

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING MARCH 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 March 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. 09CW18 – JACK GAFFNEY, JR., P. O. Box 757, Cripple Creek, CO 80813 (Shawn Marie Yoxey, Attorney for Applicant, 226 South Union, Suite 211, Pueblo, CO 81003; (719) 543-7899)

Amended Application for Approval of Plan for Augmentation

TELLER COUNTY

This Amended Application is being submitted to correct errors in the original application. **Name of structure to be augmented:** Slater Creek Stock Pond/Dam. **Are there other water rights diverted from this structure?** No. **Previous decree for water rights to be used for augmentation:** Kittridge Ditch #1. **Date of Original Decree:** February 3, 1894. **Case No.** 02/03/1894; **Court:** Division 2. **Type of water right:** surface. **Legal description of point of diversion or place of storage:** NW ¼ Section 2, Township 15 South, Range 71 West, 6th P.M. **Source:** Four Mile Creek. **Appropriation Date and Amount:** June 15, 1873; 2.333 cfs and May 31, 1877; 2.0 cfs. Decreed use was for irrigation of 125 acres. **Historic use:** The Applicant grows 125 acres of irrigated mountain grass hay for the purpose of livestock grazing in a field approximately 2.5 miles downstream from the stock pond. The land has been historically irrigated by the Kittridge Ditch No. 1, priority numbers 125 and 187 on the Arkansas River, which are also priority numbers 38 and 55 on Four Mile Creek. Maps, records and other documents pertaining to the Kittridge Ditch #1 may be found in the document attached to the original application prepared by Anselmo Engineering. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **Statement of plan for augmentation, covering all applicable matters under §37-92-103(9), 302(1)(2) and 305(8), C.R.S.:** The plan for augmentation is summarized as follows: The Applicant has built a stock pond on Slater Creek for the purpose of providing water for livestock. The surface area of the pond is approximately 2.81 acres. A 36" corrugated metal pipe riser with accompanying 24" outlet is utilized to discharge water back into Slater Creek. An 8" pipe with gate valve also discharges into Slater Creek. The 8" pipe will be used to release water from the pond when consumptive use credits are less than the net chargeable evaporation of the pond. The plan for augmentation calls for the drying up of 6.8 acres of mountain grass hay historically irrigated by Kittridge Ditch #1. The acreage is located 2.5 miles downstream from the stock pond. The source of the Kittridge

Ditch #1 is Four Mile Creek. Slater Creek is tributary to Four Mile Creek which confluence is roughly 2 miles downstream from the subject stock pond. Annual evaporative loss from the 2.81 acre stock pond has been established as 7.50 acre feet. The annual consumptive use irrigation credit for grass hay at 7900 feet above sea level, as is the case here, is 1.31 feet based on the modified Blaney-Cridle method. Total "dry-up" credit for the plan is 7.54 acre-feet. Based on the foregoing, the plan as described can be administered without causing injury to other water rights downstream or otherwise. **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. 09CW34; Previous Case No. 02CW86 – GARY M. and/or ROSE M. FARISS, 94455 C.R. 540, P. O. Box 113, Gardner, CO 81040; (719) 404-4557

Application to Make Absolute and for Finding of Reasonable Diligence

HUERFANO COUNTY

Name of structure: Bernadette #1 Spring; Bernadette #2 Spring. **Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **Date of Original Decree:** March 11, 2003; **Case No.:** 02CW86; **Court:** Water Division 2. **Legal description:** Bernadette #1 Spring - NW¼ SW¼ Sec. 31, T26S, R69W, 6th P.M., Huerfano County, Colorado, 1476 feet from the South section line and 528 feet from the West section line. Bernadette #2 Spring: Huerfano County, NW¼ of the SW¼ Sec. 31, T26S, R69W, 6th P.M., 1400 feet from the South line and 453 feet from the West line. **Street Address:** 94455 County Road 540, P. O. Box 113, Gardner, CO 81040; **Subdivision:** Colorado Land & Grazing, Lots DD55 and DD56. **Source:** Spring water. **Appropriation Date:** 6/19/02; **Amount:** 2 gallons per minute for each spring. **Use:** Domestic, stock water, 2 homes, ½ acre garden, livestock; small pets and animals; trees and flowers. **Provide 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:** Bernadette #1 Spring – spring on DD56 – will be developed in the future as we have been financially slow to develop this spring, but wish to do so in the future. Spring Bernadette #2 is paid for and completed; ready to make absolute. **If claim to make absolute:** **Date water applied to beneficial use:** March 11, 2003; **Amount:** 2 gpm. **Use:** This is spring Bernadette #2 and in use and completed on Lot DD55. **Description of place of use where water is applied to beneficial use:** Domestic/stock water for home, ½ acre garden and livestock, small pets and animals; trees and flowers. **Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

CASE NO. 09CW35 – CATLIN CANAL COMPANY, 917 Elm Avenue, P. O. Box 352, Rocky Ford, CO 81067

(Please forward all correspondence or inquiries regarding this matter to attorneys for the Petitioner: Carolyn F. Burr and James M. Noble, Ryley Carlock & Applewhite, 1999 Broadway, Suite 1800, Denver, CO 80202, (303) 863-7500)

Petition To Correct Clerical Errors In Decree

OTERO COUNTY

2. Background: 2.1. General Adjudication Decree: On April 8, 1905, the Bent County District Court entered a general adjudication decree in Case No. D-243, entitled *In the Matter of the Adjudication of Priorities of Right to the Use of Water for Irrigation in Water District Number 17*, a transcription of which is attached to the Petition as Exhibit A (hereinafter, the “General Adjudication Decree”). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Pursuant to this decree, two separate water rights were adjudicated to the Catlin Canal Company’s predecessor in interest. The first of these water rights was awarded Priority No. 5, in the amount of 248 cfs, with an appropriation date of December 3, 1884 (hereinafter the “Priority 5 Water Right”). The second water right was awarded Priority No. 7, in the amount of 97 cfs, with an appropriation date of November 14, 1887 (hereinafter the “Priority 7 Water Right”). The point of diversion for both water rights was described as being “located on the east bank of the Apishapa River about 60 feet from its confluence with the Arkansas River in the south east quarter of the south east quarter of Section 7 Township 22 South of Range 59 West of the 6th P.M. in Otero County, Colorado.” The General Adjudication Decree also adjudicated a water right for the “Jones Ditch,” which was awarded Priority No. 2, in the amount of 44.3 cfs, with an appropriation date of April 10, 1875 (hereinafter the “Priority 2 Water Right”). The Las Animas Consolidated Canal Company (“Las Animas”) was the owner of the Priority 2 Water Right and the Jones Ditch. The General Adjudication Decree contained a clerical error. Although the point of diversion was correctly described as being located “on the east bank of the Apishapa River about 60 feet from its confluence with the Arkansas River,” this location was incorrectly described as being in the Southeast ¼ of the Southeast ¼ of Section 7, T22S, R59W. This location is actually in the Southeast ¼ of the Southeast ¼ of Section **13**, T22S, R59W. **2.2 1901 Agreement:** On December 27, 1901, the Reorganized Catlin Consolidated Canal Company (Catlin’s predecessor in interest, hereinafter “Reorganized Catlin”), Las Animas, and the Ft. Lyon Canal Company (“Ft. Lyon”) entered a settlement agreement, which stated that Las Animas subordinated its Priority 2 Water Right to Reorganized Catlin’s Priority 5 Water Right and Ft. Lyon’s Priority 4 Water Right. **2.3. 1905 Agreement:** On February 25, 1905, Las Animas and Reorganized Catlin entered into an agreement, whereby Reorganized Catlin agreed to convey 22 cfs of the Priority 5 Water Right to Las Animas, and Las Animas agreed to convey 22 cfs of the Priority 2 Water Right to Reorganized Catlin. The parties also agreed that the 1901 Agreement “shall as between the parties hereto be abrogated and be of no further force and effect and that the

