

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MARCH 2011

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 March 2011, 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. 11CW15 – WALLACE R. STEALEY, 8 Cuesta Place, Pueblo, CO 81001

(Shawn M. Yoxey, Attorney for Applicant, 226 South Union, Suite 211, Pueblo, CO 81003; (719) 543-7899)

Application for Approval of Plan for Augmentation, Change in Place of Use and Exchange

PUEBLO COUNTY

Structures to be augmented are 2 ponds and the evaporation therefrom located on a farm owned by Mr. Stealey. The Center Pond and the South Pond. Center Pond and South Pond were decreed in Case No. 99CW165 for stock water, piscatorial, and wildlife purposes. **Water rights to be used for augmentation of the ponds:** Mr. Stealey's plan is to augment pond evaporation out of his Bessemer Ditch shares by drying up a portion of the historically irrigated crop land and applying the historical consumptive use to the net evaporation of the ponds. **Statement of Plan for Augmentation:** Mr. Stealey's farm is located in Pueblo County in Sections 1 and 12, Township 21 South, Range 63 W, 6th P.M., just south of the Arkansas River. Sixmile Creek borders the east boundary of the farm and joins the Arkansas River about .25 miles north of the farm. The Bessemer Canal crosses Sixmile Creek about 3.25 miles south of the farm. Figure 1 attached to the Application and incorporated herein, is a location map showing Mr. Stealey's farm and the features described herein. An aerial is also attached to the Applicant and labeled Figure 2. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Mr. Stealey owns 35 shares of Bessemer Irrigating Ditch Company stock, of which 27 shares were historically delivered through a lateral to Mr. Stealey's turnout box located near the southwest corner of the farm. The delivered water was then conveyed by open ditch to the fields and distributed by furrows and corrugations. Mr. Stealey previously operated under an approved substitute water supply plan in 2008-2010. Those plans involved the use of annual leases of water from the Lower Arkansas Valley Water Conservancy District to cover pond evaporation. This plan for augmentation will be a stand alone plan so that annual water leases will no longer be required. Mr. Stealey plans to dry up a 4-acre parcel of land located in the NE1/4SW1/4 of Section 12, Township 21 South Range 63 West. The historical consumptive use will be used to replace evaporation losses from the South Pond and the Center Pond. The evaporation losses in acre-feet are as follows:

	<u>South Pond</u>	<u>Center Pond</u>	<u>Total</u>
November 1-14	0.01	0.06	0.07
November 15-30	0	0	0
December	0	0	0
January	0	0	0
February	0	0	0
March 1-14	0	0	0
March 15-31	0.02	0.09	0.11
April	0.05	0.29	0.34
May	0.07	0.39	0.46
June	0.09	0.51	0.60
July	0.09	0.49	0.58
August	0.08	0.42	0.50
September	0.06	0.35	0.41
October	0.04	0.24	0.28
Total	0.51	2.89	3.35

The South Pond has an approximate storage capacity of 1.0 acre-foot and a maximum water surface area of 0.14 acre. The Center Pond has an approximate storage capacity of 3.0 acre-feet and a maximum surface area of 0.938 acre. Both structures were decreed in Case No. 99CW165. **Depletions.** A historical water budget was prepared for the 46.8 acres of irrigated alfalfa, grass, and sorghum and using 27 Bessemer Ditch Shares using a study period of 1950-2009. The results were prorated downward to represent 4.0 acres of dry-up and 2.31 Bessemer shares. The resulting historical depletions averaged 3.54 acre-feet annually. The monthly historical depletions are as follows:

<u>Month</u>	<u>Depletion (acre-feet)</u>
November	0.14
December	0.02
January	-0.01
February	0.02
March	0.20
April	0.33
May	0.50
June	0.77
July	0.60
August	0.44
September	0.27
October	0.26
Total	3.54

The water rights for the Bessemer Ditch that will be changed are Mr. Stealey's prorata interest (2.31 shares out of 19,738.593 outstanding shares) so that the historical depletion amounts will be used for augmentation and replacement of evaporation in Center Pond and South Pond. The Bessemer Ditch direct flow water rights are shown in Table 2 attached to the Application and incorporated herein. A tabular summary of the historical diversions of native flow and winter water storage is presented in Table 1 which is also attached to the Application and incorporated herein. The ponds will be emptied on or after November 15 and will remain so until the Bessemer Ditch begins deliveries the following Spring, usually by mid March. **Exchange.** Mr. Stealey desires

to take his proportional deliveries down Sixmile Creek and use the water by exchange at two pumps that divert water from the South Pond and Center Pond which collect water from springs, tailwater and groundwater return flows from adjoining farms that are tributary to the Sixmile Creek. The water pumped from the ponds will be in an equivalent amount less evaporation. The Bessemer Irrigating Ditch Company will deliver water to Mr. Stealey via Sixmile Creek from a turnout located in the NE1/4NE1/4 of Section 34, Township 21 South, Range 63 West. The delivered water will flow down Sixmile Creek to point where the flows from South Spring and Center Spring join Sixmile Creek. For South Spring and Pond, the exchange from point is located in the NE1/4SW1/4 of Section 12, Township 21 South, Range 63 West at a point approximately 2000 feet from the South section line and 2440 feet from the West section line. The exchange to point is the South Pond which is located in the NE1/4SW1/4 of Section 12, Township 21 South, Range 63 West at a point 1970 feet from the South section line and 2200 feet from the West section line. For the Center Spring and Pond, the exchange from point is located on Sixmile Creek in the NW1/4NE1/4 of Section 12, Township 21 South, Range 63 West at a point approximately 530 feet from the North section line and 2110 from the East section line. The exchange to point is Center Pond which is located in the NE1/2NW1/4 of Section 12, Township 21 South, Range 63 West at a point 1120 feet from the North section line and 1870 feet from the West section line. **Change in Place of Use.** Mr. Stealey sold property and retained the water rights. The irrigated parcel of land that he sold without water is described as 10.2 acres located in the SE1/4NW1/4 of Section 12, Township 21 South, Range 63 West of the 6th P.M. In the future, Mr. Stealey will irrigate up to 10.2 acres north of Center Pond generally located in the NE1/4NW1/4 and NW1/4NE1/4 of Section 12 and the SE1/4SW1/4 of Section 1, Township 21 South, Range 63 West. **Conclusion.** All proposed changes to the use of Mr. Stealey's Bessemer Ditch shares as described herein can be accomplished without injury to other water users. Furthermore, Mr. Stealey will cooperate with all other users of the Sixmile Creek turnout on the Bessemer Ditch and will record all metered diversions by the Center Pond and South Pond.

