

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MAY 2010

TO: ALL INTERESTED PARTIES

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

CASE NO. 01CW96 - REVOCABLE TRUST OF A. BRUCE CANTRELL AND JOAN D. CANTRELL, 11411 Highway 12, La Veta, Colorado 81055 (Steven P. Jeffers,

Esq., Madoline Wallace-Gross, Esq., Lyons Gaddis Kahn & Hall, P.C., P.O. Box 978, Longmont, CO 80502-0978; (303) 776-9900)

Amended Application for an Augmentation Plan, Change of Water Rights and Application for Water Right.

HUERFANO COUNTY

1) **Application and Amendment:** The application is being amended: to add a claim for surface water right for a spring supplying water to one of the ponds; to refine the description of the structures to be augmented; to correct the sources of and the amounts of depletions associated with the structures to be augmented; to change the water rights to be used as augmentation sources; and to refine the description of the operation of the augmentation plan. This Amended Application shall replace the application in its entirety. 2) **Background:** Applicant owns approximately 440 acres in Sections 13 and 24, Township 30 South, Range 69 West and Sections 18 and 19, Township 30 South, Range 68 West of the 6th P.M. on which the augmented structures are located. A map of Applicant's property and the structures is attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court.) **APPLICATION FOR SURFACE WATER RIGHT** 3) **Names of structure:** Cantrell Spring Box. 4) **Legal description of point of diversion:** The spring collection box is located in the SW ¼, NW ¼ of Section 19, T30S, R68W, 6th P.M., Huerfano County, Colorado, being 1970 feet from the north section line and 920 feet from the west section line. Water from the spring is piped approximately 1500 feet to the Cantrell Stock Pond. 5) **Source:** Spring tributary to Cucharas River. 6) **Date of appropriation:** July 1, 1980. a) **How appropriation was initiated:** By constructing the spring box and associated facilities, and diverting water for stockwatering purposes. b) **Date water was applied for beneficial use:** July 1, 1980. 7) **Amount Claimed:** 0.25 cfs, absolute. 8) **Uses:** Stockwatering. 9) **Remarks:** The Cantrell Spring Box is less than 5 feet deep and is located where the spring naturally discharged prior to constructing the structure. The structure conveys water by gravity to a valve where water can be delivered to the Cucharas River or to the Cantrell Stock Pond. **CLAIM FOR APPROVAL OF PLAN FOR AUGMENTATION AND CHANGE OF WATER RIGHTS** 10) **Name and location of structures to be augmented:** Applicant proposed to augment out-of-priority depletions

from the Cantrell Stock Pond and Cantrell Drop Structures 1, 6 and 7. A map depicting the structures to be augmented is attached to the Application as Exhibit A. None of the structures are decreed. a) **Cantrell Stock Pond (identified as "Equalizing Pond" in the original application)**: The surface area of the pond is 0.12 acres. It is located at a point in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 19, T30S, R68W, 6th P.M. approximately 820 feet south of the north line and 1850 feet east of the west line of said Section 19. The Cantrell Stock Pond may be filled from the following sources: i) **Cantrell Spring Box**: Described above. ii) **Case No. 4 Spring**: Decreed in Case No. W-763, District Court, Water Division No. 2, and made absolute in Case No. 81CW50, on December 2, 1981, at a rate of 25 gpm from spring water tributary to Magpie Canyon and the Cucharas River for domestic and stock purposes, with an appropriation date of January 1, 1970. The decreed location of Case No. 4 Spring is 1300 feet NE of SW corner of NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 19, T30S, R68W, 6th P.M., in Huerfano County, Colorado. Spring ties diagonally 1300 feet NE of SW corner and 1580 feet SE of NW corner. The natural discharge point of the Case No. 4 Spring is believed to be the same as the Cantrell Stock Pond. iii) **Well No. 3, Permit No. 257542**: Well No. 3 pumps tributary groundwater at a rate up to 15 gpm into a storage tank where water can be delivered via pipe to a guest house for domestic purposes or to the Cantrell Stock Pond for watering livestock and domestic animals. Well No. 3 is permitted as an exempt well pursuant to C.R.S. § 37-92-602(1)(b) and 602(3)(b)(ii). Well No. 3 is located at a point in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 19, T30S, R68W, 6th P.M. approximately 730 feet from north section line and 1840 feet from west section line. b) **Cantrell Drop Structure No. 1**: At a point on the main channel of the Cucharas River in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 19, T30S, R68W, 6th P.M. approximately 450 feet south of the north line and 1430 feet east of the west line. c) **Cantrell Drop Structure No. 6**: At a point on the main channel of the Cucharas River in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 19, T30S, R68W, 6th P.M. approximately 1290 feet south of the north line and 770 feet east of the west line. d) **Cantrell Drop Structure No. 7**: At a point on the Cucharas River in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 19, T30S, R68W 6th P.M. approximately 1480 feet south of the north line and 680 feet east of the west line. Drop Structure No. 7 also includes portions of the historical river channels and two ponds on those channels before they rejoin the main channel approximately 1100 feet downstream. 12) **Water rights to be used for augmentation**: Applicant proposes to use a portion of the junior storage water right to be decreed to Snowy Range Reservoir Pond Nos. 1, 2 and 3 ("SRRC Ponds") and senior water rights decreed to the Calf Pasture, Oso, Romero and Dep Ditches described below. Applicant owns 21 Class A shares in the Snowy Range Reservoir Company ("SRRC"). Applicant's 21 Class A shares yield 2.1 acre-feet of water from SRRC's water rights portfolio, including a portion of the junior storage water right and senior surface water rights as described below. Applicant is also entitled to 10 percent of all water stored in the SRRC Ponds pursuant to agreement. a) **Junior Storage Water Rights**: i) **Date of Decree**. The SRRC Ponds are not yet decreed. SRRC has applied for a conditional water storage right for the SRRC Ponds in Case No. 06CW124. ii) **Legal descriptions of reservoirs**: The locations of the SRRC Ponds are depicted in Exhibit A. (1) **SRRC Pond No. 1**: A point on the west corner of the dam in the SW $\frac{1}{4}$, NW $\frac{1}{4}$ of Section 19, T30S, R68W, 6th P.M., Huerfano County, Colorado, being 1430 feet from the north section line and 1070 feet from the West section line. (2) **SRRC Pond No. 2**: A point on the center of the dam

in the SW¼, NW¼ of Section 19, T30S, R68W, 6th P.M., Huerfano County, Colorado, being 1620 feet from the north section line and 700 feet from the west section line. (3) **SRRC Pond No. 3:** A point on the center of the dam in the SW¼, NW¼ of Section 19, T30S, R68W, 6th P.M., Huerfano County, Colorado, being 1975 feet from the North section line and 550 feet from the West section line. iii) How reservoirs are filled: By diversions through the Cozad Ditch, at a rate of 2.0 cfs. The decreed location of the Cozad Ditch is at a point on the right bank of the Cucharas River whence the West quarter corner of Section 19, T30S, R68W, 6th P.M., bears South 88°32' West, a distance of 278 feet more or less. The headgate is generally located in the SW¼, NW¼ of Section 19, 2635 feet from the north section line and 275 feet from the west section line. iv) Source: Cucharas River. v) Date of appropriation: July 7, 2006. vi) Amount: 90 acre-feet, conditional, with the right to fill and refill. Applicant is entitled to use 10% of the storage water right by agreement and a *pro rata* share of the remaining storage amount based on share ownership. vii) Current Uses: Storage for recreation, piscatorial, fire suppression, wildlife habitat, aesthetics, replacement, exchange and augmentation. b) **Senior Water Rights:** SRRC owns a portion of the water rights quantified and changed in Case No. 82CW132, District Court, Water Division No. 2, entered on February 13, 1985, as amended by Case No. 85CW10, District Court, Water Division No. 2, entered on August 23, 1985 (“Change Decree”). Specifically, the Change Decree quantified and changed 0.5 cfs of the Priority No. 2 water right, 1.5 cfs of the Priority No. 9 water right, 0.6 cfs of the Priority No. 12 water right and 0.6 cfs of the Priority No. 59 water right (“Goemmer Water Rights”). SRRC’s ownership interest in the Goemmer Water Rights is shown the last column of the following table (“SRRC’s Water Rights”). The portion of Applicant’s interest in SRRC’s Water Rights that is associated with this case shall be collectively referred to as the “Subject Water Rights.” i) Names of structures: Calf Pasture, Oso, Romero and Dep Ditches. ii) Original decree information for the Subject Water Rights:

Priority Number And Ditch	Appropriation Date	Original Decree Date	Civil Action Number (District Court Huerfano County)	Decreed Use	Decreed Amount (cfs)	SRRC’s Water Rights (cfs)
2 Calf Pasture	6/15/1863	6/12/1889	Unnumbered “Read Decree”	Irrigation	1.5	0.2188
9 Oso	5/3/1868	6/12/1889	Unnumbered “Read Decree”	Irrigation	3.0	1.5
12 Romero	4/1/1869	6/12/1889	Unnumbered “Read Decree”	Irrigation	1.2	0.6
59 Dep	5/12/1882	6/12/1889	Unnumbered “Read Decree”	Irrigation	0.6	0.3

iii) Decreed points of diversion and sources for the Subject Water Rights: (1) **Priority No. 2, Calf Pasture Ditch:** The point of diversion on the Cucharas River for SRRC’s interest in Priority No. 2 is in the NW¼ SW¼, Section 21, T29S, R68W, 6th P.M. at a point 40 feet west of the intersection of Oak Street and Ryus Avenue in the Town of La Veta, Huerfano County, Colorado. (2) **Priority No. 9, Oso Ditch:** The point of diversion for SRRC’s interest in Priority No. 9 was transferred to the Calf Pasture Ditch described in ¶ 12(b)(iii)(1) in Case No. W-1137, District Court, Water Division No. 2 on April 16, 1973. (3) **Priority No. 12, Romero Ditch:** The point of diversion for SRRC’s interest in

Priority No. 12 was transferred to the Calf Pasture Ditch in Case No. W-1137, on April 16, 1973. (4) **Priority No. 59, Dep Ditch:** The point of diversion for SRRC's interest in Priority No. 59 was changed in Case No. 79CW40, on May 8, 1981 to a point on the north bank of Middle Creek in the NW¼ SW¼, Section 21, T29S, R68W, 6th P.M., being 1,000 feet from the west line and 800 feet from the north line. (5) **Alternate points of diversion:** The Change Decree established the following three alternate points of diversion for the Goemmer Water Rights: (a) A point on the North bank of Baker Creek, a tributary to the Cucharas River, which is 850 feet easterly of the center of Section 17, Township 31 South, Range 69 West, 6th P.M.; (b) The intake to the Cucharas Sanitation and Water District's treatment facilities on the Cucharas River at a point in Section 22, Township 31 South, Range 69 West, 6th P.M., from which the West quarter corner of Section 15, Township 31 South, Range 69 West, 6th P.M., bears North 14°25' West, a distance of 5,770 feet; and (c) A point on the left bank of the Cucharas River located in the SW¼ of Section 19, Township 30 South, Range 68 West, 6th P.M. at a point approximately 180 feet from the West line and 1940 feet from the South line of said Section 19 for the purpose of filling an offstream reservoir. iv) **Amount:** The average annual historical consumptive use of the Goemmer Water Rights was determined to be 230 acre feet. 130 acre feet are attributable solely to Priority No. 2 water right, and 100 acre feet are attributable to the Priority Nos. 9, 12 and 59 water rights. The Change Decree approved a three-phased change of use the Goemmer Water Rights. Phase I was implemented upon entry of the Change Decree. The Priority No. 2 water right was changed for diversion at the alternate points and changed to year-round, direct use for irrigation, fish and wildlife enhancement and all municipal purposes. The Subject Water Rights are currently operating in Phase I. Under Phase II, the Priority No. 2 water right is further changed to a "stream credit" to be used directly for irrigation, artificial snowmaking, fish and wildlife enhancement and all municipal purposes or to be stored for subsequent release for augmentation of such depletions. Under Phase III, the Priority Nos. 9, 12 and 59 water rights are also changed to "stream credit" for the new decreed purposes. v) **SRRC's Pending Change of Water Rights:** SRRC has a pending application for change of water rights in Case No. 06CW124. SRRC seeks the following changes of SRRC's Water Rights, including the Subject Water Rights. SRRC's 0.2188 cfs of Priority No. 2 in Phase I shall be available proportionately for direct use by SRRC's shareholders. Any water not used directly by the shareholders will be diverted at the Cozad Ditch, and through SRRC Ponds for fish and wildlife purposes and returned to the Cucharas River. SRRC requests the right to divert the SRRC Water Rights through the Cozad Ditch in Phases II and III and store the water in the SRRC Ponds. 13) **Description of Augmentation Plan Operation/Change of Water Rights:** a) **Depletions:** Applicant proposes to augment all out-of-priority depletions resulting from its use of the structures described in ¶¶ 11(a) to 11(d), including all filling structures. Applicant also seeks to augment out-of-priority depletions from stock watering use from the Cantrell Stock Pond, to the extent such use is not exempt. i) **Evaporation Losses:** The combined net increase in surface area subject to evaporation of Cantrell Drop Structures Nos. 1, 6 and 7 is 0.59 acres. The net evaporative depletion rates associated with these on-channel structures is 29.56 inches per year as derived in Exhibit B. The net evaporation is 1.45 acre-feet per year as shown in Exhibit D. The surface area of the Cantrell Stock Pond is 0.12 acres. The

