

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND ORDERED PUBLISHED DURING JANUARY 2011

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and ordered published during January 2011, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

**CASE NO. 10CW62 – DWAIN W. EATON and DONNA J. EATON, 1004 East Maple Street, Lamar, CO 81052 (719) 336-5068**

Second Amendment to Application

**PROWERS COUNTY**

The Applicants request their application filed September 8, 2010, and amended on October 28, 2010 be further amended as follows: Identify the source for the Mead and Smith Seepage Ditches as Paradox Valley. Clarify that both the Mead and Smith Seepage Ditch water rights will be diverted at the same point of diversion (NE $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 19, T22S, R45W, 6<sup>th</sup> P.M., Prowers County, 2660 feet from north line and 2080 feet from west line). The acreage to be irrigated is SW4 19-22-45, S2 SE4 19-22-45; S2SW4 20-22-45, for a total of 280.4 acres. Appropriation dates are corrected as follows: Mead Seepage Ditch 11/13/1905 (1.5 cfs); Smith Seepage Ditch 4/11/1911 (3 cfs) and 4/24/1915 (2 cfs).

**CASE NO. 11CW1 – ALBERT P. URENDA, 15854 E. 10<sup>th</sup> Place, Aurora, CO 80011; (720) 217-1545**

Application for Change of Water Right

**PUEBLO COUNTY**

**Decreed water right for which change is sought: Name of structure:** Well (Sump) #2. **Date or original and all relevant subsequent decrees:** June 12, 1974; **Case No.:** W-2300. **Legal description of structure:** Pueblo County, NE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  Section 6, T19S, R64W, 6<sup>th</sup> P.M., 1264 feet from the North line and 619 feet from the East line. **Decreed source of water:** Fountain Creek. **Appropriation Date:** 4/30/1939; **Total amount decreed to structure:** 1.78 cfs (800 gpm). **Decreed use:** Irrigation on 120 acres of land. **Amount of water that applicant intends to change:** .33 cfs (150 gpm). **Detailed description of proposed change:** Applicant wishes to relocate 150 gpm of the decreed pumping amount of 1<sup>st</sup> well to 2<sup>nd</sup> well located 1763 feet south and east of existing structure. Reason for request is that paved road installed by Pueblo County makes delivery of water from first structure to field impossible. **If a change in point of diversion, provide legal description of decreed location and actual or new location of structure:** Pueblo County, SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  Section 6, T19S, R64W, 6<sup>th</sup> P.M., 3850 feet from the South line and 600 feet from the East line. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion**

or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Applicant.

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**CASE NO. 11CW2; Previous Case No. 04CW19 – DENNIS O. BOCKHAUT, 106 Yucca Lane, Westcliffe, CO 81252; (719) 783-0136**

Application for Finding of Reasonable Diligence

**FREMONT COUNTY**

**Name of Structure:** Serendipitous Spring & Pond. **Describe conditional water right:** **Date of Original Decree:** November 16, 2004; **Case No.:** 04CW19; **Court:** Water Division 2. **Legal description:** Fremont County, SW ¼ of the SE ¼ Sec. 34, T20S, R72W, 6<sup>th</sup> P.M., 1250 feet from the south line and 2750 feet from the west line. **Street Address:** 229 Spring Rd., Cotopaxi, CO 81223; **Subdivision:** Cody Park; **Lot:** 3; **Filing:** 15; **Block:** 10. **GPS location (UTM format; Zone 13; Points averaged)** Northing 4335006; Easting 0463496. **Source:** Serendipitous Spring. **Appropriation Date:** 2/29/2004; **Amount:** .014 cfs. **Use:** Landscaping and garden watering, fire suppression, recreation, wildlife habitat. **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:** Cleared under brush and trimmed low branches of trees around pond. Installed steps into steep slope approaching pond from cabin for safety. Installed barbed wire fence around portion of property to keep cattle out of area. Increased size of pond from 8w x 25l x 4d to 15w x 35l x 4d by excavating material below ground level. Increased size of spring from 3w x 3l x 2d to 7w x 12l x 6d by excavating material. Installed portable screen shelter and picnic bench in shaded area by side of pond (removed each autumn). Installed portable generator and pump at side of pond (removed each autumn). Installed 1" pvc water pipe from pump to holding tank at cabin. Except for one expense, work was done by hand and material and equipment used was already owned. Expenditures: Excavate spring - \$100. To be done in 2011: (1) Spring box as per attachment 0 to protect spring from flash flooding, contamination etc.; (2) Expand pond further to 50l x 20w x 5d; (3) Line bottom of pond with commercial liner to minimize seepage. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

