

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND ORDERED PUBLISHED DURING JUNE 2010  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and ordered published during June 2010, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CASE NO. 09CW149 - PARKVILLE WATER DISTRICT, Attn: Greg Teter, General Manager, PO Box 45, Leadville, Colorado 80461** (Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorneys for Applicant, 530 Communications Circle, Suite 204, Colorado Springs, Colorado 80905, (719) 520-9288)

Amendment to Application for Change of Water Rights, Conditional Underground Water Rights, For Conditional Appropriative Exchange Right and For Approval of Plan for Augmentation

**LAKE COUNTY**

Applicant, Parkville Water District, amends paragraph 2.C of its application by increasing its limit on pumping over a ten year running total from 8150 acre feet, to 9711 acre feet. All other aspects of the application remain unchanged. This application applies to Canterbury Tunnel, the portal of which is located at a point which bears approximately South 65 degrees 35' East 207.42 feet from Corner No. 7 of the Cass Placer, which Corner No. 7 is 660 feet East of the internal quarter corner of Section 12, T. 9 S., R. 80 W. of the 6<sup>th</sup> P.M., and to the Canterbury Well Nos. 1 and 2, the proposed locations of which are, respectively, in the NE ¼ SE ¼ Section 12, T. 9 S., R. 80 W., 6<sup>th</sup> P.M., Lake County, at a point 1,980 feet north of the south section line and 480 feet west of the east section line; and in the NE ¼ SE ¼ Section 12, T. 9 S., R. 80 W., at a point 1,900 feet north of the south section line and 220 feet west of the east section line.

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**CASE NO. 10CW32 – KEVIN P. BORRE and JOAN M. BORRE, P. O. Box 73, Florence, CO 81226**

Application for Underground Water Right

**FREMONT COUNTY**

**Name of well and permit, registration, or denial numbers:** Unnamed; Permit 248242. **Legal description of well:** Fremont County, NE ¼ of the SW ¼ Section 24, Township 19 South, Range 70 West, 6<sup>th</sup> P.M., 2100 feet from the South line and 2200 feet from the West line. **Street Address:** 10501 Auckland Avenue, Williamsburg, CO 81226; **Subdivision:** Chandler Heights, Lot 5, Block 6. **GPS location in UTM format (meters; NAD83 Datum):** Were points averaged? No. **Northing** 4247434; **Easting** 484766; **Zone:** 13. **Source of**

**water:** Groundwater; Well Construction and Test Report form GS-31 Dated 2-17-2005. **Depth of well:** 540. **Date of appropriation:** Jan. 14, 2005; **How appropriation was initiated:** Well Construction 1/18/05. **Date water applied to beneficial use:** 5/25/06 when home was purchased. **Amount claimed in gallons per minute:** 1 gpm Absolute. **Area of lawns and gardens irrigated:** 1 acre. **Non-irrigation Uses:** Ordinary household purposes, fire protection, watering of domestic animals.

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**CASE NO. 10CW37 - UPPER ARKANSAS WATER CONSERVANCY DISTRICT, PO Box 1090, Salida, CO 81201 and D & G SPARKS II, LTD, 800 N. Marienfeld, Suite 100, Midland, TX 79701** (Julianne M. Woldridge, MacDougall, Woldridge & Worley, PC, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905, (719) 520-9288)  
Application for Appropriative Right of Exchange  
Chaffee County

