

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING JULY 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 July 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. 06CW124 - SNOWY RANGE RESERVOIR COMPANY ("Applicant" or "SRRC"), 11411 Highway 12, La Veta, CO 81055 (Serve all pleadings on: Steven P. Jeffers and Madoline Wallace-Gross, Lyons, Gaddis, Kahn & Hall, P.C., Attorneys for Applicant, P. O. Box 978, Longmont, CO 80502-0978; (303) 776-9900)

First Amended Application for Conditional Water Storage Right, Change of Water Rights and Augmentation Plan

HUERFANO COUNTY

2. Application and First Amendment: The Application is being amended: to clarify Applicant's ownership of the water rights to be changed; to clarify the description of the water rights to be changed; to clarify the description of the requested alternate point of diversion; and to add a claim for approval of an augmentation plan. This First Amended Application shall replace the Application in its entirety. **Conditional Water Storage Right** **3. Names of reservoirs:** Snowy Range Reservoir Ponds Nos. 1, 2 and 3 ("SRRC Ponds"). **4. Legal descriptions of reservoirs:** The locations of the SRRC Ponds are described and depicted in Exhibits A and B to the Amended Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **4.1. SRRC Pond No. 1.** A point on the center of the dam in the SW $\frac{1}{4}$, NW $\frac{1}{4}$ of Section 19, Township 30 South, Range 68 West, 6th P.M., Huerfano County, Colorado, being 1350 feet from the North section line and 945 feet from the West section line of said Section 19. **4.2. SRRC Pond No. 2.** A point on the center of the dam in the SW $\frac{1}{4}$, NW $\frac{1}{4}$ of Section 19, Township 30 South, Range 68 West, 6th P.M., Huerfano County, Colorado, being 1620 feet from the North section line and 700 feet from the West section line of said Section 19. **4.3. SRRC Pond No. 3.** A point on the center of the dam in the SW $\frac{1}{4}$, NW $\frac{1}{4}$ of Section 19, Township 30 South, Range 68 West, 6th P.M., Huerfano County, Colorado, being 1975 feet from the North section line and 550 feet from the West section line of said Section 19. **5. How reservoirs are filled:** By diversions through the John G. Cozad Ditch ("Cozad Ditch"), which has a capacity of approximately 5.5 cfs. The decreed location of the Cozad Ditch is at a point on the right bank of the Cucharas River whence the West quarter corner of Section 19, Township 30 South, Range 68 West, 6th P.M., bears South 88°32' West, a distance of 278 feet more or less. The Cozad Ditch is located in the

SW¼, NW¼ of Section 19, Township 30 South, Range 68 West, 6th P.M., Huerfano County, Colorado, being 2635 feet from the North section line and 275 feet from the West section line of said Section 19. A map of the Cozad Ditch is attached to the Amended Application as Exhibit B. **6. Source**: Cucharas River. **7. Date of appropriation**: July 7, 2006. **7.1. How appropriation was initiated**: By manifesting the requisite intent, by filing a Notice of Intent to Construct a Non-Jurisdictional Water Impoundment Structure with the Division of Water Resources and by filing the Application in Water Court. **7.2. Date water was applied for beneficial use**: NA. **8. Diversion rate from stream**: 2.0 cfs. **9. Proposed uses**: Storage for recreation, piscatorial, fire suppression, wildlife habitat, aesthetics, replacement, exchange and augmentation. Use for replacement, exchange and augmentation shall only occur pursuant to a subsequent decree entered by the Water Court or a substitute water supply plan approved by the State Engineer. **10. Amount claimed**: Cumulative 90 acre-feet, conditional, with the right to fill and refill in-priority to maintain the SRRP Ponds at their maximum water level. **11. Specifications**: **11.1. Surface area at high water line**: Approximately 9.0 acres, cumulative for all ponds. SRRP Pond No. 1 has been constructed and has a current surface area of 1.14 acres. **11.2. Dam height**: Less than 10 feet for each dam. **11.3. Dam length**: Excavation below grade for each dam. **11.4. Active storage**: 90.0 acre-feet, cumulative for all ponds. SRRP Pond No. 1 has been constructed and has a current active storage of 7.5 acre-feet. **11.5. Dead storage**: 0.0 acre-feet, cumulative for all ponds. **12. Remarks**: SRRP Pond No. 1 has been constructed. SRRP intends to construct the remaining ponds in the future. The SRRP Ponds shall be used to store water diverted under this junior priority, to store “stream credits” associated with the water rights sought to be changed in ¶¶ 14 through 20 and to store water out-of-priority pursuant to the augmentation plan requested in ¶¶ 21 through 24. **13. Name of owner of land on which structures are located**: The Revocable Trust of A. Bruce Cantrell and Joan D. Cantrell, whose address is 11411 Highway 12, La Veta, Colorado 81055. **14. Change of Water Rights**: **14. Background**: Applicant owns a portion of the water rights quantified and changed in Case No. 82CW132, District Court, Water Division No. 2, entered on February 13, 1985, as amended by Case No. 85CW10, District Court, Water Division No. 2, entered on August 23, 1985 (“Change Decree”). Specifically, the Change Decree quantified and changed 0.5 cfs of the Priority No. 2 water right, 1.5 cfs of the Priority No. 9 water right, 0.6 cfs of the Priority No. 12 water right and 0.6 cfs of the Priority No. 59 water right (“Goemmer Water Rights”). Applicant seeks to change its ownership interest in the Goemmer Water Rights shown in the last column of the table in ¶ 16. Applicant’s interest in the Goemmer Water Rights shall be collectively referred to as the “Subject Water Rights.” Exhibit C attached to the Amended Application reflects the disposition, as of the date of this Amended Application, of all interests in the 0.5 cfs of Priority No. 2 that is the subject of the Change Decree. **15. Names of structures**: Calf Pasture, Oso, Romero and Dep Ditches. **16. Original decree information for the Subject Water Rights**:

