

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING MAY 2009

TO: ALL INTERESTED PARTIES

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

CASE NO. 09CW69 – ROBERT and NANCY RUSSELL, 601 Big Horn Drive, Walsenburg, CO 81089; (719) 738-5710

Application for Underground Water Right

HUERFANO COUNTY

Name of well and permit, registration, or denial number: Robert and Nancy Russell, Permit 232686. **Legal description of well:** Huerfano County, NE ¼ of the SW ¼ Section 6, T28S, R68W, 6th P.M., 2300 feet from the South line and 1950 feet from the West line. **Street Address:** 601 Big Horn Drive/520.1.1 County Road, Walsenburg, CO. **Subdivision;** Majors Ranch; **Lot 32. Source:** Poison Canyon Aquifer; **Depth:** 100 ft. **Date of Appropriation:** 5/1/01; **How appropriation was initiated:** Well drill permit; **Date water applied to beneficial use:** 5/1/01. **Amount claimed:** 6 gpm Absolute. **Proposed use:** 1 acre of lawns and gardens, household use, fire protection, animals. **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 pool:** Applicants.

CASE NO. 09CW70 – ANTHONY J. and ANNEMARIE McKEE, 1 Carriage Drive, Florissant, CO 80816; (719) 689-3713

Application for Surface Water Rights and Underground Deep Well

TELLER COUNTY

Name of structures: 2 springs and domestic well. **Legal description:** Spring #1 by Dam: Teller County, NE ¼ of the NW ¼ Section 17, Township 14 South, Range 70 West, 6th P.M., 315 feet from the South line and 2500 feet from the West line. **Street Address:** 1 Carriage Drive, Florissant, CO 80816. **GPS Location (UTM format; Zone 13; Units in meters; NAD83 Datum; set to true north):** **Were points averaged:** No. **Northing** 4299211mN; **Easting** 478306mE. Spring #2 South of Spring #1: Teller County, NW ½ of the NE ¼ Section 17, T14S, R70W, 6th P.M., 1000 feet from the South section line and 1500 feet from the east line. **Street Address:** 1 Carriage Drive, Florissant, CO 80816. **GPS Location (UTM format; Zone 13; Units in meters; NAD83 Datum; set to true north):** **Were points averaged:** No. **Northing** 4298991mN; **Easting** 478757mE. Domestic Well (Permit #116174): Teller

County, NE ¼ of the NW ¼ Section 17, Township 14 South, Range 70 West, 6th P.M. **Street Address:** 1 Carriage Drive, Florissant, CO 80816. **4. Source:** Spring #1 and Spring #2: Ground water less than 8 foot deep; Domestic well: Deep well. **Date of appropriation:** Springs #1 and #2: Sep. 1990 by construction of springs; Domestic well: 1981 by drilling of well. **How appropriation was initiated:** Springs 1 and 2: Springs constructed. Domestic Well: Drilled well. **Date water applied to beneficial use:** Springs #1 and #2: Sep. 1990; Domestic Well: 1981. **Amount claimed:** Spring #1 – 1 gpm absolute; Spring #2 - .2 gpm Absolute; Domestic Well: 2 gpm Absolute. **Proposed use:** For both springs, provide water for cattle grazing. For well, domestic use. Spring #1 at dam, resulted from draining wetland caused by construction of soil and water conservation dam. For well, use for residence on property. **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 pool:** Applicants.

CASE NO. 09CW71; Previous Case No. 02CW34 – ROBERT AND GRETA DITTMER, 1989 Nesterville Road, Cotopaxi, CO 81223; (719) 942-5142

Application to Make Absolute

FREMONT COUNTY

Name of structure: Dittmer South Pond. **Describe conditional water right from Referee's Ruling and Decree:** **Date of Original Decree:** May 30, 2003; **Case No.:** 02CW34; **Court:** District Court, Water Division 2. **Legal Description:** Fremont County, NE ¼ of the SE ¼ Section 27, T50N, R12E, NMPM, 1980 feet from the South line and 145 feet from the East line. **Source:** Natural spring. **Appropriation date:** April 28, 1999; **Amount:** 2 gpm conditional. **Use:** Wildlife and livestock drinking source. **Provide a detailed outline of what has been done toward completion or for completion fo the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** This pond continues to be a water source for local wildlife and livestock. The pond bottom has been sealed with 2 applications of bentonite at a cost of \$70. The pond now overflows and water continues as it should. **If claim to make absolute – Date water applied to beneficial use:** April 1999; **Amount:** 2 gpm. **Use:** Water source for wildlife and livestock. **Description of place of use where water is applied to beneficial use:** Open range.

