

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING MAY 2004

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications, and certain amendments, filed during May 2004, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 92CW6 – ROCKY MOUNTAIN MENNONITE CAMP (RMMC), 709 County Road 62, Divide, CO 80814 All correspondence to: John R. Hill, Jr., Bratton & McClow, LLC, Attorneys for Applicant, 232 West Tomichi Avenue, Gunnison, CO 81230

Third Amended Application for Surface Water Rights, Underground Water Rights, and Approval of Plan for Augmentation
Teller County, Colorado

FIRST CLAIM (Application for Surface Water Right). **Name of Structure:** Mennonite Spring No. 1. **Legal Description of point of diversion:** Mennonite Spring No. 1 is located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 29, Township 13 South, Range 69 West of the 6th P.M., at a point approximately 2030 feet North of the South section line and 1700 feet East of the West section line of said Section 29. **Source:** Fourmile Creek, a tributary of the Arkansas River. **Date of initiation of appropriation:** 1951. **How appropriation was initiated:** Construction of spring box and application of water to beneficial use. **Date water applied to beneficial use:** December 31, 1951. **Amount claimed:** 0.013 cfs absolute. **Use or proposed use:** Domestic (indoor use). **SECOND CLAIM** (Application for Surface Water Right). **Name of Structure:** Mennonite Spring No. 2. **Legal Description of point of diversion:** Mennonite Spring No. 2 is located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 29, Township 13 South, Range 69 West of the 6th P.M., approximately 2090 feet North of the South section line and 1450 feet East of the West section line of said Section 29. **Source:** Fourmile Creek, a tributary of the Arkansas River. **Date of initiation of appropriation:** 1951. **How appropriation was initiated:** Construction of spring box and application of water to a beneficial use. **Date water applied to beneficial use:** December 31, 1951. **Amount claimed:** 0.0043 cfs absolute. **Use or proposed use:** Domestic (indoor use). **THIRD CLAIM** (Application for Surface Water Right). **Name of Structure:** Mennonite Spring No. 4. **Legal Description of Point of Diversion:** Mennonite Spring No. 4 is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 29, Township 13 South, Range 69 West of the 6th P.M. at a point approximately 1670 feet North of the South section line and 700 feet East of the West section line. **Source:** Fourmile Creek, a tributary of the Arkansas River. **Date of initiation of appropriation:** 1951. **How appropriation was initiated:** Diversion and beneficial use of water in Mennonite Pond for recreational and piscatorial purposes. **Date water applied**

to beneficial use: December 31, 1951. **Amount claimed:** 0.0021 cfs absolute. **Use or proposed use:** Recreational and piscatorial purposes. **FOURTH CLAIM** (Application for Conditional Surface Water Right). **Name of Structure:** Mennonite Spring No. 3. **Legal Description of point of diversion:** Mennonite Spring No. 3 is located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 29, Township 13 South, Range 69 West of the 6th P.M. at a point approximately 2000 feet North of the South section line and 2000 feet East of the West section line. **Source:** Fourmile Creek, a tributary of the Arkansas River. **Date of initiation of appropriation:** October 25, 2003. **How appropriation was initiated:** Formation of intent, site reconnaissance. **Date water applied to beneficial use:** Not applicable to a conditional water right. **Amount claimed:** 0.015 cfs conditional. **Use or proposed use:** Domestic (indoor use). **FIFTH CLAIM** (Application for Conditional Underground Water Right). **Name of well and permit, registration, or denial number:** Mennonite Well No. 2. Well permit denied. See File No. AD-12513. **Legal Description of well:** Mennonite Well No. 2 is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 29, Township 13 South, Range 69 West of the 6th P.M., approximately 1680 feet North of the South section line and 1090 feet East of the West section line of said Section 29. **Source and depth:** Fourmile Creek alluvium, tributary to the Arkansas River. Proposed depth of approximately 200 feet. **Date of initiation of appropriation:** November 2, 1991. **How appropriation was initiated:** Formation of intent and filing of well permit application. **Date water applied to beneficial use:** Not applicable to conditional water right. **Amount claimed:** 50 g.p.m. conditional. **Use or proposed use:** Domestic (indoor use). **SIXTH CLAIM** (Application for Conditional Underground Water Rights). **Name of well, and permit, registration or denial number:** Mennonite Wells Nos. 3-7. Applicant has not yet applied for permits for Mennonite Wells Nos. 3-7. **Legal Description of wells:** Mennonite Wells Nos. 3-7 will be located on RMMC property near Fourmile Creek in the SW $\frac{1}{4}$ of Section 29, Township 13 South Range 69 West of the 6th P.M. Mennonite Well No. 7 also will be located on RMMC Property within the Winnie Lode of mining Claim Survey N. 13813, portion of Section 30 Township 13 South, Range 69 West of the 6th P.M. **Source and depth:** Mennonite Wells Nos. 3-7 will be drilled into the Fourmile Creek alluvium, which is tributary to the Arkansas River, to a proposed depth of approximately 200 feet. **Date of initiation of appropriation:** October 25, 2003. **How appropriation was initiated:** Formation of intent, site reconnaissance. **Date water applied to a beneficial use:** Not applicable to conditional water rights. **Amount claimed:** 50 g.p.m. conditional for each well. **Use or proposed use:** Domestic (indoor use). **SEVENTH CLAIM** (Application for Water Storage Right). **Name of structure:** Mennonite Pond. **Legal Description of center of pond:** in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 29, Township 13 South, Range 69 West of the 6th P.M. at a point approximately 1670 feet North of the South section line and 600 feet East of the West section line. **Legal description of dam:** N/A; the pond is below grade. **Source:** Mennonite Spring No. 4. **Date of initiation of appropriation:** 1951. **How appropriation was initiated:** Diversion and beneficial use of water in Mennonite Pond for recreation and piscatorial purposes. **Date water applied to**

