

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JULY 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 July 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. 10CW99 – CITY OF FOUNTAIN, COLORADO (“Fountain”), c/o Larry Patterson, Utilities Director, 116 South Main Street, Fountain, CO 80817 (Attorneys for Applicant: Cynthia F. Covell and Andrea L. Benson, Alperstein & Covell P.C., 1600 Broadway, Suite 2350, Denver, CO 80202; (303) 894-8191.

First Amended Application for Change of Water Rights and Plan for Augmentation, Including Exchanges

EL PASO and PUEBLO COUNTIES

Nature of Amendment. The original application in this case seeks to change 13.0 shares of the Chilcott Ditch Company purchased by the City of Fountain. The application seeks to change those shares to include, in addition to irrigation, direct municipal uses, storage, exchange and augmentation, and to include the additional acre-feet of fully consumable water available from these shares in its municipal water supplies. Pursuant to a Lease and Augmentation Agreement, dated October 26, 2010, Fountain has leased an additional 2.5 shares of Chilcott Ditch Company from Fountain-Fort Carson School District Number 8 that it wishes to include in this change case by this amendment. Fountain therefore seeks to amend the original application to request a change of a total of 15.5 shares of Chilcott Ditch Company, and to amend the following paragraphs as follows: Paragraphs 5.1, 6, and 9.3.1 are amended to reflect that 15.5 shares, as opposed to 13 shares, will be changed in this case. Paragraph 6 and 9.3.2 are hereby amended to reflect that the average annual historic consumptive use associated with 15.5 shares equals 381.455 acre-feet of fully consumable water, as opposed to 319.93 acre-feet of fully consumable water for 13.0 shares. The chart included in paragraph 9.3.1 showing volumetric limits for 13 shares, shall be amended and replaced with a revised chart showing volumetric limits for 15.5 shares.

CASE NO. 11CW17 – REX and SANDRA RIGGENBACH, P. O. Box 113, Poncha Springs, CO 81242

Amended Application for water Rights (Surface) and Application for Water Storage Right

CHAFFEE COUNTY

APPLICATION FOR SURFACE WATER RIGHT. Name of structure: Riggerbach Ditch and Spring. **Legal description:** Chaffee County, NW ¼ of the SW ¼ Section 10, Township 49 North, Range 8 East, NMPM, 2100 feet from the South line and 300 feet from the West line. **Street Address:** 247 True Avenue, Poncha Springs, CO 81242;

Subdivision: Poncha Springs; **Lots:** 10, 11, 12, 13 and 14; **Block:** 11. **Source:** Water is ground seepage. **Date of initial of appropriation:** June 11, 2011. **How appropriation was initiated:** Phone call. **Amount claimed:** .1 cfs conditional. **Use or proposed use:** ponds and irrigation. **If irrigation, complete the following:** **Number of acres historically irrigated:** 2; **proposed to be irrigated:** 2. **Legal description of acreage:** Map attached to the amended application shows location of irrigated acreage in Section 10, Township 49 North, Range 8 East, NMPM. **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:** Applicants. **Remarks:** Water is ground seepage from Poncha Springs Ditch (1881 right). **APPLICATION FOR WATER STORAGE RIGHT. Name of Reservoirs:** Riggerbach #1 and Riggerbach #2. **Legal description:** Riggerbach #1 and Riggerbach #2 are separated by an 8 ft. section of galvanized pipe and are located in the NW ¼ of the SW ¼ Section 10, Township 49 North, Range 8 East, NMPM, Chaffee County, Colorado, approximately 2100 feet from the North line and 300 feet from the West line of Section 10. Riggerbach Spring is located at the head of Riggerbach #1. **Street Address:** 247 True Avenue. **Subdivision:** Poncha Springs. **Lot:** 10, 11, 12, 13, and 14; **Block:** 11. **Source:** Riggerbach Spring. **Name of ditch used to fill reservoir:** Riggerbach Ditch. **Date of appropriation:** June 11, 2011; **How appropriation was initiated:** Phone call; **Date water applied to beneficial use:** Not applied yet. **Amount claimed:** .27 a.f. conditional. **Use:** **If irrigation, complete the following:** **Number of acres historically irrigated:** None. **Total number of acres proposed to be irrigated:** 2. **Legal description of acreage irrigated or to be irrigated:** Pasture, Block 11. **If non-irrigation, describe purpose fully:** Pasture grass. **Total capacity of reservoir in acre feet:** 0.27 acre feet. **Active capacity:** 0.27 acre feet; **Dead storage:** None. **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:** Applicants.