CASE NO. 09CW72 - JESSE L. MABE and MARION J. MABE, 4455 Arrowhead Drive, Colorado Springs, CO 80908-3781 (Henry D. Worley,

MacDougall, Woldridge & Worley, PC, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905, Phone: (719) 520-9288)

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

EL PASO COUNTY

APPLICATION FOR DENVER BASIN WATER RIGHTS. Names of wells and permit, registration, or denial numbers: Permit No. 21804 **Legal description of wells:** Well permit no. 21804 is described variously on the permit as being located in both the NW1/4 and the SW1/4 of Section 23, T. 12 S., R. 66 W., 6th P.M.; however, the well is actually located in the SE1/4 of Section 23. All other wells (two in the Denver, and one each in the Arapahoe and Laramie Fox Hills aquifers), plus all necessary additional and/or replacement wells, will be located anywhere on Applicants' 9.77 acre property, the legal description for which is the W1/2 E1/2 NW1/4 SE1/4 except the North 30 feet, Section 23, T. 12 S., R. 66 W., 6th P.M. in El Paso County (the "Property"). A map showing the location of the Property is attached to the Application as Figure 1. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The Property is located entirely within the Arkansas River drainage. **Sources:** not nontributary Dawson aquifer; not nontributary Denver aquifer; not nontributary Arapahoe aquifer; nontributary Laramie-Fox Hills aquifer. **Amount claimed:** Dawson aquifer - 15 g.p.m., 0.87 acre foot annually, absolute; Denver aquifer - 15 g.p.m. per well, 6.48 acre feet annually, absolute; Arapahoe aquifer - 15 g.p.m., 4.75 acre feet annually, absolute; Laramie-Fox Hills aquifer - 15 g.p.m., 2.85 acre feet annually, absolute. The above amounts will be changed in any decree entered herein to take into account 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. The above amounts claimed for appropriation includes water underlying Arrowhead Drive to the center of that road, located adjacent to the north side of the Property. Thus, the amount of land beneath which Applicants seek an adjudication for water rights consists of 10.0 acres. **Proposed use:** All except municipal. **Name and address of owner of land on which wells are/will be located:** Same as Applicants. **APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION. Name of structures to be augmented:** the existing Dawson aquifer well and two wells in the Denver aquifer. No other water rights are or will be diverted from those wells. After entry of a decree and subdivision of the Property, the existing well will be permitted consistent with the provisions of the decree. **Previous decrees for water rights to be used for augmentation:** None. **Statement of plan for augmentation:** Applicants seek approval of a plan for augmentation which will allow continued use of the Dawson aquifer well until it is no longer capable of producing water in usable quantities. Applicants also request that the plan for augmentation allow use of two Denver aquifer wells, one of which will be constructed after abandonment of the existing Dawson aquifer well, and one of which will be used on a second lot to be created by subdivision of the Property. Water from these wells will be used for such purposes as indoor residential uses, incidental commercial uses for an in-home office, landscape irrigation, stock water, hot tub and swimming pool and related residential uses. Indoor use for each of the two houses is expected to equal 0.26 acre foot annually. Treatment of waste water from indoor uses will be achieved using nonevaporative individual septic tanks and leach field systems ("ISDS");

consumption of water so treated will not exceed 10 percent of uses, with 90 percent, or 0.234 acre foot annually per lot, returning to the nearest stream. Septic system return flows shall be used to replace depletions during pumping. Applicants shall include in a final decree the schedule of stream depletions caused by pumping the Dawson and Denver aquifer wells, and shall reserve enough Laramie-Fox Hills aquifer water to replace all post-pumping depletions. It is anticipated that annual pumping for each of the wells will be limited to no more than 0.5 AF/yr.

CASE NO. 09CW73 - DONALA WATER AND SANITATION DISTRICT, 15850 Holbein Drive, Colorado Springs, CO 80921 (Frederick A. Fendel, III, Matthew S. Poznanovic and Kara N. Godbehere, Petrock & Fendel, P.C., Attorneys for Applicant, 700 Seventeenth Street, Suite 1800, Denver, CO 80202; (303) 534-0702)

Application for Change of Water Rights

**CHAFFEE, LAKE, FREMONT, PUEBLO, OTERO, AND EL PASO COUNTIES
Structures and Water Rights to be Changed:**

Ditch	Priority	Amount	Source
Abbott Placer Ditch	3/10/1881	2 cfs	Willow Creek
Abbott Placer 1 st Enl.	11/30/1881	1 cfs	Willow Creek
Willow Creek Ditch	4/15/1881	1.6 cfs	Willow Creek
Mitchell Ditch No. 1			
No. 2 No. 3 & No. 4	5/31/1881	1.3 cfs	Willow Creek
Sites Ditch #1	4/30/1881	0.8 cfs	Little Willow Creek*
Sites Ditch #2	4/30/1882	1.6 cfs	Little Willow Creek*

*Little Willow Creek is also known as North Willow Creek.

All rights were adjudicated in CA 1127, Chaffee County District Court, June 19, 1890. In Case No. 99CW157, the headgate locations were corrected and irrigated lands identified. **Use:** irrigation. The lands irrigated are within the Mt. Massive Ranch, described as: In Township 10 South, Range 81 West, 6th P.M., Lake County: Section 1: SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$, Section 11: NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 12: N $\frac{1}{2}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$. **Points of diversion (from 99CW157):** in Township 10 South, Range 81 West, 6th P.M., Lake County; distances are measured from the northwest corner of section 12: Abbott Placer and 1st Enlargement: 2770 feet South; and 2220 feet East (Sec. 12) Willow Creek Ditch: 2350 feet South; and 2350 feet East (Sec. 12), Sites No. 1 Ditch: 10 feet South; and 1560 feet West (Sec. 11), Sites No. 2 Ditch: 280 feet South; and 1510 feet West (Sec. 11), Mitchell Ditch No. 1 and No. 2: 3460 feet South; and 1675 feet East (Sec. 12), No. 3 and No. 4: 3860 feet South; and 1700 feet East (Sec. 12). **Description of changes:** New points of diversion and places of storage: Pueblo Reservoir: Pueblo Reservoir is an on-channel reservoir formed by the intersection of Pueblo Dam and the Arkansas River at a point whence the Northeast corner of Section 36, T 20 S, R 66 W of the 6th P.M., bears N 61°21'20" E a distance of 2,511.05 feet. Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, T 20 S, R 66 W of the 6th P.M., Sections 1, 2, 3, 4, 5, 9, 10, and 11, T 21 S, R 66 W of the 6th P.M., and

Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, T 20 S, R 67 W of the 6th P.M.