several decreed priorities of the parties hereto as they shall stand at the time said decrees transferring said water shall become final shall be the decreed priorities of the parties hereto without any reference to said contracts and without being affected thereby.” **2.4. 1905 Transfer Decree:** On August 21, 1905, the Bent County District Court approved the exchange of water rights between Reorganized Catlin and Las Animas provided for in the 1905 Agreement. A transcription and copy of the decree is attached to the Petition as Exhibit B (hereinafter, the “1905 Transfer Decree”). The 1905 Transfer Decree approved a transfer of 22 cfs from the Priority 2 Water Right to Reorganized Catlin for diversion into the Catlin Canal, and a transfer of 22 cfs from the Priority 5 Water Right to Las Animas, for diversion into the Jones Ditch. Accordingly, Reorganized Catlin’s ownership interest in the Priority 5 Water Right was reduced from 248 cfs to 226 cfs. **2.5. *Reorganized Catlin Consolidated Canal Co. v. Hinderlider*, 80 Colo. 522, 253 P. 389 (1927):** In this opinion, the Colorado Supreme Court interpreted the effect of the 1901 Agreement and the 1905 Transfer Decree. The Supreme Court held that the 1901 Agreement governed over the 22 cfs in the Priority 2 Water Right transferred by Las Animas to Reorganized Catlin. This effectively resulted in Reorganized Catlin’s 22 cfs in the Priority 2 Water Right being administered as having an equal priority to the Priority 5 Water Right. **2.6. 1955 Decree:** On November 28, 1955, the Bent County District Court entered a decree in Civil Action No. 689, attached to the Petition as Exhibit C (hereinafter, the “1955 Decree”). This decree recites that the Catlin Canal Company (successor in interest to Reorganized Catlin) is the owner of 248 cfs in Priority 5, and 97 cfs in Priority 7. The 1955 Decree recites that a flood on the Arkansas River in the summer of 1955 destroyed the Catlin Canal diversion dam. Accordingly, the 1955 Decree approves a new point of diversion at the following location: on the South bank of the Arkansas River, located in the North one-half of the Northwest quarter of Section 19, Township 22 South, Range 59 West of the 6th P.M. in Water District No. 17 in Otero County, Colorado, which point is about 1300 feet East of, or down, the Arkansas River from the original point of diversion fixed by decree of the Court on the South bank of the Arkansas River at the confluence of said river and the Apishapa River in said Section 18. 1955 Decree at 3. This decree contained a clerical error with respect to the location of the point of diversion. Although the point of diversion was correctly described as being located “about 1300 feet East of, or down, the Arkansas River from the original point of diversion,” this location was incorrectly described as being located in Range 59 West. The relocated point of diversion is actually located in Range **58** West. Otherwise, the legal description of the relocated point of diversion is correct as described in the 1955 Decree. The 1955 Decree also contained a second clerical error. The 1955 Decree states that the Catlin Canal Company owns 248 cfs in Priority No. 5, with a priority of December 3, 1884. Actually, as a result of the 1905 Transfer Decree, the Catlin Canal Company owned 226 cfs in the Priority 5 Water Right, and 22 cfs in the Priority 2 Water Right. However, the Catlin Canal Company’s portion of the Priority 2 Water Right was subordinated to Priority 4 pursuant to the 1901 Agreement as explained in *Catlin v. Hinderlider*. Therefore, as of the date of the

1955 Decree, the Catlin Canal Company owned two separate water rights, in the amounts of 226 cfs and 22 cfs (for a total of 248 cfs), each of which was administered as having Priority 5. The Catlin Canal Company also continued to own the Priority 7 Water Right, which is correctly described in the 1955 Decree (except for the point of diversion, as described above).

3. Petition to Correct Clerical Errors:

3.1. Statutory Authority:

3.1.1. The current statute governing the correction of clerical errors in decrees provides that petitions to correct such errors must be brought within three years of the entry of the incorrect decree. See C.R.S. § 37-92-304(10) (1969).

3.1.2. In *Meyring Livestock Co. v. Wamsley Cattle Co.*, 687 P.2d 955 (1984), the Colorado Supreme Court held that C.R.S. § 37-92-304(10) only applies prospectively from its enactment. The statute was enacted in 1969; therefore it only applies to decrees entered in 1969 and later. Accordingly, one looks to the law in effect at the time a decree was entered to determine whether a time limit applies to the correction of clerical errors. *Id.* at 960.

3.1.3. At the time that the 1955 Decree was entered, the relevant statute for correction of clerical errors was C.R.S. § 148-9-20 (1943), attached to the Petition as Exhibit D. This statute stated that “[i]n case there is discovered in an adjudication decree a clerical error in describing the location of any point of diversion of any ditch or other structure for diverting water . . . a petition may be filed to secure the correction of such clerical error.” There is no time limit for when the petition may be filed. The statute also required publication of the petition for four successive weeks in one public newspaper in the water district in which the decree was given.

3.2. Location of Catlin Canal Headgate:

3.2.1. The 1955 Decree correctly described the location of the Catlin Canal’s headgate as being 1300 feet down the Arkansas River from the original point of diversion, which was described as being located at the confluence of the Arkansas River and the Apishapa River. The 1955 Decree’s legal description for this location is in error, however.

3.2.2. Under Colorado law, “[i]n resolving an inconsistency in a deed, the court should look first to natural monuments, next to artificial monuments, then to courses and distances.” *Jackson v. Woods*, 876 P.2d 116, 118 (Colo. App. 1994). Although the 1955 Decree is not a deed, the same principle applies. The 1955 Decree’s description of the Catlin Canal’s point of diversion in relation to the confluence of the Arkansas River and the Apishapa River governs over the incorrect legal description.

3.2.3. Accordingly, the Catlin Canal Company hereby petitions this Court to enter an order correcting the point of diversion, as described in the 1955 Decree, as follows: The point of diversion for the water rights owned by the Catlin Canal Company is located at a point on the South bank of the Arkansas River, in the North one-half of the Northwest quarter of Section 19, Township 22 South, Range 58 West of the 6th P.M. in Water District No. 17 in Otero County, Colorado, which point is about 1300 feet East of, or down, the Arkansas River from the original point of diversion fixed by decree of the Court on the South bank of the Arkansas River at the confluence of said river and the Apishapa River.