Priority Number And Ditch	Appropriation Date	Original Decree Date	Civil Action Number (District Court, Huerfano County)	Decreed Use	Decreed Amount (cfs)	Applicant's Ownership (cfs)
2 Calf Pasture	6/15/1863	6/12/1889	Unnumbered "Read Decree"	Irrigation	1.5	0.2188
9 Oso	5/3/1868	6/12/1889	Unnumbered "Read Decree"	Irrigation	3.0	1.5
12 Romero	4/1/1869	6/12/1889	Unnumbered "Read Decree"	Irrigation	1.2	0.6
59 Dep	5/12/1882	6/12/1889	Unnumbered "Read Decree"	Irrigation	0.6	0.3

17. Decreed points of diversion and sources for the Subject Water Rights:

17.1. Priority No. 2, Calf Pasture Ditch. The point of diversion on the Cucharas River for Applicant's 0.2188 cfs of Priority No. 2 is in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 21, T.29S., R.68W., 6th P.M. at a point 40 feet west of the intersection of Oak Street and Ryus Avenue in the Town of La Veta, Huerfano County, Colorado. **17.2. Priority No. 9, Oso Ditch.** The point of diversion for Applicant's 1.5 cfs of Priority No. 9 was transferred to the Calf Pasture Ditch described in ¶ 17.1 in Case No. W-1137, District Court, Water Division No. 2 on April 16, 1973. **17.3. Priority No. 12, Romero Ditch.** The point of diversion for Applicant's 0.6 cfs of Priority No. 12 was transferred to the Calf Pasture Ditch described in ¶ 17.1 in Case No. W-1137, District Court, Water Division No. 2 on April 16, 1973. **17.4. Priority No. 59, Dep Ditch.** The point of diversion for Applicant's 0.3 cfs of Priority No. 59 was changed in Case No. 79CW40, District Court, Water Division No. 2 on May 8, 1981. The decreed alternate point of diversion is at a point on the North bank of Middle Creek in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 21, T.29S., R.68W., 6th P.M., being 1,000 feet from the West line and 800 feet from the North line of said Section 21. This water right was originally awarded Priority No. 58 in the "Read Decree," but was changed to Priority No. 59 in Civil Action No. G.D. 582, District Court, Huerfano County on February 16, 1894. **18. Previous change decrees for the Subject Water Rights:** The historical consumptive use of the Subject Water Rights was quantified and changed in the Change Decree. **18.1. Historical use.** In the Change Decree, the Water Court ruled that the Goemmer Water Rights yield a net average annual historical consumptive use of 230 acre feet. Of the 230 acre feet, 130 acre feet is attributable solely to Priority No. 2 water right, and 100 acre feet is attributable to the Priority Nos. 9, 12 and 59 water rights. **18.2. Three-phased change.** The Change Decree approved a three-phased change of use of the Goemmer Water Rights. **18.2.1. Phase I.** Phase I was implemented upon entry of the Change Decree. In Phase I, the Priority No. 2 water right was changed for diversion at alternate points as described in ¶ 18.3 below and changed from irrigation use only to year-round, direct use for irrigation, fish and wildlife enhancement and all municipal purposes. The Subject Water Rights are currently operating in Phase I. **18.2.2. Phase II.** The Change Decree states that Phase II will be implemented when a storage facility in which to store the Priority No. 2 water right is constructed, but prior to the removal from irrigation of lands irrigated by Priority Nos. 9, 12 and 59. Under Phase II, the Priority No. 2 water

right is further changed to a "stream credit" to be used directly or stored for later use to replace depletions for all municipal and snowmaking purposes or to be stored for subsequent release for augmentation of such depletions. **18.2.3. Phase III.** The Change Decree states that Phase III will be implemented when the lands historically irrigated by the Priority Nos. 9, 12 and 59 water rights are removed from irrigation. Under Phase III, the Priority Nos. 9, 12 and 59 water rights are also changed to "stream credit" for the purposes identified in ¶ 18.2.2.