CASE NO. 11CW16 – RIDLEY FARMS & RANCHES, LLP, 26960 Hwy. 101, Las Animas, CO 81054

(Send correspondence and pleadings to: Donald E. Frick, Fischer, Brown, Bartlett & Gunn, P.C., Attorneys for Applicant, 1319 E. Prospect Road, Fort Collins, CO 80525; (970) 407-9000)

Application for Change of Water Right

BENT COUNTY

2. Overview of application. Applicant owns or leases 67.5 shares in the Consolidated Extension Canal Company (the water rights associated with which will hereinafter be referred to as the "Subject Water Rights"). Water diverted pursuant to the Subject Water Rights has historically been used to irrigate approximately 165.5 acres located in Section 19, T23S, R51W, 6th P.M. (hereinafter the "Subject Property"). The Subject Property has historically been flood-irrigated. Applicant intends to change the irrigation practice on a portion of the Subject Property from flood irrigation to a center-pivot sprinkler irrigation and, in the process: (1) dry-up approximately 6.1 acres of the historically irrigated land on the Subject Property, and (2) irrigate under the center-pivot

approximately 121.9 acres on the Subject Property. This application thus seeks to change the location of use of the Subject Water Rights for irrigation of certain areas on the Subject Property which were not historically irrigated. No other change of the Subject Water Rights is sought by this application. **3. Water rights to be changed:** The water rights to be changed are the water rights represented by 67.5 out of 1,233.00 outstanding shares of stock in the Consolidated Extension Canal Company (“CECC”). The CECC owns the water rights decreed to the Consolidated Extension Canal. CECC also owns approximately 95.07 out of 562.00 outstanding shares in the Las Animas Consolidated Canal Company (“LACCC”) and is entitled to delivery of water from the LACCC diverted pursuant to the water rights decreed to the Las Animas Consolidated Canal. The water rights decreed to the Las Animas Consolidated Canal and the Consolidated Extension Canal are as follows:

Structure Name	Source	Court	Amount	Appropriation Date
Las Animas Consolidated Canal (a.k.a. Jones Ditch)	Arkansas River	District Court, Bent County	April 10, 1875	22.3
Las Animas Consolidated Canal (transfer from Catlin Ditch)	Arkansas River	District Court, Bent County	December 3, 1884	22.0
Las Animas Consolidated Canal (a.k.a. Riverside Ditch)	Arkansas River	District Court, Bent County	March 13, 1888	80.0
Consolidated Extension Canal (transfer from Las Animas Town Ditch)	Arkansas River	District Court, Bent County	March 7, 1884	5.5
Consolidated Extension Canal	Arkansas River	District Court, Bent County	April 15, 1909	44.8

3.1. Decreed point of diversion: The above water rights are decreed for diversion at the river headgate of the Las Animas Consolidated Canal, on the south bank of the Arkansas River, in the SE ¼ of Section 9, T23S, R53W, 6th P.M. **3.2 Historical Use:** Water diverted pursuant to the Subject Water Rights has historically been used for flood-irrigation of approximately 161.1 acres in NW ¼ and the West ½ of the NE ¼ of Section 19, T23S, R51 West, 6th P.M., as shown on Exhibit A attached to the original application (hereinafter the “Historically Irrigated Area”). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **4. Proposed change:** Under the proposed change, Applicant will continue flood-irrigation of approximately 33.1 acres of the Historically Irrigated Area, permanently remove from irrigation approximately 6.1 acres of the Historically Irrigated Area, and install a center-pivot sprinkler to be used for the irrigation of approximately 121.9 acres which includes lands located in the SW ¼ of the NW ¼ of Section 19, T23S, R51W, 6th P.M. which have not historically been irrigated. The acreages stated herein are approximate and may be revised. See Exhibit A to the Application for a map showing the actual location of the area to be irrigated pre- and post- change. Exhibit B to the Application contains a summary of the historical diversions for the Subject Water Rights. **5. Remarks:** Applicant asserts that the proposed change in location of use

requested herein is inconsequential and will not result in an enlargement of use. See *In re Tonko*, 154 P.3d 397 (Colo. 2007). Applicant anticipates, however, that the change in irrigation practices will require approval from the Division 2 Engineer pursuant to the “Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin in Colorado” (the “Surface Water Improvement Rules”). Applicant proposes as a term and condition of the requested change herein that Applicant comply with Surface Water Improvement Rules, to the extent such rules are applicable to Applicant’s proposed change in irrigation practice. **6. 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 (other than Applicant):** None.

