. Source. The source for the Cedar Lane Well is the alluvium of Fountain Creek, tributary to Fountain Creek, tributary to the Arkansas River.

D. Appropriation. The conditional appropriation was initiated on January 12, 2009 by filing the Application with the Water Court. Water has not yet been applied to beneficial use.

E. Amount of Water Claimed. The amount of up to 100 gpm, conditional, is claimed for the Cedar Lane Well.

F. Uses. The uses of the Cedar Lane Well are in-building drinking and sanitation, commercial, industrial and landscape irrigation.

G. Land Ownership. The land upon which the Cedar Lane Well is to be located is owned by the Applicant.

H. Additional Information. The out-of-priority depletions associated with pumping from the Cedar Lane Well are to be replaced as set forth in the plan for augmentation applied for herein.

IV. PLAN FOR AUGMENTATION/CHANGES OF WATER RIGHTS.

A. Structures to be Augmented. The structure to be augmented is the Cedar Lane Well as set forth in Section III of this Application. The Cedar Lane Well has yet to be drilled or permitted by the Colorado Division of Water Resources.

B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation are two shares of FMIC. FMIC diverts its water to the Fountain Mutual Ditch from Fountain Creek, tributary to the Arkansas River, at its headgate located in the SW 1/4 of Section 20, Township 14 South, Range 66 West, 6th P.M. FMIC's water rights were originally decreed for irrigation purposes. Those water rights have been the subject of numerous change actions and plans for augmentation. FMIC water rights are decreed as follows:

DIRECT FLOW

Fountain Creek

<u>Priority No.</u>	<u>Priority Date</u>	<u>Decree Date</u>	<u>Total Decree (cfs)</u>
4	9/21/1861	3/6/1882	9.84 (5.38) ¹
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) ²
21	12/31/1864	3/6/1882	4.65
28	12/31/1866	3/6/1882	8.48

¹ 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.

² Priority No. 17 is referred to as the Janitell's right and FMIC has used one-half 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.

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	343.20

STORAGE

Fountain Creek

<u>Priority No.</u>	<u>Priority Date</u>	<u>Decree Date</u>	<u>Total Decree (AF)</u>
Fountain	3/18/1903	6/2/1919	10,000

C. Historic Use. FMIC water rights have been decreed for 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. 90CW7, 99CW146, 00CW152, 01CW153, and 04CW118, Water Division 2. The replacement or augmentation credit allowed to FMIC water rights, as also determined in prior cases, is a percentage of the FMIC actual delivery to its shareholders computed on the basis of the following table.

FMIC REPLACEMENT CREDIT

<u>Month</u>	<u>Replacement Credit as a Percentage of Farm Headgate Delivery</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 historical consumptive use of FMIC shares was affirmed in Case No. 95CW3 which findings, together with other recent decrees, are binding as a matter of res judicata. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997). This same historic consumptive use was most recently affirmed in Case No. 04CW118 decreed on February 2, 2008. There have been no material changed circumstances since these last decrees to modify these historic consumptive use determinations. Applicants request that the Court 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 farm headgate delivery. For the Applicant's two shares, this represents an average consumptive use of 1.4 annual acre feet which may be used for replacement water under this plan. 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 replacement credits schedule. As Applicant relies upon these prior determinations, diversion records and a map are not submitted. **D. Statement of Plan for Augmentation.** The consumptive use attributable to Applicant's two shares of FMIC shall be committed to this plan for augmentation to replace the out of priority depletions associated with the diversions from the Cedar Lane Well. A portion of the diversions from the Cedar Lane Well will be used for in-building drinking supply and sanitary purposes associated with the commercial and/or industrial uses of the Applicant's Property, which Applicant considers to have a well head depletion of 10 percent of diversions with return flows of 90 percent of the amount diverted being returned to the same groundwater system by means of a nonevaporative septic system and leach field. Other diversions from the Cedar Lane Well may also be used and reused for commercial and industrial purposes, including but not limited to gravel washing, materials, processing, and truck washing, which Applicant considers to have a well head depletion of 100 percent as no return flows are claimed at this time. Some of the diversions from the Cedar Lane Well may be used for irrigation of lawn and landscaping on Applicant's Property, which use Applicant considers to have a well head depletion of 85 percent with 15 percent of the amount diverted returned to the same groundwater system. Applicant will limit diversions such that its out-of -priority depletions from the in-building, commercial, industrial and irrigation uses combined shall not exceed the consumptive use available under its FMIC shares. The lagged depletions from the Cedar Lane Well to Fountain Creek will be calculated based upon the use of a Alluvial Water Accounting System analysis performed by Applicant's engineer. The release of replacement water from the FMIC water rights will be made to replace the in-building, commercial, industrial and irrigation diversions from the Cedar Lane Well as determined by this analysis and based on the depletion percentages for the uses set forth above. Water available under Applicant's FMIC shares will be diverted at the headgate of the Fountain Mutual Ditch and released back to Fountain Creek at the Spring Creek Augmentation Station, and Applicant will contract with FMIC for the use of the augmentation station. The replacement credits under this plan for Fountain Mutual shares will be computed as a percentage of actual FMIC in priority diversions applied to the above monthly replacement credit schedule. Applicant's pro rata interest in FMIC's 10,000 acre feet of decreed storage in Big Johnson Reservoir will be stored in Big Johnson Reservoir, together with any excess consumptive use credits from FMIC shares dedicated for augmentation purposes. Such storage and use shall be in accordance with FMIC rules and regulations. The water so stored in Big John Reservoir is to be used as augmentation and may be delivered by means of an intraditch exchange during any month in which Applicant's deliveries of water under its direct flow rights to the Spring Creek augmentation station may be inadequate. The intraditch exchange from Big Johnson Reservoir to the Spring Creek augmentation station will operate at any time FMIC is diverting water, except when both (a) Big

