

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JULY 2014  
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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 2014, 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:

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**CASE NO. 2013CW7 - TOWN OF FOWLER, Dan Hyatt, Town Administrator, 317 Main Street, Fowler, CO 81039** (Henry D. Worley, Worley Law Firm, LLC, Attorney for Applicant, 611 North Weber, Suite 104, Colorado Springs, CO 80903; (719) 634-8330)

Second Amended Application for Change of Water Rights

**PUEBLO AND OTERO COUNTIES**

(Par. 1 omitted.) **2.** The application in this case contemplated that the water rights, once changed, will be transferred to CWPDA on an annual basis for use in its Rule 14 Plan to augment out-of-priority depletions caused by pumping the wells listed in the application. That is still the case, but Fowler wishes to add options to allow it to replace lagged return flows, among other things, if CWPDA's Rule 14 plan is unavailable to Fowler, or is inadequate, for any reason. **3.** Fowler seeks the ability to store some of the consumptive use attributable to the changed water rights in Pueblo Reservoir. This water will be used as necessary for the replacement of lagged return flows to the Arkansas River for the benefit of participants in the Winter Water Storage Program, as well as to make replacements necessary for calling water rights during the wintertime, such as off-channel reservoirs whose sources of water are ditches whose head gates are located east of Fowler. **4.** Storage may occur in either of two possible ways: in an excess capacity account acquired by Fowler, or pursuant to the Arkansas Valley Conduit Long-Term Excess Capacity Master Contract currently being negotiated between the US Bureau of Reclamation and the Southeastern Colorado Water Conservancy District ("Southeastern), or in some combination (which would presumably occur only if Fowler had insufficient space available for its needs in the Master Contract space, and simultaneously had its own excess capacity account with the Bureau of Reclamation). Fowler is a constituent member of Southeastern. **5. Pueblo Reservoir**, including the proposed Pueblo Reservoir Enlargement is described as follows: **A. Legal Description of Structure:** Pueblo Reservoir is located at the intersection of Pueblo Dam Axis and the Arkansas River whence the Northeast corner of Section 36, Township 20 South, Range 66 West of the 6th P.M., bears North 61° 21' 20" East a distance of 2,511.05 feet. Said reservoir inundates all or portions of Sections 7, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 20 South, Range 66 West of the 6th P.M., Sections 1, 2, 3, 4, 5, 9, 10, and 11, Township 21 South, Range 66 West of the 6th P.M., and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, Township 20 South, Range 67 West of the 6th P.M. in Pueblo County, Colorado. **B. Decrees:** Pueblo Reservoir was decreed in Case No. B-42135, Pueblo County District

Court, on June 25, 1962, with an appropriation date of February 10, 1939 (Priority No. A-22C). The decree was modified in Case No. 80CW6 (Water Division 2) on October 23, 1980 (amended to correct clerical error on April 29, 1981), to conform to the reservoir as built. The conditional portion of the water right has been maintained through a series of diligence proceedings, most recently Case No. 02CW37 (Water Division 2). **C. Storage Volume:** The current decreed and existing capacity is 357,678 acre-feet. Of the decreed amount, 62,972 acre-feet, together with the right to refill, remain conditional. Southeastern's engineers have estimated that up to 7,738 acre-feet of this capacity may have been lost due to silting. **6.** Fowler seeks the ability to store the consumptive use portion of the water rights changed herein in Pueblo Reservoir, by exchanges approved for Colorado Water Protective and Development Association replacement plans, by the exchange described in Case No. 06CW8, application of Southeastern Colorado Water Conservancy District, once approved, and by any administratively approved exchange requested by Applicant. **7.** Fowler proposes that statements of opposition previously filed in this case shall apply to the application as amended herein, as indicated in the form of Order submitted contemporaneously herewith. **8.** Copies of this amendment to the application are being sent by certified mailed to the US Bureau of Reclamation, which administers Pueblo Reservoir, at 610 Pueblo Reservoir Road, Pueblo, CO 81005, and to the Southeastern Colorado Water Conservancy District, 31717 East United Avenue, Pueblo, CO 81001.