CASE NO. 11CW17 – REX and SANDRA RIGGENBACH, P. O. Box 113, Poncha Springs, CO 81242; (719) 539-6350

Application for Water Rights (Surface)

CHAFFEE COUNTY

Name of Structure: Riggerbach Spring. **Legal description:** Chaffee County, NW ¼ of the SW ¼ Section 10, Township 49 North, Range 8 East, N.M.P.M., 2075 feet from the South line and 160 feet from the West line. **Street Address:** 247 True Ave., Poncha Springs, CO. **Source:** Springs and seepage. **Date of initiation of appropriation:** April 1971; **How appropriation was initiated:** Began using Riggerbach spring water. **Date water applied to beneficial use:** April 1971. **Amount claimed:** 20 gpm Absolute. **Use or proposed use:** Piscatorial and irrigation of 2 acres. **If Irrigation, complete the following: Number of acres historically irrigated:** 2; **proposed to be irrigated:** 2. **Legal description:** Legal description is located in Sec. 10, T49N, R8E, NMPM, Chaffee County, Colorado, as depicted on map on file with the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **If non-irrigation, describe purpose fully:** Use in filling and maintaining two fish ponds and livestock use and wildlife use. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

CASE NO. 11CW18 – ROBERT C. NORRIS, 755 El Pomar Road, Unit 632, Colorado Springs, CO 80906

(Joseph B. Dischinger and Jack L. Mankamy, II, Fairfield and Woods, P.C., Attorneys for Applicant, 1700 Lincoln Street, Suite 2400, Denver, CO 80203-4524; (303) 830-2400)

Application for Change of Water Right

EL PASO COUNTY

Name of Structure: Robinson Ditch. **Previous Decrees:** Originally decreed by the District Court of El Paso County on February 15, 1882, in Civil Action No. 0751, the Robinson Ditch was decreed an irrigation right with Priority No. 13 for 10.45 cfs from Fountain Creek with an appropriation date of March 1, 1863. In Case No. 86CW31,

Water Division No. 2, the Robinson Ditch water right was changed in the following respects: the allowed beneficial uses were changed as described below, and alternate points of diversion were established. **Point of Diversion:** The original decree does not specify a point of diversion, but the Robinson Ditch originally diverted water from the west side of Fountain Creek in the Northwest Quarter (NW¼) of Section 14, T. 17 S., R. 65 W. of the 6th P.M., in El Paso County. The decree in Case No. 86CW31 added alternate points of diversion at the headgate of the Fountain Mutual Ditch, which diverts from Fountain Creek in the Southwest Quarter (SW¼) of Section 20, T. 14 S., R. 66 W. of the 6th P.M., in El Paso County; and conditionally by exchange at various wells and infiltration galleries located in the Fountain Creek alluvium in Sections 10, 14 and 24, T. 15 S., R. 66 W. of the 6th P.M., in El Paso County. **Source:** Fountain Creek, a tributary of the Arkansas River. **Use:** As changed in 86CW31, allowed uses include domestic, municipal, commercial, irrigation, industrial, recreation, augmentation and replacement uses, storage and aquifer recharge. **Historical Use:** The Robinson Ditch water rights were historically used for irrigation in Sections 23 and 26, T. 17 S., R. 65 W., of the 6th P.M. in El Paso County, Colorado. A map of the approximate location of the historical use of the water right for irrigation is attached as Exhibit A to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Water Right was changed in Case No. 86CW31 for various uses within the service area of the Colorado Centre Metropolitan District, then comprising approximately 4000 acres in T. 14 and 15 S., R. 65 W. of the 6th P.M., in El Paso County. The water right has not been used under the change decree in Case No. 86CW31. However, it was used for irrigation for many decades prior to the previous change case at the location shown on Exhibit A. Summaries of records of historical diversions of the Robinson Ditch water right through the Robinson Ditch headgate are attached as Exhibit B to the application. **Proposed Changes:** Applicant seeks to change 10.45 cfs of the 10.45 cfs Robinson Ditch water right decreed to Priority No. 13. Applicant seeks to change the point of diversion to the Jackson and Burke Ditch headgate, located on the west bank of Fountain Creek in the SW¼ of the SW¼ of Section 24, T. 17 S., R. 65 W., 6th P.M., in El Paso County. Applicant further seeks approval of a new place of use for irrigation in portions of the E½ of the SW¼ and the SE¼ of Section 11, the W½ and the W½ of the SE¼ of Section 12, and the N½ of the NW¼ of Section 13, all within T. 18 S., R. 65 W., 6th P.M, in Pueblo County, as shown in a map attached to the application as Exhibit C. **Owner of Land on which New or Modified Structures Will Be Located:** It is not anticipated that any new structures will be necessary for the change of water rights sought in this matter. Applicant, through BJ Ranches LLC, owns the land on which all structures of the Jackson and Burke Ditch are located.

CASE NO. 11CW19 – KEVIN JAMES RIVARD and ROBIN SUE RIVARD, P. O. Box 238, Rockvale, CO 81244; (719) 784-4103

Application for Underground Water Right

FREMONT COUNTY

Name of well and permit, registration or denial number: Rivard; Permit 248450.

Legal description of well: Fremont County, SE ¼ of the SE ¼ Sec. 23, T19S, R70W, 6th P.M., 200 feet from the South line and 250 feet from the East line. **Street Address:**

7500 Auckland Ave., Rockvale, CO 81244. **Subdivision:** Chandler Heights; **Lot:** 11. **GPS location in UTM format; Zone 13; Units in Meters; Datum NAD83; Unit set to true North. Were points averaged?** No. **Northing** 0484334; **Easting** 4247250. **Source of water:** Groundwater. **Depth of well:** 520. **Date of appropriation:** 4/12/2006; **How appropriation initiated:** Purchase of property; **Date water applied to beneficial use:** 4/12/2006. **Amount claimed:** 1 gpm Absolute. **Proposed use:** Domestic use, one household, fire protection. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

CASE NO. 11CW20 – FREMONT RE-2 SCHOOL DISTRICT, c/o Cyndy Scriven, Superintendent, 1910 Rand Avenue, Colorado Springs, CO 80906 (Steven T.