net evaporative depletion rate associated with this off-channel structure is 40.0 inches per year as derived in Exhibit C. The net evaporation is 0.4 acre-feet per year as shown in Exhibit D. The total evaporation loss is 1.85 acre-feet per year. ii) Stock Watering: Applicant may water up to 15 head of livestock and domestic animals, including horses, from the Cantrell Stock Pond. Assuming each animal consumes 15 gallons of water per day, the maximum net consumption is 0.25 acre-feet per year. Some or all of the water used for stock and domestic animals is provided by an exempt well. To the extent livestock watering is not considered exempt, Applicant shall augment the depletions from such use. b) Operation of Plan for Augmentation/Change of Water Rights: i) Replacements Utilizing Junior Water Right: Applicant may replace all out-of-priority depletions under this plan by making releases of the Junior Storage Water Right from the SRRC Ponds. ii) Replacements Utilizing the Change Decree and Case No. 06CW124: (1) **Phase I**: If SRRC is operating in Phase I of the Change Decree, Applicant proposes to utilize its ownership interest in the Priority No. 2 water right by year-round direct use for fish and wildlife enhancement at Cantrell Drop Structure Nos. 1, 6 and 7, as alternate points of diversion. (2) **Phase II**: If SRRC has implemented Phase II of the Change Decree, Applicant may offset evaporation from all structures by storing and releasing from the SRRC Ponds Applicant's ownership interest in the Priority No. 2 water right or the Junior Storage Water Right, or bypassing stream credits from Applicant's ownership interest in the Priority No. 2 water right at the structures' points of diversion. (3) **Phase III**: If SRRC has implemented Phase III of the Change Decree, Applicant may offset evaporation from all structures by storing and releasing from the SRRC Ponds the Subject Water Rights or the Junior Storage Water Right or bypassing stream credits from the Subject Water Rights at the structures' points of diversion. (4) To the extent augmentation water is not available when needed, Applicant will lower the water level in one or more of the structures to prevent any out-of-priority depletions. 14) Ownership of Land on which Structures are Located: Applicant owns the land upon which the Cantrell Stock Pond, the Cantrell Spring Box, the Case No. 4 Spring, the Cantrell Drop Structure Nos. 1, 6 and 7, and the Snowy Range Reservoir Company Pond Nos. 1, 2 and 3 are located.

CASE NO. 02CW116 – CORSENTINO DAIRY FARMS, INC., c/o Joe Corsentino, President, 2689 East Hwy. 10, Walsenburg, CO 81089 (Shawn M. Yoxey, Attorney for Applicant, 226 South Union, Suite 211, Pueblo, CO 81003; (719) 543-7899)
Amended Application for Underground Water Rights and Plan for Augmentation
HUERFANO COUNTY

Application for Underground Water Rights. 2. Names of Wells and permit numbers (the wells are named by their permit numbers). Well No. 56793-F. **3. Legal Description of well location(s):** Well Number 56793-F is located in the SE4/NE4 Section 2 Township 28 South, Range 66 West of the 6th P.M. in Huerfano County, at a point 1374 feet from the north line and 1252 feet from the east line of said section. **4. Source:** Groundwater tributary to the Cucharas River. **5. Date of Appropriation:** Well 56793-F October 2001. Appropriation was initiated by applying for the well permit, drilling the well and placing the water to beneficial use. The water from Well Number 56793-F was applied to beneficial use on April 5, 2002. **6. Amount claimed from Well Number 56793-F is 24 gpm absolute and 14 gpm conditional. 7.**

Proposed uses are stock watering, commercial, dairy farm and domestic. **8.** The structure is located on land belonging to the applicant, Corsentino Dairy Farms, Inc. **APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION** **10. Structure to be augmented** is Well Number 56793-F. **11. Previous decrees for water rights to be used for augmentation.** A. The Ballejos Ditch was decreed for the irrigation of 200 acres by the Huerfano County District Court in the “Read Decree” dated June 12, 1889 with an appropriation date of April 1, 1868 for 2.0 cfs and a further appropriation of 2.0 cfs with an appropriation date of April 1, 1869, out of the Cucharas River. The headgate is on the north bank of the Cucharas River in the SE4 of the NE4, Section 2, Township 28 South, Range 66 West in Huerfano County. Applicant owns 1.125 cfs in each of the described priorities of this water right. B. Holita Ditch and Reservoir was decreed October 15, 1901 by the District Court for Huerfano County (no case number) for the irrigation of 600 acres with an appropriation date of March 20, 1900, for a feeder ditch at the rate of 16 cfs out of the Cucharas River and a water storage right of 540 acre feet. The enlargement of the feeder ditch was adjudicated October 3, 1921 in the “Atwood” Decree for an additional 82 cfs with an appropriation date of May 23, 1910 for irrigation of an additional 1400 acres. The location of the headgate of the feeder ditch, which is now called the Walsenburg Town Ditch, is on the north bank of the Cucharas River 25 feet north of the Southwest Corner of Section 9, Township 28 South, Range 66 West of the 6th P.M. The location of the outlet works of the reservoir is 100 feet south of the Northwest Corner of Section 36, Township 27 South, Range 66 West of the 6th P.M., all in Huerfano County. Applicant owns an undivided 93.12 percent interest in this entire water right. **12. Historic Use:** The water rights herein have historically been used for the irrigation of 409.2 acres of crops on its property. Prior to filing the original application, Applicant dried up 23.7 acres of that area and has committed to historic consumptive use thereby saved to a substitute water supply plan. Applicant continues to irrigate the remaining 385.5 acres with said water rights. The irrigated area is shown on a map attached as Exhibit A to the original Application. Summaries of records of diversions from the Ballejos Ditch from 1970 to 1995 are attached to the original Application as Exhibit B, and summaries of storage of the Holita Reservoir from 1970 to 1995 are attached to the original Application as Exhibit C. All Exhibits are on file and may be inspected at the office of the Clerk of this Court. Summary of records of diversions from the Ballejos Ditch from 1912 through 2008 are attached to the Amended Application as Exhibit B-1. **13. Statement of plan for augmentation:** The primary use by the Applicant of the well described herein will be for stock water use in its dairy operations. It is considered that all diversions will be fully consumed. Diversions and consumptive use are expected to be approximately 35 acre feet per year. The historic consumptive use by crops on the 23.7 acres which has been dried up is approximately 35 acre feet per year. Therefore, the stream system would be fully compensated. In the event the Court should determine that any additional augmentation water is needed, it will be furnished by releases from the Holita Reservoir. **14. Names and Address of owners of land on which structures are or will be located:** Applicant

CASE NO. 10CW25; Previous Case No. 04CW5 – THEODORE W. MORGAN and NORMA F. MORGAN, 0021 John Deere Road, Howard, CO 81233; (719) 942-4233

Application to Make Absolute

FREMONT COUNTY

Name of Structure: Morgan Spring. **Describe conditional water right:** **Date of Original Decree:** 5/17/04; **Case No.** 04CW5; **Court:** Water Division No. 2. **Legal description:** Fremont County, NW ¼ of the NW ¼ Section 2, Township 48 North, Range 10 East, NMPM, 1117 feet from the North line and 340 feet from the West line. **Street Address:** 0021 John Deere Road. **Source of water:** Natural spring; **Appropriation Date:** 01/20/04; **Amount:** 3 gpm. **Use:** Irrigation of 2 acres (M/L) and stock water pond. **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:** Cleared and leveled part of the area, cultivated and planted hay and pasture seed irrigated by a pumped sprinkler system (hand pipe). **If claim to make absolute:** **Date water applied to beneficial use:** 5/17/04; **Amount:** 3 gpm; **Use:** Irrigation of 2 acres (M/L) and stock water pond. **Description of place of use where water is applied to beneficial use:** Parcel in the NW ¼ of the NW ¼ Section 2, Township 48 North, Range 10 East, NMPM, at a point 1100' from North and 390' from W of the NW corner of Section 2. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

CASE NO. 10CW27; Previous Case No. 03W26 – OLSON FAMILY TRUST, c/o Charles B. and Shirley L. Olson, 29624 Thimbleberry Lane, Evergreen, CO 80439; (303) 674-3537

Application for Finding of Reasonable Diligence

CHAFFEE COUNTY

Name of Structure: Olson Ditch. **Describe conditional water right:** **Date of Original Decree:** May 07, 2004; **Case No.** 03CW26; **Court:** Water Division No. 2. **Legal description:** Chaffee County, NE ¼ of the NW ¼ Section 35, Township 13 South, Range 79 West, 6th P.M., 1050 feet from the North line and 1550 feet from the West line. **Source of water:** Powell Creek; **Appropriation Date:** July 5, 2002; **Amount:** 0.8 cfs. **Use:** Irrigation and livestock. **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:** From Jan. 1, 2007 to date, expenditures for maintenance of the Olson Ditch and construction of the "New Ditch", indicated on the map attached to the application have exceed \$2500. These expenditures have included materials, fuel, and equipment rental. The "New Ditch" was constructed to supply water to an irrigation system, under development, for irrigation of the 20 acres, indicated on the map 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.) **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or**

storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Adventure Unlimited Ranches, P. O. Box 2036, Buena Vista, CO 81211 and Ronald Linza, 28315 CR 313, Buena Vista, CO 81211.

CASE NO. 10CW28 – WOODMOOR WATER AND SANITATION DISTRICT NO. 1, P. O. Box 1407, Monument, CO 80132 (Veronica A. Sperling, Buchanan and Sperling, P.C., Attorneys for Applicant, 7703 Ralston Road, Arvada, CO 80002; (303) 431-9141) Application for Approval of Plan for Augmentation and for Quantification of Reusable Outdoor Use Return Flows

EL PASO COUNTY

PLAN FOR AUGMENTATION. 2. Names of structures to be augmented: Woodmoor Water and Sanitation District No. 1 (“District”) proposes to augment out-of-priority depletions resulting from evaporation losses associated with on-channel ponds or ponds that expose tributary groundwater located in Water Division 2 within the Monument Creek drainage basin and within the boundaries of the District as it currently exists and as it may exist in the future (“Participating Ponds”). The current boundaries of the District are shown on the map attached to the application as Appendix 1. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court.) Participating Ponds may include, but are not limited to, four on-channel ponds located on an unnamed tributary of Dirty Woman Creek, a tributary of Monument Creek, which are owned and operated by the Woodmoor Pines Golf and Country Club, LLC. The approximate locations of the Woodmoor Pines Golf and Country Club, LLC ponds are described below and shown on the map attached to the application as Appendix 1. Ponds not specifically identified herein may be included in the plan as Participating Ponds pursuant to the terms described in paragraph 4 below or such other terms as required by the final decree herein. A. Woodmoor Pines Golf Pond No. 1, located in the NW1/4 SE1/4 of Section 12, Township 11 South, Range 67 West, 6th P.M., El Paso County, being 2360 feet north of the south line of said Section 12, and 1380 feet west of the east line of said Section 12. The approximate surface area of the pond is 1.27 acres. B. Woodmoor Pines Golf Pond No. 2, located in the NW1/4 SE1/4 of Section 12, Township 11 South, Range 67 West, 6th P.M., El Paso County, being 1750 feet north of the south line of said Section 12 and 1730 feet west of the east line of said Section 12. The approximate surface area of the pond is 0.40 acres. C. Woodmoor Pines Golf Pond No. 3, located in the SW1/4 SE1/4 of Section 12, Township 11 South, Range 67 West, 6th P.M., El Paso County, being 1274 feet north of the south line of said Section 12 and 1800 feet west of the east line of said Section 12. The approximate surface area of the pond is 0.51 acres. D. Woodmoor Pines Golf Pond No. 4, located in the SE1/4 SE1/4 of Section 12, Township 11 South, Range 67 West, 6th P.M., El Paso County, being 640 feet north of the south line of said Section 12 and 1265 feet west of the east line of said Section 12. The approximate surface area of the pond is 1.81 acres. The Woodmoor Pines Golf Pond Nos. 1-4 are not decreed and no other water rights are diverted from these structures. **3. Water and water rights to be used for augmentation:** A. Reusable outdoor use return flows resulting from use of the District’s tributary, not nontributary and nontributary Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifer groundwater decreed in Case Nos. W-2647, W-4544,

80CW169, 81CW230 and 81CW231, all District Court, Water Division 2, and in Case No. 02CW25, Water Division 1, and to be decreed in pending Water Division 2 Consolidated Case Nos. 07CW104 (Water Division 2) and 08CW263 (Water Division 1).