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**CASE NO. 2014CW12; Previous Case No. 2007CW64 – RONALD G. and LAURA M. MILLER, 5184 Siloam Road, Beulah, CO 81023; (719) 485-2333**

Application to Make Absolute in Whole or in Part

**PUEBLO COUNTY**

**Name of Structure:** Miller Reservoir; **Describe Conditional Water Right:** **Date of Original Decree:** 7/23/2008; **Case No.:** 07CW64; **Court:** District Court, Water Div. 2, Colorado. **Legal description:** The center of the dam is located in the SE ¼ SE ¼ Section 30, Township 22 South, Range 67 West of the 6<sup>th</sup> P.M., Pueblo County, CO, lying 605 feet from the South line and 545 feet from the East line of said Section 30 on property whose address is 5184 Siloam Road, Beulah, CO 81023. **Source of water:** Runoff water within an unnamed water course tributary to Rock Creek, tributary to the Arkansas River. **Appropriation Date:** Spring of 1940; February 28, 2006. **Amount:** 7.86 acre feet annual; fill and refill 5 times per year. **Use:** 1. Absolute: Stock water; 2. Irrigation and fire fighting. **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, during the previous diligence period:** We used a contractor (Pioneer West Homes) to perform the enlargement of the water holding storage. They worked for approximately three weeks. The work was done in exchange for approximately 25 semi loads of high quality topsoil that was located on our property. The value of each semi load of topsoil is estimated at approximately \$500/load for a total of approximately \$12,500. Pumps and reel irrigation system worth approximately \$23,000 was installed to irrigate fields. **If claim to make absolute in whole or in part: Date water applied to beneficial use and amount:** 2010 – 21 a.f.; 2011 and 2012 – 0 a.f. due to drought; 2013 – 28 a.f.; 2014 – 5 a.f. **Use:** Irrigation. **Description of place of use where water is applied to**

**beneficial use:** There are four separate fields: Field #1 – approximately 16 acres; Field #2 – approximately 2 acres; Field #3 – approximately 4 acres; and Field #4 – approximately 16 acres. A total of approximately 38 acres. The legal description is 30-22-67 SE4 SE4 lying E of Siloam Rd (Formerly 27-000-00-042). Pueblo County Assessor Property number: 2700000131. See map attached to application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). **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.

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**CASE NO. 2014CW13 – PHILIP and HEIDI ENSLEY, 780 Coronado Road, Westcliffe, CO 81252-8642; (719) 431-9173**

Application for an Absolute Underground Water Right for an Exempt Well Pursuant to § 37-92-602(4), C.R.S. and Application for an Absolute Water Storage Right

**CUSTER COUNTY**

**Application for Underground Water Right. Name of well and permit, registration, or denial number:** Ensley Well No. 1; Permit No. 281794. **Total area of parcel on which this well is located:** 50.4 acres. **Legal description of well (PLSS Description):** Custer County, NW ¼ of the NW ¼ Section 22, Township 22 South, Range 73 West, 6<sup>th</sup> P.M., 1,085 feet from the north line and 674 feet from the west line. **Source of PLSS information:** Well Permit 281794 and topographic map. **Street Address:** 780 Coronado Road, Westcliffe, CO 81252-8642. **Subdivision:** Conquistador; **Lot:** 2 as amended. **Date of appropriation:** August 24, 2009; **How appropriation was initiated:** Well permit application; **Date water applied to beneficial use:** December 4, 2009; pump installed. **Source of water:** Groundwater tributary to Grape Creek and the Arkansas River; **Depth of well:** 145 feet. **Amount of Underground Water claimed in gallons per minute (gpm):** 15 gpm. **List All Existing Uses:** Domestic and livestock. **Number of single-family dwellings served:** 1; **Area of lawns and gardens irrigated:** 1 acre. **Legal description of irrigated acreage:** Lawn and garden areas adjacent to house and garage areas. **Domestic animal watering?** Yes; **Livestock watering on farm/ranch/pasture?** Yes. **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.

**Application for Water Storage Right. Name of Reservoir:** Red Clover Pond. **Legal description of location of dam centerline (PLSS description):** Custer County, NE ¼ of the NW ¼ Section 22, Township 22 South, Range 73 West, 6<sup>th</sup> P.M., 1,150 feet from the north line and 1,450 feet from the west line. **Source of PLSS information:** USGS topographic map and aerial photograph. **Source:** Spring flows beginning approximately 550 feet southwest of pond at the spring location described as Custer County, SW ¼ of the NW ¼ Section 22, Township 22 S, Range 73 W, 6<sup>th</sup> P.M., 1390 feet from the north line and 925 feet from the west line, and flowing in a natural slough channel to the pond. **Source of PLSS information:** USGS topographic map and

aerial photography. **Date of appropriation:** October 1953 or earlier. **How appropriation was initiated:** Construction and use of the pond. **Date water applied to beneficial use:** October 1953. **Amount claimed:** 0.5 acre feet absolute. **If filled from a ditch, rate of diversion:** 5 gpm (from spring flows). **List all uses or proposed uses:** Wildlife, livestock, piscatorial and aesthetic. All uses are in-pond uses. **Surface area of high water line:** 7,800 square feet. **Vertical height of dam in feet measured vertically from the elevation of the lowest point of the natural surface of the ground where that point occurs along the longitudinal centerline of the dam up to the crest of the emergency spillway of the dam:** 3 feet, dam height varies from 0-4 feet. **Length of dam:** 180 feet. **Total capacity of reservoir:** 0.5 a.f.; **Active capacity:** 0 a.f.; **Dead storage:** 0.5 a.f. **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.

