

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING JUNE 2004

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 June 2004, 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. 02CW171 – RICK ENSTROM, 13393 West LaSalle Circle, Lakewood, CO 80228 (Frederick A. Fendel, III and Matthew S. Poznanovic, Petrock & Fendel, P.C., Attorneys for Applicant, 700 Seventeenth Street, Suite 1800, Denver, CO 80202)

Amended Application for Water Right
Prowers County

2. This amendment seeks to clarify that the Applicant does not seek an underground water right and to correct the source given in the original application for the Enstrom Spring. The correct source for the Enstrom Spring is: Spring water. 3. This amendment further seeks to amend the date and initiation of the appropriation. The appropriation date is December 16, 2002. The appropriation was initiated by the filing of the original application. 4. All other matters remain as presented in the original application. WHEREFORE, Applicant requests that this Court enter a decree granting the amended application requested herein and for such other and further relief as this Court deems proper.

(Amended Application, 2 pages)

CASE NO. 02CW181 – LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION (“LAWMA”), c/o Donald F. Higbee, 307 Fifth Street, P. O. Box 1161, Lamar, CO 81052 (David L. Harrison and Richard J. Mehren, Moses, Wittemyer, Harrison and Woodruff, P.C., Attorneys for Applicant, P. O. Box 1440, Boulder, CO 80306)

First Amendment to Application for Change of Water Rights and Plan for Augmentation

Bent and Prowers Counties

The Applicant, Lower Arkansas Water Management Association (“LAWMA”), pursuant to an order of the Court accepting this amendment for filing, hereby amends its Application as follows: **I. A new Section III.G is added to the Application as follows: G. Keesee Ditch.** LAWMA is the owner of one-half of the Keesee Ditch water right. Historical diversions of the Keesee Ditch water right are shown on Exhibits G-1a. and G-1b. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The Keesee Ditch water right has historically been used for agricultural irrigation purposes on the parcels depicted on Exhibit G-2. LAWMA acquired

one-half of the Keesee Ditch water right in 2004. During the 2003 and 2004 irrigation seasons all of the parcels depicted on Exhibit G-2 have been and will be dried-up or irrigated with other water and the Keesee Ditch water right has been and will be used in LAWMA's annual replacement plan for the replacement of LAWMA's members' stream depletions as approved by the Colorado State Engineer under the Arkansas River Rules. **1. Appropriation Dates, Priority Nos. and Amounts:** a. March 13, 1871, Priority No. 1 for 9.0 cfs. b. December 31, 1883, Priority No. 4 for 4.5 cfs. c. September 3, 1893, Priority No. 1918-4 for 15.0 cfs.; **2. Original Decree for Priority Nos. 1 and 4:** a. Case No.: Unnumbered adjudication titled "In the matter of the Adjudication of Priorities to the use of Water for Irrigation in District Number 67." b. Date Entered: July 1, 1895. c. Court: Bent County District Court. **3. Original Decree for Priority No. 1918-4:** a. Case No.: Unnumbered adjudication titled "In the Matter of the Adjudication of Water Rights and priorities to the use of Water in Water District Number Sixty-seven, in the State of Colorado." b. Date Entered: October 14, 1918. c. Court: Bent County District Court. **4. Decreed Point of Diversion:** The decreed headgate location is "located on the south bank of the Arkansas River, near the center of Sec. 6, Twp. 23 South, Range 49 W. 6th P.M., in the Northwest Quarter of the Southeast Quarter of said section; said point of location being distant from the quarter corner between Sections 5 and 6, said township and range south of west ten degrees, 12', 32½ chains." **5. Source:** The Arkansas River. **6. Decreed Use:** Irrigation. **7. Amount to be Changed by this Application:** a. Priority No. 1: 4.5 cfs of the 9.0 cfs. b. Priority No. 4: 2.25 cfs of the 4.5 cfs. c. Priority No. 1918-4: 7.5 cfs of the 15.0 cfs. **II. Exhibit G-1a. is added to the Application.** Exhibit G-1a. is attached to the Application. **III. Exhibit G-1b. is added to the Application.** Exhibit G-1b. is attached hereto. **IV. Exhibit G-2 is added to the Application.** Exhibit G-2 is attached to the Application. **V. The first sentence of Section IV.A of the Application is stricken in its entirety and replaced with the following:** LAWMA seeks to change each of the water rights described in Section III.A., B., C., D., E., F. and G. from agricultural irrigation purposes to use for irrigation, domestic, commercial, municipal, industrial, fire protection, recreation, fish and wildlife preservation and propagation, and all other beneficial uses of LAWMA and its members by means of augmentation or replacement of depletions in the Arkansas River or its tributaries. **VI. A new Section IV.B.3. is added to the Application as follows:** 3. LAWMA requests the Keesee Ditch water right described in Section III.G., above, be changed to include storage in John Martin Reservoir. The location of John Martin Reservoir is described in Section IV.B.2., above. **VII. The first sentence of Section VI.C.1. of the Application is stricken in its entirety and replaced with the following:** The 1980 Operating Plan provides that 60% of the water attributable to conservation storage in JMR shall be for the Colorado Water District 67 ditches including the Stubbs Ditch, X-Y Canal, Manvel Canal, Lamar Canal, Fort Bent Ditch and Keesee Ditch water rights described in Section III, above, that LAWMA owns or has the right to use and 40% for Kansas (hereinafter referred to as "Article II Storage Accounts"). **VIII. The second sentence of Section VI.C.2. of the Application is stricken in**