beneficial use: 1951. **Amount claimed:** 2 acre-feet absolute. **Use or proposed use:** Recreational and piscatorial purposes. **Surface area of high water line:** 0.31 acres. **Maximum height of dam in feet:** Not applicable; the pond is below grade. **Length of dam in feet:** Not applicable; the pond is below grade. **Total capacity of reservoir in acre-feet:** 2 acre-feet. **Active Capacity:** 0. **Dead Storage:** 2 acre-feet. **EIGHTH CLAIM** (Application for Approval of Plan for Augmentation). **Name of structures to be augmented:** The plan for augmentation will provide sufficient augmentation water to replace depletions to Fourmile Creek attributable to Mennonite Springs Nos. 1-4, Mennonite Wells Nos. 1-7, and Mennonite Pond. The legal descriptions of all the structures to be augmented, except Mennonite Well No. 1, are contained in the preceding paragraphs of this Application. Mennonite Well No. 1 is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 29, Township 13 South, Range 69 West of the 6th P.M., approximately 2000 feet North of the South section line and 1200 feet East of the West section line of said Section 29. The District Court, Water Division Two decreed an absolute water right of 15 g.p.m. to Mennonite Well No. 1 for domestic purposes in Case No. 84 CW 1 on June 14, 1984. **Previous decrees for water rights to be used for augmentation:** Applicant owns three shares of common stock in The Twin Lakes Reservoir and Canal Company ("Twin Lakes"), identified as Share Numbers 7815, 8071, and 8072. The yield of Applicant's Twin Lakes shares will be released from Twin Lakes Reservoir. Twin Lakes Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in Township 11 South, Range 81 West of the 6th P.M., in Lake County, Colorado. The Twin Lakes dam axis and the centerline of Lake Creek intersect at a point whence the Southeast corner of Section 23, Township 11 South, Range 81 West of the 6th P.M., bears South 54° 13'08" East a distance of 3,803.10 feet, all as more particularly described in the decree in Civil Action No. 5141 (District Court, Chaffee County, Colorado). Twin Lakes shares consist of storage and direct flow rights for water diverted from another basin which are available for 100 percent consumptive use and reuse and are available for augmentation. The water rights producing the pro rata interest of Applicant are: 1). Colorado River Water Rights: Case No. 3802, District Court, Garfield County, August 25, 1963 and Case No. W-1901, District Court, Water Div. No. 5, May 12, 1976; priority: August 23, 1930, No. 431; source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Div. No. 5; use: direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal, and all beneficial uses; amount: direct flow amount for diversions 12 through transmountain tunnels of 625 c.f.s., with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre-feet; 2) Arkansas River Water Rights: Case No. 2346, District Court, Chaffee County, July 14, 1913 as modified in Case No. W-3965, District Court, Water Div. No. 2, April 19, 1974; priorities: December 15, 1896, No. 3 and March 25, 1897, No. 4; source: Lake Creek and its tributaries, tributary to the Arkansas River; use: storage for irrigation, domestic, commercial, industrial, and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir which are capable of being served by water by diversion from said Arkansas River; amount:

54,452 acre-feet (20,645.3 acre-feet for Priority No. 3 and 33,806.7 acre-feet for Priority No. 4. **Historic Use:** Beneficial use in the Arkansas River Drainage. **Statement of plan for augmentation:** RMMC is a Christian retreat for school-age children, young adults, and families. RMMC is located on approximately 110 acres in Sections 29 and 30, Township 13 South, Range 69 West, 6th P.M. The property ranges in elevation from about 9,400 to 9,800 feet. Fourmile Creek traverses the property. RMMC facilities consist of two year-round residences, seasonal staff housing, a lodge/dining hall, a nature center, a chapel, several cabins and camping sites, an infirmary, and a retreat or conference center. These facilities can support up to 160 campers and 65 staff and guests for a total of 225 persons. The use is generally much less however. Water is used at RMMC for “in-building” purposes and to maintain a small pond on the property. No lawn, landscape, or garden irrigation occurs at the camp. The water is obtained from three springs and a well situated on the property. Two of these springs are located along a live tributary of Fourmile Creek and are the primary sources of potable water. The third spring, which supplies the pond, is adjacent to Fourmile Creek. Water from the two springs located on the live tributary of Fourmile Creek is collected in a pipeline and metered before it is chlorinated and distributed to camp facilities. Wastewater at the camp is collected and treated in three different septic tank and leach fields situated within a few hundred feet of Fourmile Creek. Potable water usage at RMMC amounted to 296,737 gallons (0.91 acre-feet) during June through December of 2002 and 489,318 gallons (1.50 acre-feet) in 2003. The water usage averaged 22.0 gallons per person-day in 2002 and 32.5 gallons per person-day in 2003. The pond on RMMC property adjacent to Fourmile Creek has a surface area of 0.31 acres. Net evaporation from the pond is estimated to be 0.54 acre-feet per year. The water depletions from the potable water uses were calculated as 10 percent of the water usage. Water depletions amounted to 0.49 acre-feet during June through December 2002, of which 0.09 acre-feet were from potable water usage and 0.40 acre-feet were from pond evaporation. In 2003, the water depletions amounted to 0.69 acre-feet of which 0.15 acre-feet were from potable water depletions and 0.54 acre-feet were from pond evaporation. In view of the relatively small depletions, the close proximity of the diversion structures and wastewater treatment facilities to Fourmile Creek, and the narrowness of the Fourmile Creek valley at the location of the RMMC, it is assumed that the depletions to Fourmile Creek occur concurrently with the diversions. The maximum probable level of usage at RMMC assumes that the camp facilities are fully used during mid-May through mid-September and at one-half of the capacity on weekends during the remainder of the year. This level of usage is approximately 2.4 times the usage that occurred in 2003. Based on a water usage rate of 35 gallons per person-day, which is about 8 percent higher than the 2003 usage rate, total water usage at this level is 3.94 acre-feet and total water depletions are 0.93 acre-feet. The absolute maximum level of usage at RMMC assumes that the camp facilities are fully used every day of a 365-day year, a situation that Applicant believes is unlikely to occur. This level of usage is more than 5 times the 2003 usage. Based on a water usage rate of 35 gallons per person-day, total water usage at