(1) Dates decrees entered, Case Nos. and courts: (a) March 29, 1974 and June 13, 1980, Case No. W-2647, and November 1, 1982, Case No. 80CW170 (plan for augmentation), District Court, Water Division 2 (Woodmoor Well Nos. 1 through 8). (b) February 26, 1982, Case No. W-4544 and November 1, 1982, Case No. 80CW170 (plan for augmentation), District Court, Water Division 2 (Woodmoor Well No. 9). (c) April 24, 1984, Case No. 80CW169 and November 1, 1983, Case No. 80CW170 (plan for augmentation), District Court, Water Division 2 (Woodmoor Well No. 10). (d) December 28, 1987, Case No. 81CW230 and June 14, 1990, Consolidated Case Nos. 87CW067, 88CW100 and Water Division 1 88CW218 (plan for augmentation), District Court, Water Division 2 (Woodmoor Well Nos. DA-1 through DA-4 and additional Dawson aquifer wells and DEN-1, DEN-2 and DEN-4 and additional Denver aquifer wells). (e) December 28, 1987, Case No. 81CW231 and June 14, 1990, Consolidated Case Nos. 87CW067, 88CW100 and Water Division 1 88CW218 (plan for augmentation), District Court, Water Division 2 (Woodmoor Well Nos. DEN-3 and additional Denver aquifer wells, A-1 through A-6 and additional Arapahoe aquifer wells, unnamed Arapahoe aquifer well and additional Arapahoe aquifer wells, and LFH-1 through LFH-6 and additional Laramie-Fox Hills aquifer wells). (f) February 20, 2003, Case No. 02CW25, District Court, Water Division 1 (not nontributary Dawson and Denver aquifer ground water and nontributary Denver, Arapahoe and Laramie-Fox Hills aquifer groundwater). (g) Pending, Water Division 2 Consolidated Case Nos. 07CW104 (Water Division 2) and 08CW263 (Water Division 1) (nontributary Denver, Arapahoe and Laramie-Fox Hills aquifer groundwater and not nontributary Dawson, Denver and Arapahoe aquifer groundwater).

(2) Type of water rights: Tributary, nontributary and not nontributary Denver Basin groundwater rights. (3) Sources of water: Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers within the Denver Basin. (4) Amounts: Pursuant to the decrees identified in paragraphs 3.A.(1) (a) - (f), the following average annual amounts may be withdrawn by the District from the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers through the wells described in said decrees and such additional wells as are provided for in the decrees in Case Nos. 81CW230, 81CW231 and 02CW25: Dawson aquifer, 730 acre feet tributary and 1713.6 acre feet not nontributary; Denver aquifer, 1038.9 acre feet not nontributary and 237.2 acre feet nontributary; Arapahoe aquifer, 160 acre feet not nontributary and 1485.6 acre feet nontributary; Laramie-Fox Hills aquifer, 959.4 acre feet nontributary. The estimated average annual amounts available to the District underlying the lands subject to the application pending in Water Division 2 Consolidated Case Nos. 07CW104 (Water Division 2) and 08CW263 (Water Division 1), which conform to the State Engineer's determinations of fact, are as follows: Dawson aquifer, 385.3 acre feet not nontributary; Denver aquifer, 160.8 acre feet not nontributary and 164.8 acre feet nontributary; Arapahoe aquifer, 16.5 acre feet not nontributary and 223.4 acre feet nontributary; Laramie-Fox Hills aquifer, 115.0 acre feet nontributary. (5) Decreed uses: (a) Case No. W-2647, Well Nos. 1 through 7: Municipal purposes, including use and reuse to extinction of return flows in excess of augmentation deliveries required pursuant to the decree in Case No. 80CW170. (b) Case No. W-2647, Well No. 8: Municipal, domestic

and recreational purposes, including use and reuse to extinction of return flows in excess of augmentation deliveries required pursuant to the decree in Case No. 80CW170. (c) Case No. W-4544: Municipal purposes, including use and reuse to extinction of return flows in excess of augmentation deliveries required pursuant to the decree in Case No. 80CW170. (d) Case No. 80CW169: Use, reuse, successive use and complete disposition for municipal, domestic, industrial, commercial, irrigation, stockwatering, recreation, fish and wildlife, fire protection, and any other beneficial purposes, including augmentation purposes. (e) Case Nos. 81CW230 and 81CW231: Use, reuse, successive use and complete disposition for all municipal purposes, including domestic, agricultural, industrial, commercial, irrigation, stockwatering, fire protection, recreation, fish and wildlife preservation and propagation, and for all other beneficial purposes, including exchange, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to § 37-90-137(9)(b), C.R.S., and all augmentation purposes. (f) Case No. 02CW25: All beneficial purposes. (g) Pending, Water Division 2 Consolidated Case Nos. 07CW104 (Water Division 2) and 08CW263 (Water Division 1): Use, reuse, successive use and complete disposition for all existing and future beneficial uses, including municipal, domestic, industrial, commercial, fire protection, irrigation, stockwatering, recreation, fish and wildlife preservation and propagation, and for all other beneficial purposes, exchange, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to § 37-90-137(9)(b), C.R.S., and all augmentation purposes.

B. Reusable outdoor use return flows resulting from use of water diverted by the District pursuant to the appropriative rights of substitution and exchange decreed in Case Nos. 87CW67 (Dirty Woman Creek Exchange) and 94CW73 (Monument Creek Exchange), District Court, Water Division 2. (1) Dates decrees entered, Case Nos. and courts, type of water rights, legal descriptions of points of diversion, sources, appropriation dates, amounts, decreed uses: (a) June 14, 1990, Consolidated Case Nos. 87CW067, 88CW100 and 88CW218, District Court, Water Division 2; February 3, 1997, Case No. 96CW67, District Court, Water Division 2, decree finding diligence and making partially absolute; June 21, 2004, Case No. 03CW222, District Court, Water Division 2, decree finding diligence and making partially absolute. (b) June 4, 1996, Case No. 94CW73, District Court, Water Division 2; February 27, 2003, Case No. 02CW83, District Court, Water Division 2, decree finding diligence; pending, Case No. 09CW31, District Court, Water Division 2, application for finding of reasonable diligence and to make partially absolute. (2) Type of water rights: Appropriative rights of substitution and exchange. (3) Legal descriptions of points of diversion by exchange (exchange-to points): (a) Case Nos. 87CW67, 88CW100 and 88CW218: Well No. QAL-3: In the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 13, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1400 feet from the west section line and 1900 feet from the north section line of said Section 13. Well No. QAL-4 a/k/a QAL-4T (Permit No. 037840-F): In the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 13, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 2000 feet from the east section line and 1300 feet from the north section line of said Section 13. Well No. QAL-5: In the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 11, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1400 feet from the east section line and 2100 feet from the south section line of said Section 11. Well No. QAL-

6: In the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 14, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 2500 feet from the west section line and 1000 feet from the north section line of said Section 14. Well No. QAL-7: In the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 22, Township 11 South, Range 67 West, of the 6th P.M., El Paso County, Colorado, at a point approximately 2000 feet from the east section line and 1200 feet from the north section line of said Section 22. (b) Case No. 94CW73: On the east bank of Monument Creek at a point in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 22, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, located approximately 800 feet north of the south section line and 1900 feet west of the east section line of said Section 22. (4) Sources, appropriation dates, amounts, decreed uses: (a) Case Nos. 87CW67, 88CW100 and 88CW218: Source: Dirty Woman Creek; Appropriation Date: June 30, 1987; Amount: 1.56 cfs (700 gpm); 0.97 cfs (435 gpm) of which was made ABSOLUTE for irrigation use in Case Nos. 96CW67 and 03CW222; Decreed Use: Use, reuse, successive use and complete disposition for all municipal purposes, including domestic, agricultural, industrial, commercial, irrigation, stock watering, fire protection, recreation, fish and wildlife preservation and propagation and all other beneficial purposes, including exchange purposes, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to § 37-90-137(9)(b), C.R.S., and all augmentation purposes. (b) Case No. 94CW73: Source: Monument Creek; Appropriation Date: May 5 1992; Amount: 2.23 cfs (1,000 gpm); Decreed Use: irrigation, stock watering, fire protection, recreation, fish and wildlife preservation and propagation and for all other beneficial purposes, including recharge of Denver Basin aquifers, exchange purposes, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to § 37-90-137(9)(b), C.R.S., and all augmentation purposes. The water diverted by substitution and exchange is fully consumable and may be used, reused, successively used and completely disposed of for the above-described purposes. C. Indoor use return flows from use of the District's tributary, not nontributary and nontributary Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifer groundwater decreed in Case Nos. W-2647, W-4544, 80CW169, 81CW230 and 81CW231, all District Court, Water Division 2, and in Case No. 02CW25, District Court, Water Division 1, and to be decreed in pending Water Division 2 Consolidated Case Nos. 07CW104 (Water Division 2) and 08CW263 (Water Division 1), as more fully described in paragraph 3.A. above. Such indoor use return flows accrue to Monument Creek at the outfall of the Tri-Lakes Wastewater Treatment Facility located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County. The District operates its municipal water system pursuant to plans for augmentation approved in decrees of the District Court for Water Division 2 in Case No. 80CW170, dated November 1, 1982, and Consolidated Case Nos. 87CW067, 88CW100 and 88CW218, dated June 14, 1990. The indoor use return flows available to the District under the various decrees described above exceed the depletions required to be replaced under the decrees in Case No. 80CW170 and Consolidated Case Nos. 87CW067, 88CW100 and 88CW218. D. Direct discharge of the District's nontributary and fully augmented tributary and not nontributary Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifer groundwater decreed in Case Nos. W-2647, W-4544, 80CW169, 81CW230 and 81CW231, all District Court, Water Division 2, and in Case No. 02CW25, District Court, Water Division 1, and to be decreed in pending Water