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**CASE NO. 2014CW14; Previous Case Nos. 2000CW122; 2007CW97(2000CW122) – GWENDOLYN B. CHAMPION, 2608 N. Logan Avenue, Colorado Springs, CO 80907; (719) 471-3760**

Application to Make Absolute in Whole or in Part

**CHAFFEE COUNTY**

**Name of structure:** Rob Roy Ditch. **Describe conditional water right:** **Date of Original Decree:** 10-17-2001; **Case No.:** 00CW122; **Court:** Water Division 2. **List all subsequent decrees awarding findings of diligence:** **Date of Decree:** 10/1/2007; **Case No.:** 2007CW97(2000CW122); **Court:** Water Division 2. **Legal description:** Chaffee County, whence the W ¼ corner Section 26, Township 15 S, Range 80 W, 6<sup>th</sup> P.M., bears S. 9° 29' E 718 feet. **Source of water:** Coal Camp Canyon Creek, tributary to Chalk Creek, which is tributary to the Arkansas River. **Appropriation Date:** July 16, 1957; **Amount:** 1.0 c.f.s. **Use:** Domestic purposes, single family dwelling, stock watering and irrigation of approximately 2500 sq. ft. of lawns and gardens. **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, during the previous diligence period:** Used for domestic purposes in a single family dwelling, stock watering and irrigation of approximately 2500 sq. ft. of lawns and gardens within Rob Roy Millsite. **If claim to make absolute in whole or in part:** **Date water applied to beneficial use:** August 8, 1964 to present; **Amount:** 1.0 cfs; **Use:** Domestic purposes, irrigation and stock watering. **Description of place of use where water is applied to beneficial use:** Proposed to be irrigated is one acre located within the Rob Roy Millsite, Chaffee County, Colorado. **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. 2014CW3033; Previous Case Nos. W-4788; 82CW214; 94CW30(W-4788); 01CW11(W-4788,82CW214); 2008CW5(W-4788,82CW214); – ESCALANTE GOLF/PINE CREEK, L.P., a Colorado Limited Partnership, 9850 Divot Trail, Colorado Springs, CO 80920** (James J. Petrock and Kara N. Godbehere, Petrock & Fendel, P.C., Attorneys for Applicant, 700 17<sup>th</sup> Street, Suite 1800, Denver, CO 80202; (303) 534-0702)

Application for Finding of Reasonable Diligence and to Make Absolute a Portion of Conditional Water Rights

**EL PASO COUNTY**

**Name of structure:** Chapel Hills Well No. 2, Chapel Hills Well No. 3 and Chapel Hills Well No. 4. **Description of Conditional Rights:** **Chapel Hills Well No. 2 (Permit No. 11810-FR):** **Decrees:** Original Decree entered June 22, 1988, Case No. W-4788 for 24 acre feet absolute, 96 acre feet conditional. Decree finding diligence entered on February 3, 1995, in 94CW30(W-4788, 82CW214). Decree finding diligence entered on January 29, 2002 in 01CW11(W-4788, 82CW214). Decree finding diligence entered on July 10, 2008 in 08CW05(W-4788, 82CW214) making 37.43 acre feet ABSOLUTE with 82.47 acre feet CONDITIONAL. **Location of well:** Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) of Section 33, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, at a point approximately 845 feet from the South section line and 465 feet from the East section line of said Section 33. **Source:** The source of the water is not non tributary ground water within the Denver and Arapahoe Aquifers. **Appropriation date:** April 30, 1967. **Amount requested:** 54.18 acre feet, ABSOLUTE, 65.82 acre feet CONDITIONAL. **Use:** Municipal purposes. **Chapel Hills Well No. 3 (Permit No. 21884-F):** **Decrees:** Original Decree entered on June 22, 1988, Case No. W-4788 for 40 acre feet ABSOLUTE, 186 acre feet CONDITIONAL. Decree finding diligence entered in 01CW11(W-4788 and 82CW214), making 95.77 acre feet ABSOLUTE, 130.23 acre feet CONDITIONAL, entered on January 29, 2002. Decree finding diligence entered on July 10, 2008 in 08CW05(W-4788, 82CW214). **Location:** Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4) of Section 28, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, at a point approximately 16 feet from the South section line and 14 feet from the East section line of said Section 28. **Source:** The source of the water is not non tributary ground water within the Arapahoe Aquifer. **Amount requested:** continuing diligence on 130.23 acre-feet, conditional. **Use:** Municipal purposes. **Chapel Hills Well No. 4 (Permit No. 24922-F):** **Decrees:** Original Decree entered on June 22, 1988, Case No. 82CW214 for 201 acre feet CONDITIONAL. Decree finding diligence entered on February 5, 1995, in Case No. 94CW30(82CW214). Decree finding diligence making ABSOLUTE 180.43 acre feet and 20.57 acre feet CONDITIONAL entered in 01CW11(W-4788, 82CW214) on January 29, 2002. Decree finding diligence entered on July 10, 2008 in 08CW05(W-4788, 82CW214) making 184.98 acre feet ABSOLUTE with 16.52 acre feet CONDITIONAL. **Location:** Northeast Quarter (NE1/4) of the Southwest Quarter (SW1/4) of Section 22, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, at a point approximately 2,641 feet South of the North section line and 2,639 feet East of the West section line of said Section 22. **Source:** The source of the water is not non tributary ground water in the Arapahoe