18.3. Alternate points of diversion. The Change Decree established the following three alternate points of diversion for the Goemmer Water Rights:

18.3.1. A point on the North bank of Baker Creek, a tributary to the Cucharas River, which is 850 feet easterly of the center of Section 17, Township 31 South, Range 69 West, 6th P.M.; **18.3.2.** The intake to the Cucharas Sanitation and Water District's treatment facilities on the Cucharas River at a point in Section 22, Township 31 South, Range 69 West, 6th P.M., from which the West quarter corner of Section 15, Township 31 South, Range 69 West, 6th P.M., bears North 14°25' West, a distance of 5,770 feet; and 18.3.3. A point on the left bank of the Cucharas River located in the SW¼ of Section 19, Township 30 South, Range 68 West, 6th P.M. at a point approximately 180 feet from the West line and 1940 feet from the South line of said Section 19 for the purpose of filling an offstream reservoir.

19. Proposed changes of the Subject Water Rights:

19.1. Alternate point of diversion: Applicant seeks to establish an alternate point of diversion for the Subject Water Rights at the Cozad Ditch described in ¶ 5.

19.2. Phase I change for direct use: Based on the Change Decree, Applicant's 0.2188 cfs of Priority No. 2 can be used for direct, year-round uses in Phase I. While operating in Phase I, all 0.2188 cfs shall be available proportionately to Applicant's shareholders as authorized by a decree of the Water Court or by a substitute water supply plan approved by the State Engineer. Water not used directly by the shareholders shall be diverted at the Cozad Ditch, be delivered through the SRRC Ponds for fish and wildlife purposes, and be immediately returned to the Cucharas River.

19.2.1. SRRC Pond No. 1 has been filled by water leased from the Navajo Western Water District, pursuant to a substitute water supply plan approved by the State Engineer. SRRC Pond Nos. 2 and 3 have not been constructed.

19.2.2. Applicant may run water through SRRC Ponds for fish and wildlife purposes at a maximum rate of 0.2188 cfs when the Priority No. 2 water right is in-priority. When the Priority No. 2 water right is out-of-priority, Applicant will cease diversions under that water right and the water level in the SRRC Ponds will fall as evaporation occurs, unless such evaporative depletion is replaced by some other source.

19.2.3. The only consumptive use will result from evaporation. Applicant's engineer has calculated the maximum annual evaporative depletion from Pond No. 1 to be 3.8 acre feet per year. At full build out, the maximum annual evaporative depletion from the SRRC Ponds will be 30.0 acre feet per year. Applicant shall only be required to account for the actual evaporative depletions based on the then-current surface area of the SRRC Ponds. A table showing monthly distribution of evaporative depletions from Pond No. 1 and the SRRC Ponds is attached to the Amended Application as Exhibit D.

19.3. Phases II and III changes for direct use and storage: In

Phase II the Priority No. 2 water right and in Phase III the Subject Water Rights were changed to a "stream credit" to be used directly or stored. Applicant seeks to establish an alternate place of storage for the Subject Water Rights in Phases II and III at the SRRC Ponds described in ¶4. Upon the Water Court's approval of the alternate point of diversion and place of storage sought herein, the SRRC Ponds shall be the storage facilities that allow Applicant to implement Phase II, pursuant to the Change Decree. **20. Remarks:** **20.1.** Applicant's use of the Subject Water Rights shall remain subject to all other terms and conditions of Change Decree not changed by this Application. **20.2.** Three of SRRC's shareholders have obtained Water Court decrees or filed Applications to change their pro rata portion of the Subject Water Rights in Case Nos. 97CW108C, 01CW96 and 04CW126. Nothing in this Application shall alter the rights of SRRC's shareholders in those proceedings. **Augmentation Plan** **21. Structures to be Augmented:** SRRC Ponds described in ¶¶ 3 through 12. **22. Water Rights to be Used for Augmentation:** Subject Water Rights described in ¶¶ 15 through 17. **23. Description of Plan for Augmentation:** Upon Applicant's implementation of Phases II or III of the Change Decree, when the SRRC Ponds' storage water right is out-of-priority, Applicant will divert water at the Cozad Ditch at a maximum rate of 0.2188 cfs in Phase II and 2.6188 cfs in Phase III, deliver the water through SRRC Ponds and immediately return the water, less evaporation, to the Cucharas River. Applicant's engineer has calculated the maximum annual evaporative depletion from the Pond No. 1 to be 3.8 acre feet per year. At full build out, the maximum annual evaporative depletion from the SRRC Ponds will be 30.0 acre feet per year, with a maximum depletion rate of 35 gallons per minute. Applicant shall only be required to replace the actual evaporative depletion based on the then-current surface area of the SRRC Ponds. A pond evaporation summary is attached to the Amended Application as Exhibit D. **24.** Applicant will replace these evaporative depletions using the Subject Water Rights in the following manner: **24.1.** If Applicant has implemented Phase II of the Change Decree: **24.1.1.** By storage in the SRRC Ponds of Applicant's ownership interest in the Priority No. 2 water right in the manner described in ¶ 19.3; or **24.1.2.** By bypass of stream credits from Applicant's ownership interest in the Priority No. 2 water right at the Cozad Ditch headgate. **24.2.** If Applicant has implemented Phase III of the Change Decree: **24.2.1.** By storage in the SRRC Ponds of the Subject Water Rights in the manner described in ¶ 19.3; or **24.2.2.** By bypass of stream credits from the Subject Water Rights at the Cozad Ditch headgate.

