

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING JUNE 2009

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed during June 2009, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 08CW47 - CITY OF FOUNTAIN, 116 South Main Street, Fountain, CO 80817 and WIDEFIELD WATER & SANITATION DISTRICT, 37 Widefield Boulevard, Colorado Springs, CO 80911 (Please direct all correspondence or inquiries regarding this matter to the attorneys for Fountain and Widefield: Cynthia F. Covell, Alperstein & Covell, P.C., Attorneys for City of Fountain, 1600 Broadway, Suite 2350, Denver, CO 80202; (303) 894-8191; and Sarah A. Klahn and Matthew L. Merrill, White & Jankowski, LLP, Attorneys for Widefield Water & Sanitation District, 511 Sixteenth Street, Suite 500, Denver, CO 80202; (303) 595-9441)

Application for Change of Water Rights

CUSTER COUNTY, COLORADO

2. Decreed Name of Structures for which Change is Sought: 2.1 W.A. Bell Ditch No. 1. The W.A. Bell Ditch No. 1 diverts a total of 3.71 cfs out of the Alvarado (a/k/a Cheesefactory or Neave) Creek. The W.A. Bell Ditch No. 1 is located on the east side of the Alvarado Creek at a point 16 rods west and 2 rods north of the Southeast corner of the SE ¼ of the NW ¼ of Section 24, Township 22 South, Range 73 West of the 6th P.M. in Custer County, Colorado. 2.2. W.A. Bell Ditch No. 2. The W.A. Bell Ditch No. 2 diverts a total of 3.38 cfs out of the Venable (a/k/a/ Bothwell) Creek. The W.A. Bell Ditch No. 2 is located on the northwest side of the Venable Creek at a point 50 rods south and 23 rods west of the center of Section 23, Township 22 South, Range 73 West of the 6th P.M. in the SW ¼ of the same Section 23 in Custer County, Colorado. 2.3. W.A. Bell Ditch No. 3. The W.A. Bell Ditch No. 3 diverts a total of 8.608 cfs out of the Venable (a/k/a Bothwell) Creek. The W.A. Bell Ditch No. 3 is located on the east bank of the Venable Creek at a point 36.5 rods east and 5.5 rods north of the center of Section 22, Township 22 South, Range 73 West of the 6th P.M. in Custer County, 38 Colorado. **3. Prior Decrees:** 3.1. Original Adjudication. The W.A. Bell Ditch Nos. 1, 2 and 3 (the "Subject Water Rights") were awarded priorities by the Findings and Decree dated August 26, 1893 by the District Court of the 11th Judicial District of the State of Colorado, in and for the County of Fremont, In the Matter of the General Adjudication of Water Rights in Water District No. 13, Water Division No. 2. 3.1.1. W.A. Bell No. 1 was awarded Priority No. 30 for a direct flow right of 3.71 cfs out of Alvarado (a/k/a Cheesefactory or Neave) Creek with an appropriation date of August 31, 1871 for irrigation purposes. Fountain and Widefield own 2.56 cfs out of the 3.71 cfs decreed to W.A. Bell

Ditch No. 1. 3.1.2. W.A. Bell Ditch No. 2 was awarded Priority No. 23 for a direct flow right of 3.38 cfs out of Venable (a/k/a Bothwell) Creek, with an appropriation date of June 1, 1871 for irrigation purposes. Fountain and Widefield own 2.61 cfs out of the 3.38 cfs decreed to the W.A. Bell Ditch No. 2. 3.1.3. W.A. Bell Ditch No. 3 was awarded Priority No. 114 for a direct flow right of 8.608 cfs out of Venable (a/k/a Bothwell) Creek, with an appropriation date of May 1, 1875 for irrigation purposes. Fountain and Widefield own 6.3825 cfs out of the 8.608 cfs decreed. W.A. Bell Ditch No. 3 was also awarded Priority Nos. 35 and 55 for a combined total of 2.152 cfs, but these Applicants do not own an interest in these priorities, and they are not subject to the claims that have been made herein. **3.2. Prior Change Cases.** 3.2.1. Beardsley v. Kelling et al. Decree entered by the Custer County District Court on December 16, 1908 confirming a four day rotation schedule for the period between March 15 throughout the irrigation season for *inter alia* the W.A. Bell Ditch No. 1 between George Beardsley and Allen Bates (predecessor-in-interest to the Applicants). 3.2.2. Findings of Fact, Conclusions of Law and Decree entered in Case No. W-4321 on January 17, 1977 by the District Court in and for Water Division No. 2 for a Plan for Augmentation and to change 2.56 cfs of W.A. Bell Ditch No. 1; 2.61 cfs of W.A. Bell Ditch No. 2, 6.3825 cfs of W.A. Bell Ditch No. 3, Priority No. 114; the Lea Adams Well, Permit No. 1555 for 1.25 cfs with an appropriation date of June 3, 1963; and 1.20 cfs of A. Katzenstein Ditch No. 2. 3.2.3. Findings of Fact, Conclusions of Law, Judgment and Decree entered in Case No. W-4370 on April 22, 1980 by the District Court in and for Water Division No. 2 finding that Lea and Celesta Adams acquired a 0.77 cfs interest in W.A. Bell Ditch No. 2 from Frank Schneider by adverse possession and changing 0.85 cfs of W.A. Bell Ditch No. 1, 0.4105 cfs of W.A. Bell Ditch No. 3, Priority Nos. 35 and 55, and 1.417 cfs of W.A. Bell Ditch No. 3, Priority No. 114, all owned by Frank Schneider, to alternate points of diversion. 3.2.4. Judgment and Decree entered in Case No. 80CW90 on August 31, 1981 by the District Court, Water Division No. 2 changing 0.70 cfs of Lea and Celesta Adams' 1.7415 cfs interest in the W.A. Bell Ditch No. 3, Priority Nos. 35 and 55 to the Adams Well for use for municipal purposes. 3.2.5. Findings of Fact, Conclusions of Law and Decree Approving Change of Water Rights and Vacating Decree in Case No. W-4321 entered on September 12, 1996 by the District Court, Water Division No. 2 resulting in 2.56 cfs of the W.A. Bell Ditch No. 1, 2.61 cfs of the W.A. Bell Ditch No. 2, and 6.3825 cfs of W.A. Bell Ditch No. 3 being changed back to irrigation use on the NE ¼ of Section 23 and the N ½ of Section 24, Township 22 North [Court records indicate this location to be in Township 22 South], Range 73 West of the 6th P.M. **4. Proposed Change:** 4.1. Historic Use: The water rights owned by Fountain and Widefield have historically been used to irrigate approximately 486 acres of land known as the H20 Ranch (a/k/a the Adams Ranch). The historically irrigated 39 lands consist of the N ½ of Section 24 and the NE ¼ of Section 23, Township 22 South, Range 73 West of the 6th P.M. in Custer County, Colorado. 4.2. Change in Type of Use: Fountain and Widefield seek to quantify the historic consumptive use attributable to the Subject Water Rights and to change their use from the previously decreed use to all municipal uses, including but not limited to domestic, commercial, industrial, recreation, piscatorial, wildlife, irrigation, replacement and substitution, exchange, recharge and storage of the previously decreed direct flow rights for subsequent use within the Fountain and Widefield service areas as they now exist and as they may exist in the future. This request includes the right

to use and reuse such water to extinction. The Subject Water Rights will continue to be diverted and measured at the currently decreed points of diversion and then returned to the stream. Any consumptive use quantified in this case shall be delivered via Alvarado and Venable Creeks to Grape Creek, then to the Arkansas River for delivery to Pueblo Reservoir for use by Fountain and Widefield either on a direct flow basis through the Fountain Valley Conduit, or for storage and later use. The use of any consumptive use quantified in this case in a particular augmentation plan, exchange or recharge plan shall require a new water court application to be filed by Fountain and/or Widefield. Return flows from the water rights have historically accrued to Taylor Creek, Alvarado Creek and Venable Creek. Applicants will replace historical return flows in time, location and amount as necessary to prevent injury to other water rights.

4.3 Change in Place of Use: Fountain and Widefield seek to change the place of use of the consumptive use portion of the Subject Water Rights to the service areas of the City of Fountain and the Widefield Water & Sanitation District as they currently exist and may exist in the future. The Fountain and Widefield service areas are generally located in an area bounded by Townships 15 and 16 South and Ranges 64, 65 and 66 West of the 6th P.M. in El Paso County, Colorado. Pueblo Reservoir is generally located in Section 36, Township 20 South, Range 66 West of the 6th P.M. in Pueblo County, Colorado.

4.4. Alternate Point of Diversion. The current location of the W.A. Bell Ditch No. 2 headgate on Venable Creek is only a few hundred yards upstream of the current location of the W.A. Bell Ditch No. 3 headgate. There are no intervening diversions between the two headgates. Applicants seek to make the point of diversion for their interest in the W.A. Bell Ditch No. 2 an alternate point of diversion for the W.A. Bell Ditch No. 3.

5. Proposed Terms and Conditions: Terms and conditions imposed on the change of Fountain and Widefield's interest in the Subject Water Rights shall include the following:

5.1. Maximum annual volumetric diversions will be imposed, based on historic use of the Subject Water Rights.

5.2. Twenty year maximum diversion limitations will be imposed.

5.3. Maximum monthly diversion limitations will be imposed.

5.4. Diversions and measurement of the Subject Water Rights at the original points of diversion may only take place during the historic irrigation season.

5.5. Maximum net depletions will be established for the irrigation season when there is a valid downstream call.

5.6. Return flow patterns during the irrigation and non-irrigation season will be maintained. Replacements will be made during the non-irrigation season in accordance with the historic pattern of such return flows when there is a valid downstream call.

6. Owners of Land on which Structures are Located:

6.1. W.A. Bell Ditch No. 1 and W.A. Bell Ditch No. 3: the City of Fountain.

6.2. W.A. Bell Ditch No. 2: Charles Koch, 1431 Walnut Street, Canon City, CO 81212.

6.3. Pueblo Reservoir: United States Department of Interior, Bureau of 40 Reclamation, 11056 W. County Road 18E, Loveland, CO 80537.

7. Diversion Records and Irrigated Area. Summaries of records of actual diversions of the W.A. Bell Ditch Nos. 1, 2 and 3 for the water years 1970 through 2006 are attached to the Application as Exhibit 1. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. A map depicting the lands historically irrigated by the W.A. Bell Ditch Nos. 1, 2 and 3 is attached to the Application as Exhibit 2. ACCORDINGLY, Fountain and Widefield request that the Court enter a decree granting this application for change of water rights.

Statements of Opposition in Case

No. 08CW47 shall be filed no later than thirty (30) days after the date of publication of this notice.

CASE NO. 08CW61 – CITY OF MANITOU SPRINGS, a Colorado Municipal Corporation, 606 Manitou Avenue, Manitou Springs, CO 80929 (Henry D. Worley, MacDougall, Woldridge & Worley, PC, 530 Communication Circle, Suite 204, Colorado Springs, Colorado 80905 (719) 520-9288).

Amendment to Application for Conditional Appropriative Rights of Exchange

PUEBLO AND EL PASO COUNTIES

Paragraph 2.A.II is amended from its original indication that the exchange right sought for the “Fountain Creek Exchange” is for 5.0 cfs conditional. Applicant instead applies for a decree for the “Fountain Creek Exchange” which reflects that 4.55 cfs is sought to be decreed as an absolute right of exchange, priority date June 9, 2009, and 0.45 cfs are sought to be decreed as conditional water rights. On June 8, 2009, 9.02 acre feet were stored in Manitou Reservoir out-of-priority, and were replaced by exchange on June 9, 2009, by the release of 9.02 acre feet of Project Water from Manitou Springs’ account in Pueblo Reservoir. This exchange was administratively approved by the Division of Water Resources.

CASE NO. 09CW78 - JOE E. GONZALES and HELEN GONZALES, 1227 E. Third Street, Pueblo, CO 81001; (719) 542-9056

Application to Make Absolute

HUERFANO COUNTY

Name of structure: Gonzales Springs 1, 2 and 3. **Describe conditional water rights including the following information from the Referee’s Ruling and Judgment and Decree:** **Date of Original Decree:** May 22, 1990; **Case No.:** 90CW5. **Court:** Div. No. 2. **Subsequent decrees awarding finding of diligence:** 96CW52(90CW5) - December 11, 1996; 02CW168(90CW5) - May 19, 2003. **Legal description:** All three springs are located in the NW ¼ of the NW ¼ Section 2, T25S, R69W, 6th P.M., Huerfano County, Colorado, more specifically described as follows: Spring No. 1 being approximately 300 feet from the North line and 650 feet from the West line of said Section 2. Spring No. 2 being approximately 750 feet from the North line and 500 feet from the West line of said Section 2. Spring No. 3 being approximately 930 feet from the North line and 300 feet from the West line of said Section 2. **Source of water:** Unnamed tributary to Turkey Creek to Huerfano River. **Appropriation Date:** March 10, 1987 **Amount:** 7 gpm for each spring. **Use:** Domestic purposes. **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:** I close up my cabin for the winter in November or December and cannot access it until May or June due to the amount of snow and the Forest Service locking gates to the area. Therefore, each Spring it requires 60 to 80 hours to clean the three Springs and repair lines after the runoff to the cistern. Last year, due to the Wind Burst that hit the area, I spent even more time trying to clear

brush, trees and debris. There is still work to be done as the damage was enormous. I have also rented a Backhoe to clean the Springs and the area surrounding the Springs. I have also had expense to repair frozen water lines. I will continue to repair and maintain the 3 Springs and surrounding area as I am dependent on them for my water source. I spend approx. \$350.00-\$1000.00 per year, depending on what is needed, to maintain water flow in the 3 Springs to the cistern and cabin. **If claim to make absolute – Water applied to beneficial use: Date:** June 2003. **Amount:** 7 gpm per spring. **Use:** Domestic. **Name(s) and address(es) of owner(s) of 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:** Applicants.

CASE NO. 09CW79 (Water Division 2) and CASE NO. 09CW82 (Water Division 1) - LYNN AND KELLY KARNES, 17815 Thompson Road, Colorado Springs, CO 80908

(Christopher D. Cummins, Felt, Monson & Culichia, LLC, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212; E-mail: cdc@fmcwater.com)

Application for Adjudication of Denver Basin Groundwater, Surface Water Rights, and for Approval of Plan for Augmentation

EL PASO COUNTY

II. Application for Underground Water Rights **A. Legal Description of Wells.** **1.**

Property Description. All wells will be located on Applicant's Property, described as the NE1/4 of the SW1/4 of Section 18, Township 11 South, Range 65 West of the 6th P.M., El Paso county, Colorado, which contains approximately 40 acres, more or less ("Applicants' Property"). Applicants' Property is generally shown on the Exhibit A map attached to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **2. Existing Wells.** State

Engineer Well Permit No. 251611 is an exempt domestic well currently located in the Applicant's Property, permitted pursuant to C.R.S. §37-92-602(3)(b)(II)(A) in the NE1/4 of the SW1/4 of Section 18, Township 11 South, Range 65 West of the 6th P.M., approximately 2000 feet from the south section line and 2300 feet from the west section line of said Section 18 ("Karnes Well #1"). **B. Water Source.** **1. Not Nontributary.**

The ground water withdrawn from the Dawson aquifer of the Denver Basin underlying Applicants' Property is not-nontributary. Pursuant to C.R.S. 37-90-137(9)(c), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. **2. Nontributary.**

The groundwater that will be withdrawn from the Denver, Arapahoe and Laramie-Fox Hills aquifers of the Denver Basin underlying the Applicants' Property is nontributary. **C. Estimated Rates of Withdrawal and Ground Water Available.** **1. Estimated Rates of Withdrawal.**

Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicants request the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by

topography and actual aquifer conditions. **2. Estimated Average Annual Amounts of Ground Water Available.** Applicants request an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicants' Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4). Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Specific Yield (%)</u>	<u>Total Water Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)</u>
Dawson	476	.20	3810	38.1
Denver	493	.17	3350	33.5
Arapahoe	253	.17	1720	17.2
Laramie Fox Hills	205	.15	1230	12.3

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

FOR SURFACE WATER STORAGE RIGHT Applicants desire to adjudicate one surface water storage right in El Paso County, Colorado, for an existing reservoir upon Applicants' Property. **A. Name of Structure:** Chatelaine Pond **B. Legal Description of Structure:** The center of the dam is located in the NE1/4 of the SW1/4 of Section 18, Township 11 South, Range 65 West of the 6th P.M., being approximately 2735 feet east of the west line of said Section 18, and 2412 feet north of the south line of said Section 18. **C. Source:** The source for the filling and maintenance of this on-channel pond is an unnamed gulch, tributary to East Cherry Creek, tributary to the South Platte River. **D. Appropriation:** The Applicants' right in Chatelaine Pond was appropriated long before Applicants' purchase of the property with construction of Chatelaine Pond estimated to have occurred sometime in the 1960's. However, Applicants claim an appropriation date of March 25, 2008, representing Applicants' purchase of the property upon which the existing reservoir is located and by the use of the reservoir to the beneficial uses requested herein on that date. **E. Amount Claimed:** 2.0 acre feet absolute, with the right to fill and refill, and freshening flows. **F. Use or Proposed Uses:** Recreation, fish propagation, stock water, wetlands, wildlife habitat and fire protection, irrigation and augmentation. Wetlands and Wildlife Habitat uses are limited to the surface of the pond itself and its immediate perimeter. **G. Reservoir Specifications:** Chatelaine Pond has a maximum surface area at the high water line of approximately 0.75 acres. The maximum height of the dam is approximately 10 feet and the length of the dam is approximately 201 feet. **H. Total Capacity of Pond:** Approximately 2.0 acre feet, all of which is dead storage. **I. Land Ownership:** The land upon which all points of diversion and places of use are located are owned by the Applicants set forth in Section I of this Application, which consists of approximately 40 acres and is depicted in Exhibit A to the Application ("Applicant's Property").