**2. Name of Exchange:** Sparks Pond Exchange. **3. Legal Description of Exchange Reaches and points of exchange:** The exchange reach is on North Cottonwood Creek in Chaffee County. The lower terminus of the exchange is the confluence of North Cottonwood Creek with Cottonwood Creek, in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 13, T.14S., R.79W., 6<sup>th</sup> P.M. The upper terminus of the exchange is the headgate of the Sparks Pond Feeder Ditch, located on North Cottonwood Creek in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 10, T.14S., R.79W., 6<sup>th</sup> P.M. **4. Point of Diversion by Exchange (exchange-to point):** The water will be diverted by exchange at the Sparks Pond Feeder Ditch located on North Cottonwood Creek in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 10, T.14S., R.79W., 6<sup>th</sup> P.M. The water will be conveyed by this ditch to the Sparks Ponds, a series of five off-channel ponds that are either directly connected to each other or are connected by ditches. **5. Source of Exchange Water:** The source of water to the ponds is North Cottonwood Creek. The exchange water will be the following water and water rights owned, leased, or controlled or otherwise acquired by UAWCD: **a.** Thompson Ditch – stored in Rainbow Lake pursuant to decree dated June 4, 1996, Case No. 95CW208, District Court, Water Division No. 2, Colorado, or Cottonwood Lake pursuant to decree dated August 19, 1995, Case No. 94CW5, District Court, Water Division No. 2, Colorado, appropriation date – April 5, 1930, amount – 23.45 a.f.y., uses – augmentation and replacement; **b.** Water derived from shares of Twin Lakes Reservoir and Canal Company. The water rights producing this water are: **1)** 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; **2)** 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); **6.** The exchange water will be released by UAWCD from storage in Cottonwood Lake and/or Rainbow Lake and conveyed down Cottonwood Creek to the lower terminus of the exchange. This water shall be stored in these reservoirs by separate decree and/or administrative exchange. The locations of these structures are: **a.** Cottonwood Lake is located on South Cottonwood Creek, a tributary of Cottonwood Creek, a tributary of the Arkansas River, in the SE $\frac{1}{4}$ , Sec. 6, T.14S., R.80W., 6<sup>th</sup> P.M.; **b.** Rainbow Lake is on Middle Cottonwood Creek, a tributary of Cottonwood Creek, a tributary of the Arkansas River, in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , and the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 19, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec. 19, T.14S., R.80W., 6<sup>th</sup> P.M. **7. Amount of Exchange:** 1.2 c.f.s., absolute, up to 5.0 a.f.y. **8. Appropriation Information:** **a.** Date of initiation of appropriation: June 30, 2006. **C.R.C.P. 89 Notice: The priority for this exchange right may antedate earlier adjudicated water rights. The water right claimed by this application may affect in priority any water right 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.** **b.** How appropriation was initiated and date applied to beneficial use: By exercise of an exchange approved by the Water Commissioner. **c.** Uses: The water in the ponds is for fishery and recreational uses. The purpose of the exchange is to fill and refill the ponds and for augmentation pursuant to the terms and conditions in the decree in Case No. 06CW32, administered by UAWCD. **9. Names and addresses of owners of land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water will be stored:** **a.** Cottonwood Reservoir is on land owned by the United States Forest Service, P.O. Box 25127, Lakewood, CO 80225; **b.** Rainbow Lake is located on land owned by Rainbow Lake Resort, Inc., 21509 County Road 306, Buena Vista, CO 81211; **c.** The headgate of the Sparks Pond Feeder Ditch is on land owned by John Bowers, 300 West Cherokee, P.O. Box 1349, Enid, OK 73702-1349; and **d.** The Sparks Ponds are located on land owned by D & G Sparks II, Ltd. 800 N. Marienfeld, Ste. 100, Midland, TX 79701. Applicants, therefore, request the Court grant the appropriative right of exchange and substitution requested herein and such other relief as the Court deems appropriate.

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**CASE NO. 10CW39 - VICTORIA FLEMING, 3870 Tapadero Drive, Colorado Springs, CO 80921** (Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905, (719) 520-9288)

Application for Water Storage Rights and for Approval of Plan for Augmentation  
**EL PASO COUNTY**

**I. APPLICATION FOR WATER STORAGE RIGHTS. 2. Name of reservoir:** Pond Hockey. **A. Location of dam:** NW1/4 SW1/4 Section 33, T. 11 S., R. 67 W., 6<sup>th</sup> P.M., El Paso County, UTM\_X (meters) 508497; UTM\_Y (meters) 4321953. **B. Source:** Hay Creek. **C. Date of appropriation:** September 29, 1999 **How appropriation was initiated:** completion of dam. **Date water applied to beneficial use:** September 29, 1999. Note: the reservoir is visible on an aerial photograph dated September 29, 1999. Applicant has no personal knowledge of actual age of the dam. **D. Use:** recreational, wildlife and fish raising purposes. **E. Surface area of high water line:** 0.14 acre; **maximum height of dam:** 7 feet; **length of dam:** 104 feet; **capacity of reservoir:** 0.18 acre foot; **active capacity:** 0 acre feet; **dead storage:** 0.18 acre foot. **II. PLAN FOR AUGMENTATION. 3. Names of structure to be augmented:** Pond Hockey. **4. Previous decrees for water rights to be used for augmentation:** A. Case No. 81CW213, entered by the Water Court, Water Division 2, on July 18, 1984, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Dillon Well, permit no. 17483-FR, the location of which is in the NW1/4 NE1/4 Section 35, T. 11 S., R. 67 W., 6<sup>th</sup> P.M. The amount decreed is 400 acre feet annually. "The water which is the subject of the rights claimed herein may be used for municipal, domestic, commercial and irrigation purposes. The right to apply such water to the above-specified beneficial uses shall include the right of successive use pursuant to C.R.S. §37-82-106 and the right to use, reuse, and successively use all such water to extinction and to dispose of such water, free of any limitation, restriction, or requirement as to the place of use, the amount of discharge after such use, and as to its reuse, successive use or disposition. The water may be produced for immediate application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes." B. Case No. 83CW142, entered by the Water Court, Water Division 2, on September 25, 1987, for absolute underground water rights, decreed for multiple purposes, including augmentation. The point of diversion is through a structure called the Arapahoe Well, permit no. 63496-F, the location of which is in the NW1/4 SE1/4 Section 27, T. 11 S., R. 67 W., 6<sup>th</sup> P.M., 2100 feet from the south section line and 2050 feet from the east section line. The amount permitted to be pumped through the Arapahoe Well is 451.3 acre feet annually, of which Applicant is in the process of purchasing the right to withdraw 0.05 acre foot annually. "Said water may be produced for immediate application to all municipal purposes and domestic, industrial, livestock, irrigation, commercial, and recreational uses, for storage and