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**CASE NO. 11CW3 – GARY W. SHANE, SHARON L. SHANE and CONNIE J. SHANE, 33301 Hwy. 194, La Junta, CO 81050; (719) 384-5028; JEFFERY STEDMAN and JANELLE STEDMAN, 34349 Hwy. 194, La Junta, CO 81050; (719) 384-5613; WESLEY D. ECK and CONNIE ANN ECK, 2544 Hwy. 194, La Junta, CO 81050; (719) 456-1484; and WESLEY DARRIN ECK and JULIE J. ECK, 35417 Hwy. 194, La Junta, CO 81050; (719) 384-9699**

Application for Change of Water Right

**OTERO, BENT, KIOWA, CROWLEY, PUEBLO AND PROWERS COUNTIES**

**Decreed water rights for which change is sought:** Applicants are requesting to add augmentation use to their respective shares of the Fort Lyon Canal Company. The Fort Lyon Canal Company is a mutual ditch company consisting of approximately

93,989.4166 shares of capital stock issued and outstanding. The Applicants' shares listed below represent approximately one percent (1%) of the total outstanding capital stock in the Fort Lyon Canal Company. The Applicants' respective ownership shares of the Fort Lyon Canal Company are as follows: Gary W. Shane and Sharon L. Shane: 54 shares represented by Certificate No. 9998 issued on July 8, 2009; 50 shares represented by Certificate No. 9996 issued on July 8, 2009; 50 shares represented by Certificate No. 9997 issued on July 8, 2009. Gary W. Shane and Connie J. Shane: 374.2 shares represented by Certificate No. 9999 issued on July 8, 2009. Jeffery Stedman and Janelle Stedman: 93.84 shares represented by Certificate No. 10012 issued on September 9, 2009; 51.5 shares represented by Certificate No. 10011 issued on September 9, 2009; 54 shares represented by Certificate No. 10010 issued on September 9, 2009. Wesley D. Eck and Connie Ann Eck: 46 shares represented by Certificate No. 10028 issued on February 10, 2010; 154 shares represented by Certificate No. 9633 issued on June 20, 2003. Wesley Darrin Eck and Julie J. Eck: 100 shares represented by Certificate No. 9283 issued on June 21, 1999. **Previous Decrees:** The Fort Lyon Canal Company has decreed points of diversion or rights of use at the following structures: Fort Lyon Canal: The decreed point of diversion of the Fort Lyon Canal is located in the NE/4 of Section 32, Township 23 South, Range 55 West of the 6<sup>th</sup> P.M. in Otero County, Colorado. Fort Lyon Storage Canal: The diversion dam straddles the Crowley/Otero County line. The point of diversion is located on the north bank of the Arkansas River, at a point in the NW/4 of the SE/4 of Section 20, Township 22 South, Range 57 West of the 6<sup>th</sup> P.M., in Crowley County. Horse Creek Reservoir: is located in portions of Sections 29, 30, and 31 of Township 21 South, Range 53 West, and Sections 6 and 7 of Township 22 South, Range 53 West, and in portions of Section 25 and 36 of Township 21 South, Range 54 West, and Sections 1, 2, and 12 of Township 22 South, Range 54 West of the 6<sup>th</sup> P.M., in Otero County. The dam for the reservoir is located in Sections 6 and 7, Township 22 South, Range 53 West, and in Sections 1 and 12, Township 22 South, Range 54 West of the 6<sup>th</sup> P.M., all in Bent and Otero Counties. Horse Creek Supply Ditch: The decreed point of diversion of the Horse Creek Supply Ditch is located in the SW/4 of Section 6, Township 22 South, Range 54 West of the 6<sup>th</sup> P.M. Adobe Creek Reservoir: is located in portions of Sections 27, 28, 29, 32, 33, and 34 of Township 20 South, Range 52 West, and in portions of Sections 3, 4, 5, 6, 7, 8, 9, 17 and 18, of Township 21 South, Range 52 West, in Kiowa and Bent Counties. The dam for the reservoir is located in Sections 7, 17 and 18 of Township 21 South, Range 52 West of the 6<sup>th</sup> P.M. in Bent County. Adobe Creek Supply Ditch: The point of diversion is located in the NW/4 of Section 26, Township 20 South, Range 53 West of the 6<sup>th</sup> P.M. in Kiowa County. Thurston Reservoir: (originally decreed as Prince Reservoir): is located in portions of Section 18 of Township 21 South, Range 46 West and Section 13 of Township 21 South, Range 47 West, in Prowers County. The points of diversion for the Thurston Pipeline are located in/at the Thurston Reservoir. Thurston Pipeline: The point of diversion for the Thurston Pipeline is located at a point whence the section corner common to sections 7 and 18, Township 21 South, Range 46 and Sections 12 and 13, Township 21 South, Range 47, all West of the 6<sup>th</sup> P.M., Prowers County, Colorado, bears North 0°41' West a distance of 1680 feet. There is an alternate point of diversion located at a point whence the S/4 corner of Section 18, Township 21 South, Range 46