IV. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION **A. Structures to be Augmented.** The structures to be augmented are Karnes Well #1 in the not-nontributary Dawson aquifer of the Denver Basin underlying the Applicants' Property, and Chatelaine Pond, as requested and described herein. There are to be no other water rights diverted from or into these structures. **B. Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during pumping are the pumping and return flows of the not-nontributary Dawson aquifer from Karnes Well #1 as set forth in this plan for augmentation, together with water rights from the nontributary Laramie-Fox Hills aquifer for post pumping depletions. **C. Statement of Plan for Augmentation.** Applicants wish to provide for the augmentation of stream depletions caused by pumping the not-nontributary Dawson aquifer well proposed herein for one residential lot, as well as for evaporative depletions associated with the use and operation of Chatelaine Pond. Water use criteria and their consumptive use component for replacement of actual depletions for the lot is as follows: **1. Household Use Only:** 0.30 acre feet annually within one single family dwelling with a ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for this residence is therefore 0.030 acre feet, with resulting

return flows of 0.27 annual acre feet. Any other type of waste water disposal shall require an amendment to this plan of augmentation. **2. Landscape Irrigation:** 0.046 acre feet annually per 1,000 square feet (2.0 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.039 acre feet. **3. Horses (or equivalent livestock):** 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. **4. Pond Evaporation:** Applicants' consultants have determined the net evaporative depletions based on the application of local climate data to the standards of the State Engineer's Office for the determination of pond evaporation. Based thereon, the net evaporation from the surface area of Chatelaine Pond is determined to be approximately 2.62 acre feet per acre of exposed surface area. Chatelaine Pond has a maximum of approximately 0.75 acres of exposed surface area, and therefore has associated evaporative depletions of approximately 2.0 annual acre feet. Should the Karnes Well supplying the Applicants' Property pump 3.4 acre feet per year, such quantities pumped would be divided as follows: 0.3 acre feet for in-house use, 0.055 acre feet for watering of up to five (5) head of livestock; 2.0 acre feet for replacement of evaporative depletions from Chatelaine Pond, with the remaining 1.045 acre feet utilized for the irrigation of up to 15,000 square feet of lawn and garden. Septic return flows are calculated to be 0.27 acre feet annually, with an additional 0.16 acre feet annually of lawn irrigation return flows. Applicants' consultant has calculated that these combined return flows are sufficient to replace depletions occurring during the pumping life of Karnes Well #1 from the Dawson aquifer. Applicants propose to reserve a quantity of water from the nontributary Laramie-Fox Hills aquifer for replacement of post-pumping depletions. 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 the South Platte River system where the majority of depletions occur. Applicants request that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. **D. Augmentation of Depletions During Pumping.** Pursuant to C.R.S. §37-90-137(9)(c) Applicants are required to replace actual stream depletions attributable to pumping of the Karnes Well #1 to the extent necessary to prevent injurious effect. Applicants' consultant has calculated maximum depletions during the 100 year pumping life of the Karnes Well #1 to be 7.9% of pumping. Based upon annual pumping of 3.4 acre feet per year, and the requested uses therefrom, Applicants are therefore required to replace 0.27 acre feet annually. Applicants have determined that during pumping, septic system return flows from the residence should account for approximately 0.27 acre feet per year and return flows from irrigation will total 0.16 acre feet, for total return flows of 0.43 acre feet. Thus, there are sufficient return flows through the septic system and irrigation return flows to replace the estimated stream depletions during the pumping life of Karnes Well #1. **E. Augmentation for Post Pumping Depletions.** For the replacement of post-pumping depletions, Applicants will reserve up to 340 acre feet of water from the

nontributary Laramie-Fox Hills aquifer underlying the Applicants' Property, less the amount of actual stream depletions replaced during the plan pumping period. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, Applicants claim that post pumping depletions will be noninjurious and do not need to be replaced. Under the Court's retained jurisdiction, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to file for and receive an amended well permit for the Karnes Well #1 for the uses in accordance with this Application. **F. Remarks.** Additional remarks are as follows: 1. Applicants request a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary well upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). 2. The term of this augmentation plan is for 100 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. 3. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 4. Pursuant to C.R.S. §37-90-137, upon approval of the plan for augmentation requested herein, Applicants will file an application with the State Engineer's office to re-permit the existing well on Applicants' approximately 40.0 acre property (Permit No. 251611) for operation under the plan for augmentation. 5. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 6. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 7. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. 8. Applicants will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(l), and such notice will be sent within 10 days of the filing of this application.

CASE NO. 09CW80 - WESLEY and CONNIE ECK, 2544 Hwy. 194, La Junta, CO 81050; (719) 456-1484

Application for Change of Water Right

OTERO COUNTY

Decreed water right for which change is sought: Name of structure: Unnamed well, Permit No. 21780-F. **Date of original and all relevant subsequent decrees:** June 19, 1972; **Case No.** W-1677. **Court:** Division 2. **Legal description:** W ½ SW ¼ SE ¼ of Section 15, Township 23 South, Range 54 West of the 6th P.M., in Otero County, Colorado. See decreed location map 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. **Decreed source of water:** Well. **Appropriation Date:** December 30, 1935. **Total amount decreed to structure:** 875 gpm. **Decreed use or uses:** Well used for supplemental irrigation along with 46 shares of Ft. Lyon Canal Water to irrigate 30 acres of farm ground. See map of lands irrigated attached to the Application as Exhibit B. **Detailed description of proposed change:** Location change only. Location of well decreed in error when filed for water right in 1972. Well is actually located in the NW ¼ NE ¼ of Section 22, Township 23 South, Range 54 West of the 6th P.M. (See map of irrigation well location attached to the Application as Exhibit C). **If a change in point of diversion, provide legal description:** NW ¼ of the NE ¼ Section 22, Township 23 South, Range 54 West, 6th P.M., 149 feet from the North line and 2598 feet from the East line. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

CASE NO. 09CW81 - KAREN BERTEAU-FRY, P. O. Box 1534, Canon City, CO 81215; (719) 784-1393

Application for Underground Water Right

FREMONT COUNTY

Name of well and permit, registration or denial number: Berteau-Fry; Permit No. 248244. **Legal description of well:** Fremont County, NE ¼ of the SW ¼ Section 24, Township 19 South, Range 70 West, 6th P.M., 2050 feet from the South line and 1500 feet from the West line. **Street Address:** 10500 Auckland Avenue, Williamsburg, CO 81226. **Subdivision:** Chandler Heights; Lot 8. **Optional Additional Description:** **GPS location information in UTM format:** Zone 13; Units set to meters; Datum NAD83; Units set to true north). **Northing** 4247960 **Easting** 484718. **Source:** Groundwater. **Depth:** 560 feet. **Date of appropriation:** 5-23-06. **How appropriation was initiated:** Purchase of property. **Date water applied to beneficial use:** 5-23-06. **Amount claimed:** 1 gpm Absolute. **Proposed use:** Domestic use - 1 household; fire protection; garden irrigation. Area of lawns and gardens irrigated: 300 sq. ft. **Name(s)**

and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Applicant.

CASE NO. 09CW82 - PHILLIP A. AND SHEILA J. DORENKAMP, 24813 CR 127.5, Model, CO 81059; (719) 845-0340

Application for Finding of Reasonable Diligence

HUERFANO COUNTY

Name of structure: Dorenkamp Spring #2. **Describe conditional water right:** **Date of original Decree:** June 11, 2003; **Case No.** 98CW81; **Court:** District Court, Div. 2. **Legal description:** NE ¼ of the NE ¼ Section 2, Township 26 South, Range 68 West, 6th P.M., Huerfano County, Colorado, 1087 feet from the North line and 420 feet from the East line. **Subdivision:** Colorado Land and Livestock; Lot 50A of Unit C. **Source of Water:** Mexican Springs; **Appropriation Date:** September 1995; **Amount:** 25 gpm; **Use:** Domestic and livestock. **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:** Dorenkamp Spring #2 (#2) Case #98CW81 is located within Lot 50A, Unit C of Colorado Land and Livestock in Huerfano County. Phil Dorenkamp and the Hambrick family provided materials (pipe, hardware, etc.) and Applicants provided the labor to develop the springs (now Rose Wood, Westkamp #1 and #2) to a usable, dependable condition. In the early 2000s, it became apparent that the owner of an existing water line was unwilling to allow Applicants to divert water into his line for use at Applicant's residence located on Lot 91, Unit D of Colorado Land and Livestock. In 2002, Applicants decided to approach the owner of Lot 50A about purchasing an easement for the installation and maintenance of a plastic water line (line). The owner did sell Applicants such an easement: See Exhibit A to Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Shortly after this purchase, Applicants sought legal counsel's advice as to the cost of counsel assisting Applicants in getting the line easement from the purchased easement to Applicants' house. The cost was approximately \$10,000. Applicants did not have the resources available at that time for counsel's assistance. In 2003 after the water referee's hearing, at which the only protesting individual assured everyone in attendance that he'd not protest/appeal the referee's ruling on this case and Case # 98CW109 which he did, an ensuing Judgment and Decree for Dorenkamp Spring #2 (#2) was granted. It was still apparent that the owner of an existing water line was unwilling to let Applicants divert water into their line. Subsequently, Applicants decided to attempt to place the line across Lot 50. After researching the property owner, Applicants sent a packet by certified mail to the owner of Lot 50: See Exhibit B. He responded stating he would allow Applicants to install the line across his property but suggested Applicants place it in the "wash" that exits from Mexican Springs Canyon.

Willing to work with Applicants' neighbors, Applicants researched the owners of where the wash lies (Lots 47, 51 and 95) and sent each of them a packet certified mail see Exhibit C, a copy of one of the certified mail cards, with an updated map depicting the proposed line location: see Exhibit D a copy of one of the packets. Applicants didn't receive any responses to these certified mailings. A 2nd mailing was sent to each of the property owners: see Exhibit E a copy of one of the 2nd mailings. Again Applicants received no response. Researching on the internet, Applicants were able to obtain the phone numbers to the owners of Lots 47 & 51. Applicants left messages with each over the next few years. This past fall, Applicants received a call from the owner of Lot 51, Jeff Pantle, as he was deleting messages. He told Applicants he had left messages on Applicant's cell but being technologically challenged, Applicants most likely deleted them without knowing it. Mr. Pantle has graciously agreed to allow Applicants to install the line on his property: See Exhibit F an email from him. Applicants had further discussions and it's Applicants' sense that he'd have no issue with Applicants placing their line near the existing line that crosses his property instead of along his north property line. Also in 2008, Applicants happened to receive a call from the owner of Lot 96, Steve Williamson. Through conversations and emails, he also graciously agreed to allow Applicants to install the line across his property: see Exhibit G. Last year during Sandy Charney's hearing, it was revealed that Mr. Charney and Joan Malloany now own Lot 50. Applicants sent the new owners a letter with some options that Applicants wanted them to consider regarding the line: see Exhibit H. Mr. Charney responded to Applicants' letter: see Exhibit I. Applicants did some research and responded to Mr. Charney's letter: see Exhibit J. Applicants are now waiting on a response to Applicants' second letter. Over the years, Applicants also purchased approximately 1,000 feet of plastic line that is available for this project although Applicants do not have the receipts to support this. Applicants ask the Court to decide favorably upon this application and continue to allow them to develop this spring/water line. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** James Eccher, 506 W. Cedar, Walsenburg, CO 81089; Sandy Charney, P. O. Box 54, Walsenburg, CO 81089; Jeff Pantle, 2406 Hidden's Hare Drive, Katy, TX 77450; Tina Mills, 1556 Crater St., Simi Valley, CA 93063; Danny Weston, 547 Starlite Drive, Pueblo, CO 81005-1942.

CASE NO. 09CW83 - JOHN AND TERESA BARNES, 18540 Arrowwood Drive, Monument, CO 80132; WILLIAM AND MAUREEN BELEI, 12113 S. 30th Avenue, Bellevue, NE 68123; ROBERT AND LAURIE EFRAM, 18185 Martingale Road, Monument, CO 80132; BRYAN AND JENNIFER FUJIMOTO, 145 W. Stirrup Trail, Monument, CO 80132; DEL AND MAUREEN LANG, 335 West Way, Monument, CO 80132; ROSS AND LINDA NELSON, 450 E. Stirrup Trail, Monument, CO 80132; BRIAN AND KAREN SCHADE, 18150 Arrowwood Drive, Monument, CO 80132; CLAUDETTE VAN PELT and ALBERT VAN PELT TRUST, 450 Lariat Loop, Monument, CO 80132; DOUGLAS AND PAULENE WAGNER, 19215 Furrow Road, Monument, CO 80132; and ROY AND JEANNE WHEELER, 390 E. Stirrup Trail, Monument, CO 80132 (James J. Petrock, Kara Godbehere, Petrock & Fendel, P.C., Attorneys for Applicants, 700 Seventeenth Street, Suite 1800, Denver, CO 80202; (303) 534-0702)

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

EL PASO COUNTY

2. Well Permits: Well permits will be applied for when Applicants are prepared to drill the wells. **3. Legal Description of Wells and Subject Property:** The property which is the subject of this application is 11 residential lots in Arrowwood Subdivision III, which lots are generally located in part of the S1/2 of Section 7, and the N1/2 of Section 18, T11S, R66W of the 6th P.M, as more particularly described on Attachment A attached to the Application and shown on Attachment B attached to the Application (Subject Property). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The lots are approximately 2.5 acres each for a total acreage of 25.3 acres. Applicants are the owners of the Subject Property and the water underlying their respective land. **4. Source of Water Rights:** The source of the groundwater to be withdrawn from the Dawson and Denver aquifers underlying the Subject Property is not nontributary as described in Section 37-90-103(10.7) and 37-90-137(9)(c), C.R.S. The ground water to be withdrawn from the Arapahoe and Laramie-Fox Hills aquifer underlying the Subject Property is nontributary groundwater as described in Section 37-90-103(10.5), C.R.S. **5. Estimated Amounts and Rates of Withdrawal:** The wells will withdraw the groundwater at rates of flow necessary to efficiently withdraw the entire decreed amounts. Applicants will withdraw the subject groundwater through wells to be located at any location on the Subject Property, including existing wells in the Dawson aquifer which are located on 8 of the lots as described on Attachment A, which will be re-permitted to operate under the augmentation plan requested below and when required. Three lots are vacant and the augmentation plan will allow for use of new Dawson aquifer wells on those lots. Applicants waive the 600 foot spacing rule as described in Section 37-90-137(2), C.R.S. for wells located on the Subject Property. The estimated average annual amounts of

withdrawal available from the subject aquifers as indicated below, are based upon the Denver Basin Rules, 2 C.C.R. 402-6. Applicants estimate the following annual amounts are representative of the subject aquifers underlying the Subject Property. Applicants will reserve part of the Dawson aquifer groundwater for use and continued use through exempt wells.

<u>Aquifer</u>	<u>Saturated Thickness</u>	<u>Estimated Annual Amount</u>
Dawson	400 feet	20 acre-feet
Denver	481 feet	20 acre-feet
Arapahoe	283 feet	12 acre-feet
Laramie-Fox Hills	196 feet	8 acre-feet

6. Well Fields: Applicants request that this Court determine that Applicants have the right to withdraw all of the legally available groundwater lying below the Subject Property, through the wells requested herein, which may be located anywhere on the Subject Property, and any additional wells which may be completed in the future as Applicants' well fields. As additional wells are constructed, applications will be filed in accordance with Section 37-90-137(10), C.R.S.

7. Proposed Use: The water will be used, reused, successively used, leased, sold, or otherwise disposed of for the following beneficial purposes: domestic, industrial, commercial, irrigation, livestock watering, recreational, and fish and wildlife. Said water will be produced for immediate application to said uses, both on and off the Subject Property, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for augmentation purposes.

8. Jurisdiction: The Water Court has jurisdiction over the subject matter of this application pursuant to Section 37-92-302(2), and 37-90-137(6), C.R.S. The application is filed pursuant to Section 37-92-302(5), C.R.S. which states that persons alone or in concert may initiate and implement plans for augmentation.

9. Description of plan for augmentation:

A. Water and structures to be augmented: 11 acre-feet per year of Dawson aquifer water requested herein.

B. Water rights to be used for augmentation: Return flows from the use of not nontributary and nontributary groundwater and direct discharge of nontributary ground water.

C. Statement of plan for augmentation: The subject Dawson aquifer groundwater may be used for inhouse, irrigation, and stockwatering purposes through the existing wells or new wells on each lot at a rate of flow of 15 gpm to provide water for each lot. Each lot will use 1 acre-foot annually for inhouse use (0.3 acre-feet), irrigation (0.65 acre-feet limited to 11,000 square-feet of home lawn and garden), and stockwatering of up to 4 large domestic animals (0.05 acre-feet). Applicants reserve the right to revise these values without the need of revising or republishing this application. The lots will utilize a non-evaporative septic system. Consumptive use associated with inhouse use will be approximately 10% of water used for that purpose and consumptive use associated with irrigation use will be approximately 90% of water used for that purpose. Stockwatering use will be 100% consumed. During pumping Applicants will replace actual depletions to the

affected stream system pursuant to Section 37-90-137(9)(c), C.R.S. In the 100th year of pumping, total actual depletion is approximately 10% of the annual amount withdrawn of which the majority occurs to the Arkansas River stream system. Return flows from use of the water through non-evaporative septic systems and irrigation use accrue to the Monument Creek stream system and those return flows are sufficient to replace actual depletions pursuant to Section 37-90-137(9)(c), C.R.S. while the wells are being pumped. Applicants will reserve an equal amount of nontributary groundwater underlying the Subject Property to meet post pumping augmentation requirements, but reserves the right to substitute the use of other nontributary groundwater, including return flows, from another location which is legally available for such purpose, for replacement of post-pumping depletions at such time that post-pumping depletions may begin. **10. Remarks:** A. Applicants claim the right to withdraw more than the average annual amounts estimated in paragraph 5B above pursuant to Rule 8A of the Statewide Rules, 2 C.C.R. 402-7. B. Although Applicants have estimated the amounts of water available for withdrawal from the subject aquifers based on estimates of relative values for specific yield and saturated thickness, Applicants request the right to revise the estimates upward or downward, based on better or revised data, without the necessity of amending this application or republishing the same. C. Applicants will withdraw part of the not nontributary Dawson aquifer water requested herein under the plan of augmentation requested herein pursuant to Section 37-90-137(9)(c), C.R.S. WHEREFORE, Applicants pray that this Court enter a Decree: 11. Granting the application herein and awarding the water rights claimed herein as final water rights, except as to those issues for which jurisdiction of the Court will be specifically retained; 12. Specifically determining that: A. Applicants have complied with Section 37-90-137(4), C.R.S., and water is legally available for withdrawal by the wells proposed herein; B. The groundwater in the Dawson and Denver aquifers is not nontributary and groundwater in the Arapahoe and Laramie-Fox Hills aquifers is nontributary groundwater; C. Vested or conditionally decreed water rights of others will not be materially injured by the withdrawals of groundwater and the plan for augmentation proposed herein; Further, Applicants pray that this Court grant such other relief as seems proper in the premises.

CASE NO. 09CW84 - COMANCHE RESOURCES, LLC, 2454 Waynoka Road, Colorado Springs, CO 80915 (Steven T. Monson and Michael J. Gustafson, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Modification of Decreed Plans for Augmentation

EL PASO COUNTY

II. Modification of Augmentation Plan Decrees. A. Existing Decrees. In Case No. 99CW146 of the District Court for Water Division 2, the Applicant, Comanche Resources, LLC (“Comanche” or “Applicant”), obtained a groundwater right for Midway Ranches POA Well No. 1 and a plan for augmentation using Comanche’s shares of the

Fountain Mutual Irrigation Company (“FMIC”) for augmentation water to replace out-of-priority well depletions from said well (“Augmentation Plan I”). The replacement water rights committed to Augmentation Plan I are 314 shares of FMIC stock owned by Comanche. The Court found that each share of FMIC stock historically yielded on the average the equivalent of 0.7 acre feet of net replacement or consumptive use water each year. Thus, the 314 FMIC shares within Augmentation Plan I represent an average of 219.8 annual acre feet of consumptive use that can be used for replacement water. Augmentation Plan I allowed Comanche to divert up to 219.8 annual acre feet of water from the Midway Ranches POA Well No.1 for use in a central water supply system to supply water to Comanche’s Service Area described in Exhibit A to the Application (“Service Area”). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. In Case No. 00CW152 of the District Court for Water Division 2, Comanche obtained a groundwater right for CR Well No. 1 and supplemented Augmentation Plan I using 103 additional FMIC shares owned by Comanche for augmentation purposes to replace out-of-priority depletions from CR Well No. 1 (“Augmentation Plan II”)¹. The 103 FMIC shares subject to Augmentation Plan II represent an average consumptive use of 72.1 annual acre feet that can be used for replacement water. The consumptive use water associated with the 103 FMIC shares is committed to Augmentation Plan I to replace the depletions associated with diversions from Midway Ranches POA Well No. 1 and CR Well No. 1. The Midway Ranches POA Well No. 1 and CR Well No.1 are referred to in this Application as the “Comanche Wells”. Augmentation Plans I and II combined allowed Comanche to replace total depletions of up to 291.9 annual acre feet (219.8 acre feet from Augmentation Plan I and 72.1 from Augmentation Plan II) from the Comanche Wells and the FVP wells. In Case No. 02CW112 of the District Court for Water Division 2, Comanche obtained two additional groundwater rights for the Comanche Wells and further supplemented Augmentation Plan I by committing 145 additional FMIC shares owned by Comanche for augmentation purposes to replace additional depletions from the Comanche Wells. (“Augmentation Plan III”). The 145 FMIC shares subject to Augmentation Plan III represent an average consumptive use of 101.5 annual acre feet that can be used for replacement water. The consumptive use associated with the 145 FMIC shares is committed to Augmentation Plan I to replace the depletions associated with additional diversions from the Comanche Wells. Augmentation Plans I, II, and III combined allowed Comanche to replace total depletions of up to 393.4 annual acre feet (219.8 acre feet from Augmentation Plan I, 72.1 from Augmentation Plan II, and 101.5