Johnson Reservoir is full, and (b) the date is between November 15 and March 15. This intraditch exchange will operate from Big Johnson Reservoir, which is located in Sections 8, 17 and 18, Township 15 South, Range 65 West, 6th P.M., up the Fountain Mutual Ditch to the location of the Spring Creek augmentation station in the NE1/4 of Section 29, Township 14 South, Range 66 West, 6th P.M. As an alternative to the delivery of water to the Spring Creek augmentation station, if FMIC constructs a new augmentation station on the Fountain Mutual Ditch down gradient from Big Johnson Reservoir, Applicant's replacements may also be made by releasing water from Big Johnson Reservoir and returning it to Fountain Creek through the new augmentation station, in addition to the intraditch exchange. Such releases can be made at any time to the extent that Applicant owns a pro rata portion of the water stored in Big Johnson Reservoir. Applicant's FMIC water rights as changed herein for augmentation purposes will be permanently removed from their historical use for irrigation and the historically irrigated property will no longer be irrigated at such time as these shares are committed to meet depletions under this plan of augmentation. Until so used in this plan of augmentation, such FMIC shares may be continued to be used through the Fountain Mutual Ditch in accordance with the terms of its decrees. Once shares have been dedicated to this plan for replacement purposes, those shares will not be used for other purposes absent a new water court application. The Fountain Mutual system is a water short system, and the withdrawal of water deliveries under the Fountain Mutual Ditch to lands under the FMIC system results in naturally reduced irrigation and the dry up of property. No dry up covenant of Fountain Mutual lands is therefore required for shares committed to this plan of augmentation. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997); and Case Nos. 99CW146, 00CW152 and 01CW153. **E. Name and Address of Owner of Land Upon Which Structures Are Located.** The Applicant is the owner of the land upon which the Cedar Lane Well will be located. **F. Additional Information, Requests and Terms.** The use of the two shares of FMIC are to be changed to augmentation use as set forth herein. Applicant further requests the ability to add additional shares of FMIC to this plan for augmentation in order to augment additional irrigation well depletions or to provide a supplemental source of augmentation water. Any additional shares added to this augmentation plan shall be committed to this plan by a subsequent change of water right through Water Court committing such additional FMIC shares to the uses and purposes under this augmentation plan. Applicant will request that a permit for the Cedar Lane Well be issued by the State Engineer in accordance with the terms of this application. A totalizing flow meter will be installed on the Cedar Lane Well to allow accurate monitoring of this augmentation plan, and monthly accountings shall be made to the Division Engineer demonstrating compliance with this plan for the Cedar Lane Well, including well diversions, total stream depletions, augmentation water credit and any intraditch exchange. Applicant shall participate in the USGS Fountain Creek transit loss model through its membership in FMIC and appropriate transit losses will be assessed. Applicant will curtail its diversions as required and directed by the Division Engineer if the

available water directly attributable to Applicant's shares of FMIC stock is not sufficient to fully augment the depletions under this plan. Wellco Hardwoods, whose address is 2755 E. Las Vegas Street, Colorado Springs, CO 80906, are claimants of a well permitted with the State Engineers Permit No. 199853. This well may be located within 600 feet of the Cedar Lane Well. Pursuant to C.R.S. 37-90-137(2)(a)(II)(B), Applicant has provided Wellco Hardwoods with notice of this application within ten days prior to filing this application. The certificate of mailing, with return receipt, reflecting this notice is attached to the Application as Exhibit C. WHEREFORE, the Applicant requests that this Application for Conditional Groundwater Right, Change of Water Rights, and Plan for Augmentation be granted as requested herein, and for such other and further relief as the Court deems appropriate in these circumstances.

CASE NO. 09CW7 - HEIDI KINGSTROM , 5615 Piedra Vista Drive, Colorado Springs, CO 80908 (Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905, 719-520-9288)

Application for Not Nontributary and Nontributary Underground Denver Basin Water Rights

EL PASO COUNTY

2. Names of wells and permit, registration, or denial numbers: well permit no. 232228, constructed in the Denver aquifer. **3. Legal description of well:** Well permit 232228 is located in the NE1/4 SE1/4 Section 1, T. 12 S., R. 66W., 6th P.M., 1630 feet from the south section line and 1010 feet from the east section line, in El Paso County. All other wells constructed by Applicant pursuant to the decree sought herein may be located at any location on the Applicant's 5.0 acre property, which is described as Lot 3, Holmes Park subdivision. A copy of a general location map of the Property is attached to the Application as Exhibit 1; a copy of a portion of the Holmes Park subdivision showing Lot 3 is attached to the Application as Exhibit 2. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Additional wells shall not be located within 600 feet of another well in the same aquifer located off the Property except pursuant to the provisions of C.R.S. 37-90-137(2)(b). Applicant waives the 600 foot spacing requirement for all wells located on the Property. **4. Source:** Not nontributary Dawson aquifer; not nontributary Denver aquifer; nontributary Arapahoe aquifer; nontributary Laramie-Fox Hills aquifer. **5.A. Date of appropriation:** Not applicable. **5.B. How appropriation was initiated:** Not applicable. **5.C. Date water applied to beneficial use:** Not applicable. **6. Amount claimed: (A)** not nontributary Dawson aquifer, 15 gpm per well, 3.4 AF/yr, absolute; not nontributary Denver aquifer: 15 gpm per well, 4.3 AF/yr, absolute; nontributary Arapahoe aquifer: 25 gpm per well, 2.0 AF/yr, absolute; nontributary Laramie-Fox Hills aquifer, 25 gpm per well, 1.4 AF/yr, absolute. The above amounts will be changed in any decree entered herein to conform to the State Engineer's Determinations of Facts. The water court will be asked to 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. **(B)** Applicant also seeks a decree for exempt well permit 232228. **7. Proposed uses:** all beneficial uses except municipal uses, including uses off the Property, except that uses for permit no. 232228 shall be limited to its currently permitted use for ordinary household uses in one single family dwelling, the watering of domestic animals, and the irrigation of not more than 43,560 square feet of home gardens and lawns. **8. Name and address of owner of land on which well is located:** Same as Applicant. **9. Remarks:** **(1)** There are no liens or encumbrances against the Property, so the notice requirements of C.R.S. 37-92-302(2)(b) are not applicable. **(2)** A total of 2.53 acre feet per year of water in the Denver aquifer is not sought to be adjudicated herein. This amount is intended to allow permit no. 232228 to continue to be operated as an exempt well, and reduces the amount of water to be decreed in the Denver aquifer to 1.77 AF/yr. **(3)** This decree and all wells decreed herein will comply with all relevant provisions of the Colorado Revised Statutes, the Denver Basin Rules and Statewide Nontributary Ground Water Rules, including without limitation the requirement that the Dawson and Denver aquifer not nontributary water rights decreed (not including rights associated with well permit 232228) herein may be pumped only pursuant to a court-approved plan for augmentation, and that two percent of water pumped on an annual basis may not be consumed.