CASE NO. 11CW45 – DEBORAH BLOUIN, P. O. Box 1068, La Veta, CO 81055; (719) 568-3015

Application for Water Rights (Surface), as amended
HUERFANO COUNTY

Name of structure: Ojo Springs #1; Ojo Springs #2. **Legal description of each point of diversion:** **Ojo Springs #1:** SW ¼ SW ¼ Section 32, Township 28 South, Range 69 West, 6th P.M, Huerfano County, Colorado. GPS Zone 13, Datum NAD 83, E 0487301 N 4157374. **Ojo Springs #2:** SW ¼ SW ¼ Sec. 32, Township 28 South, Range 69 West, 6th P.M., Huerfano County, Colorado. **Street Address:** 5101 U.S. Hwy. 160, La Veta, CO 81055. **Source:** Natural spring of Cucharas River, tributary to Huerfano River, tributary to the Arkansas River. **Date of initiation of appropriation:** July 12, 2011. **How appropriation was initiated:** by application; **Date water applied to beneficial use:** not applicable at this time. **Amount claimed:** **Ojo Springs #1:** 80 GPM absolute for domestic and livestock and conditional for all other uses; **Ojo Spring**

#2: 20 gpm conditional. **Use or proposed use:** Water stored and hauled for domestic and livestock use. Commercial. Possible augmentation water. Construction of water wells. **If non-irrigation, describe purpose fully:** Gravity pipeline to storage tank, water hauled to residents for domestic and livestock use, or used for water well construction, and if unable to haul water could be used for augmentation. **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:** Michael McCauley, 450 CR 520.1, Walsenburg, CO 81089.

CASE NO. 11CW46 – COMPLAINT. This case is a complaint and is being listed in the resume to account for the case number in consecutive order.

CASE NO. 11CW47 – LUCAS ESCH FARMS, INC. and CLOCK LAND CORPORATION, c/o Patrick Esch, 717 Colorado, Springfield, CO 81073 (Attorneys for Applicants: FELT, MONSON & CULICHIA, LLC, Chris D. Cummins, #35154, 319 N. Weber St., Colorado Springs, CO 80903, (719) 471-1212)

Application for Surface Water Rights

LINCOLN COUNTY

II. APPLICATION FOR SURFACE WATER RIGHTS. A. Esch Pond No. 3. **1. Name of Structure:** Esch Pond No. 3. **2. Legal Description:** In the SE1/4 NE1/4, Section 18, Township 17S South, Range 58 West, 6th P.M. UTM coordinates – Northing: 42_70270 N, Easting: 13_0593614 E, Zone 13, NAD83 (See 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). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** December 30, 2010. **5. Amount Claimed:** 0.50 acre feet, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection. **7. Remarks:** Esch Pond No. 3 will have approximately 0.67 acres of surface area, and impound approximately 0.50 acre feet of water. Esch Pond No. 3 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **B. Esch Pond No. 4.** **1. Name of Structure:** Esch Pond No. 4. **2. Legal Description:** In the SW1/4 NW1/4, Section 17, Township 17 South, Range 58 West, 6th P.M. UTM coordinates – Northing: 42_70179 N, Easting: 13_0593742 E, Zone 13, NAD83 (See Exhibit A Map attached to the Application). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** December 30, 2010. **5. Amount Claimed:** 8.47 acre feet, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection. **7. Remarks:** Esch Pond No. 4 will have approximately 3.34 acres of surface area, and impound approximately 8.47 acre feet of water. Esch Pond No. 4 is located and the waters therefrom are used exclusively upon the lands of the Applicants. **C. Esch Pond No. 5.** **1. Name of Structure:** Esch Pond No. 5. **2. Legal Description:** In the NE1/4 SW1/4, Section 17, Township 17 South, Range 58 West, 6th P.M. UTM coordinates –