3.3. Description of Catlin’s Water Rights:

3.3.1. As explained in Part 2.6 above, the 1955 Decree states that the Catlin Canal Company owns 248 cfs in Priority No. 5, and 97 cfs in Priority No. 7. A more precise statement of the Catlin

Canal Company's interests that were changed to the new point of diversion in the 1955 Decree would be as follows: The following water rights owned by the Catlin Canal Company are changed to the new point of diversion: (a) 22 cfs in the water right assigned Priority No. 2 by the Decree of April 8, 1905, with an appropriation date of April 10, 1875. Pursuant to *Reorganized Catlin Consolidated Canal Co. v. Hinderlider*, 80 Colo. 522, 253 P. 389 (1927), this 22 cfs interest is required to be administered as junior to the Priority No. 4 Water Right, as described in the Decree of April 8, 1905; (b) 226 cfs in the water right assigned Priority No. 5 by the Decree of April 8, 1905, with an appropriation date of December 3, 1884; (c) 97 cfs, which is the entire water right assigned Priority No. 7 by the Decree of April 8, 1905, with an appropriation date of November 14, 1887. **3.3.2.** The 1955 Decree's statement that the Catlin Canal Company owns 248 cfs in Priority No. 5 was a mere recognition of the fact that the Catlin Canal Company's interest in Priority No. 2 was effectively administered as if it were also part of the Priority 5 Water Right. Therefore, the intent of the 1955 Decree was to change the point of diversion for the Catlin Canal Company's interest in the Priority 2 Water Right and the Priority 5 Water Right, for a total amount of 248 cfs. **3.3.3.** Accordingly, the Catlin Canal Company hereby requests that the Court enter an order correcting the description of the water rights changed in the 1955 Decree, as described in Part 3.3.1 above. **3.4. No Other Changes:** Through this petition, the Catlin Canal Company does not seek any other changes to the 1955 Decree, except for those described in Parts 3.2 and 3.3 above. WHEREFORE, the Catlin Canal Company respectfully requests that the Court grant the following relief: a) enter an order correcting the clerical error regarding the Catlin Canal's point of diversion found in the 1955 Decree, as more specifically described in Part 3.2.3 above; and b) enter an order correcting the clerical error regarding the Catlin Canal's water rights that were changed to the new point of diversion in the 1955 Decree, as more specifically described in Part 3.3.1 above.

CASE NO. 09CW36 – ALVIN R. GARDNER and LINDA S. GARDNER, 26825 County Road DD, Rocky Ford, CO 81067 (Michael L. Nicklos, Attorney for Applicants, 13 West 2nd Street, P. O. Box 581, La Junta, CO 81050; (719) 384-5946)

Application for Change of Water Right
OTERO COUNTY

Decreed name of structure for which change is sought: Well. **From previous Decree:** **Date Entered:** March 14, 2007; **Case No.:** 05CW54; **Court:** District Court, Water Division 2, Colorado. **Decreed point of diversion:** SW ¼ SW ¼ of Section 25, Township 23 South, Range 56 West of the 6th P.M., Otero County, Colorado, 947 feet from West section line and 54 feet from South section line. **Source:** Underground water tributary to the Arkansas River. **Appropriation Date:** August 1955. **Amount:** .888 cfs or 400 gpm not to exceed 285 acre feet in a calendar year for the irrigation of 70 acres of land within the W ½ SW ¼ of Section 25, Township 23 South, Range 56 West of the 6th P.M., Otero County, Colorado. **Historic use:** Irrigation. **Proposed change:**

Well No. 6050 (State Engineer's I.D. No. 1705490) which was decreed as set forth above has become a dry hole. Applicants have requested and received from the Office of the State Engineer Well Permit No. 279807 to drill a replacement well as set forth hereafter and as is represented on the maps attached to the application and hereby incorporated by reference. A copy of Well Permit No. 67128 for the current decreed located as provided in 05CW54 is attached to the application and hereby incorporated by reference, as is a copy of Well Permit No. 279807 for the new well location. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Applicants seek to change the point of diversion to the location set forth hereafter due to these circumstances. Applicants' current well decreed under Case No. 05CW54 is covered and included in the augmentation plan provided by Colorado Water Protective and Development Association (CWPDA). Applicants have had discussions with the representatives of the State Engineer and the current CWPDA augmentation plan which allows the current decreed well under Case No. 05CW54 to pump will follow with and provide appropriate augmentation for the new well to be located under this change in point of diversion. **If a change in point of diversion, provide legal description:** Otero County, NW ¼ of the NW ¼ Section 36, Township 23 South, Range 56 West, 6th P.M., 263 feet from the North line and 45 feet from the West line. **GPS location (UTM format, Zone 13, Units in meters, NAD83 datum; unit set to true north):** Points were averaged. Northing 4286583; Easting 135619361. **Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Same as Applicants.

CASE NO. 09CW37 – FORREST J. BORRE and BARBARA J. BORRE, 11501 Auckland Avenue, Williamsburg, CO 81226; (719) 784-2246

Application for Underground Water Right

FREMONT COUNTY

Name of well and permit number: Not Named; Permit 248241. **Legal description of well:** NE ¼ of the NW ¼ Sec. 24, T19S, R70W, 6th P.M., 900 feet from the North line and 1720 feet from the West line. **Street Address:** 11501 Auckland Avenue, Williamsburg, CO 81226; **Subdivision:** Chandler Heights, Lot 3. **GPS location (UTM format, Zone 13, Units in meters, NAD83 datum; unit set to true north):** Points were not averaged. Northing 4248195; Easting 484713. **Source:** Well Construction and Test Report for GWS-31 of May 20, 2007. **Depth:** 540 feet. **Date of appropriation:** May 15, 2007; **How appropriation initiated:** Purchase of property; **Date water applied to beneficial use:** May 15, 2007. **Amount claimed:** ½ gpm Absolute. **If well is non-tributary: Name of Aquifer:** Ground Water; **Amount claimed in acre feet annually:** 0.81 acre feet. **Proposed use:** Ordinary household purpose, fire protection, watering of domestic animals, irrigation of 1 acre of lawns and gardens. **Names and addresses of owners or reputed owners of the land**

upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: NA.

CASE NO. 09CW38; Previous Case Numbers: W-551; W-551(76); 80CW124(W-551); 85CW35(W-551); 89CW34(W-551); 95CW230 W-551); 02CW68(W-551)- ROUND MOUNTAIN WATER AND SANITATION DISTRICT, c/o Tracey Garcia, Manager, P. O. Box 86, Westcliffe, CO 81252-0086

(Robert F. T. Krassa, Krassa & Miller, LLC, Attorneys for Applicant, 2344 Spruce St., Suite A, Boulder, CO 80302; (303) 442-2156)

Application for Finding of Diligence and to Make Partly Absolute
CUSTER COUNTY

2. Name of structure: Municipal Water System No. 2, Town of Silver Cliff. **Type of structure:** well. **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree: A. Date of Original Decree:** September 29, 1972, **Case No.** W-551, **Court:** District Court in and for Water Division 2, State of Colorado. **B. Legal description:** A point in a seepage area in the SW/4 of the SW/4, Section 20, T. 22 S, R. 72 W. of the 6th P.M., Custer County, Colorado, whence the northwest corner of the said Section 20 bears N.03 degrees 24' 13" W. a distance of 4774.30 feet. Vicinity and detail maps are attached to the Application as Exhibits A and B respectively and may be examined at the office of the Clerk of this Court. **C. Source:** A seepage area, tributary to Grape Creek. **D. Appropriation Date:** June 27, 1969, **Amount:** 1.00 cfs. **E. Use:** Municipal. **F. Depth: (if well).** Depth not stated in original decree. **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:** Since March 5, 2003, the applicant has after consultation with the Division Engineer's office replaced the old well with a new one designed, drilled and equipped to modern standards, and has acquired additional right of way to access the infrastructure. Applicant has during the diligence period spent over \$20,000 on well reconstruction, bringing electric power to the correct location, fencing, surveying and other activities specific to this water right. The new well has produced approximately 400 gpm to beneficial use, and Round Mountain requests that the subject conditional water right be made absolute to that extent. In addition, Round Mountain has during the diligence period expended over \$500,000 on capital improvements to other portions of its water system, which improvements are necessary to eventually place this entire water right to beneficial use. Applicant has in all respects diligently worked toward fully placing this water right to beneficial use. **5. If claim to make absolute - A. Date water applied to beneficial use:** Nov. 15, 2007, **Amount:** 0.89 cfs (400 gpm), **Use:** Municipal. **B. Description of place of use where water is applied to beneficial use:** Applicant's service area in Custer County, Colorado. **6. Name and address of owner of the land on which structure is or will be located:** Applicant.