West of the 6<sup>th</sup> PM., Prowers County, Colorado bears South 10°10' East a distance of 2297 feet. Pueblo Reservoir: is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 20 South, Range 66 West, Sections 1, 2, 3, 4, 5, 9, 10, and 11, Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, Township 20 South, Range 67 West of the 6<sup>th</sup> PM., in Pueblo County. The dam for the reservoir is located in Sections 25 and 36 of Township 20 South, Range 66 West, and Section 1, Township 21 South, Range 66 West, in Pueblo County. John Martin Reservoir: is located in all or portions of Sections 24, 25, 26, 27, 33, 34, 35, and 36, Township 22 South, Range 51 West, Sections 28, 29, 30, 31, 32, 33, 34, and 35, Township 22 South, Range 50 West, Sections 5, 6, 7, 8, 17, and 18, Township 23 South, Range 49 West, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, and 30, Township 23 South, Range 50 West, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, and 18, Township 23 South, Range 51 West, and Sections 1, 2, and 13, Township 23 South, Range 52 West, in Bent County. The dam for the reservoir is located in Sections 5, 8, and 17 of Township 23 South, Range 49 West in Bent County. Queen Reservoir (a/k/a Neeskah Reservoir): is located in Townships 19, 20, and 21 South, Ranges 46, 47 and 48 West of the 6<sup>th</sup> P.M. in Kiowa and Prowers County, Colorado. The Fort Lyon Canal Company was originally decreed three direct flow water rights in Bent County Court with an original adjudication date of April 8, 1905. The first water right is for 164.64 cubic feet per second (“cfs”) with an appropriation date of April 15, 1884. The second right is for 597.16 cfs with an appropriation date of March 1, 1887. The third is for 171.20 cfs with an appropriation date of August 31, 1893. These water rights total 933 cfs and are summarized in Table 1 below.

**Table 1**  
**Fort Lyon Canal Company – Direct Flow Water Rights**

<b>Identification of Water Right</b>	<b>Amount (cfs)</b>	<b>Source</b>	<b>Appropriate Date</b>
Fort Lyon Canal	166.64	Arkansas River	April 15, 1884
Fort Lyon Canal	597.16	Arkansas River	March 1, 1887
Fort Lyon Canal	171.20	Arkansas River	August 31, 1893

The Fort Lyon Canal Company also owns several water rights to divert and store water in Horse Creek and Adobe Creek Reservoirs. The Fort Lyon Canal Company may divert from both the Arkansas River (via the Fort Lyon Storage Canal) and from Horse Creek (via the Horse Creek Feeder Ditch, or Supply Canal) to store up to 28,000 acre feet (“AF”) in the Horse Creek Reservoir. The Fort Lyon Canal Company may divert from the Arkansas River (via the Fort Lyon Storage Canal) and Adobe Creek (via the Adobe Creek Feeder Ditch, or Supply Canal) to store up to 87,000 AF in the Adobe Creek Reservoir. These water rights were decreed in Bent County District Court and are summarized in Table 2 below.