its entirety and replaced with the following: LAWMA intends to use the Offset Account to facilitate its members' compliance with the Compact by delivering replacement water from the: (a) Highland Canal water rights described above in Section III.F.; (b) Article II Storage Account water described above in Section VI.C.1.; (c) Keesee Ditch water right described above in Section III.G.; or (d) other water delivered to the Offset Account. **IX. Exhibit G to the Application is amended by adding the structures described on Exhibit G attached to the Application. X. A new Section VIII.M. is added to the Application as follows:** M. Keesee Ditch Headgate. Fort Bent Ditch Company, P. O. Box 485, Lamar, Colorado 81052. In all other aspects the Application remains unchanged. (First Amendment to Application and attachments, 12 pages)

CASE NO. 04CW38 – DENNIS STEINER and JONI STEINER, 17613 CR 31.9, Weston, CO 81091

Application for Surface Water Rights
Las Animas County

2. Name of structure: Spring and pond. **3. Legal description of each point of diversion:** Las Animas County, SW ¼ of the NW ¼ Section 24, Township 32 South, Range 68 West, 6th P.M., 1400 feet from the North section line and 120 feet from the West section line. **Street Address:** 17613 CR 31.9, Weston, CO. **Subdivision:** Cimarron Ranch 1. **4. Source:** Spring. **5. A. Date of initiation of appropriation:** March 2002. **B. How appropriation was initiated:** Watered horses, irrigation. **C. Date water applied to beneficial use:** March 2002. **6. Amount claimed:** 5 cfs Absolute. **7. Use or proposed use:** Spring – drinking water; pond – irrigation, swimming, watering horses. **A. If irrigation, complete the following: Number of acres historically irrigated: _____; proposed to be irrigated: 5 acres. Legal description of acreage:** SW ¼ NW ¼ Section 24, Township 36, Range 68. **B. If non-irrigation, describe purpose fully:** We would like to develop our spring for drinking water usage. The pond will be used as an educational tool and recreational swimming. **8. Name(s) and address(es) of owners of the land upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Joni Steiner, 17613 CR 31.9, Weston, CO 81091; Dennis Steiner, 3327 Chestnut Avenue, Trevoise, PA 19053.
(Application, 3 pages)

CASE NO. 04CW39 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 04CW40 – EUGENE AIELLO, 206 Nona Avenue, Trinidad, CO 81082

Application for Surface Water Rights
Las Animas County

2. Name of structure: Aiello Drain Ditch. **3. Legal description of each point of diversion:** Las Animas County, SE ¼ of the SW ¼ Section 5, Township 33 South, Range 63 West, 6th P.M., 660 feet from the South line and 1,980 feet from

the West Line. **4. Source:** Drain ditch tributary to the Purgatoire River. **5. A. Date of initiation of appropriation:** August 22, 1982. **B. How appropriation was initiated:** Construction of ditch. **C. Date water applied to beneficial use:** August 22, 1982. **6. Amount claimed:** 1.0 cfs Absolute. **7. Use or proposed use:** Stockwater, wildlife propagation, recreation, augmentation for all beneficial uses. **A. If irrigation, complete the following: Number of acres historically irrigated:** 0; **proposed to be irrigated:** 0. **Legal description of acreage:** N/A. **B. If non-irrigation, describe purpose fully:** The flow from this structure will be used for stock watering, recreation, wildlife propagation, and for augmentation of all recognized beneficial uses when in priority. **8. Name(s) and address(es) of the land upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicant.
(Application and attachments, 4 pages)

CASE NO. 04CW41 – EUGENE AIELLO, 206 Nona Avenue, Trinidad, CO 81082

Application for Water Storage Right
Las Animas County

2. Name of Reservoir: Aiello #1. **3. A. Legal description of location of dam:** Las Animas County, SE ¼ of the SW ¼ Section 5, Township 33 South, Range 63 West, 6th P.M., 660 feet from the South line and 1,980 feet from the West line. **B. If off-channel reservoir, name and capacity of ditch or ditches used to fill reservoir, and legal description of each point of diversion: Name of Ditch and capacity:** Aiello Drain Ditch. **Legal Description:** Las Animas County, SE ¼ of the SW ¼ Sec. 5, Township 33 South, Range 63 West, 6th P.M. **4. Source:** Aiello Drain Ditch, tributary to the Purgatoire River. **5. A. Date of appropriation:** August 22, 1982. **B. How appropriation was initiated:** Construction of drain ditch. **C. Date water applied to beneficial use:** N/A. **6. Amount claimed: A. In acre feet:** 1.0 Conditional. **B. If off-channel reservoir, rate of diversion in cfs for filling the reservoir:** 1.0 Absolute. **7. Use: A. If irrigation, complete the following: (1) Number of acres historically irrigated:** 0; **(2) Total number of acres proposed to be irrigated:** 0. **Legal description of acreage:** N/A. **B. If non-irrigation, describe purpose fully:** Storage and releases from this impoundment will be used for stock watering, recreation, wildlife propagation and augmentation for all beneficial uses. **8. Surface area of high water line:** 0.2 acres. **A. Maximum height of dam in feet:** 6.0; **B. Length of dam in feet:** 12.0. **9. Total capacity of reservoir in acre feet:** 1.0; **Active capacity:** 1.0; **Dead storage:** 0. **10. Name(s) and address(es) of owner(s) of the land upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicant.
(Application and attachments, 5 pages)