Turquoise Reservoir: Turquoise Reservoir is located in all or portions of Sections 7, 8, 17, 18, 19, and 20, T 9 S, R 80 W, and Sections 10, 11, 12, 13, 14 and 15, T 9 S, R 81 W of the 6th P.M. The Turquoise Reservoir Dam axis and the centerline of Lake Fork of the Arkansas River intersect at a point whence the NW corner of Section 16, T 9 S, R 80 W of the 6th P.M. bears N 44°46'18" E a distance of 10,344.35 feet, all as more particularly described in the decree in Civil Action 5141, District Court, Chaffee County, Colorado.

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, T 11 S, R 80 W of the 6th P.M. The Twin Lakes Dam axis and centerline of Lake Creek intersect at a point whence the SE corner of Section 23, T 11 S, R 80 W of the 6th P.M. bears S 54°13'8" E a distance of 3,803.10 feet, as more particularly described in the decree in Civil Action No. 5141, District Court, Chaffee County, Colorado.

Otero-Arkansas Pump Station Intake: The Otero Pump Station Intake diverts water from the Arkansas River approximately at a point that bears N 30° W a distance of 6,180 feet to the NE corner of Section 6, T 12 S, R 79 W of the 6th P.M.

Fremont County Diversion: Although the precise location of this point of diversion has not yet been established, the furthest point upstream where it may be located is on the Arkansas River at the headgate of the Canon City Hydraulic Ditch, at a point South 80°30' East a distance of 648 feet from the SW corner of Section 31, T 18 S, R 70 W of the 6th P.M., and the furthest point downstream where it may be located is on the Arkansas River at the Pueblo County/Fremont County Line, a point in the SE ¼ of the NE ¼ of Section 1, T 20 S, Range 68 W of the 6th P.M.

Excelsior Ditch/Stonewall Springs Reservoir: headgate for Excelsior Ditch located in the SE ¼ of the SE ¼ of Section 30, T 20 S, R 64 W of the 6th P.M. in Pueblo County, Colorado.

Colorado Canal: the Colorado Canal headgate and point of diversion is located approximately 15 miles downstream from Pueblo near Boone, Colorado, and was originally decreed at a point on the North bank of the Arkansas River in the Northeast quarter of the Northeast quarter, Section 10, T 21 S, R 62 W, at a point bearing South 0°58' West 426 feet from the SW Corner of Section 2, T 21 S, R 62 W of the 6th P.M., in Pueblo County, Colorado. The Arkansas River has shifted and relocated to the northeast to the extent that the center of the diversion gates is located slightly more than 300 feet northeasterly at a point in the Northwest Range 62 W of the 6th P.M., at a point bearing South 63°14' East a distance of 117.3 feet from the Southwest Corner of said Section 2 as described in the decree in Case No. 84CW62 (District Court, Water Division No. 2), as dated October 21, 1985.

Lake Meredith Reservoir is located in all or portions of Sections 15, 16, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, and 33 in Township 21 S, R 56 W, Sections 1 and 12 in T 22 S, R 57 W, Section 6 in T 22 S, R 56 W, and Sections 24, 25, and 36 in Township 21 S, R 57 W, all from the 6th P.M. in Crowley County, Colorado. Lake Meredith Reservoir dam axis and the centerline of the outlet canal intersect at a point located in the NW ¼ of the SW ¼ of Section 12, T 22 S, R 57 W of the 6th P.M. at a point from which the West Quarter Corner of said Section 12 bears North 27° 14' West a distance of 564.30 feet. Lake Meredith is authorized to store 26,028.4 acre-feet at a rate of