**Table 2**  
**Storage Rights – Horse Creek Reservoir and Adobe Creek Reservoir**

<b>Identification of Water Right</b>	<b>Amount (cfs)</b>	<b>Source</b>	<b>Appropriation Date</b>
Horse Creek Reservoir original construction	2,000 cfs 840 cfs 1,466 cfs 11,400 af	Horse Creek Arkansas River Arkansas River	August 15, 1990 January 25, 1906 March 1, 1910
Horse Creek Reservoir 1 <sup>st</sup> Enlargement	840 cfs 5,000 cfs 1,466 cfs 15,487 af	Arkansas River Horse Creek Arkansas River	January 25, 1906 December 20, 1907 March 1, 1910
Horse Creek Reservoir 2 <sup>nd</sup> Enlargement	5,000 cfs 840 cfs 1,466 cfs 1,113 af	Horse Creek Arkansas River Arkansas River	June 12, 1908 June 12, 1908 March 1, 1910
Adobe Creek Reservoir original construction	8,631 cfs 840 cfs 1,466 cfs 61,575 af	Adobe Creek Arkansas River Arkansas River	January 25, 1906 January 25, 1906 March 1, 1910
Adobe Creek Reservoir Enlargement	8,631 cfs 840 cfs 1,466 cfs 25,425 af	Adobe Creek Arkansas River Arkansas River	December 29, 2908 December 29, 2908 March 1, 1910

Additionally, the Fort Lyon Canal Company owns a right to store 1,515 AF of water in Thurston Reservoir, via the Main Canal for up to 355.20 cfs. The right was originally decreed for Prince Reservoir, but was conditionally transferred to Thurston Reservoir in 1972 in Case No. W-27, Water Division 2, and made absolute in 1979 in Case Number 79CW085, Water Division 2. The Thurston Pipeline, from Thurston Reservoir, was constructed to allow the Fort Lyon Canal Company to pump nontributary water back into the Main Canal. The right associated with this pipeline is for 25 cfs; 6.68 cfs is absolute and 18.32 cfs is conditional (Case No. 96CW102). These water rights are summarized in Table 3 below.

**Table 3**  
**Storage Rights – Thurston Reservoir and Pipeline**

<b>Identification of Water Right</b>	<b>Amount (cfs)</b>	<b>Source</b>	<b>Appropriation Date</b>
"Prince Reservoir"	355.20 cfs 1,515 af Absolute	Arkansas River	Aug. 12, 1889
"Prince Reservoir" Transfer to Thurston Pipeline	355.20 cfs 1,515 af Absolute	Arkansas River	Aug. 12, 1889

Thurston Pipeline	Original Claim 25 cfs Conditional  Continued as 6.68 cfs Absolute 18.32 cfs Conditional through due diligence application	Thurston Lake whose water is accumulated from springs in said lake, seepage flowing into the lake, waste water from a canal of the Fort Lyon Canal Company, rainfall and waste water flowing into the lake from land of owners adjoining the lake. Pursuant to the decree in W-27, the water so accumulated is not tributary to any natural stream of the State of Colorado.	July 15, 1969
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In addition to its original direct flow and storage rights discussed above, the Fort Lyon Canal Company owns and/or operates several additional water rights and water supply agreements, summarized in Table 4 below.

**Table 4  
Other Water Rights**

<b>Identification of Water Right</b>	<b>Case Number</b>	<b>Amount</b>	<b>Storage/Source</b>
Amity Mutual Irrigation Company – Queens Reservoir	80CW019 89CW076	5,483 AF	Queen Reservoir Horse Creek Reservoir Adobe Creek Reservoir John Martin Reservoir
John Martin Reservoir Change	79CW160 79CW161 80CW051	Cumulative 5,000 AF	Horse Creek Reservoir Adobe Creek Reservoir Queen Reservoir
Change in Diversion Point	79CW178	933 cfs	Horse Creek Reservoir Adobe Creek Reservoir Queen Reservoir
Winter Water Storage Program	84CW179	38,160 AF of the first 100,000 AF and 38.16% of all water over 103,106 AF	Horse Creek Reservoir Adobe Creek Reservoir Thurston Reservoir
John Martin Reservoir Exchange	90CW047	Absolute: flow rate 544 cfs, annual limit 15,288.95 AF Conditional: 606 cfs	John Martin Reservoir

John Martin Operating Plan 1980	Arkansas River Compact Administration April 24, 1980	20,000 AF	John Martin Reservoir
Fryingpan-Arkansas Project		Varies depending on hydrologic conditions	
Informal Basis	Periodically the Fort Lyon Canal Company works with other area canals to increase water availability to shareholders		