Northing 42_69750 N, Easting 13_0594075 E, Zone 13, NAD83 (See Exhibit A Map attached to the Application). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** December 30, 2010. **5. Amount Claimed:** 3.83 acre feet, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection. **7. Remarks:** Esch Pond No. 5 will have approximately 2.20 acres of surface area, and impound approximately 3.83 acre feet of water. Esch Pond No. 5 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **D. Esch Pond No. 6. 1. Name of Structure:** Esch Pond No. 6. **2. Legal Description:** In the SE1/4 SW1/4, Section 17, Township 17 South, Range 58 West, 6th P.M. UTM coordinates – Northing 42_69576 N, Easting 13_0594293 E, Zone 13, NAD83 (See Exhibit A Map attached to the Application). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** December 30, 2010. **5. Amount Claimed:** 2.38 acre feet, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection. **7. Remarks:** Esch Pond No. 6 will have approximately 1.88 acres of surface area, and impound approximately 2.38 acre feet of water. Esch Pond No. 6 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **E. Esch Pond No. 7. 1. Name of Structure.** Esch Pond No. 7. **2. Legal Description:** In the SW1/4 SE1/4, Section 17, Township 17 South, Range 58 West, 6th P.M. UTM coordinates – Northing 42_69451 N, Easting 13_0594467 E, Zone 13, NAD83 (See Exhibit A Map attached to the Application). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** December 30, 2010. **5. Amount Claimed:** 3.20 acre feet, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection. **7. Remarks:** Esch Pond No. 7 will have approximately 2.40 acres of surface area, and impound approximately 3.20 acre feet of water. Esch Pond No. 7 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **F. Esch Pond No. 8. 1. Name of Structure:** Esch Pond No. 8. **2. Legal Description:** In the SW1/4 SE1/4, Section 17, Township 17 South, Range 58 West, 6th P.M. UTM coordinates – Northing 42_69360 N, Easting 13_0594587 E, Zone 13, NAD83 (See Exhibit A Map attached to the Application). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** December 30, 2010. **5. Amount Claimed:** 2.28 acre feet, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection. **7. Remarks:** Esch Pond No. 8 will have approximately 1.23 acres of surface area, and impound approximately 2.28 acre feet of water. Esch Pond No. 8 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **G. Esch Pond No. 9. 1. Name of Structure:** Esch Pond No. 9. **2. Legal Description:** In the SE1/4 SW1/4, Section 17, Township 17 South, Range 58 West, 6th P.M. UTM coordinates – Northing 42_69663 N, Easting 13_0594175 E, Zone 13, NAD83 (See Exhibit A Map attached to the Application). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer

Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** December 30, 2010. **5. Amount Claimed:** 1.66 acre feet, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection. **7. Remarks:** Esch Pond No. 9 will have approximately 1.30 acres of surface area, and impound approximately 1.66 acre feet of water. Esch Pond No. 9 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **III. NAME AND ADDRESS OF OWNERS OF LAND ON WHICH STRUCTURES WILL BE LOCATED:** The land, referred to herein as Applicants' Property, on which all structures will be located and upon which the water will be placed to beneficial use is owned by the Applicants. The address of the Applicants is set forth in Paragraph I above. **IV. ADDITIONAL TERMS AND CONDITIONS THAT WILL HELP IN THE ADMINISTRATION OF THE SUBJECT WATER RIGHTS INCLUDE THE FOLLOWING:** A. The Applicants shall install and maintain such water measuring devices as deemed essential by the State Engineer or Division Engineer and the same shall be installed and operated in accordance with the instruction of that office. B. Applicants' primary purpose in the construction, use and adjudication of these structures is preservation, enhancement and development of wetlands on Applicants' property, and associated uses of wildlife, stockwater, fire protection, recreation, piscatorial, and augmentation, to the extent applicable now or in the future. C. The water rights requested herein are a part of the "Horse Creek Basin" as discussed by the Colorado Supreme Court in State Engineer v. Smith Cattle, Inc., 780 P.2d 546 (Colo. 1989) and as discussed in the "Horse Creek Basin Study" completed by the Office of the State Engineer in 1989. Such findings and studies have determined that limited hydraulic connections may exist between the tributaries of the Horse Creek Basin and downstream water rights on the mainstem of the Arkansas River. "*Horse Creek receives water from these tributaries only in time of flood; there is no significant connection between this basin and the Arkansas River*". Smith Cattle at 548. The SEO Study stated its intent to develop and identify the scope of the Horse Creek Basin "*so that it could be administered without having to consider the impact of rights in the basin on the senior water rights of the Arkansas mainstem.*" Study at 10. Historically, valid calls outside of the Horse Creek Basin upon water rights located therein, have occurred only in times of significant precipitation events, during which times live flows from the Horse Creek Basin have occurred. Therefore, the water rights requested herein are considered "tributary" to the Arkansas River, and administration of such water rights shall be pursuant to a valid call based upon actual stream conditions.