Monson and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Changes of Water Right and Plan for Augmentation

FREMONT COUNTY

Background and Summary of Application. Fremont Re-2 School District (“Applicant”) is the owner of 358 shares in the Union Ditch and Water Company, a Colorado mutual ditch company, under Certificate Nos. 720 (6 shares), 4208 (43 shares), 4231 (9 shares), and 4317 (300 shares) (“Subject Water Rights”). Applicant seeks to change the type of use and place of use of the Subject Water Rights from irrigation use to replacement and augmentation uses to replace depletions resulting from the pumping of three wells it owns, and two wells it uses with permission from the City of Florence, for irrigation of school property Applicant owns in Fremont County, Colorado. The five wells are the Fremont School District Well No. 1, Fremont School District Well No. 2, Fremont School District Well No. 3 owned by Applicant and Florence Municipal Well No. 1 and Florence Municipal Well No. 2 owned by the City of Florence (collectively, “Wells”). The Wells are currently included in the Arkansas Groundwater Users Association’s (“AGUA”) blanket Rule 14 Plan and the historical depletions of the Subject Water Rights are leased to AGUA for use as a replacement source in its blanket Rule 14 Plan. Applicant also seeks approval of a plan for augmentation allowing it to use the historical depletions of the Subject Water Rights to independently replace out of priority depletions to the Arkansas River resulting from pumping the Wells if Applicant does not participate in AGUA’s Rule 14 Plan in the future. **Application for Changes of Water Right. Name of Structure.** The name of the structure for which the changes of water right are sought is the Union Ditch. **Information from Previous Decree. Date Entered.** The Union Ditch was decreed on February 3, 1894 by the District Court of Fremont County in the Matter of the Adjudication of Water Rights in District No. 12, State of Colorado. **Point of Diversion.** The decree for the Union Ditch provides that the headgate is located on the south bank of the Arkansas River at a point north 41 degrees and 28 minutes west fifteen and nine tenths chains from the center of Section 7, Township 19 South, Range 69 West, 6th P.M. The Union Ditch water rights are diverted at the headworks of the Minnequa Canal which is located on the south bank of the Arkansas River in the NW 1/4 Section 7, Township 19 South, Range 69 West, 6th

P.M. in Fremont County, Colorado at a point approximately 750 feet from the west line and 1200 feet from the north line of said Section 7. **Source.** The source of water for the Union Ditch is the Arkansas River. **Appropriation Date/Amounts.** The Union Ditch has an appropriation date of November 30, 1861 for 48 cfs for the irrigation of 1,200 acres of land (“Union Ditch Water Right”). **Historical Use. Historical Use of the Union Ditch Company Irrigation Shares:** On July 19, 2010, the District Court, Water Division 2, entered its decree in Case No. 99CW149 approving a change in type of use from irrigation to municipal use and change in place of use of 1,256.63 shares in the Union Ditch Company for the City of Florence, the Town of Coal Creek, and the Town of Williamsburg (“Florence Change Decree”). The Florence Change Decree included the following findings regarding the history and historical use of the Union Ditch Water Right under the mutual ditch company. The Florence Change Decree found that a total of 29,998 shares of stock in the Union Ditch Company have been issued. CF&I Steel, LP (“CF&I”) historically owned 20,752 of the Union Ditch Company shares (“CF&I Shares”) and 17,448 of the CF&I Shares were carried through the Minnequa Canal for industrial use at CF&I’s steel mill in Pueblo, Colorado. Of the remaining 12,550 Union Ditch Company shares, 11,612 shares (“Irrigation Shares”), including Applicant’s 358 shares, have historically been used to irrigate up to 1,200 acres of land located under the Union Ditch within the area shown on the map attached to the Application as Exhibit A. Attached to the Application as Exhibit B is a summary of diversions of the Irrigation Shares for the period of 1983 through 1999, which was the period of study in the ditch wide analysis in the Florence Change Decree. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Florence Change Decree included a ditch-wide analysis of the Irrigation Shares and found that the Irrigation Shares totaled 38.7 percent of the shares in the Union Ditch Company and that it was appropriate to apply that percentage to the 48 cfs decreed flow rate, and to thereby allocate the corresponding flow rate of 18.6 cfs to the historical use of water for irrigation under the Irrigation Shares. The Florence Change Decree also found that the duty of water for the Irrigation Shares is 64.5 acres per cfs and that the historical consumptive use of water diverted under the Irrigation Shares was 30.2 percent of those diversions. Applicant intends, without limitation, to rely on these res judicata findings in the Florence Change Decree regarding the flow rate and the historical diversions and consumptive use of the Irrigation Shares. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997). **Historical Use of Subject Water Rights:** The 358 Union Ditch shares of the Subject Water Rights proportionately represent a flow rate of 0.573 cfs of the 18.6 cfs of the Union Ditch water right allocated to the 11,612 Irrigation Shares. Such a flow rate provided a duty of water sufficient to irrigate approximately 37 acres of land. Applicant is the owner of 38.47 acres of land historically irrigated with the Irrigation Shares (“Dry-up Land”) that will be dried up to the extent necessary. The Dry-up Land is located in Section 16, Township 19 South, Range 69 West of the 6th P.M., Fremont County, Colorado. A map depicting the general location of the Dry-up Land is attached to the Application as Exhibit C. The Dry-up Land will not be irrigated with water diverted under the Irrigation Shares, including the Subject Water Rights. Based upon findings in the Florence Change Decree in Case No. 99CW149, annual diversions per share for the Irrigation Shares under the Union Ditch were determined to be 0.6523 acre feet over a