Aquifer. **Appropriation date:** June 13, 1980. **Amount requested:** 191.06 acre feet, ABSOLUTE and 9.94 acre feet, CONDITIONAL. **Use:** Municipal, domestic, irrigation, commercial, industrial, recreational, fire protection and stock watering purposes, and for the maintenance of adequate storage systems and storage reservoirs. Use, reuse, and successive use of all such water to extinction, free of any limitation, restriction or requirement as to the place of use, amount of discharge after such use, reuse, or disposition. Immediate beneficial use, storage and subsequent application to beneficial use, and for exchange, replacement, or augmentation purposes. **Detailed outline of what has been done toward completion or for completion of the appropriations and application of the water to beneficial uses conditionally decreed, including expenditures:** Applicant has continued to expend substantial sums in expanding, improving and replacing portions of the unified water system of which the wells described in this Application are a part. All three wells currently provide water to the Pine Creek golf course which is a part of the Briargate Development and which is operated by Applicant. Applicant has expended substantial sums in protecting and perfecting the water rights involved in this Application, including the filing of diligence applications and filing statements of objection and has incurred repair and maintenance fees in excess of \$75,544.00 for necessary repair and improvement work on the three wells since the last diligence decree was entered. Applicant replaced the meter on Well No. 3 in 2008, 2011, and 2012; the meter on Well No. 2 in 2012 and the meter on Well No. 4 in 2008 and 2011. Well No. 4 was cleaned/bailed and repaired due to damaged screens and casing in 2008; the entire pumping system on Well No. 4 was removed and replaced in July of 2013 and a new pump and motor again installed in Well No. 4 in May of 2014 in an effort to improve pumping efficiency and output. WHEREFORE, Applicants request that the Court enter a decree finding that the Applicants have exercised reasonable diligence in the furtherance of the appropriations decreed in this case and further that Applicants be granted an Absolute Decree for Chapel Hills Well No. 2, in the amount of 54.18 acre feet and an Absolute Decree for Chapel Hills Well No. 4 in the amount of 191.06 acre feet and that the Applicants be granted a Decree continuing the Conditional portions of the decrees for Chapel Hills Wells No. 2, 3 and 4. Applicants further request that in the event additional amounts of water conditionally decreed to the wells herein described are put to beneficial use prior to the entry of a decree herein, that without further notice, such amounts as may be proven, be made Absolute by any decree granted herein. FURTHER, Applicant prays that this Court grant such other relief as seems proper in the premises.