CASE NO. 11CW48 – WASTE MANAGEMENT OF COLORADO, INC., 2400 West Union Avenue, Englewood, CO 80110 and WIDFIELD WATER & SANITATION DISTRICT, 37 Widefield Boulevard, Colorado Springs, CO 80911 (Attorneys for Waste Management of Colorado, Inc.: Lee E. Miller, Sarah M. Shechter, BURNS, FIGA & WILL, P.C., 6400 South Fiddler's Green Circle, Suite 1000, Greenwood Village, Colorado, 80111; (303) 796-2626. Email: lmill@bfw-law.com; sshechter@bfw-law.com. Attorneys for Widefield Water & Sanitation District: Sarah Klahn and Philip Lopez, WHITE & JANKOWSKI, LLP, 511 16th Street, Suite 500, Denver, Colorado 80202. Telephone (303) 595-9441. Email: sarahk@white-jankowski.com; phill@white-jankowski.com).

Application for Conditional Underground Water Rights and Plan for Augmentation
EL PASO COUNTY.

II. Conditional Application for Underground Water Rights: Waste Management of Colorado, Inc. (“WMC”) owns 304.3 acres in El Paso County, Colorado, located in the E ½ of Section 5, Township 14 South, Range 64 West, 6th P.M. (“Subject Property”). WMC owns and operates a municipal solid waste landfill on a portion of the Subject Property. Pursuant to C.R.S. § 37-90-137(4), WMC is entitled to 97.4 acre-feet per year of water from the not nontributary Laramie-Fox Hills aquifer of the Denver Basin underlying the Subject Property. The Subject Property is located outside of any designated basin. WMC seeks to adjudicate rights to up to three wells as necessary to withdraw WMC’s full entitlement from the Laramie-Fox Hills aquifer. These wells will be located on the Subject Property. WMC owns and operates a municipal solid waste landfill on a portion of the Subject Property. WMC intends to use up to the full annual appropriation to which it is entitled (97.4 acre-feet per year) from the Laramie-Fox Hills aquifer underlying the Subject Property. WMC’s use of the Laramie-Fox Hills water will be 100 percent consumptive. **Uses:** WMC’s use of the water will be domestic, commercial, irrigation, construction, fire fighting, augmentation, industrial, dust suppression, livestock watering, moisture conditioning of soils, and sanitary facilities. WMC’s use of the water will be fully consumptive. The water rights that are the subject of this application will be used in part at the landfill. WMC will make fully consumptive use of the water on the Subject Property or will market the water for use off the Subject Property. WMC will operate its Laramie-Fox Hills wells pursuant to the terms of the plan for augmentation decreed in this case. **III. Plan for Augmentation. 1. Structures to be Augmented:** This plan for augmentation will augment the wells described in section II above, pumping of which will cause depletions to Jimmy Camp Creek, tributary to Fountain Creek and the Arkansas River. **2. Water Rights to be Used for Augmentation:** Pursuant to an Agreement between WMC and Widefield Water and Sanitation District (“Widefield”), Widefield will make fully consumable water rights available to WMC for its use as augmentation water in an amount not to exceed 4.0 acre feet per year, except that Widefield will not use Fountain Valley Authority return flows or Fountain Mutual Irrigation Company shares as augmentation water. Widefield will retain ownership of any water rights supplied for use as augmentation water. **3. Complete Statement of Plan for Augmentation:** The Subject Property is located approximately 6 miles northeast of the Colorado Springs Municipal Airport near Corral Bluffs in north-central El Paso County, Colorado. Approximately 97.4 acre-feet per year of water is available for WMC to pump from the not-nontributary Laramie-Fox Hills aquifer underlying the Subject Property. The location of the Subject Property relative to Jimmy Camp Creek requires that WMC make augmentation of 4 percent of its annual withdrawals from the Laramie-Fox Hills aquifer to the Jimmy Camp Creek system. This plan will augment depletions caused by the Laramie-Fox Hills wells described in Paragraph II above by providing augmentation water to Fountain Creek above the confluence with Jimmy Camp Creek. Though pumping of the wells will cause depletions to Jimmy Camp Creek, there are no decreed senior surface water rights on Jimmy Camp Creek. This plan for augmentation is sufficient to meet valid senior calls pursuant to C.R.S. § 37-92-305(8)(c). Records of the State Engineer indicate that there are no decreed senior surface water rights on Jimmy Camp Creek, which would require