subsequent application to said uses, for exchange purposes, or replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes.” **C. Source:** for both decreed water rights, nontributary Arapahoe aquifer. **Appropriation date:** not applicable. **E. Land ownership:** The Pond Hockey is located on land owned by Applicant. **5. Statement of plan for augmentation.** A. Applicant will augment all out-of-priority depletions caused by evaporation from the reservoir’s surface. Because the reservoir will rarely be in priority, and evaporation under futile call conditions is uncertain, Applicant has made arrangements to purchase augmentation water in the amount of average annual net evaporative losses. Applicant’s consulting hydrologist, Peter Boddie, has determined that the net annual evaporation, taking into account a phreatophyte credit for this on-stream reservoir, is 0.05 acre foot. Net monthly evaporation is as follows: January, 0.0 AF; February, 0.0 AF; March, 0.0 AF; April, 0.03 AF; May, 0.0 AF; June, 0.0 AF; July, 0.0 AF; August, 0.0 AF; September, 0.0 AF; October, 0.01 AF; November, 0.01 AF; December, 0.00 AF. B. Applicant has reached an agreement in principle with Forest Lakes, LLC to purchase 0.05 acre foot of nontributary Arapahoe water decreed in Case No. 83CW142 to replace 0.05 acre foot of annual net depletions. It is anticipated that the agreement will be executed in July 2010. C. Applicant has also reached an agreement in principle with Forest Lakes Metro District to pump the purchased water, or substitute water owned by Forest Lakes Metro District and decreed in Case No. 81CW213, which will be traded to Applicant for Applicant’s water rights and pumped through the Dillon Well, at the District’s option, into Beaver Creek. Replacement may be made either into Bristlecone Lake No. 2 (Bristlecone Reservoir), from which it shall be released in a timely fashion, or into the reservoir’s spillway, which flows directly into Beaver Creek. The location of Bristlecone Reservoir is in the SE1/4 SW1/4 Section 27, T. 11 S. R. 67 W., 6<sup>th</sup> P.M.; its south abutment is at a point approximately 2500 feet from the west section line and 20 feet from the south section line. Such replacements will be made not less frequently than monthly during months in which there is a net stream depletion. D. Rather than seeking a decree for an appropriative right of exchange from the confluence of Hay Creek and Beaver Creek, Applicant shall instead augment the depletions at the confluence of those two streams in the SE1/4 NE1/4 Section 34, T. 11 S., R. 67 W., 6<sup>th</sup> P.M. Nothing herein is intended to prevent the Applicant from seeking administrative approval of occasional exchanges from Beaver Creek up Hay Creek to the Applicant’s reservoir.

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**CASE NO. 10CW40 – VOLLMER PROPERTIES, LLC, c/o Dennis Good, 8355 Vollmer Road, P. O. Box 25579, Colorado Springs, CO 80936** (All pleadings should be directed to: Michael F. Browning, Porzak Browning & Bushong, LLP, 929 Pearl Street, Suite 300, Boulder, CO 80302; (303) 443-6800)  
Application to Correct Decreed Location of Denver Aquifer Well  
**EL PASO COUNTY, COLORADO**

**2. Name of Structure:** Monks Denver Well No. 1. **3. Background:** Applicant is the successor in title to R.E. Monks Construction Company and owns 35 acres of land (the “Land”) located within the NE1/4 of Section 5, Township 13 South,

Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado depicted on Exhibit A attached to the Application (the “Map”). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) By decree dated April 14, 2009, in Case No. 06CW112 (the “2009 Decree”), the District Court in and for Water Division No. 2 determined and decreed that the Applicant was entitled to withdraw 7.24 acre feet of water per year from the Denver Aquifer beneath the Land (the “Denver Basin Entitlement”) and approved an augmentation plan replacing the depletions associated with such withdrawals. The 2009 Decree described two existing wells on the Land that could withdraw Applicant’s Denver Basin Entitlement – Monks Denver Well No. 1, then having Permit No. 256473, and a second then unpermitted well. The location of Monks Denver Well No. 1 having Permit No. 256473 was described in the 2009 Decree as being located in the SW1/4NE1/4 of Section 5, Township 13 South, Range 65 West of the 6<sup>th</sup> P.M., 2400 feet from the North Section line and 2420 from the East section line of said Section 5. This was the location set forth in Well Permit No. 256473. The 2009 Decree required Applicant to file an application with the State Engineer to re-permit the well to be consistent with terms and conditions of the 2009 Decree. Applicant submitted such a well permit application and the State Engineer issued such permit as Well Permit No. 68749, which permit cancelled and replaced Well Permit No. 256473. However, the conditions of approval for Well Permit No. 68749 noted that Monks Denver Well No. 1, while correctly stated to be located in the SW1/4NE1/4 of said Section 5, was located 2380 feet from the North section line and 1657 feet from the East section line of said Section 5 – which is approximately 736 feet from the location described in the 2009 Decree. Accordingly, the State Engineer required that Applicant obtain a decree correcting the described location of Monks Denver Well No. 1. This is such application. The location of Monks Denver Well No. 1 as set forth in the 2009 Decree, and as it actually exists, are both depicted on the Map. **4. Change Requested.** Applicant files this application to correct and change the location of the Monks Denver Well No. 1 from the location described in the 2009 Decree to the actual location set forth above in order to make it consistent with, and satisfy the condition of, Well Permit No. 68749. **5. Ownership.** Applicant owns the Land and both the original and corrected location of Monks Denver Well No. 1.

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**CASE NO. 10CW41 – WOODMOOR WATER AND SANITATION DISTRICT NO. 1, P. O. Box 1407, Monument, CO 80132** (Veronica A. Sperling, Buchanan and Sperling, P.C., Attorneys for Applicant, 7703 Ralston Road, Arvada, CO 80002; (303) 431-9141)

Application for Finding of Reasonable Diligence and to Make Conditional Water Right Partially Absolute

**EL PASO COUNTY**

**2. Name of structure:** Woodmoor Dirty Woman Creek Exchange. **3. Describe conditional water right giving the following from the Referee’s Ruling and Judgment and Decree:** **A. Date of original decree:** June 14, 1990; Consolidated Case Nos. 87CW067, 88CW100 and Water Division 1 Case No.

88CW218; Court: District Court, Water Division 2. Decrees finding reasonable diligence and making partially absolute were previously entered on February 3, 1997 in Case No. 96CW67, District Court, Water Division 2, and on June 21, 2004 in Case No. 03CW22, District Court, Water Division 2. **B. Location of exchange reach**: Monument Creek from the outfall of the Tri-Lakes Wastewater Treatment Facility in the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, upstream to the confluence of Monument Creek with Dirty Woman Creek in the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 22, Township 11 South, Range 67 West of the 6th P.M., and upstream on Dirty Woman Creek from its above-described confluence with Monument Creek to Well No. QAL-4 a/k/a QAL-4T in the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 13, Township 11 South, Range 67 West of the 6th P.M., and upstream on an unnamed tributary of Dirty Woman Creek to Well No. QAL-5 in the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 11, Township 11 South, Range 67 West of the 6th P.M., all in El Paso County, Colorado. The structures within the exchange reach from which water is or will be diverted by exchange are described as follows: (1) Well No. QAL-3: In the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 13, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1400 feet from the west section line and 1900 feet from the north section line of said Section 13. (2) Well No. QAL-4 a/k/a QAL-4T (Permit No. 037840-F): In the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 13, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 2000 feet from the east section line and 1300 feet from the north section line of said Section 13. (3) Well No. QAL-5: In the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 11, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1400 feet from the east section line and 2100 feet from the south section line of said Section 11. (4) Well No. QAL-6: In the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 14, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 2500 feet from the west section line and 1000 feet from the north section line of said Section 14. (5) Well No. QAL-7: In the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 22, Township 11 South, Range 67 West, of the 6th P.M., El Paso County, Colorado, at a point approximately 2000 feet from the east section line and 1200 feet from the north section line of said Section 22. **C. Source**: (1) Water diverted at exchange-to points: Dirty Woman Creek and an unnamed tributary of Dirty Woman Creek, tributaries to Monument Creek. (2) Water released at exchange-from point: Fully consumable return flows from applicant's nontributary and not nontributary Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifer groundwater decreed in Case Nos. W-2647, W-4544, 80CW169, 81CW230 and 81CW231, all District Court, Water Division No. 2. **D. Appropriation date**: June 30, 1987; **Amount**: 1.56cfs (700 gpm); 0.97 cfs (435 gpm) of which was made ABSOLUTE for irrigation use in Case Nos. 96CW67 and 03CW22. **E. Use**: Use, reuse, successive use and complete disposition for all municipal purposes, including domestic, agricultural, industrial, commercial, irrigation, stockwatering, fire protection, recreation, fish and wildlife preservation and propagation and all other beneficial purposes, including exchange purposes, replacement of depletions resulting from the use of water from other sources,