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**CASE NO. 2014CW3034; Previous Case No. 1997CW160 – SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT (“Southeastern”), 31717 United Avenue, Pueblo, CO 81001** (Please address all pleadings and correspondence to: Stephen H. Leonhardt, Alix L. Joseph, and Spencer W. Williams, Burns, Figa & Will, P.C., Attorneys for Applicant; 6400 S. Fiddlers Green Circle, Suite 1000, Greenwood Village, CO 80111; (303) 796-2626)

Application for Finding of Reasonable Diligence

**CHAFFEE COUNTY, COLORADO**

**2. Name of Right:** South Arkansas River Project Water Exchange (“South Arkansas Exchange”). **3. Original Decree:** Case No. 97CW160, entered July 10, 2008, by

District Court, Water Division 2, Colorado. **4. Exchange Reach:** (a) Lower Terminus: The confluence of the Arkansas River and the South Arkansas River. (b) Upper Termini (for conditional rights): (i) O'Haver Reservoir, located in the center of Section 12, Township 48 North, Range 7 East, N.M.P.M. O'Haver Reservoir is an off-channel reservoir fed by Gray's Creek, tributary to Poncha Creek, through the O'Haver Filler Ditch, headgate in the NW1/2 SW1/4 of said Section 12, approximately 5,000 feet from the East section line and 1,400 feet from the South section line. (ii) Boss Lake, located in NE1/4 of Section 29, Township 50 North, Range 6 East, N.M.P.M. (iii) Any points along the South Arkansas River upstream of the Poncha Springs wells and any points along the North Fork of the South Arkansas River downstream of North Fork Reservoir.

**5. Source of Exchange Water:** (a) Fryingpan-Arkansas Project Water – West Slope Decrees: The Fryingpan-Arkansas Project ("Project") diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County. The principal water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County) dated June 20, 1958, and August 3, 1959; and were modified by the decree in Case No. W-829-76 (Water Division No. 5) dated November 27, 1979; and were supplemented by the decree in Case No. 83CW352 (Water Division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, and applied to beneficial use within Southeastern's District boundaries. Because the water is imported from another river basin, it is fully consumable within Southeastern's District boundaries in Water Division 2. (b) Fryingpan-Arkansas Project Water – East Slope Decrees: The Fryingpan-Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court, Chaffee County) dated July 9, 1969; and Civil Action No. B-42135 (District Court, Pueblo County) dated June 25, 1962; and were modified and supplemented by the decree in Case No. 80CW6 (Water Division No. 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed as fully consumable and for reuse and exchange, for beneficial use within Southeastern's District boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir. (c) Project Water Allocations and Limitations: The Upper Arkansas Water Conservancy District ("UAWCD"), the Town of Poncha Springs, and the City of Salida and others are eligible to receive annual allocations of Fryingpan-Arkansas Project Water ("Project Water"), which they may purchase and use after it is allocated to them by Southeastern. Southeastern allocates Project Water annually based on its principles, policies, rules and regulations, as they may be amended. Any and all use of Project Water in these exchanges will be pursuant to and subject to the above-referenced Decrees for the Fryingpan-Arkansas Project, and to all lawful rules, regulations, policies, and contract obligations of Southeastern. This Application does not seek to give UAWCD, Salida, and Poncha Springs any rights to use Fryingpan-Arkansas Project structures, or any

rights of ownership or rights to purchase or receive allocation of Project Water or return flows therefrom, but does not alter any existing rights (including allocation rights) they may otherwise have. UAWCD, Salida, Poncha Springs, and others may use and exchange Project Water only if, when, and to the extent they have purchased such water after it is allocated to them by Southeastern. This Application does not in any way seek to modify Southeastern's decrees for the Fryingpan-Arkansas Project Water rights. The description of or reference to structures and water rights herein, other than the proposed exchanges described in this Application, does not in any way seek to amend or limit the decrees for those structures and water rights, and omissions in such descriptions and references shall in no way prejudice the owners of those structures and water rights.