¹Augmentation Plan II included Fountain Valley Power as a co-applicant for the adjudication of FVP Well No. 1, FVP Well No. 2, and FVP Well No. 3 (“FVP Wells”) with replacement of out-of-priority depletions from those wells by commitment of augmentation water from 244 shares of FMIC. The FVP Wells and the 244 FMIC shares committed to replace out-of-priority depletions from those wells are not part of this Application and Comanche does not request modification of Augmentation Plan II with regard to the FVP Wells or the 244 FMIC shares committed under the Water Supply Agreement.

acre feet from Augmentation Plan III) from the Comanche Wells and the FVP Wells. Pursuant to the March 14, 2001 Water Supply Agreement (“Water Supply Agreement”) between Comanche and Fountain Valley Power (“FVP”), 244 of the 562 FMIC shares dedicated to Augmentation Plans I, II, and III representing 170.8 acre feet of consumptive use water are committed to replace depletions resulting from diversions from FVP Well’s. The amendments requested herein only apply to the 318 remaining FMIC shares that are not subject to the Water Supply Agreement and in no way effect or impact the FMIC shares under the Water Supply Agreement or the parties’ depletions allowed under the Water Supply Agreement. Pursuant to a May 26, 2005 Water Shares Acquisition Agreement, Comanche has transferred its interests in 241 of the 318 FMIC shares that are the subject of this Application along with its interests in Augmentation Plans, I, II, and III with regard to those 241 shares to Wigwam Mutual Water Company (“Wigwam”). Wigwam provides water for indoor domestic and irrigation uses to its customers within Comanche’s Service Area. The Water Shares Acquisition Agreement allows Comanche to claim the return flows associated with all pumping from the Comanche Wells. **B. Return Flows.** Comanche did not claim any return flow credit for diversions from the Comanche Wells in Augmentation Plans I, II, and III and diversions from the Comanche Wells were, therefore, considered under Augmentation Plans I, II, and III as 100 percent depletive.² The decrees for Augmentation Plans I, II, and III also provide that although no return flows are claimed in the applications, those return flows are not abandoned by Comanche, and that Comanche has the right to file separate future applications or amendments to the applications to take credit for return flows. The purpose of this application is to claim return flow credit. **C. Modifications Requested.** Comanche’s water rights engineer has determined that there are return flows to the Fountain Creek stream system resulting from Wigwam’s deliveries of water to its customers within the Exhibit A service area Under Augmentation Plans I, II and III. Wigwam’s diversion records from the Comanche Wells were used to determine how much of the water delivered to Wigwam’s customers was used for in-house domestic and for lawn and garden irrigation purposes based upon winter time base indoor usage. Average monthly diversions for January and February were assumed to be representative of amounts of in-house use, and monthly diversions in excess of that average were assumed to be used for lawn and garden irrigation. Based upon that information, currently 13 percent of the water delivered to Wigwam’s customers is used for irrigation purposes and the remaining 87 percent being used for in-house domestic purposes. Comanche’s engineer then determined the percentage of water delivered for in-house and irrigation purposes that is returned to the Fountain Creek system. Based on standard engineering figures and analysis of the hydrogeology in the area, it was determined that 90 percent of in-house water uses and 15 percent of water applied for

²The Water Supply Agreement granted FVP the right to claim return flow credits associated with diversions from the FVP Wells. Return flows from FVP’s use of the FVP wells has already been adjudicated in Case No. 02CW63.

irrigation purposes return to Fountain Creek. Credit for the system losses claimed in this Application will be determined by a system wide water budget. Given the geology of the area, Darcy's Law rather than a Glover Analysis was used to determine the estimated time for the return flows to reach Fountain Creek, which time lag will determine when return flow credit from the Comanche Wells will be claimed. By combining the return flow delays with the location and amount of return flows, it was determined that return flows to Fountain Creek from irrigation and in-house use will eventually equal approximately 82 percent of water delivered to customers from the Comanche Wells. Comanche requests that the Water Court modify Augmentation Plans I, II, and III, to allow Comanche to claim augmentation credit for return flows to Fountain Creek and that it be allowed to remove the number of FMIC shares committed to Augmentation Plans I, II, and III that equate to the return flow credits. At the time the decree is entered in this case and every three years thereafter, Comanche will determine the extent of the return flows and the number of FMIC shares that can be withdrawn from Augmentation Plans I, II, and III in the following manner. First, Comanche will determine how many shares would have to be committed to replace depletions in the previous year if no return flows were claimed. Comanche will then determine how many shares would have to be committed to replace the previous year's depletions taking into account return flows that accrued in that year and will continue to accrue. Comanche will be entitled to permanently withdraw from Augmentation Plans I, II, and III the number of FMIC shares equal to the difference between the number of shares necessary to meet depletions if return flows were not claimed and the number of shares necessary to meet depletions if return flows were taken into account. In subsequent years, Comanche will determine the number of shares that can be withdrawn in the same manner except that it must account for the FMIC shares previously removed from the plan. Comanche's annual accountings shall demonstrate the shares withdrawn. Any shares not needed for full build out are also requested to be withdrawn under this same methodology. In all events, a sufficient number of shares shall remain within the augmentation plan to meet plan depletions with credit for return flows. **D. Modification Results.** The result of the requested modification will be to generally decree the Augmentation Plans as they would have been if Comanche had initially requested that it receive credit for return flows associated with 90 percent of diversions for in-house uses, 15 percent of diversions for irrigation uses, and system losses within the Service Area as is customarily provided for in augmentation plans. The modifications sought by this Application will always leave sufficient FMIC shares committed to replace out-of-priority depletions from the Comanche Wells with return flows accruing as a result, and the requested modifications will not materially impair the augmentation of the diversions from the Comanche Wells under the terms of the Augmentation Plans and will not cause injury to vested water rights. **III. Ownership of Structures.** The Midway Ranches POA Well No. 1 is owned, in part, by Applicant and is located on land owned by PPIR Properties, LLC, whose address is 16650 Midway Ranch Rd., Fountain, CO 80817 and Comanche has an easement for this well. This Application concerns only

Comanche's interest in POA Well No. 1. The other owner of POA Well No. 1 is Midway Ranches Property Owner's Association, whose address is 2454 Waynoka Road, Colorado Springs, CO 80918. CR Well No. 1 and the property it is located upon is owned by Applicant.

CASE NO. 09CW85 - UPPER ARKANSAS WATER CONSERVANCY DISTRICT (UAWCD), P. O. Box 1090, Salida, CO 81201

(Send all pleadings and correspondence to John R. Hill, Jr., Bratton Hill Wilderson & Lock, LLC, Attorney for Applicant, 232 West Tomichi Avenue, Suite 232, Gunnison, CO 81230; (970) 641-1903) Application for Appropriative Rights of Exchange and for Approval of Plan for Augmentation

CHAFFEE, CUSTER, FREMONT AND PUEBLO COUNTIES

NATURE AND PURPOSE OF APPLICATION. Applicant is a water conservancy district organized under the provisions of the Water Conservancy Act, now in C.R.S. §§ 37-45-101 et seq. As such, UAWCD has broad powers to facilitate the beneficial use of water within its boundaries. To that end, this is an application for a plan for augmentation for a part of the lands within UAWCD, specifically Grape Creek drainage basin located in portions of Custer County and Fremont County. The objective of the plan for augmentation is to protect water rights and increase the supply of water available for beneficial use within the plan area. This proposed plan for augmentation will use decreed replacement supplies to replace out-of-priority depletions caused by, for example, tributary wells (including augmentation wells to augment all beneficial uses), reservoirs, ponds, springs and surface diversions thereby offsetting or replacing out-of-priority depletions in time, place and amount which will prevent injury to vested water rights. The following tables and maps are included with and made a part of this application: Table 1. Description of Exchanges Reaches. Table 2. Augmentation Storage Reservoirs. Map showing exchange reaches and reservoir locations (Exhibit A). Map showing H2O Ranch water rights historically irrigated land (Exhibit B). Map showing Johnson Ranch water rights historically irrigated land (Exhibit C). Map showing A. Katzenstein Ditch No. 1 historically irrigated land (Exhibit D). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **FIRST CLAIM (Application for Conditional Appropriative Right of Exchange). Pueblo Reservoir-DeWeese Reservoir Exchange.** Location of exchange structures or points. Lower terminus is Pueblo Reservoir which is located: in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, in Township 20 South, Range 67 West, all in the 6th P.M. in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section bears North 61° 21' 20" East, a distance of 2,511.05 feet, all more particularly described in the decree in Case No. B-

42135, District Court, Pueblo County, Colorado, in Pueblo County. Upper terminus DeWeese Reservoir. The southeasterly corner of the dam is North 41°37' East, a distance of 758.7 feet from the Northeast Corner of Section 20, Township 21 South, Range 72 West of the 6th P.M., in Custer County. Amount claimed: 20 cfs conditional. Appropriation date: June 30, 2009. How appropriation was initiated: By UAWCD Board of Directors resolution dated November 8, 2007, field reconnaissance in the Grape Creek drainage, engineering studies, planning, meetings in Custer County with Board of County Commissioners and interested persons, Power Point presentation posted on UAWCD web site, posting of signs at locations reasonably calculated to give interested persons actual notice of the proposed appropriations, Board direction to file this application by resolution made on June 25, 2009 and filing of this application on June 30, 2009. These exchanges are in Custer and Fremont Counties. **SECOND CLAIM (Application for Conditional Appropriative Rights of Exchange in Grape Creek Drainage)** Applicant claims conditional appropriative rights of exchange in Grape Creek and its tributaries in the amount of 20 cfs for Grape Creek and the amounts for each tributary listed in and described in Table 1 with appropriation date of June 30, 2009. The upstream and downstream termini and exchange amounts are listed and described in Table 1. UAWCD claims the right to exchange to any point within the described reaches of the respective streams, the inlet (feeder structure) of any reservoir listed and described in Table 2 or any other reservoir to be constructed later the inlet (feeder structure) of which is within a described reach or to any on stream reservoir within the respective described reach. The appropriation was initiated by UAWCD Board of Directors resolution dated November 8, 2007, field reconnaissance in the Grape Creek drainage, engineering studies, planning, meetings in Custer County with Board of County Commissioners and interested persons, Power Point presentation posted on UAWCD web site, posting of signs at locations reasonably calculated to give interested persons actual notice of the proposed appropriations, Board direction to file this application by resolution made on June 25, 2009 and filing of this application on June 30, 2009. These exchanges are in Custer and Fremont Counties. **THIRD CLAIM (Application for Approval of Plan for Augmentation)** Areas to be augmented are in the Grape Creek drainage in Fremont and Custer Counties. See map attached to the Application as Exhibit A and made a part hereof. Structures to be augmented are tributary wells, on-stream reservoirs or ponds, off-stream reservoirs or ponds, direct flow surface diversions, tributary springs or seepage and structures requiring additional augmentation located in the areas described above. These structures shall be referred to as "Augmented Structures" and may be augmented for any and all beneficial uses. Previous decrees for water rights to be used for augmentation: **Hermit Basin Lodge rights.** Applicant is in the process of acquiring approximately 70 acre-feet firm annual yield of the following water rights: A. Katzenstein Ditch No. 1, originally decreed by the Fremont County District Court on May 13, 1893 and April 16, 1894, for 1.86 c.f.s. for irrigation use on 75 acres with an appropriation date of March 30, 1873 (Priority No. 51), and 1.86 c.f.s. for irrigation use on an additional 60 acres with an appropriation date of

July 1, 1878 (Priority No. 207B), and as changed in Case No. W-4320, Case No. 95CW10, and Case No. 00CW42. The A. Katzenstein Ditch No. 1 diverts on the left bank of Middle Taylor Creek at a point whence the West quarter corner of Section 20, Township 22 South, Range 73 West of the 6th Principal Meridian bears North 58°15' West at a distance of 2,900 feet. Water rights originally decreed by the District Court for Water Division No. 2 on August 1, 1978, in Case No. W-4320 to Conquistador Reservoir No. 1, for 150 acre feet for municipal, domestic, industrial, irrigation, recreation, fish and wildlife propagation, snow making, and augmentation and exchange purposes, with an appropriation date of July 28, 1975, and as changed in Case No. 86CW67, Case No. 95CW10, and Case No. 00CW42. The place of storage was changed by decree entered in Case No. 86CW67 on January 9, 1987, to the SE¼ of Section 21, Township 22 South, Range 73 West of the 6th P.M. The decreed source of water for this reservoir is Middle Taylor Creek at the A. Katzenstein Ditch No. 1 head gate, local surface runoff and groundwater infiltration. All other rights of Seller by virtue of any of the aforementioned decrees, including but not limited to all of Seller's rights under the augmentation plan approved in Case No. 95CW10 and amended in Case No. 00CW42, such as the average annual consumptive for the A. Katzenstein Ditch No. 1, which the Court in Case No. 95CW10 determined to be 106 acre-feet, and all available stream depletion credits attributable to the A. Katzenstein Ditch No. 1 by virtue of the decree entered in Case No. 95CW10. Applicant will file a separate application for change of place of use to the areas to be augmented in this plan for augmentation upon receiving title to the Hermit Basin Lodge water rights rights described above. **Twin Lakes Reservoir and Canal Company (TL)**. Applicant owns shares in TL and also acquires TL water from other TL shareholders or other entities through leases with terms from one to several years. Such water consists of storage and direct flow rights for water diverted from another basin which are available for 100 percent consumptive use and reuse and are available for augmentation. This water will be used directly or released from storage for replacement of out-of-priority depletions above the controlling call or by exchange with the H2O Ranch water rights described below. The water rights producing the pro rata interest of Applicant are: Colorado River Water Rights: Case No. 3802, District Court, Garfield County, August 25, 1963 and Case No. W-1901, District Court, Water Div. No. 5, May 12, 1976; priority: August 23, 1930, No. 431; source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Div. No. 5; use: direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal, and all beneficial uses; amount: direct flow amount for diversions through transmountain tunnels of 625 c.f.s., with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre-feet; and Arkansas River Water Rights: Case No. 2346, District Court, Chaffee County, July 14, 1913 as modified in Case No. W-3965, District Court, Water Div. No. 2, April 19, 1974; priorities: December 15, 1896, No. 3 and March 25, 1897, No. 4; source: Lake Creek and its tributaries, tributary to the Arkansas River; use: storage for irrigation, domestic, commercial, industrial, and municipal purposes on any site in the Arkansas River Basin of Colorado

below the Twin Lakes Reservoir which are capable of being served by water by diversion from said Arkansas River; amount: 54,452 acre-feet (20,645.3 acre-feet for Priority No. 3 and 33,806.7 acre-feet for Priority No. 4. Twin Lakes Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in Township 11 South, Range 81 West of the 6th P.M., in Lake County, Colorado. The Twin Lakes dam axis and the centerline of Lake Creek intersect at a point whence the Southeast corner of Section 23, Township 11 South, Range 81 West of the 6th P.M., bears South 54° 13'08" East a distance of 3,803.10 feet, all as more particularly described in the decree in Civil Action No. 5141 (District Court, Chaffee County, Colorado). Historic use: Irrigation, domestic, commercial, industrial, municipal and other beneficial uses in the Arkansas River Basin. **Pueblo Board of Water Works Lease.** Applicant has entered into a lease of 202 acre-feet of fully consumable water with Pueblo Board of Water Works (PBWW) for a term of 40 years. With respect to the source of the water to be provided the lease provides in pertinent part that PBWW "will deliver water derived from the Board's shares in the Twin Lakes Reservoir and Canal Co. to the extent that such water is available to the Board. If Board does not have sufficient water from the Twin Lakes Reservoir and Canal Co. to satisfy its delivery obligations under this lease, then the Board may deliver water from other sources of fully consumable water available to the Board including, but not limited to, stored water at Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir, from direct flow transmountain water or transmountain return flows by exchange." This water will be used directly or released from storage for replacement of out-of-priority depletions above the controlling call or by exchange with the H2O Ranch water rights water rights described below. The Twin Lakes water rights are described above. Water rights in which PBWW owns or has the right to use which may also be used to deliver water under the lease are, including but not limited to: the Ewing Placer Ditch decreed on November 13, 1911, with appropriation date of June 1, 1906, by the District Court, Eagle County, Civil Action No. 507; the Columbine Ditch decreed on October 3, 1936, with an appropriation date of June 21, 1930, by the District court, Eagle County, Civil Action No. 963; the Warren E. Wurtz Ditch (aka the Warren E. Wurts Ditch) decreed on October 3, 1936, with an appropriation date of June 8, 1929, by the District Court, Eagle County, Civil Action No. 963; the Wurtz Extension Ditch decreed on October 21, 1982, with an appropriation date of October 26, 1953, by the District Court, Water Division No.5, Case No. 80CW505; the Busk-Ivanhoe System decreed by absolute decree of the District Court, Garfield County, in Civil Action No. 2621 dated January 9, 1928, with appropriation dates differing for various components of the system as more fully set forth in the referenced decree, other absolute decrees were entered in Civil Actions Nos. 3082 and 4033 in by the District Court, Garfield County; the Homestake Project conditionally decreed in Civil Action No. 1193 by the District Court, Eagle County on June 8, 1962 with appropriation date of September 22, 1952; the Independence Pass Transmountain Diversion decreed in Civil Action No. 3082 by the District Court, Garfield County dated August 25, 1936, and were modified by a Decree in Case No. W-1901 by the District

Court, Water Division No. 5, dated May 12, 1976. The Busk-Ivanhoe System, the Columbine Ditch, the Ewing Ditch and the Wurtz Ditch are all subject to a change of water rights decree in Case No. 90CW340, District Court, Water Division No. 5 (consolidated with Case No. 90CW52, District Court, Water Division No. 2. The points of diversion of the foregoing water rights are located in the Colorado River drainage basin. **Round Mountain Water and Sanitation District's Johnson Ranch water rights.** Pursuant to a letter agreement dated November 17, 2008, Applicant and Round Mountain Water and Sanitation District are negotiating the terms of an agreement for use of Round Mountain's excess Johnson Ranch water rights as changed Case No. 02CW186. That case determined, inter alia, the historic consumptive use of the following described water rights which are described with reference to their original decreed locations in Section 8, Township 23 South, Ranch 72 West of the 6th P.M. in Custer County: Benoni Jarvis Ditch, with 0.60 cfs, with the priority date of May 15, 1872, adjudicated in the 1896 Decree as being on the North side of Macey Creek at a point whence the South Quarter Corner of Section 8 bears South 2°15' East 1584 ft, being in the NW¼SE¼ of said Section 8, and changed in Case 99CW25 to the headgate of the Vannier ditch described below. Lane Ditch, with 1.75 cfs, with the priority date of May 15, 1872, and with 0.86 cfs with the priority date of June 5, 1878, and with 0.64 cfs, with the priority date of June 10, 1888, on the southeast side of Macey Creek at a point whence the SW corner of said Section 8 bears South 81°20' West 172 ft, being in the SW¼SW¼ of said Section 8. Vannier Ditch, with 0.56 cfs, with the priority date of June 10, 1872, and 1.19 cfs with the priority date of June 10, 1875, on the west side of Macey Creek, at a point whence the SW corner of said Section 8 bears South 74°30' West 172 feet, being in the SW¼SW¼ of said Section 8, and described in the said decree in Case 99CW25 as approximately 150 feet east of the west line and 30 feet north of the south line of said Section 8. Helen Ditch, with 0.585 cfs, with the priority date of June 11, 1875, adjudicated in the 1896 Decree as being on the northwest side of the North Branch of Macey Creek, at a point whence the SW corner of said Section 8 bears South 1° West 1075 feet, being in the SW¼SW¼ of said Section 8, and changed in Case 99CW25 to the headgate of the Vannier Ditch described above. **City of Fountain's and Widefield Water and Sanitation District's H2O Ranch water rights.** Applicant is in the process of acquiring a variable amount of the consumptive use component of these water rights which are currently the subject of a pending application for change of water rights in Case No. 08CW47, District Court, Water Division No. 2 to wit: the W.A. Bell Ditch Nos. 1, 2 and 3 that were originally adjudicated pursuant to the Findings and Decree dated August 26, 1893 by the District Court of the 11th Judicial District of the State of Colorado, in and for the County of Fremont, In the Matter of the General Adjudication of Water Rights in Water District No. 13, Water Division No. 2. These water rights, as changed from time to time, have been used to irrigate approximately 486 acres of land sometimes known as the H2O Ranch located in the N½ of Section 24 and the NE¼ of Section 23, Township 22 South, Range 73 West of the 6th P.M. in Custer County, Colorado. As proposed in the