WMC to replace its depletions to meet them. The records of the State Engineer indicate numerous senior surface water rights on Fountain Creek and the Arkansas River. Accordingly, WMC will deliver its replacement water at or above the confluence of Jimmy Camp Creek and Fountain Creek. Releases of augmentation water will be made at one of the following locations: Spring Creek Aug Station; Stubbs and Miller Diversion; Owens and Hall Turnout; or other location on Fountain Creek accruing between Spring Creek and the Owens and Hall Turnout. If this Court so approves in a decree approving this augmentation plan, augmentation water may also be delivered to a location to be determined on Jimmy Camp Creek. Water will be released for augmentation when free river conditions do not exist on Fountain Creek at the confluence of Jimmy Camp Creek. Applicants will maintain adequate accounting of the water withdrawals from the wells described in paragraph II, along with deliveries of augmentation water to Fountain Creek, to demonstrate that sufficient augmentation to the Jimmy Camp Creek system is occurring. **4. Names and Address of Owners of New Well Locations.** The wells will be located on property owned by the WMC.

CASE NO. 11CW49 – LEROY S. SCHMIDT, 5150 Redstone Ridge Road, P. O. Box 407, Monument, CO 80132-0407 (Henry D. Worley, MacDougall, Woldridge & Worley, P.C., Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905-1743; (719) 520-9288

Application for Change of Water Rights, Appropriative Right of Exchange, and for Approval of Plan for Augmentation

EL PASO COUNTY

I. CHANGE OF WATER RIGHTS. 2. Decreed water right for which change is sought: A one-half interest in: **A. Name of structure:** Nevins Well #5, permit #60132-F. **B. Date of original and all subsequent decrees:** October 15, 1972, July 7, 1981; Case Nos. W-774 and W-774-76, respectively, Water Division 2. **C. Legal description of structure:** SW 1/4 NW1/4 Sec. 8, T. 11 S., R. 67 W., 6th P.M. Though not part of the decree, the well permit indicates the well is located 2600 feet from the north section line and 587 feet from the west section line of Section 8. **D. Decreed source of water:** not indicated in decree, but source is the unconsolidated materials tributary to Monument Creek. **E. Appropriation date:** April 16, 1964. **Total amount decreed to structure:** 0.04 cfs. **F. Decreed uses:** Domestic and municipal. **G. Amount of water that applicant intends to change:** nominally 0.02 cfs (9 gpm), representing Applicant's one-half interest; in reality, the total amount that the well is now capable of pumping on a sustained basis probably does not exceed 10 gpm, and Applicant's ownership interest is for one-half of the amount the well can produce. **3. Detailed description of proposed change.** Applicant seeks to add the beneficial use of storage for recreation, wildlife, aesthetic and piscatorial purposes and, to the extent they are not implied in "domestic" uses, livestock watering and irrigation. Applicant owns a small excavated "amenity" pond with an approximate surface area of 10,000 square feet and approximate storage capacity of 4,000 gallons. Applicant seeks the ability to use Nevins Well #5 to maintain the surface level of the pond. Applicant's landscaping is irrigated with a senior surface water right, and he likewise desires to use the Nevins Well #5 to keep that landscape vegetation alive when the senior surface right is not in priority. Finally, Applicant desires the ability to utilize Nevins Well #5 for livestock