Division 2 Consolidated Case Nos. 07CW104 (Water Division 2) and 08CW263 (Water Division 1), as more fully described in paragraph 3.A. above. E. Water from any other source that is decreed for replacement or augmentation or is legally permitted to be fully consumed and which can be provided in the amount, at the time and at the location required by any final decree entered herein including, but not limited to, outdoor use and indoor use return flows resulting from use of such water within the current and future boundaries of the District. F. Current Uses: The water and water rights described in paragraphs 3.A. through 3.D and proposed to be used for augmentation are used for their currently decreed purposes, generally within the boundaries of the District, the approximate location of which is shown on the map attached to the application as Appendix 1. **4. Complete statement of plan for augmentation**: The District will replace out-of-priority depletions to Monument Creek and its tributaries resulting from evaporation losses associated with Participating Ponds using the sources of water and water rights described in paragraph 3 above. The District's reusable outdoor use return flows will be quantified in this case and will be a source of augmentation and replacement supply under the proposed plan for augmentation. Such reusable outdoor use return flows accrue to Crystal Creek, Dirty Woman Creek and Teachout Creek, tributaries of Monument Creek, at or upstream of the approximate locations shown on the map attached to the application as Appendix 1. To the extent such reusable outdoor use return flows are not sufficient to replace out-of-priority depletions hereunder, the District proposes to use the other water and water rights described in paragraph 3 above, which are in excess of the District's replacement obligations under its augmentation plan decrees described in paragraph 3.A.(1) above, to replace such out-of-priority depletions. The District estimates that gross evaporation loss and net evaporation loss on open water surface areas located within the portion of the District located within Water Division 2, following guidelines established by the office of the State Engineer, are approximately 3.25 acre-feet per surface acre per year and 2.0 acre-feet per surface acre per year, respectively. The combined surface area of the Woodmoor Pines Golf Pond Nos. 1-4 is 3.99 acres and the estimated net evaporation loss from such ponds is 7.98 acre feet per year. Ponds specifically identified in this application may be included as Participating Ponds in the plan for augmentation if their inclusion is approved by the District. Ponds not specifically identified herein may be included as Participating Ponds in the plan if they are located within the then-current portion of the District within Water Division 2 and their inclusion in the plan is approved by the District, after notice and an opportunity to object to the proposed inclusion is provided to those persons or entities who file statements of opposition to this application and the State Engineer and Division Engineer, and/or to such other persons or entities as the court determines are entitled to notice. Such notice shall include, at a minimum, the name and contact information for the owner of the proposed Participating Pond, the location of the proposed Participating Pond, the surface area of the proposed Participating Pond, the estimated net evaporation loss associated with the proposed Participating Pond, the name of the flowing stream nearest to the proposed Participating Pond and any other information that is submitted to the District in connection with a request for inclusion of the proposed Participating Pond in the plan. Unresolved objections to the District's approval of the inclusion of a proposed Participating Pond in the plan will be resolved by the court under its retained jurisdiction. **5. 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:

No new diversion or storage structures will be constructed in connection with this plan for augmentation, and no water is or will be stored hereunder, except after application to and approval by the District of the inclusion of such structure as a Participating Pond in this plan for augmentation.

QUANTIFICATION OF REUSABLE OUTDOOR-USE RETURN FLOWS.

6. Water use within the District's boundaries includes use for outdoor purposes, including irrigation of lawns, landscaping and a golf course. A portion of the water used for outdoor purposes returns to the stream system unconsumed. The District seeks quantification of the amount, timing and location of the reusable outdoor use return flows accruing to the Monument Creek stream system, located in Water Division 2, from use of water from the sources described in paragraph 3 above within the District's current and future boundaries. The District also seeks approval of the right to use such reusable outdoor use return flows for augmentation and replacement in the plan for augmentation described above. Such outdoor use return flows accrue to Crystal Creek, Dirty Woman Creek and Teachout Creek, tributaries to Monument Creek. The approximate location at or upstream of which such outdoor use return flows accrue is shown on the map attached to the application as Appendix 1. The District proposes to calculate the amount of such reusable outdoor use return flows using a fixed return flow percentage of 15 percent of total outdoor use. This percentage is based upon a relationship between deep percolation (expressed as a fraction of the amount of water applied) and the amount of water applied (expressed as a fraction of the potential consumptive use of lawn grass), referred to as the "Cottonwood Curve," and the methodology referred to as the "Cottonwood methodology," first approved in Case No. 81CW142, Water Division 1. This or a similar relationship and methodology has also been approved for use in various cases in Water Division 2. The District proposes to calculate the timing of the deep percolation portion of such reusable outdoor use return flows to the Monument Creek stream system using the Glover bounded alluvial aquifer equation. The District claims the right to use outdoor use return flows resulting from the use of water delivered to its customers prior to the date of this application that are now accruing to the Monument Creek stream system, as well as outdoor use return flows that result from future deliveries of water to its customers. WHEREFORE, the District requests the Court to enter a decree approving the above-described plan for augmentation, quantifying the District's reusable outdoor use return flows to the Monument Creek basin in Water Division 2, and approving the use of such reusable outdoor use return flows as a source of augmentation and replacement water in the above-described plan for augmentation.

CASE NO. 10CW29 - WOODMOOR WATER AND SANITATION DISTRICT NO. 1, P.O. Box 1407, Monument, Colorado 80132 (Attorney: Veronica A. Sperling, Buchanan and Sperling, P.C., 7703 Ralston Road, Arvada, Colorado 80002; (303) 431-9141).

Application for Approval of Appropriative Right of Substitution and Exchange

EL PASO COUNTY

2. Name of substitution and exchange: Woodmoor GC Exchange. **3. Purpose of**

Exchange: The appropriative right of substitution and exchange described herein is used by Applicant as one means of delivering non-potable water to the Woodmoor Pines Golf and Country Club, LLC (“Woodmoor Pines”) for use for irrigation of the Woodmoor Pines golf course located in the SE1/4, S1/2 NE1/4 and E1/2 SW1/4 of Section 12, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado. A map showing the approximate location of the Woodmoor Pines golf course is attached to the application as Appendix 1. **4. Legal description of exchange reaches and**

points of substitution and exchange: A. Exchange Reach: The exchange reach is on Monument Creek, Dirty Woman and an unnamed tributary of Dirty Woman Creek, from the outfall of the Tri-Lakes Wastewater Treatment Facility on Monument Creek, the location of which is described in paragraph 4.C. below, upstream to the confluence of Monument Creek and Dirty Woman Creek, and thence upstream on Dirty Woman Creek and the unnamed tributary of Dirty Woman Creek to the Woodmoor Pines Golf Pond Nos. 1-4 described in paragraph 4.B. below, and includes the following-described points of diversion by exchange (exchange-to points) and point of introduction of substitute supply (exchange-from point) within this reach. B. Points of diversion by exchange (exchange-to points): Four ponds located on an unnamed tributary of Dirty Woman Creek, a tributary of Monument Creek, which are owned and operated by Woodmoor Pines. The approximate locations of the four ponds are as follows: (1) Woodmoor Pines Golf Pond No. 1, located in the NW1/4 SE1/4 of Section 12, Township 11 South, Range 67 West, 6th P.M., El Paso County, being 2360 feet north of the south line of said Section 12, and 1380 feet west of the east line of said Section 12. (2) Woodmoor Pines Golf Pond No. 2, located in the NW1/4 SE1/4 of Section 12, Township 11 South, Range 67 West, 6th P.M., El Paso County, being 1750 feet north of the south line of said Section 12 and 1730 feet west of the east line of said Section 12. (3) Woodmoor Pines Golf Pond No. 3, located in the SW1/4 SE1/4 of Section 12, Township 11 South, Range 67 West, 6th P.M., El Paso County, being 1274 feet north of the south line of said Section 12 and 1800 feet west of the east line of said Section 12. (4) Woodmoor Pines Golf Pond No. 4, located in the SE1/4 SE1/4 of Section 12, Township 11 South, Range 67 West, 6th P.M., El Paso County, being 640 feet north of the south line of said Section 12 and 1265 feet west of the east line of said Section 12. The Woodmoor Pines Golf Pond Nos. 1-4 are not decreed and no other water rights are diverted from these structures. C. Point of introduction of substitution and exchange supply (exchange-from point): On Monument Creek at the outfall of the Tri-Lakes Wastewater Treatment Facility located in the NW1/4 NE1/4 of Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado. D. A map showing the location of the substitution and exchange reach on Monument Creek, Dirty Woman Creek and the unnamed tributary of Dirty Woman Creek, the locations of the Woodmoor Pines Golf Pond Nos. 1-

4 and the location of the Tri-Lakes Wastewater Treatment Facility outfall is attached to the application as Appendix 1. **5. Water and water rights to be used for substitution and exchange supply:** A. Fully consumable return flows resulting from use of Applicant's tributary, not nontributary and nontributary Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifer groundwater decreed in Case Nos. W-2647, W-4544, 80CW169, 81CW230 and 81CW231, all District Court, Water Division 2, and in Case No. 02CW25, District Court, Water Division 1, and to be decreed in pending Water Division 2 Consolidated Case Nos. 07CW104 (Water Division 2) and 08CW263 (Water Division 1). (1) Dates decrees entered, Case Nos. and courts: (a) March 29, 1974 and June 13, 1980, Case No. W-2647, and November 1, 1982, Case No. 80CW170 (plan for augmentation), District Court, Water Division 2 (Woodmoor Well Nos. 1 through 8). (b) February 26, 1982, Case No. W-4544 and November 1, 1982, Case No. 80CW170 (plan for augmentation), District Court, Water Division 2 (Woodmoor Well No. 9). (c) April 24, 1984, Case No. 80CW169 and November 1, 1983, Case No. 80CW170 (plan for augmentation), District Court, Water Division 2 (Woodmoor Well No. 10). (d) December 28, 1987, Case No. 81CW230 and June 14, 1990, Consolidated Case Nos. 87CW067, 88CW100 and Water Division 1 88CW218 (plan for augmentation), District Court, Water Division 2 (Woodmoor Well Nos. DA-1 through DA-4 and additional Dawson aquifer wells and DEN-1, DEN-2 and DEN-4 and additional Denver aquifer wells). (e) December 28, 1987, Case No. 81CW231 and June 14, 1990, Consolidated Case Nos. 87CW067, 88CW100 and Water Division 1 88CW218 (plan for augmentation), District Court, Water Division 2 (Woodmoor Well Nos. DEN-3 and additional Denver aquifer wells, A-1 through A-6 and additional Arapahoe aquifer wells, unnamed Arapahoe aquifer well and additional Arapahoe aquifer wells, and LFH-1 through LFH-6 and additional Laramie-Fox Hills aquifer wells). (f) February 20, 2003, Case No. 02CW25, District Court, Water Division 1 (not nontributary Dawson and Denver aquifer ground water and nontributary Denver, Arapahoe and Laramie-Fox Hills aquifer groundwater). (g) Pending, Water Division 2 Consolidated Case Nos. 07CW104 (Water Division 2) and 08CW263 (Water Division 1) (nontributary Denver, Arapahoe and Laramie-Fox Hills aquifer groundwater and not nontributary Dawson, Denver and Arapahoe aquifer groundwater). (2) Type of water rights: Tributary, nontributary and not nontributary Denver Basin groundwater rights. (3) Sources of water: Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers within the Denver Basin. (4) Amounts: Pursuant to the decrees identified in paragraphs 5.A.(1) (a) - (f), the following average annual amounts may be withdrawn by Applicant from the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers through the wells described in said decrees and such additional wells as are provided for in the decrees in Case Nos. 81CW230, 81CW231 and 02CW25: Dawson aquifer, 730 acre feet tributary and 1713.6 acre feet not nontributary; Denver aquifer, 1038.9 acre feet not nontributary and 237.2 acre feet nontributary; Arapahoe aquifer, 160 acre feet not nontributary and 1485.6 acre feet nontributary; Laramie-Fox Hills aquifer, 959.4 acre feet nontributary. The estimated average annual amounts available to Applicant underlying the lands subject to the application pending in Water Division 2 Consolidated Case Nos. 07CW104 (Water Division 2) and 08CW263 (Water Division 1), which conform to the State Engineer's determinations of fact for those applications, are as follows: Dawson aquifer, 385.3 acre feet not nontributary; Denver aquifer, 160.8 acre feet not nontributary and 164.8 acre

feet nontributary; Arapahoe aquifer, 16.5 acre feet not nontributary and 223.4 acre feet nontributary; Laramie-Fox Hills aquifer, 115.0 acre feet nontributary. (5) Decreed uses: (a) Case No. W-2647, Well Nos. 1 through 7: Municipal purposes, including use and reuse to extinction of return flows in excess of augmentation deliveries required pursuant to the decree in Case No. 80CW170. (b) Case No. W-2647, Well No. 8: Municipal, domestic and recreational purposes, including use and reuse to extinction of return flows in excess of augmentation deliveries required pursuant to the decree in Case No. 80CW170. (c) Case No. W-4544: Municipal purposes, including use and reuse to extinction of return flows in excess of augmentation deliveries required pursuant to the decree in Case No. 80CW170. (d) Case No. 80CW169: Use, reuse, successive use and complete disposition for municipal, domestic, industrial, commercial, irrigation, stockwatering, recreation, fish and wildlife, fire protection, and any other beneficial purposes, including augmentation purposes. (e) Case Nos. 81CW230 and 81CW231: Use, reuse, successive use and complete disposition for all municipal purposes, including domestic, agricultural, industrial, commercial, irrigation, stockwatering, fire protection, recreation, fish and wildlife preservation and propagation, and for all other beneficial purposes, including exchange, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to § 37-90-137(9)(b), C.R.S., and all augmentation purposes. (f) Case No. 02CW25: All beneficial purposes. (g) Pending, Water Division 2 Consolidated Case Nos. 07CW104 (Water Division 2) and 08CW263 (Water Division 1): Use, reuse, successive use and complete disposition for all existing and future beneficial uses, including municipal, domestic, industrial, commercial, fire protection, irrigation, stockwatering, recreation, fish and wildlife preservation and propagation, and for all other beneficial purposes, exchange, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to § 37-90-137(9)(b), C.R.S., and all augmentation purposes.