CASE NO. 04CW42 – DOMINIC C. FOTI, JR. and JONI S. FOTI, 14650 Highway 83, Colorado Springs, CO 80921 (Robert E. Schween, Robert E. Schween, P.C., Attorney for Applicants, 8231 South Winnipeg Circle, Aurora, CO 80016)

Application for Nontributary and Not-Nontributary Ground Water Rights in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills Aquifers
El Paso County

2. Well Permits: Well permit applications for the wells to be constructed pursuant to this application and subsequent decree will be applied for at such time as Applicants are prepared to construct such wells pursuant to the terms of the decree to be entered in this matter. **3. Names, Description, and Estimated Depths of Wells:** A. The wells which will withdraw ground water from each aquifer underlying the land described in paragraph 10 below will be located on "Applicants' Property," consisting of 28.7 acres, more or less, in the SW ¼, Section 34, Township 11 South, Range 66 West of the 6th P.M., in El Paso County, Colorado. See **Exhibit A**, General Location Map, **Exhibit A-1**, Site Location Map, and **Exhibit B**, Property Legal Description, 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. Applicants request the right to construct such wells anywhere on the tract to recover the entire allowable annual amounts from each aquifer as claimed herein or as determined by the Court pursuant to its retained jurisdiction. B. The estimated depths to the base of the aquifers at the location of Applicant's Property are as described in the Denver Basin Rules, 2 CCR 402-6. Actual well completion depths will comply with the well permit, but may vary slightly from the permitted depth depending on the topography at any particular location. **4. Source of Water Rights:** A. Not-Nontributary Ground Water. The ground water contained in the Dawson and Denver aquifers at this location is not-nontributary ground water as defined at § 37-90-103 (10.7), C.R.S. Applicants may not obtain a well permit and withdraw such not-nontributary ground water until an augmentation plan is approved for the replacement of injurious depletions caused thereby. See § 37-90-137(9), C.R.S. *No such plan is sought by this application.* B. Nontributary Ground Water. The ground water contained in the Arapahoe and Laramie-Fox Hills aquifers at this location is nontributary ground water as defined at § 37-90-103 (10.5), C.R.S. Applicants may obtain a well permit, withdraw, and fully consume such nontributary ground water, except that Applicants must relinquish two-percent (2%) of such ground water withdrawn to the stream system, as required by the Denver Basin Rules. Such relinquishment may be by any means selected by the Applicants. **5. Background:** Applicants file this application for water rights pursuant to § 37-92-203, C.R.S., as a water matter concerning nontributary and not-nontributary ground water. Applicants are the owners of the overlying land as described herein. **6. Date of Initiation of Appropriation:** Not Applicable. **7. Right to Ground Water Claimed Herein:** A. Applicants seek a decree for all ground water determined to be available from the named aquifers underlying the tract of land described herein based upon a statutory aquifer life of 100 years. B.

Applicants assert that withdrawal in the average annual amounts determined to be available from the named aquifers can be made pursuant to § 37-90-137(4) and (9), C.R.S., without causing material injury to the vested rights of others. A separate Court-approved plan for augmentation must be obtained before any such not-nontributary ground water adjudicated herein may be produced. **8. Estimated Amounts and Rates of Withdrawal:** **A. Estimated Average Annual Amounts Available:** The estimated average annual amounts of withdrawal available from the named aquifers underlying Applicants' Property, as indicated below, are based upon interpretations of information contained in the Denver Basin Rules, 2 C.C.R. 402-6.

<u>Aquifer</u>	<u>Acres</u>	<u>Sat. Thickness</u>	<u>Sp. Yield</u>	<u>Ave. Ann. Amt.</u>
Dawson	28.7	300 Feet	20%	17.2 AF
Denver	28.7	430 Feet	17 %	21.0 AF
Arapahoe	28.7	225 Feet	17 %	11.0 AF
Laramie-Fox Hills	28.7	185 Feet	15 %	8.0 AF