watering. **4.** Due to the junior priority of the Nevins Well #5, it is seldom if ever in priority, and Applicant does not propose to claim any historical consumptive use from the well. Instead, all depletions due to pumping the Nevins Well #5 shall be augmented pursuant to the augmentation plan decreed herein. **5.** The Nevins Well #5 is located on property owned by Applicant and by Beverley B. Miller, address P.O. Box 567, Palmer Lake, CO 80133-0567, and by Applicant. Notice of this application is being sent by certified mail to Beverly B. Miller; a copy of that letter 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.) **II. APPROPRIATIVE RIGHT OF EXCHANGE.** **6.** Applicant claims an appropriative right of exchange on Monument Creek in the amount of 1.0 gpm (.0022 cfs), from the confluence of Monument Creek and Beaver Creek in the NW1/4 SW1/4 Section 35, T. 11 S., R. 67 W., to a location on Monument Creek approximately 650 feet northwest of the Nevins Well #5, in the SW1/4 NW1/4 Section 8, T. 11 S, R. 67 W., 6th P.M. The upstream terminus of the exchange is at the approximate at which the depletions from the Nevins Well #5 impact Monument Creek. **III. PLAN FOR AUGMENTATION.** **7. Names of structure to be augmented:** Nevins Well #5. **8. Previous decrees for water rights to be used for augmentation:** **A.** Case No. 81CW213, entered by the Water Court, Water Division 2, on July 18, 1984, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Dillon Well, permit no. 17483-FR, the location of which is in the NW1/4 NE1/4 Section 35, T. 11 S., R. 67 W., 6th P.M. The amount decreed is 400 acre feet annually. "The water which is the subject of the rights claimed herein may be used for municipal, domestic, commercial and irrigation purposes. The right to apply such water to the above-specified beneficial uses shall include the right of successive use pursuant to C.R.S. §37-82-106 and the right to use, reuse, and successively use all such water to extinction and to dispose of such water, free of any limitation, restriction, or requirement as to the place of use, the amount of discharge after such use, and as to its reuse, successive use or disposition. The water may be produced for immediate application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes." **B.** Case No. 83CW142, entered by the Water Court, Water Division 2, on September 25, 1987, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Arapahoe Well, permit no. 63496-F, the location of which is in the NW1/4 SE1/4 Section 27, T. 11 S., R. 67 W., 6th P.M., 2100 feet from the south section line and 2050 feet from the east section line. The amount permitted to be pumped through the Arapahoe Well is 451.3 acre feet annually, of which Applicant is in the process of purchasing the right to withdraw 0.05 acre foot annually. "Said water may be produced for immediate application to all municipal purposes and domestic, industrial, livestock, irrigation, commercial, and recreational uses, for storage and subsequent application to said uses, for exchange purposes, or replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes." **C. Source:** for both decreed water rights, nontributary Arapahoe aquifer. Appropriation date: not applicable. **D. Historic use:** Not applicable. **E. Land ownership:** The land upon which the Arapahoe aquifer wells cited