Application in Case No. 08CW47, the water rights will continue to be diverted and measured at their currently decreed points of diversion and then returned to the stream at such times as those rights are legally and physically available. In this manner, the historic consumptive use attributable to the water rights as they will be quantified in Case No. 08CW47 would then be delivered via Alvarado and Venable Creeks to Grape Creek, then to the Arkansas River for delivery to Pueblo Reservoir, which reservoir is located in Section 36, Township 20 South, Range 66 West of the 6th P.M. in Pueblo County, Colorado for use by Fountain and the Widefield Water and Sanitation District either on a direct flow basis through the Fountain Valley Conduit, or for storage and later use. UAWCD, Fountain and Widefield Water and Sanitation District may utilize these water rights as part of a contract exchange to exchange UAWCD augmentation water stored in Pueblo Reservoir to the point of diversion decreed in the pending Case No. 08CW47. By this action, UAWCD will exchange its replacement water stored in Pueblo Reservoir to Venable and/or Alvarado Creek. Furthermore, UAWCD will acquire the H₂O water rights through lease or purchase of consumptive use credits in Venable or Alvarado Creeks. Other water rights. In addition, Applicant may augment out-of-priority depletions from "Augmented Structures" in the areas to be augmented with any other water and water rights that Applicant has or may acquire that legally can be used to augment or replace out-of-priority depletions, provided the amounts of such water available for such uses have been adjudicated or otherwise administratively approved and quantified for such use. Applicant will obtain changes of water rights and/or administrative approvals so as to allow for use of these waters for such purposes, where appropriate, prior to such use. Applicant shall provide such notice as may be required of any such additional water prior to use within this plan. Also water and water rights acquired on a temporary basis pursuant to leases and interruptible supply agreements pursuant to C.R.S. § 37-92-309. **Statement of Plan for Augmentation:** Out-of-priority depletions attributable to augmented structures including augmentation wells will be replaced to the Arkansas River and Grape Creek and its tributaries depending upon the location of the controlling call and point of impact of the depletion using one of the sources of replacement water described in this plan. The replacement may be made directly from the water rights listed above, by release from one of the reservoirs listed in Table 2 or by exchange using one of the appropriate rights of exchange described herein depending upon the specific situation. Releases or exchanges of replacement water will be coordinated with the Division Engineer or Water Commissioner. For purposes of this plan the controlling call occurs when: 1) a water right is not receiving its full legal entitlement at its point of diversion; and 2) the priority date of that water right is senior to any downstream water right that may be calling or has placed an order with the Water Commissioner. When the controlling call is located on a tributary of Grape Creek, replacement will be made directly to the tributary upstream of the point of diversion of the controlling call or directly to said structure. When the controlling call is located on Grape Creek, the replacement will be provided to Grape Creek or to a Grape Creek tributary upstream of the controlling call or directly to

the calling structure. Augmentation wells: Wells which will be designated as augmentation wells will be used to deliver replacement or augmentation water to ditches or streams. These wells will be located hydraulically down-gradient of the ditch or stream that is receiving its discharge. The location of these wells will be such that pumping the well will not impact or deplete the stream or ditch that receives the well's discharge. This plan for augmentation will be implemented over a period of time according to the following procedures: (1) Persons needing augmentation water who desire to participate in this plan for augmentation will be required to submit to UAWCD an application setting forth inter alia the type of structure to be augmented, its location, the type of use, any water right decreed to the structure, the type of wastewater treatment system and the proposed beneficial uses of the water. The form may be supplemented or amended from time to time to meet continuing requirements of the State Engineer, and Division Engineer. That application shall identify this plan for augmentation as the source of replacement water which will prevent injury to other vested water rights or decreed conditional rights. (2) Upon receipt of the application, fees and appropriate supplemental material, UAWCD shall submit to the Division Engineer the application and attachments. The Division Engineer will then determine whether the diversion can be administered under this plan. If the application is to augment a surface diversion or storage facility, the Division Engineer shall forward the application to the State Engineer for final approval. If the application is to augment a well, the Division Engineer shall give UAWCD a written determination of his findings, which shall be submitted to the State Engineer with a well permit application for evaluation pursuant to this plan and C.R.S. § 37-90-137. (3) Upon application to the State Engineer by UAWCD to include an authorized diversion located in the augmentation plan area within this plan for augmentation, UAWCD shall give notice to the parties to this case and the State and Division Engineers. Such notice shall include the application for augmentation water filed with the UAWCD and such supplemental information as may be submitted with such application. (4) In addition to the foregoing notice, UAWCD shall, on a monthly basis, publish in a newspaper of general circulation in the area in which the augmentation water will be used the names of applicants for augmentation water, together with street or county road address or other brief description of the diversion location, including therein notice that such applications are available for review by interested parties in the offices of UAWCD during normal business hours. Any affected person may file comments with the State Engineer within thirty days of the date of publication of such monthly notice, except that comments may be filed within sixty days for applications for commercial or industrial use. Any affected person not satisfied by the State Engineer's determination, may then apply to the District Court, Water Division No. 2 for a de novo hearing, under the court's retained jurisdiction, whether the terms and conditions of the decree approving this plan for augmentation have been met with respect to a particular application before the State Engineer. Such de novo hearing shall be pursuant to Water Right Determination and Administration Act of 1969, C.R.S. §§ 37-92-101 et seq. Diversions located within the

augmentation plan areas included in the plan for augmentation, by either an uncontested approval by the State Engineer or Order of the court, shall become part of the decree ultimately entered approving this plan for augmentation. (5) Applicant will maintain records of augmented structures, amount and times of augmentation releases and other data as may be required by the Division Engineer for administration of this plan and provide same to the Division Engineer periodically. Storage reservoirs listed at Table 2 are off-stream reservoirs which will be filled by exchange from the Arkansas River, Grape Creek, Texas Creek, Pueblo Reservoir, DeWeese Reservoir or any other reservoir listed in Table 2, or the water rights to be used for augmentation described above. Therefore, Applicant does not intend to claim any storage rights for the reservoirs in Table 2 of this application. Remarks: Applicant does not seek to establish or change any water rights by the plan for augmentation detailed above. No diversion records or summaries are being submitted with this application because Applicant is acquiring, or in the process of acquiring, water rights to be used for augmentation, the consumptive use of which has already been determined in a judicial proceeding. Applicant is relying on the res judicata effect of the previous determinations. Consequently, Applicant is not relying upon such underlying diversion records in this case. No claim in this application involves the use of Fryingpan-Arkansas Project water. The authority for UAWCD to use Pueblo Reservoir is a an excess capacity contract with the United States which is renewed annually and is for storage of non Fryingpan-Arkansas Project water. **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 pool:** Geroux Reservoir will be on land owned by the Jack Geroux Family, LLP whose address is 329 County Road 182, Westcliffe, CO 81232 and by Harvey Geroux, whose address is 269 County Road 182, Westcliffe, CO 81232. Geroux Reservoir No. 2 and No. 3 will be on land owned by Darell & Twila Geroux, whose address is 1100 County Road 160, Westcliffe, CO 81252. Seegers Texas Creek Reservoir will be on land owned by Paul Seegers, whose address is Seegers Enterprises, Trails End Ranch, LLC, 12720 Hillcrest Road, Ste 530, Dallas, TX 75230. Humboldt Peak Ranch Reservoir will be on land owned by Humboldt Peak Partners, LLC c/o Buck Blessing whose address is 102 N. Cascade Avenue, 5th Floor, Colorado Springs, CO 80903. Miles Reservoir will be on land owned by Mr. Matt Miles whose address is 9 Tidewater Drive, Ormond Beach, FL 32174. Conquistador Reservoir No. 1 is on land owned by Hermit Basin Lodge, LLC, 1699 Camino Road, Westcliffe, Colorado 81252, Attn: Paul Zeller, Managing Member. Miles Coleman Reservoir will be on land owned by Mr. Miles Coleman, whose address is 1454 Co. Rd. 130, Westcliffe, CO 81252 . Ken Coleman Reservoir will be on land owned by Mr. Ken Coleman, whose address is 1454 Co. Rd. 130 Westcliffe, CO 81252. George Reis Reservoir will be on land owned by the Reis Family Limited Partnership, Mr. George Reis, whose address is 53003 Hwy 69, Westcliffe CO 81252. Chet Haga Reservoir will be on land owned by the Chet Haga

Family Trust, whose address is P.O. Box 908, 2387 County Road 119, Westcliffe CO 81252. Horn Creek Reservoir No. 2 will be on land owned by Horn Creek Conference Grounds, 6758 CR 130, Westcliffe, CO 81252. DeWeese Reservoir is owned by DeWeese-Dye Ditch and Reservoir Company is 1631 Chestnut Street, Canon City, CO 81212. Breadsley Reservoir is owned by Pete and Cathy Lo Presti, whose address is 664 Joy Lane, Westcliffe, CO 81252. Koch Reservoir No. 1 will be on land owned by Helen Koch, whose address is 1400 S. 2nd, Canon City, CO 81212. Posavad Reservoir will be on land owned by George L. & Verene Posavad whose address is whose address is 3300 Richmond Avenue in Shoreview, MN 55126. Pueblo Reservoir is owned by the United States of America and managed by the Bureau of Reclamation, U.S. Department of the Interior, Eastern Colorado Area Office, 11056 W. County Road 18-E, Loveland, CO 80537.

**TABLE 1
UPPER ARKANSAS WATER CONSERVANCY DISTRICT
WATER DISTRICT 13 AUGMENTATION PLAN
DESCRIPTION OF EXCHANGE REACHES IN THE GRAPE CREEK DRAINAGE**

Exch No.	Name	Amount (cfs)	Terminus	Terminus Description	Legal Description	UTM X	UTM Y	Distance from Section Line
GC-1	Grape Creek	20	Lower	Confluence with Arkansas River	T19S R70W, Sec 6 NE/4 NW/4, 6th PM	476590	4253730	90' from North Sec. Line, 1430' from West Sec. Line
			Upper	Grape Creek at USDA FS Boundary	T24S R72W, Sec 28 SE/4 NW/4, 6th PM	460310	4198660	2610' from South Sec. Line, 2140' from West Sec. Line
GC-2	Swift Creek	2	Lower	Confluence with Grape Creek	T21S R73W, Sec 36 SE/4 NE/4, 6th PM	457190	4226300	2170' from North Sec. Line, 1310' from East Sec. Line
			Upper	Swift Creek at USDA FS Boundary	T22S R73W, Sec 7 SW/4 SW/4, 6th PM	447720	4222900	1250' from North Sec. Line, 0' from East Sec. Line
GC-3	Taylor Creek	4	Lower	Confluence with Grape Creek	T22S R73W, Sec 1 SE/4 NW/4, 6th PM	456520	4224830	1840' from North Sec. Line, 2040' from West Sec. Line
			Upper	at North Taylor Creek	T22S R73W, Sec 22 NE/4 SE/4, 6th PM	453870	4219620	1980' from South Sec. Line, 780' from East Sec. Line
GC-4	North Taylor Creek	2	Lower	Confluence with Taylor Creek	T22S R73W, Sec 22 NE/4 SE/4, 6th PM	453870	4219620	1980' from South Sec. Line, 780' from East Sec. Line
			Upper	North Taylor Creek at USDA FS Boundary	T22S R73W, Sec 19 SW/4 NE/4, 6th PM	448470	4220430	1490' from North Sec. Line, 2560' from East Sec. Line
GC-5	Goodwin Creek	2	Lower	Confluence with Taylor Creek	T22S R73W, Sec 23 SE/4 NW/4, 6th PM	454820	4220120	1550' from North Sec. Line, 2300' from West Sec. Line

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Exch No.	Name	Amount (cfs)	Terminus	Terminus Description	Legal Description	UTM X	UTM Y	Distance from Section Line
			Upper	Goodwin Creek at USDA FS Boundary	T22S R73W, Sec 32 SW/4 SW/4, 6th PM	449320	4215920	0' from South Sec. Line, 400' from West Sec. Line
GC-6	Middle Taylor Creek	2	Lower	Confluence with Taylor Creek	T22S R73W, Sec 22 NE/4 SE/4, 6th PM	453870	4219620	1980' from South Sec. Line, 780' from East Sec. Line
			Upper	Middle Taylor Creek at USDA FS Boundary	T22S R73W, Sec 19 SW/4 SE/4, 6th PM	448460	4219520	980' from South Sec. Line, 2620' from West Sec. Line
GC-7	South Taylor Creek	2	Lower	Confluence with Middle Taylor Creek	T22S R73W, Sec 22 SE/4 SW/4, 6th PM	453010	4219110	180' from South Sec. Line, 1770' from West Sec. Line
			Upper	South Taylor Creek at USDA FS Boundary	T22S R73W, Sec 31 SE/4 NE/4, 6th PM	448830	4217030	1780' from North Sec. Line, 1430' from East Sec. Line
GC-8	Spring Creek	4	Lower	Confluence with Grape Creek	T22S R72W, Sec 7 SW/4 NW/4, 6th PM	457610	4222940	2460' from North Sec. Line, 460' from West Sec. Line
			Upper	Confluence with Alvarado Creek	T22S R72W, Sec 18 NW/4 SW/4, 6th PM	457400	4221020	1710' from South Sec. Line, 0' from West Sec. Line
GC-9	Venable Creek	2	Lower	Confluence with Spring Creek	T22S R73W, Sec 13 SE/4 NE/4, 6th PM	457410	4221700	1330' from North Sec. Line, 20' from East Sec. Line
			Upper	Venable Creek at USDA FS Boundary	T23S R73W, Sec 4 SW/4 NW/4, 6th PM	450780	4215370	1760' from North Sec. Line, 0' from West Sec. Line
GC-10	Alvarado Creek	2	Lower	Confluence with Spring Creek	T22S R72W, Sec 18 NW/4 SW/4, 6th PM	457400	4221020	1710' from South Sec. Line, 0' from West Sec. Line

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Exch No.	Name	Amount (cfs)	Terminus	Terminus Description	Legal Description	UTM X	UTM Y	Distance from Section Line
			Upper	Alvarado Creek at USDA FS Boundary	T23S R73W, Sec 4 NW/4 SW/4, 6th PM	450760	4214960	2250' from South Sec. Line, 0' from West Sec. Line
GC-11	Horn Creek	2	Lower	Confluence with Grape Creek	T23S R72W, Sec 5 SE/4 NW/4, 6th PM	459480	4214810	2520' from North Sec. Line, 2030' from West Sec. Line
			Upper	Horn Creek at USDA FS Boundary	T23S R73W, Sec 15 SW/4 SE/4, 6th PM	453070	4211340	1240' from South Sec. Line, 2670' from East Sec. Line
GC-12	Stanton Creek	2	Lower	Confluence with Grape Creek	T23S R72W, Sec 5 NW/4 SE/4, 6th PM	459680	4214500	1650' from South Sec. Line, 2460' from East Sec. Line
			Upper	Stanton Creek at USDA FS Boundary	T23S R73W, Sec 22 SW/4 SE/4, 6th PM	453170	4209320	0' from South Sec. Line, 2140' from East Sec. Line
GC-13	Macey Creek	2	Lower	Confluence with Grape Creek	T23S R72W, Sec 5 SW/4 SE/4, 6th PM	459840	4214310	1060' from South Sec. Line, 1910' from East Sec. Line
			Upper	Macey Creek at USDA FS Boundary	T23S R73W, Sec 23 SE/4 SW/4, 6th PM	454420	4209310	0' from South Sec. Line, 1930' from West Sec. Line
GC-14	Antelope Creek	2	Lower	Confluence with Grape Creek	T23S R72W, Sec 9 NW/4 NW/4, 6th PM	460600	4213780	560' from North Sec. Line, 660' from West Sec. Line
			Upper	Antelope Creek at USDA FS Boundary	T23S R71W, Sec 24 NE/4 NE/4, 6th PM	476510	4210140	990' from North Sec. Line, 0' from East Sec. Line
GC-15	Froze Creek	1	Lower	Confluence with Cottonwood Creek	T23S R71W, Sec 31 SW/4 SW/4, 6th PM	466880	4205930	810' from South Sec. Line, 900' from West Sec. Line

**TABLE 1
UPPER ARKANSAS WATER CONSERVANCY DISTRICT
WATER DISTRICT 13 AUGMENTATION PLAN
DESCRIPTION OF EXCHANGE REACHES IN THE GRAPE CREEK DRAINAGE**

Exch No.	Name	Amount (cfs)	Terminus	Terminus Description	Legal Description	UTM X	UTM Y	Distance from Section Line
			Upper	Froze Creek at USDA FS Boundary	T23S R70W, Sec 27 NE/4 SE/4, 6th PM	482980	4207410	1460' from South Sec. Line, 0' from East Sec. Line
GC-16	Cottonwood Creek (Antelope)	1	Lower	Confluence with Antelope Creek	T23S R72W, Sec 23 SW/4 NE/4, 6th PM	464310	4210100	1560' from North Sec. Line, 2650' from East Sec. Line
			Upper	Cottonwood Creek at USDA FS Boundary	T24S R72W, Sec 34 SE/4 SW/4, 6th PM	461900	4196220	0' from South Sec. Line, 2510' from West Sec. Line
GC-18	South Colony Creek	2	Lower	Confluence with Grape Creek	T23S R72W, Sec 16 SW/4 NE/4, 6th PM	461510	4211670	2100' from North Sec. Line, 1440' from East Sec. Line
			Upper	South Colony Creek at USDA FS Boundary	T24S R72W, Sec 6 SW/4 SW/4, 6th PM	456790	4204570	430' from South Sec. Line, 0' from West Sec. Line
GC-19	North Colony Creek	2	Lower	Confluence with South Colony Creek	T23S R72W, Sec 16 SW/4 NE/4, 6th PM	461470	4211540	2530' from North Sec. Line, 1560' from East Sec. Line
			Upper	North Colony Creek at USDA FS Boundary	T23S R73W, Sec 36 NW/4 NW/4, 6th PM	455360	4207320	1130' from North Sec. Line, 0' from West Sec. Line
GC-22	Hudson Creek	1	Lower	Confluence with Grape Creek	T23S R72W, Sec 27 SW/4 SW/4, 6th PM	462020	4207470	100' from South Sec. Line, 670' from West Sec. Line
			Upper	Hudson Creek at USDA FS Boundary	T24S R72W, Sec 18 SW/4 NE/4, 6th PM	457410	4202050	2530' from North Sec. Line, 2560' from West Sec. Line

**TABLE 1
UPPER ARKANSAS WATER CONSERVANCY DISTRICT
WATER DISTRICT 13 AUGMENTATION PLAN
DESCRIPTION OF EXCHANGE REACHES IN THE GRAPE CREEK DRAINAGE**

Exch No.	Name	Amount (cfs)	Terminus	Terminus Description	Legal Description	UTM X	UTM Y	Distance from Section Line
GC-24	Crystal Falls Creek	1	Lower	Confluence with Grape Creek	T24S R72W, Sec 16 SE/4 NW/4, 6th PM	460520	4202120	1820' from North Sec. Line, 2320' from West Sec. Line
			Upper	Crystal Falls Creek at USDA FS Boundary	T24S R72W, Sec 18 SW/4 SE/4, 6th PM	457390	4201480	1040' from South Sec. Line, 2540' from West Sec. Line