Notes: (1) The final average annual amounts available from each aquifer will depend upon the actual hydrogeology and the legal entitlement of Applicants to all ground water in the subject aquifers underlying Applicants' Property. (2) An exempt domestic well, Well Permit No. 179222, completed into the Denver aquifer, is located on the property. **B. Average Pumping Rates:** The average pumping rate for wells to be completed into the four named aquifers is expected to vary from 15 to about 250 gpm. Applicants request that the pumping rates for each well may be as great as necessary to withdraw the full annual allocation of water from each named aquifer. **9. Well Fields:** Subject to obtaining an adequate Court approved augmentation plan therefor, Applicants have the right to withdraw all of the legally available ground water in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the tract of land described in Paragraph 11 below, through any well(s) initially permitted in each aquifer and any additional well(s) which may become part of the Applicants' well field. Applicants request that the initial well(s) permitted, along with any additional well(s) completed into the same aquifer, shall be treated as a well field. As additional wells are constructed, well permit applications will be filed in accordance with § 37-90-137(10), C.R.S. **10. Proposed Uses:** A. Applicants request the right to use all ground water subject to this application. Such water is to be used, reused, successively used and, after use, leased, sold or otherwise disposed of for the following beneficial purposes: *domestic, industrial, agricultural, commercial, irrigation, stock watering, storage, recreational, fish and wildlife propagation, fire protection, and any other beneficial purposes, to be used on or off the land described in Paragraph 11.* B. Such water will be produced for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of stream depletions caused by the use of water from other sources, and for augmentation. **11. Description of the Land Overlying Subject Ground Water:** The property overlying the ground water claimed herein consists of a tract of land with a total acreage of 28.7 acres, more or less, located in El Paso County, and generally described as follows: **A Tract located in portions of the SW ¼ of the SW ¼ and the SE ¼ of the SW ¼, lying West of the westerly right-of-way of Colorado**

State Highway 83, in Section 34, Township 11 South, Range 66 West of the 6th P.M., in El Paso County. See Exhibit A, Exhibit A-1, and Exhibit B. 12.

Jurisdiction: The Water Court has jurisdiction over the subject matter of this application pursuant to §§ 37-92-302(2) and 37-90-137(6), C.R.S. **13. Name of**

Owner of the Land on Which Structures are Located: The owners of the Tract described herein are the Applicants, Dominic C. Foti, Jr., and Joni S. Foti. **14.**

Additional Remarks: A. Applicants request the Court enter a decree granting: (1) A quantification and adjudication of the ground water rights in the aquifers named herein to which Applicants are entitled to develop and use; (2) The right to adjudicate an augmentation plan for use of such not-nontributary ground water herein at a later date under a separate caption and case number; (3) The right to withdraw more than the average annual amount estimated in paragraph 5B above pursuant to Rule 8A of the Statewide Rules, 2 C.C.R. 402-7; and (4) The right to revise the above estimate of the average annual amounts available for withdrawal upward or downward, based on better or revised data, without the necessity of amending this application or republishing same. B. In compliance with House Bill 93-1060 (§ 37-92-302(2)(b), C.R.S.), Applicants hereby give notice that there are no persons or entities who have a lien or mortgage on, or deed of trust to, the overlying land recorded in the county in which the overlying land is located. Applicants own such land free and clear of all such encumbrances. **WHEREFORE, Applicants Dominic C. Foti, Jr., and Joni S. Foti** request a ruling and decree granting the application herein and awarding the ground water rights claimed herein as final water rights, except as to those issues for which jurisdiction of the Court will be specifically retained, so that the State Engineer may issue well permits for such well(s) as Applicants request under this decree, subject to the limitations described in such ruling and decree. Further, Applicants request that the ruling and decree find that -- (1) Applicants have complied with § 37-90-137(4), C.R.S., and ground water is legally available for withdrawal from the named aquifers through wells to be located on the Applicants' Property, EXCEPT THAT withdrawals of not-nontributary ground water may not be withdrawn until an augmentation plan is approved therefor; (2) Jurisdiction is to be retained with respect to the average annual amounts of withdrawal specified herein to provide for the adjustment of such amounts to conform to actual local aquifer characteristics from adequate information obtained from wells or test holes drilled on or near Applicants' Property, pursuant to § 37-92-305(11), C.R.S.; (3) Applicants or their successors may construct wells into the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers anywhere on the subject property, so long as statutory well spacing requirements are met, without the necessity of filing any further amendments to this application, republishing this application, or reopening the decree to be awarded; (4) Vested or conditionally decreed water rights of others will not be materially injured by the withdrawals proposed herein; (5) In accordance with § 37-92-305(11), C.R.S., no findings of reasonable diligence are required to maintain the water rights applied for herein; and (6) The nature and extent of the water rights claimed herein are defined by § 37-90-137(4), C.R.S., and the withdrawals sought to be made are based upon an aquifer life of 100 years and upon the quantity of ground water, exclusive of any artificial recharge, underlying the land shown on **Exhibit A** and

described in **Exhibit B** to the Application.

FURTHER, Applicants request this Court grant such other relief as it deems proper in the premises.

(Application and attachments, 9 pages)

CASE NO. 04CW43 – JOE E. and LORRAINE VARGAS, 664 CR 575, Gardner, CO 81040

Application for Surface Water Rights

Huerfano County

2. Name of structure: Vargas Spring. **3. Legal description of each point of diversion:** Huerfano County, SW ¼ of the NE ¼ Section 9, Township 27 South, Range 69 West, 6th P.M., 1770 feet from the North line and 1080 feet from the East line. **Subdivision:** Colorado Land & Grazing. **Lot:** 50 Unit CC-1. **Optional Additional Description: GPS location information in UTM format. Required settings for GPS units are as follows: Format must be UTM; Zone must be 13; Units must be Meters Datum must be NAD27 (CONUS) and; Units must be set to true north. Were points averaged? Yes. Northing 0490163; Easting 4174395.** **4. Source:** Spring, Oak Creek – tributary to Huerfano River. **5. A. Date of initiation of appropriation:** September 2002. **B. How appropriation was initiated:** Spring box, water line and stock tank installed. **C. Date water applied to beneficial use:** September 2002. **6. Amount claimed:** .0178 cfs Absolute. **7. Use or proposed use:** Livestock watering – domestic animal watering – household use – home garden. **A. If irrigation, complete the following: Number of acres historically irrigated:** Less than one; **proposed to be irrigated:** less than one. **Legal description of acreage:** Lot 50, Unit CC-1, Farisita, CO. **B. If non-irrigation, describe purpose fully:** _____. **8. Name(s) and address(es) of owner(s) of the land upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicants.