this level is 9.02 acre-feet and the total water depletions are 1.44 acre-feet. Applicant desires to secure Court approval of a plan for augmentation that has the flexibility to accommodate its current depletions as well as its future potential depletions. Applicant anticipates that its water requirements will increase as the Camp and the number of those using its amenities grows. Accordingly, Applicant has acquired a quantity of augmentation water sufficient to replace both Applicant's current depletions as well as its future potential depletions. Applicant has purchased three shares of common stock in The Twin Lakes Reservoir and Canal Company for augmentation purposes. Allowing for evaporative losses in Twin Lakes Reservoir of 10 percent and actual conveyance losses of 10 percent between Twin Lakes Reservoir and Pueblo Reservoirs, the firm yield of the three RMMC Twin Lakes shares will be approximately 2.43 acre-feet per year. Pursuant to a Water Storage And Exchange Agreement with the Catlin Canal Company ("Catlin") dated February 9, 2004, Applicant will deliver the firm yield of its Twin Lakes shares to the Arkansas River, either at the mouth of Fourmile Creek or at Pueblo Reservoir, so as to make the water available for exchange into Mt. Pisgah Reservoir. Mt. Pisgah Reservoir is located on Fourmile Creek in parts of section 30 and 31, Township 14 South, Range 70 West of the 6th P.M. The dam is located in the N½ of Section 31. Each year, Catlin will exchange the firm yield of RMMC's Twin Lakes shares into Mt. Pisgah Reservoir. Catlin will then either release sufficient water out of the firm yield of RMMC's Twin Lakes shares from Mt. Pisgah Reservoir as necessary to replace RMMC's out-of-priority depletions, or Catlin will accept sufficient water out of the firm yield of RMMC's Twin Lakes shares to replace depletions to the Mt. Pisgah Reservoir water rights. In addition, Catlin Canal Company has agreed to carry the portion of the annual firm yield not needed for replacement purposes in any particular year over into the next year so as to make the excess water available for replacement purposes in the subsequent year. The amount of RMMC's out-of-priority depletions that need to be replaced each year, and the timing of releases needed to make such replacements, will be determined by the Division Engineer for Water Division Two or his designee. **Name and address of owner of land upon which points of diversion and places of use are located:** Applicant owns the land upon which points of diversion and places of use are located.
(Third Amended Application, 9 pages)

**CASE NO. 04CW33 – MICHAEL J. FLICK and BARBARA L. FLICK, 3074
Four Mile Road N.W., Grand Rapids, MI 49544**

Application for Surface Water Rights
Custer County

2. Name of structure: Spring. **3. Legal description of each point of diversion:** Custer County, NW ¼ of the SE ¼ Section 32, Township 21 South, Range 69 West, 6th P.M., 2740 feet from the South line and 5,230 feet from the East line. **Lot:** Hammond Tract A. **Optional Additional Description: GPS location information in UTM format. Required settings for GPS units are as follows: Format must be UTM; Zone must be 13; Units must be Meters Datum must be NAD27 (CONUS) and; Units must be set to true north. Were**

points averaged? Yes. **Northing** 422504N; **Easting** 0488672E. **4. Source:** North Hardscrabble Creek. **5. A. Date of initiation of appropriation:** May 5, 2004. **B. How appropriation was initiated:** Purchase of property. **C. Date water applied to beneficial use:** May 5, 2004. **6. Amount claimed:** One cfs Conditional. **7. Use or proposed use:** Fish pond, fire protection and recreation. **A. If irrigation, complete the following:** n/a. **B. If non-irrigation, describe purpose fully:** Decrease current surface area from approx. 2 acres to .5 acres, direct overflow back to Hardscrabble Creek. See map attached to application. All attachments mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **8. Names and address of owners upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicants.
(Application and attachment, 4 pages)