17 year period with a maximum diversion of 0.8003 acre feet in any single year. Based upon the ditch wide depletion percentage of 30.2 percent of diversions, the annual consumptive use per share of the Irrigation Shares were determined to average 0.197 acre feet over a running seventeen year period with a maximum consumptive use of 0.2270 acre feet in any single year. Applicant intends, without limitation, to rely on these per share findings and the depletion percentages as res judicata. Applicant claims its pro rata share of diversions and entitlements under the Irrigation Shares. The Applicant's average annual diversions and average annual consumptive use available under its 358 shares would therefore be approximately 233.52 acre feet and 70.52 acre feet, respectively. **Changes Sought.** Applicant seeks the following change in place of use and change in type of use of the consumptive use of the Subject Water Rights: **Change in Place of Use:** Applicant requests a change in place of use of the historical consumptive use of the Subject Water Rights from the historically irrigated land under the Union Ditch to the Arkansas River for replacement purposes. **Change in Type of Use:** Applicant requests a change in type of use of the historical consumptive use of the Subject Water Rights from direct use for irrigation use to direct use, reuse, and successive use to extinction for replacement and augmentation uses, and placement into storage for such uses. The historical consumptive use of the Subject Water Rights will be used to replace depletions to the Arkansas River caused by pumping Applicant's Wells or other groundwater depletions as made available to AGUA under its blanket replacement plan(s). Any consumptive use credits from the Subject Water Rights that are not needed for the replacement and augmentation purposes of the Applicant's Wells ("Excess Consumptive Use Credits") are requested to be made available to the Arkansas River for replacement and augmentation use by entities such as AGUA or for storage for later release. Other users of the adjudicated historical depletions, including AGUA, will be responsible for obtaining administrative or Water Court approval for their end uses. Storage of Excess Consumptive Use Credits is currently to be made in structures under the control or leased by AGUA pursuant to arrangements between Applicant and AGUA. Applicant may also seek to store Excess Consumptive Use Credits in Pueblo Reservoir pursuant to a storage agreement with the Bureau of Reclamation and in compliance with all relevant regulations, rules, policies and procedures. **Description of Use of Changed Water Rights.** **Plan for Augmentation.** **Structures to be Augmented.** The structures to be augmented are the Fremont School District Well No. 1, Fremont School District Well No. 2, Fremont School District Well No. 3, Florence Municipal Well No. 1, Florence Municipal Well No. 2 (collectively the "Wells"). Applicant currently uses water pumped from the Wells to irrigate approximately 16 acres of lawn on its school grounds. The Wells are all located in Township 19 South, Range 69 West, 6th P.M., Fremont County, Colorado. The Wells are more particularly described as follows: **Fremont School District Well No. 1.** Fremont School District Well No. 1 is located in the NW1/4 SE1/4 of Section 16, under Well Permit No. 22358-F, with a pumping rate of 248 gpm for irrigation use. Applicant currently irrigates approximately 0.80 acres with water pumped from Fremont School District Well No. 1. **Fremont School District Well No. 2.** Fremont School District Well No. 2 is located in the NW1/4 SW1/4 of Section 16, under Well Permit No. 22359-F, with a pumping rate of 21 gpm for irrigation use. Applicant currently irrigates approximately 0.5 acres with water pumped from Fremont School District Well No. 2.

Fremont School District Well No. 3. Fremont School District Well No. 3 is located in the SW1/4 NW1/4 of Section 16, under Well Permit No. 22360-F, with a pumping rate of 14 gpm for irrigation use. Applicant currently irrigates approximately 0.5 acres with water pumped from Fremont School District Well No. 3. **Florence Municipal Well No. 1.** Florence Municipal Well No. 1 is located in the NE1/4 SW1/4, under Well Permit No. 15705-R, with a pumping rate of 300 gpm for domestic and sprinkling use. Applicant currently irrigates approximately 8.3 acres with water pumped from Florence Municipal Well No. 1. **Florence Municipal Well No. 2.** Florence Municipal Well No. 2 is located in the NE1/4 SW1/4 of Section 16, under Well Permit No. 15706-R, at 300 gpm for domestic and sprinkling use. Applicant currently irrigates approximately 5.6 acres with water pumped from Florence Municipal Well No. 2. Applicant may use the Wells separately for irrigation of the approximate acreage discussed above or as a well field for irrigation of all its school grounds and athletic fields. **Water Rights to be Used for Augmentation.** The water rights to be used for augmentation consist of the historical depletions of the Subject Water Rights changed in this case, including as placed into storage. To the extent necessary, augmentation water will also be provided by fully consumable water leased from entities such as AGUA, Pueblo Board of Water Works, or the Lower Arkansas Valley Water Conservancy District (“Leased Water”) to be used to meet Well depletions and historical delayed return flows of the Subject Water Rights. The adequacy of the Leased Water will be subject to approval by the Division Engineer’s Office. **Statement of Plan for Augmentation.** Depletions resulting from Applicant’s pumping of the Wells are currently replaced under AGUA’s administratively approved Rule 14 Plan. Applicant intends to continue to include its Wells in AGUA’s Rule 14 Plan at the present time. However, as an alternative to including the Wells in AGUA’s Rule 14 Plan Applicant also seeks to use the historical depletions of the Subject Water Rights to independently augment out of priority depletions from the Wells. Under this alternative, historical depletions attributable to the Subject Water Rights shall be committed to this plan of augmentation to replace the out of priority depletions associated with Applicant’s pumping from the Wells as lagged to the Arkansas River. Applicant’s diversions from the Wells will be used for irrigation of school grounds and athletic fields on Applicant’s Property, which have a well head depletion of 85 percent with 15 percent of the amount diverted as return flows to the same ground water system. The timing of depletions from the Wells to the Arkansas River will be calculated based upon the Glover analysis prepared by Applicant’s water resources engineer. Historical depletion credits and irrigation season return flows with the Subject Water Rights will be returned to the Arkansas River through an augmentation station on the Union Ditch system, with the historical depletion credits used to replace depletions from Applicant’s irrigation use of the Wells. The water available in-priority under the Subject Water Rights will be diverted at the headgate of the Minnequa Canal and then travel down the Minnequa Canal a short distance to the headgate of the Union Ditch where those diversions, including the volume attributable to the historical consumptive use and return flows, will thereafter be sent down the Union Ditch with Applicant’s share of diversions measured and returned to the Arkansas River through the existing augmentation station Applicant shares with Rocky Mountain Materials and Asphalt, Inc (“Augmentation Station”). The Augmentation Station is located along the Union Ditch in Section 16, Township 19 South, Range 69 West, 6th