(Application, 3 pages)

CASE NO. 04CW44 - GOLDWEST III LLC, c/o James Hull, 2924 Country Club Drive, Colorado Springs, CO 80909 (Henry D. Worley, MacDougall, Woldridge & Worley, P.C., Attorneys for Applicant, 530 Communication Circle, Suite 204 Colorado Springs, CO 80905-1743)

Application for Adjudication of Denver Basin Ground Water and for Approval of Plan for Augmentation

In El Paso County

I. APPLICATION FOR DENVER BASIN WATER RIGHTS.

2. Names of wells and permit, registration, or denial numbers: None. **3. Legal description of wells:** At any location on the Property. The Property itself consists of approximately 16.56 acres located in the SE1/4 NE1/4 Section 33, T. 11 S., R. 67 W., 6th P.M., El Paso County, Colorado. The legal description 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. **4. Source:** Not nontributary Dawson aquifer; not nontributary Denver aquifer; nontributary Arapahoe aquifer; nontributary Laramie-Fox Hills aquifer. **5. A. Date of appropriation:** Not applicable. **5.B. How appropriation was initiated:** Not applicable. **5.C. Date water applied to beneficial use:** Not applicable. **6. Amount claimed:** Not nontributary Dawson aquifer, 15 g.p.m., 1.49 acre feet annually, absolute; not nontributary Denver aquifer, 45 g.p.m., 7.32 acre feet annually, absolute; nontributary Arapahoe aquifer, 250 gpm, 10.13 acre feet annually, absolute; nontributary Laramie-Fox Hills aquifer, 150 gpm, 4.47 acre feet annually, absolute. The above amounts will be changed in any proposed decree submitted to the Court for signature to conform to the State Engineer's Determination of Facts. The water court will be asked to retain jurisdiction over such decree to enter a final determination of the amount of water available for appropriation from each aquifer based on geophysical logs for such wells. **7. Proposed use:** Indoor residential and commercial, landscape and garden irrigation, fire fighting, stock water and augmentation, and water amenities such as but not limited to hot tubs, spas, decorative ponds, swimming pools. **8. Name and address of owner of land on which wells will be located:** Same as Applicant as noted above. **9. Remarks:** There is one lien or encumbrance of record on the Property, owned by Kurt M. Ostrow and Louise Ostrow. Applicant has given Mr. and Mrs. Ostrow notice of this application by registered or certified mail, return receipt requested, as required by C.R.S. § 37-92-302(b); a copy of that letter is attached to the Application as Exhibit B. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.** **10. Name of structures to be augmented:** Up to three Denver aquifer wells. No other water rights are or will be diverted from these wells. **11. Previous decrees for water rights to be used for augmentation:** None. **12. Historic use:** Not applicable. **13. Statement of plan for augmentation:** Applicant intends to subdivide the Property into three residential lots, each of which will be served by individual on-lot wells which may pump no more than 0.7 acre foot (228,130 gallons) annually, each. Water from the three Denver aquifer wells will be used for indoor uses, most likely residential, on each of the three lots. Water use criteria for the most likely uses are as follows: indoor uses, 0.26 acre feet annually per single family dwelling, which is 10% consumptive based on the required use of nonevaporative Individual Sewage Disposal Systems ("ISDS") or a central type of discharging wastewater treatment facility; horses (or horse equivalent), 0.011 acre feet annually per head, 100% consumptive; landscape irrigation, 2.5 acre feet per acre for turf grass, 85% consumptive. So long as a single family dwelling or commercial facility with bathrooms is located on each lot, ISDS return flows alone will equal or exceed maximum stream depletions during the 300 year pumping period regardless of the uses made of the water not treated in the ISDS. Thus, other than a requirement that there be a single family dwelling or commercial facility with bathrooms on each lot, that uses nonevaporative ISDS or a discharging type of central wastewater treatment plant, water not so treated may be used for any decreed purpose in any amount, so long as the 0.7 acre foot annual limitation is not exceeded. Change of the type of wastewater treatment to central sewage treatment with direct discharge to the

stream shall not require an amendment to this plan for augmentation, but change to any other type of waste water disposal shall require an amendment to the plan for augmentation. Computer modeling indicates that depletions to Monument Creek will gradually increase to a maximum of approximately 33% of pumping annually in the 300th year after pumping begins, and will decline thereafter. Applicant proposes to replace depletions during pumping with return flows from the ISDS, and to replace injurious post-pumping depletions with the nontributary Arapahoe or Laramie-Fox Hills aquifer water decreed herein, 630 acre feet of which will be reserved for that purpose. However, Applicant shall reserve the right to replace such depletions with any judicially acceptable source of augmentation water. Any final decree entered in this case shall provide that no more than 0.7 acre feet per year may be diverted from the each of the three Denver aquifer wells absent an amendment of this plan for augmentation.
(Application and attachments, 5 pages)