CASE NO. 09CW57 - JERALD and LEVI HEIDRICH, 7440 Templeton Gap Road, Colorado Springs, CO 80922 (James J. Petrock, Petrock & Fendel, P.C., 700 Seventeenth Street, Suite 1800, Denver, CO 80202; (303) 534-0702)
Amended Application for Underground Water Rights from Nontributary and Not Nontributary Sources and for Approval of Plan for Augmentation in the Nontributary Laramie-Fox Hills and the Not Nontributary Denver and Arapahoe Aquifers
EL PASO COUNTY

2. The original application was filed with this Court in March, 2009, and requests adjudication of the not nontributary Denver and Arapahoe aquifers and the nontributary Laramie-Fox Hills aquifer groundwater underlying approximately 5.5 acres of land, which is generally located in part of the NE1/4 of Section 7, T13S, R65W of the 6th P.M., as described and shown on Attachment A to the Amended Application ("Subject Property"). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Applicants estimate that there is approximately 2.3 acre-feet per year of not nontributary Arapahoe aquifer groundwater underlying the Subject Property. 3. Applicants have obtained the written consent of the landowner of an adjacent parcel to withdraw and use the not nontributary Arapahoe aquifer groundwater underlying that land in this application. As part of the consent, the not nontributary Denver aquifer groundwater underlying the Subject Property is withdrawn from this application. A copy of the consent is recorded in the El Paso County records in Reception No. 209082227, and is also attached to the Amended Application as Attachment B. The land which is the subject of the consent is approximately 5 acres, known as the Reel Subdivision Waiver as described in Book 2890 at Page 382 of the El Paso County records. The land is generally located in the NE1/4 of Section 7, T13S, R65W of the 6th P.M., and is described and shown on Attachment A hereto ("Reel Subdivision"). Applicants estimate that based on a saturated thickness of 252 feet, there is approximately 2.1 acre-feet per year of not nontributary Arapahoe aquifer groundwater available underlying the Reel Subdivision, and that groundwater will be decreed in this case for use by Applicants. 4. Applicants also request that the Arapahoe aquifer groundwater underlying the Reel Subdivision be combined and used with the Arapahoe aquifer groundwater under the Subject Property for commercial and irrigation use through a well on the Subject Property pursuant to a plan for augmentation as described in the original application. The total amount of Arapahoe aquifer water to be withdrawn pursuant to the plan for augmentation is approximately 4.4 acre-feet per year or the amount determined to be available by the State Engineer in this case. Applicants will replace 4% of the actual amount withdrawn to the affected stream system pursuant to Section 37-90-137(9)(c), C.R.S., and depletions may occur to the Arkansas River stream system. Return flows from use of the subject water rights on the Subject Property will return to the Arkansas River stream system, and those return flows are sufficient to replace at least 4% of the annual amount withdrawn while the subject groundwater is being pumped. Applicants will reserve all of the nontributary Laramie-Fox Hills aquifer groundwater underlying the Subject Property and an additional amount of nontributary Arapahoe aquifer groundwater decreed in Case No. 03CW078 as described in the original application to meet post pumping augmentation requirements, but reserve the right to substitute the use of other nontributary groundwater, including return flows, from another location which is legally available for such purpose, for replacement of post-pumping depletions at such time as post-pumping depletions may begin. All other matters remain the same as requested in the original application.