**Description of Change of Use Requested:** Applicants Gary W. Shane and Sharon L. Shane, wish to add augmentation use to 154 shares of Fort Lyon Canal Company currently allocated to head gates 24F, 24B and 24C which have historically irrigated the following real property: Portion of the W/2SW/4 of Section 25 of Section 22, Township 23 South, Range 54 West of the 6<sup>th</sup> P.M.; a portion of the NW/4NW/4 of Section 22, Township 23 South, Range 54 West of the 6<sup>th</sup> P.M.; 50.235 acres in Sections 16 and 21, Township 23 South, Range 54 West of the 6<sup>th</sup> P.M., all in Otero County, Colorado. Said change of use would simply provide the owner with the choice of transferring all or a portion of their Fort Lyon Canal Company Shares to the Fort Lyon Canal Company Augmentation Station (generally located in the SW/4 of Section 29, Township 22 South, Range 53 West of the 6<sup>th</sup> P.M., in Bent County, Colorado)(See map and photographs attached to the Application as Exhibits “A”, “B” and “C”). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Said shares would be used for augmentation credits through CWPDA’s Rule 14 Augmentation Plan. A map showing the location of the wells which would pump the augmented shares of water is attached to the Application as Exhibit “D”. Applicants Gary W. Shane and Connie J. Shane, wish to add augmentation use to 374.2 shares of Fort Lyon Canal Company currently allocated to head gates 23 and 24 which have historically irrigated the following real property: SE/4NW/4W/2 of Section 16, Township 23 South, Range 54 West of the 6<sup>th</sup> P.M.; and NE/4SW/4E/2 of Indian Claim in Section 21, Township 23 South, Range 54 West of the 6<sup>th</sup> P.M., in Otero County, Colorado. Said change of use would simply provide the owner with the choice of transferring all or a portion of their Fort Lyon Canal Company Shares to the Fort Lyon Canal Company Augmentation Station (generally located in the SW/4 of Section 29, Township 22 South, Range 53 West of the 6<sup>th</sup> P.M., in Bent County, Colorado)(See map and photographs attached to the Application as Exhibits “A”, “B” and “C”). Said shares would be used for augmentation credits through CWPDA’s Rule 14 Augmentation Plan. A map showing the location of the wells which would pump the augmented shares of water is attached to the Application as Exhibit “D”. Applicants, Jeffery Stedman and Janelle Stedman, wish to add augmentation use to 199.34 shares of Fort Lyon Canal Company currently allocated to head gates 25D, 26 and 24A which have historically irrigated the following described real property: Land lying in Section 15, Township 23 South, Range 54 West of the 6<sup>th</sup> P.M.; E/2W/2SW/4 of Section 21, Township 23 South, Range 54 West of the 6<sup>th</sup> P.M.; E/2W/2 of Section 21, Township 23 South, Range 54 West of the 6<sup>th</sup> P.M.; NE/4 of Section 21, Township 23 South, Range 54 West of the 6<sup>th</sup> P.M.; and 4 acres in E/2SW/4 of Section 21, Township 23 South, Range 54 West of the 6<sup>th</sup> P.M., all in Otero County, Colorado. Said change of use would simply provide the owner with the choice of transferring all or a portion of their Fort Lyon Canal Company Shares to the Fort Lyon Canal Company Augmentation Station (generally located in the SW/4 of Section 29,