CASE NO 09CW8 - ALAN V. TUCKER and JANICE L. TUCKER, 6125 County Road 521, P. O. Box 1286, Walsenburg, CO 81089; (719) 738-2142

Application for Underground Water Right

HUERFANO COUNTY

Name of well and permit number: Alan V. Tucker; Permit 189690-A. **Legal description of well:** Huerfano County, NE ¼ Section 36, Township 27 South, Range 68 West, 6th P.M., 1800 feet from the North line and 800 feet from the East line. **Street Address:** 6125 County Road 521, Huerfano County 81089; **Subdivision:** Majors Ranch, Lot 28. **GPS Location information in UTM format, Zone 13; Units in meters; NAD83 Datum; Unit set to true north:** Points not averaged. Northing 4167947; Easting 0505017. **Source:** Aquifer; **Depth:** 757'. **Date of appropriation:** Aug. 29, 2001; **How appropriation was initiated:** Well drill permit. **Date water applied to beneficial use:** Sept. 1, 2001. **Amount claimed:** 12 gpm Absolute. **If well is non-tributary: Name of Aquifer:** Poison Canyon; **Amount claimed in acre feet annually:** 1. **Proposed use:** Household use, fire protection, 1 acre of garden. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

CASE NO. 09CW9 - LINDA S. ALDERMAN, 2648 Silver Spur Road, Walsenburg, CO 81089; (719) 480-3605

Application, as amended, for Underground Water Right

HUERFANO COUNTY

Name of well and permit number: Alderman; Permit 235116. **Legal description of well:** Huerfano County, SW ¼ of the SW ¼ Section 14, Township 29 South, Range 66 West, 6th P.M., 290 feet from the South line and 947 feet from the West line. **Street Address:** 2648 Silver Spur Road, Walsenburg, CO 81089; **Subdivision:** Silver Spurs Ranch; Lot 140. **Source:** Well; **Depth:** 418'. **Date of appropriation:** 9/1/01; **How appropriation was initiated:** 235116. **Date water applied to beneficial use:** 03/29/02. **Amount claimed:** 15 gpm Conditional. **If well is non-tributary:** **Name of Aquifer:** Raton Sandstone Basin - Poison Canyon Aquifer. **Amount claimed in acre feet annually:** 1/3. **Proposed use:** 1 house domestic use, watering of domestic animals, and irrigation of 1000 sq. ft. of home lawns and gardens. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

CASE NO. 09CW10 - DAVE WHEELER and KELLY WHEELER, 6328 CR 521, P. O. Box 26, Walsenburg, CO 81089; (719) 738-7270

Application for Underground Water Right

HUERFANO COUNTY

Name of well and permit number: Wheeler Domestic Well; Permit #261236. **Legal description of well:** Huerfano County, NE ¼ of the SW ¼ Section 36, Township 27 South, Range 68 West, 6th P.M., 2614 feet from the South line and 2624 feet from the West line. **Street Address:** 6328 CR 521, Walsenburg, CO 81089; **Subdivision:** Majors Ranch, Lot 28, Filing 2. **GPS Location information in UTM format, Zone 13; Units in meters; NAD83 Datum; Unit set to true north:** Points not averaged. Northing 4167708; Easting 504436. **Source:** Ground water; **Depth:** 307'. **Date of appropriation:** 1/18/05; **How appropriation was initiated:** Pump installed. **Date water applied to beneficial use:** 08/02/05. **Amount claimed:** 8 gpm Absolute. **Proposed use:** Domestic well for fire protection, ordinary household purposes inside not more than 3 single family dwellings, the irrigation of not more than 1 acre of home gardens and lawns and the watering of domestic animals. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

CASE NO. 09CW11 - CITY OF TRINIDAD, 135 North Las Animas Street, Trinidad, CO 81082 (Jeffrey J. Kahn and Madoline Wallace-Gross, Bernard, Lyons, Gaddis & Kahn, P.C., Attorneys for Applicant, P. O. Box 978, Longmont, CO 80502-0978)