CASE NO. 09CW93 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 09CW94 - DAVID and JoANNE HAWK, P. O. Box 42, Florence, CO 81226; (719) 784-2107

Application for Underground Water Right

FREMONT COUNTY

Name of well and permit number: David Hawk; Permit 265775. **Legal description of well:** Fremont County, NW ¼ of the SW ¼ Sec. 24, T19S, R70W, 6th P.M., 1500 feet from the South line and 1050 feet from the West line of Section 24. **Street Address:** 9500 Auckland Avenue. **Subdivision:** Chandler Heights. **Lot:** 9; **Block:** 6. **Source:** Ground water and underground water. **Depth of well:** 600 ft. **Date of appropriation:** 9/28/2005; **How appropriation initiated:** Purchase of property. **Date water applied to beneficial use:** 4/25/2006. **Amount claimed:** 1 gpm Absolute. **Use:** Domestic use for 1 household, fire protection, support home landscape 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:** Applicants.

CASE NO. 09CW95 - JOHN and MAUREEN BURNES, 1945 Alamosa Drive, Colorado Springs, CO 80920 (Chris D. Cummins, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation

EL PASO COUNTY

II. Application for Underground Water Rights **A. Legal Description of Wells.** **1. Property Description.** All wells will be located on a property consisting of Lot B, Block F, Filing 2, Spring Crest Subdivision, in El Paso County, Colorado, which contains 3.95 acres, more or less, located in NW 1/4 SW1/4 Section 28, Township 12 South, Range 66 W., 6th P.M., also known as 1945 Alamosa Drive (“Applicants’ Property”). Applicants’ Property is generally shown on the Exhibit A map attached to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **2. Existing Wells.** State Engineer Well Permit No. 164474 is an exempt household-use-only domestic well currently located in the NW1/4 SW1/4 Section 28, Township 12 South, Range 66 West, 6th P.M., approximately 1,530 feet from the south section line and 940 feet from the west section line of said Section 16 (“Burness Well”). **B. Water Source.** **1. Not Nontributary.** The ground water withdrawn from the Denver and Arapahoe aquifers of the Denver Basin underlying Applicants’ Property is not-nontributary. Pursuant to C.R.S. 37-90-137(9)(c), the augmentation requirements for wells in the Denver and Arapahoe aquifers will require the replacement of actual stream depletions to the

extent necessary to prevent any injurious effect. **2. Nontributary.** The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer of the Denver Basin underlying the Applicants' Property is nontributary. **C. Estimated Rates of Withdrawal and Ground Water Available.** **1. Estimated Rates of Withdrawal.** Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicants request the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. **2. Estimated Average Annual Amounts of Ground Water Available.** Applicants request an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicants' Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4). Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

Aquifer	Saturated Thickness (Feet)	Classification	Total Water Adjudicated (Acre Feet)	Annual Average Withdrawal (Acre Feet)
Denver	158	NNT	106	1.06
Arapahoe	250	NNT	168	1.68
Laramie Fox Hills	186	NT	110	1.10

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **D. Requested Uses.** The Applicants request the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, fire protection, and also for exchange and augmentation purposes. The Applicants also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicants shall only be entitled to construct a well or use water from the not-nontributary Denver or Arapahoe aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c). **E. Well Fields.** Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants request that these wells be treated as a well field. Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicants' Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of

years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicants are entitled to withdraw from the aquifers underlying the Applicants' Property. **F. Name and Address of Owner of Land Upon Which Wells are to Be Located.** The land upon which the wells are and will be located is owned by Applicants.

III. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.

A. Structures to be Augmented. The structure to be augmented is the Burness Well in the not-nontributary Denver aquifer of the Denver Basin underlying the Applicants' Property, and any future replacement well for this structure to either the Denver or Arapahoe aquifer. There are to be no other water rights diverted from this structure.

B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows of the not-nontributary Denver aquifer from the Burness Well as set forth in this plan for augmentation, together with water rights from the nontributary Laramie-Fox Hills aquifer for post pumping depletions.

C. Statement of Plan for Augmentation. Applicants wish to provide for the augmentation of stream depletions caused by pumping the not-nontributary Denver aquifer well proposed herein for one residential lot. Water use criteria and their consumptive use component for replacement of actual depletions for the lot is as follows:

- 1. Household Use Only:** 0.30 acre feet annually per single family dwelling with a ten percent consumptive use based on nonevaporative septic leach field disposal systems. The annual consumptive use for this residence is therefore 0.030 acre feet. Any other type of waste water disposal shall require an amendment to this plan of augmentation.
- 2. Landscape Irrigation:** 0.046 acre feet annually per 1,000 square feet (2.0 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet irrigated is therefore 0.039 acre feet. The well supplying the Applicants' Property should therefore be able to pump 1.0 acre feet per year, which is sufficient to support in-house use in one single family residence, and the irrigation of a maximum of 10,000 square feet of lawn or garden (assuming bluegrass irrigation).

D. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c) Applicants are required to replace actual stream depletions attributable to pumping of the Burness Well to the extent necessary to prevent injurious effect. Applicants' consultant has determined that maximum depletions at 100 years are 11% of pumping. As such, based upon annual pumping of 1.0 acre feet per year, Applicants are required to replace a maximum of 0.11 acre feet annually. Applicants' have determined that during pumping, septic system return flows from the residence should account for approximately 0.27 acre feet per year. Thus, there is enough return flows through the septic system to replace the estimated stream depletions.

E. Augmentation for Post Pumping Depletions. For the replacement of post-pumping depletions, Applicants will reserve up to 110 acre feet of water from the nontributary Laramie-Fox Hills aquifer underlying the Applicants' Property, less the amount of actual stream depletions replaced during the plan pumping period. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon

further approval of the Court under its retained jurisdiction. Even though this reservation is made, Applicants claim that post pumping depletions will be noninjurious and do not need to be replaced. Under the court's retained jurisdiction, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to file for and receive a well permit for the Burness Well for the uses in accordance with this Application. **F. Remarks.** Additional remarks are as follows: 1. Applicants request a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary well upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). 2. The term of this augmentation plan is for 100 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. 3. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 4. Pursuant to C.R.S. §37-90-137, upon approval of the plan for augmentation requested herein, Applicants will file an application with the State Engineer's office to re-permit the existing well on Applicants' 3.95 acres (Permit No. 164474) for operation under the plan for augmentation. 5. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 6. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 7. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. 8. Applicants will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 10 days of the filing of this application.

CASE NO. 09CW96 - DONALA WATER and SANITATION DISTRICT, 15850 Holbein Drive, Colorado Springs, CO 80921 (Frederick A. Fendel, Matthew S. Poznanovic, and Kara N. Godbehere, Petrock & Fendel, P.C., Attorneys for Applicant, 700 Seventeenth Street, Suite 1800, Denver, CO 80202; (303) 534-0702)
Application
LAKE COUNTY

2. History of Case: All rights herein were adjudicated in CA 1127 by the Chaffee County District Court on June 19, 1890. Subsequently, a decree was entered in Case No. 99CW157 on September 21, 2000, by the Water Court in and for Water Division 2, which corrected the location of several headgates located in Sections 11 and 12, Township 10 South, Range 81 West of the 6th P.M. Donala became the successor in interest to Glynn Shannon, LLC and Ron and Shirley Strich, applicants in Case No. 99CW157, when it purchased property known as the Mount Massive Ranch, on which the corrected headgate locations are located. Although the original application in Case No. 99CW157 sought to correct the location of the headgates, several clerical errors were made in the final decree regarding the location of the irrigated lands served by such headgates. The Sites No. 1 Ditch has always and does currently irrigate the property described as irrigated by the Sites No. 2 Ditch in the decree entered in Case No. 99CW157, and vice-versa. The description of irrigated acreage for the Mitchell Ditches Nos. 1-4 contains a redundancy in that it lists the place of use as both the "N ½" and also the "NE1/4." Therefore, this application seeks to correct the location of the irrigated lands served by the headgates and structures previously described by the decree entered in Case Nos. 99CW157 and also by the application filed in Case No. 09CW73. No actual change from the historical practices and operation of the Sites No. 1 and No. 2 Ditches or the Mitchell Ditch Nos. 1-4 is sought. The "change" requested herein merely seeks to change the decree terms and conditions to accurately reflect the actual usage and operation of the Sites No. 1 and No. 2 Ditches and also the Mitchell Ditches Nos. 1-4 by switching the decreed place of use for the Sites No. 1 and No. 2 ditches, and also by correcting a redundancy in the description of the decreed place of use for the Mitchell Ditches Nos. 1-4.

3. Decreed Water Rights for Which Change is Sought:

a. Name of Structure: Mitchell Ditch Nos. 1-4. **i. Priority date:** 5/31/1881; **ii. Amount:** 1.3 cfs; **iii. Source:** Willow Creek; **iv. Irrigated acreage:** 75 acres in parts of the N1/2, SW1/4 and the NE1/4, Section 12; and the SW1/4, Section 1, Township 10 South, Range 81 West of the 6th P.M.

b. Name of Structure: Sites Ditch #1; **i. Priority date:** 4/30/1881; **ii. Amount:** 0.8 cfs; **iii. Source:** Little Willow Creek* **iv. Irrigated acreage:** 40 acres in parts of the NE ¼, Section 11 and the NW1/4, Section 12, Township 10 South, Range 81 West of the 6th P.M.

c. Name of Structure: Sites Ditch #2; **i. Priority date:** 4/30/1882; **ii. Amount:** 1.6 cfs; **iii. Source:** Little Willow Creek* **iv. Irrigated acreage:** 80 acres in parts of the SW¼, Section 1, Township 10 South, Range 81 West of the 6th P.M. *Little Willow Creek is also known as North Willow Creek.