**6. Appropriation Date:** February 10, 1939. **7. Description of Appropriative Rights of Exchange.** (a) Sources: South Arkansas River and its tributaries, specifically the North Fork of the South Arkansas River, Poncha Creek, Gray's Creek, and the Middle Fork and Lake Fork of the South Arkansas River. (b) Affected Stream Reach: The following reach of the South Arkansas River and its tributaries, including the North Fork of the South Arkansas River, Poncha Creek, Gray's Creek, and the Middle Fork and Lake Fork of the South Arkansas River: The upstream termini are on the North Fork of the South Arkansas River, at North Fork Reservoir; on Gray's Creek, at the O'Haver Filler Ditch headgate; and on the Lake Fork of the South Arkansas River, at Boss Lake. The downstream terminus is the confluence of the South Arkansas River with the Arkansas River located in the SW1/4 SE1/4 Section 4, Township 49 North, Range 9 East of the N.M.P.M., at a point approximately 300 feet North of the South Section line and 2,300 feet west of the East Section line. **8. Amount:** Maximum total exchange rate of 60 c.f.s.; maximum total volume of 495 acre feet per year. This maximum rate and amount include any exchanges of Project Water on the subject streams under the priorities decreed in Case No. 97CW160, including certain exchanges made under previous decrees specified in paragraph 8.b of the Decree in Case No. 97CW160. **9. Uses:** (a) Salida: Salida uses allocated Project Water within its municipal boundaries as a supplemental supply for municipal uses, including commercial, industrial, domestic uses and irrigation use incidental thereto. (b) Poncha Springs: Poncha Springs uses allocated Project Water within its municipal boundaries as a supplemental supply for municipal uses, including commercial, industrial, domestic uses and irrigation use incidental thereto. (c) UAWCD: UAWCD uses allocated Project Water as a supplemental supply for augmentation, municipal, industrial, and irrigation uses. (d) Southeastern may also provide allocated Project Water to other parties for municipal, industrial, irrigation and augmentation uses within Southeastern's District boundaries. (e) Allocated Project Water also may be used to replace evaporation losses on allocated Project Water stored by exchange in North Fork Reservoir, O'Haver Reservoir, and Boss Lake. **10. Detailed outline of work done toward operation of exchanges, completion of project and application of water to beneficial use:** During the diligence period, lasting from July 2008 to June 2014, Southeastern's staff has communicated with the United States Bureau of Reclamation, the Division Engineer for Division 2, and UAWCD to develop accounting for the exchanges decreed in Case No. 97CW160 and to monitor their operation. Southeastern and UAWCD also entered into an intergovernmental agreement on April 20, 2014 to ensure cooperation on exchanges and storage of Project Water made by



Southeastern and UAWCD, including exchanges under the decree in Case No. 97CW160. Similarly, Southeastern entered into an agreement with Poncha Springs in March 2011 for cooperative operation of exchanges and storage of Project Water by Poncha Springs and Southeastern under the decree in Case No. 97CW160. Southeastern defended its water rights, including the South Arkansas Exchange rights, by filing statements of opposition and negotiating stipulations in various water court cases, including Case No. 04CW96, an exchange application by UAWCD, and Case No. 09CW138, an exchange application by Poncha Springs. Southeastern's efforts in these cases and negotiating agreements with UAWCD and Poncha Springs show diligence made specifically toward protecting and developing the South Arkansas Exchange. Salida, Poncha Springs and UAWCD rely in part on Project Water for the operation of their integrated water systems and augmentation plans, and all three entities received allocations of Project Water in most years during the diligence period. The South Arkansas Exchange is an important way to deliver Project Water to Southeastern's constituents to allow them to operate and further develop their systems. UAWCD has obtained authorization from the United States Forest Service to maintain and operate North Fork Reservoir, O'Haver Reservoir and Boss Lake. UAWCD has also operated the portions of the conditional exchanges Southeastern is claiming as absolute. UAWCD's operation of the South Arkansas Exchange, the structures involved in the exchange and its integrated water system as a whole shows diligence made toward developing Southeastern's conditional rights decreed in Case No. 97CW160. As this Court has previously found, the construction, operation and maintenance of parts of the Fryingpan-Arkansas Project demonstrate reasonable diligence for other parts of the Project. See, e.g., Decree in Case No. 10CW23 at 9 ¶ 7 (Sept. 21, 2011); Decree in Case No. 02CW37 at 8 ¶7 (April 27, 2004). The collection, transportation, storage, and power systems of the Fryingpan-Arkansas Project comprise one overall, integrated water supply project. *Id.* The Fryingpan-Arkansas Project is the source of water for the South Arkansas Exchange. Reasonable diligence on the Fryingpan-Arkansas Project is reasonable diligence on the South Arkansas Exchange. *Id.* Work in connection with the Fryingpan-Arkansas Project and all its decreed diversions has been prosecuted with reasonable diligence. The existing East Slope structures of the Fryingpan-Arkansas Project have been used to convey and store Project Water, including that diverted from the West Slope, and to deliver such water for decreed beneficial uses. Southeastern has contractual agreements for planning, construction, operation, maintenance and repayment of the Fryingpan-Arkansas Project with the United States Bureau of Reclamation. Consequently, the acts of the Bureau of Reclamation evidence diligence with respect to Southeastern's water rights. Fryingpan-Arkansas Project activities include operation, maintenance and improvement of the collection system. Operation is subject to the terms of Water Division 5 and Division 2 Decrees, the Operating Principles, and the Congressional authorizing legislation. Current diversions and recordkeeping are integral to future development of the system's conditional rights. Throughout the diligence period, the existing facilities of the Fryingpan-Arkansas Project, including Turquoise Lake and Twin Lakes Dam, were in operation and maintenance status. From July 2008 through June 2014, the Fryingpan-Arkansas Project expended more than \$18,180,000 on East Slope and West Slope Project operation and maintenance costs, including more than \$2,290,000 on Sugarloaf Dam