above are located is owned by Forest Lakes Metropolitan District. A copy of this application has been sent to Forest Lakes Metropolitan District by certified mail; a copy of that letter is attached to the Application as Exhibit B. **F. Ownership of augmentation water / provision of augmentation services:** Applicant has an agreement in principle with Forest Lakes, LLC to purchase 0.3 acre foot annually of the above water rights for augmentation purposes, and similarly has an agreement in principle with Forest Lakes Metropolitan District to provide augmentation services, including being responsible for pumping water into Bristlecone Reservoir or into Beaver Creek in the vicinity of Bristlecone Reservoir, and providing accounting services regarding such replacements. **9. Statement of plan for augmentation. A.** Applicant will augment all depletions attributable to his use of the Nevins Well #5. Applicant has purchased the right to 0.3 acre foot annually of the fully consumable water described in paragraph 8 above for augmentation purposes. 0.3 AF/yr, or 97,756 gallons, of the water pumped from the Nevins Well #5 will be used for indoor uses inside Applicant's residence. Wastewater is treated in a nonevaporative septic system (septic tank and leach field), which is generally acknowledged to result in consumption of no more than 10 percent of the water so treated. Thus, the annual augmentation requirement for indoor uses is 0.03 acre foot, which will occur on a relatively constant monthly basis of 0.0025 acre foot, or approximately 815 gallons. **B.** 0.264 acre feet may be used on the Applicant's property for pond maintenance, landscape irrigation and livestock watering, though the primary purpose is to maintain the pond level. All such uses shall be considered to be fully consumptive. Use of water for maintaining the pond level and for irrigation shall occur only from April 1 through September 30, on the assumption that the vast majority of such depletions will occur within two months of pumping. **C.** Annual diversions by Applicant for all purposes shall not exceed 173,780 gallons. pursuant to this plan for augmentation. **D.** Applicant shall replace depletions to Monument Creek at the confluence of Monument Creek and Beaver Creek, which confluence is located in the NW1/4 SW1/4 Section 35, T. T. 11 S. R. 67 W., 6th P.M. The pumping will be accomplished by Forest Lakes Metropolitan District, which will also report replacements made pursuant to this plan for augmentation to the appropriate authorities. Replacements will be made as follows: April through October: 11,822 gallons per month; November 1 - 15: 5,902 gallons; November 15 - 30: 9,229 gallons; December 1 - March 31: 0 gallons. The depletions attributable to indoor uses are 815 gallons per month, and the depletions for November 16 - March 30 are aggregated and will be replaced during the second half of November. The pumping for all other uses shall occur during the six month period from April 1 through September 30; depletions are assumed to lag over an approximately two month period, so the depletions for all other uses are assumed to occur from April 1 through November 30, and will be replaced equally over those eight months. Depletions will equal 0.294 acre foot annually; the replacements, however, will equal 0.3 acre foot annually to account for the two percent relinquishment requirement for nontributary Arapahoe groundwater. The above figures for replacements include the two percent relinquishment amount. **10. Comments:** Applicant is the owner of the NE1/4 SE1/4 Section 8 T. 11 S., R. 67 W., 6th P.M. Applicant's residence is the only residence on the property, and Applicant has placed all but 3.5 acres in a conservation easement, ensuring that no more residences will be constructed on the property. Applicant obtained well permits for "exempt" wells on his

property pursuant to C.R.S. 37-92-602(3)(b)(II)(A) for a tract of land 35 acres or larger, but drilling resulted in dry holes. There is no ground water underlying Applicant's land, at least not at economically recoverable depths, and Applicant's property is not located within any municipal water provider's water service area. As a result, Applicant purchased a ½ interest in the Nevins Well #5 to provide potable water for his property. Because the well is not located on Applicant's 40 acre property, and because the half interest not owned by Applicant is used as a water supply for other dwellings, Applicant cannot convert the Nevins Well #5 to an exempt well, and it must be augmented. Although the well itself is not an exempt well entitled to a presumption that its use will not cause material injury to the vested water rights of others, under this plan for augmentation, the Applicant's allowable depletions pursuant to this plan for augmentation will be considerably less than those which could be caused by use of a well on 35 or more acres, permitted pursuant to C.R.S. 37-92-602 (3)(b)(II)(A).

CASE NO. 11CW50 – HARRY AND CYNTHIA DAVIS, 15585 Castlegate Ct., Colorado Springs, CO 80921 (Attorneys for Applicants: Petrock & Fendel, P.C., James J. Petrock, Atty. Reg. #2881, 700 Seventeenth Street, Suite 1800, Denver, Colorado 80202, Telephone: (303) 534-0702)

Application for Underground Water Rights from Not Nontributary Sources and for Approval of Plan for Augmentation, in the Nontributary Laramie-Fox Hhills and the Not Nontributary Dawson, Denver, and Arapahoe Aquifers