CASE NO. 09CW39 – ROBERT and LAURA LINS, P. O. Box 424, Florence, CO 81226; (719) 784-2288

Application for Underground Water Right

FREMONT COUNTY

Name of well and permit number: Lins Well; Permit 243372. **Legal description of well:** Fremont County, SW ¼ of the SW ¼ Sec. 24, T19S, R70W, 6th P.M., 724 feet from the South line and 1112 feet from the West line. **Street Address:** 8500 Auckland Avenue, Williamsburg, CO 81226; **Subdivision:** Chandler Heights, Lot 10. **GPS location (UTM format, Zone 13, Units in meters, NAD83 datum; unit set to true north):** Northing 4247530; Easting 484529. **Source:** Groundwater. **Depth:** 480 feet. **Date of appropriation:** July 1, 2003; **How appropriation initiated:** Purchase of property; **Date water applied to beneficial use:** July 1, 2003. **Amount claimed:** 1 gpm Absolute. **Proposed use:** Domestic use – 1 household; fire protection; irrigation of 500 sq. ft. lawn/garden. **Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

CASE NO. 09CW40 – STEVEN G. DOUGLAS, 8203 Highway 78 West, Beulah, CO 81023; (719) 485-3513

Application for Underground Water Right

PUEBLO COUNTY

Name of well and permit number: Well Permit Number 7003. **Legal description of well:** Pueblo County, NE ¼ of the NE ¼ Sec. 1, T23S, R68W, 6th P.M., 1145 feet from the North line and 75 feet from the East line. **Street Address:** 8203 Highway 78 West, Beulah, CO 81023. **Source:** Dakota formation. **Depth:** 247 feet. **Date of appropriation:** September 12, 1960; **How appropriation initiated:** Application for use of ground water; **Date water applied to beneficial use:** September 24, 1960. **Amount claimed:** 10 gpm Absolute. **Proposed use:** The well serves one home, provides water for livestock and irrigation of one (1) acre of home lawns and gardens. **Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** NA. **Remarks:** This well was drilled in 1960 to a depth of 247 feet, cased to 245 feet, with slotted perforations in the casing from 220 to 245 feet. The well was tested September 24, 1960. Depth to water then was 125 feet, with a yield of 25 gpm. Routine maintenance was performed on the well March 25, 2009. Depth to water was found to be 155 feet. The pump (1 hp/10 gpm) is currently at 185 feet. A three-hour pump test was performed by the owner with positive results (clear water and constant production).

CASE NO. 09CW41 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008

(Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)

Application for Surface Water Right

PUEBLO COUNTY

Name of Structures and legal descriptions: Deerfly Spring. **POD:** Applicant seeks the following point of diversion for the Deerfly Spring: a point located in NE1/4 SW1/4 S23, T19S, R62W, 6th P.M., 1390' from the S Section line and 1900' from the W Section line of said S 23. **GPS location in UTM format** (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 4247918 **Easting** 554216. **Source:** Unnamed tributary to Chico Creek, a normally dry tributary of the Arkansas River. **Amount:** 0.032 cfs, Absolute. **APP. Date:** April 1965 by watering livestock. **Use:** Livestock water, wildlife and fire suppression.

CASE NO. 09CW42 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008

(Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)

Application for Surface Water Right

PUEBLO COUNTY

Name of Structures and legal descriptions: Headquarters Spring. **POD:** Applicant seeks the following point of diversion for the Headquarters Spring: a point located in SE1/4 SE1/4 S4, T18S, R63W, 6th P.M., 900' from the S Section line and 150' from the E Section line of said S 4. **Source:** Unnamed tributary to Chico Creek, a normally dry tributary of the Arkansas River. **Amount:** 0.3 cfs, Absolute. **APP. Date:** April 1965 by watering livestock and construction of a reservoir. **Use:** Irrigation of 91 acres, livestock water, fisheries, wildlife and fire suppression.

CASE NO. 09CW43 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008

(Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)

Application for Surface Water Right

EL PASO COUNTY

Name of Structures and legal descriptions: H.O.P. Reservoir Spring. **POD:** Applicant seeks the following point of diversion for the H.O.P. Reservoir Spring: a point located in SW1/4 NW1/4 S33, T17S, R63W, 6th P.M., 1600' from the N Section line and 550' from the W Section line of said S 33. **GPS location in UTM format** (Zone 13, Units set to meters, Datum NAD83, and Units set to true north)

Northing 4264599 **Easting** 547261. **Source:** Unnamed tributary to Chico Creek, a normally dry tributary of the Arkansas River. **Amount:** 0.02 cfs, Absolute. **APP. Date:** April 1965 by development of spring box. **Use:** Livestock water, wildlife and fire suppression.

CASE NO. 09CW44 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008 (Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)

Application for Surface Water Right

EL PASO COUNTY

Name of Structures and legal descriptions: Julie Spring. **POD:** Applicant seeks the following point of diversion for the Julie Spring: a point located in SW1/4 SW1/4 S28, T17S, R63W, 6th P.M., 240' from the S Section line and 160' from the W Section line of said S 28. **GPS location in UTM format** (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 4265229 **Easting** 547152. **Source:** Unnamed tributary to Chico Creek, a normally dry tributary of the Arkansas River. **Amount:** 0.05 cfs, Absolute. **APP. Date:** April 1965 by watering livestock. **Use:** Livestock water, wildlife and fire suppression.

CASE NO. 09CW45 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008 (Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)

Application for Surface Water Right

PUEBLO COUNTY

Name of Structures and legal descriptions: Schoolhouse Spring. **POD:** Applicant seeks the following point of diversion for the Schoolhouse Spring: a point located in SW1/4 SW1/4 S15, T18S, R63W, 6th P.M., 650' from the S Section line and 850' from the W Section line of said S 15. **GPS location in UTM format** (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 4258880 **Easting** 549010. **Source:** Unnamed tributary to Chico Creek, a normally dry tributary of the Arkansas River. **Amount:** 0.05 cfs, Absolute. **APP. Date:** April 1965 by watering livestock. **Use:** Livestock water, wildlife and fire suppression.

CASE NO. 09CW46 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008 (Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)

Application for Surface Water Right

EL PASO COUNTY

Name of Structures and legal descriptions: Vega Spring. **POD:** Applicant seeks the following point of diversion for the Vega Spring: a point located in NW1/4 SE1/4 S29, T17S, R63W, 6th P.M., 1675' from the S Section line and 1640' from the E Section line of said S 29. **GPS location in UTM format** (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 14265848 **Easting** 546503.8. **Source:** Unnamed tributary to Chico Creek, a normally dry tributary of the Arkansas River. **Amount:** 0.05 cfs, Absolute. **APP. Date:** April 1965 by watering livestock. **Use:** Livestock water, wildlife and fire suppression.