756.28 cfs under a priority of March 9, 1898. Lake Meredith Outlet Canal: water released from Lake Meredith Reservoir are carried through the Outlet Canal to a point in the S ½ Section 21, T 22 South, R 57 W of the 6th P.M., where they can be released to the Holbrook Canal and/or discharged into the Fort Lyon Storage Canal whence they are carried southeasterly approximately one-half mile in the Fort Lyon Storage Canal to a point at which they either continue in said Fort Lyon Storage Canal or are discharged through a headgate on its southerly bank in the SW ¼ of Section 22, T 22 S, R 57 W of the 6th P.M., in Crowley County, Colorado, whence they travel south-southeast approximately one mile to discharge into the Arkansas River in the SE ¼ of Section 27, T 22 S, R 57 W of the 6th P.M. in Otero County, Colorado. Lake Henry: located in all or portions of Sections 31 and 32, T 20 S, R 56 W, and Sections 5 and 6, Township 21 S, Range 56 W, all from the 6th P.M., in Crowley County, Colorado; the primary outlet works for Lake Henry Reservoir are located in the South ½ of said Section 6 and the Lake Henry Reservoir dam axis and the centerline of the outlet canal intersect at a point on the West line of the SE ¼ of said Section 6, a distance of 512 feet south of the center of Section 6, Township 21 S, R 56 W of the 6th P.M., in Crowley County, Colorado. Lake Henry is decreed to store 6,355 acre-feet at a rate of 756 cfs under a priority of 1891, to store 2,000 acre-feet at a rate of 756 cfs under a priority of September 10, 1900; and to store 3,561 acre-feet at a rate of 756 cfs under a priority of May 15, 1909. Holbrook Canal: point of diversion located on the north bank of the Arkansas River in the Northeast ¼, Section 24, T 22 S, Range 58 W of the 6th P.M., Crowley County, Colorado. Holbrook Reservoir No. 1: is located in all or portions of Sections 6, 7, and 8, T 23 S, R 55 W of the 6th P.M., Otero County, Colorado. Holbrook No. 1 is decreed for a total storage volume of 7,472 acre-feet as adjudicated in Bent County District Court on April 8, 1905 and February 3, 1927. Dye Reservoir is filled through the Holbrook Canal and is located in all or portions of Sections 32 and 33, T 22 S, R 56 W of the 6th P.M. in Otero County, Colorado. Dye Lake is decreed for a total storage volume of 7,986 acre-feet as adjudicated in Bent County District Court on February 3, 1927. Clear Creek Reservoir: Clear Creek Reservoir is located in all or part of Sections 7 and 8, T 12 S, R 79 W of the 6th P.M. The Clear Creek Reservoir Dam axis and the centerline of Clear Creek intersect at a point whence the S. corner of Section 8, T 12 S, R 79 W of the 6th P.M. bears S 27°W a distance of 2,255 feet. The current decreed capacity is 11,439 acre-feet. The volume of the proposed 2nd enlargement is 18,561 acre-feet, conditional, pending in Case No. 04CW130, Water Division No. 2. **New uses**: All municipal uses, including domestic, irrigation, commercial, industrial, mechanical, fire protection, maintenance and replacement of storage losses, reuse, successive use and disposition of return flows. **New manner of use**: direct flow, storage, augmentation or exchange. **New places of use**: El Paso County, including the service areas of Donala, Colorado Springs Utilities, and members of the Pikes Peak Regional Water Authority (PPRWA). Donala is a member of PPRWA. The members plan to cooperate with each other in their operations, which may include sharing water from time to time. Donala or the PPRWA may contract with Colorado Springs Utilities to assist in the delivery of this water to the new

places of use. Use in the service areas of Colorado Springs Utilities and other members of PPRWA will be pursuant to separate contract. Donala proposes to quantify the historical beneficial consumptive use of irrigation water and return flows. Donala will propose terms and conditions to limit the new uses to the extent of historical consumptive use and depletions, and to maintain return flows as necessary to prevent injury. To the extent possible without injury to others, historical return flows may be replaced with return flows from use of these water rights or other reusable sources in the new places of use. Such return flows will accrue to the Arkansas River at or above the confluence with Fountain Creek.

Exchange: Diversions and storage in Turquoise Reservoir, Twin Lakes Reservoir and Clear Creek Reservoir involve exchange of water from the changed rights. Donala claims conditional rights of exchange as follows: (1) From the confluence of Willow Creek and the Lake Fork to Turquoise Reservoir; (2) From the confluence of the Arkansas River and Lake Creek to Twin Lakes Reservoir; (3) From the confluence of the Arkansas River and Clear Creek to Clear Creek Reservoir. **Rate:** 8.3 cfs; **Priority date:** May 26, 2009, based on substantial steps in acquiring the rights and engineering this change, seeking consent of Colorado Springs Utilities to name its points of diversion and storage in this application and other substantial work, together with the filing of this application. **Owners of land on which structures are located:** Abbott, Willow Creek, Mitchell Ditches: Donala, Sites Ditches: US Forest Service, 2840 Kachina Dr., Pueblo, CO 81008. Turquoise Lake, Pueblo Reservoir: US Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, CO 80537. Twin Lakes: Twin Lakes Reservoir Company, PO Box 8, Ordway, CO 81063. Otero Pump Station: City of Colorado Springs, Colorado Springs Utilities, PO Box 1103, Mail Code 1328, Colorado Springs, CO 80947-1328. City of Aurora Utility Enterprise, Attn: Utilities Director, 15151 East Alameda Avenue, Aurora, CO 80012. Fremont County Diversion: US Bureau of Land Management, Attn: Field Manager, 3170 E. Main St., Canon City, CO 81212. Brush Hollow Partnership, Attn: James Grisenti, 15000 Highway 115, Florence, CO 81226. Colorado Canal/Lake Meredith/Lake Henry: 331 Main St., Ordway, CO 81063. Holbrook Canal/Holbrook Reservoir/Dye Reservoir: Holbrook Mutual Irrigating Co., Rocky Ford, CO 81067. Excelsior Ditch: c/o Brenda Fillmore, P.O. Box 367, Fowler, CO 81039. Stonewall Springs Reservoir: Stonewall Springs Quarry, LLC, 15 N. Nevada Avenue, Colorado Springs, CO 80903. Clear Creek Reservoir: Pueblo Board of Water Works, 319 West 4th St., Pueblo, CO 81003. The City of Colorado Springs granted Donala permission to list certain points of diversion and places of storage owned or controlled by Colorado Springs, or in which Colorado Springs has an interest. Inclusion of these facilities and diversion points in this application does not grant Donala any interest in or right to use these facilities or diversion points. Any use of Colorado Springs' facilities or points of diversion or Colorado Springs' interest in facilities or points of diversion owned or controlled by others will be governed by separate agreement or contract between Donala and Colorado Springs. Additionally, Donala may also be required to obtain approval from other entities that control or have ownership interests in these facilities. A map showing the location of lands