and Turquoise Reservoir and \$2,991,000 on Twin Lakes Dam and Reservoir. Southeastern was allocated more than \$9,980,000 of these total Project operation and maintenance costs. During the diligence period, the Bureau of Reclamation expended more than \$184,000 on substantial improvements to West Slope Project facilities, and \$334,000 on substantial improvements to the East Slope Project facilities. Southeastern has expended during July 2008-June 2014 more than \$200,000 for engineering and more than \$2,700,000 for legal fees, primarily to protect Southeastern's West and East Slope water decrees and for further Project development. Southeastern has appeared as a party in various water rights proceedings involving water rights along the Arkansas River and its tributaries in order to protect Southeastern's various decreed rights in the Fryingpan-Arkansas Project. Southeastern also has expended substantial executive time and legal and engineering expense toward protecting and administering the Winter Water Storage Program in Pueblo Reservoir pursuant to the Decree in 84CW179, which program contributes to repayment of the Fryingpan-Arkansas Project costs. Southeastern has taken part in various legislative, administrative and judicial proceedings to protect Southeastern's rights in the Fryingpan-Arkansas Project, including its absolute and conditional East Slope water rights. During the diligence period, Southeastern filed and diligently pursued adjudication of exchange applications in Water Division 2, including Case No. 01CW151 for exchange of certain return flows from Fryingpan-Arkansas Project Water into Pueblo Reservoir for use within the Southeastern District. Such exchanges help to "secure the greatest benefit from the use and reuse of imported project waters within project boundaries in the State of Colorado," as provided in the Operating Principles and contemplated in the decrees for Southeastern's water rights. The Court entered a final decree in Case No. 01CW151 on June 16, 2014. Southeastern's activities on this matter demonstrate reasonable diligence with respect to Southeastern's water rights for the Project.

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**CASE NO. 2014CW3035 – EUSTICE ZACHER, 804 30<sup>th</sup> Lane, Pueblo, CO 81006**

(Please address all pleadings and correspondence to: David M. Shohet, Ryan W. Farr, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Surface Storage Water Rights and for Approval of Plan for Augmentation  
**PUEBLO COUNTY, COLORADO**

**SUMMARY OF APPLICATION:** Applicant is the owner of three, off-stream ponds in Pueblo County, Colorado, that are supplied water by an unnamed spring tributary to the Arkansas River. Applicant is seeking storage water rights and an augmentation plan to replace the depletions of the three ponds caused by evaporation. **APPLICATION FOR**

**SURFACE WATER STORAGE RIGHTS:** **A. Property Description:** All ponds are located on the Applicant's property described as a portion of the N ½ of Section 1, Township 21 South, Range 64 West of the 6<sup>th</sup> P.M., Pueblo, Colorado and more specifically described on Exhibit A – Assessor Legal Description, and shown on Exhibit B – Aerial Photo attached to the Application, ("Applicant's Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). **B. Name of Structure:** Pond No. 1. **1. Legal Description of Structure:** Pond No.1 is located in Lot 3 of the NW ¼ of Section 1, Township 21 South, Range 64 West of the 6<sup>th</sup> P.M. UTM NAD83 coordinates of center of dam are