EI PASO COUNTY

2. Well Permits: Well permits will be applied for prior to construction of the wells. **3.**

Legal Description of Subject Property: 5 acres being Lot 14, Kingswood Subdivision, generally located in part of the SW1/4SE1/4 of Section 30, T11S, R66W of the 6th P.M., as shown on Attachment A to the Application ("Subject Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). **4. Source of Water Rights:** The source of the groundwater to be withdrawn from the Dawson, Denver, and Arapahoe aquifers is not nontributary as described in 37-90-103(10.7) and 37-90-137(9)(c), C.R.S. The groundwater to be withdrawn from the Laramie-Fox Hills aquifer is nontributary groundwater as described in 37-90-103(10.5), C.R.S. **5. Estimated Amounts and Well Locations:** Applicants will withdraw the subject groundwater through wells to be located at any location on the Subject Property, including an existing well completed into the Dawson aquifer as permitted in Well Permit No. 227493, which will be re-permitted pursuant to the augmentation plan requested below. Applicants estimate the following annual amounts are representative of the subject aquifers:

are representative of the subject aquifers:

<u>Aquifer</u>	<u>Saturated Thickness</u>	<u>Annual Amount</u>
Dawson	177 feet	1.7 acre-feet
Denver	471 feet	4.0 acre-feet
Arapahoe	261 feet	2.2 acre-feet
Laramie-Fox Hills	187 feet	1.4 acre-feet

7. Proposed Use: Domestic, irrigation, stockwatering, fire protection, and augmentation purposes, both on and off the Subject Property. **8. Jurisdiction:** The Water Court has jurisdiction over the subject matter of this application pursuant to Section 37-92-302(2), and 37-90-137(6), C.R.S. **9. Description of plan for**

augmentation: **A. Groundwater to be augmented:** 1 acre-foot per year of the Dawson aquifer groundwater requested herein. **B. Water rights to be used for augmentation:** Return flows from the use of not nontributary Dawson aquifer groundwater herein and nontributary groundwater underlying the Subject Property requested herein. **C. Statement of plan for augmentation:** Applicants will use the Dawson aquifer water for inhouse, irrigation, and stockwatering use through the existing well at a rate of flow not to exceed 15 gpm. The well will be used for inhouse use in one residence (0.4 acre-feet), irrigation of 9500 square-feet of lawn, garden and trees (0.55 acre-feet), and stockwatering of 4 large domestic animals (0.05 acre-feet). Sewage treatment for inhouse use is provided by a non-evaporative septic system. Consumptive use associated with inhouse use will be approximately 10% of water used for that purpose and consumptive use associated with irrigation use will be approximately 90% of water used for that purpose. During pumping Applicants will replace actual depletions to the affected stream system pursuant to 37-90-137(9)(c), C.R.S. Return flows from use of the water accrue to the Arkansas River system, and those return flows are sufficient to replace actual depletions while the subject groundwater is being pumped. Applicants will reserve an equal amount of nontributary groundwater underlying the Subject Property to meet post pumping augmentation requirements.

CASE NO. 11CW51; Previous Case No. 05CW3 – VINCENT J. and LINDA J. OUELLETTE, 5090 CR 271, Westcliffe, CO 81252; (719) 783-3777

Application to Make Absolute

CUSTER COUNTY

Name of Structure: VO Spring. **Describe conditional water right:** **Date of Original Decree:** July 25, 2005; **Case No.:** 2005CW3; **Court:** CO Pueblo County District 10th JD. **Legal description:** Custer County, NE ¼ of the NW ¼ Section 24, Township 22 South, Range 71 West, 6th P.M., 290 feet from the North line and 1400 feet from the West line. **Street Address:** 200 Eagle Springs Road, Westcliffe, CO 81252. **Subdivision:** Eagle Springs. **Lot:** 1; **Block:** 1. **Source of water:** Natural spring; **Appropriation Date:** December 7, 2004; **Amount:** .01 cfs; **Use:** Livestock and fire protection. **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:** 3 each storage pools installed at spring site. Cost \$1,000. July 2005. **If claim to make absolute—Date water applied to beneficial use:** July 2005; **Amount:** .01 cfs. **Use:** Livestock and fire protection. **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:** Applicants.

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 2011, (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 August, 2011.



Mardell R. DiDomenico

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)
Published: August _____, 2011.