CASE NO. 04CW45 – CONRAD CISNEROS, P. O. Box 921, Walsenburg, CO 81089

Application for Surface Water Rights
Huerfano County

2. Name of structure: Springs – Cisneros #2 and Cisneros #8. **3. Legal description of each point of diversion:** Cisneros #2: Huerfano County, NW ¼ of the NW ¼ Section 30, Township 27 South, Range 70 West, 6th P.M., 680 feet from the North line and 450 feet from the West line. Cisneros #8: Huerfano County, NE ¼ of the NW ¼ Section 19, Township 27 South, Range 70 West, 6th P.M., 2530 feet from the South line and 1355 feet from the West line. **4. Source (as to both springs):** Spring – tributary to Palo Duro Creek. Tributary to the Huerfano River. **5. A. Date of initiation of appropriation (as to both springs):** January 1955. **B. How appropriation was initiated (as to both springs):** Spring box and piping for household use and stock. **C. Date water applied to beneficial use (as to both springs):** January 1955. **6. Amount claimed:** 0.0333 cfs Absolute for each spring. **7. Use or proposed use (as to each spring):** Domestic use and stock water. **A. If irrigation, complete the following: Number of acres historically irrigated: ____; proposed to be irrigated: ____.** **Legal description of acreage: ____.** **B. If non-irrigation, describe purpose fully (as to each spring):** For domestic use and livestock. **8. Name(s) and address(es) of owner(s) of the land upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicant.

(Application, 6 pages)

CASE NO. 04CW46 – SCOTT BOYD and LAURA DOWNING, Mount Elbert Lodge, P. O. Box 40, Twin Lakes, CO 81251 (Anthony L. Martinez, Attorney for

Applicants, 249 E Street, P. O. Box 767, Salida, CO 81201)

Application for Approval of Plan for Augmentation

Lake County

2. Name of structure to be augmented: Lady Elsie Pipeline. Are there other water rights diverted from this structure: No. **3. Previous decrees for water**

rights to be used for augmentation: The singular source of replacement water is a share of Twin Lakes Reservoir and Canal Company owned by Applicants. Decree information for Twin Lakes Reservoir and Canal Company is as follows:

(1) Twin Lakes Reservoir and Canal Company – Independence Pass Transmountain Diversion System. The Independence Pass Transmountain

Diversion System diverts water from the headwaters of Roaring Fork River and its tributaries, and carries such water through the Continental Divide for delivery to Lake Creek, a tributary of the Arkansas River. The System is decreed for 625 c.f.s. through the transmountain tunnel by Decree dated August 25, 1936, with an appropriation date of August 23, 1930, by the District Court, Garfield County, Civil Action No. 3082. The original Decree for the system was modified by a Decree in Case No. W-1901 (District Court, Water Division No. 5) dated May 12, 1976, which Decree contains additional limits more fully set forth therein. The land upon which most of the above diversion system is located is owned by the

United States of America and is administered by the Department of Agriculture, National Forest Service, Rocky Mountain Regional Office, 740 Simms, P. O. Box 25127, Lakewood, CO 80225. Its phone number is 303-275-5350. (2) Twin Lakes Canal and Reservoir Company – Twin Lakes Reservoir and Twin Lakes Reservoir Enlargement. Native water stored in Twin Lakes Reservoir pursuant to

the Decrees for the Twin Lakes Reservoir and Canal Company adjudicated in Civil Action No. 2346, District Court of Chaffee County, on July 14, 1913, with an appropriation date of December 15, 1896, for 20,645.3 acre-feet and March 29, 1987, for 33,806.7 acre-feet, as changed by Decree in Case No. W-3965, Water Division No. 2, entered April 19, 1974. The land upon which Twin Lakes Reservoir is located is owned by the United States of America and is administered by the Department of Agriculture, National Forest Service, Rocky Mountain Regional Office, 331 Main Street, Ordway, CO 81063. Its phone number is 719-267-4411. **Required Description:** Lake County, NE ¼ of the NW ¼ Section 27, Township 11 South, Range 81 West, 6th P.M., 400 feet from the North line and 1500 feet from the West line. All estimated; this Section has not been surveyed. Street Address: 10764 Highway #82, Twin Lakes, CO.

Optional Additional Description: GPS location information in UTM format. Required settings for GPS units are as follows: Format must be UTM; Zone must be 13; Units must be Meters; Datum must be NAD27 (CONUS); and Units must be set to true north. **Were points averaged?** No. **Northing** 39° 1.15 North; **Easting** 106° 26.188 West. **A. Source:** Black Cloud Creek, a tributary of Lake Creek. **B. Amount:** 1.0 c.f.s. **C. Appropriation:** August 1, 1939. Adjudication date July 7, 1969, Previous Adjudication date December 14, 1942.