Application for Conditional Rights of Appropriative Exchange

LAS ANIMAS COUNTY

2. Names of exchanges: a) Trinidad Reservoir to Monument Lake Ditch No. 1 Exchange. b) Trinidad Reservoir to Monument Lake Ditch No. 2 Exchange. c) Trinidad Reservoir to C Ditch & Pipeline Exchange. d) Trinidad Reservoir to Cherry Creek Ditch Exchange. **3. Description of exchanges:** Pursuant to §§ 37-80-120, 37-83-104, and 37-92-302(1)(a), C.R.S., Applicant seeks to adjudicate appropriative rights of exchange in which water will be delivered to the Purgatoire River (aka Las Animas River) from Trinidad Reservoir to supply the needs of downstream appropriators, and an equivalent amount of water will be diverted on the North Fork of the Purgatoire River and/or its tributaries by wells and/or headgates located within the exchange reaches. **4. Locations of structures and exchange reaches:** All structures and exchange reaches are located in Las Animas County, Colorado. The downstream terminus for all the exchanges is the Trinidad Reservoir dam, which is located in § 27, T33S, R64W to the 6th P.M. a) Trinidad Reservoir to Monument Lake Ditch No. 1 Exchange. The exchange will operate on the Purgatoire River and the North Fork of the Purgatoire River. The upstream terminus will be the headgate of the Monument Lake Ditch No. 1 (aka "A" Ditch), which is decreed for diversion in the SE¼ SW¼ § 19, T32S, R68W of the 6th P.M. on the right bank of the North Fork of the Purgatoire River whence the SW corner of § 19 bears S69°23'W 2746 feet. The actual location of the diversion is the SE¼ SW¼ § 24, T32S, R69W of the 6th P.M. on the right bank of the North Fork of the Purgatoire River whence the SW corner of § 24 bears S67°W 2470 feet. Applicant will use this exchange to divert water at Monument Lake Ditch No. 1 for storage in Monument Lake and/or to divert water at North Lake Inlet for storage in North Lake. b) Trinidad Reservoir to Monument Lake Ditch No. 2 Exchange. The exchange will operate on the Purgatoire River, the North Fork of the Purgatoire River and Brown Creek. The upstream terminus will be the headgate of the Monument Lake Ditch No. 2 (aka "D" Ditch), which is decreed for diversion in the NE¼ SE¼ § 25, T32S, R69W of the 6th P.M. on the south bank of Brown Creek whence the SE corner of § 25 bears S00°30'E 1721.7 feet. The actual location of the diversion is the NE¼ SE¼ § 25, T32S, R69W of the 6th P.M. on the south bank of Brown Creek whence the SE corner of § 25 bears S18°E 2200 feet. Applicant will use this exchange to fill Monument Lake. c) Trinidad Reservoir to C Ditch & Pipeline Exchange. The exchange will operate on the Purgatoire River, the North Fork of the Purgatoire River and Whiskey Creek. The upstream terminus will be the headgate of the "C" Ditch & Pipeline, which is located in the SW¼ NE¼ § 1, T33S, R69W of the 6th P.M. on the south bank of Whiskey Creek, whence the NE corner of § 11, bears N54°27'E 3044.7 feet. Applicant will use this exchange to fill Monument Lake. d) Trinidad Reservoir to Cherry Creek Ditch Exchange. The exchange will operate

on the Purgatoire River, the North Fork of the Purgatoire River, Brown Creek and Cherry Creek. The upstream terminus will be the headgate of the Cherry Creek Ditch, which is located at a point on Cherry Creek in the NE¼ NE¼ of § 1, T33S, R69W of the 6th P.M. whence the NE corner of § 1 bears N62°E 410.3 feet. Applicant will use this exchange to fill Monument Lake. **5. Water to be used for exchange:** Water stored in Applicant's account in Trinidad Reservoir. **6. Rates of exchange for each exchange:** a) Trinidad Reservoir to Monument Lake Ditch No. 1 Exchange: 8.17 cfs, conditional. b) Trinidad Reservoir to Monument Lake Ditch No. 2 Exchange: 2.0 cfs, conditional. c) Trinidad Reservoir to C Ditch & Pipeline Exchange: 5.0 cfs, conditional. d) Trinidad Reservoir to Cherry Creek Ditch Exchange: 4.8 cfs, conditional. **7. Cumulative volumetric limitation for all exchanges:** 3476 af. **8. Claimed appropriation dates for all exchanges:** January 26, 2009. a) How appropriations were initiated: By forming the requisite intent to appropriate, adopting a resolution to make these appropriations, and by filing the application in this case. b) If a claim to make absolute, date water applied to beneficial use: Not applicable. **9. Proposed uses:** Municipal, industrial, recreation and fish propagation uses. Municipal includes all municipal uses, such as, but not by way of limitation, domestic, commercial, manufacturing, industrial, fire protection, generation of electric power and power generally, recreation, fish and wildlife propagation, sewage treatment, street sprinkling, maintenance of adequate storage reserves, replacement, substitution, augmentation (including augmentation of domestic and commercial wells), exchange, and storage. Industrial includes augmentation of depletions associated with industrial wells. **10. Names and addresses of owners of the land upon which the subject structures are located:** a) The Bureau of Reclamation owns the land upon which the Trinidad Reservoir diversion and storage structures are located. Its address is United States Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18E, Loveland, Colorado 80537-9711. b) Applicant owns the land upon which the headgates of Monument Lake Ditch No. 1, C Ditch & Pipeline and Cherry Creek Ditch are located. c) Monument Lake Ditch No. 2 is located near the boundary of three properties. One of the following people/entities owns the land upon which the headgate of Monument Lake Ditch No. 2 is located: 1) Alvin Smart whose address is 4222 Highway 12, Weston, CO 81091; 2) Rudy Zuech whose address is 510 W. Colorado Avenue, Trinidad, CO 81082; or 3) Gary Garlutz who addresses are 214 Farasita Street, Trinidad, CO 81082 and 4002 Highway 12, Weston, CO 81091. WHEREFORE, Applicant respectfully requests the Court enter a decree finding that Applicant is entitled to the conditional appropriative rights of exchange described herein.