historically irrigated and a summary of diversion records is submitted with this application. Wherefore, Donala requests a decree approving the above changes of water rights, and for such other and further relief as is warranted.

CASE NO. 09CW74; Previous Case No. 02CW159 - CHARLES I. CASTRO, 1107 W. Laurel, San Antonio, TX 78201 (Copies of all pleadings to: Stephen C. Larson and David F. Bower, JOHNSON & REPUCCI, LLP, Attorneys for Applicant, 2521 Broadway, Suite A, Boulder, CO 80304; (303) 442-1900
Application to Make Water Right Absolute
PUEBLO COUNTY, COLORADO

Original Decree. The spring water right that is the subject of this application, the Castro Spring, was conditionally decreed on May 22, 2003 by the Water Court, Case No. 02CW159, Water Division 2. The location of the Castro Spring was corrected by decree of the Water Court in Case No. 04CW101, Water Division 2. The Castro Spring is more fully described below. **Description of Spring Right.** **Structure Name:** Castro Spring. **Legal description of Structure:** The Castro Spring is located in the Southwest 1/4 of Section 30, Township 23 South, Range 68 West of the 6th Principal Meridian, within 200 feet of a point located 2,000 feet east of the West section line and 1,237 feet north of the South section line of Section 30. **Source:** Natural spring. **Date of Appropriation:** November 18, 2002. **Amount:** 0.000278 c.f.s., conditional. **Uses:** Fire protection, livestock and wildlife watering. **Claim to Make Absolute.** Applicant claims to make the Castro Spring absolute for fire protection, livestock and wildlife watering uses for an amount of 0.000278 c.f.s. The Castro Spring has been used for wildlife watering and has been available for fire fighting purposes since May 22, 2003, the date of the original decree. The Castro Spring water right was put to beneficial use for livestock watering on May 8, 2009. WHEREFORE, Applicant respectfully requests that the Court enter a decree finding that the Castro Spring has been made absolute by the completion of appropriation and placement of such water to beneficial use.

CASE NO. 09CW75; Previous Case Nos. W-399, 81CW141, 85CW80, 89CW44, 96CW11, and 02CW107 - WATER RESOURCE DEVELOPMENT COMPANY ("WRDC"), c/o Roger A. DeKloe, 3 Widefield Boulevard, Colorado Springs, CO 80911; (719) 392-3411 (Please direct all correspondence or inquiries regarding this matter to the attorneys for the Applicant: William B. Tourtillott, Carolyn F. Burr and James M. Noble, RYLEY CARLOCK & APPLEWHITE, 1999 Broadway, Suite 1800, Denver, CO 80202; (303) 863-7500

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

Name of Structures: This application relates to the conditional water rights decreed in Case No. W-514 for Widefield Well No. 3, Widefield Well No. 4, and Widefield Well No. 13 (the "Subject Water Rights"). The Subject Water Rights are included and used within the Widefield Water and Sanitation District's water supply system pursuant to an agreement between Widefield and WRDC.