P.M. Applicant may also use releases of the historical depletions from the Subject Water Rights as stored by AGUA, or other entity on behalf of Applicant, together with the release of Leased Water, to replace the historical return flows from the Subject Water Rights and also the lagged depletions from its diversions from the Wells. Such replacement water will be made available in time, location, and quantity necessary to prevent injury to vested water rights. **Terms and Conditions.** Applicant proposes the following terms and conditions to prevent injury to vested water rights. A. Use of the historical consumptive use of the Subject Water Rights under the changes of water right is limited to the timing of the historical availability of those water rights under their historical irrigation practices. B. Future diversions of the Subject Water Rights and depletion credits claimed thereunder should be limited to the extent that water is determined to be physically and legally available at the Union Ditch as diverted at the Minnequa Canal Headgate. C. Diversions and depletion credits available under the Subject Water Rights will be limited on an annual and monthly basis by a consecutive year rolling average based on averages of historical in-priority diversions and depletion percentage, including, without limitation, as determined in the Florence Change Decree. D. The Applicant's consumptive use entitlement under the Subject Water Rights will be determined by the historical depletion percentage applied to available in-priority diversions. Diversions under the Subject Water Rights shall be measured and returned to Arkansas River through the augmentation station. E. Applicant will replace historical winter return flow obligations of the Subject Water Rights from releases of stored Excess Consumptive Use Credits and the use of Leased Water Rights subject to approval by the Division Engineer's Office. F. Measuring devices will be installed as necessary to allow accurate monitoring of the requested augmentation plan and changes of water right, and monthly accountings shall be made to the Division Engineer demonstrating compliance with the terms of the requested changes of water right and augmentation plan, including well head diversions, lagged well depletions, volume of Excess Consumptive Use Credits, replacement of historical return flows, total stream depletions, available sources of augmentation water, and volume and timing of augmentation water provided. **Names and Addresses of Owners of Land Upon Which Structures are Located.** Fremont School District Well Nos. 1, 2, and 3 are owned by Applicant. Florence Municipal Well No. 1 and Florence Municipal Well No. 2 are owned by the City of Florence, whose address is 600 West 3rd Street, Florence, CO 81226. The Minnequa Canal and its headgate is owned by Rocky Mountain Steel Mills whose address is 1612 E. Abriendo Ave, Pueblo, CO 81004. The Union Ditch is owned by the Union Ditch and Water Company whose address is PO Box 71, Florence, CO 81226. The augmentation station is owned by Applicant and Rocky Mountain Materials and Asphalt and is located on land owned by the City of Florence, whose address is 600 West 3rd Street, Florence, CO 81226. Pueblo Reservoir is located on land owned by the United States of America, Bureau of Reclamation, whose address is Attn: Fred Ore, Area Manager, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, Colorado, 80537-9711. Storage is currently to be made in structures under the control or lease of AGUA, whose address is P.O. Box 11446, Pueblo, CO 81001.

CASE NO. 11CW21 – MAYTAG RANCH ENTERPRISES, LTD. and RUSSELL S. MAYTAG, P. O. Box 194, Hillside, CO 81232 (David C. Hallford and Chad J. Lee, Balcomb & Green, P.C., Attorneys for Applicants, P. O. Drawer 790, Glenwood Springs, CO 81602 (970) 945-6546)

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

FREMONT COUNTY, COLORADO

Name of Reservoir: MMR Pond No. 3. **Conditional Water Right Description:** **Date of Orig. Decree:** 3/7/2005. **Case No.:** 03CW38, Dist. Ct, Water Div. 2. **Subsequent Decrees Awarding Diligence:** None. **Legal Desc. of MMR Pond No. 3:** NE1/4 NE1/4, Sec. 28, T. 47 N., R. 12 E. of the N.M.P.M., 498 ft. from the E. line and 1,279 from the N. line of said Sec. 28. The map attached as Exhibit A to application depicts the general location of the pond. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Date of approp.:** 11/20/2002. **Amt:** 5.0 AF. **Use:** Pisc., wildlife habitat, rec., and aesthetic uses. **Remarks:** The MMR Pond No. 3 is operated pursuant to the plan for aug. decreed in Case No. 03CW38. It has been constructed to a capacity of 4.52 AF. Applicant requests that this Ct. continue the remaining 0.48 AF as a cond. right. Outline of Activities Constituting Diligence are on file with this Court. **CLAIM TO MAKE WATER RIGHT ABSOLUTE** **Date Water Applied to Beneficial Use:** 7/1/2004. **Amt:** 4.52 AF. **Use:** Pisc., wildlife habitat, rec., and aesthetic uses. **Desc. of Place of Use Where Water is Applied to Beneficial Use:** The pond is depicted on Exhibit A attached to application, and desc. in the Decree in 03CW38. **Landowner Information:** The Pond is located on land owned by Maytag Mountain Ranch Association, P.O. Box 6, Hillside, CO 81232.