4. Points of diversion (from 99CW157): in Township 10 South, Range 81 West, 6th P.M., Lake County; distances are measured from the northwest corner of section 12: Sites No. 1 Ditch: 10 feet South; and 1560 feet West (Sec. 11) Sites No. 2 Ditch: 280 feet South; and 1510 feet West (Sec. 11) Mitchell Ditch No. 1 and No. 2: 3460 feet South; and 1675 feet East (Sec. 12) No. 3 and No. 4: 3860 feet South; and 1700 feet East (Sec. 12).

5. Decreed Use: Irrigation. The lands irrigated are within the Mt. Massive Ranch, described as: In Township 10 South, Range 81 West, 6th P.M., Lake County: Section 1: SW¼ and S½SE¼; Section 11: NE¼NE¼; Section 12: N½ and N½SW¼.

a. The specific lands

decreed for irrigation by the Sites Ditches No. 1 and No. 2 and the Mitchell Ditch Nos. 1-4, as set forth in the Decree entered in Case No. 99CW157, are as follows: i. Sites No. 1 Ditch: 40 acres in parts of the NE ¼, Section 11, and the NW ¼, Section 12, Township 10 South, Range 81 West of the 6th P.M. ii. Sites No. 2 Ditch: 80 acres in parts of the SW ¼, Section 1, Township 10 South, Range 81 West of the 6th P.M. iii. Mitchell Ditch Nos. 1-4: 75 acres in parts of the N ½, SW ¼ and the NE ¼, Section 12; and the SW ¼, Section 1, Township 10 South, Range 81 West of the 6th P.M. **6. Corrected location of irrigated lands:** a. Mitchell Ditch Nos. 1-4 i. Corrected Irrigated acreage: 75 acres in parts of the N1/2 and the SW1/4, Section 12; and the SW1/4, Section 1, Township 10 South, Range 81 West of the 6th P.M. b. Sites Ditch #1; i. Corrected Irrigated acreage: 80 acres in parts of the SW¼, Section 1, Township 10 South, Range 81 West of the 6th P.M. c. Sites Ditch #2. i. Corrected Irrigated acreage: 40 acres in parts of the NE ¼, Section 11 and the NW1/4, Section 12, Township 10 South, Range 81 West of the 6th P.M. **7. Owners of land on which structures are located:** Mitchell Ditches: Donala; Sites Ditches (headgates): US Forest Service, 2840 Kachina Dr., Pueblo, CO 81008. Wherefore, Donala requests a decree approving the above changes of description of irrigated acreage, and for such other and further relief as is warranted.

CASE NO. 09CW97; Previous Case Nos. 84CW68, 89CW108, 94CW146, and 02CW91 - PAUL M. CAMPBELL, P. O. Box 806, Salida, CO 81201 (Cynthia F. Covell, Alperstein & Covell, P.C., Attorneys for Applicant, 1600 Broadway, Suite 2350, Denver, CO 80202-4923; (303) 894-8191
Application for Finding of Reasonable Diligence
CHAFFEE COUNTY

Name of structures: Campbell Well No. 1 (Permit No. 128483, copy attached to the application along with Well Completion and Pump Installation Report). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Campbell Well No. 2 (Permit No. 128482, copy attached to the application along with Well Completion and Pump Installation Report). **Describe conditional water right (as to each structure) giving the following from the Referee's ruling and judgment and decree:**
Date of original decree: April 1, 1985; **Case No.:** 84CW68; **Court:** Water Court, Water Division 2. **Location:** Campbell Well No. 1: NW ¼ SE ¼ Section 9, Township 48 North, Range 8 East of the N.M.P.M. in Chaffee County, Colorado, 2000 feet from the South section line and 1420 feet from the East section line of said Section 9. Campbell Well No. 2: NE ¼ SE ¼ Section 9, Township 48 North, Range 8 East of the N.M.P.M. in Chaffee County, Colorado, 2000 feet from the South section line and 1220 feet from the East section line of said Section 9. **Source:** Campbell Well No. 1 and Campbell Well No. 2: Groundwater tributary to Poncha Creek. **Appropriation date:** Campbell Well No. 1 and Campbell Well No. 2: September 14, 1982. **Amount:** Campbell Well No. 1: 0.33 cfs (15 gpm, CONDITIONAL, but not to exceed one acre-foot in any one calendar year. Campbell Well No. 2: 0.33 cfs (15 gpm), CONDITIONAL, but not to exceed one acre-foot in any one calendar year. (These are decreed