Description of Water Rights. **Date of Original Decree:** August 15, 1977, Case No. W-399, Water Division No. 2. This Court previously found that Applicant has been diligent in the development of the Subject Water Rights and entered decrees accordingly in Case Nos. 81CW141, 85CW80, 89CW44, 96CW11, and 02CW107. **Legal Description of the Structures:** **Widefield Well No. 3:** Located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 24, Township 15 South, Range 66 West of the 6th P.M., approximately 30 feet North of the South line of said NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and approximately 500 feet West of the center line of said Section 24, in El Paso County, Colorado. **Widefield Well No. 4:** Located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 24, Township 15 South, Range 66 West of the 6th P.M., approximately 795 feet West of the center line of said Section 24 and approximately 690 feet South of the North line of Section 24, in El Paso County, Colorado. **Widefield Well No. 13.** Located in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 19, Township 15 South, Range 65 West of the 6th P.M., at a point approximately 2,240 feet North of the South section line and 2,215 feet East of the West section line of said Section 19, in El Paso County, Colorado. **Source of Water Rights:** Underground water from the alluvium of Fountain Creek, a tributary to the Arkansas River. **Appropriation Dates:** **Widefield Well No. 3:** August 26, 1963. **Widefield Well No. 4:** March 24, 1964. **Widefield Well No. 13:** April 30, 1953. **Amounts:** **Widefield Well No. 3:** A total of 9.691 cfs. 3.756 cfs have been decreed as Absolute; 5.935 cfs remain as Conditional. **Widefield Well No. 4:** A total of 4.511 cfs. 3.34 cfs have been decreed as Absolute; 1.171 cfs remain Conditional. **Widefield Well No. 13:** A total of 0.44 cfs. 0.22 cfs have been decreed as Absolute; 0.22 cfs remain Conditional. **Use:** Each water right has been conditionally decreed for municipal purposes, and they continue to be an integral part of the Widefield Water and Sanitation District's ("Widefield's") unified municipal water supply system. In addition, pursuant to the Findings of Fact, Judgment and Decree entered by the Water Court in Case No. W-399, the Widefield Well No. 13 was decreed for 0.22 cfs, Absolute, for irrigation use. **Depth:** **Widefield Well No. 3:** 73 feet. **Widefield Well No. 4:** 71 feet. **Widefield Well No. 13:** 32 feet. **Evidence of Reasonable Diligence Towards Completing Appropriation:** The Subject Water Rights are an integral part of the Widefield's unified municipal water supply system. Accordingly, diligence on part of the system serves as reasonable diligence for the entire project. Applicants will use the Subject Water Rights on lands located within Widefield's service area. Widefield's water system is being constructed on a phased basis over time based upon the pace of growth within Widefield's service area. Widefield's service area currently includes approximately 9,642 acres of raw ground, which is scheduled for development of approximately 18,450 new, single-family residences. During this diligence period 753 taps were added to Widefield's system. System improvements are ongoing. Substantial improvements are expected in current and future years as growth in the Widefield service area continues. During the interval of time since this Court's entry of its Findings of Fact, Conclusions of Law, Ruling and Decree in Case No. 02CW107, in continuing the development of the conditional portion of the Subject Water Rights, the following work directly related to the was performed: Widefield

Well Nos. 3 and 4 are pumped most months as part of Widefield's municipal system. When the wells are being pumped, Widefield staff performs daily visitations. Both wells are connected to Widefield's SCADA system for 24-7 reporting and monitoring, and Widefield calibrates the meters for these two wells on an annual basis. In addition to routine maintenance work performed on Well Nos. 3 and 4, the chlorination system on both wells was upgraded during the diligence period. Development of a master plan that includes specific plans for upgrading the Widefield Wells, including a new metering/control building for the Widefield Wells, sizing of leader lines from the Widefield Wells to the planned metering/control building, and sizing of connections to the main Widefield Aquifer Manifold. These planned upgrades and improvements are also included in Widefield's long term capital improvement plan. Widefield's ongoing planning efforts include considering the use of Widefield Well No. 13 as a source of non-potable water for irrigation purposes within the Widefield District. During the current diligence period (2003 through 2009), the following work has been performed and expenses incurred in relation to Widefield's water system, of which the Subject Water Rights are a part: Widefield has incurred costs in excess of \$14,687,700.00 for the repair and maintenance of Widefield's water system. Widefield has incurred costs in excess of \$656,000 for capital expansion and improvements to its water system, including: new hydrants and valves in various parts of the water system, upgrades to SCADA system, installation of new chlorine disinfection equipment and new chlorine analyzers; construction of 30 Inch Goldfield Outfall (2006); construction of 20 Inch South Powers Transmission Line (2007); installation of 8 through 18 inch lines along Mesa Ridge Corridor (2004); reconnection of Goldfield Tank Farm (2006); upgrades to Booster #2 Pump Station (ongoing). Of these facilities, the Booster #2 Pump Station upgrades, the construction of the 20 Inch South Powers line and the construction of the 30 Inch Goldfield Outfall enable Widefield to increase water system deliveries from sources on the west side of its service area, including the Subject Water Rights, to the east side of Widefield's service area. In addition, Widefield has overseen the design and construction of the following developer installed facilities: Jimmy Camp Pump Station and Equalizing Tank; 24 Inch Marksheffel Transmission Line; Air Stripper #2; 24 Inch West Fountain Transmission Line; Approximately 10 miles of distribution line. The costs for contract expenditures related to operation, management and maintenance of Widefield's water system were \$36,600. Engineering consulting fees in excess of \$321,969 have been incurred in performing work related to the general development of Widefield's integrated water system, including annual updates of water systems demands and projections; annual updates of needed near term and long term system improvements; development of capital facilities planning document that includes approximate costs and timing of improvements on a 5, 10 and 20 year scenario (updated annually); annual updates of ultimate water supply needs and proposed timing of growth projections; updates of certain master-planned elements; water rights accounting; Cruse Gulch augmentation water supply (Widefield portion); meter certification; engineering support related to water rights protection; maintenance of well permits and analysis of water

storage needs; engineering support for the acquisition of additional water rights to be used for augmentation purposes and the work described above. Pursuant to a stipulation entered into in Case No. W-116, Widefield's share of the costs related to the Widefield Aquifer Management Program, of which the Widefield Well No. 3, 4 and 13 water rights are a part, has been \$245,100 during the diligence period. During the diligence period, Widefield participated as an opposer in several cases filed in the Division No. 2 Water Court in defense of its municipal water rights, including the Subject Water Rights. An example of such cases includes Case No. 07CW47, Application of Colorado Centre Metropolitan District. Legal fees in the amount of \$73,795 have been incurred in defense of Widefield's water rights, including the Subject Water Rights. WHEREFORE, the Applicant requests that the Court enter a decree finding that reasonable diligence was performed during the diligence period in development of the conditional water rights that are the subject of this application.