11CW22 – CYRIL W. OENBRING and JULIANA L. OENBRING, d/b/a Collegiate Valley Mobile Village, 2051 Elkhorn Road, Cotopaxi, CO 81223 (David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 N. Weber Street, Colorado Springs, Colorado 80903; (719) 471-1212,

Application for Finding of Reasonable Diligence

CHAFFEE COUNTY

2. Name of Structure: Collegiate Well No. 4. **3. Description of Collegiate Well No. 4 conditional water right:** **A. Date of Original Decree:** March 15, 2005, **Case No.:** 02CW52, **Court:** District Court, Water Division 2. **B. Legal Description:** Collegiate Well No. 4 is decreed to be located within 200 feet of either Collegiate Well No. 1, Collegiate Well No. 2 or Collegiate Well No. 3. Collegiate Well No. 1 is located in the NW1/4 of the SW 1/4 of Section 22, Township 14 South, Range 78 West, 6th P.M. at a distance of 1,390 feet from the south line of said section, and 450 feet from the west line of said section. Collegiate Well No. 2 is located in the NW 1/4 of the SW 1/4 of Section 22, Township 14 South, Range 78 West, 6th P.M. at a distance of 1,350 feet from the south line of said section, and 240 feet from the west line of said section. Collegiate Well No. 3 is located in the SW 1/4 of the SW 1/4 of Section 22, Township 14 South, Range 78 West, 6th P.M. at a distance of 1,110 feet from the south line of said section, and 320 feet from the west line of said section. Exhibit A attached to the application indicates the approximate location of Collegiate Wells 1-3. (All exhibits mentioned

herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **C. Source:** Arkansas River alluvium with an estimated depth of 60 feet. **D. Appropriation Date:** April 22, 2002. **E. Amount:** 45 g.p.m., conditional. **F. Use:** Domestic and commercial uses for the mobile home park known as Collegiate Valley Mobile Village. **4. Description of work performed toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** In Case No. 02CW52, the Water Court adjudicated three absolute underground water rights and one conditional underground water right for use in an integrated central water system for the domestic and commercial uses within a mobile home park known as the Collegiate Valley Mobile Village (the "Village") in Chaffee County. Under the decree awarded in Case No. 02CW52, the Applicants may divert water for up to a total of 60 mobile homes and up to 40 multi-family units or apartments, together with the irrigation up to 37,000 square feet of lawn, garden and landscaping. A plan for augmentation was also decreed in case No. 02CW52 to replace any out of priority depletions caused by the Applicants' use of water along with terms and conditions to prevent injury to any decreed absolute or conditional water right on the Arkansas River. Collegiate Well No. 4 was the sole decreed conditional water right in case No. 02CW52. It was decreed as a replacement well for Collegiate Well Nos. 1, 2, and 3, to be the sole source of water for the Village as part of the integrated central water supply system for the full development of the Village. During this diligence period, Applicants have located and staked the point of diversion for Collegiate Well No. 4. Furthermore, Applicants have contacted a well driller and obtained an estimate to drill Collegiate Well No. 4. Applicants have inquired with the United States Department of Agriculture Rural Development regarding financing and a loan to construct Collegiate Well No. 4. In addition to the work described above, Applicants, in connection with the Village as part of the integrated system, have spent considerable time and money repairing the Village's water infrastructure. Applicants have replaced water pits, valves and water lines within the Village. Applicants have also insulated all water pits. Lastly, Applicants have obtained an estimate from a local construction company to install new sewer mains. During this diligence period Applicants have spent \$7,500.00 on the development of Collegiate Well No. 4, as part of an integrated system for the Village. During this diligence period Applicants have, therefore, devoted substantial efforts toward the development of the Village and the integrated central water system, for the further application of water from Collegiate Well No. 4 to beneficial use. **5. Claim to Make Absolute:** No part of the conditional water right decreed in Case No. 02CW52 is claimed to be made absolute at this time. **6. Name and address of the owners of land on which structure is located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicants are the owners of the property upon which the point of diversion for Collegiate Well No. 4 is located.

CASE NO. 11CW23 - GARY L. BRINKMAN and BRENDA L. BRINKMAN, 4507 Silver Nell Drive, Colorado Springs, CO 80908 (Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorneys for Applicants, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905, (719) 520-9288).

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

EL PASO COUNTY

I. APPLICATION FOR DENVER BASIN WATER RIGHTS. Applicants seek the adjudication of the water in the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers underlying their 40.0 acre property in El Paso County. The Applicants' property (the "Property"), the legal description of which is SW1/4 NE1/4 NE1/4 and NW1/4 SE1/4 NE1/4 and E1/2 SW1/4 NE1/4 Section 23, T. 11 S., R. 66 W., 6th P.M., is located in the East Cherry Creek drainage, tributary to the South Platte River. A map showing the location of the Property is attached to the Application as Figure 1. A copy of the Applicants' deed to the Property is attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

2. Names of wells and permit, registration, or denial numbers: permit no. 238092. This structure is currently permitted as an exempt well in the Dawson aquifer.

3. Legal description of wells: at any location on the Property. Applicants hereby waive the 600 foot spacing rule in regard to all Dawson aquifer wells constructed on the Property.

4. Source: Not nontributary Dawson aquifer; nontributary Denver aquifer; nontributary Arapahoe aquifer, and nontributary Laramie-Fox Hills aquifer.

6. Amount claimed: Not nontributary Dawson aquifer, 15 g.p.m. for each of up to 15 wells, 37.61 acre feet annually, absolute; nontributary Denver aquifer, 50 g.p.m., 36.76 acre feet annually, absolute; nontributary Arapahoe aquifer, 250 g.p.m., 16.51 acre feet annually, absolute; nontributary Laramie-Fox Hills aquifer, 120 gpm, 12.31 acre feet annually, absolute. The above amounts may be changed in any proposed decree submitted to the Court to conform to the State Engineer's Determination of Facts. The Water Court will be asked to retain jurisdiction over such decree to enter a final determination of the amount of water available for appropriation from each aquifer based on geophysical logs for wells in such aquifers.