exempt wells. In Case No. 95CW146, the Campbell Well No. 1 was decreed absolute for 4 gpm for irrigation of up to one-half acre and diligence was found as to the remaining 11 gpm for irrigation uses. Diligence was also found for the Campbell Well No. 1 for the 15 gpm flow rate decreed for domestic purposes. In the same case, the Campbell Well No. 2 was decreed absolute for 7 gpm for irrigation of up to one-half acre, and diligence was found as to the remaining 8 gpm for irrigation uses. Diligence was also found for the Campbell Well No. 2 for the 15 gpm flow rate decreed for domestic purposes). **Use:** Each well is decreed for domestic use and irrigation of one-half acre. **Depth:** Campbell Well No. 1: 180 feet; Campbell Well No. 2: 167 feet. **Detailed outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** During the last diligence period, Applicant, together with others, formed the Poncha Pass Homeowners' Association, which arranged to have electricity brought to its members' properties, including Applicant's. Applicant's share of this cost was \$12,058.00, and that obligation has been paid in installments. The obligation was paid off during this diligence period, and a more reliable electrical supply is available to operate the well pumps. The earlier solar-powered pumps will be fully replaced in 2009, at a remaining cost of \$700.00. In addition, during this diligence period, a new pump was installed in Well No. 2 at a cost of about \$300.00. Applicant continues to use the wells to irrigate the windbreak of trees planted on his property during an earlier diligence period, and for domestic uses when camping on the property. The cost of bringing reliable electricity to the property, coupled with the recent economic downturn, has delayed Applicant's plans to construct one or more cabins on the property for his use. However, he still intends to do so. WHEREFORE, Applicant Paul M. Campbell, having demonstrated that he has steadily applied effort to complete the appropriation of these water rights in a reasonably expedient and efficient manner under all the facts and circumstances, respectfully requests this Court to find that he has exercised reasonable diligence in putting to beneficial use the remaining conditionally-decreed portions of the water rights decreed to the wells, and to continue the conditional decrees for another six years, or such period as may otherwise be permitted by law.

CASE NO. 09CW98 (Previous Case Nos. 82CW210, 89CW8, 95CW147, 02CW126) - TOWN OF MONUMENT, c/o Catherine Green, Town Manager, P. O. Box 325, Monument, CO 80132 (Robert F. T. Krassa, Krassa & Miller, P.C., Attorney for Applicant, 2344 Spruce Street, Suite A, Boulder, CO 80302; (303) 442-2156)

Application for Finding of Reasonable Diligence

EL PASO COUNTY, COLORADO

2. Name of structure: (wells): Monument Well No. 4 and Monument Well No. 5.
3. Describe conditional water right (as to each structure) giving the following from the Referee's Ruling and Judgment and Decree: a. Date of Original Decree: February 8, 1985, **Case No.:** 82CW210, **Court:** District Court, Water Division No. 2. **b. Location:** both Wells in SW/4 NW/4, Sec. 15, T. 11S.

R67 W of the 6th P.M. in El Paso County. No. 4 is 2020 feet from north line and 790 feet from west line said section; No. 5 is 2100 feet from north line and 600 feet from west line said section. **c. Source:** Monument Creek Alluvium. **d. Appropriation Date:** December 8, 1982. **Amount:** No. 4 - 100 gpm, No. 5 - 60 gpm. **e. Use:** Municipal, including domestic, industrial, commercial, irrigation, fire protection, stock water, recreation and any other beneficial use. **f. Depth:** (if well) Each well is 28 feet deep. **4. Provide a detailed outline of what has been done toward completion or for completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** During the diligence period, Well No. 2 was rehabilitated, Wells No. 4 and 5 were rehabilitated and reequipped, Well No. 3 was rehabilitated, Well No. 7 was rehabilitated and lowered and Well No. 8 was rehabilitated. During the year 2006 a new Water Treatment Plant was constructed for the treatment of the new Well No. 9 and we piped Well No. 3 into this plant for treatment. During the diligence period the Town has spent over \$2,000,000 on these and other water system projects. The Town of Monument has in all respects diligently worked toward placing these conditional water rights to beneficial use.

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 September 2009, (forms available at Clerk's office or at 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 August, 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)

Published: August _____, 2009

NOTICE

New Water Court Rule revisions go into effect on July 1, 2009, available at [://www.courts.state.co.us/Courts/Water/Index.cfm](http://www.courts.state.co.us/Courts/Water/Index.cfm)

Mandatory E-Filing required for all water case documents filed by attorneys is effective in all Water Divisions July 1, 2009, including for all existing cases. Pro se parties need file only one paper copy of each application and document with the Water Court Clerk under Rule 2 of the Revised Water Court Rules. Reference, Bill Number: HB 09-1185, Water Rights Applications Documents and Rule 2 of the Revised Water Court Rules available at [://www.courts.state.co.us/Courts/Water/Index.cfm](http://www.courts.state.co.us/Courts/Water/Index.cfm)