relinquishment pursuant to C.R.S. §37-90-137(9)(b), and all augmentation purposes. **F. Depth (if well):** Well No. QAL-4 a/k/a QAL-4T is approximately 10 feet deep; Well Nos. QAL-3, 5, 6 and 7 will be approximately 20 feet deep. **4. 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:** The subject exchange is one of the components of applicant's water supply system. Since July 2004, applicant has diverted excess reusable return flows available at the outfall of the Tri-Lakes Wastewater Treatment Facility by exchange at Well No. QAL-4 a/k/a QAL-4T. The maximum rate of exchange for municipal purposes during this diligence period was 1.02 cfs (461 gpm), on May 4, 2010. The water so diverted by exchange was placed to beneficial use for all municipal purposes within applicant's service area. The operation of the subject exchange during the diligence period has been with the knowledge and approval of the Water Commissioner and reports concerning it have been filed regularly with the Water Commissioner and Division Engineer. In addition, during the diligence period, applicant has expended approximately \$7,407,000 for design and/or construction of new facilities or modification of existing facilities necessary to divert, treat and place water to beneficial use under the subject exchange. This includes construction of a pumping gallery to pump water out of Lake Woodmoor, construction of a 4mgd water filtering facility to filter water delivered under the subject exchange for potable use, installation of larger pumps at applicant's zone 1 booster pump facility, rehabilitation of the outlet works for Lake Woodmoor, pumping equipment and measuring device improvements at Well No. QAL-4 a/k/a QAL-4T, construction of one additional Dawson aquifer well and design, construction and installation of pumping equipment in one additional Arapahoe aquifer well. Applicant has also added approximately 158 acres to its service area by inclusion agreements, has added more than 663 new water taps to its water system and has expended more than \$637,000 for improvements to its treated water distribution system. **5. If claim to make absolute – water applied to beneficial use:** A. Date: May 4, 2010, and subsequently. Amount: 1.02 cfs (461 gpm). Use: All municipal purposes. Description of place of use where water is applied to beneficial use: Applicant's service area. **6. Name(s) and address(es) of owner(s) of land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored:** The exchange-from structure is located on land at the Tri-Lakes Wastewater Treatment Facility which is owned jointly by Monument Sanitation District, Palmer Lake Sanitation District and applicant, and whose address is 16510 Mitchell Avenue, Monument, Colorado 80132. Well Nos. QAL-4 a/k/a QAL-4T, QAL-5 and QAL-6 are or will be located on land owned by the applicant. Well No. QAL-3 will be located on land owned by Bryan Clark, Shanna Clark, Rosa Pires-Harvey and Richard Harvey, whose address is 865 South Park Drive, Monument, Colorado 80132. Well No. QAL-7 will be located on land owned by Joseph Kailey III and Cynthia Kailey, whose address is P.O. Box 1243, Monument, Colorado 80132. The land on which water is or will be stored is



owned by applicant. WHEREFORE, applicant requests the Court to enter a decree finding and determining that the subject conditional water right has been made absolute in the additional amount stated in paragraph 5 above, that applicant has exercised reasonable diligence in the development of the remaining portion of the subject conditional water right, and continuing the remaining portion of the subject conditional water right in full force and effect for an additional six-year diligence period.

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**CASE NO. 10CW43 – JAMES C. YOUNG AND ANN H. YOUNG, 118 E. Platte Avenue, Colorado Springs, CO 80903 and Co-Applicant FOUNTAIN MUTUAL IRRIGATION COMPANY (“FMIC”), c/o Gary L. Steen, P.E., P. O. Box 75292, Colorado Springs, CO 80906** (Steven T. Monson and Michael J. Gustafson, Felt, Monson & Culichia, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Surface Water Right, Storage Right, Changes of Water Rights, and Plan for Augmentation