CASE NO. 09CW76 - SANDCASTLE DEVELOPMENT 1, LLC, c/o John Besancon, 5350 Tomah Drive, Suite 1000, Colorado Springs, CO 80918

(Michael J. Gustafson, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

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

EL PASO COUNTY

APPLICATION FOR ADJUDICATION OF DENVER BASIN GROUND WATER

RIGHTS **Property Description.** All wells will be located on a 35 acre parcel of land in the Southeast Quarter of Section 2, Township 12 South, Range 66 W, 6th P.M. ("Applicant's Property"). Applicant intends to develop a seven lot subdivision on Applicant's Property. Applicant's Property is generally shown on the Exhibit A map attached to the Application and the legal description provided on Exhibit B 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. **Future Wells.** Up to seven wells will be drilled into the not-nontributary Dawson aquifer underlying Applicant's Property. Wells may also be drilled into the not-nontributary Denver and Arapahoe aquifers. Well permit applications for the wells to be drilled pursuant to this application and subsequent decree will be applied for prior to drilling wells into the Denver Basin aquifers which are the subject of this application. No exact location is requested for the proposed wells, as that information will be provided when the well permit applications are submitted. Upon approval of the plan for augmentation requested herein, these wells will be permitted under C.R.S. §37-90-137 for operation under the plan for augmentation. **Water Source.** 1. **Not-nontributary.** The ground water that will be withdrawn from the Dawson, Denver, and Arapahoe aquifers of the Denver Basin underlying Applicant's Property is not-nontributary. The Denver and Arapahoe aquifers underlying Applicant's Property are more than one mile from any point of contact between any natural stream, including its alluvium. Pursuant to **C.R.S. §37-90-137(9)(c)**, the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions to the

extent necessary to prevent any injurious effect and the augmentation requirements for wells into the Denver and Arapahoe aquifers will require the replacement to the effected stream system of a total amount of water equal to 4 percent of the water withdrawn on an annual basis. 2. Nontributary. The ground water in the Laramie-Fox Hills aquifer of the Denver Basin underlying Applicant's Property is nontributary. **Estimated Rates of Withdrawal and Ground Water Available.** Estimated Rates of Withdrawal. The pumping rates for the wells to be completed to each aquifer are estimated to be between 15 g.p.m. and 100 g.p.m. The actual pumping rate for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts, which may be less than or exceed the above estimates. The actual depth of each well to be constructed within the respective aquifers will be determined by actual aquifer conditions. **Estimated Average Annual Amounts of Ground Water Available.** Applicant requests an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying Applicant's Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4), but for the purposes of this Application, withdrawals must be limited to the 300-year subdivision water supply requirements of El Paso County. The estimated average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers will be based upon the Denver Basin Rules. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property of approximately 35 acres as follows:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Aquifer Depth (Feet)</u>	<u>Total Water Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)¹</u>
Dawson	260	600	1,820	6.06
Denver	520	1500	3,090	10.30
Arapahoe	230	2000	1,370	4.56
Laramie Fox Hills	188	2800	990	3.30

Pursuant to C.R.S. §37-92-304(11), the Applicant requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **Requested Uses.** The Applicant requests the right to use the ground water for all beneficial uses including, without limitation, domestic, commercial, industrial, irrigation, stock water, recreation, fish and wildlife propagation, fire protection, central water supply for such uses and also for exchange, augmentation, aquifer recharge and replacement purposes. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off Applicant's Property subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial

¹ Based upon a 300 year aquifer life.

uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct a well or use water from the not-nontributary Dawson, Denver, or Arapahoe aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c). **Well Fields.** Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying Applicant's Property. **Name and Address of the Owner of the Land Upon Which the Wells are to be Located.** The Applicant, as set forth above, is the owner of Applicant's Property, on which the wells are to be located. **APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION. Name of Structures to be Augmented.** The structures to be augmented consist of up to seven wells to be completed in the not-nontributary Dawson, Denver and/or Arapahoe aquifers of the Denver Basin underlying Applicant's Property, including any replacement wells. Applicant requests the right to have a central well system as an alternative for all or part of the water allotment for the individual wells. **Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during pumping are the return flows of the not-nontributary Dawson, Denver, and/or Arapahoe aquifer wells to be pumped as set forth in this plan for augmentation, together with water rights from the nontributary Laramie-Fox Hills aquifer for post pumping depletions. **Statement of Plan for Augmentation.** Applicant wishes to provide for the augmentation of stream depletions caused by pumping the not-nontributary Dawson, Denver, and/or Arapahoe aquifer wells proposed herein for up to seven residential lots. **Diversions.** Seven augmented wells are to be used for the water supply for up to seven single family residences and other uses as stated herein upon Applicant's Property including irrigation of lawns, gardens and landscaping. The maximum annual pumping from each well for these uses shall be approximately 0.46 acre feet per year and a total of approximately 3.22 acre feet for all seven wells annually. The diversion and depletions numbers are approximate and may vary based on final water availability. **Depletions.** The Applicant's consultant has operated the State Engineer's Denver Basin Groundwater Flow Model for the determination of stream depletions from Dawson aquifer well pumping. The actual stream depletions during the plan term under such model are a maximum of approximately 24.00 percent of the Dawson aquifer well pumping, assuming 300 years of withdrawal under this plan. The actual stream depletions associated with the Dawson aquifer will therefore be a maximum of approximately 0.11 annual acre feet per lot with a total stream depletion under