Table 2
AUGMENTATION STORAGE RESERVOIRS - Grape Creek Drainage

Name	Location	Capacity (ac-ft)	Fill Rate (cfs)	Location of Intake	Location of Outlet Discharge
Geroux Reservoir	Custer County, S/2, Sec 17, T21 S, R73 W, 6 th PM	540	5	Pipeline from Well located adjacent to Texas Creek SE/4, NE/4, Sec 17, T21 S, R73 W, 6 th PM	Pipeline from Reservoir to Texas Creek
Seegers Texas Creek Reservoir	Fremont County, W/2, Sec 36, T47 N, R12 E, NMPM	60	2	Pipeline from Well located adjacent to Texas Creek W/2, Sec 36, T47 N, R12 E, NMPM Or Delivered thru the Howard Ditch No. 1, whose headgate is located in SE/4, NE/4, Sec. 2, T46 N, R12 E, NMPM	Pipeline from Reservoir to Texas Creek, W/2, Sec 36, T47 N, R12 E, NMPM
Humboldt Peak Ranch Reservoir	Custer County, N/2 SW/4, and NW/4 SE/4 Sec 13, T23 S, R73 W, 6 th PM	50	2	Pipeline from Well located adjacent to Stanton or Macey Creek, N/2 SW/4, and NW/4 SE/4 Sec 13, T23 S, R73 W, 6 th PM	Pipeline from Reservoir to Macey Creek or Stanton Creek N/2 SW/4, and NW/4 SE/4 Sec 13, T23 S, R73 W, 6 th PM
Miles Reservoir	Custer County, SW/4 Sec 4 & SE/4 Sec 5, T23 S, R72 W, 6 th PM	100	2	Pipeline from Well located adjacent to Grape Creek, SW/4 Sec 4, or NW/4 Sec 9, T23 S, R72 W, 6 th PM	Pipeline from Reservoir to Grape Creek, SW/4 Sec 4 & SE/4 Sec 5, T23 S, R72 W, 6 th PM

Conquistador Reservoir No. 1	Custer County, SE/4, Sec 21, T22 S, R73 W, 6 th PM	134	2	Pipeline to the reservoir the headgate of which is located on the north bank of Middle Taylor Creek in the NE/4 NW/4, Sec. 28, T22 S, R73 W, 6 th PM, Custer County Colorado at a point whence the Northwest corner of said Sec 28 bears North 86° 31' West a distance of 2,058 feet.	Pipeline from Reservoir to Middle Taylor Creek at a point located in the SW/4 SW/4, Sec 22, T22 S, R73 W, 6 th PM
Miles Coleman Reservoir	Custer County, S/2 NW/4, Sec 9, T23 S, R72 W, 6 th PM	50	2	Pipeline to the reservoir from Grape Creek or a well located adjacent to Grape Creek in the W/2 Sec 9, T23 S, R72 W, 6 th PM or Pipeline to the reservoir from a well (Permit 244012-A) located in the SW/4, Sec 9, T23 S, R72 W, 6 th PM or Pipeline to the reservoir from a well (Permit 246518) located in the NW/4 Sec 9, T23 S, R73 W, 6 th PM	Pipeline from Reservoir to Grape Creek at a point located in the S/2 NW/4 Sec 9, T23 S, R72 W, 6 th PM
Ken Coleman Reservoir	Custer County, E/2 NW/4, Sec 22, T23 S, R72 W, 6 th PM	50	2	Pipeline to the reservoir from Grape Creek or a well located adjacent to Grape Creek in the W/2, Sec 22, T23 S, R73 W, 6 th PM.	Pipeline from Reservoir to Grape Creek at a point located in the NW/4 T23S, R72 W, 6 th PM
George Reis Reservoir	Custer County, SE/4, Sec 10, T23 S, R72 W, 6 th PM	50	2	Brown & Wilson Ditch whose headgate is located in the NW/4, Sec 14, T23 S, R72 W, 6 th PM	Pipeline from Reservoir to Antelope Creek or to the Brown & Wilson Ditch in the SE/4, Sec 10, T23 S, R72 W, 6 th PM

Chet Haga Reservoir	Custer County, NW/4, Sec 21, & SE/4 SW/4, Sec 16, T23 S, R72 W, 6 th PM	50	2	Pipeline from Well located adjacent to North Colony Creek or Piroth Creek, NW/4, Sec 21, & SE/4 SW/4, Sec 16, T22 S, R72 W, 6 th PM	Pipeline from Reservoir to North Colony Creek or Piroth Creek at a point located in the NW/4, Sec 21, & SE/4 SW/4, Sec 16, T22 S, R72 W, 6 th PM
Deweese Reservoir	Custer County, southeasterly corner of said dam is North 41°37' East, and is distant 758.7 feet from the Northeast Corner of Sec 20, T21 S, R72 W, 6 th PM	60 - UAWCD has contract for storage and may acquire additional storage space in Deseese Reservoir	N/A	On-Stream Reservoir	Reservoir Outlet
Horn Creek Reservoir No. 2	Custer County, SE 1/4 NE 1/4, Sec 15, T23 S, R73 W, 6 th PM	30	1	Located in the SE 1/4 SW 1/4, Sec 15, T23 S, R73 W, 6 th PM, Custer County, approximately 4,154 feet from the North line and 2,695 feet from the East line of said Sec 15	Pipeline that will release water directly into Horn Creek
Geroux Reservoir No. 2	Custer County, SE/4 NE/4 Sec 19, T22 S, R72 W, 6 th PM	200	5	Ditch or pipeline from Grape Creek, or Well tributary to Grape Creek SE/4 NE/4 Sec 19, T22 S, R72 W, 6 th PM	Reservoir outlet or pipeline from Reservoir to Grape Creek, SE/4 NE/4 Sec 19, T22 S, R72 W, 6 th PM
Geroux Reservoir No. 3	Custer County, SE/4 Sec 19 & SW/4 Sec 20, T22 S, R72 W, 6 th PM	200	5	Ditch or pipeline from Grape Creek, or Well tributary to Grape Creek SE/4 Sec 19, T22 S, R72 W, 6 th PM	Reservoir outlet or pipeline from Reservoir to Grape Creek, SE/4 Sec 19, T22 S, R72 W, 6 th PM

Breadsley Ranch Reservoir	Custer County, SE/4 Sec 23, E/2 Sec 26, T22 S, R73 W, 6 th PM and SW/4 Sec 24, W/2 Sec 25, T22 S, R73 W, 6 th PM	50	2	Ditch or pipeline from Alvarado Creek, or Well tributary to Alvarado Creek in the NE/4 Sec 26 T22 S, R73 W, 6 th PM or SW/4 Sec 24, T22 S, R73 W, 6 th PM	Pipeline to Alvarado Creek in the NE/4 Sec 26 T22 S, R73 W, 6 th PM or SW/4 Sec 24, T22 S, R73 W, 6 th PM
Koch Reservoir No. 1	Custer County, E/2 & NW/4 Sec 7, T23 S, R72 W, 6 th PM	50	2	Ditch or pipeline from Horn Creek or Stanton Creek, or Well tributary to Horn Creek or Stanton Creek in the E/2 & NW/4 Sec 7, T23 S, R72 W, 6 th PM	Pipeline to Horn Creek and/or Pipeline to Stanton Creek located in the E/2 & NW/4 Sec 7, T23 S, R72 W, 6 th PM
Posavad Reservoir	Custer County, SE/4 SW/4, and S/2 SE/4 Sec 17, NE/4 NW/4, N/2 NE/4 and SE/4 NE/4 Sec 20, W/2 NW/4 and NE/4 NW/4 Sec 21, all T24 S, R72 W, 6 th PM	50	2	Ditch or pipeline from Grape Creek, or Well tributary to Grape Creek in the N/2 NW/4 Sec 21, T24 S, R72 W, 6 th PM, or Ditch or pipeline from Crystal Falls Creek, or Well tributary to Crystal Falls Creek in the SE/4 SW/4, and S/2 SE/4 Sec 17, and N/2 NE/4 Sec 20, T24 S, R72 W, 6 th PM	Pipeline to Grape Creek in the W/2 NW/4 Sec 21, T24 S, R72 W, 6 th PM, or Pipeline to Crystal Falls in the SE/4 SW/4, and S/2 SE/4 Sec 17, T24 S, R72 W, 6 th PM

CASE NO. 09CW86 - UPPER ARKANSAS WATER CONSERVANCY DISTRICT (UAWCD), P. O. Box 1090, Salida, CO 81201 (Send all pleadings and correspondence to: John R. Hill, Jr., Bratton Hill Wilderson & Lock, L.L.C., Attorney for Applicant, 232 West Tonmichi Avenue, Suite 232, Gunnison, CO 81230; (970) 641-1903)

Application for Appropriative Rights of Exchange and for Approval of Plan for Augmentation

CHAFFEE, CUSTER, FREMONT, and PUEBLO COUNTIES

NATURE AND PURPOSE OF APPLICATION Applicant is a water conservancy district organized under the provisions of the Water Conservancy Act, now in C.R.S. §§ 37-45-101 et seq. As such, UAWCD has broad powers to facilitate the beneficial use of water within its boundaries. To that end, this is an application for a plan for augmentation for a part of the lands within UAWCD, specifically the Texas Creek drainage basin in western Fremont County and Custer County. The objective of the plan for augmentation is to protect water rights and increase the supply of water available for beneficial use within the plan area. This proposed plan for augmentation will use decreed replacement supplies to replace out-of-priority depletions caused by, for example, tributary wells (including augmentation wells to augment all beneficial uses) reservoirs, ponds, springs and surface diversions thereby offsetting or replacing out-of-priority depletions in time, place and amount which will prevent injury to vested water rights. The following tables and maps are included with and made a part of this application: Table 1. Description of Exchange Reaches. Table 2. Augmentation Storage Reservoirs. Map showing exchange reaches and reservoir locations (Exhibit A). Map showing H2O Ranch water rights historically irrigated land (Exhibit B). Map showing Johnson Ranch water rights historically irrigated land (Exhibit C). Map showing A. Katzenstein Ditch No. 1 historically irrigated land (Exhibit D). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **FIRST CLAIM (Application for Conditional Appropriative Right of Exchange) Pueblo Reservoir-Texas Creek Exchange.** Location of exchange structures or points. Lower terminus is Pueblo Reservoir which is located: in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, in Township 20 South, Range 67 West, all in the 6th P.M. in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section bears North 61° 21' 20" East, a distance of 2,511.05 feet, all more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado, in Pueblo County. Upper terminus is mouth of Texas Creek located at a UTM 449053E 4251488N WD NAD83. Amount claimed: 20 cfs conditional. Appropriation date: June 30, 2009. How appropriation was

initiated: By UAWCD Board of Directors resolution dated November 8, 2007, field reconnaissance in the Texas Creek drainage, engineering studies, planning, meetings in Custer County with Board of County Commissioners and interested persons, Power Point presentation posted on UAWCD web site, posting of signs at locations reasonably calculated to give interested persons actual notice of the proposed appropriations, Board direction to file this application by resolution made on June 25, 2009 and filing of this application on June 30, 2009. These exchanges are in Custer and Fremont Counties. **SECOND CLAIM (Application for Conditional Appropriative Rights of Exchange in Texas Creek Drainage)** Applicant claims conditional appropriative rights of exchange in Texas Creek and its tributaries in the amount of 20 cfs for Texas Creek and the amounts for each tributary listed in and described in Table 1 with appropriation date of June 30, 2009. The upstream and downstream termini and exchange amounts are listed and described in Table 1. UAWCD claims the right to exchange to any point within the described reaches of the respective streams, the inlet (feeder structure) of any reservoir listed and described in Table 4 or any other reservoir to be constructed later the inlet (feeder structure) of which is within a described reach or to any on stream reservoir within the respective described reach. The appropriation was initiated by UAWCD Board of Directors resolution dated November 8, 2007, field reconnaissance in the Texas Creek drainage, engineering studies, planning, meetings in Custer County with Board of County Commissioners and interested persons, Power Point presentation posted on UAWCD web site, posting of signs at locations reasonably calculated to give interested persons actual notice of the proposed appropriations, Board direction to file this application by resolution made on June 25, 2009 and filing of this application on June 30, 2009. These exchanges are in Custer and Fremont Counties. **THIRD CLAIM (Application for Approval of Plan for Augmentation)** Areas to be augmented are in the Texas Creek drainage in Fremont and Custer Counties. See map attached to the Application as Exhibit A and made a part hereof. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Structures to be augmented are tributary wells, on-stream reservoirs or ponds, off-stream reservoirs or ponds, direct flow surface diversions, tributary springs or seepage and structures requiring additional augmentation located in the areas described above. These structures shall be referred to as "Augmented Structures" and may be augmented for any and all beneficial uses. Previous decrees for water rights to be used for augmentation: **Hermit Basin Lodge rights.** Applicant is in the process of acquiring approximately 70 acre-feet firm annual yield of the following water rights: A. Katzenstein Ditch No. 1, originally decreed by the Fremont County District Court on May 13, 1893 and April 16, 1894, for 1.86 c.f.s. for irrigation use on 75 acres with an appropriation date of March 30, 1873 (Priority No. 51), and 1.86 c.f.s. for irrigation use on an additional 60 acres with an appropriation date of July 1, 1878 (Priority No. 207B), and as changed in Case No. W-4320, Case No. 95CW10, and Case No. 00CW42. The A. Katzenstein Ditch No. 1 diverts on the left bank of Middle Taylor Creek at a point whence the West quarter corner of Section 20, Township 22 South, Range 73 West of

the 6th Principal Meridian bears North 58°5' West at a distance of 2,900 feet. Water rights originally decreed by the District Court for Water Division No. 2 on August 1, 1978, in Case No. W-4320 to Conquistador Reservoir No. 1, for 150 acre feet for municipal, domestic, industrial, irrigation, recreation, fish and wildlife propagation, snow making, and augmentation and exchange purposes, with an appropriation date of July 28, 1975, and as changed in Case No. 86CW67, Case No. 95CW10, and Case No. 00CW42. The place of storage was changed by decree entered in Case No. 86CW67 on January 9, 1987, to the SE¼ of Section 21, Township 22 South, Range 73 West of the 6th P.M. The decreed source of water for this reservoir is Middle Taylor Creek at the A. Katzenstein Ditch No. 1 head gate, local surface runoff and groundwater infiltration. All other rights of Seller by virtue of any of the aforementioned decrees, including but not limited all of Seller's rights under the augmentation plan approved in Case No. 95CW10 and amended in Case No. 00CW42, such as the average annual consumptive for the A. Katzenstein Ditch No. 1, which the Court in Case No. 95CW10 determined to be 106 acre-feet, and all available stream depletion credits attributable to the A. Katzenstein Ditch No. 1 by virtue of the decree entered in Case No. 95CW10. Applicant will file a separate application for change of place of use to the areas to be augmented in this plan for augmentation upon receiving title to the Hermit Basin Lodge water rights. **Twin Lakes Reservoir and Canal Company (TL).** Applicant owns shares in TL and also acquires TL water from other TL shareholders or other entities through leases with terms from one to several years. Such water consists of storage and direct flow rights for water diverted from another basin which are available for 100 percent consumptive use and reuse and are available for augmentation. This water will be used directly or released from storage for replacement of out-of-priority depletions above the controlling call or by exchange with the H2O Ranch water rights described below. The water rights producing the pro rata interest of Applicant are: Colorado River Water Rights: Case No. 3802, District Court, Garfield County, August 25, 1963 and Case No. W-1901, District Court, Water Div. No. 5, May 12, 1976; priority: August 23, 1930, No. 431; source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Div. No. 5; use: direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal, and all beneficial uses; amount: direct flow amount for diversions through transmountain tunnels of 625 c.f.s., with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre-feet; and Arkansas River Water Rights: Case No. 2346, District Court, Chaffee County, July 14, 1913 as modified in Case No. W-3965, District Court, Water Div. No. 2, April 19, 1974; priorities: December 15, 1896, No. 3 and March 25, 1897, No. 4; source: Lake Creek and its tributaries, tributary to the Arkansas River; use: storage for irrigation, domestic, commercial, industrial, and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir which are capable of being served by water by diversion from said Arkansas River; amount: 54,452 acre-feet (20,645.3 acre-feet for Priority No. 3 and 33,806.7 acre-feet for Priority No. 4. Twin Lakes Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in

Township 11 South, Range 81 West of the 6th P.M., in Lake County, Colorado. The Twin Lakes dam axis and the centerline of Lake Creek intersect at a point whence the Southeast corner of Section 23, Township 11 South, Range 81 West of the 6th P.M., bears South 54° 13'08" East a distance of 3,803.10 feet, all as more particularly described in the decree in Civil Action No. 5141 (District Court, Chaffee County, Colorado). Historic use: Irrigation, domestic, commercial, industrial, municipal and other beneficial uses in the Arkansas River Basin. **Pueblo Board of Water Works Lease.** Applicant has entered into a lease of 202 acre-feet of fully consumable water with Pueblo Board of Water Works (PBWW) for a term of 40 years. With respect to the source of the water to be provided the lease provides in pertinent part that PBWW "will deliver water derived from the Board's shares in the Twin Lakes Reservoir and Canal Co. to the extent that such water is available to the Board. If Board does not have sufficient water from the Twin Lakes Reservoir and Canal Co. to satisfy its delivery obligations under this lease, then the Board may deliver water from other sources of fully consumable water available to the Board including, but not limited to, stored water at Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir, from direct flow transmountain water or transmountain return flows by exchange." This water will be used directly or released from storage for replacement of out-of-priority depletions above the controlling call or by exchange with the H2O Ranch water rights described below. The Twin Lakes water rights are described above. Water rights in which PBWW owns or has the right to use which may also be used to deliver water under the lease are, including but not limited to: the Ewing Placer Ditch decreed on November 13, 1911, with appropriation date of June 1, 1906, by the District Court, Eagle County, Civil Action No. 507; the Columbine Ditch decreed on October 3, 1936, with an appropriation date of June 21, 1930, by the District court, Eagle County, Civil Action No. 963; the Warren E. Wurtz Ditch (aka the Warren E. Wurts Ditch) decreed on October 3, 1936, with an appropriation date of June 8, 1929, by the District Court, Eagle County, Civil Action No. 963; the Wurtz Extension Ditch decreed on October 21, 1982, with an appropriation date of October 26, 1953, by the District Court, Water Division No.5, Case No. 80CW505; the Busk-Ivanhoe System decreed by absolute decree of the District Court, Garfield County, in Civil Action No. 2621 dated January 9, 1928, with appropriation dates differing for various components of the system as more fully set forth in the referenced decree, other absolute decrees were entered in Civil Actions Nos. 3082 and 4033 in by the District Court, Garfield County; the Homestake Project conditionally decreed in Civil Action No. 1193 by the District Court, Eagle County on June 8, 1962 with appropriation date of September 22, 1952; the Independence Pass Transmountain Diversion decreed in Civil Action No. 3082 by the District Court, Garfield County dated August 25, 1936, and were modified by a Decree in Case No. W-1901 by the District Court, Water Division No. 5, dated May 12, 1976. The Busk-Ivanhoe System, the Columbine Ditch, the Ewing Ditch and the Wurtz Ditch are all subject to a change of water rights decree in Case No. 90CW340, District Court, Water Division No. 5 (consolidated with Case No. 90CW52, District Court, Water Division No. 2. The points of diversion of the foregoing water rights are located in the Colorado River drainage basin. **Round Mountain Water and Sanitation District's Johnson Ranch water rights.** Pursuant to a letter agreement dated November 17, 2008, Applicant and Round Mountain Water and Sanitation District are negotiating the terms of an

agreement for use of Round Mountain's excess Johnson Ranch water rights as changed Case No. 02CW186. That case determined, *inter alia*, the historic consumptive use of the following described water rights which are described with reference to their original decreed locations in Section 8, Township 23 South, Range 72 West of the 6th P.M. in Custer County: Benoni Jarvis Ditch, with 0.60 cfs, with the priority date of May 15, 1872, adjudicated in the 1896 Decree as being on the North side of Macey Creek at a point whence the South Quarter Corner of Section 8 bears South 2°15' East 1584 ft, being in the NW¼SE¼ of said Section 8, and changed in Case 99CW25 to the headgate of the Vannier ditch described below. Lane Ditch, with 1.75 cfs, with the priority date of May 15, 1872, and with 0.86 cfs with the priority date of June 5, 1878, and with 0.64 cfs, with the priority date of June 10, 1888, on the southeast side of Macey Creek at a point whence the SW corner of said Section 8 bears South 81°20' West 172 ft, being in the SW¼SW¼ of said Section 8. Vannier Ditch, with 0.56 cfs, with the priority date of June 10, 1872, and 1.19 cfs with the priority date of June 10, 1875, on the west side of Macey Creek, at a point whence the SW corner of said Section 8 bears South 74°30' West 172 feet, being in the SW¼SW¼ of said Section 8, and described in the said decree in Case 99CW25 as approximately 150 feet east of the west line and 30 feet north of the south line of said Section 8. Helen Ditch, with 0.585 cfs, with the priority date of June 11, 1875, adjudicated in the 1896 Decree as being on the northwest side of the North Branch of Macey Creek, at a point whence the SW corner of said Section 8 bears South 1° West 1075 feet, being in the SW¼SW¼ of said Section 8, and changed in Case 99CW25 to the headgate of the Vannier Ditch described above. **City of Fountain's and Widefield Water and Sanitation District's H2O Ranch water rights.** Applicant is in the process of acquiring a variable amount of the consumptive use component of these water rights which are currently the subject of a pending application for change of water rights in Case No. 08CW47, District Court, Water Division No. 2 to wit: the W.A. Bell Ditch Nos. 1, 2 and 3 that were originally adjudicated pursuant to the Findings and Decree dated August 26, 1893 by the District Court of the 11th Judicial District of the State of Colorado, in and for the County of Fremont, In the Matter of the General Adjudication of Water Rights in Water District No. 13, Water Division No. 2. These water rights, as changed from time to time, have been used to irrigate approximately 486 acres of land sometimes known as the H2O Ranch located in the N½ of Section 24 and the NE¼ of Section 23, Township 22 South, Range 73 West of the 6th P.M. in Custer County, Colorado. As proposed in the Application in Case No. 08CW47, the water rights will continue to be diverted and measured at their currently decreed points of diversion and then returned to the stream at such times as those rights are legally and physically available. In this manner, the historic consumptive use attributable to the water rights as they will be quantified in Case No. 08CW47 would then be delivered via Alvarado and Venable Creeks to Grape Creek, then to the Arkansas River for delivery to Pueblo Reservoir, which reservoir is located in Section 36, Township 20 South, Range 66 West of the 6th P.M. in Pueblo County, Colorado for use by Fountain and the Widefield Water and Sanitation District either on a direct flow basis through the Fountain Valley Conduit, or for storage and later use. UAWCD, Fountain and Widefield Water and Sanitation District may utilize these water rights as part of a contract exchange to exchange UAWCD augmentation water stored in Pueblo Reservoir to the point of diversion decreed in the pending Case