CASE NO. 09CW47 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008 (Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)

Application for Surface Water Right

PUEBLO COUNTY

Name of Structures and legal descriptions: May Camp Barn Spring. **POD:** Applicant seeks the following point of diversion for the May Camp Barn Spring: a point located in SW1/4 SW1/4 S23, T18S, R63W, 6th P.M., 975' from the S Section line and 675' from the W Section line of said S 23. **GPS location in UTM format** (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 4257402 **Easting** 550578. **Source:** Unnamed arroyo tributary to Chico Creek, a normally dry tributary of the Arkansas River. **Amount:** 0.02 cfs, Absolute. **APP. Date:** April 1965 by construction of a pipe collection system to collect and convey spring water to livestock. **Use:** Livestock water, wildlife and fire suppression

CASE NO. 09CW48 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008 (Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)

Application for Surface Water Right

PUEBLO COUNTY

Name of Structures and legal descriptions: Little Chico Pasture Spring. **POD:** Applicant seeks the following point of diversion for the Little Chico Pasture Spring: a point located in SE1/4 NE1/4 S30, T19S, R62W, 6th P.M., 2320' from the N Section line and 450' from the E Section line of said S 30. **GPS location in UTM format** (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 4246772 **Easting** 555040. **Source:** Unnamed tributary to Chico Creek, a normally dry tributary of the Arkansas River. **Amount:** 0.02 cfs, Absolute. **APP. Date:** April 1965 by spring development of collection pipe to fill livestock watering tank. **Use:** Livestock water, wildlife and fire suppression.

CASE NO. 09CW49 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008

(Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)

Application for Surface Water Right

PUEBLO COUNTY

Name of Structures and legal descriptions: Little Chico Pasture Spring North.

POD: Applicant seeks the following point of diversion for the Little Chico Pasture Spring North: a point located in SE1/4 NE1/4 S30, T19S, R62W, 6th P.M., 1773' from the N Section line and 575' from the E Section line of said S 30. **Source:**

Unnamed tributary to Chico Creek, a normally dry tributary of the Arkansas River.

Amount: 0.02 cfs, Absolute. **APP. Date:** April 1965 by watering livestock. **Use:**

Livestock water, wildlife and fire suppression.

CASE NO. 09CW50 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008

(Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)

Application for Water Storage Right

PUEBLO COUNTY

Name of Structures and legal descriptions: May Camp Reservoir. **Location:**

Storage facility located in the SW1/4 SW 1/4 S23, T18S, R63W, 6th P.M., 650' from the S Section line and 1125' from the W Section line of said S 23. **GPS**

location in UTM format (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 4257318 **Easting** 550691. **Source:** Fed by May

Camp Reservoir Spring. **Amount:** 54 AF, Absolute, with the right to fill and refill while in priority at a rate of .25 cfs, Absolute. **APP. Date:** 1884 by construction of

a dam. **Use:** Domestic, livestock water, waterfowl habitat, wildlife and fisheries.

Dam Height: 13.3', **Length** 550', **Total Capacity:** 54 AF.

CASE NO. 09CW51 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008

(Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)

Application for Surface Water Right

PUEBLO COUNTY

Name of Structures and legal descriptions: May Camp Reservoir Spring.

POD: Applicant seeks the following point of diversion for the May Camp Reservoir Spring: a point located in SE1/4 SW1/4 S23, T18S, R63W, 6th P.M., 1100' from the S Section line and 1825' from the W Section line of said S 23.

GPS location in UTM format (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 4257920 **Easting** 550930. **Source:** Unnamed

tributary to Chico Creek, a normally dry tributary of the Arkansas River. **Amount:** 0.25 cfs, Absolute. **APP. Date:** 1884 by construction of a dam to impound the spring. **Use:** domestic, stock water, fisheries, wildlife and fire suppression.

CASE NO. 09CW52 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008 (Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)
Application for Water Storage Right
PUEBLO COUNTY

Name of Structures and legal descriptions: Lower Tolle Reservoir. **Location:** Storage facility located in the SW1/4 NE1/4 S22, T18S, R63W, 6th P.M., 1800' from the N Section line and 1450' from the E Section line of said S 22. **GPS location in UTM format** (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 4258140 **Easting** 549900. **Source:** Fed by Tolle Springs. **Amount:** 8 AF, Absolute, with the right to fill and refill while in priority at a rate of .50 cfs, Absolute. **APP. Date:** January 28, 1908 initiated by construction of a dam. **Use:** Irrigation of 30 acres, stock water, fire suppression, waterfowl habitat, wildlife and fisheries. **Dam Height:** 13.2', **Length** 555', **Total Capacity:** 8 AF.

CASE NO. 09CW53 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008 (Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)
Application for Water Storage Right
PUEBLO COUNTY

Name of Structures and legal descriptions: Tolle Reservoir. **Location:** Storage facility located in the SE1/4 SE 1/4 S15, T18S, R63W, 6th P.M., 150' from the S Section line and 900' from the E Section line of said S 15. **GPS location in UTM format** (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 4258751 **Easting** 550012. **Source:** Fed by Tolle Springs. **Amount:** 48 AF, Absolute, with the right to fill and refill while in priority at a rate of .50 cfs, Absolute. **APP. Date:** April 1965 by construction of a dam. **Use:** Irrigation of 30 acres, livestock water, fire suppression, waterfowl habitat, wildlife and fisheries. **Dam Height:** 12.7', **Length** 1315', **Total Capacity:** 48 AF.

CASE NO. 09CW54 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008 (Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)
Application for Surface Water Right
PUEBLO COUNTY

Name of Structures and legal descriptions: Tolle Springs. **POD:** Applicant seeks the following point of diversion for the Tolle Springs: a point located in NE1/4 SE1/4 S15, T18S, R63W, 6th P.M., 2,280' from the S Section line and 1,040' from the E Section line of said S 15. **Source:** Unnamed tributary to Chico Creek, a normally dry tributary of the Arkansas River. **Amount:** 0.50 cfs, Absolute. **APP. Date:** March 1891 by construction of reservoir to capture the spring. **Use:** Irrigation of 30 acres, stock water, fish propagation, wildlife and fire suppression.

CASE NO. 09CW55 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008 (Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)
Application for Surface Water Right
PUEBLO COUNTY

Name of Structures and legal descriptions: Holland Springs. **POD:** Applicant seeks the following point of diversion for the Holland Springs: a point located in SE1/4 NW1/4 S10, T18S, R63W, 6th P.M., 2,750' from the S Section line and 1,400' from the W Section line of said S10. **Source:** Unnamed tributary to Chico Creek, a normally dry tributary of the Arkansas River. **Amount:** 0.20 cfs, Absolute. **APP. Date:** 1877 by construction of a reservoir. **Use:** Irrigation of 91 acres, livestock water, fisheries, wildlife and fire suppression.

CASE NO. 09CW56 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008 (Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)
Application for Water Storage Right
PUEBLO COUNTY

Name of Structures and legal descriptions: J.H. Holland Reservoir No. 1. **Location:** Storage facility located in the NE1/4 SW1/4 S10, T18S, R63W, 6th P.M., 2060' from the N Section line and 1420' from the W Section line of said S 10. **GPS location in UTM format** (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 42606625 **Easting** 549175. **Source:** Fed by Holland Springs. **Amount:** 55 acre feet, Absolute with the right to fill and refill at a rate of .20 cfs. **APP. Date:** 1877 by construction of a dam. **Use:** Irrigation of 91 acres, livestock water, waterfowl habitat, wildlife and fisheries and the right to store water for said uses. **Dam Height:** 11', **Length** 2,072'; **Total Capacity:** 55 AF.

CASE NO. 09CW57 – JERALD AND LEVI HEIDRICH, 7440 Templeton Gap Road, Colorado Springs, CO 80922 (James J. Petrock, Petrock & Fendel, 700

Seventeenth Street, Suite 1800, Denver, CO 80202; (303) 534-0702)

Application for Underground Water Rights from Nontributary and Not Nontributary Sources and for Approval of Plan for Augmentation

EL PASO COUNTY

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

3. Legal Description of Wells and Subject Property: The wells which will withdraw groundwater from the not nontributary Denver and Arapahoe and nontributary Laramie-Fox Hills aquifers will be located at any location on approximately 5.5 acres of land, which is generally located in part of the NE1/4 of Section 7, T13S, R65W of the 6th P.M., as described and shown on Attachment A to the Application ("Subject Property"). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court.