B. Fully consumable return flows resulting from use of water diverted by Applicant pursuant to the appropriative rights of substitution and exchange decreed in Case Nos. 87CW67 (Dirty Woman Creek Exchange) and 94CW73 (Monument Creek Exchange), District Court, Water Division 2. (1) Dates decrees entered, Case Nos. and courts, type of water rights, legal descriptions of points of diversion, sources, appropriation dates, amounts, decreed uses: (a) June 14, 1990, Consolidated Case Nos. 87CW067, 88CW100 and 88CW218, District Court, Water Division 2; February 3, 1997, Case No. 96CW67, District Court, Water Division 2, decree finding diligence and making partially absolute; June 21, 2004, Case No. 03CW222, District Court, Water Division 2, decree finding diligence and making partially absolute. (b) June 4, 1996, Case No. 94CW73, District Court, Water Division 2; February 27, 2003, Case No. 02CW83, District Court, Water Division 2, decree finding diligence; pending, Case No. 09CW31, District Court, Water Division 2, application for finding of reasonable diligence and to make partially absolute. (2) Type of water rights: Appropriative rights of substitution and exchange. (3) Legal descriptions of points of diversion by exchange (exchange-to points): (a) Case Nos. 87CW67, 88CW100 and 88CW218: Well No. QAL-3: In the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 13, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1400 feet from the west section line and 1900 feet from the north section line of said Section 13. Well No. QAL-4 a/k/a QAL-4T (Permit No. 037840-F): In the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 13, Township 11 South, Range 67 West

of the 6th P.M., El Paso County, Colorado, at a point approximately 2000 feet from the east section line and 1300 feet from the north section line of said Section 13. Well No. QAL-5: In the NW¼ of the SE¼ of Section 11, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1400 feet from the east section line and 2100 feet from the south section line of said Section 11. Well No. QAL-6: In the NE¼ of the NW¼ of Section 14, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 2500 feet from the west section line and 1000 feet from the north section line of said Section 14. Well No. QAL-7: In the NW¼ of the NE¼ of Section 22, Township 11 South, Range 67 West, of the 6th P.M., El Paso County, Colorado, at a point approximately 2000 feet from the east section line and 1200 feet from the north section line of said Section 22. (b) Case No. 94CW73: On the east bank of Monument Creek at a point in the SW1/4 SE1/4, Section 22, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, located approximately 800 feet north of the south section line and 1900 feet west of the east section line of said Section 22. (4) Sources, appropriation dates, amounts, decreed uses: (a) Case Nos. 87CW67, 88CW100 and 88CW218: Source: Dirty Woman Creek; Appropriation Date: June 30, 1987; Amount: 1.56 cfs (700 gpm), 0.97 cfs (435 gpm) of which was made ABSOLUTE for irrigation use in Case Nos. 96CW67 and 03CW222; Decreed Use: Use, reuse, successive use and complete disposition for all municipal purposes, including domestic, agricultural, industrial, commercial, irrigation, stock watering, fire protection, recreation, fish and wildlife preservation and propagation and all other beneficial purposes, including exchange purposes, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to § 37-90-137(9)(b), C.R.S., and all augmentation purposes. (b) Case No. 94CW73: Source: Monument Creek; Appropriation Date: May 5 1992; Amount: 2.23 cfs (1,000 gpm); Decreed Use: irrigation, stock watering, fire protection, recreation, fish and wildlife preservation and propagation and for all other beneficial purposes, including recharge of Denver Basin aquifers, exchange purposes, replacement of depletions resulting from the use of water from other sources, relinquishment pursuant to § 37-90-137(9)(b), C.R.S., and all augmentation purposes. The water diverted by substitution and exchange is fully consumable and may be used, reused, successively used and completely disposed of for the above-described purposes. C. Direct discharge of Applicant's nontributary and fully augmented tributary and not nontributary Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifer groundwater decreed in Case Nos. W-2647, W-4544, 80CW169, 81CW230 and 81CW231, all District Court, Water Division 2, and in Case No. 02CW25, District Court, Water Division 1, and to be decreed in pending Water Division 2 Consolidated Case Nos. 07CW104 (Water Division 2) and 08CW263 (Water Division 1), as more fully described in paragraph 5.A. above. D. Other fully consumable water legally available to Applicant that can be delivered to Monument Creek at the outfall of the Tri-Lakes Wastewater Treatment Facility, the location of which is described in paragraph 4.C. above. **6. Source**: The source of the water to be diverted by exchange under the subject appropriative right of substitution and exchange is an unnamed tributary of Dirty Woman Creek, a tributary of Monument Creek. The source of the water and water rights to be used for the substitution and exchange supply are described in paragraph 5 above. **7. A. Date of initiation of appropriation**: April 8, 2010. **B. How appropriation was initiated**: By formation of intent to

appropriate followed by, among other actions, direction by Applicant's Board of Directors to prepare an application for judicial confirmation of the subject appropriative right of substitution and exchange and operation of the subject appropriative right of substitution and exchange on April 21, 2010. **C. Date water applied to beneficial use:** April 21, 2010. **8. Amount claimed:** 2.5 cfs (1123 gpm), 1.383 cfs (621 gpm) of which is claimed as ABSOLUTE and 1.117 cfs (502 gpm) of which is claimed as CONDITIONAL. **9. Use or proposed use:** Irrigation of Woodmoor Pines golf course located in the SE1/4, S1/2 NE1/4 and E1/2 SW1/4 of Section 12, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, the approximate location of which is shown on the map attached to the application as Appendix 1. **10. Names and addresses of owners of land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored:** Woodmoor Pines Golf and Country Club, LLC, 18945 Pebble Beach Way, Monument, Colorado 80132. WHEREFORE, Applicant requests the Court to enter a decree confirming and approving the above-described appropriative right of substitution and exchange.

CASE NO. 10CW30 – UPPER ARKANSAS WATER CONSERVANCY DISTRICT (“UAWCD”), P. O. Box 1090, Salida, CO 81201 and HERMIT BASIN LODGE, LLC, (“HBL”), 1699 Camino Road, Westcliffe, CO 81252 (Please send all correspondence and pleadings to Applicants' attorneys: Bratton Hill Wilderson & Lock, LLC, Attorneys for UAWCD, 525 North Main Street, Gunnison, CO 81230, (970) 641-1903, **AND** Trout Raley Montaño Witwer & Freeman, PC, Attorneys for HBL, 1120 Lincoln St., Ste. 1600, Denver, CO 80203, (303) 339-5824)

Application for Change of Water Right

CHAFFEE, CUSTER, FREMONT and PUEBLO COUNTIES

Nature and Purpose of Application. Applicant UAWCD is a water conservancy district organized under the provisions of the Water Conservancy Act, now in C.R.S. §§ 37-45-101 et seq. As such, UAWCD has broad powers to facilitate the beneficial use of water within its boundaries. To that end, this is an application for change of water rights to use the water rights described in Paragraph 3 of this Application (the “HBL Water Rights”) as a source of replacement water under the plans for augmentation currently pending in Case Nos. 09CW85 and 09CW86, and the plan for augmentation decreed in Case No. 06CW32 (collectively, these plans will be referred to in this Application as the “Plans for Augmentation.”). In Case No. 09CW85, UAWCD is seeking conditional appropriative rights of exchange and approval of a plan for augmentation in the Grape Creek drainage basin located in portions of Custer County and Fremont County. In Case No. 09CW86, UAWCD is seeking conditional appropriative rights of exchange and approval of a plan for augmentation in the Texas Creek drainage basin located in portions of Custer County and Fremont County. The applications in these two cases state that UAWCD is in the process of acquiring title to certain water rights referred to as the “Hermit Basin Lodge rights,” and that UAWCD would file a separate application to change such rights to be used in those respective augmentation plans. This Application is that “separate application” referred to in the applications filed in Case Nos. 09CW85 and 09CW86. In Case No. 06CW32, UAWCD obtained approval of a plan for augmentation covering portions of Chaffee and Fremont counties. As explained below,

the decree in this case allowed for additional sources of replacement water to be subsequently included in that plan for augmentation. Applicant HBL currently holds title to the HBL Water Rights. UAWCD, acting by and through the Upper Arkansas Water Activity Enterprise (the "Enterprise"), has entered into a contract to acquire title to a portion of the HBL Water Rights. This Application is not seeking to change the Plans for Augmentation by changing the geographic area covered, the types of uses covered, or in any other manner except for making the HBL Water Rights available as an additional source of replacement water. **Decreed water right for which change is sought.**

Name of Structure. A KATZENSTEIN DITCH NO. 1 (Priority Nos. 51 and 207(B)).

Date of Prior Decrees, Case Numbers, and Court. The A. Katzenstein Ditch No. 1 water rights were originally decreed by the Fremont County District Court by a decree entered March 12, 1896. The A. Katzenstein Ditch No. 1 water rights were changed for use in a plan for augmentation by the decree of the District Court, Water Division 2, entered in Case No. W-4321 on January 17, 1977. This change was vacated by the decree of the District Court, Water Division 2, entered in Case No. 95CW09 on September 4, 1996. The A. Katzenstein Ditch No. 1 water rights were changed for use in a plan for augmentation by the decree of the District Court, Water Division 2, entered in Case No. 95CW10 on August 4, 1998. A. Katzenstein Ditch No. 1 water rights were changed to allow an alternate point of diversion at the location described below by decree of the District Court, Water Division 2, entered in Case No. 00CW42 on February 12, 2001. **Legal Description:** The original decreed location of the A. Katzenstein Ditch No. 1 headgate is on the left (northwest) bank of Middle Taylor Creek (aka West Taylor Creek) at a point whence the West quarter corner of Section 20, Township 22 South, Range 73 West of the 6th Principal Meridian bears North 58° 15' West at a distance of 2,900 feet, such point being in the SE1/4NW1/4 of said Section 20. In Case No. 00CW42, A. Katzenstein Ditch No. 1 was decreed an alternate point of diversion at a point located on the north (left) bank of Middle Taylor Creek in the NE1/4NW1/4 of Section 28, Township 22 South, Range 73 West, 6th P.M., Custer County, Colorado, at a point whence the Northwest corner of said Section 28 bears North 86° 31' West a distance of 2,058 feet. **Decreed Source:** Middle Taylor Creek (aka West Taylor Creek). **Appropriation Date:** March 30, 1873 (Priority 51) and July 1, 1878 (Priority 207(B)). **Total Amount Decreed to Structure:** 1.86 cubic feet per second ("c.f.s."). **Decreed Uses:** The A. Katzenstein Ditch No. 1 water rights are currently decreed for use in HBL's plan for augmentation decreed in Case No. 95CW10, that is, for year-round replacement of out-of-priority depletions caused by any and all beneficial uses of water within HBL's Conquistador development, including the Priestly-Robbins addition thereto, in Custer County, Colorado. The water rights to be augmented under the plan were decreed for the following beneficial uses: domestic, irrigation (in general) and landscape irrigation, commercial, fire fighting, recreational (including snowmaking), in-storage aesthetic, municipal, industrial, fish and wildlife propagation, augmentation and exchange. The decree also authorized HBL to change the amount or type of water uses augmented under the plan, provided that out of priority depletions from such uses do not exceed the amount of augmentation water available.