No. 08CW47. By this action, UAWCD will exchange its replacement water stored in Pueblo Reservoir to Venable and/or Alvarado Creek. Furthermore, UAWCD will acquire the H₂O water rights through lease or purchase of consumptive use credits in Venable or Alvarado Creeks. **Other water rights.** In addition, Applicant may augment out-of-priority depletions from “Augmented Structures” in the areas to be augmented with any other water and water rights that Applicant has or may acquire that legally can be used to augment or replace out-of-priority depletions, provided the amounts of such water available for such uses have been adjudicated or otherwise administratively approved and quantified for such use. Applicant will obtain changes of water rights and/or administrative approvals so as to allow for use of these waters for such purposes, where appropriate, prior to such use. Applicant shall provide such notice as may be required of any such additional water prior to use within this plan. Water and water rights acquired on a temporary basis pursuant to leases and interruptible supply agreements pursuant to C.R.S. § 37-92-309. **Statement of Plan for Augmentation:** Out-of-priority depletions attributable to augmented structures including augmentation wells will be replaced to the Arkansas River and Texas Creek and its tributaries depending upon the location of the controlling call and point of impact of the depletion using one of the sources of replacement water described in this plan. The replacement may be made directly from the water rights listed in above, by release from one of the reservoirs listed in Table 4 or by exchange using one of the appropriative rights of exchange described herein depending upon the specific situation. Releases or exchanges of replacement water will be coordinated with the Division Engineer or water commissioner. For purposes of this plan the controlling call occurs when: 1) a water right is not receiving its full legal entitlement at its point of diversion; and 2) the priority date of that water right is senior to any downstream water right that may be calling or has placed an order with the Water Commissioner. When the controlling call is located on a tributary of Texas Creek, replacement will be made directly to the tributary upstream of the point of diversion of the controlling call or directly to said structure. When the controlling call is located on Texas Creek, the replacement will be provided to Texas Creek or to a Texas Creek tributary upstream of the controlling call or directly to the calling structure. **Augmentation wells:** Wells which will be designated as augmentation wells will be used to deliver replacement or augmentation water to ditches or streams. These wells will be located hydraulically down-gradient of the ditch or stream that is receiving its discharge. The location of these wells will be such that pumping the well will not impact or deplete the stream or ditch that receives its discharge. **This plan for augmentation will be implemented over a period of time according to the following procedures:** (1) Persons needing augmentation water who desire to participate in this plan for augmentation will be required to submit to UAWCD an application setting forth *inter alia* the type of structure to be augmented, its location, the type of use, any water right decreed to the structure, the type of wastewater treatment system and the proposed beneficial uses of the water. The form may be supplemented or amended from time to time to meet continuing requirements of the State Engineer, and Division Engineer. That application shall identify this plan for augmentation as the source of replacement water which will prevent injury to other vested water rights or decreed conditional rights. (2) Upon receipt of the application, fees and appropriate supplemental material, UAWCD shall submit to the Division

Engineer the application and attachments. The Division Engineer will then determine whether the diversion can be administered under this plan. If the application is to augment a surface diversion or storage facility, the Division Engineer shall forward the application to the State Engineer for final approval. If the application is to augment a well, the Division Engineer shall give UAWCD a written determination of his findings, which shall be submitted to the State Engineer with a well permit application for evaluation pursuant to this plan and C.R.S. 37-90-137. (3) Upon application to the State Engineer by UAWCD to include an authorized diversion located in the augmentation plan area within this plan for augmentation, UAWCD shall give notice to the parties to this case and the State and Division Engineers. Such notice shall include the application for augmentation water filed with the UAWCD and such supplemental information as may be submitted with such application. (4) In addition to the foregoing notice, UAWCD shall, on a monthly basis, publish in a newspaper of general circulation in the area in which the augmentation water will be used the names of applicants for augmentation water, together with street or county road address or other brief description of the diversion location, including therein notice that such applications are available for review by interested parties in the offices of UAWCD during normal business hours. Any affected person may file comments with the State Engineer within thirty days of the date of publication of such monthly notice, except that comments may be filed within sixty days for applications for commercial or industrial use. Any affected person not satisfied by the State Engineer's determination, may then apply to the District Court, Water Division No. 2 for a *de novo* hearing, under the court's retained jurisdiction, whether the terms and conditions of the decree approving this plan for augmentation have been met with respect to a particular application before the State Engineer. Such *de novo* hearing shall be pursuant to Water Right Determination and Administration Act of 1969, C.R.S. §§ 37-92-101 *et seq.* Diversions located within the augmentation plan areas included in the plan for augmentation, by either an uncontested approval by the State Engineer or Order of the court, shall become part of the decree ultimately entered approving this plan for augmentation. (5) Applicant will maintain records of augmented structures, amount and times of augmentation releases and other data as may be required by the Division Engineer for administration of this plan and provide same to the Division Engineer periodically. **Storage reservoirs** listed at Table 2 are off-stream reservoirs which will be filled by exchange from the Arkansas River, Grape Creek, Texas Creek, Pueblo Reservoir, DeWeese Reservoir or any other reservoir listed in Table 2, or the water rights to be used for augmentation described above. Therefore, Applicant does not intend to claim any storage rights for the reservoirs in Table 2 this application. **Remarks:** Applicant does not seek to establish or change any water rights by the plan for augmentation detailed above. No diversion records or summaries are being submitted with this application because Applicant is acquiring, or in the process of acquiring, water rights to be used for augmentation, the consumptive use of which has already been determined in a judicial proceeding. Applicant is relying on the *res judicata* effect of the previous determinations. Consequently, Applicant is not relying upon such underlying diversion records in this case. **No claim in this application involves the use of Fryingpan-Arkansas Project water.** The authority for UAWCD to use Pueblo Reservoir is an excess capacity contract with the United States which is renewed annually and is for storage of non

Fryingpan-Arkansas Project water. **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 pool:** Geroux Reservoir will be on land owned by the Jack Geroux Family, LLP whose address is 329 County Road 182, Westcliffe, CO 81232 and by Harvey Geroux, whose address is 269 County Road 182, Westcliffe, CO 81232. Geroux Reservoir No. 2 and No. 3 will be on land owned by Darell & Twila Geroux, whose address is 1100 County Road 160, Westcliffe, CO 81252. Seegers Texas Creek Reservoir and Seeger Spruce Creek Reservoir will be on land owned by Paul Seegers, whose address is Seegers Enterprises, Trails End Ranch, LLC, 12720 Hillcrest Road, Ste 530, Dallas, TX 75230. Conquistador Reservoir No. 1 is on land owned by Hermit Basin Lodge, LLC, 1699 Camino Road, Westcliffe, Colorado 81252, Attn: Paul Zeller, Managing Member. DeWeese Reservoir is owned by DeWeese-Dye Ditch and Reservoir Company is 1411 Walnut Street, Canon City, CO 81212. Pueblo Reservoir is owned by the United States of America and managed by the Bureau of Reclamation, U.S. Department of the Interior, Eastern Colorado Area Office, 11056 W. County Road 18-E, Loveland, CO 80537.

TABLE 1
UPPER ARKANSAS WATER CONSERVANCY DISTRICT
WATER DISTRICT 13 AUGMENTATION PLAN
DESCRIPTION OF EXCHANGE REACHES IN THE TEXAS CREEK DRAINAGE

Exch No.	Name	Amount (cfs)	Terminu s	Terminus Description	Legal Description	UTM X	UTM Y	Distance from Section Line
TC-1	Texas Creek	6	Lower	Confluence with Arkansas River	T19S R73W, Sec 7 SE/4 SW/4, 6th PM	449080	4251520	1020' from South Sec. Line, 2190' from West Sec. Line
			Upper	Texas Creek at USDA FS Boundary	T45N R12E, Sec 1 SW/4 NW/4, NMPM	446960	4225240	1120' from South Sec. Line, 0' from West Sec. Line
TC-2	Lake Creek	2	Lower	Confluence with Texas Creek	T47N R12E, Sec 23 SE/4 SE/4, NMPM	447190	4239690	750' from South Sec. Line, 770' from East Sec. Line
			Upper	Lake Creek at USDA FS Boundary	T46N R12E, Sec 4 NW/4 SW/4, NMPM	442440	4235500	2450' from South Sec. Line, 0' from West Sec. Line
TC-3	Duckett Creek	2	Lower	Confluence with Lake Creek	T47N R12E, Sec 34 NE/4 NE/4, NMPM	445650	4237580	900' from North Sec. Line, 290' from East Sec. Line
			Upper	Duckett Creek at USDA FS Boundary	T46N R12E, Sec 8 NE/4 SW/4, NMPM	441180	4233720	1790' from South Sec. Line, 1320' from West Sec. Line
TC-4	Spruce Creek	2	Lower	Confluence with Texas Creek	T47N R12E, Sec 35 SE/4 SE/4, NMPM	447260	4236570	1140' from South Sec. Line, 270' from East Sec. Line
			Upper	Spruce Creek at USDA FS Boundary	T46N R12E, Sec 9 NW/4 SE/4, NMPM	443250	4233890	2520' from South Sec. Line, 2450' from East Sec. Line
TC-6	Brush Creek	2	Lower	Confluence with Texas Creek	T46N R12E, Sec 1 NW/4 SW/4, NMPM	447420	4235150	1900' from South Sec. Line, 350' from West Sec. Line
			Upper	North Brush Creek at USDA FS Boundary	T46N R12E, Sec 13 NW/4 NW/4, NMPM	447280	4232650	1170' from North Sec. Line, 230' from West Sec. Line

**TABLE 1
UPPER ARKANSAS WATER CONSERVANCY DISTRICT
WATER DISTRICT 13 AUGMENTATION PLAN
DESCRIPTION OF EXCHANGE REACHES IN THE TEXAS CREEK DRAINAGE**

Exch No.	Name	Amount (cfs)	Terminu s	Terminus Description	Legal Description	UTM X	UTM Y	Distance from Section Line
TC-8	South Brush Creek	2	Lower	Confluence with Brush Creek	T46N R12E, Sec 13 NW/4 NW/4, NMPM	447280	4232650	1170' from North Sec. Line, 230' from West Sec. Line
			Upper	South Brush Creek at USDA FS Boundary	T46N R12E, Sec 33 NE/4 NE/4, NMPM	443840	4227960	1030' from North Sec. Line, 40' from East Sec. Line
TC-9	North Brush Creek	2	Lower	Confluence with Brush Creek	T46N R12E, Sec 13 NW/4 NW/4, NMPM	447280	4232650	1170' from North Sec. Line, 230' from West Sec. Line
			Upper	North Brush Creek at USDA FS Boundary	T46N R12E, Sec 22 SW/4 SW/4, NMPM	443880	4230170	1000' from South Sec. Line, 0' from West Sec. Line
TC-10	Greenleaf Creek	2	Lower	Confluence with Texas Creek	T21S R73W, Sec 21 NW/4 SW/4, 6th PM	451500	4229300	1660' from South Sec. Line, 950' from West Sec. Line
			Upper	Greenleaf Creek at USDA FS Boundary	T46N R12E, Sec 35 SE/4 SW/4, NMPM	445970	4226560	0' from South Sec. Line, 1940' from West Sec. Line

Table 2
AUGMENTATION STORAGE RESERVOIRS - Texas Creek Drainage

Name	Location	Capacity (ac-ft)	Fill Rate (cfs)	Location of Intake	Location of Outlet Discharge
Geroux Reservoir	Custer County, S/2, Sec 17, T21 S, R73 W, 6 th PM	540	5	Pipeline from Well located adjacent to Texas Creek SE/4, NE/4, Sec 17, T21 S, R73 W, 6 th PM	Pipeline from Reservoir to Texas Creek
Seegers Texas Creek Reservoir	Fremont County, W/2, Sec 36, T47 N, R12 E, NMPM	60	2	Pipeline from Well located adjacent to Texas Creek W/2, Sec 36, T47 N, R12 E, NMPM Or Delivered thru the Howard Ditch No. 1, whose headgate is located in SE/4, NE/4, Sec. 2, T46 N, R12 E, NMPM	Pipeline from Reservoir to Texas Creek, W/2, Sec 36, T47 N, R12 E, NMPM
Seegers Spruce Creek Reservoir	Custer County, NW/4, Sec 10, T46 N, R12 E, NMPM	60	2	Pipeline or Ditch from Spruce, NW/4, Sec 10, T46 N, R12 E, NMPM	Pipeline from Reservoir to Spruce Creek, NW/4, Sec 10, T46 N, R12 E, NMPM
Geroux Reservoir No. 2	Custer County, SE/4 NE/4 Sec 19, T22 S, R72 W, 6 th PM	200	5	Ditch or pipeline from Grape Creek, or Well tributary to Grape Creek SE/4 NE/4 Sec 19, T22 S, R72 W, 6 th PM	Reservoir outlet or pipeline from Reservoir to Grape Creek, SE/4 NE/4 Sec 19, T22 S, R72 W, 6 th PM
Geroux Reservoir No. 3	Custer County, SE/4 Sec 19 & SW/4 Sec 20, T22 S, R72 W, 6 th PM	200	5	Ditch or pipeline from Grape Creek, or Well tributary to Grape Creek SE/4 Sec 19, T22 S, R72 W, 6 th PM	Reservoir outlet or pipeline from Reservoir to Grape Creek, SE/4 Sec 19, T22 S, R72 W, 6 th PM

CASE NO. 09CW87 - COLORADO WATER CONSERVATION BOARD, 1313 Sherman Street, Suite 721, Denver, CO 80203 (Beth Van Vurst, Assistant Attorney General, Attorney for Applicant, 1525 Sherman Street, 5th Floor, Denver, CO 80203; (303) 866-5054)

Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree

LAKE COUNTY, COLORADO

Name of natural stream: Rock Creek, tributary to Willow Creek tributary to Lake Fork Arkansas River tributary to Arkansas River. **Location:** Legal description of the stream segment through which an instream flow is claimed: The natural stream channel from the outlet of Native Lake at latitude 39° 13' 26.66"N and longitude 106° 27' 30.51"W as the upstream terminus and extending to the confluence with Willow Creek at latitude 39° 12' 39.72"N and longitude 106° 22' 49.14"W as the downstream terminus, being a distance of approximately 5.0 miles. This segment can be located on the Mount Massive U.S.G.S. quadrangle. For administrative purposes only: Upper Terminus = SW NW S33 T9S R81W 6th PM, 240' East of the West Section Line, 2115' South of the North Section Line UTM North: 4342655.8 UTM East: 374104.6. Lower Terminus = SW NW S6 T10S R80W 6th PM 1270' East of the West Section Line, 1587' South of the North Section Line UTM North: 4341103.3 UTM East: 380829.5. **Date of initiation of appropriation:** January 27, 2009. **Date water applied to beneficial use:** Water was first applied to beneficial use on or before January 27, 2009. The appropriation was completed on January 27, 2009 by the action of the Colorado Water Conservation Board under the provisions of Sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2008). **How appropriation was initiated:** At its regular meeting on January 27, 2009, the Colorado Water Conservation Board appropriated this water right pursuant to the Rules Concerning the Colorado Instream Flow and Natural Lake Program, 2 CCR 408-2. **Amount of water claimed (ABSOLUTE):** Instream flow of 11.0 cfs (May 15 – August 31), 5.0 cfs (September 1 – October 31), and 1.7 cfs (November 1 – May 14). **Remarks:** This appropriation is made pursuant to the provisions of Sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2008). The purpose of this appropriation by the State of Colorado is to preserve the natural environment to a reasonable degree. At its regular meeting on May 19, 2009, the Board determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the Board's water right herein, if granted; and that such environment can exist without material injury to water rights. This Application is for an instream flow water right, exclusive to the CWCB pursuant to section 37-92-102(3) C.R.S., and as such there are no proposed diversion structures or storage involved, nor does it affect ground water described in section 37-90-137(4), C.R.S.. See City of Thornton By and Through Utilities Bd. v. City of Fort Collins, 830 P.2d 915, 931 (Colo.,1992) ("A minimum stream flow does not require removal or control of water by some structure or device. A minimum stream flow between two points on a stream or river usually signifies the complete absence of a

structure or device."). Therefore, the notice provision contained in section 37-92-302(2)(b) C.R.S. is not applicable.

CASE NO. 09CW88 - COLORADO WATER CONSERVATION BOARD, 1313

Sherman Street, Suite 721, Denver, CO 80203 (Beth Van Vurst, Assistant Attorney General, Attorney for Applicant, 1525 Sherman Street, 5th Floor, Denver, CO 80203; (303) 866-5054)

Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree

LAS ANIMAS COUNTY, COLORADO

Name of natural stream: South Fork Purgatoire River, tributary to Purgatoire River.

Location: Legal description of the stream segment through which an instream flow is claimed: The natural stream channel from the confluence of unnamed tributary at latitude 37° 3' 49.3"N and longitude 104° 58' 59.73"W as the upstream terminus and extending to the confluence with Torres Canyon at latitude 37° 5' 39.66"N and longitude 104° 52' 46.78"W as the downstream terminus, being a distance of approximately 8.2 miles. This segment can be located on the Tercio U.S.G.S. quadrangle. For administrative purposes only: Upper Terminus =S22 T34S R68W 6th PM UTM North: 4101938.3 UTM East: 501488.3. Lower Terminus = S10 T34S R67W 6th PM. UTM North: 4105345.6 UTM East: 510694.1.