4. Source of Water Rights: The source of the groundwater to be withdrawn from the Denver and Arapahoe aquifers is not nontributary as described in Sections 37-90-103(10.7) and 37-90-137(9)(c), C.R.S. The groundwater to be withdrawn from the Laramie-Fox Hills aquifer is nontributary groundwater as described in 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. Applicants waive any 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 on the Denver Basin Rules, 2 C.C.R. 402-6. Applicants estimate the following annual amounts are representative of the subject aquifers:

<u>Aquifer</u>	<u>Saturated Thickness</u>	<u>Annual Amount</u>
Denver	270 feet	2.5 acre-feet
Arapahoe	252 feet	2.3 acre-feet
Laramie-Fox Hills	189 feet	1.5 acre-feet

6. Well Field: 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 wells 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: Applicants will use, reuse, and successively use the water for domestic, commercial, industrial, irrigation, livestock watering, fire protection, and augmentation purposes, both on and off the Subject Property.

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

9. Description of plan for augmentation:

A. Groundwater to be augmented: All of the

Arapahoe aquifer groundwater as requested in paragraph 5 above. **B. Water rights to be used for augmentation:** Return flows from the use of not nontributary Arapahoe aquifer groundwater and direct discharge or return flows from use of nontributary Laramie-Fox Hills aquifer ground water underlying the Subject Property as requested herein, and nontributary Arapahoe aquifer groundwater as decreed in Case No. 03CW078, District Court, Water Division 2, located in Section 22, T12S, R65W. Applicants will purchase 1 acre-foot per year of nontributary Arapahoe aquifer groundwater decreed in Case No. 03CW078, for use in this plan. **C. Statement of plan for augmentation:** Applicants will use the Arapahoe aquifer groundwater for commercial and irrigation use on the Subject Property. Sewage treatment for commercial use will be provided by a non-evaporative septic system. Consumptive use associated with commercial use will be approximately 10% of water used and consumptive use associated with irrigation use will be approximately 90% of water used. During pumping Applicants will replace 4% of the actual amount withdrawn to the affected stream system pursuant to Section 37-90-137(9)(c), C.R.S. Applicants estimate that depletions may occur to the Arkansas River stream system. Return flows from use of the subject water rights on the Subject Property will return to the Arkansas River stream system, and those return flows are sufficient to replace at least 4% of the annual amount withdrawn while the subject groundwater is being pumped. Applicants will reserve all of the nontributary Laramie-Fox Hills aquifer groundwater underlying the Subject Property and one acre-foot of nontributary Arapahoe aquifer groundwater decreed in Case No. 03CW078 to meet post pumping augmentation requirements, but reserve 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 as 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. Applicants will withdraw all of the not nontributary Arapahoe aquifer groundwater requested herein under the plan of augmentation requested herein pursuant to Section 37-90-137(9)(c), C.R.S. 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, but that jurisdiction will be retained with respect to the average annual amounts of withdrawal specified herein to provide for the adjustment of such amounts to conform to actual local aquifer characteristics from adequate information obtained from wells or test holes drilled on or near Applicants' property, pursuant to Section 37-92-305(11), C.R.S. and Denver Basin Rule 9.A.; B. The groundwater in the Denver and Arapahoe aquifers is not nontributary and groundwater in the Laramie-Fox Hills aquifer 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.

CASE NO. 09CW58 – STATE OF COLORADO, Acting by and through the STATE BOARD OF LAND COMMISSIONERS, 4718 N. Elizabeth, Suite C, Pueblo, CO 81008

(Kerri Stroupe, Assistant Attorney General, Natural Resources Section, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5127)

Application for Water Storage Right

PUEBLO COUNTY

Name of Structures and legal descriptions: J.H. Holland Reservoir No. 2.

Location: Storage facility located in the NE1/4 NE 1/4 S9, T18S, R63W, 6th P.M., 1,280' from the N Section line and 520' from the E Section line of said S 9. **GPS location in UTM format** (Zone 13, Units set to meters, Datum NAD83, and Units set to true north) **Northing** 4257318 **Easting** 550691. **Source:** Fed by Headquarters Spring. **Amount:** total capacity 143 AF, Absolute, with the right to fill and refill while in priority at a rate of 0.30 cfs, Absolute. **APP. Date:** April 1965 by construction of a dam. **Use:** Irrigation of 91 acres, livestock water, waterfowl habitat, wildlife and fisheries. **Dam Height:** 16.9', **Length** 675, **Total Capacity:** 143 AF; active capacity 39 acre feet, dead storage 104 acre feet.

CASE NO. 09CW59 – ROGER E. LAINE, 22422 N. Rebecca Burwell Lane, Katy, TX 77449-2909

(David C. Lindholm, Attorney for Applicant, P. O. Box 18903, Boulder, CO 80308-1903; (303) 415-2502)

Application for Underground Water Rights, Approval of a Plan for Augmentation and Exchange Right

LAKE COUNTY

I. APPLICATION FOR UNDERGROUND WATER RIGHTS: 2. Names of

Wells and Permit, Registration or Denial Numbers: Laine Well No. 1 (Permit No. 133135), Laine Well No. 2 and Laine Well No. 3. **2. Legal Description of the Wells:**

Laine Well No. 1 is located in the NW 1/4 NW 1/4 of Section 8, Township 10 South, Range 80 West, 6th P.M., Lake County, at a point approximately 520 feet from the North Section line and 253 feet from the West Section line of said Section 8. Laine Well No. 2 will be located in the SW1/4 SW 1/4 of Section 5, Township 10 South, Range 80 West, 6th P.M., Lake County, at a point approximately 850 feet from the South Section line and 100 feet from the West Section line of said Section 5. Laine Well No. 3 will be located in the SE1/4 SE 1/4 of Section 6, Township 10 South, Range 80 West, 6th P.M., Lake County, at a point approximately 600 feet from the South Section line and 450 feet from the East Section line of said Section 6. **3(A). Source of Water:** Ground water that is tributary to Halfmoon Creek. **3(B). Depth of Wells:**

Laine Well No. 1: 44 feet. Laine Well No. 2: 75 feet, approximate. Laine Well No. 3: 75 feet, approximate. **4.A. Dates of Appropriation:** Laine Well No. 1: October 14, 1983. Laine Well No. 2: March 31, 2009. Laine Well No. 3: March 31, 2009.