Name of Structure. CONQUISTADOR RESERVOIR NO. 1. **Date of Prior Decrees, Case Numbers, and Court.** Originally decreed by the District Court, Water Division 2, on August 1, 1978, in Case No. W-4320. Decreed for use in a plan for augmentation by

the decree of the District Court, Water Division 2, entered in Case No. W-4321 on January 17, 1977. This plan for augmentation was vacated by the decree of the District Court, Water Division 2, entered in Case No. 95CW09 on September 4, 1996. A finding of reasonable diligence was made by the District Court, Water Division 2, on January 28, 1983 (nunc pro tunc December 23, 1982) in Case No. 82CW118. The place of storage was changed (as provided below) by decree of the District Court, Water Division 2, dated January 9, 1987, in Case No. 86CW67. A finding of reasonable diligence was made by the District Court, Water Division 2, on January 9, 1987 in Case No. 86CW69. A finding of reasonable diligence was made by the District Court, Water Division 2, on January 11, 1994 in Case No. 93CW4. The Conquistador Reservoir No. 1 water rights were changed for use in HBL's plan for augmentation by the decree of the District Court, Water Division 2, entered in Case No. 95CW10 on August 4, 1998. In Case No. 00CW3, on September 27, 2001, the District Court for Water Division 2 decreed as absolute a storage right for 134.6 acre-feet (and the remaining conditional 15.4 acre-feet was declared to be abandoned). In Case No. 00CW42, by decree of the District Court, Water Division 2, dated February 12, 2001, the point of diversion for the A. Katzenstein Ditch No. 1, which is a source of water for the Conquistador Reservoir No. 1, was changed to allow an alternate point of diversion at the location described below. **Legal Description:** SE1/4 of Section 21, Township 22 South, Range 73 West of the 6th P.M., in Custer County, Colorado. **Decreed Source:** Middle Taylor Creek at the A. Katzenstein Ditch No. 1 head gate and the A. Katzenstein Ditch No. 1 alternate point of diversion, local surface runoff and groundwater infiltration. **Appropriation Date:** Conquistador Reservoir No. 1 may be filled under its own priority date of July 28, 1975, and it may also store water diverted under the A. Katzenstein Ditch No. 1 water rights, with priority dates of March 30, 1873 and July 1, 1878. **Total Amount Decreed to Structure:** 134.6 acre-feet. **Decreed Uses:** Conquistador Reservoir was decreed for the following uses in Case No. W-4320: Municipal, domestic, industrial, irrigation, recreation, fish and wildlife propagation, snowmaking, augmentation and exchange. Under the decree in Case No. 95CW10, Conquistador Reservoir can store water to replace year-round out of priority depletions caused by uses of water pursuant to the plan decreed therein. The water rights to be augmented under the plan were decreed for the following beneficial uses: domestic, irrigation (in general) and landscape irrigation, commercial, fire fighting, recreational (including snowmaking), in-storage aesthetic, municipal, industrial, fish and wildlife propagation, augmentation and exchange. The decree also authorized HBL to change the amount or type of water uses augmented under the plan, provided that out of priority depletions from such uses do not exceed the amount of augmentation water available. **Amount of Water that Applicant Intends to Change:** In Case No. 95CW10, the Court determined that average annual historic diversions by the A. Katzenstein Ditch No. 1 equaled 177.2 acre-feet per year. The decree limited diversions during any consecutive 10-year period to 1,772 acre-feet, and limited monthly diversions as follows: May: 90.45 acre-feet; June: 110.68 acre-feet; July: 114.37 acre-feet; August: 109.25 acre-feet; September: 25.82 acre-feet and October through April: 0 acre-feet. In Case No. 95CW10, the Court also determined that the historical irrigation efficiency was 60%, and that return flows were equal to 40% of diversions. As such, the Court quantified the average historic consumptive use ("HCU") of the A. Katzenstein Ditch No. 1 water rights at 106 acre-feet

per year. At the same time, 100% of the water that is stored in Conquistador Reservoir No. 1 under its own priority can be used for augmentation purposes. The decree in Case No. 95CW10 provided that “Any stream depletion credits or augmentation water stored in Conquistador Reservoir No. 1 in excess of what is needed to replace out-of-priority depletions in any year hereunder, may be leased or sold to others, provided that the Division Engineer shall be notified of such lease or sale. Any such sale or lease shall reduce the amount of out-of-priority depletions that can be augmented hereunder, and no such augmentation water can be used unless approved by a decree of this court or a substitute supply plan by the State Engineer.” The Conquistador development, including the Priestly-Robbins Addition thereto, has not reached, and will not reach, the level of development anticipated by the decree in 95CW10. As a result, out of priority depletions have been, and will continue to be, much smaller than the maximum amount contemplated by the decree in 95CW10. By way of example, HBL does not anticipate any snowmaking use in the future, and it plans to reduce the number of single family dwelling from 88 to 31. Therefore, excess stream depletion credits and augmentation water from the HBL Water Rights are available for sale by HBL. Applicant UAWCD, acting by and through the Enterprise, has entered into a contract with Applicant HBL to purchase all of the fully consumable water produced from the HBL Water Rights which is actually available for augmentation purposes each year, excepting only that water which is necessary to satisfy HBL’s augmentation obligation for such year. The current annual consumptive use of the development is approximately 2.507 acre-feet, and the anticipated annual consumptive use at build-out is now approximately 6.1 acre-feet. Because it is impossible to know precisely what HBL’s augmentation requirements will be in each year, in the interest of simplicity and judicial economy, Applicants request a decree that changes all of the fully consumable water produced from the HBL Water Rights to add the places of use, places of storage and types of uses described below but which recognizes that, in any given year, UAWCD will only be able to use that quantity of water for the additional uses described below not required to meet HBL’s augmentation obligations under the plan for augmentation decreed in 95CW10. The use of the HBL Water Rights to meet HBL’s augmentation obligations under the decree in 95CW10 will be subject to the terms of that decree and not the decree entered upon this application. HBL has operated under the plan for augmentation decreed in 95CW10 since 1998, and as such it has developed an accounting system that the Division Engineer and Water Commissioner have found to be acceptable. As such, accounting for the determination of fully consumable water and return flow maintenance will not change except to the extent necessary to allocate water between HBL and UAWCD. **Statement of Change.** Applicant UAWCD seeks to change the place of use, place of storage, and type of beneficial use of the HBL Water Rights by adding use in the Plans for Augmentation. A map that was attached to the decree in Case No. 95CW10 showing the location of the Conquistador Reservoir No. 1, the Katzenstein Ditch No. 1 and its alternate point of diversion, and the location of the current place of use of the water rights augmented under the plan for augmentation decreed in Case No. 95CW10 is attached to the Application as Exhibit A and hereby incorporated into this Application by reference. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court.) **Place of Use.** UAWCD seeks to change the place of use of the HBL Water Rights to allow, in addition to the

currently decreed places of use, augmentation of structures identified in, and pursuant to, the Plans for Augmentation, in those portions of Custer, Fremont, and Chaffee counties shown on the maps attached to the Application as Exhibits B, C, and D. Exhibits B and C were also attached to the applications in Case Nos. 09CW85 and 09CW86, and Exhibit D was also attached to the Decree in Case No. 06CW32. All are hereby incorporated by reference into this Application and available for inspection at the office of the Clerk for Water Division 2. **Place of Storage.** UAWCD seeks to change the place of storage of the HBL Water Rights to include, in addition to the currently decreed places of storage, the following places of storage: Pueblo Reservoir, which 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 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, 24 and 25, in Township 20 South, Range 67 West, all in the 6th P.M. in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th P.M., from which the Northeast corner of said Section bears North 61° 21'20" East, a distance of 2,511.05 feet, all more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado, in Pueblo County. DeWeese Reservoir. The southeasterly corner of the dam of said reservoir is North 41°37' East, and is distant 758.7 feet from the Northeast Corner of Section 20, T. 21 S., R. 72 W., 6th P.M., in Custer County. **Type of Use.** To the extent that the HBL Water Rights may not already be decreed for augmentation of all beneficial uses, UAWCD seeks to change the beneficial use of the HBL Water Rights to allow, in addition to the currently decreed uses, their use as replacement water for all authorized uses described in the Plans for Augmentation, including as a source of replacement water for the appropriative rights of exchange included in these Plans for Augmentation. UAWCD may divert water under the HBL Water Rights and store such water in Conquistador Reservoir No. 1 for subsequent release, or it may divert water under the HBL Water Rights for measurement at the headgate of the A. Katzenstein Ditch No. 1 and immediately return such water to the stream. Water that is released from Conquistador Reservoir No. 1 or water that is diverted at the headgate of the A. Katzenstein Ditch No. 1, measured, and returned to the stream may be (1) immediately used for augmentation purposes pursuant to the Plans for Augmentation; (2) stored in one of the downstream reservoirs identified in paragraph 4(b) above for later use pursuant to the Plans for Augmentation; or (3) stored via one of the appropriative rights of exchange identified in pending Case No. 09CW85, 09CW86, or 04CW96, via administrative exchange, or via contract exchange in one of the reservoirs identified in the Plans for Augmentation for later use pursuant to the Plans for Augmentation. **Owners of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored.** Conquistador Reservoir No. 1 is primarily located on Lot 6, Conquistador Filing No. 1, Custer County, Colorado, which is owned by Paul Zeller and C. Jean Zeller. Conquistador Reservoir No. 1 is also partially located on Lot 7, Conquistador Filing No. 1, Custer County, Colorado, which is owned by James D. Hood and Frankie B. Hood. Pueblo Reservoir is owned by the United States of America and managed by the Bureau of Reclamation, U.S. Department of the Interior, Eastern

Colorado Area Office, 11056 W. County Road 18-E, Loveland, CO 80537. DeWeese Reservoir is owned by DeWeese-Dye ditch and Reservoir Company, 1631 Chestnut Street, Canon City, CO 81212.

CASE NO. 10CW31 – CRIPPLE CREEK & VICTOR GOLD MINING COMPANY, c/o Wayne M. Chancellor, Esq., AngloGold Ashanti North America, 7400 East Orchard Road, Suite 350, Greenwood Village, CO 80111 (Michael D. Shimmin and Nathan B. Rand, Vranesh & Raisch, LLP, Attorneys for Applicant, 1720 14th Street, Suite 200, Boulder, CO 80302; (303) 443-6151)

Application for Approval of Plan for Augmentation

TELLER AND FREMONT COUNTIES

2. Name of structures to be augmented: Cripple Creek & Victor Gold Mining Company (“CC&V”) operates an ongoing surface mining operation (“Cresson Project”) in Teller County near Victor, Colorado. A general area map of the Cresson Project is attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court.) Several phases of the Cresson Project have already been built. Replacement of stream depletions attributable to the previous phases of the Cresson Project is the subject of an augmentation plan already pending in Case No. 02CW122, Water Division 2. CC&V is now extending its mining operations as part of the Cresson Project under a revision referred to as the Mine Life Extension (“MLE”), as approved by the Office of Mined Land Reclamation. A component of the MLE includes an expansion of the existing Valley Leach Facility (“VLF”) known as Phase 5 (“Phase 5”). A map depicting the location of Phase 5 of the VLF is attached to the Application as Exhibit B. Phase 5 is an expansion of the VLF which does not change the mining operations or stream depletions associated with the previous phases of the Cresson Project that are covered by the augmentation plan in Case No. 02CW122. However, operation of the MLE of the Cresson Project may result in a reduction of the runoff of precipitation to streams that will be captured by mine facilities, resulting in a potential decrease in the amount of water available to downstream users. The following structures to be built as part of the MLE may require augmentation: 2.1 Facilities or areas with an underlain impermeable liner or other impervious surface (“Lined Areas”); and 2.2 Detention ponds that will result in evaporation of water captured out of priority (“Detention Ponds”). The purpose of this application is to obtain a decreed augmentation plan to replace out of priority stream depletions caused by the Lined Areas and Detention Ponds. The location of the structures to be augmented are in Sections 17, 18, 19, 29, and 30, Township 15 South, Range 69 West of the 6th P.M., as depicted in Exhibit B. **3. Water rights to be used for augmentation:** The water that will be used to replace out of priority depletions will be purchased by CC&V through contracts with the City of Victor and/or the City of Colorado Springs. CC&V has an agreement with the City of Victor that provides for delivery of up to 1,300 acre feet per year of water to the Cresson Project, and a portion of this water will be released to replace out-of-priority depletions. This water will be derived from any water right which is owned by the City of Victor and available for this use. The water rights owned by the City of Victor are summarized in the following table.