D. Decreed use (if irrigation, include total acreage): Irrigation, industrial and domestic, No more than one acre of outside irrigation (lawn). **4. Historic use:** No diversion records exist for the Lady Elsie Pipeline. **5. Statement of plan for augmentation, covering all applicable matters under CRS 37-92-103(9), 302(1)(2) and 305(8). Give full details of plan, including a description of all water rights to be established or changed by the plan:** Applicants own and operate the Mount Elbert Lodge located less than 250 feet from the confluence of Black Cloud Creek and Lake Creek. Although the Lodge is open year round, the historic window of use is the months of May through October. The maximum number of guests per day at the Lodge is 50. In one year, the maximum number of "guest days" will be 10,800 days utilizing a figure of 50 gallons per day/per guest. The gross depletions will be 540,000 gallons per season. At a consumptive use of 10% for motels with septic tank and leach field sewage system, the Lodge will consume 54,000 gallons or .16 acre feet of water per year. This figure must be added to .039 for septic tank and leach field serviced facilities for owners quarters. The total maximum consumptive use for the Lodge is .20 acre feet per year. **6. Names and addresses of owners of the land on which structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** The Lady Elsie Pipeline Headgate and pipe are located on the Pike and San Isabel National Forests. The District Ranger is located in Leadville at 2015 North Poplar. Actual use will be on Lodge property owned by Applicants.
(Application and attachments, 6 pages)

CASE NO. 04CW47 (Water Division 2) and CASE NO. 04CW158 (Water Division 1) – HI-POINT HOME BUILDERS, c/o Wayne Intermill, Sole Proprietor of Hi-Point Home Builders, 4075 Arrowhead Drive, Colorado Springs, CO 80908 (Bradford R. Benning and Steven T. Monson, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903)

Application for Underground Water Rights and Plan for Augmentation
El Paso and Douglas Counties

II. APPLICATION FOR UNDERGROUND WATER RIGHTS, **A. Legal Description of Wells.** All wells will be located on Applicant's property, consisting of 19.59 acres described as the E1/2 NW1/4 NE1/4 of Section 24, T12S, R66W of the 6th P.M., El Paso County, Colorado ("Property"). The Property is more particularly described in the Exhibit A legal description and plot plan showing the Property. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Well permit applications for the wells to be drilled pursuant to this application and subsequent decree will be applied for prior to drilling wells into the Denver Basin aquifers which are the subject of this application. No exact location is requested for the proposed wells, as that information will be provided when the well permit applications are submitted. **B. Water Source.** 1. **Not Nontributary.** The ground water that will be withdrawn from the Dawson, Denver, and Arapahoe aquifers of the Denver Basin underlying the Property is not nontributary. The

Denver and Arapahoe aquifers underlying the Property are more than one mile from any point of contact between any natural stream, including its alluvium. Pursuant to C.R.S. §37-90-137(9)(c), the augmentation requirements for wells into the Denver and Arapahoe aquifers will require the replacement to the effected stream system of a total amount of water equal to 4 percent of the water withdrawn on an annual basis. Pursuant to C.R.S. 37-90-137(9)(c), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. 2. Nontributary. The ground water that will be withdrawn from the Laramie-Fox Hills Aquifer of the Denver Basin underlying the Property is nontributary. **D. Estimated Rates of Withdrawal and Ground Water Available**.

1. Estimated Rates of Withdrawal. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests 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 actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the 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), or withdrawn over a longer time based upon actual withdrawals or local government regulations. The estimated average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers are based upon the Denver Basin Rules. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

<u>Aquifer</u>	<u>Acres</u>	<u>Saturated Thickness (Feet)</u>	<u>Specific Yield (%)</u>	<u>Annual Average Withdrawn Acre Feet</u>
Dawson	19.59	129.7	20	4.78 ¹
Denver	19.59	376.3	17	12.53
Arapahoe	19.59	266.7	17	8.88
Laramie-Fox Hills	19.59	189.7	15	5.57

Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **E. Requested Uses**. The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, commercial, irrigation, stock water,

¹ The total average annual withdrawal for the Dawson aquifer is 5.08. Applicant reserves from this determination an amount of 0.3 annual acre feet for any future issuance of an exempt well for the subject property under C.R.S. §37-92-602. This reservation of 0.3 annual acre feet is made on the basis of 0.016 annual acre feet of Dawson aquifer ground water per surface acre of Applicant's 19.59 acre Property.

recreation, wildlife, fire protection, central water supply for such uses, and also for exchange and augmentation purposes. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall not be entitled to construct a well or use water from the not nontributary Dawson, Denver, or Arapahoe aquifers until a decreed augmentation plan has been entered by this Court, covering the out-of-priority stream depletions from such not nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c).

F. Well Field. Applicant requests that it be permitted to produce the full legal entitlement from the respective Denver Basin aquifers underlying the Property through any combination of wells constructed into each aquifer on the Property. Applicant requests that these wells be treated as a well field. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed from the Denver Basin aquifers underlying Property, so long as the sum of the total withdrawals from all the wells in the aquifer 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 occurs first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifer underlying the Property.

G. Description of Land Overlying Subject Ground Water. The land overlying the ground water which is the subject of this application as described previously consists of 19.59 acres described as the E1/2 NW1/4 NE1/4 of Section 24, T12S, R66W of the 6th P.M., El Paso County, Colorado more particularly described in the Exhibit A legal description and incorporated by reference.