CASE NO. 04CW34 – WILSHIRE DEVELOPMENTS (WISCONSIN), L.L.C., 6040 North 22nd Place, Phoenix, AZ 85016 (Robert E. Schween, Robert E. Schween, P.C., Attorney for Applicant, 8185 South Winnipeg Circle, Aurora, CO 80016)

Application for Nontributary and Not-Nontributary Ground Water Rights In the Dawson, Denver, Arapahoe, and Laramie-Fox Hills Aquifers and for a Plan for Augmentation for Withdrawal of Not-Nontributary Ground Water
El Paso County

2. **Well Permits:** Well permit applications for the wells to be constructed pursuant to this application and subsequent decree will be applied for at such time as Applicant is prepared to construct such wells pursuant to the terms of the decree to be entered in this matter. 3. **Names, Description, and Estimated Depths of Wells:** A. The wells which will withdraw ground water from each aquifer underlying the land described in Paragraph 11 below will be located on "Applicant's Property," consisting of 120 acres, more or less, in the S ½, SE ¼, and the SE ¼, SW ¼, Section 31, Township 11 South, Range 65 West of the 6th P.M., in El Paso County, Colorado. **See Exhibit A, General Location Map and Exhibit B, Property Legal Description,** attached to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Applicant requests the right to construct such wells anywhere on the tract to recover the entire allowable annual amounts from each aquifer as claimed herein or as determined by the Court pursuant to its retained jurisdiction. B. The depths to the base of each aquifer at the location of Applicant's Property are as described in the Denver Basin Rules, 2 CCR 402-6, and are estimated as follows: Dawson -- 900 Ft.; Denver -- 1900 Ft.; Arapahoe -- 2400 Ft.; Laramie-Fox Hills -- 3000 Ft. C. Actual well completion depths will comply with the well permit, but may vary slightly from the permitted depth depending on the topography at any particular location. 4. **Source of Water Rights:** A. **Not-Nontributary Ground Water.** The ground water contained in the Dawson aquifer at this location is not-nontributary ground water as defined at § 37-90-103 (10.7), C.R.S. Applicant may not obtain a well permit and withdraw

such not-nontributary ground water until an augmentation plan is approved for the replacement of injurious depletions caused thereby. See § 37-90-137(9), C.R.S. *Such a plan is sought by this application with respect to the Dawson aquifer ground water, as described hereinbelow.* B. Nontributary Ground Water. The ground water contained in the Denver, Arapahoe, and Laramie-Fox Hills aquifers at this location is nontributary ground water as defined at § 37-90-103 (10.5), C.R.S. Applicant may obtain a well permit, withdraw, and fully consume such nontributary ground water, except that Applicant must relinquish two-percent (2%) of such ground water withdrawn to the stream system, as required by the Denver Basin Rules. Such relinquishment may be by any means selected by the Applicant.

5. **Background:** Applicant files this application for water rights pursuant to § 37-92-203, C.R.S., as a water matter concerning nontributary and not-nontributary ground water. Applicant is the contract purchaser the overlying land as described herein, and has the consent of the landowners (Sellers) to file this application.

6. **Date of Initiation of Appropriation:** Not Applicable.

7. **Right to Ground Water Claimed Herein:** A. Applicant seeks a decree for all ground water determined to be available from the named aquifers underlying the tract of land described herein based upon a statutory aquifer life of 100 years. Applicant asserts that withdrawal in the average annual amounts determined to be available from the named aquifers can be made pursuant to § 37-90-137(4) and (9), C.R.S., without causing material injury to the vested rights of others. B. A plan for augmentation must be approved by the Water Court before any such not-nontributary ground water adjudicated herein may be produced and put to use. Such a plan is sought by this application, hereinbelow. Such plan will be designed to replace modeled stream depletions caused by pumping in both Water Divisions 1 and 2. Approximately 20% of the subject property is located in Water Division 2.

8. **Estimated Amounts and Rates of Withdrawal:** A. Estimated Average Annual Amounts Available: The estimated average annual amounts of withdrawal available from the named aquifers underlying Applicant's Property, as indicated below, are based upon interpretations of information contained in the Denver Basin Rules, 2 C.C.R. 402-6.

<u>Aquifer</u>	<u>Acres</u>	<u>Sat. Sand Thickness</u>	<u>Specific Yield</u>	<u>Average Annual Amount</u>
Dawson	120	480 Feet	20%	115.2 AF
Denver	120	490 Feet	17 %	100.0 AF
Arapahoe	120	235 Feet	17 %	47.9 AF
Laramie-Fox Hills	120	185 Feet	15 %	33.3 AF

Notes: (1) The final average annual amounts available from each aquifer will depend upon the actual hydrogeology and the legal entitlement of Applicant to all ground water in the subject aquifers underlying Applicant's Property. (2) An exempt domestic well, Well Permit No. 1377750, completed into the Dawson aquifer, is located on the property.

B. Average Pumping Rates: The average pumping rate for wells to be completed into the four named aquifers is expected to vary from 15 to about 250 gpm. Applicant requests that the pumping rates for each well may be as great as necessary to withdraw the full annual allocation of water from each named aquifer.