this plan of approximately 0.77 annual acre feet for all seven lots. Attached to the application as Exhibit C are the ground water flow model Dawson aquifer stream depletion factors. To the extent Applicant utilizes ground water in the Denver and/or Arapahoe aquifers, 4 percent of the water withdrawn on an annual basis shall be replaced to the effected stream system. **Replacement.** Applicant's augmentation water during the plan term will consist of septic return flows from in-house use. Waste water from the in-house residential uses will be disposed of through non-evaporative septic systems that are determined to have return flows to the tributary stream system of 90 percent of the in-house residential pumping of 0.3 annual acre feet per residence. Therefore, return flows total 0.27 annual acre feet per residence, and 1.89 annual acre feet for all seven residences. These return flows during the period of the plan will augment the tributary stream system in an amount greater than the maximum actual stream depletion amount from the Dawson aquifer of 0.77 annual acre feet. For the Denver and Arapahoe aquifers, the 4 percent replacement requirement which totals approximately 0.13 annual acre feet for all seven lots is exceeded by septic return flow replacement water. Therefore, Applicant's septic return flows will prevent material injury to other vested water rights. Applicant believes that fifteen percent of irrigation water would accrue to the stream as return flows which could be used for additional augmentation. Applicant does not at this time, claim the irrigation return flows as part of this augmentation plan, but Applicant preserves its claim to those return flows and does not waive its rights or claims thereto. **Augmentation for Post Pumping Depletions.** For the replacement of post-pumping depletions, Applicant will reserve up to 970 acre feet of water from the nontributary Laramie-Fox Hills aquifer underlying Applicant's Property, less the amount of actual stream depletions replaced during the plan pumping period. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, Applicant claims that post pumping depletions will be noninjurious and do not need to be replaced. Under the court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used to replace any injurious post-pumping depletions and a well may be drilled into the Laramie-Fox Hills aquifer for that purpose. Upon entry of a decree in this case, the Applicant will be entitled to file for and receive well permits for up to seven Dawson, Denver Arapahoe aquifer wells for the uses in accordance with this Application. **Filing in Both Water Divisions.** This Application is being filed in both Water Divisions 1 and 2 because Dawson aquifer depletions will occur in both divisions. The return flows set forth above will accrue to only the Arkansas River system where most depletions occur. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. **Remarks.** Additional remarks are as follows: Applicant requests a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-

nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). The term of this augmentation plan is for 300 years, however the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. Before any wells are constructed, applications for well permits will be filed with the State Engineer's office, and well permits shall be granted in accordance with the decree pursuant to this application. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon Applicant's Property. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(l), and such notice will be sent within 10 days of the filing of this application.

CASE NO. 09CW77; Previous Case No. 97CW163 - CATAMOUNT CENTER, 740 W. Caramillo St., Colorado Springs, CO 80907; and JULIE FRANCIS AND HOWARD DROSSMAN, 1624 N. Tejon St., Colorado Springs, CO 80907

(Henry D. Worley, MacDougall, Woldridge & Worley, P.C., Attorney for Applicants, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905; (719) 520-9288)

Application for Finding of Diligence

TELLER COUNTY

Names of structures: Well No. 1, Well No. 2 and Well No. 3. **Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **Date of Original Decree:** May 29, 2003; **Case No.** 97CW163; **Court:** Water Division 2. **Legal Description:** Well 1: Teller County, NW ¼ of the NW ¼ Section 15, Township 13 South, Range 69 West, 6th P.M., 1220 feet from the North section line and 920 feet from the West section line. Street Address: 3168 County Road 28, Woodland Park, CO. Well 2: Teller County, NW ¼ of the NW ¼ Section 15, Township 13 South, Range 69 West, 6th P.M., 110 feet from the North section line and 510 feet from the West section line. Street Address: 3168 County Road 28, Woodland Park, CO. Well 3: Teller County, NW ¼ of the NW ¼ Section 15, Township 13 South, Range 69 West, 6th P.M., 580 feet from the North section line and 2020 feet from the West section line. Street Address: 3168 County Road 28, Woodland Park, CO. **Source:**

Groundwater tributary to Crystola Creek, a tributary to Fountain Creek. **Appropriation Date:** Wells - December 30, 1997; **Amount:** Wells - 15 gpm. **Use:** Well No. 1: commercial; Well Nos. 2 and 3: Indoor residential, domestic stock water, irrigation of not more than one acre per well of lawn and garden. **Depth:** Approximately 100 ft. each. **Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** As required by the plan of augmentation contained in the conditional decree, one share of Twin Lakes Reservoir and Canal Company water has been purchased and is being transferred to Colorado Springs Utilities, The Board of Trustees is in the process of acquiring the remaining 15 shares. **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:** Same as applicants.

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 2009, (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 June, 2009.



Mardell R. DiDomenico

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

(Court seal)
Published: June _____, 2009

NOTICE

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

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