Township 22 South, Range 53 West of the 6<sup>th</sup> P.M., in Bent County, Colorado)(See map and photographs attached to the Application as Exhibits “A”, “B” and “C”). Said shares would be used for augmentation credits through CWPDA’s Rule 14 Augmentation Plan. A map showing the location of the wells which would pump the augmented shares of water is attached to the Application as Exhibit “D”. Applicants Wesley D. Eck and Connie Ann Eck wish to add augmentation use to 46 shares of Fort Lyon Canal Company currently allocated to head gate 25E, and add augmentation use to 154 shares of Fort Lyon Canal Company currently allocated to head gate 37D which have historically irrigated the following described real property: Part of the W/2W/2E/2 of Section 22, Township 23 South, Range 54 West of the 6<sup>th</sup> P.M.; Part of the SW/4SW/4SE/4 of Section 15, Township 23 South, Range 54 West of the 6<sup>th</sup> P.M., in Otero County, Colorado; and NE/4 of Section 5, Township 23 South, Range 53 West of the 6<sup>th</sup> P.M., in Bent County, Colorado. Said change of use would simply provide the owner with the choice of transferring all or a portion of their Fort Lyon Canal Company Shares to the Fort Lyon Canal Company Augmentation Station (generally located in the SW/4 of Section 29, Township 22 South, Range 53 West of the 6<sup>th</sup> P.M., in Bent County, Colorado)(See map and photographs attached to the Application as Exhibits “A”, “B” and “C”). Said shares would be used for augmentation credits through CWPDA’s Rule 14 Augmentation Plan. A map showing the location of the wells which would pump the augmented shares of water is attached to the Application as Exhibits “E” and “F”. Applicants Wesley Darrin Eck and Julie J. Eck wish to add augmentation use to 100 shares of Fort Lyon Canal Company currently allocated to head gate 29 which have historically irrigated the following described real property: E/2 of Lot 5, Lot 6 and the W/2 of Lot 7, in Section 14, Township 23 South, Range 54 West of the 6<sup>th</sup> P.M., in Otero County, Colorado. Said change of use would simply provide the owner with the choice of transferring all or a portion of their Fort Lyon Canal Company Shares to the Fort Lyon Canal Company Augmentation Station (generally located in the SW/4 of Section 29, Township 22 South, Range 53 West of the 6<sup>th</sup> P.M., in Bent County, Colorado)(See map and photographs attached to the Application as Exhibits “A”, “B” and “C”). Said shares would be used for augmentation credits through CWPDA’s Rule 14 Augmentation Plan. A map showing the location of the wells which would pump the augmented shares of water is attached to the Application as Exhibit “E”. WHEREFORE, Applicants request that the Water Court allow Applicants to add augmentation use to their respective shares of the Fort Lyon Canal Company, and for further relief as the Court deems proper.

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**CASE NO. 11CW4 – CATLIN CANAL COMPANY, P. O. Box 352, Rocky Ford, CO 81067** (Carolyn F. Burr and Kristen E. Cunningham, Ryley Carlock & Applewhite, Attorneys for Applicant, 1999 Broadway, Suite 1800, Denver, CO 80202; (303) 863-7500)

Application for Change of Water Rights

**OTERO AND TELLER COUNTIES**

**2. Name of Structures:** Catlin Canal and Mt. Pisgah Reservoir. **3. Previous Decrees:** a. **Catlin Canal** i. **The following water rights are decreed to the Catlin Canal:** 1. 22 c.f.s. in the water right assigned Priority No. 2 by the Decree of April 8, 1905, with an appropriation date of April 10, 1875. Pursuant to *Reorganized Catlin*