9. **Well Fields:** Subject to obtaining an adequate Court-approved augmentation plan for withdrawal of not-nontributary ground water, Applicant has the right to withdraw all of the legally available ground water in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the parcel described in Paragraph 11 below, through any well(s) initially permitted in each aquifer and any additional well(s) which may become part of the Applicant's well field. Applicant requests that the initial well(s) permitted, along with any additional well(s) completed into the same aquifer, shall be treated as a well field. As additional wells are constructed, well permit applications will be filed in accordance with § 37-90-137(10), C.R.S. 10.

Proposed Uses: A. Applicant requests the right to use all ground water subject to this application. Such water is to be used, reused, successively used and, after use, leased, sold or otherwise disposed of for the following beneficial purposes: *domestic, industrial, agricultural, commercial, irrigation, stock watering, storage, recreational, fish and wildlife propagation, fire protection, and any other beneficial purposes, to be used on or off the land described in Paragraph 11.* B. Such water will be produced for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of stream depletions caused by the use of water from other sources, and for augmentation.

11. **Description of the Land Overlying Subject Ground Water:** The Applicant's property overlying the ground water claimed herein is a tract of land consisting of 120 acres, more or less, located in El Paso County, and generally described as follows: **The S ½ of the SE ¼ and the SE ¼ of the SW ¼, Section 31, Township 11 South, Range 65 West of the 6th P.M., in El Paso County, also known as 14510 Black Forest Road, El Paso County. See Exhibits A and B to the Application.**

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

The owners of the properties described herein are as follows: A.. Present Landowners (Contract Sellers): (1) S ½ of the SE ¼, Section 31: Marjorie Bowling, 14510 Black Forest Road, Colorado Springs, Colorado 80908. (2) SE ¼ of the SW ¼ of Section 31: Thomas A. Weatherley, III, and Karla J. Weatherley, 5026 Vista Del Sol Pt., Colorado Springs, Colorado 80919. B. The Applicant herein, Wilshire Developments (Wisconsin), LLC, is the contract purchaser of the properties and has the consent of both landowners to proceed with this application.

PLAN FOR AUGMENTATION

14. **Description of Plan for Augmentation:** A. Ground Water to be Augmented: Dawson aquifer ground water to be decreed as described in Paragraph 8A above. B. Water Rights to be Used for Augmentation: Return flows from the use of fully augmented not-nontributary and nontributary ground water and direct discharge of nontributary ground water. 15. **Statement of Plan for Augmentation:**

A. Applicant will use Dawson aquifer ground water herein to serve as the domestic supply of 25 homes to be constructed on the property, each home with its own Dawson aquifer well. Such ground water will be used for all domestic, stockwatering, and irrigation of lawns and gardens at each homesite on the subject property. Each home site will be equipped with a nonevaporative

wastewater disposal (septic) system. B. For purposes of this application, it is estimated that each residence will require an annual amount of up to 0.7 acre-feet per year, over 300 years. In-structure use will require approximately 0.30 acre-feet per year, and lawn and garden irrigation and stockwatering uses will be limited to approximately 0.4 acre-feet per year. Applicant reserves the right to amend these values based on final annual quantities available and final land planning decisions. C. The following assumptions have been accepted by the Court and are adopted for this application: (1) Consumptive use associated with in-residence use will be approximately 10% of water used; the remaining 90% returns to the stream system. (2) Approximately 85% of water used for lawn and garden irrigation purposes will be consumed; the remaining 15% will percolate and return to the stream system. (3) Any water used for stock watering purposes will be fully consumed. D. Before any other type of sewage treatment is proposed in the future, including incorporation of the facility into a central sewage collection and treatment system, Applicant, or its successors and assigns, will amend a decree entered in this case prior to such change and thereby provide notice of the proposed change to other water users by publication procedures required by then existing law. 16.

Replacement of Stream Depletions:

A. During the Pumping Period. (1) Pumping from the not-nontributary Dawson aquifer at this location will result in stream depletions. Applicant will replace modeled actual stream depletions to the affected stream system pursuant to § 37-90-137(9)(c), C.R.S., to the extent required. Such stream depletions occur to both the Cherry Creek/South Platte stream system, and the Monument Creek/Arkansas River stream system. See Table I, Stream Depletion Factors, attached to the Application as **Exhibit C**. For that reason, this application is filed in both Water Divisions 1 and 2, and consolidation will be sought in Water Division 1. (2) Return flows generated by the use of Dawson aquifer ground water will accrue primarily to the Cherry Creek/South Platte River system in amounts exceeding those amounts sufficient to replace fully the actual modeled stream depletions while such ground water is being pumped. Such return flow regimen is illustrated as follows, using commonly accepted assumptions with respect to the consumptive use characteristics associated with different types of uses.