Date of initiation of appropriation: January 27, 2009. **Date water applied to beneficial use:** Water was first applied to beneficial use on or before January 27, 2009. The appropriation was completed on January 27, 2009 by the action of the Colorado Water Conservation Board under the provisions of Sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2008).

How appropriation was initiated: At its regular meeting on January 27, 2009, the Colorado Water Conservation Board appropriated this water right pursuant to the Rules Concerning the Colorado Instream Flow and Natural Lake Program, 2 CCR 408-2.

Amount of water claimed (ABSOLUTE): Instream flow of 18.0 cfs (June 1 – June 30), 13.0 cfs (July 1 – August 15), 5.0 cfs (August 16 – October 15), 3.0 cfs (October 16 – April 30) and 9.6 cfs (May 1 – May 31).

Remarks: This appropriation is made pursuant to the provisions of Sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2008). The purpose of this appropriation by the State of Colorado is to preserve the natural environment to a reasonable degree. At its regular meeting on May 19, 2009, the Board determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the Board's water right herein, if granted; and that such environment can exist without material injury to water rights. This Application is for an instream flow water right, exclusive to the CWCB pursuant to section 37-92-102(3) C.R.S., and as such there are no proposed diversion structures or storage involved, nor does it affect ground water described in section 37-90-137(4), C.R.S.. See City of Thornton By and Through Utilities Bd. v. City of Fort Collins, 830 P.2d 915, 931 (Colo.,1992) ("A minimum stream flow does not require removal or control of water by some structure or device. A minimum stream flow between two points on a stream or river usually signifies the complete absence of a

structure or device."). Therefore, the notice provision contained in section 37-92-302(2)(b) C.R.S. is not applicable.

CASE NO. 09CW89 - COLORADO WATER CONSERVATION BOARD, 1313

Sherman Street, Suite 721, Denver, CO 80203 (Chad M. Wallace, Assistant Attorney General, Attorney for Applicant, 1525 Sherman Street, 5th Floor, Denver, CO 80203; (303) 866-5461)

Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree

LAKE COUNTY, COLORADO

Name of natural stream: Maxwell Creek. **Location:** Legal description of the stream segment through which an instream flow is claimed: The natural stream channel from the headwaters in the vicinity of latitude 38° 45' 10.62"N and longitude 106° 14' 54.52"W as the upstream terminus and extending to the headgate of the O.W. Friskey Ditch at latitude 38° 46' 25.59"N and longitude 106° 11' 2.0"W as the downstream terminus, being a distance of approximately 4.0 miles. This segment can be located on the Buena Vista West U.S.G.S. quadrangle. For administrative purposes only: Upper Terminus = SE SW S8 T15S R79W 6th PM 2230' East of the West Section Line, 210' North of the South Section Line. UTM North: 4290101.6 UTM East: 391515.3. Lower Terminus = NW SW S1 T15S R79W 6th PM 35' East of the West Section Line, 2400' North of the South Section Line UTM North: 4292338.0 UTM East: 397157.8. **Date of initiation of appropriation:** January 27, 2009. **Date water applied to beneficial use:** Water was first applied to beneficial use on or before January 27, 2009. The appropriation was completed on January 27, 2009 by the action of the Colorado Water Conservation Board under the provisions of Sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2008). **How appropriation was initiated:** At its regular meeting on January 27, 2009, the Colorado Water Conservation Board appropriated this water right pursuant to the Rules Concerning the Colorado Instream Flow and Natural Lake Program, 2 CCR 408-2. **Amount of water claimed (ABSOLUTE):** Instream flow of 3.3 cfs (June 1 – July 27), 1.5 cfs (July 28 – September 30), 1.0 cfs (October 1 – October 31), and 0.4 cfs (November 1 – May 31). **Remarks:** This appropriation is made pursuant to the provisions of Sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2008). The purpose of this appropriation by the State of Colorado is to preserve the natural environment to a reasonable degree. At its regular meeting on May 19, 2009, the Board determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the Board's water right herein, if granted; and that such environment can exist without material injury to water rights. This Application is for an instream flow water right, exclusive to the CWCB pursuant to section 37-92-102(3) C.R.S., and as such there are no proposed diversion structures or storage involved, nor does it affect ground water described in section 37-90-137(4), C.R.S.. See City of Thornton By and Through Utilities Bd. v. City of Fort Collins, 830 P.2d 915, 931 (Colo., 1992) ("A minimum stream flow does not require removal or control of water by some structure or device. A minimum stream flow between two points on a stream or river usually signifies the

complete absence of a structure or device."). Therefore, the notice provision contained in section 37-92-302(2)(b) C.R.S. is not applicable.

CASE NO. 09CW90 - COLORADO WATER CONSERVATION BOARD, 1313

Sherman Street, Suite 721, Denver, CO 80203 (Chad M. Wallace, Assistant Attorney General, Attorney for Applicant, 1525 Sherman Street, 5th Floor, Denver, CO 80203; (303) 866-5461)

Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree

LAS ANIMAS COUNTY, COLORADO

Name of natural stream: Purgatoire River. **Location:** Legal description of the stream segment through which an instream flow is claimed: The natural stream channel from the confluence with the Middle and North Forks of the Purgatoire River at latitude 37° 9' 26.01"N and longitude 104° 56' 26.53"W as the upstream terminus and extending to the confluence with Lopez Canyon at latitude 37° 8' 25.05"N and longitude 104° 52' 44.77"W as the downstream terminus, being a distance of approximately 4.8 miles. This segment can be located on the Vigil U.S.G.S. quadrangle. For administrative purposes only: Upper Terminus = SE NE S24 T33S R68W 6th PM 733' West of the East Section Line, 2490' South of the North Section Line. UTM North: 4112315.8 UTM East: 505265.1. Lower Terminus = NE SW S27 T33S R67W 6th PM 1347' East of the West Section Line, 3565' South of the North Section Line. UTM North: 4110442.4 UTM East: 510737.2. **Date of initiation of appropriation:** January 27, 2009. **Date water applied to beneficial use:** Water was first applied to beneficial use on or before January 27, 2009. The appropriation was completed on January 27, 2009 by the action of the Colorado Water Conservation Board under the provisions of Sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2008). **How appropriation was initiated:** At its regular meeting on January 27, 2009, the Colorado Water Conservation Board appropriated this water right pursuant to the Rules Concerning the Colorado Instream Flow and Natural Lake Program, 2 CCR 408-2. **Amount of water claimed (ABSOLUTE):** Instream flow of 21.0 cfs (May 15 – August 15), 15.0 cfs (August 16 – September 15), 8.4 cfs (September 16 – November 30), 7.0 cfs (December 1 – April 14), and 8.4 cfs (April 15 – May 14). **Remarks:** This appropriation is made pursuant to the provisions of Sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2008). The purpose of this appropriation by the State of Colorado is to preserve the natural environment to a reasonable degree. At its regular meeting on May 19, 2009, the Board determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the Board's water right herein, if granted; and that such environment can exist without material injury to water rights. This Application is for an instream flow water right, exclusive to the CWCB pursuant to section 37-92-102(3) C.R.S., and as such there are no proposed diversion structures or storage involved, nor does it affect ground water described in section 37-90-137(4), C.R.S.. See City of Thornton By and Through Utilities Bd. v. City of Fort Collins, 830 P.2d 915, 931 (Colo.,1992) ("A minimum stream flow does not require removal or control of water by some structure or device. A minimum stream flow

between two points on a stream or river usually signifies the complete absence of a structure or device."). Therefore, the notice provision contained in section 37-92-302(2)(b) C.R.S. is not applicable.

CASE NO. 09CW91 - ST. CHARLES MESA WATER DISTRICT, 1397 Aspen Road, Pueblo, CO 81006 (Attorneys for Applicant: Holland & Hart LLP, Christopher L. Thorne, Atty. Reg. #20003 and Meghan N. Winokur, Att. Reg. #35973, 555 Seventeenth Street, Suite 3200, Denver, CO 80202, Telephone: (303) 295-8000)

Application for Change of Water Rights

PUEBLO COUNTY

Water Rights to be Changed: Applicant owns or leases a total of 2057.744 shares of the 19,738.593 outstanding shares in the Bessemer Irrigating Ditch Company ("Bessemer"). This application involves 180.340 of the Bessemer shares owned by Applicant. By decree dated April 24, 2009 in Case No. 04CW08 (Water Division 2) (the "04CW08 Decree"), the decreed uses for water represented by 1710.609 Bessemer shares owned or leased by Applicant were expanded to include municipal use, replacement of return flow obligations pursuant to the 04CW08 Decree, and storage for municipal and replacement purposes. The 04CW08 Decree also expanded the decreed uses for 166.745 Bessemer shares previously changed in Case Nos. W-373 and W-374, to add storage in St. Charles Mesa Reservoir No. 2 ("Reservoir No. 2") as a permitted use, and confirmed that the domestic use previously approved for these shares included use for all municipal purposes. In this Application, Applicant seeks a change in use of the water represented by the remaining 180.340 Bessemer shares owned by Applicant, to add to the existing decreed uses: municipal use, replacement of return flow obligations pursuant to decree, and storage for municipal and replacement purposes. Applicant proposes that the requested changes in use be subject to the applicable terms and conditions set forth in the 04CW08 Decree. Bessemer owns the following water rights (the "Bessemer Water Rights") : Bessemer Water Rights

Identification of Water Right	Date Original Decree Entered	Amount owned by Bessemer (c.f.s.)	Decreed Use	Appropriation Date
Warrant, Barnes & Baxter*	March 23, 1896**	2.0	Irrigation	April 30, 1861
Excelsior	March 23, 1896**	20.0	Irrigation	Dec. 31, 1861
Canon City & Oil Creek	Feb. 3, 1894	3.74	Irrigation and Domestic	May 31, 1864
Rogers	May 21, 1898	3.0	Irrigation	June 30, 1866
Arkansas Ditch	March 23, 1896**	2.5	Irrigation and Domestic	Jan. 8, 1867
Canon City & Oil Creek	Feb. 3, 1894	5.13	Irrigation and Domestic	May 31, 1867
Hamp-Bell	March 23, 1896**	1.47	Irrigation	Nov. 30, 1870
Barnum	March 23, 1896**	3.4	Irrigation	Dec. 31, 1870
Cape Horn Ranch	Dec. 22, 1896	2.0	Irrigation	Sept. 18, 1873
Cape Horn Ranch	Dec. 22, 1896	2.5	Irrigation	Dec. 31, 1876
Cape Horn Ranch	Dec. 22, 1896	0.5	Irrigation and Domestic	Dec. 31, 1876
Hamp-Bell	March 23, 1896**	0.41	Irrigation	Dec. 31, 1878
Collier	March 23, 1896**	14.0	Irrigation	May 4, 1881

I.N. Sater	March 23, 1896**	2.0	Irrigation	June 20, 1881
Collier	March 23, 1896**	8.0	Irrigation	March 31, 1882
Bessemer Flood Right	March 23, 1896**	322.0	Irrigation	May 1, 1887
Total, excluding Warrant, Barnes & Baxter		390.65		

* This water right is independently owned by the City of Pueblo and is not included in the Bessemer Water Rights. The diversions associated with this priority have been subtracted from the Bessemer Ditch headgate diversions to determine the District's share of the Bessemer Water Rights.

** These water rights were originally decreed in a general adjudication for Water District 14 on May 9, 1892. The decree entered at that time was modified and confirmed by decree dated March 23, 1896. Applicant's pro rata entitlement to the Bessemer Water Rights represented by the 180.340 Bessemer shares that are the subject of this Application is hereinafter referred to as the "Subject Water Rights." **A. Point of Diversion for Bessemer Water Rights:** The decreed point of diversion for the Bessemer Water Rights is on the right bank of the Arkansas River, in the NW ¼, Section 33, Township 20 South, Range 66 West, at a point whence the corner stone common to Sections 28, 29, 32, and 33 of said Township and Range bears North 34°15' West 2,450 feet, in Pueblo County, Colorado. The original headgate and upper four miles of the Bessemer Ditch have been inundated by the water stored in Pueblo Reservoir. As a result of the construction of Pueblo Reservoir, the Bessemer Ditch now diverts at the axis of Pueblo Dam. The Pueblo Reservoir Dam axis and the centerline of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West, 6th P.M., from which the Northeast corner of said Section 36 bears North 61° 21' 20" East, a distance of 2,511.05 feet, all as more particularly described in the decree in Case No. B-42135, District Court, Pueblo County ("Bessemer Ditch Headgate"). **B. Source for Bessemer Water Rights:** Arkansas River. **3. Background Information:** Applicant is a municipal water provider currently serving approximately 4,045 equivalent residential units located within the District boundaries. To serve its growing population, Applicant must increase its municipal water supply. Applicant operates two reservoirs, St. Charles Mesa Reservoir No. 1 and Reservoir No. 2, that have approximate water storage capacities of 90 acre feet and 1,800 acre feet, respectively, and are used by Applicant to store municipal water prior to delivery to its customers. Settling of sediment in the water during storage in the two reservoirs is also a component of the District's treatment process. **4. Description of Proposed Change:** Applicant requests a change in the type of use of the Subject Water Rights to add municipal use, replacement of return flow obligations pursuant to decree, and storage for municipal and replacement purposes. The Applicant does not request a new point of diversion, or a change in the place of use, for the Subject Water Rights. The Subject Water Rights will continue to be diverted at the Bessemer Ditch Headgate, and will be delivered to Reservoir No. 2 via the Bessemer Ditch for storage prior to treatment and delivery to Applicant's customers. The Subject Water Rights have historically been used to irrigate lands located within the District, as more particularly described below, and will continue to be used within the District. **5. Place of Use:** The Subject Water Rights have historically been used for irrigation purposes in areas north of the Bessemer Ditch on the St. Charles Mesa, and east of the St. Charles River and west of the Huerfano River. The municipal use of the Subject Water Rights will be wholly within the area of historical use. The District's service area

is divided into two zones. Zone 1 is generally located along the south side of the Arkansas River and north of the Bessemer Ditch, extending from downtown Pueblo eastward. Zone 2 is located south and east of Zone 1 and south of the Bessemer Ditch, extending east to the Huerfano River. A map depicting the District's boundaries and the location of Zones 1 and 2 is attached to the Application as Exhibit A (due to its size, Exhibit A is being filed with the Court via U.S. Mail). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Storage of the Subject Water Rights will take place in Reservoir No. 2. From Reservoir No. 2, the water will be treated in Applicant's water treatment plant and distributed to its customers. The municipal and storage use of the Subject Water Rights will be limited to Zone 1 of the District, as it is modified from time to time in the future. In the event Zone 1 is expanded in the future, Applicant will pursue inclusion in the Southeastern Colorado Water Conservancy District (the "Southeastern District") of any lands in the expanded area not already included within the Southeastern District. Zone 1 will not be expanded in the future to include any additional lands outside of the area of historical irrigation by the Bessemer Ditch, which generally consists of those lands located north of the Bessemer Ditch, south of the Arkansas River, and west of the Huerfano River.

6. Historical Consumptive Use: The Subject Water Rights were historically used to irrigate 49 parcels of land totaling approximately 219.18 acres. In conjunction with its application in Case No. 04CW08, Applicant undertook an engineering analysis to determine the historical consumptive use associated with Bessemer shares owned by Applicant based on river headgate diversions and crop consumptive use calculations (the "Prior Engineering Analysis"). Applicant believes that the methodology and results of that Prior Engineering Analysis are generally applicable to the Subject Water Rights. The 04CW08 Decree provides historical consumptive use values of 1.47 acre feet per Bessemer share and 1.44 acre feet per acre. Applicant will use the Subject Water Rights as part of its municipal water supply. To the extent that the historical consumptive use credit attributable to the Subject Water Rights is not used for irrigation, not stored or used in the District's municipal water supply system, and not needed to make up any net return flow deficit, Applicant claims credit for the excess consumptive use. No use of the excess consumptive use credit will be made, however, without further application to this Court and approval of such additional use or approval by the State or Division Engineers in accordance with law. Applicant claims the right to reuse, successively use, and dispose of such excess consumptive use credits, so long as it retains dominion and control over such water.

7. Historical Return Flows: Historical return flows from the irrigation use of the Subject Water Rights have generally accrued to a reach of the Arkansas River located between Fountain Creek and the Huerfano River. Use of the Subject Water Rights for municipal use within the District will result in return flows that generally accrue to the same reach of the Arkansas River as has occurred historically. The Prior Engineering Analysis evaluated, among other things, the potential effects that the change of use of Bessemer shares owned by Applicant may have on the vested water rights of others as a result of changes in the location, quantity, or timing of return flows to the Arkansas River. Applicant intends to calculate and maintain the historical return flows associated with the Subject Water Rights in the manner prescribed in the 04CW08 Decree.

8. Continued Irrigation Use of Bessemer

Shares: Annual water demand within the District may not require use of all the Subject Water Rights for municipal purposes. A portion of the Subject Water Rights not required for municipal use has been, is now, and will continue to be used for irrigation. Other portions of the Subject Water Rights not required for municipal use have been allowed to remain in the Bessemer Ditch. Applicant did not relinquish or abandon any of the Subject Water Rights while holding them for its future municipal use. Applicant anticipates that the population of the District will continue to increase as it has in the past, requiring additional supplies of municipal water. However, not all of the Subject Water Rights will be needed by Applicant, until some point in the future, for the provision of municipal water service to its constituents. Applicant requests that any delays by Applicant in putting all the Subject Water Rights to municipal use and storage for municipal purposes not be deemed to constitute an abandonment of those uses.

9. Remarks: Applicant intends to propose that the requested changes in use for the Subject Water Rights be subject to the applicable terms and conditions set forth in the 04CW08 Decree. **10. Name and address of owner of land on which places of use are located:** A. Irrigation use of Subject Water Rights takes place on Property owned by the following: Applicant (see address above) B. Municipal use of Subject Water Rights will take place within the boundaries of the District, described above. The owners of the land within the District are the customers and residents of the St. Charles Mesa Water District. **11. Names and addresses of owners of land on which structures are located:** A. Bessemer Ditch Headgate: U.S. Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Rod 18E, Loveland, CO 80537-9711 B. St. Charles Lateral and Reservoir No. 2 Headgate: Bessemer Ditch Irrigating Company, 711 Thatcher Building, Pueblo, CO 81003 **12. Names and addresses of owners of land on which water will be stored:** Applicant (see address above).

CASE NO. 09CW92 - SECURITY WATER DISTRICT, c/o Roy E. Heald, Manager, 231 Security Boulevard, Colorado Springs, CO 80911; Co-Applicant: FOUNTAIN MUTUAL IRRIGATION COMPANY, c/o Gary Steen, Manager, 487 Anaconda Drive, Colorado Springs, CO 80919 (Attorneys for Applicant: Steven T. Monson, Michael J. Gustafson, Felt, Monson & Culichia, LLC, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Change of Water Rights and Plan for Augmentation

EL PASO COUNTY

II. Background and Summary of Application. Security Water District (“Security”) has decreed plans for augmentation in Case Nos. W-4212 and 90CW28, Water Division 2, and pending plans for augmentation in Case Nos. 01CW149, 07CW51, and 06CW117, Water Division 2, which are used to replace depletions to Fountain Creek resulting from Security’s municipal well field diversions from the Widefield Aquifer and to provide effective recharge to the Widefield Aquifer. The municipal users within the Widefield Aquifer have entered into a Widefield Aquifer Management Agreement which was approved by the Court in Case No. W-116 (“Original Stipulation”) and has been incorporated into the applicable decrees and plans for augmentation of the participants. The Original Stipulation allocates the annual aquifer yield among those parties based on historical use of the parties’ wells within various production zones (“reaches”) of the

aquifer. The parties to the Original Stipulation have entered into a Restatement of Stipulations Concerning the Management of the Widefield Aquifer ("Widefield Aquifer Stipulation") that was substituted for the Original Stipulation by an order of the Court in Case No. W-116 dated May 21, 2009. Security by means of inclusion of additional property into its boundary is now the owner of two additional groundwater rights located in the Widefield Aquifer known as Bender Well No. 1 and Bender Well No. 2 (the "Bender Wells"). The Bender Wells were originally decreed on January 16, 1973 in Case No. W-664, Water Division No. 2 and were also the subject of Case No. 81CW225, Water Division 2, which added additional uses and alternate points of diversion for the groundwater rights and adjudicated an augmentation plan for the Bender Wells ("Bender Augmentation Plan"). The Bender Augmentation Plan utilized 60 shares of Fountain Mutual Irrigation Company ("FMIC") to provide for the replacement of depletions caused by pumping the Bender Wells to supply a residential development and to provide recharge to the Widefield Aquifer, which water supply was intended to be taken over and operated by Security. The Bender Wells have now been brought into the Widefield Aquifer Stipulation for their stipulated pumping allotment of 115 annual acre feet plus an additional 55 annual acre feet if effective recharge is provided to the Widefield Aquifer under the Widefield Aquifer Stipulation. The Bender Wells and the 60 FMIC shares were conveyed to Security in 2006 in exchange for Security agreeing to provide water service to a development within the District's expanded boundaries. The general purpose of this Application is to: (1) allow for the use of the Bender Wells by Security as part of its municipal water supply system by changing the place of use of the Bender Wells to include all of Security's service area; (2) to decree Security's other wells in the same reach of the Widefield Aquifer as alternate points of diversion for the Bender Wells; (3) to use Security's existing water rights, including the augmentation water under the Bender Augmentation Plan, as replacement water for out-of-priority depletions to Fountain Creek under the terms of its augmentation plans in place of the Bender Well Augmentation Plan decreed in Case No. 81CW255; and (4) incorporate the 55 annual acre feet of Widefield Aquifer recharge attributable to the Bender Wells within Security's application for aquifer recharge and reuse pending in Water Court, Division 2, Case No. 01CW149.