**EL PASO COUNTY**

**II. GENERAL STATEMENT OF APPLICATION.** Applicants are the owners of Glenpond Apartments within the City of Colorado Springs. On that property is located the Glenpond which is fed by the Glenpond Ditch diverting from the North Fork of Cheyenne Slough, tributary to Cheyenne Creek, tributary to Fountain Creek. By this Application, the Applicants seek to adjudicate a surface water right for the Glenpond Ditch for recreational, piscatorial, wildlife watering, and aesthetic purposes and a water storage right for Glenpond for the same uses, and to then augment the stream to replace the evaporative depletions from Glenpond through the use and commitment of up to five shares in the Fountain Mutual Irrigation Company (“FMIC”) that are owned by Applicants. FMIC is a Co-Applicant in this case only for the purpose of protecting the company’s interests under the proposed use of the FMIC shares. **III. APPLICATION FOR SURFACE WATER RIGHT. A. Name of Structure.** The name of the structure is Glenpond Ditch. **B. Legal Description.** The headgate of the Glenpond Ditch is located in the SW 1/4 of NE 1/4 of Section 25, Township 14 South, Range 67 West, 6<sup>th</sup> P.M., a distance of 1,396 feet south of the north section line of section 25 and 1,666 feet west of the east section line of Section 25, as shown on the Exhibit A map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **C. Source.** The source for the Glenpond Ditch is the North Fork of Cheyenne Slough, tributary to Cheyenne Creek, tributary to Fountain Creek, tributary to the Arkansas River. **D. Appropriation.** The appropriation was initiated in the spring of 1972 by Applicants’ diversions of water through the Glenpond Ditch into storage in Glenpond for the requested uses. **E. Amount of Water Claimed.** The amount of 0.4 cfs, absolute, is claimed for the Glenpond Ditch. **F. Uses.** The uses of the water diverted through the Glenpond Ditch are for recreation, piscatorial, wildlife watering, and aesthetic purposes by filling and maintaining levels in the Glenpond. **G. Land Ownership.** The headgate of the Glenpond Ditch is located upon land owned by Roger L. Freischlag, whose address is 501 Penrose Blvd.,

Colorado Springs, CO 80906-4215. **IV. APPLICATION FOR STORAGE RIGHT.** **A. Name of Structure.** The name of the structure is Glenpond. **B. Legal Description.** Glenpond is located in the NE 1/4 of NE 1/4 of Section 25, Township 14 South, Range 67 West, 6<sup>th</sup> P.M., with the north end of the dam a distance of 1,164 feet south of the north section line of Section 25 and 992 feet west of the east section line of Section 25, as shown on the Exhibit A map. **C. Source.** The source of the water stored in Glenpond is the Glenpond Ditch diverting from the North Fork of Cheyenne Slough, tributary to Cheyenne Creek, tributary to Fountain Creek, tributary to the Arkansas River. **D. Off-Channel Reservoir.** Glenpond is filled and refilled by surface water diversions under the surface water right for the Glenpond Ditch requested in section III above. **E. Appropriation.** The appropriation was initiated in the spring of 1972 by Applicants' diversion of water through the Glenpond Ditch into storage in Glenpond for the beneficial uses described below. **F. Amount of Storage Claimed.** (1) Acre Feet: The pond capacity is 1.8 acre feet of storage, absolute, with the right to fill and refill. (2) Diversion Rate: The diversion rate for the filling and refilling of Glenpond is 0.4 cfs. **G. Uses.** The uses of the water stored in Glenpond are for recreation, piscatorial, wildlife watering, and aesthetic purposes. **H. Reservoir Specifications.** The maximum surface area of Glenpond at the high water line is 0.44 acres. The maximum height of the dam is seven feet and the length of the dam is 97 feet. **I. Capacity of Reservoir.** The total capacity of Glenpond is 1.8 acre feet. **J. Land Ownership.** Glenpond is located upon land owned by Applicants. **K. Additional Information/Depletions.** Evaporative depletions associated with the maintenance of water levels in Glenpond by diversion of water through the Glenpond Ditch are to be replaced as set forth in the plan for augmentation requested herein. **L. Additional Information/Overfiling.** Applicants are the owners of the Bruening's Feeder Ditch No. 1 and Bruening's Reservoir No. 2, both decreed in El Paso County District Court, Case No. 10146 on June 5, 1919. The Bruening's Feeder Ditch No. 1 was decreed for 6.32 cfs with an appropriation date of December 31, 1890 for the irrigation of 25 acres of land and the Bruening's Reservoir No. 2, together with Bruening's Reservoir No. 1 combined, were decreed for 4.6 acre feet of storage, with an appropriation date of December 1, 1890, for the irrigation of 25 acres of land which includes in part the Glenpond Apartments. The Glenpond Ditch is an overfiling on the Bruening's Feeder Ditch No. 1 and the Glenpond is an overfiling on the Bruening's Reservoir No. 2. **V. PLAN FOR AUGMENTATION/CHANGES OF WATER RIGHTS.** **A. Structure to be Augmented.** The structure to be augmented is Glenpond as requested in Section IV of this Application. **B. Water Rights to be Used for Augmentation.** The water rights to be used for augmentation are up to five shares of FMIC stock owned by Applicants. FMIC diverts its water to the Fountain Mutual Ditch from Fountain Creek, tributary to the Arkansas River, at its headgate located in the SW 1/4 of Section 20, Township 14 South, Range 66 West, 6<sup>th</sup> P.M. FMIC's water rights were originally decreed for irrigation purposes. Those water rights have been the subject of numerous change actions and plans for augmentation. FMIC's 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) <sup>1</sup>
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) <sup>2</sup>
21	12/31/1864	3/6/1882	4.65
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	343.20