*Consolidated Canal Co. v. Hinderlider*, 80 Colo. 522, 253 P. 389 (1927), this 22 c.f.s. interest is required to be administered as junior to the Priority No. 4 Water Right, as described in the Decree of April 8, 1905. 2. 226 c.f.s. in the water right assigned Priority No. 5 by the Decree of April 8, 1905, with an appropriation date of December 3, 1884. 3. 97 c.f.s., which is the entire water right assigned Priority No. 7 by the Decree of April 8, 1905, with an appropriation date of November 14, 1887. ii. **Decree**: The Bent County District Court entered a decree for Priorities 2, 5 and 7 in a case entitled In re Adjudication of Priorities of Right to the Use of Water for Irrigation in Water District No. 17 on April 8, 1905. iii. **Point of Diversion**: The decreed point of diversion was changed in Case No. 689, Water District 17, November 28, 1955 due to the flood of 1955 that destroyed the diversion dam, to the North ½ of the Northwest ¼ of Section 19, Township 22 South, Range 59 West of the 6<sup>th</sup> P.M. on the South bank of the Arkansas River to a point 1,300 feet east of, or downstream from the original point of diversion fixed by decree of the Court on the south bank of the Arkansas River at the confluence of said river and the Apishapa River in said Section 18. However, Case No. 689 contained a clerical error concerning the point of diversion. The description incorrectly lists Range 59 West instead of 58 West of the 6<sup>th</sup> P.M., but is correct in all other details. The actual location of the Catlin Canal headgate is on the south bank of the Arkansas River in the North ½ of the Northwest ¼ of Section 19, Township 22 South, Range 58 West of the 6<sup>th</sup> P.M, approximately 1401 feet from the west line and 270 feet from the north line of said Section 19. A petition to correct the decreed point of diversion was filed by Catlin and is pending in Case No. 09CW35, District Court, Water Division No. 2. iv. **Source**: Arkansas River. v. **Use**: Domestic and Irrigation. vi. **Historical Use**: The Catlin Canal water rights have been used by shareholders of the Catlin Canal Company for domestic purposes and to irrigate up to 18,660 acres of land in Otero County. A portion of this water was used during the non-irrigation season to maintain soil moisture levels. Catlin participates in the Winter Water Storage Program (“WWSP”), storing a portion of its water rights during the winter months in Pueblo Reservoir pursuant to a decree dated November 10, 1990 in Case No. 84CW179. Water stored pursuant to the Winter Water storage program may be released to the river for augmentation or replacement purposes or delivered to the Catlin headgate and diverted during the period of March 16 through November 14. Catlin’s water rights include such WWSP storage and deliveries. b. **Mount Pisgah Reservoir (a/k/a Wrights Reservoir)**: Catlin Canal Company owns 6/7ths of the Mount Pisgah Reservoir water right. i. **Decree**: The Fremont County District Court entered a decree for Mount Pisgah Reservoir in Case No. 4796, In re Priority of Water Rights in Water District No. 12 on January 13, 1928. ii. **Point of Diversion**: The Mount Pisgah Reservoir is an on-channel reservoir located on Four Mile Creek, a tributary of the Arkansas River in Teller County, Colorado. The decreed location of the Reservoir is in the East ½ of the Northwest ¼ and Lots 1 and 2 of Section 31, and the East ½ of the Southwest ¼, the Southwest ¼ of the Northeast ¼, the Southeast ¼ of the Northwest ¼ and Lots 3 and 4 of Section 30, Township 14 South, Range 70 West of the 6<sup>th</sup> P.M. iii. **Source**: Four Mile Creek, a tributary to the Arkansas River. iv. **Appropriation Date**: October 15, 1907. v. **Amount**: 2,743 a.f. vi. **Use**: Storage, irrigation along Four Mile Creek and the Arkansas River. 4. **Maps and Diversion Records**: Pursuant to C.R.S. § 37-92-302(2)(a) a map showing the location of the lands historically irrigated by the

Catlin shares is attached to the Application as Exhibit B. A summary of the Catlin diversions 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.)

**5. Proposed Change:** Applicant seeks to change 7,500 shares out of a total of 18,660 shares of the capital stock of the Catlin Canal Company to include augmentation and replacement as additional uses. No change in point of diversion is requested. In addition to irrigation, the changed shares will be used for augmentation and replacement purposes pursuant to the augmentation plan filed by the Colorado Water Protective and Development Association (“CWPDA”) in Case No. 07CW128 or any other suitable augmentation plan, Rule 14 Plan or substitute water supply plan approved by the Water Court or the Division of Water Resources in current or subsequent proceedings. **6. Remarks Regarding Change of Catlin Shares:** Catlin shares changed in this matter will continue to be stored in the WWSP or delivered to the Catlin headgate. Applicant proposes to quantify the portion of the water historically consumed by irrigation use, together with the historical return flows. The consumptive use and historical return flow requirements will be pro rated on a per share basis in order that shares may be designated for augmentation purposes prior to each irrigation season as is currently the case under the applicable Rule 14 Plans. Applicant will maintain the historical return flows in the amounts, times and at the locations necessary to prevent injury to other vested water rights or decreed conditional water rights. With the exception of water stored pursuant to the WWSP that is released directly to the Arkansas River, both the consumptive use portion and the historical return flow portion of the shares used for augmentation purposes will be delivered through the Catlin Canal to existing and/or future Catlin augmentation stations, at which point said water will be returned to the Arkansas River. In the course of the adjudication of this proposed change, Applicant will prepare a decree with proposed terms and conditions to ensure that this change of water right will not injuriously affect vested water rights or decreed conditional water rights. **7. Name and Address of Owners of Land Upon Which Any New Structures Will Be Located:** It is not anticipated that any new structures will be necessary for the change of water rights sought in this matter. Applicant, Catlin Canal Company owns the land on which the Catlin headgate is located. Pisgah Reservoir and Ditch Company owns the land on which Mt. Pisgah Reservoir is located. Applicant shall not use any structure on land to which it does not have permission or a legal interest.

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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 2011, (forms available at Clerk’s office or at [www.courts.state.co.us](http://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.

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



*Mardell R. DiDomenico*

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

(Court seal)

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