4.B. How Appropriation was Initiated: Laine Well No. 1: Issuance of a well permit by the Colorado Division of Water Resources, followed by drilling of the Well. Laine Well Nos. 2 and 3: Field reconnaissance survey and the filing of this application. **4.C. Dates Water Applied to Beneficial Use:** Laine Well No. 1:

October 2, 1985. Laine Well Nos. 2 and 3: N/A. **5. Amounts Claimed:** Laine Well No. 1: 15 gallons per minute, Absolute. Laine Well Nos. 2 and 3: 30 gallons per minute, Conditional, (each well). **6. Uses:** Laine Well No. 1: Irrigation and fire protection purposes, Absolute. Domestic and stock watering purposes, Conditional. Laine Well Nos. 2 and 3: Irrigation and commercial purposes, Conditional. **7. Name and Address of Owner of Land on which the Wells are or will be Located:** Applicant, as described above. **8. Remarks:** The Permit for the Laine Well No. 1 was issued pursuant to C.R.S. §37-92-602. As such, the Well is exempt from administration under the priority system. **II. APPLICATION FOR APPROVAL OF A PLAN FOR AUGMENTATION AND EXCHANGE RIGHT:** **1. Names of Structures to be Augmented:** Laine Well Nos. 2 and 3. **2. Water Rights to be Used for Augmentation Purposes:** a. Applicant proposes to augment depletions from the Laine Well Nos. 2 and 3 utilizing water available to a portion of a share of stock he has contracted to purchase in the Twin Lakes Reservoir and Canal Company ("Twin Lakes"). b. A Twin Lakes share represents a pro-rata interest in native Arkansas River diversions and the Independence Pass Transmountain Diversion System. The water associated with Twin Lakes shares is available for one hundred percent consumptive use and reuse, including augmentation purposes. The Twin Lakes water rights are more particularly described as follows: i. Colorado River Water Rights: The Independence Pass Transmountain Diversion System diverts water from the headwaters of Roaring Fork Creek and its tributaries in Pitkin County. The System was decreed by the District Court for Garfield County in Civil Action No. 3082, on August 25, 1936, with a date of appropriation of August 23, 1930, for direct flow and storage purposes, irrigation, domestic, commercial, industrial, municipal and all beneficial uses. The original Decree for the System was modified by the Decree entered by the District Court for Water Division 5 in Case No. W-1901, on May 12, 1976. Water is carried through the Continental Divide for delivery to Lake Creek, a tributary of the Arkansas River, at a decreed rate of 625 cfs, with an annual limit of 68,000 acre feet, a running ten year limit of 570,000 acre feet and other limitations set forth in the Decrees. ii. Arkansas River Water Rights: Water in Lake Creek, a tributary of the Arkansas River, is stored in Twin Lakes Reservoirs pursuant to the Decree entered by the District Court for Chaffee County in Civil Action No. 2346, on July 14, 1913, with dates of appropriation of December 15, 1896, for 20,645.2 acre feet, and March 25, 1897, for 33,806.7 acre feet. The original Decree was modified by the District Court for Water Division 2 in Case No. W-3965, dated April 19, 1974. Twin Lakes Reservoirs are on-stream reservoirs located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 of Township 11 South, Range 80 West, 6th P.M. The water is decreed for storage for irrigation, domestic, commercial, industrial and municipal purposes on any sites in the Arkansas River Basin of Colorado below Twin Lakes Reservoir, which are capable of being served water by diversion from said Arkansas River. c. The State Engineer has acknowledged that the average consumptive use yield of each Twin Lakes share is approximately 0.94 of an acre-foot of water per year. **3. Statement of Plan for Augmentation, Covering all Applicable Matters under C.R.S. §37-92-**

103(9), §302(1)(2) and §305(8): a. Applicant is the owner of a 35.21 acre parcel of property located in the SE 1/4 SE 1/4 of Section 6, the SW 1/4 SW 1/4 of Section 5, the NE 1/4 NE 1/4 of Section 7 and the NW 1/4 NW 1/4 of Section 8, all in Township 10 South, Range 80 West, 6th P.M., Lake County. The property is also identified as Tract 8 of the Half Moon Lakes subdivision. The property is depicted on the Exhibit "A" 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. b. Applicant proposes to grow plants that are sold in commercial nurseries on a portion of the property. A variety of trees and landscape plants will be grown from seedlings to a marketable size. Water for the plants will be obtained from the Laine Well Nos. 2 and 3. It is envisioned that irrigation water will be delivered directly to the plants via a high efficiency irrigation system. c. Studies conducted by the Applicant indicate that no more than 0.3 of an acre foot of water is anticipated to be required for the irrigation operation at full development. For the first twenty years, only 0.13 of an acre foot of water is anticipated to be needed. All water that is delivered to the plants will be assumed to be consumed for purposes of this augmentation plan. The Laine Well Nos. 2 and 3 will be equipped with totalizing flow meters to monitor annual ground water withdrawals. Depletions will be replaced in accordance with measured water deliveries. d. The required volume of augmentation water will be provided from the sources described in Paragraph No. 2, above. Since the yield of only a fraction of a Twin Lakes share will be needed for augmentation purposes, Applicant reserves the right to retain, exclude from this augmentation plan, and use for other purposes, the portion of the share not needed to replace depletions from the Laine Well Nos. 2 and 3. Due to the small volume of annual stream depletions projected to occur under this plan, instantaneous stream depletions may be aggregated and replaced by one or more releases from storage of short duration. e. The points of depletion associated with water use from the Laine Well Nos. 2 and 3 will be to a side tributary of the Arkansas River. Therefore, Applicant asserts an appropriative right of substitute supply and exchange pursuant to C.R.S. §37-80-120 and §37-92-302(1)(a). Water released from the Twin Lakes Reservoirs will be carried in Lake Creek to the confluence of Lake Creek and the Arkansas River, located in the NE 1/4 SE 1/4 of Section 24, Township 11 South, Range 80 West, 6th P.M., Lake County. From there, the water will be exchanged up the Arkansas River to its confluence with Lake Fork in the SW 1/4 SE 1/4 of Section 5, Township 10 South, Range 80 West, 6th P.M.; thence up Lake Fork to its confluence with Halfmoon Creek in the SW 1/4 SE 1/4 of Section 5, Township 10 South, Range 80 West, 6th P.M.; and thence up Halfmoon Creek to the points of depletion from the Laine Well Nos. 2 and 3 in the SE 1/4 SE 1/4 of Section 6, Township 10 South, Range 80 West, 6th P.M. The exchange will operate to replace depletions to the flow of water in Halfmoon Creek, Lake Fork and the Arkansas River as the depletions occur. The exchange will be administered with a priority date of March 31, 2009, at a maximum flow rate of 0.1 of a cubic foot per second. f. It is not anticipated that any water right located on Halfmoon Creek, Lake Fork or the Arkansas River upstream of the confluence of Lake Creek and the Arkansas River will be injured

by the operation of the subject wells. Should that turn out not to be the case, Applicant reserves the right to include on-site storage as part of the augmentation plan, and exchange Twin Lakes water into the on-site storage container as needed. g. Applicant will comply with the Bylaws of Twin Lakes relative to the submission of a certificate representing the fractional share committed to this plan for legending restrictions on sale or transfer of the certificate. **4. Name and Address of Owner of Land on which New Structures will be Located:** Structures described in Paragraph No. 1. Applicant, as described above. WHEREFORE, Applicant requests the entry of a decree approving this Application, specifically determining that the source and location of delivery of augmentation water are sufficient to eliminate material injury to vested water rights. Applicant also requests a determination that the Laine Well Nos. 2 and 3 can be operated without curtailment so long as out-of-priority stream depletions are replaced as proposed herein. Applicant further requests the entry of an Order directing the State Engineer to issue permits for the construction and use of the Laine Well Nos. 2 and 3.