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

**C. 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 District Court, Water Division Two, Case Nos. 05CW33, 04CW118, 03W81, 07CW51, and 01CW149. 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.

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<sup>1</sup> FMIC'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.

<sup>2</sup> Priority 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.

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) (appeal of Case No. 95CW3). This same historic consumptive use was most recently affirmed in Case Nos. 02CW112, 04CW55, 05CW33, 04CW118, 03CW81, 07CW51, and 01CW149, District Court for Water Division 2, decreed on June 6, 2006, September 22, 2006, and March 28, 2007, February 12, 2008, December 31, 2008, November 16, 2009, and January 5, 2010 respectively. There have been no material changed circumstances since these last decrees to modify these historic consumptive use determinations. Applicants request that the Court find that each FMIC share 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 farm headgate delivery. For the Applicants' five shares, this represents an average consumptive use of 3.5 annual acre feet which may be used for replacement water under this plan. The total amount of consumptive use under 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 credits schedule. As Applicants rely upon these prior determinations, diversion records and a map are not submitted. **D. Statement of Plan for Augmentation.** As necessary, the consumptive use attributable to Applicants' five shares of FMIC shall be committed to this plan of augmentation to replace evaporative depletions from the maintenance of Glenpond at the high water line and from the fountain used to aerate Glenpond. Evaporative depletions from Glenpond have been determined by Applicants' engineer based on an application of local climate data to the standards of the State Engineer's Office for the determination of pond evaporation, including application of NOAA Technical Report NWS33. The maximum surface of Glenpond is 0.44 acres at its high water line. Gross evaporation was determined to be 41.9 inches per year per acre. No credit was

claimed for effective precipitation for the off-channel pond. Thus, the net annual evaporative depletion for Glenpond was determined to be 1.53 acre feet per year. Applicants' engineer used a method developed by Frost and Schwalen (1960) to determine the evaporative depletions from the fountain used to aerate Glenpond. Under that method, the percentage of evaporative losses from fountain flow is determined as a function of fountain characteristics, operating pressure, and climate factors including air temperature, relative humidity, and wind speed. Using information gathered for the pump and fountain in Glenpond and local climate data from the Western Regional Climate center, evaporative losses from the fountain for the months of operation for March through December were determined to be 0.5 percent of the fountain flow, except for July when losses are calculated to be 0.7 percent of fountain flow. Evaporative losses from fountain flows were not determined for January and February because the fountain is not operated during those months. Applying the evaporative loss percentages to the fountain flow rate for its 15.5 hours of daily operation resulted in evaporative losses from the fountain of 0.91 annual acre-feet. Total evaporative losses from Glenpond and the fountain were determined to be a total of 2.44 acre-feet annually. While these evaporative losses are estimated to occur year round, the stream depletions from evaporative losses only occur when replacement water is being diverted through the Glenpond Ditch. The Glenpond Ditch is typically frozen in January and February and, therefore, not used to fill Glenpond during those months. Replacement of depletions associated with evaporation in those two months will be replaced when the pond is filled again in March. The annual net evaporative depletions shall be allocated on a monthly basis as generally set forth below, and will be replaced by the consumptive use from up to five of Applicants' FMIC shares at times when the Glenpond Ditch and Glenpond are out of priority and subject to a valid senior call.