approximately: Northing: 4234429, Easting: 543169, Zone 13N. Pond No. 1 is off-channel. See Exhibit B attached to the Application. **2. Source:** Unnamed spring, tributary to the Arkansas River. **3. Date of Initiation of Appropriation:** December 31, 1932. **4. How Appropriation was Initiated:** Construction of all three ponds. **5. Date Water Applied to Beneficial Use:** December 31, 1932. **6. Amount Claimed:** 5.34 acre-feet, absolute. **7. Uses:** Recreation, piscatorial purposes, wildlife habitat, fire protection, and aesthetic enjoyment. **8. Reservoir Specifications:** Pond No. 1 has a maximum surface area of 0.82 acres at high water line; the maximum height of the dam is less than 10 feet; and the total capacity is 5.34 acre-feet. **C. Name of Structure:** Pond No. 2. **1. Legal Description of Structure:** Pond No. 2 is located in Lot 2 of the NE ¼ of Section 1, Township 21 South, Range 64 West of the 6<sup>th</sup> P.M. UTM NAD83 coordinates of center of dam are approximately: Northing: 4234412, Easting: 543362, Zone 13N. Pond No. 2 is off channel. See Exhibit B attached to the Application. **2. Source:** Unnamed spring, tributary to the Arkansas River. **3. Date of Initiation of Appropriation:** December 31, 1932. **4. How Appropriation was Initiated:** Construction of all three ponds. **5. Date Water Applied to Beneficial Use:** December 31, 1932. **6. Amount Claimed:** 4.23 acre-feet, absolute. **7. Uses:** Recreation, piscatorial purposes, wildlife habitat, fire protection, and aesthetic enjoyment. **8. Reservoir Specifications:** Pond No. 2 has a maximum surface area of 0.64 acres at high water line; the maximum height of the dam is less than 10 feet; and the total capacity is 4.23 acre-feet. **D. Name of Structure:** Pond No. 3. **1. Legal Description of Structure:** Pond No. 3 is located in Lot 2 of the NE ¼ of Section 1, Township 21 South, Range 64 West of the 6<sup>th</sup> P.M. UTM NAD83 coordinates of center of dam are approximately: Northing: 4234367, Easting: 543430, Zone 13N. Pond No. 3 is off channel. See Exhibit B attached to the Application. **2. Source:** Unnamed spring, tributary to the Arkansas River. **3. Date of Initiation of Appropriation:** December 31, 1932. **4. How Appropriation was Initiated:** Construction of all three ponds. **5. Date Water Applied to Beneficial Use:** December 31, 1932. **6. Amount Claimed:** 1.56 acre-feet, absolute. **7. Uses:** Recreation, piscatorial purposes, wildlife habitat, fire protection, and aesthetic enjoyment. **8. Reservoir Specifications:** Pond No. 3 has a maximum surface area of 0.23 acres at high water line; the maximum height of the dam is less than 10 feet; and the total capacity is 1.56 acre-feet. **E. Land Ownership:** The land upon which all ponds are located is owned by the Applicant which consists of approximately 32.08 acres. **APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION. A. Structures to be Augmented.** The structures to be augmented are Pond Nos. 1, 2, and 3 on the Applicant's Property as shown in Exhibit B to the Application ("Ponds"). **1. Source.** The Ponds are supplied water by an unnamed spring, tributary to the Arkansas River. **2. Uses.** The Ponds are non-consumptively used for piscatorial purposes, recreation, wildlife habitat, fire suppression, and aesthetic enjoyment. **3. Water Rights to be Used for Augmentation.** Applicant and Arkansas Groundwater Users Association ("AGUA") have entered into a long term lease for 10.0 annual acre feet of water. The water rights to be used for augmentation under this plan are fully consumable water rights leased or owned by AGUA. AGUA will provide up to 10.0 acre-feet of water annually at Applicant's point of depletion to augment depletions of the Ponds. **D. Statement of Plan for Augmentation.** Applicant wishes to provide for the augmentation of stream

depletions associated with the Ponds. Gross annual evaporative depletions from the Ponds have been determined by the Colorado Office of the State Engineer to be approximately 7.34 acre-feet, the total of which is broken down into monthly amounts as follows:

TABLE 1

MONTH	GROSS EVAPORATION (ACRE-FEET)
January	0.22
February	0.26
March	0.40
April	0.66
May	0.88
June	1.06
July	1.10
August	0.99
September	0.73
October	0.51
November	0.29
December	0.22
<b>Total</b>	<b>7.33</b>

The Ponds have a maximum total surface area of 1.69 acres. This measurement is broken down per pond as follows: Pond 1 = 35,877.29 square feet (0.82 acres); Pond 2 = 27,663.47 square feet (0.64 acres); Pond 3 = 10,095.39 square feet (0.23 acres). AGUA will provide for the needed augmentation water through releases of fully consumable, trans-mountain water commensurate with the estimated monthly depletions set forth in Table 1. **F. Remarks.** Additional remarks are as follows: 1. The term of this augmentation plan is for 15 years or for whatever time period in which the Applicant is able to obtain augmentation water to replace the annual evaporative depletions from the Ponds, whichever is longer. 2. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of evaporative depletions in order to protect other water rights. 3. The Applicants request a finding that the vested water rights of others will not be materially injured by the evaporative depletions as long as those depletions are augmented as set forth herein. 4. The Ponds shall be metered/measured/monitored as reasonably required by the State Engineer. The Applicant shall provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation.

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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 September 2014, (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 6th day of August, 2014.



*Mardell R. DiDomenico*

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Mardell R. DiDomenico, Clerk  
District Court, Water Div. 2  
Pueblo Judicial Building  
501 N. Elizabeth Street, Suite 116  
Pueblo, CO 81003; (719) 404-8832

(Court seal)  
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