**CASE NO. 09CW12 - THOMAS A. WILLIAMS AND CONSUELO WILLIAMS,
1435 Montezuma Road, Colorado Springs, CO 80920**

(Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorneys for Applicants, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905, (719) 520-9288)
Application for Underground (Denver Basin) Water Rights

EL PASO AND ELBERT COUNTIES

Applicants seek the adjudication of the water in the Arapahoe and Laramie-Fox Hills aquifers underlying their 161.27 acre parcel in El Paso County, which is the NE1/4 of Section 2, T. 12 S., R. 60 W., 6th P.M. ("El Paso County Property"), and underlying their 320 acre parcel in Elbert County, consisting of the W ½ Section 34, T. 11 S., R. 59 W., 6th P.M. ("Elbert County Property") The locations of the El Paso County Property and the Elbert County Property are as shown on Figure 1 attached to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **2.**

Names of wells and permit, registration, or denial numbers: There are permits for two exempt wells in the Arapahoe aquifer on the El Paso County Property. Well permit 273315 has been constructed and placed to a beneficial use; well permit 273316 has not been constructed. There is one permitted exempt well in the Arapahoe aquifer on the Elbert County Property, permit no. 189473. Other wells may be constructed anywhere on the two properties. **3.**

Legal description of wells: El Paso County Property: Well permit no. 2273315 is located in the NW1/4 NE1/4 Section 2, T. 12 S., R. 60 W., 6th P.M. 79 feet from the north section line and 1568 feet from the east section line; well permit 227316, which is not constructed, is permitted to be located in the NE1/4 NE1/4 Section 2, T. 12 S., R. 60 W., 6th P.M., 79 feet from the north section line and 977 feet from the east section line. Elbert County Property: Well permit 189473 is located in the SE1/4 SW1/4 Section 34, T. 11 S., R. 59 W., 6th P.M., 210 feet from the south section line and 2487 feet from the west section lines. **4.**

Sources: The Arapahoe aquifer underlying the El Paso County aquifer is not nontributary; the Laramie-Fox Hills aquifer underlying the El Paso County Property is nontributary. Both the Arapahoe and Laramie-Fox Hills aquifers underlying the Elbert County Property are not nontributary. **5.A. Date of appropriation:** Not applicable. **5.B. How appropriation was initiated:** Not applicable. **5.C. Date water applied to beneficial use:** Not applicable. **6.**

Amount claimed: El Paso County Property: Arapahoe aquifer, 15 g.p.m., 19.4 acre feet annually, absolute; nontributary Laramie-Fox Hills aquifer, 100 gpm, 45.6 acre feet annually, absolute. Elbert County Property: Arapahoe aquifer, 17.7 acre feet annually, absolute; Laramie-Fox Hills aquifer, 88.8 acre feet annually, absolute. Four acre feet annually of Arapahoe aquifer water underlying the El Paso County Property for which the Applicants could seek a decree are excepted from this adjudication to allow the operation of well permit nos. 273315 and 273316, plus two additional wells, as "exempt" wells permitted pursuant to C.R.S. 37-92-602; nine acre feet annually of the Arapahoe aquifer water underlying the Elbert County Property as excepted from the application to allow the operation of permit no. 189473, plus up to eight additional wells, as exempt

wells. The Water Court will be asked to 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 wells in such aquifers. **7. Proposed use:** all beneficial uses except municipal uses. At the time well permits are sought, Applicants shall specify the uses for which the well is intended, and the State Engineer will be asked to issue permits for all requested uses which he determines at that time are not speculative. **8. Names and addresses of owners of land on which well is located:** Same as Applicants. **9. Remarks:** **A.** There are no liens against either the El Paso County Property or the Elbert County Property. **B.** The use of all not-nontributary Arapahoe and Laramie-Fox Hills aquifer water decreed herein may occur only pursuant to a court-approved plan for augmentation. No more than 98% of the water pumped from the nontributary Laramie-Fox Hills aquifer underlying the El Paso County property may be consumed. Any decree submitted to the court shall contain such provisions.

CASE NO. 09CW13 - EVELINE KELLY, 11685 Howells Road, Colorado Springs, CO 80908 (Henry D. Worley, MacDougall, Woldridge & Worley, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905-1743; (719) 520-9288