7. Proposed use: all beneficial uses except municipal.

8. Names and addresses of owners of land on which well is located: Same as Applicants.

9. Remarks: **A.** There are two liens against the Property. Pursuant to C.R.S. 37-92-302(2)(b), notice has been given to the lienors, Indy Mac Mortgage Services and Green Tree; copies of the letters are attached to the Application as Exhibits B and C. **B.** Applicants are the owners of well permit 238092, an exempt Dawson aquifer well located on the Property. Applicants request that the State Engineer's Determination of Facts for the Dawson aquifer include as water available for appropriation, the water which would otherwise be allocated to well permit 238092. After entry of the decree adjudicating the Denver Basin water rights and approving the plan for augmentation described below, Applicants will apply for a new well permit for 238092, the terms of which are consistent with the plan for augmentation and with applicable statutes and regulations.

II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION

10. Name of structures to be augmented: Up to 15 Dawson aquifer wells, including the existing Dawson aquifer well,

permit 238092. No other water rights are or will be diverted from these wells. **11. Previous decrees for water rights to be used for augmentation:** None. **13. Statement of plan for augmentation:** **A. Water Demand.** Applicant will subdivide the Property into as many as 15 lots for single family residences which may include some commercial uses, such as a home-based business. Uses of water on such lots are expected to be, but shall not be limited to, some or all of the following uses: for indoor uses for drinking and sanitary purposes in the principal houses and in stand-alone home offices or guest cottages, no more than one per lot, for livestock watering and for landscape irrigation, hot tubs, swimming pools and landscape uses including irrigation and decorative ponds and fountains, and augmentation. Total annual pumping from the Dawson aquifer will be limited to 1.0 acre foot annually per lot for up to 12 lots. If 13, 14 or 15 lots are created, the well associated with current permit 238092 will continue to be allowed to pump 1.0 acre feet per year, but the water on the remaining lots shall be reduced slightly: 0.961 acre foot annually for the additional 12 lots in a 13 lot subdivision; 0.887 acre foot annually for the additional 13 lots in a 14 lot subdivision, and 0.824 acre foot annually for the additional 14 lots in a 15 lot subdivision. These amounts may be adjusted slightly in the decree, to conform with what is possible as determined from the State Engineer's Determinations of Fact regarding the amount of water available for appropriation in the Dawson and Denver aquifers. Indoor water usage for each house is expected to equal 0.30 acre foot per house. Applicants for well permits will designate the uses to which they intend to put the water on their well permit applications. **B. Water Consumption and Return Flows.** It is generally accepted that no more than ten percent of water used indoors in residences using non-evaporative septic systems and leach fields for wastewater disposal is consumed, with 90 percent (0.27 acre foot per lot, annually) returning to the stream system. Although there will be some return flows from other uses, Applicants will rely only on return flows from septic systems and leach fields for replacement of depletions during pumping. **C. Replacement of Stream Depletions During Pumping.** Based on computer modeling, stream depletions will occur to tributaries of the South Platte and Arkansas Rivers. Applicant proposes to aggregate and replace all stream depletions to East Cherry Creek, a tributary of the South Platte River. Computer modeling indicates that during pumping stream depletions will gradually increase to a maximum of 22.24 percent of annual pumping in the 300th year, or 2.74 acre feet based on annual pumping of 12.5 acre feet. Applicants propose to replace those depletions with septic system return flows, which will equal 4.05 acre feet annually for 15 lots. If the property is subdivided into fewer lots, return flows from septic systems will still always exceed stream depletions during the 300 year pumping period. For example, if five lots were created and 5.0 acre feet were pumped annually, depletions would equal 1.11 acre feet in the 300th year, and septic system return flows would equal 1.35 acre feet in the 300th year. **D. Replacement of Stream Depletions After Cessation of Pumping.** Applicants agree to replace depletions for the shortest of the following periods: the period provided by the Colorado Legislature, should it eventually specify one and if the Applicants obtain water court approval for such modification, the period determined by the State Engineer, should the State Engineer lawfully establish such a period; the period established through rulings of the Colorado Supreme Court in relevant cases; or until Applicants petition the water court and after notice to parties in the case proves that it has complied

with all statutory requirements. Applicants will reserve all the water from the Denver aquifer underlying the Property for the replacement of post-pumping depletions, unless and until such time as any of the above conditions occurs which terminates the obligation to replace post-pumping depletions, or unless Applicants obtain judicial approval of another source of replacement water for post-pumping depletions. Applicants shall make post-pumping replacements annually as required to replace modeled stream depletions. Applicants propose to aggregate all depletions and to replace them to the South Platte drainage. **E. Miscellaneous. (1)** As stated above, after entry of this decree, Applicants shall apply for a new well permit for existing permit 238092 on terms consistent with the decree in this case and with applicable regulations and statutes. **(2)** Applicants will establish restrictive covenants on the Property which:(a) limit annual pumping from the proposed Dawson aquifer wells as set forth in 13.A above: (b) require the use of non-evaporative septic systems for wastewater treatment; (c) reserve adequate nontributary water for replacement of post-pumping depletions, which reservation may be voided upon the occurrence of any of the events specified above eliminating the need for such reservation; (d) which inform the future homeowners that utilization of water for indoor residential purposes is required in order to generate the necessary return flows for augmentation; and (e) indicate that the owners will be required to construct a well or wells into the Denver aquifer underlying the Property for replacement of post-pumping depletions if the source of augmentation water is unchanged. Restrictive covenants limiting the area to be irrigated or the number of horses, or their water-consuming equivalents, which are allowed on the Property, are unnecessary because the annual pumping limitations, and the requirement that non-evaporative septic systems be used, ensures that septic system return flows alone will exceed depletions throughout the 300 year pumping period. **(3)** This application is being filed in both Water Divisions 1 and 2 because stream depletions will occur in both the South Platte and Arkansas drainages. After the time for filing statements of opposition has expired, Applicants will seek to consolidate the two applications in Water Division 1.

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 2011, (forms available at Clerk's office or at 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.

Witness my hand and the seal of this Court this 8th day of April, 2011.



Mardell R. DiDomenico

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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