City of Victor Water Rights			
Name of Right	Appropriation Date	Adjudication Date	Amount
Glendale Ditch	4-15-1861	2-03-1894	1.0 cfs ¹
Callen Ditch	5-30-1861	2-03-1894	
Johnson Ditch	5-20-1864	2-03-1894	0.25 cfs
Johnson Ditch	4-01-1865	2-03-1894	0.75 cfs
Upper & Lower Pipelines	9-24-1893	2-14-1916	1.0 cfs
Upper Reservoir	9-24-1893	2-14-1916	7.97 AF
Middle Reservoir	9-24-1893	2-14-1916	1.53 AF
Lower Reservoir	9-24-1893	2-14-1916	12.28 AF
Victor Pipeline	5-06-1895	3-13-1954	4.8 cfs
Victor Reservoir No. 2	8-14-1897	3-13-1954	202.77 AF
Bison Park Reservoir	6-07-1907	3-13-1954	1,147.84 AF
Note: ¹ The City owns 0.296 cfs in the Glendale Ditch and 0.92 cfs in the Callen Ditch. In Case No. 2637, the diversions under the two rights are limited to a total of 1.0 cfs.			

CC&V also has an agreement with the City of Colorado Springs to purchase water as a backup source which will be released to replace out of priority stream depletions if needed. This water is fully consumable raw water yielded by the Colorado Springs water rights and is available for this use. In addition, CC&V has applied for conditional water rights and exchange rights in Case No. 98CW115 and any rights adjudicated in that case may be used to replace out of priority depletions. **4. Historic Use:** The replacement water sources listed above are or will be decreed as fully consumable for the uses to be made by CC&V. Therefore, the historic use of these augmentation sources is not at issue in this case. **5. Plan for Augmentation:** Operation of the MLE of the Cresson Project may result in a reduction in the runoff of precipitation to streams, including Fourmile Creek and Beaver Creek, which are tributary to the Arkansas River. The reduction in runoff may result in a decrease in the amount of water available to downstream users. Much of the Cresson Project is geographically situated within the limits of a volcanic diatreme. See Exhibit B. The material inside of the diatreme is relatively porous. The diatreme is generally surrounded by comparatively lower permeability granite. Prior to mining activity, the diatreme contained groundwater that was prevented from escaping into the surface streams by the surrounding granite. Over the years, several historic drainage tunnels were created to provide drainage of water from the diatreme, the last and largest being the Carlton Tunnel, completed in 1941. Because of the relatively porous nature of the materials within the diatreme, practically all of the naturally occurring precipitation falling inside of the diatreme boundary percolates and returns to Fourmile Creek via the Carlton Tunnel. As a result, replacement supplies for all mining operations within the diatreme boundary or on the southerly side are delivered through the Carlton Tunnel into the Fourmile Creek basin. Replacement supplies for mining operations within a close proximity to or outside of the northerly diatreme boundary are delivered to West Beaver Creek via Grassy Creek. See Exhibit B. The location of the Lined Areas and Detention Ponds and their respective tributary basins are listed in **Tables 1 and 2**, below. The configuration of

MLE activities are dictated by numerous factors, including CC&V's mining permit, future discoveries, commodities prices, mine economics, and advances in technologies. Based upon the current and future operations presently anticipated for the MLE, CC&V proposes to provide replacement water for the following activities or facilities for the MLE of the Cresson Project: - Lined Areas; and - Detention Ponds. The amount of replacement water needed for each of these activities or facilities as well as the plan for augmentation is described below. **A. Lined Areas.** Gold is recovered from ores using an extraction process in which a weak cyanide solution is applied to the mined ore and allowed to percolate down through the ore on the VLF, at which point it is recaptured and cycled through a beneficiation facility. To contain the solution and protect the environment, the VLF is lined with an impervious multiple liner system. The VLF also intercepts and contains naturally occurring precipitation that falls on the Lined Areas. Accordingly, operation of these Lined Areas may cause a depletion of the natural streamflows of Fourmile Creek that may cause injury to other water users on these tributary streams and/or the Arkansas River. Although the Lined Areas will change incrementally through construction of Phase 5 of the VLF and with the eventual reclamation of the Lined Areas, this plan addresses replacement water requirements based upon the maximum existing and presently planned operations for MLE of the Cresson Project and provides for annual monitoring of the size of the Lined Areas within for the MLE of the Cresson Project. In the event that Lined Areas are reclaimed, replacement water may no longer be required for these areas. The accounting forms will reflect changes in the size of the Lined Areas. The Lined Areas planned for the MLE of the Cresson Project at this time are listed in **Table 1**.

Table 1
CC&V Phase 5
Lined Areas and Tributary Basin
(acres)

Area Description	Current Total Area	Current Fourmile Creek (Outside the Diatreme Area)*	Current Fourmile Creek (Inside the Diatreme Area)
Valley Leach Facility, Phase 5	122.30	87.30	35.00
Fresh Water Pond at Fuel Island	0.12		0.12
New Crusher Pond	1.14		1.14
Ames Containment Cell	0.03		0.03
Buckley Containment Cell	0.10		0.10
AK Drilling Containment Cell	0.06		0.06
Totals	123.75	87.30	36.45

*There are no depletions to the Beaver Creek drainage basin associated with Lined Areas that are located outside of the diatreme in this application.

The locations of the Lined Areas are depicted in Exhibit B. The Lined Areas in **Table 1** also include small ponds or containment cells, which may be lined with concrete or other impervious surfaces. CC&V will provide sufficient amounts of replacement water to replace the depletions caused by the interception of the natural precipitation for these Lined Areas. The amount of water required for replacement under this part of the plan will equal the amount of runoff that would have historically occurred from the Lined Areas prior to construction of Phase 5 of the VLF, ponds and containment cells. This amount is determined by estimating the unit runoff that would have occurred in the pre-construction condition and multiplying that unit runoff times the acreage of the lined

areas. The historic unit runoff value has been calculated to be 1.29 inches per acre annually (or 0.107 acre-foot per acre) considering historic records of stream flow in the Fourmile Creek drainage basin, and taking into account the man-caused depletions and return flows upstream of the gauging station. This historic runoff value of 0.107 acre-foot per acre also takes into account the annual precipitation patterns in the vicinity of the Cresson Project. Therefore, the depletion to Fourmile Creek associated with the existence of the Lined Areas planned at this time is estimated to be 13.24 acre-feet per year (123.75 acres x 0.107 = 13.24 ac-ft). As noted above, the size of the Lined Areas associated with the MLE of the Cresson Project will be monitored and replacement water will be distributed as needed. Replacement water will be used to replace the depletions to Fourmile Creek associated with these Lined Areas and will be measured and delivered on a monthly basis to match replacement requirements. A monthly accounting form has previously been developed and used to report to the Division of Water Resources the acreage underlain by an impermeable liner within the Cresson Project, the calculated stream depletions, and the amount of replacement water deliveries. These forms will continue to reflect changes to the configuration of Lined Areas over time.

B. Detention Ponds. CC&V has developed a storm water management plan for the MLE of the Cresson Project. The storm water management plan includes construction of structures such as sediment detention ponds, ditches, and sumps to capture runoff of precipitation and allow settling of solids. The majority of the storm water controls are either conveyances (e.g., ditches, channels, culverts, etc.) that direct water from one location to another without impoundment or are quite small in size and do not detain water for long periods of time or are not in place for extended periods. The Detention Ponds, which may hold water during larger precipitation events, are predominantly excavations with embankments of limited height. Spillways and permeable bottoms allow release and percolation of water from the sediment detention ponds. There may be short periods, however, when evaporation may occur from these ponds. The ponds are intentionally oversized to contain the runoff volume expected from two consecutive 10-year, 24-hour precipitation events as part of the Enhanced Management Practices (“EMP”) in place. An event of this magnitude is very unlikely, and the ponds, therefore, will seldom approach capacity. This plan for augmentation addresses the potential need to replace water that evaporates from these structures. The eight Detention Ponds associated with this application are listed in **Table 2**. The locations of these Detention Ponds are depicted in Exhibit B. Four of the Detention Ponds are located within the diatreme boundary where depletions will occur to Fourmile Creek. Four of the Detention Ponds are located in areas where depletions will occur to West Beaver Creek.

Table 2
CC&V Phase 5
Sediment Detention Ponds and Tributary Basin
(acres)

Pond Identification	Approximate Surface Area Fourmile Creek (Inside the Diatreme Area)*	Approximate Surface Area West Beaver Creek
Ironclad Access Road Sediment Pond	0.23	
EMP 8a	0.13	
EMP 8b	0.21	
EMP 9	0.13	
EMP 10		0.13
EMP 15		1.03
EMP 16		0.20
EMP 17		0.53
Total Acres = 2.59	0.7	1.89

*There are no depletions to the Fourmile Creek drainage basin associated with Detention Ponds that are located outside of the diatreme in this application.

CC&V has developed a methodology for calculating evaporation losses from the Detention Ponds which will be applied for calculating evaporative losses if water is observed in the Detention Ponds for longer than three consecutive days, pursuant to the State Engineer's policy that if ponds that capture precipitation runoff contain water for more than three days after a precipitation event, water is being stored and evaporation losses must be replaced. Unit monthly and daily evaporation rates were determined using *NOAA Technical Report NWS 33, Evaporation Atlas for the Contiguous 48 United States*, June 1982. This is the procedure adopted by the State Engineer in the *General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits*. Annually, at the Cresson Project, the Free Water Surface evaporation is 35.9 inches, effective precipitation is 11.7 inches, and net evaporation is 24.2 inches per unit area. A Pond Evaporation table showing the monthly and daily evaporation rates is shown in **Table 3**.

Table 3
Monthly Net Pond Evaporation Rates
(inches)

	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC
Monthly	0	0	1.4	2.6	3.3	4.5	3.9	2.6	2.9	2.0	1.0	0
Daily Values	0	0	.045	.087	.106	.150	.126	.083	.096	.066	.034	0

The maximum depletions associated with the Detention Ponds in this application would be 1.41 acre-feet to Fourmile Creek and 3.81 acre-feet to West Beaver Creek if the ponds are full year-round, for a total of 5.22 acre-feet. The maximum depletion of 5.22 acre feet is a conservative estimate in light of CC&V's experience at the Cresson Project over the last 16 plus years, wherein the existing EMP ponds have never been full. The following methodology is proposed for determination of evaporation from the Detention Ponds and replacing the water lost: 1. CC&V will measure precipitation. This information will be included in the monthly report to the Division of Water Resources. 2. On the fourth day after a precipitation event of greater than one inch, the ponds will be observed. CC&V will identify any ponds that contain water and

perform the following: - Ponds with water: - Evaporation losses will be calculated as total maximum surface area (from **Table 2**) times the average daily net evaporation rate for the month (from **Table 3**). - Observations will continue until water within the ponds has infiltrated and the calculations made accordingly. Alternatively, in lieu of continual monitoring until dry, CC&V may replace the maximum monthly evaporation value for each pond that contains water for more than three consecutive days. - Ponds with no measurable water: No additional monitoring required. 3. Evaporation losses will be calculated and replaced during the following month. The source and location for delivery of replacement water is set forth in paragraph 5.C, below. **C. Sources and Delivery of Replacement Water.** 1. Sources of Replacement Water. The sources of replacement water are the agreements with the City of Victor and the City of Colorado Springs described in Paragraph 3 above. These agreements provide the CC&V Cresson Project with a total of up to 1,900 acre-feet of water annually, to be used for both direct supply for operations and for replacement water for this augmentation plan and the augmentation plan in Case No. 02CW122. The augmentation plan in Case No. 02CW122 has been requiring an average of approximately 53 acre feet per year of replacement water. The presently estimated maximum amounts of replacement water that may be needed to replace out of priority stream depletions caused by mining activities for the MLE are: 1. Lined Areas = 13.24 acre-feet 2. Detention Ponds = 5.22 acre-feet **Total = 18.46 acre-feet.** The water available for replacement purposes, therefore, will be more than sufficient to replace the out of priority stream depletions for both the previous stages of the Cresson Project and the MLE activities described in this application. 2. Delivery of Replacement Water. Replacements will be made in the appropriate time, location, and amount to prevent injury to water users on Fourmile Creek and West Beaver Creek. a. Fourmile Creek The estimated total amount of replacement water needed to replace stream depletions to Fourmile Creek caused by the MLE is comprised of the following amounts: 1.41 acre-feet attributable to Lined Areas (Inside of the diatreme); 9.34 acre-feet attributable to Lined Areas (Outside of the diatreme); 3.90 acre-feet attributable to Detention Ponds (Inside the diatreme). Water used to replace depletions to Fourmile Creek will be measured and delivered to Arequa Gulch, Wilson Creek, and Fourmile Creek. Deliveries will be made on a monthly basis to match replacement requirements. Deliveries will be made at the following locations to match the location of the depletions as set forth below: Arequa Gulch augmentation station, Bull Hill augmentation station, Wilson Creek augmentation station, City of Victor bleeder valves, and or City of Victor wastewater treatment plant augmentation station. These delivery locations are depicted on Exhibit B. The Arequa Gulch augmentation station is located outside of the diatreme boundary in Arequa Gulch, which is tributary to Cripple Creek and flows into Fourmile Creek upstream of the Carlton Tunnel terminus. See Exhibits A and B. At times when the Colorado Water Conservation Board ("CWCB") instream flow right, decreed in Case No. 00CW103, (in the amount of 9.4 cfs from April 15 through October 14 and 4.5 cfs from October 15 through April 14 ("ISF Right") in the reach of Fourmile Creek that extends downstream from the confluence with Cripple Creek to the Carlton Tunnel on Fourmile Creek ("Cripple Creek ISF Reach") is not satisfied by available stream flow, replacement of depletions associated with Lined Areas outside of the diatreme will be made upstream at the Arequa Gulch augmentation station. Under this plan, releases from the Arequa Gulch augmentation