<u>Use Type</u>	<u>Use Amount</u>	<u>No. of Homesites</u>	<u>Total Amt. Used</u>	<u>% Return Flow</u>	<u>Total Return Flow</u>
In-House	0.3 AF	25	7.5 AF	90 %	6.75 AF
Irrigation	0.3 AF	25	7.5 AF	15 %	1.12 AF
Stock	<u>0.1</u> AF	25	2.5 AF	-0- %	<u>-0-</u>
Total	0.7 AF		17.5 AF		7.87 AF

(3) Maximum stream depletions during pumping, aggregating depletions to both drainage basins, are about 21.7% of the amount pumped, or an annual maximum of about 3.8 acre-feet. Generated return flows are more than twice the amount of maximum stream depletions. Further, return flows from in-house uses exceed aggregate maximum stream depletions by almost three acre-feet per year. (4) Stream depletions accruing to Arkansas River tributaries are lesser in amount than those accruing to the South Platte system. See Exhibit C to the Application. In the event Applicant is required to make replacements in this drainage basin, it will

contract for an adequate replacement source, which source may include tributary or nontributary return flow water or reuse water. B. During the Period After Pumping Ceases: After the total of 5,250 acre-feet (0.7 AF/Yr./Home x 25 Homes x 300 years) of Dawson aquifer ground water has been withdrawn by the planned development or after all Dawson aquifer pumping ceases, Applicant will demonstrate that any stream depletions which may continue to occur to the stream systems are unmeasurable, non-injurious to other water rights, and need not be replaced. However, if the Court finds that such continuing stream depletions must be replaced, Applicant will have reserved an adequate amount of nontributary ground water in any combination of the nontributary aquifers underlying the subject property to meet fully such post-pumping augmentation requirements. 17.

Remarks: A. Applicant claims the right to withdraw more than the average annual amounts estimated above pursuant to Rule 8A of the Statewide Ground Water Rules, 2 C.C.R. 402-7. B. Applicant requests the right to revise the estimates of annual amounts made herein either upward or downward, based on better or revised data, without the necessity of amending this application or republishing the same. C. Applicant will withdraw the not-nontributary Dawson aquifer ground water requested herein under the plan of augmentation proposed herein pursuant to § 37-90-137(9)(c), C.R.S. D. In compliance with § 37-92-302(2)(b), C.R.S., Applicant will give notice to every person or entity who has a lien or mortgage on, or deed of trust to, or other financial interest in the overlying land recorded in the county in which the overlying land is located within 10 days of the filing of this application. **WHEREFORE, Applicant Wilshire Developments (Wisconsin), L.L.C.**, requests a ruling and decree granting the application herein and awarding the ground water rights claimed herein as final water rights, except as to those issues for which jurisdiction of the Court will be specifically retained, so that the State Engineer may issue well permits for such well(s) as Applicant requests under this decree, subject to the limitations described in such ruling and decree. Further, Applicant requests that the ruling and decree find that -- (1) Applicant has complied with § 37-90-137(4), C.R.S., and ground water is legally available for withdrawal from the named aquifers through wells to be located on the Applicant's property, EXCEPT THAT withdrawals of not-nontributary ground water may be made only pursuant to the augmentation plan approved herewith; (2) Jurisdiction is to be retained with respect to the average annual amounts of withdrawal specified herein to provide for the adjustment of such amounts to conform to actual local aquifer characteristics from adequate information obtained from wells or test holes drilled on or near Applicant's property, pursuant to § 37-92-305(11), C.R.S.; (3) Applicant or its successors may construct wells into the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers anywhere on the subject property, without the necessity of filing any further amendments to this application, republishing this application, or reopening the decree to be awarded. Applicant waives the statutory 600-foot well spacing requirement for wells to be completed on the property; (4) Vested or conditionally decreed water rights of others will not be materially injured by the withdrawals proposed herein or pursuant to the plan for augmentation proposed herein; (5) In accordance with § 37-92-305(11), C.R.S., no findings of reasonable diligence are required to maintain the water rights applied

for herein; and (6) The nature and extent of the water rights claimed herein are defined by § 37-90-137(4), C.R.S., and the withdrawals sought to be made are based upon an aquifer life of 100 years and upon the quantity of ground water, exclusive of any artificial recharge, underlying the land shown on **Exhibit A** and described in **Exhibit B** to the Application. **FURTHER, Applicant** requests this Court grant such other relief as it deems proper in the premises.
(Application and attachments, 11 pages)

CASE NO. 04CW35 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 04CW36 - JOAN LAVELETT LIVING TRUST, Joan Lavelett, Trustee, 4810 Meridian Road, Peyton, CO 80831-7717 (MacDougall, Woldridge & Worley, P.C., Henry D. Worley, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905-1743)
Application for Underground Denver Basin Water Rights and for Approval of Plan for Augmentation

In the Arkansas River and its tributaries and in El Paso County

I. APPLICATION FOR DENVER BASIN WATER RIGHTS

2. Names of wells and permit, registration, or denial numbers: none **3. Legal description of wells:** Up to seven wells in the Arapahoe aquifer, and so many wells in each of the Denver and Laramie-Fox Hills aquifers as are necessary to obtain Applicant’s full adjudicated amount of water. The wells may be located anywhere on two contiguous parcels of land which are located in the N1/2 SE1/4 Section 24, T. 13 S., R. 65 W., 6th P.M. (the “Property”), so long as they are at least 600 feet from existing wells, unless permission for closer wells is obtained pursuant to C.R.S. § 37-90-137(2)(b). One parcel consists of approximately 56 acres, the other consists of approximately five acres. Applicant waives the 600 foot spacing requirement for all wells constructed on the Property. **4. Source:** not nontributary Denver aquifer; not nontributary Arapahoe aquifer; nontributary Laramie-Fox Hills aquifer. **5.A. Date of appropriation:** Not applicable. **5.B. How appropriation was initiated:** Not applicable. **5.C. Date water applied to beneficial use:** Not applicable. **6. Amount claimed:** Denver aquifer: 250 g.p.m. per well, 25.3 acre feet annually, absolute; Arapahoe aquifer: 15 g.p.m. per well, 22.6 acre feet annually, absolute; Laramie-Fox Hills aquifer: 150 g.p.m. per well, 18.4 acre feet annually, absolute. The above amounts will be changed in any decree entered herein to conform to the State Engineer’s Determination of Facts. The water court will be asked to retain jurisdiction over such decree to enter a final determination of the amount of water available for appropriation from each aquifer based on geophysical logs for such wells. **7. Proposed use:** Indoor commercial and residential uses, landscape and garden irrigation, water amenities such as hot tubs, decorative ponds and swimming pools, stock water, fire fighting and augmentation. **8. Name and address of owner of land on which well is located:** Same as Applicant. **9. Remarks:** There are no liens or encumbrances against the Property, so the notice provisions of C.R.S. § 37-90-137(4)(b.5) are not applicable.