III. Change of Water Rights

A. Information from Previous Decrees:

1. Structures: Bender Well No. 1 and Bender Well No. 2.

2. Date Entered: The Bender Wells were both originally decreed on December 5, 1972, in Water Court, Division 2, Case No. W-664. Diligence for domestic and municipal uses was last maintained on Bender Well No. 2 in Water Court, Division 2, Case No. 05CW97 entered on September 12, 2006.

3. Decreed Point of Diversion: The decreed location of Bender Well No. 1 in Case No. W-664 is at a point whence the North Quarter corner of Section 14, Township 15 South, Range 66 West of the 6th P.M., bears North 71 degrees 22' West a distance of 496.0 feet. The decreed location of Bender Well No. 2 in Case No. W-664 is at a point whence the NE corner of Section 14, Township 15 South, Range 66 West of the 6th P.M., bears North 88 degrees 22' 15" East a distance of 1805.88 feet. In Case No. 81CW225 the points of diversion for the Bender Wells were changed to make each well an alternate point of diversion for the other well so that the water right decreed to each well may be withdrawn from either or both of the wells.

4. Source: The source of water for the

Bender Wells is the Widefield Aquifer, tributary to Fountain Creek, tributary to the Arkansas River, in El Paso County, Colorado. **5. Appropriation Date, Amount, and Uses:** In Case No. W-664, Bender Well No. 1 was decreed absolute for 630 g.p.m. for irrigation use with a priority date of December 31, 1930. In Case No. W-664, Bender Well No. 2 was decreed absolute for irrigation use at 1,350 g.p.m. and conditional for domestic use at 927 g.p.m. with a priority date of April 25, 1958. In Case No. 81CW225, domestic and municipal uses were added as absolute and conditional uses for the Bender Wells.¹ Pursuant to the decree in Case No. 81CW225 a maximum of 170 annual acre feet can be withdrawn from the Bender Wells, which amount consists of a 115 annual acre feet base level pumping rate and an additional 55 annual acre feet that can be withdrawn as long as 55 acre feet of effective recharge is provided to the Widefield Aquifer under the terms of the Widefield Aquifer Stipulation. This term and condition will be included in the decree requested herein. **6. Historical Use:** The historical combined use of the Bender Wells has been established under the Widefield Aquifer Stipulation as a maximum allotment to Security of 170 annual acre feet. This maximum use is comprised of the 115 acre foot base level pumping rate and the additional 55 acre feet annually allowed if effective aquifer recharge is provided under the terms of the Widefield Aquifer Stipulation. **B. Proposed Change:** Security requests a change in the place of use of the Bender Wells to the entirety of Security's existing service area boundaries and its future inclusions and service areas. Security's current boundaries and anticipated future service areas are generally shown, without limitation, on Exhibit A attached to the application and defined as lying within Sections 1, 2, 3, 11, 12, 13, 14, and 24, in Township 15 South, Range 66 West and within Sections 6 and 7 in Township 15 South, Range 65 West of the 6th P.M., El Paso County, Colorado. Security also requests alternate points of diversion for the Bender Wells at Security's existing wells S-2, S-4, S-8, S-15 and S-16 and Venetucci Wells V-1, V-4, V-5, V-7 and V-8, all of which are located within Sections 11 and 14 of Township 15 South, Range 66 West, 6th P.M. These existing wells are further described in Exhibit B, and are located within the same reach of the Widefield Aquifer as the Bender Wells, which alternate points of diversion are allowed pursuant to the terms of the Widefield Aquifer Stipulation. The sum of Security's diversion rates for the Bender Wells at both the original points of diversion and the requested alternate points of diversion shall not exceed the decreed flow rate for the Bender Well water rights or the volumetric limits set forth in the Widefield Aquifer Stipulation. The actual surveyed location for the existing Bender Wells are to be set forth as the points of diversion in the final decree. Security further requests that providing recharge to the Widefield Aquifer pursuant to the terms of any decree entered in Security's pending application in Case No. 01CW149 be added as a permitted use for the Bender Wells and that the 55 acre feet of recharge attributable to the Bender Wells be incorporated into Security's case for aquifer recharge and reuse now pending in Water Court, Division 2, Case No. 01CW149.

¹Case No. 81CW225 decreed the 630 gpm for Bender Well No. 1 as absolute for municipal and domestic uses, the 1,350 gpm of Bender Well No. 2 as absolute for municipal and domestic uses, and added municipal use to the 927 gpm for conditional domestic use under Case No. W-664 for Bender Well No. 2.

Although the Widefield Aquifer Stipulation imposes volumetric limits on Security’s wells within the Widefield Aquifer, diversions in excess of those volumetric limits are not waived as to third parties not within the Widefield Aquifer Stipulation. All exhibits are available for inspection at the office of the Clerk of the Water Court. **IV. Plan for Augmentation** **A. Structures to be Augmented**. The structures to be augmented are the Bender Wells described in Section III above. **B. Water Rights to Be Used for Augmentation**. **1. Fountain Mutual**. (a) FMIC Shares. The water rights to be used for supplemental augmentation include 529 shares of Fountain Mutual Irrigation Company (“FMIC”) owned or under contract by Security. Thirty of these FMIC shares have already been committed to Security’s Plan for Augmentation in Case No. 90CW28, 239 shares have been included within Security’s pending plan for augmentation in Case No. 01CW149, an additional 260 shares, including the 60 shares originally decreed to augment the Bender Wells in Case No. 81CW255, are the subject of Security’s pending augmentation plan application in Case No. 07CW51, for a total of 529 shares to be used in this plan for augmentation. The consumptive use attributable to Security’s 529 FMIC shares is to be collectively used to augment out-of-priority depletions from Security’s municipal well field diversions under Security’s existing plan for augmentation in Case No. 90CW28, the plans for augmentation to be decreed in Case No. 07CW51 and this case, and in combination with Security’s other plans for augmentation as decreed by this Court. FMIC diverts its water to the Fountain Mutual Ditch from Fountain Creek tributary to the Arkansas River, at its headgate located in the SW1/4 of Section 20, Township 14 South, Range 66 West, 6th P.M. FMIC’s water rights were originally decreed for irrigation purposes. Those water rights have been the subject of numerous change actions and augmentation plans. FMIC water rights are decreed as follows:

DIRECT FLOW

Fountain Creek

<u>Priority No.</u>	<u>Priority Date</u>	<u>Decree Date</u>	<u>Total Decree (cfs)</u>
4	9/21/1861	3/6/1882	9.84 (5.38) ²
7	4/1/1862	3/6/1882	1.125
11	2/1/1863	3/6/1882	16.69
17	12/31/1863	3/6/1882	4.25 (2.125) ³
21	12/31/1864	3/6/1882	4.65

²FMIC’s interest in Priority No. 4 is 5.38 cfs. The amount of 1.73 cfs was changed on application of Security Water District in Case No. 90CW28. In addition to the 5.38 cfs, FMIC claims the right to divert any of the remaining 2.73 cfs decreed to this priority which is not used by the other owners thereof.

³Priority No. 17 is referred to as the Janitell’s right and FMIC has used one-half of the water, or 2.125 cfs, in return for the carriage of the other 2.125 cfs to its owner through the FMIC ditch. By Decree Authorizing Change in Point of Diversion in Civil Action No. 38180, entered July 29, 1959, the point of diversion for this 4.25 cfs of Priority No. 17 of the Laughlin Ditch was changed to the headgate of the Fountain Mutual Ditch.

28	12/31/1866	3/6/1882	8.48
29	12/31/1867	3/6/1882	9.68
41	9/21/1874	3/6/1882	17.05
168	1/31/1903	6/2/1919	343.2

STORAGE

Fountain Creek

<u>Priority No.</u>	<u>Priority Date</u>	<u>Decree Date</u>	<u>Total Decree (AF)</u>
Fountain	3/18/1903	6/2/1919	10,000

(b) Historic Use. FMIC water rights have been decreed for use in numerous other changes of water rights and plans of augmentation. In those previous cases, this court has determined that each share of FMIC has historically yielded on the average the equivalent of 0.7 acre feet of net replacement or consumptive use water each year, which number represents a portion of the farm headgate delivery. These findings have been previously established by this court, without limitation, in the decrees in Case Nos. 90CW7, 99CW146, 00CW152, 01CW153, and 04CW118, Water Division 2. The replacement or augmentation credit allowed to FMIC water rights, as also determined in prior cases, is a percentage of the FMIC actual delivery to its shareholders computed on the basis of the following table.

FMIC REPLACEMENT CREDIT

<u>Month</u>	<u>Replacement Credit as a Percentage of Farm Headgate Delivery</u>
January	47
February	58
March	70
April	70.
May	70
June	70
July	72
August	72
September	74
October	66
November	40
December	49

This historical consumptive use of FMIC shares was affirmed in Case No. 95CW3 which findings, together with other recent decrees, are binding as a matter of res judicata. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997). This same historic consumptive use was most recently affirmed in Case No. 03CW81 decreed on December 31, 2008. There have been no material changed circumstances since this last decree to modify these historic consumptive use determinations. Security requests that the Court find that each FMIC share has historically yielded on the average the equivalent of 0.7 acre foot of net replacement or consumptive use water each year, which number represents a portion of farm headgate delivery. For the 529 FMIC shares, this represents an average consumptive use of 370.3 annual acre feet which may be used collectively for replacement water under

Security's augmentation plans. The total amount of consumptive use pursuant to the FMIC water rights varies from year to year based upon the amount of water available for diversion under those rights. Therefore, the actual consumptive use available from such shares shall be based on actual in-priority diversions applied to the above monthly replacement credit schedule. Augmentation credit will be limited to a maximum of one acre foot per share per year. As Security relies upon these prior determinations, diversion records and a map are not submitted. **2. Fryingpan-Arkansas Project.** (a) **Project Water Return Flows.** Security is a member of the Fountain Valley Authority ("FVA") which entity purchases and transports to Security and other FVA members, through the Fountain Valley Conduit, the participants' allocation of water from the Fryingpan-Arkansas project ("Project Water") that is managed and operated by the Southeastern Colorado Water Conservancy district ("Southeastern District"). Security has the contractual right to purchase and annual delivery of a proportionate share of Project Water, delivered from Pueblo Reservoir through the Fountain Valley Conduit pursuant to an agreement dated July 10, 1979, and related FVA contracts.⁴ Project Water is fully consumable; therefore, return flows from Security's use of allocated Project Water through its municipal system may be purchased by Security from the Southeastern District and then reused to extinction. Those return flows are used, in part, under Case Nos. 90CW28, 01CW149, and 07CW51 as Applicant's augmentation for municipal well depletions. Security claims the right to use, reuse, and successively use to extinction the Project Water sewer return flows for augmentation hereunder in combination with its existing and pending augmentation plans. The project water rights are described as follows: (i) West Slope Decrees: The Fryingpan-Arkansas 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 (District Court, Water Division 5) dated November 27, 1979; and were supplemented by the Decree in Case No. 83CW352 (District Court, 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 in Water Division 2. (ii) 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 (District Court, Water Division 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir,

⁴ Security's allocation of Project Water under its FVA membership has in the past yielded approximately 1,646 annual acre feet depending upon annual yield.

Pueblo Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed 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. The Southeastern District allocates Project Water annually based on its principles, policies, rules and regulations. Any and all use of Project Water and return flows therefrom 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 the Southeastern District. Any decree entered in this case will not give Security any rights to use Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocations of Project Water or return flows therefrom, but will not alter the existing rights, including allocation rights, held by Security. Security will use Project Water received through the FVA Conduit and return flows therefrom only if, when, and to the extent they have purchased Project Water after it is allocated to them by the Southeastern District. **3. Bender Well Return Flows.** Security requests the right to claim credit for the sewered and the non-sewered return flows from the Bender Wells generated from lawn irrigation within Security's service area. These non-sewered return flows are not consumable water which can be reused. Rather, Security claims the Non-sewered return flows as a credit against diversions from Security's wells under this plan of augmentation to calculate actual out-of-priority depletions to be augmented. The non-sewered return flows claimed are 14.65 percent of the water applied to lawn irrigation as determined by the amount that irrigation season diversions exceed base winter time use. The non-sewered return flows claimed will be reduced when watering restrictions are implemented as follows: 10 percent of water applied to lawn irrigation if watering is restricted to 2 days per week, and 5 percent of water applied to lawn irrigation if watering is restricted to 1 day per week. Security will not claim non-sewered return flows when watering is completed. The calculation of non-sewered return flows has taken into consideration spray losses and miscellaneous losses incurred in outside water use. **C. Statement of Plan for Augmentation.** The Project Water sewered return flows and the consumptive use attributable to Security's 529 shares of FMIC are to be used under this plan for augmentation to replace the out-of-priority depletions associated with the diversions from the Bender Wells. Security's sewered Project Water return flows are delivered and measured to Fountain Creek at the outfall of the Security Sanitation District treatment plant located in the NW1/4 NW1/4, Section 24, Township 15 South, Range 66 West, 6th P.M. Water available under Security's FMIC shares will be diverted at the headgate of the Fountain Mutual Ditch and released back to Fountain Creek at the Spring Creek Augmentation Station, and Security has contracted with FMIC for the use of the augmentation station for these 529 shares. The replacement credits under this plan for FMIC shares will be computed as a percentage of actual FMIC in-priority diversions applied to the above monthly replacement credit schedule. Those replacement credits at the augmentation station will be assessed a transit loss from the augmentation station to the point of depletion based upon the current Fountain Creek Transit Loss Model. Depletions from Security's municipal wells in the Widefield Aquifer are already calculated under Security's existing augmentation

decree in Case No. 90CW28 on a monthly basis considering the system wide municipal depletion percentages and the lagged depletions from Security's wells within the Widefield Aquifer. Depletions from the Bender Wells are to be determined on the same basis. The release of replacement water from the Project Water sewer return flows and the FMIC water rights will be made to replace those depletions. Security's pro rata share of water attributable to its FMIC shares may be placed into storage in FMIC's 10,000 acre feet of decreed storage in Big Johnson Reservoir, together with any excess consumptive use credits from FMIC shares put through the augmentation station. Such storage and use shall be in accordance with FMIC rules and regulations. The water so stored in Big Johnson Reservoir is to also be used as augmentation and may be delivered to the Spring Creek augmentation station by means of an intraditch exchange during any month in which Applicant's deliveries of water under its direct flow rights to the Spring Creek augmentation station may be inadequate. The intraditch exchange from Big Johnson Reservoir to the Spring Creek augmentation station will operate at any time FMIC is diverting water, except when both (a) Big Johnson Reservoir is full, and (b) the date is between November 15 and March 15. This intraditch exchange will operate from Big Johnson Reservoir, which is located in Sections 8, 17 and 18, Township 15 South, Range 65 West, 6th P.M., up the Fountain Mutual Ditch to the location of the Spring Creek augmentation station in the NE1/4 of Section 29, Township 14 South, Range 66 West, 6th P.M. As an alternative to the delivery of water to the Spring Creek augmentation station, if FMIC obtains approval for use and/or constructs another augmentation station on the Fountain Mutual Ditch down gradient from Spring Creek, Applicant's replacements may also be made by returning water to Fountain Creek through the new augmentation station, in addition to the intraditch exchange, including storage releases from Big Johnson Reservoir put through such augmentation station. Such releases can be made at any time to the extent that Applicant owns a pro rata portion of the water stored in Big Johnson Reservoir. Any new augmentation station will not be located below Cruse Gulch, and thereby not below the Chilcott Ditch headgate without prior Water Court approval. Security's FMIC water rights to be changed herein for augmentation purposes will be permanently removed from their historical use for irrigation at such time as these shares are committed to meet depletions under this plan of augmentation. Until so used in existing or pending plans of augmentation, such FMIC shares may be continued to be used through the Fountain Mutual Ditch in accordance with the terms of its decrees. Once shares have been dedicated to existing or pending augmentation plans for replacement purposes, those shares will not be used for other purposes absent a new water court application. The Fountain Mutual system is a water short system, and the withdrawal of water deliveries under the Fountain Mutual Ditch to lands under the FMIC system results in naturally reduced irrigation and the dry up of property. No dry up covenant for Fountain Mutual lands is therefore required for shares committed to this plan of augmentation. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997); and Case Nos. 97CW7, 90CW28, 95CW3, 99CW146, and 99CW152. A portion of the FMIC shares and the Project Water Sewered Return Flows dedicated to the augmentation plan herein are currently dedicated to other Security plans for augmentation. Security shall only receive a single credit of its FMIC consumptive use and the Project Water

Sewered Return Flows under its decreed plans for augmentation. **IV. Name and Address of Owner of Land Upon Which Structures are Located.** The Bender Wells are located upon land owned by River Bend No. 1, LLC c/o NorWood Limited, Inc., 111 South Tejon Street, Suite 222, Colorado Springs, CO 80903. The District has an inclusion agreement with the owner for easements to accommodate Security's use of the Bender Wells. The Fountain Mutual Ditch headgate and Spring Creek Augmentation Station are located upon land or easements owned by co-applicant FMIC. **V. Additional Terms and Conditions.** Security proposes the following additional terms and conditions to prevent injury to other vested water rights by this plan for augmentation and change of water right: A. Totalizing flow meters will be maintained on the Bender Wells to allow accurate monitoring and administration of this augmentation plan. B. Monthly accountings shall be made to the Division Engineer demonstrating compliance with this plan for each well, including diversions for each well, total stream deletions, available augmentation water credit and also any intraditch exchange and release of storage water under Security's FMIC shares. C. Security shall measure and account for its entitlement under its FMIC shares through use of the FMIC augmentation station(s). D. Only that amount of water actually available and attributable to Security's 529 shares of FMIC stock will be made available for purposes of this augmentation plan and Security's other and existing plans for augmentation using FMIC shares. E. Operations under the decree in this case will be included within the Fountain Creek Transit Loss Model and thereby the Division Engineer will assess appropriate transit losses to the point of depletion. F. Security will curtail its well diversions if the augmentation water available under this augmentation plan is not sufficient to fully augment the depletions from its municipal wells.

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 2009 (**except for Case No. 08CW47; see resume notice for special requirements**). Forms are available at Clerk's office or at www.courts.state.co.us; filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 6th day of July, 2009.



Mardell R. DiDomenico

Mardell R. DiDomenico, Clerk
District Court Water Div. 2
203 Judicial Bldg., 320 W. 10th Street
Pueblo, CO 81003 Tel. 583-7048

(Court seal)

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NOTICE

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

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