H. Name and Address of Owner of Land Upon Which Wells are to Be Located. The Applicant, as set forth in Section I above, is the owner of the property on which the wells are to be located.

III. PLAN FOR AUGMENTATION.

A. Structures to be Augmented. The structures to be augmented consist of up to four wells completed or to be completed in the not nontributary Dawson, Denver and/or Arapahoe aquifers of the Denver Basin underlying the Property, including any replacement wells. Applicant requests the right to have a central well system as an alternative for all or part of the water allotment for the individual wells.

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 Dawson, Denver, and/or Arapahoe aquifer wells to be pumped as set forth in this plan for augmentation, together with water rights from the nontributary Laramie-Fox Hills aquifer for post pumping depletions hereunder.

C. Statement of Plan for Augmentation.

1. *Diversions.* Four augmented wells are to be used for the water supply for up to four single family residences and other uses as stated herein upon the Applicant's Property. The maximum annual pumping from each well for these uses shall not exceed 0.465 annual acre feet and a total of approximately 1.86 acre feet for all four wells.

2. *Depletions.* The Applicants' consultant has

operated the State Engineer's Denver Basin Ground Water Flow Model for the determination of stream depletions from Dawson aquifer well pumping. The actual stream depletions during the plan term are a maximum of approximately 13.86 percent of the Dawson aquifer well pumping, assuming 300 years of withdrawal under this plan. The actual stream depletions associated with the Dawson aquifer will therefore be a maximum of approximately 0.065 annual acre feet per lot with a total stream depletion under this plan of approximately 0.258 annual acre feet for all four lots. Attached to the Application as Exhibit B are the Dawson Aquifer stream depletion factors under the ground water flow model. To the extent Applicant utilizes ground water in the Denver and/or Arapahoe aquifers, 4 percent of the water withdrawn on an annual basis shall be replaced to the effected stream system. 3. *Replacement.* Applicant's augmentation water during the plan term will consist of septic return flows from in-house use. Waste water from the in-house residential uses will be disposed of through a non-evaporative septic system that is determined to have return flows to the tributary stream system of 90 percent (95 percent if a central water system is utilized) of the in-house residential pumping of 0.26 annual acre foot per residence. Therefore, return flows total 0.234 annual acre feet per residence, and 0.936 for all four residences. These return flows will augment the tributary stream system in an amount greater than the maximum actual stream depletion amount from the Dawson aquifer of 0.258 annual acre feet and the 4 percent replacement requirement, which totals approximately 0.074 annual acre feet for all four lots, for the Denver and Arapahoe aquifers. Therefore, Applicant's return flows prevent material injury to other vested water rights. Applicants use of the remaining pumping allotment, which totals approximately 0.82 annual acre feet for all four lots, will be for commercial, irrigation, stock water, recreation, wildlife, and/or fire protection. Applicant believes that fifteen percent of irrigation water would accrue to the stream as return flows which could be used for additional augmentation. Applicant does not at this time, claim the irrigation return flows as part of this augmentation plan, but Applicant preserves its claim to those return flows and does not waive its rights or claims thereto. This Application is being filed in Water Divisions 1 and 2 because depletions may occur to both divisions. The return flows set forth above will accrue to only the Arkansas River system where most depletions occur. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. For the replacement of post-pumping depletions, Applicant will reserve up to 557 acre feet of water from the nontributary Laramie-Fox Hills aquifer underlying the Applicant's Property, less the amount of actual stream depletions replaced during the plan pumping period. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Applicant claims that post pumping depletions will be noninjurious and do not need to be replaced and under the Court's retained jurisdiction Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used, as

so necessary, to replace any injurious post pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to file for and receive well permits for up to four Dawson, Denver and/or Arapahoe aquifer wells for the uses in accordance with this Application. **IV. REMARKS.** Additional remarks are as follows: 1. Applicant requests a finding that it has complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested nontributary wells and by the requested not nontributary wells 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 300 years, however the length of the plan for a particular well or wells 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. Applicant will comply with C.R.S. §37-90-137(9)(b) requiring the relinquishment of the right to consume no more than two percent of the amount of the nontributary ground water withdrawn. 4. 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. 5. Before any wells are constructed, applications for well permits will be filed with the State Engineer's office, and well permits shall be granted in accordance with the decree pursuant to this application. 6. The Applicant requests 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. 7. 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 Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 8. The Applicant intends to waive the 600 feet well spacing requirement for the wells to be located upon the Applicant's Property. 9. There are no encumbrances of record on the property. WHEREFORE, the Applicant requests that its Application for Underground Water Rights and Plan for Augmentation, as stated and set forth herein, be granted and a decree entered, and for such other and further relief as the Court deems appropriate.
(Application and attachments, 14 pages)

CASE NO. 04CW48 – APPEAL OF SUBSTITUTE WATER SUPPLY PLAN APPROVAL. This is an appeal of the approval of a substitute water supply plan approval and is simply being listed in the resume to account for the case number in consecutive order.

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 August 2004, (forms available at Clerk's office, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$70.00). 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 8th day of July, 2004.

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: July _____, 2004