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: Permit No. 279593. **2. Legal description of wells:** Permit No. 279593 is constructed in the Denver aquifer in the SW1/4 SW1/4 Section 14, T. 12 S., R. 66 W., 6th P.M., 748 feet from the south section line and 447 feet from the west section line. One well in each of the Arapahoe and Laramie-Fox Hills aquifers is contemplated, plus all necessary additional and/or replacement wells, to be located anywhere on Applicant's 8.27 acre property located in the SW1/4 Section 14, T. 12 S., R. 66 W., 6th P.M., in El Paso County (the "Property"). The legal description of the Property is shown on Applicant's deed, a copy of which is attached to the Application as Exhibit A, and a map showing its location is attached to the Application as Figure 1. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The Property is located entirely within the Arkansas River drainage. **3. Sources:** not nontributary Denver aquifer; not 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:** Denver aquifer - 15 g.p.m., 6.1 acre feet annually, absolute; Arapahoe aquifer - 150 g.p.m., 3.7 acre feet annually, absolute; Laramie-Fox Hills aquifer - 150 g.p.m., 2.4 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. The water court will be asked to 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 use:** All beneficial uses except municipal. **7. Name and address of owner of land on which wells are/will be located:** Same as Applicant. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.** **8. Name of structures to be augmented:** Well permit 279593. No other water rights are or will be diverted from that well. After entry of a decree, permit 279593 will be re-permitted consistent with the provisions of the decree. **9. Previous decrees for water rights to be used for augmentation:** None. **10. Historic use:** Not applicable. **11. Statement of plan for augmentation:** Well permit 279593 is permitted for indoor residential uses only. Applicant seeks approval of a plan for augmentation which will allow multiple uses from this structure, including without limitation indoor residential uses, incidental commercial uses for an in-home office, a detached home office or guest house, landscape irrigation, domestic livestock, hot tub and swimming pool. Indoor use for the existing house is expected to equal 0.26 acre foot annually. Treatment of waste water from indoor uses will be achieved using nonevaporative individual septic tanks and leach field systems ("ISDS"); consumption of water so treated will not exceed 10 percent of uses, with 90 percent, or 0.234 acre foot annually, returning to the nearest stream. Depletions in the 300th year are modeled to equal approximately 5 percent of annual pumping, or 0.05 acre foot based on annual pumping of 1.0 acre feet. So long as a single family dwelling is located on the lot, ISDS return flows alone will equal or exceed maximum stream depletions each year during pumping. Change of the type of wastewater treatment to a central sewage treatment with direct discharge to any tributary of Fountain Creek shall not require an amendment to this plan for augmentation, but change to any other type of wastewater disposal shall require an amendment. Applicant proposes to replace depletions during pumping with return flows from the ISDS, and to replace post-pumping depletions with the nontributary Laramie-Fox Hills aquifer water decreed herein, all of which will be reserved for that purpose. The amount of Laramie-Fox Hills aquifer water available for appropriation indicates that this plan for augmentation has adequate augmentation water to replace depletions associated with pumping approximately 250 acre feet of water from the Denver aquifer, regardless of the amount of time over which the 250 acre feet are pumped. Applicant does seek to reserve the right to replace such depletions with any other judicially acceptable source of augmentation water, upon judicial approval after appropriate notice. **12. Miscellaneous provisions.** There are no liens or encumbrances against the Applicant's property, so the notice provisions of C.R.S. 37-92-302(2)(b) are not applicable.

CASE NO. 09CW14 - SUSAN A. GALVEZ, 1814 Garwood, Pueblo, CO 81005, 719-250-8006; ANNA M. ARAGON, 1725 Harlow Avenue, Pueblo, CO 81006 719-252-9074; CATHY L. TRUJILLO, 1037 S. Avenida del Oro E., Pueblo West, CO 81007 719-252-2265; TINA B. LEPIK, 288 S. Massalino Drive, Pueblo West, CO 81007 719-568-2615; ELOYDA J. VALLEJOS, 4311 Wilderness Trail, Pueblo, CO 81008, 719-544-4706; DOLORES J. GOMEZ, 1079 Della Lane, Pueblo, CO 81006, 719-251-9760; and REBECCA H. WILSON, 1043 Camino al Cielo, Pueblo West, CO 81007, 719-778-6647

Application for Water Rights (Surface)

HUERFANO COUNTY

Name of structure: Cisneros #2. **Legal description of each point of diversion:** Huerfano County, NW ¼ of the NW ¼ Section 30, Township 27 South, Range 70 West, 6th P.M., 680 feet from the North line and 450 feet from the West line. **Source:** Natural spring, tributary to Palo Duro Creek. **Date of initiation of appropriation:** Livestock 1955; Domestic 1973. **How appropriation was initiated:** Developed for livestock, pipeline for domestic. **Date water applied to beneficial use:** Livestock 1955; Domestic 1973. **Amount claimed:** 6 gpm livestock and 6 gpm domestic Absolute. **Use or proposed use:** Livestock and domestic for home and garden and lawn
Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Donald Cisneros, 5000 Red Creek Springs Road, Pueblo, CO 81005.

CASE NO. 09CW15 - JAMES M. CONLEY, P. O. Box 882, 499 Lookout Point Road, Walsenburg, CO 81089; (719) 738-2170

Application for Underground Water Right

HUERFANO COUNTY

Name of well and permit number: Conley Well #1; Permit 255929. **Legal description of well:** Huerfano County, SW ¼ of the NW ¼ Section 35, Township 28 South, Range 67 West, 6th P.M., 1494 feet from the North line and 844 feet from the West line. **Street Address:** 499 Lookout Point Road, Walsenburg, CO 81089; **Subdivision:** River Ridge Ranch, Lot 15, Phase 1. **GPS Location information in UTM format, Zone 13; Units in meters; NAD83 Datum; Unit set to true north:** Points averaged. Northing 511986; Easting 4158178. **Source:** Groundwater; **Depth:** 345' from surface. **Date of appropriation:** Domestic and livestock well permit 255929; Feb. 20, 2004; **How appropriation was initiated:** Application for well permit. **Date water applied to beneficial use:** May 18, 2004. **Amount claimed:** 12 gpm. **Proposed use:** Domestic and livestock use, irrigation of not more than 1 acre of home garden and lawn. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or**

upon which water is or will be stored, including any modification to the existing storage pool: Applicant. **Remarks:** Pursuant to CRS §37-92-602(4), the appropriation date is awarded as the original priority date for the well described above, notwithstanding the fact that the Application was filed in 2009 and the priorities decreed herein are therefore not subject to the postponement doctrine set forth in C.R.S. 37-92-306.