II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION

10. Name of structures to be augmented: Up to seven Arapahoe aquifer wells. No other water rights are or will be diverted from these wells. **11. Previous decrees for water rights to be used for augmentation:** None. **12. Historic use:** Not applicable. **13. Statement of plan for augmentation:** This application provides for the augmentation of stream depletions caused by pumping up to seven Arapahoe aquifer wells. Anticipated water use criteria for each lot are as follows: indoor uses, 0.27 acre feet annually per single family dwelling which is 10% consumptive; horses (or horse equivalents), 0.011 acre feet annually (10 gallons per day) per head, 100% consumptive; landscape irrigation, 0.046 acre feet annually per 1,000 square feet (2.0 acre feet per acre) per year, 85% consumptive. Consumption attributable to indoor uses is predicated on the use of nonevaporative individual sewage disposal systems ("ISDS") or central discharging types of wastewater treatment plants. Change to any other type of waste water disposal shall require an amendment to the plan for augmentation. **Replacements during pumping.** The Arapahoe aquifer in this area is more than one mile from any point of contact with any natural stream including its alluvium; accordingly, Applicant must replace to the affected stream system a total amount of water equal to four percent of the amount of water withdrawn on an annual basis. Each lot shall be limited to pumping of no more than 0.876 acre foot (285,400 gallons) annually, and total subdivision pumping shall be limited to 6.13 acre feet annually. Thus, the maximum replacement obligation will never exceed 0.245 acre foot annually during the 300 year pumping period. Return flows from a single ISDS will equal 0.24 acre feet annually. Even if all water uses on the Property, other than in-door commercial or residential uses, are fully consumptive, return flows from ISDS alone are adequate to replace stream depletions during pumping. The only restrictions necessary to ensure that replacements equal or exceed stream depletions during pumping are an annual pumping limitation of 0.876 acre foot per well and 6.13 acre feet annually, and use of nonevaporative ISDS or some other form of wastewater treatment which is no more consumptive. **Replacements after pumping.** Total pumping over the 300 year pumping period is restricted to 1,839 acre feet. Applicant proposes to replace injurious post-pumping depletions with the nontributary Laramie-Fox Hills aquifer water decreed herein, all 1,839 acre feet of which will be reserved for that purpose. Upon cessation of pumping the Arapahoe aquifer wells, Applicant's successors shall calculate the rate at which replacements must be made, using standard procedures in use at that time, and shall make replacements as indicated. However, Applicant seeks to reserve the right to replace such depletions with any judicially acceptable source of augmentation water upon application and notice as required by law.
(Application and attachments, 4 pages)

CASE NO. 04CW37 (Water Division 2) and CASE NO. 04CW138 (Water Division 1) – HARLEY G. JERGENSEN, CARL N. TURSE, and C & H, LLC, 155 Pontiac Loop, Monument, CO 80132 (Scott M. Huyler, Petrock & Fendel, P.C., Attorneys for Applicants, 700 Seventeenth Street, Suite 1800, Denver, CO 80202)

Application for Underground Water Rights from Nontributary and Not Nontributary Sources and for Approval of Plan for Augmentation In the Nontributary Denver, Arapahoe and Laramie-Fox Hills and the Not Nontributary Dawson Aquifers
El Paso County

2. Well Permits: Well permits will be applied for when Applicants are prepared to drill the wells. **3. Legal Description of Wells and Subject Property:** The wells which will withdraw groundwater from the subject not nontributary and nontributary aquifers will be located on approximately 60.6 acres of land located in the E1/2NW1/4NE1/4 and the N1/2NE1/4NE1/4 of Section 23, and the N1/2NW1/4NW1/4 of Section 24, T11S, R66W of the 6th P.M, as shown on Attachment A to the Application (Subject Property). All attachments mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Applicants Jergensen and Turse are current owners of the Subject Property. **4. Source of Water Rights:** The source of the groundwater to be withdrawn from the Dawson aquifer is not nontributary as described in 37-90-103(10.7) and 37-90-137(9)(c), C.R.S. The ground water to be withdrawn from the Denver, Arapahoe and Laramie-Fox Hills aquifers is nontributary groundwater as described in 37-90-103(10.5), C.R.S. **5. Estimated Amounts and Rates of Withdrawal:** The wells will withdraw the subject amounts of groundwater at rates of flow necessary to efficiently withdraw the entire decreed amounts. Applicants will withdraw the subject groundwater through wells to be located at any location on the Subject Property, including an existing well completed into the Dawson aquifer (Permit No. 434302) which will be re-permitted to operate under the plan for augmentation herein, if necessary. Applicants waive the 600 foot spacing rule as described in Section 37-90-137(2), C.R.S. for wells located on the Subject Property. The estimated average annual amounts of withdrawal available from the subject aquifers as indicated below, are based upon the Denver Basin Rules, 2 C.C.R. 402-6. Applicants estimate the following annual amounts are representative of the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the Subject Property:

<u>Aquifer</u>	<u>Saturated Thickness</u>	<u>Estimated Annual Amount</u>
Dawson	475 feet	57.6 acre-feet(NNT)
Denver	525 feet	54.1 acre-feet(NT)
Arapahoe	250 feet	25.8 acre-feet(NT)
Laramie-Fox Hills	210 feet	19.1 acre-feet(NT)

6. Well Fields: Applicants request that this Court determine that Applicants have the right to withdraw all of the legally available groundwater lying below the Subject Property, through the wells requested herein, which may be located

anywhere on the Subject Property, and any additional wells which may be completed in the future as Applicants' well fields. As additional wells are constructed, applications will be filed in accordance with 37-90-137(10), C.R.S. **7. Proposed Use:** Domestic, industrial, commercial, irrigation, livestock watering, recreational, fire protection, and augmentation. **8. Jurisdiction:** The Water Court has jurisdiction over the subject matter of this application pursuant to 37-92-302(2), and 37-90-137(6), C.R.S. **9. Description of plan for augmentation:** **A. Water and structures to be augmented:** Approximately 13.5 acre-feet per year over a 300 year pumping period of Dawson aquifer water requested herein. **B. Water rights to be used for augmentation:** Return flows from the use of not nontributary and nontributary groundwater and direct discharge of nontributary ground water. **C. Statement of plan for augmentation:** The subject Dawson aquifer groundwater may be used for inhouse, irrigation, and stockwatering purposes to serve approximately 18 residential lots on the Subject Property for 300 years. The lots will be served by individual wells which will withdraw at rates of flow of 15 gpm. For purposes of this application, Applicants estimate that each lot will require approximately 0.75 acre-foot annually for inhouse use (0.3 acre-feet), irrigation (0.4 acre-feet), and stockwatering (0.05 acre-feet). Applicants reserve the right to revise the number of lots to be served and the referenced demand without the need of revising or republishing this application. Each lot will utilize non-evaporative septic systems. Consumptive use associated with inhouse use will be approximately 10% of water used and it is estimated that approximately 10% of water used for irrigation will be returned to the stream system. Stockwatering use will be 100% consumed. During pumping Applicants will replace actual depletions to the affected stream system pursuant to 37-90-137(9)(c), C.R.S. Because depletions may occur in both Water Divisions 1 and 2, this application is being filed in both divisions. Return flows from the development through nonevaporative septic systems and irrigation use accrue to the South Platte River system and those return flows are sufficient to replace actual depletions to that system while those wells are being pumped. Before any other type of sewage treatment is proposed in the future, including incorporation of the lots into a central sewage collection and treatment system, Applicants, or successors and assigns, will amend this decree prior to such change and thereby provide notice of the proposed change to other water users by publication procedures required by then existing law. Depletions which may occur to the Arkansas River system may not be replaced by return flows from use of the water. If this is the case, said depletions will be replaced by direct discharges from the nontributary groundwater decreed herein, or from direct discharges or return flows from other legally available sources. Applicants may also request that the total amount of depletions to both stream systems be returned to one system and for a finding that those replacements are sufficient. Applicants will reserve an equal amount of nontributary groundwater underlying the Subject Property for replacement of post-pumping depletions. **10. Remarks:** A. Applicants claim the right to withdraw more than the average annual amounts estimated in paragraph 5B above pursuant to Rule 8A of the Statewide Rules, 2 C.C.R. 402-7. B. Although Applicants have estimated the amounts of water

available for withdrawal from the subject aquifers based on estimates of relative values for specific yield and saturated thickness, Applicants request the right to revise the estimates upward or downward, based on better or revised data, without the necessity of amending this application or republishing the same. C. Applicants will withdraw part of the not nontributary Dawson aquifer water requested herein under the plan of augmentation requested herein pursuant to 37-90-137(9)(c), C.R.S. **WHEREFORE, Applicants pray that this Court enter a Decree:** 11. Granting the application herein and awarding the water rights claimed herein as final water rights, except as to those issues for which jurisdiction of the Court will be specifically retained; 12. Specifically determining that: A. Applicants have complied with 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 37-92-305(11), C.R.S. and Denver Basin Rule 9.A.; B. The groundwater in the Dawson aquifer is not nontributary and groundwater in the Denver, Arapahoe and Laramie-Fox Hills aquifers is nontributary groundwater; C. Vested or conditionally decreed water rights of others will not be materially injured by the withdrawals of groundwater and the plan for augmentation proposed herein; FURTHER, Applicants pray that this Court grant such other relief as seems proper in the premises.

(Application and attachments, 6 pages)

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 July 2004, (forms available at Clerk's office, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$70.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this _____ day of June, 2004.

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

(Court seal)
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