CASE NO. 09CW60. Previous Case Nos.: W-514, W-514(77), 81CW93(W-514), 85CW53(W-514), 89CW31(W-514), 95CW227(W-514), 02CW69(W-514) – NORMAN ENFIELD, deceased, and MARY M. TRUJILLO and WALETA SIOUX FISHER (as Lessors under Master Lease with Widefield Water & Sanitation District), WIEDIFIELD WATER & SANITATION DISTRICT, WATER SOURCES DEVELOPMENT COMPANY (as Successor in Interest to Widefield Homes Water Company, Lessor and Water Rights Manager under the Master Lease with Widefield Water & Sanitation District), c/o Roger A. DeKloe, 3 Widefield Boulevard, Colorado Springs, Colorado 80911, (719) 392-3411 (Please forward all correspondence or inquiries regarding this matter to attorneys for the Applicants: William B. Tourtillott, Carolyn F. Burr and James M. Noble, RYLEY CARLOCK & APPLEWHITE, 1999 Broadway, Suite 1800, Denver, Colorado 80202, (303) 863-7500)

Application for Finding of Reasonable Diligence for Conditional Water Rights
EL PASO COUNTY

2. Name of Structures: This application relates to the conditional water rights decreed in Case No. W-514 for the Enfield Well No. 1, Enfield Well No. 1 Enlargement, Enfield Well No. 3 and Enfield Well No. 3 Enlargement (the "Subject Water Rights"). **3. Description of Water Rights. 3.1. Date of Original Decree:** June 26, 1973, as amended by an order entered August 20, 1973, nunc pro tunc June 26, 1973, in Case No. W-514, Water Division No. 2. This Court previously found that Applicants have been diligent in the development of the Subject Water Rights and entered decrees accordingly in Case Nos. W-514(77), 81CW093, 85CW053, 89CW031, 95CW227, and 02CW69. **3.2. Legal Description of the Structures:** 3.2.1. Enfield Well No. 1/Enfield Well No. 1 Enlargement: The Enfield Well No. 1 water right and the Enfield Well No. 1 Enlargement water right are decreed for diversion from the same well structure, which is located in the SW¼ of the SE¼ of Section 24, Township 15 South, Range 66 West of the 6th P.M., approximately 550 feet from

the South line and approximately 1,700 feet from the East line of said Section 24, in El Paso County, Colorado. 3.2.2. Enfield Well No. 3/Enfield Well No. 3 Enlargement: The Enfield Well No. 3 water right and the Enfield Well No. 3 Enlargement water right are decreed for diversion from the same well structure, which is located in the SW¼ of the SE¼ of Section 24, Township 15 South, Range 66 West of the 6th P.M., approximately 1,000 feet from the South line and approximately 2,050 feet from the East line of said Section 24, in El Paso County, Colorado. 3.3. **Source of Water Rights**: Fountain Creek, a tributary to the Arkansas River. 3.4. **Appropriation Dates and Amounts**: 3.4.1. Enfield Well No. 1: June 30, 1946 for 0.557 cfs (250 gpm). 3.4.2. Enfield Well No. 1 Enlargement: March 21, 1972 for 2.28 cfs (1,000 gpm). 3.4.3. Enfield Well No. 3: September 2, 1964 for 0.044 cfs (20 gpm). 3.4.4. Enfield Well No. 3 Enlargement: March 21, 1972 for 1.67 cfs (750 gpm). 3.5. **Use**: Each water right has been conditionally decreed for municipal purposes, and they continue to be an integral part of the Widefield Water and Sanitation District's ("Widefield's") unified municipal water supply system. In addition, pursuant to the Findings of Fact, Judgment and Decree entered by the Water Court in Case No. W-514, the Enfield Well No. 1 was decreed for 0.557 cfs for irrigation and domestic use, absolute, and the Enfield Well No. 3 was decreed for 20 gpm for domestic use, absolute. 3.6. **Depth**: 3.6.1. Enfield Well No. 1/Enfield Well No. 1 Enlargement: 46 feet. 3.6.2. Enfield Well No. 3/Enfield Well No. 3 Enlargement: 45 feet. 4. **Evidence of Reasonable Diligence Towards Completing Appropriation**: 4.1. The Subject Water Rights are an integral part of Widefield's unified municipal water supply system. Accordingly, diligence on part of the system serves as reasonable diligence for the entire project. Applicants will use the Subject Water Rights on lands located within Widefield's service area. Widefield's water system is being constructed on a phased basis over time based upon the pace of growth within Widefield's service area. Widefield's service area currently includes approximately 9,642 acres of raw ground, which is scheduled for development of approximately 18,450 new, single-family residences. During this diligence period 753 taps were added to Widefield's system. System improvements are ongoing. Substantial improvements are expected in current and future years as growth in the Widefield service area continues. 4.2. During the interval of time since this Court's entry of its Findings of Fact, Conclusions of Law, Ruling and Decree in Case No. 02CW69, in continuing the development of these conditional water rights, the following work directly related to the Subject Water Rights was performed: 4.2.1. Appraisal of the Enfield Wells and the Subject Water Rights at a cost of \$4,821.00. 4.2.2. Development of a master plan that includes specific plans for upgrading the Enfield Wells, including a new metering/control building for the Enfield Wells, sizing of leader lines from the Enfield Wells to the planned metering/control building, and sizing of connections to the main Widefield Aquifer Manifold. These planned upgrades and improvements are also included in Widefield's long term capital improvement plan. 4.3. During the current diligence period (2003 through 2009), the following work has been performed and expenses incurred in relation to Widefield's water system, of which the Subject Water Rights are a part: 4.3.1.

Widefield has incurred costs in excess of \$14,687,700.00 for the repair and maintenance of Widefield's water system. 4.3.2. Widefield has incurred costs in excess of \$656,000 for capital expansion and improvements to its water system, including: new hydrants and valves in various parts of the water system, upgrades to SCADA system, installation of new chlorine disinfection equipment and new chlorine analyzers; construction of 30 Inch Goldfield Outfall (2006); construction of 20 Inch South Powers Transmission Line (2007); installation of 8 through 18 inch lines along Mesa Ridge Corridor (2004); reconnection of Goldfield Tank Farm (2006); upgrades to Booster #2 Pump Station (ongoing). Of these facilities, the Booster #2 Pump Station upgrades, the construction of the 20 Inch South Powers line and the construction of the 30 Inch Goldfield Outfall enable Widefield to increase water system deliveries from sources on the west side of its service area, including the Subject Water Rights, to the east side of Widefield's service area. In addition, Widefield has overseen the design and construction of the following developer installed facilities: Jimmy Camp Pump Station and Equalizing Tank; 24 Inch Marksheffel Transmission Line; Air Stripper #2; 24 Inch West Fountain Transmission Line; Approximately 10 miles of distribution line. 4.3.3. The costs for contract expenditures related to operation, management and maintenance of Widefield's water system were \$36,600. 4.3.4. Engineering consulting fees in excess of \$321,969 have been incurred in performing work related to the general development of Widefield's integrated water system, including annual updates of water systems demands and projections; annual updates of needed near term and long term system improvements; development of capital facilities planning document that includes approximate costs and timing of improvements on a 5, 10 and 20 year scenario (updated annually); annual updates of ultimate water supply needs and proposed timing of growth projections; updates of certain master-planned elements; water rights accounting; Cruse Gulch augmentation water supply (Widefield portion); meter certification; engineering support related to water rights protection; maintenance of well permits and analysis of water storage needs; engineering support for the acquisition of additional water rights to be used for augmentation purposes and the work described in paragraph 4.3.2, above. 4.3.5. Pursuant to a stipulation entered into in Case No. W-116, Widefield's share of the costs related to the Widefield Aquifer Management Program, of which the Enfield Well water rights are a part, has been \$245,100 during the diligence period. 4.3.6. During the diligence period, Widefield participated as an opposer in several cases filed in the Division No. 2 Water Court in defense of its municipal water rights, including the Subject Water Rights. An example of such cases includes Case No. 07CW47, Application of Colorado Centre Metropolitan District. Legal fees in the amount of \$73,795 have been incurred in defense of Widefield's water rights, including the Subject Water Rights. WHEREFORE, the Applicants request that the Court enter a decree finding that reasonable diligence was performed during the diligence period in development of the conditional water rights that are the subject of this application.

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 May 2009, (forms available at Clerk's office or at courts.state.co.us, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 7th day of April, 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)
Published: April _____, 2009