CASE NO. 09CW16(94CW6) - TURKEY CANON RANCH WATER COMPANY, LLC, c/o Mark Morley, Member/Manager, 20 Boulder Crescent, 2nd Floor, Colorado Springs, CO 80903 (James G. Felt and Michael J. Gustafson, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; 719-471-1212)

Application for Finding of Diligence and to Make Partially Absolute a Conditional Water Right

EL PASO COUNTY

2. Name of structures: TCR Well No. 1 and TCR Well No. 2. **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **A. Date of initial decree:** January 18, 1996, **Case No.** 94CW6, District Court, Water Division 2, **Date of final decree:** December 17, 1997, **Case No.** 94CW6, District Court, Water Division 2, **Date of amended decree:** November 6, 1998, **Case No.** 97CW171, District Court, Water Division 2, **Date of first diligence decree:** January 14, 2003, **Case No.** 02CW11, District Court Water Division 2. **B. TCR Well No. 1** **(1) Legal Description:** NE ¼ NE ¼, Section 5, Township 17 South, Range 67 West, 6th P.M., being 1100 feet from the North Section line, and 20 feet from the East Section line. **(2) Source:** Manitou Formation **(3) Date of Appropriation:** May 24, 1994 **(4) Amount Claimed:** 100 gpm conditional not to exceed 20.65 acre feet limited to a maximum annual combined diversion with TCR Well No. 2 of 27.26 acre feet **(5) Use:** In-house domestic use, commercial use for a fire station and replacement **(6) Depth:** 617 feet. **C. TCR Well No. 2** **(1) Legal Description:** SE ¼, Section 5, Township 17 South, Range 67 West, 6th P.M., being 2452 feet from the North Section line and 1566 feet from the East Section line. **(2) Source:** Manitou Formation **(3) Date of Appropriation:** August 31, 1994 **(4) Amount Claimed:** 100 gpm conditional limited to a maximum annual combined diversion with TCR Well No. 1 of 27.26 acre feet **(5) Use:** In-house domestic use, commercial use for a fire station and replacement **(6) Depth:** 617 feet **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:** **A. Summary of Previous Decrees (94CW6 and 97CW171):** The prior decrees adjudicated conditional water rights for two wells to serve a 59 lot subdivision known as the Pinons of Turkey Canon Ranch on a 323 acre parcel of land and three additional residences and a restaurant located adjacent to the applicant's land in southwestern El Paso County. Those wells were adjudicated to serve a central water system connected to each of the subdivision lots and the additional uses on the 4 lots adjacent to the subdivision for in-house domestic use, commercial

use for a fire station and replacement purposes. An augmentation plan was approved utilizing 19 shares of Twin Lakes Reservoir and Canal Company shares of stock to replace depletions to Turkey Creek and Red Creek. The decrees are attached to the Application as Exhibits A and B. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. (02CW11): This was the previous diligence decree for TCR Well No.1 and TCR Well No. 2. The decree in Case No. 02CW11 awarded TCR Well No. 1 an absolute water right for in-house domestic use, commercial use for a fire station and replacement for 3.06 annual acre feet at a flow rate of 100 gpm. The decree in Case No. 02CW11 awarded a finding of reasonable diligence and a continuation of the remaining 23.4 acre feet at a flow rate of 100 g.p.m. for TCR Well No. 1 and a finding of reasonable diligence and a continuation of the conditional water right originally awarded to TCR Well No. 2. The diligence decree is attached to the Applicant as Exhibit C. B. Statement of Diligence: During this diligence period TCR Well No. 1 has been used to pump water to 40 constructed homes in the subdivision and 3 neighboring water users. Applicant's engineer also assisted Applicant in verifying the accuracy of the flow meter for TCR Well No. 1. TCR well No. 1 has pumped a maximum amount of 10.29 acre feet during the diligence period. TCR Well No. 2 has been permitted, drilled and tested. The Applicant also installed the electrical systems necessary for the operation of TCR Well No. 2. Applicant is in the process of setting a pump in TCR Well No. 2 and connecting the well to the central water system for the subdivision. Expenditures for the TCR Well No. 1 flow meter verification, the permitting, drilling, and testing of TCR Well No. 2, engineering, attorney's fees directly related to implementation of the water rights decree; and electrical work have been in the amount of at least \$91,188.08 for the period of diligence set forth in 02CW11 to be from January 2003 to January 2009. **5. Claim to make absolute for TCR Well No. 1: A. Date water first placed to beneficial use:** December 19, 1997. **Amount of 2008 usage:** 10.29 acre feet. **Use:** In-house domestic use, commercial use for a fire station and replacement. **B. Description of place of use where water is applied to beneficial use:** A 353 acre parcel known as the Pinons at Turkey Canon Ranch the legal description of which is set forth within the decree in 94CW6 attached to the Application as Exhibit A. **6. Names of the owners 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:** TCR Well No. 1, TCR Well No. 2, water storage facilities and water mains are all located upon lands of the Applicant and/or within easements owned by the Applicant. The central water system is operated by the Turkey Canon Ranch Water District whose address is 15580 Cala Rojo Dr., Colorado Springs, CO 80926. The place of beneficial uses are the subdivision known as the Pinons at Turkey Canon Ranch and three additional properties adjacent to the subdivision belonging to Matt Shirola III, Sydney Dickey, and Dick Davis as set forth in the decree in 97CW171.

CASE NO. 09CW17 - OLIVER K. NIESS, JR., 10055 Kit Carson Lane, Colorado Springs, CO 80920-1512 (Henry D. Worley, MacDougall, Woldridge & Worley, P.C., Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905; (719) 520-9288)