Stream Depletion Allocation (Acre Feet)

<u>Month</u>	<u>Pond Evaporative Depletions</u>	<u>Fountain Evaporative Depletions</u>	<u>Total Evaporative Depletions</u>	<u>Total Stream Depletions</u>
January	0.05	0.00	0.05	0.00
February	0.05	0.00	0.05	0.00
March	0.08	0.09	0.17	0.27 <sup>3</sup>
April	0.14	0.09	0.22	0.22
May	0.18	0.09	0.27	0.27
June	0.22	0.09	0.31	0.31
July	0.23	0.12	0.35	0.35
August	0.21	0.09	0.30	0.30
September	0.15	0.09	0.24	0.24
October	0.11	0.09	0.20	0.20
November	0.06	0.09	0.15	0.15
December	<u>0.05</u>	<u>0.09</u>	<u>0.13</u>	<u>0.13</u>
<b>Annual</b>	<b>1.53</b>	<b>0.91</b>	<b>2.44</b>	<b>2.44</b>

Water available under Applicants' FMIC shares will be diverted at the headgate of the Fountain Mutual Ditch and measured and released back to Fountain Creek at the Spring Creek Augmentation Station. Subject to FMIC approval, Applicants may also use any augmentation station constructed between the Spring Creek augmentation station and Big Johnson Reservoir and/or the Crews Gulch augmentation station below Big Johnson Reservoir. Applicants will contract with FMIC for the use of the augmentation stations. These augmentation stations may be in substitution or in combination with one another. The replacement credits under this plan for Fountain Mutual shares will be computed as a percentage of actual FMIC in priority diversions applied to the above monthly replacement credit schedule. Applicants' pro rata interest in FMIC's 10,000 acre feet of decreed storage in Big Johnson Reservoir will be stored in Big Johnson Reservoir, together with any excess consumptive use credits from FMIC shares dedicated for augmentation purposes. Such storage and use shall be in accordance with FMIC rules and regulations. The water so stored in Big Johnson Reservoir is to be used as augmentation and may be delivered by means of an intraditch exchange during any month in which Applicants' 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, 6<sup>th</sup> 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

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<sup>3</sup>This figure reflects that the 0.10 acre feet of the evaporative depletions that occur in January and February accrue as stream depletions in March when the Glenpond Ditch is used to refill the pond.

South, Range 66 West, 6<sup>th</sup> P.M. As an alternative to the delivery of water to the Spring Creek augmentation station, if FMIC uses or constructs an augmentation station on the Fountain Mutual Ditch down gradient from Big Johnson Reservoir, Applicants' replacements may also be made by releasing water from Big Johnson Reservoir and returning it to Fountain Creek through that new augmentation station, in addition to the intraditch exchange. Such releases can be made at any time to the extent that Applicants own a pro rata portion of the water stored in Big Johnson Reservoir. Applicants' FMIC water rights as changed herein for augmentation purposes will be permanently removed from their historical use for irrigation and the historically irrigated property will no longer be irrigated at such time as these shares are committed to meet depletions under this plan of augmentation. Until so used in this plan of augmentation, such FMIC shares may be continued to be used through the Fountain Mutual Ditch in accordance with the terms of its decrees. 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 of 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. 99CW146, 00CW152 and 01CW153.

**G. Additional Information, Requests and Terms.** The use of the shares of FMIC is to be changed to augmentation use as set forth herein. Applicants further request the ability to add additional shares of FMIC to this plan for augmentation in order to augment additional depletions or to provide a supplemental source of augmentation water. Any additional shares added to this augmentation plan shall be committed to this plan by a subsequent change of water right through Water Court committing such additional FMIC shares to the uses and purposes under this augmentation plan. Depletions from Glenpond will accrue to Fountain Creek at its confluence with Cheyenne Creek which is above the USGS Colorado Springs gage on Fountain Creek. Replacement water provided by the FMIC shares will accrue downstream of the gage on Fountain Creek at its confluence with Spring Creek, or other tributary to which an augmentation station delivers replacement water. The Applicant proposes that replacement water is to be added to accounting at the USGS Colorado Springs gage for purposes of determining native and other water available for diversion below the gage under the Fountain Creek transit loss model. Measuring devices will be installed on the Glenpond Ditch and in Glenpond as necessary to allow accurate monitoring of this augmentation plan, and monthly accountings shall be made to the Division Engineer demonstrating compliance with this augmentation plan, including total stream depletions, and location and amount of augmentation water credit provided. Applicants shall participate in the USGS Fountain Creek transit loss model through its membership in FMIC and any appropriate transit losses will be assessed. Applicants will curtail diversions as required and directed by the Division Engineer if the available water attributable to Applicants' shares of FMIC stock is not sufficient to fully replace the depletions under this plan.

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THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of August 2010, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this 2nd day of July, 2010.



*Mardell R. DiDomenico*

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Mardell R. DiDomenico, Clerk  
District Court, Water Div. 2  
Pueblo County Judicial Building  
320 W. 10th Street  
Pueblo, CO 81003; (719) 583-7048

(Court seal)  
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