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: One well in the Denver aquifer, apparently unpermitted, exists on the Applicant's property. **2. Legal description of wells:** One well in each of the Denver, Arapahoe and Laramie-Fox Hills aquifers, plus any replacement wells, to be located anywhere on Applicant's 6.51 acre property located in the SE1/4 SE1/4 NW1/4 Section 28, T. 12 S., R. 66 W., 6th P.M., in El Paso County (the "Property"). The legal description of the Property is Lot 6, Block E, Spring Crest Amended Filing. One map depicting its general location is attached to the Application as Figure 1; another showing the exact dimensions of the Property is attached to the Application as Figure 2. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The Property is located entirely within the Arkansas River drainage. **3. Sources:** not nontributary Denver aquifer; not 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:** Denver aquifer - 15 g.p.m., 1.6 acre feet annually, absolute; Arapahoe aquifer - 15 g.p.m., 2.86 acre feet annually, absolute; Laramie-Fox Hills aquifer - 120 g.p.m., 1.91 acre feet annually, absolute. The water court will be asked to 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. The above amounts claimed for appropriation includes water underlying Kit Carson Lane to the center of that road, adjacent to the west side of the Property. It also claims water underlying what was formerly Alamosa Drive on the south side of the Property, to the center of Alamosa Drive. **6. Proposed use:** All beneficial uses except municipal. **7. Name and address of owner of land on which wells are/will be located:** Same as Applicant. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION. 8. Name of structures to be augmented:** The existing unpermitted Denver aquifer well, and the proposed Arapahoe aquifer well. No other water rights are or will be diverted from these wells. After entry of a decree, both the existing Dawson aquifer well and the yet-to-be constructed Arapahoe aquifer well will be permitted consistent with the provisions of this plan for augmentation. **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 residential lots, one of which will be served by the existing Denver aquifer well and one of which will be served by an Arapahoe aquifer well. Diversions by each

well shall be limited to no more than 0.34 acre foot (110,800 gallons) annually. Indoor use for each of the houses is expected to equal 0.30 acre foot annually. Treatment of wastewater from indoor uses will be achieved using nonevaporative individual septic tanks and leach field systems ("ISDS"); consumption of water so treated will not exceed 10 percent of uses, with 90 percent, or 0.54 acre foot annually, returning to the nearest stream. Depletions in the 300th year are modeled to equal approximately 24.55 percent of annual pumping from the Denver aquifer. Four percent of Arapahoe aquifer withdrawals need to be replaced annually. Thus, in the 300th year, 0.18 acre feet of water will need to be replaced. So long as a single family dwelling is located on each lot, ISDS return flows alone will equal or exceed maximum stream depletions each year during pumping. Applicant proposes to replace depletions during pumping with return flows from the ISDS, and to replace injurious post-pumping depletions with the nontributary Laramie-Fox Hills aquifer water decreed herein, all 191 acre feet of which will be reserved for that purpose. However, Applicant seeks to reserve the right to replace such depletions with any judicially acceptable source of augmentation water. **12. Miscellaneous provisions. (A)** Any final decree entered in this case shall provide that no more than 0.34 acre feet per year may be diverted from each of the Denver and Arapahoe aquifers absent an amendment of this plan for augmentation. **(B)** The only lien or encumbrance against the property beneath which the right to appropriate water is being claimed, is El Paso County's easement for the portion of Kit Carson Lane and possibly Alamosa Drive which are adjacent to the Property. Therefore, pursuant to C.R.S. 37-92-302(2)(b), notice of this application is being given to the El Paso County Board of County Commissioners.

CASE NO. 09CW18 - JACK GAFFNEY, JR., P. O. Box 757, Cripple Creek, CO 80813 (Shawn Marie Yoxey, The Law Office of Shawn M. Yoxey, P.C., Attorney for Applicant, 226 S. Union, Suite 211, Pueblo, CO 81003; (719) 543-7899)
Application for Approval of Plan for Augmentation

TELLER COUNTY

Name of structure to be augmented: Slater Creek Stock Pond/Dam. **Are there other water rights diverted from this structure?** No. **Previous decree for water rights to be used for augmentation:** Kittridge Ditch #1. **Date of Original Decree:** February 3, 1894. **Case No.** 02/03/1894; **Court:** Division 2. **Type of water right:** surface. **Legal description of point of diversion or place of storage:** NW ¼ Section 2, Township 14 South, Range 71 West, 6th P.M. **Source:** Four Mile Creek. **Appropriation Date and Amount:** June 15, 1873; 2.333 cfs and May 31, 1877; 2.0 cfs. Decreed use was for irrigation of 125 acres. **Historic use:** The Applicant grows 125 acres of irrigated mountain grass hay for the purpose of livestock grazing in a field approximately 2.5 miles downstream from the stock pond. The land has been historically irrigated by the Kittridge Ditch No. 1, priority numbers 125 and 187 on the Arkansas River, which are also priority numbers 38 and 55 on Four Mile Creek. Maps, records and other documents pertaining to the Kittridge Ditch #1 may be found in the document attached to the application prepared by Anselmo Engineering. All

exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **Statement of plan for augmentation, covering all applicable matters under §37-92-103(9), 302(1)(2) and 305(8), C.R.S.:** The plan for augmentation is summarized as follows: The Applicant has built a stock pond on Slater Creek for the purpose of providing water for livestock. The surface area of the pond is approximately 2.81 acres. A 36" corrugated metal pipe riser with accompanying 24" outlet is utilized to discharge water back into Slater Creek. An 8" pipe with gate valve also discharges into Slater Creek. The 8" pipe will be used to release water from the pond when consumptive use credits are less than the net chargeable evaporation of the pond. The plan for augmentation calls for the drying up of 6.8 acres of mountain grass hay historically irrigated by Kittridge Ditch #1. the acreage is located 2.5 miles downstream from the stock pond. The source of the Kittridge Ditch #1 is Four Mile Creek. Slater Creek is tributary to Four Mile Creek which confluence is roughly 2 miles downstream from the subject stock pond. Annual evaporative loss from the 2.81 acre stock pond has been established as 7.50 acre feet. The annual consumptive use irrigation credit for grass hay at 7900 feet above sea level, as is the case here, is 1.31 feet based on the modified Blaney-Criddle method. Total "dry-up" credit for the plan is 7.54 acre-feet. Based on the foregoing, the plan as described can be administered without causing injury to other water rights downstream or otherwise. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

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 2009 (forms available at Clerk's office or at www.courts.state.co.us, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 5th day of February, 2009.



Mardell R. DiDomenico

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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