station will be made to cover the projected maximum 9.34 acre-feet of replacement water attributable to Lined Areas outside of the diatreme when the ISF right is not satisfied. At all other times, replacement can be made at any of the other augmentation stations in the Fourmile Creek drainage basin. The Bull Hill augmentation station is located within the diatreme boundary in the Fourmile Creek drainage basin. See Exhibit B. The beginning of the Carlton Tunnel lies within the same portion of the diatreme and approximately 3,000 feet in elevation below the Bull Hill augmentation station. Water released at the Bull Hill augmentation station percolates into the regional ground water system within the diatreme on a year round basis. After percolating into the regional ground water system, such replacement water is subsequently intercepted by the historical drainage tunnels in the area. After the water passes through the underground tunnel system, it then flows directly into Fourmile Creek at a location which is near the Carlton Tunnel terminus. See Exhibit A. This water flow into Fourmile Creek occurs on a generally constant year-round basis and has historically provided a near constant source of flow since before 1993. The Wilson Creek augmentation station, City of Victor bleeder valves, and City of Victor wastewater treatment plant augmentation station are located outside of the diatreme boundary near Wilson Creek, which is tributary to Fourmile Creek. See Exhibit B. b, West Beaver Creek. The estimated total amount of replacement water needed to replace stream depletions to West Beaver Creek caused by the MLE is comprised of the following amount: 3.81 acre-feet to West Beaver Creek attributable to Detention Ponds (On or outside the diatreme boundary). Replacements will be made by releases from the Grassy Creek augmentation station into Grassy Creek, a tributary of West Beaver Creek. See Exhibit B. Water will be released at the Grassy Creek augmentation station on a monthly basis to match replacement requirements to Beaver Creek. Any potential depletions on or outside of the diatreme boundary area and in the Beaver Creek drainage basin occur in upland situations where there are no live streams. With the exception of short-duration flows in response to unusually heavy precipitation events, depletions to ground water associated with these areas are relatively minor and result in a year-round lagged depletion. c. Accounting and Releases. As described above, the actual configuration of MLE facilities are subject to change, and as a result, the amount of annual replacement water may also change. The types of activities associated with MLE of the Cresson Project requiring replacement (Lined Areas and Detention Ponds), should not change. However, the specific size of the area affected by these activities will change from time to time. CC&V, therefore, proposes to provide through accounting the current amount of replacement water needed using the methodologies described above. The methodology for each type of facility will remain the same, but the Lined Area acreage or the size and number of Detention Ponds, for example, may change, thus altering the amount of replacement water needed to comply with the terms of this augmentation plan. Such changes in configuration are anticipated and included in this plan, and no modification or amendment of this plan will be required for such changes. Changes to the configuration and resulting changes in replacement requirements, will be accounted for using forms similar to those used in the past with the approval of the Division Engineer. Due to the changing configuration of Phase 5 and the relatively small amounts of water involved, Applicant requests that the water commissioner be given discretion to vary the timing and aggregate the releases of replacement water so that

they occur in amounts and at times when they will effectively reach downstream senior water rights, and as part of this aggregation, if there is a shortage of replacement water in one month, it may be made up in the following month, or at such other time as the water commissioner determines is appropriate to protect senior water rights from material injury. CC&V will keep records of the calculated stream depletions and the associated replacement deliveries on forms similar to those used in the past and in a format acceptable to the Division Engineer. Thus, this augmentation plan is sufficient to prevent injury to downstream water rights in the Fourmile Creek and West Beaver Creek basins. **6. Names and addresses of owners of land on which structures will be located, upon which water is or will be stored, or upon which water will be placed for beneficial use:** The Lined Areas, Detention Ponds and the augmentation location in Arequa Gulch are owned or controlled by Applicant: Cripple Creek & Victor Gold Mining Company, P.O. Box 191, 100 North 3rd Street, Victor, Colorado 80860. The owner of the augmentation locations at Bull Hill, WTP, WWTP, the bleeder valves and Wilson Creek Station is: City of Victor, P.O. Box 86, Victor, Colorado 80860. WHEREFORE, CC&V requests that the Court enter a decree which determines that this augmentation plan will not injuriously affect the owners of any decreed water rights or conditional water rights and approves the operation of this augmentation plan.

CASE NO. 10CW34; Previous Case No. 02CW175 - RIVER RIDGE RANCH LANDOWNERS ASSOCIATION, INC. c/o Don Derowitsch, Treasurer, 9288 W Arizona Ave, Lakewood, CO 80232 (Julianne M. Woldridge, MacDougall, Woldridge & Worley, PC, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905, Phone: 719-520-9288)

Application for Findings of Reasonable Diligence

HUERFANO COUNTY

2. Name of structure: River Ridge Ranch Pond. **3. Original Decree:** Case No. 02CW175, Water Division No. 2, May 11, 2004. **4. Legal description:** the dam is in SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 35, T.28S., R.67W., 6th P.M. **5. Source of water:** Nontributary ground water pumped from Rio South Well #1, Well Permit #16861-F, located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 11, T.29S., R.67W., 6th P.M., decreed in Case No. W-4208, District Court, Water Div. No. 2 on June 22, 1976 for municipal, industrial, and commercial uses. **6. Appropriation Date:** December 31, 2002. **7. Amount:** 110 acre-feet per year, fill and refill, conditional. **8. Use:** piscatorial and recreational. **9. 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:** On April 3, 2004, the original owner conveyed the storage right to Applicant. Originally, the pond structure was leased to a third party pursuant to an evaporation pond Agreement dated March 25, 1999. Applicant's interest in this agreement was assigned to Applicant on April 3, 2003. Applicant has maintained its ownership interests in the underlying land, and continued the lease of the pond structure to the third party until it expired in 2009. Applicant's use of the pond structure was limited during the pendency of the temporary easement. From October 2006 until July 2009, Applicant defended its interests in the pond, storage right, and supply well by opposing three water court applications filed by other parties. In 2010, Applicant defended its ownership interest in the storage right and supply well from a third party

claiming some ownership interest in the supply well. Applicant expended approximately \$8,844/90 in legal fees and costs in these efforts. Applicant has maintained its intent to develop the conditional storage right and is discussing financing and structural options for filling the pond now that the subject easement has terminated. **10. Name and address of owner of the land upon which water is or will be stored:** Same as Applicant. Applicant, therefore, requests an Order finding that Applicant has exercised reasonable diligence towards the completion of this appropriation.

CASE NO. 10CW35 – TRES VALLES WEST OWNERS ASSOCIATION, Attn: John Frederick, President, 109 W. Main Street, Trinidad, CO 81082 (Please direct all correspondence to: William H. Caile, Holland & Hart, LLP, Attorneys for Applicant, P. O. Box 8749, Denver, CO 80201-8749; (303) 295-8000)

Application for Water Rights, Change of Water Rights, and Approval of Plan for Augmentation Including Exchange
HUERFANO COUNTY

2. Overview of Application: The Tres Valles West residential subdivision is located near La Veta, Colorado. There are four ponds on the property which are fed by water from the Tres Valles Springs Nos. 2 and 3, tributary to South Abeyta Creek and the Cucharas River. The water rights associated with these springs were decreed in Case No. 79CW107, Water Division 2. This Application seeks conditional water storage rights for the ponds, and approval of a plan for augmentation including exchange to replace out-of-priority depletions associated with surface evaporation from the ponds. Additionally, Applicant requests approval of a change of water right for a 1/60 interest in the Coler Ditch and Reservoir System in order to allow use of these water rights for augmentation in the plan described herein. **CLAIM FOR WATER STORAGE RIGHTS**

3. Name of Reservoirs: Tres Valles Pond Nos. 2-1, 3-1, 3-2, and 3-3 (collectively, "Tres Valles Ponds"). **4. Description of Water Rights:** A. Tres Valles Pond No. 2-1 (i) Legal description: NE ¼ of NE ¼ of Section 4, Township 29 South, Rang 69 West of 6th P.M., at a distance of 1070 feet from the North section line and 875 feet from the East section line (37°33'33.68"N, 105°6'37.62"W). A map depicting the location of the Tres Valles Ponds is attached to the Application as Exhibit 1. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court.) (ii) Source: Tres Valles Spring No. 2, tributary to South Abeyta Creek, tributary to Cucharas River. (iii) Appropriation date: May 28, 2010. (iv) How appropriation was initiated: By formation of necessary intent and overt acts sufficient to put other parties on notice, including but not limited to the filing of the application herein. (v) Date water applied to beneficial use: N/A (vi) Amount claimed: 6.86 acre feet, **CONDITIONAL** (vii) Use: Recreation, piscatorial, aesthetic, fire protection, domestic, stock watering and wildlife. (viii) Surface area at high water line: 1.28 acres. (ix) Approximate vertical height of dam: 38.5 feet. (x) Length of dam: 393 feet. (xi) Total capacity of reservoir: 6.86 acre feet. (xii) Active storage: 6.86 acre feet. (xiii) Dead storage: 0.0 acre feet. B. Tres Valles Pond No. 3-1 (i) Legal description: SW ¼ of NW ¼ of Section 34, Township 28 South, Range 69 West of 6th P.M., at a distance of 2,276 feet from the North section line and 100 feet from the West section line (37°34'14.78"N, 105°6'25.41"W). A map depicting the location of the Tres Valles Ponds is attached to the Application as Exhibit 1. (ii) Source: Tres Valles Spring No. 3, tributary to South

Abeyta Creek, tributary to Cucharas River. (iii) Appropriation date: May 28, 2010. (iv) How appropriation was initiated: By formation of necessary intent and overt acts sufficient to put other parties on notice, including but not limited to the filing of the application herein. (v) Date water applied to beneficial use: N/A (vi) Amount claimed: 2.33 acre feet, CONDITIONAL (vi) Use: Recreation, piscatorial, aesthetic, fire protection, domestic, stock watering and wildlife. (viii) Surface area at high water line: 0.56 acres. (ix) Approximate vertical height of dam: 20 feet. (x) Length of dam: 240 feet. (xi) Total capacity of reservoir: 2.33 acre-feet. (xii) Active storage: 2.33 acre feet. (xiii) Dead storage: 0.0 acre feet. C. Tres Valles Pond No. 3-2 (i) Legal description: NE ¼ of the NW ¼ of Section 3, Township 29 South, Range 69 West of the 6th P.M., at a distance of 920 feet from the North Section Line and 2,150 feet from the West section line (37°33'35.44"N, 105°5'59.97"W). A map depicting the location of the Tres Valles Ponds is attached to the Application as Exhibit 1. (ii) Source: Tres Valles Spring No. 3, tributary to South Abeyta Creek, tributary to Cucharas River. (iii) Appropriation date: May 28, 2010. (iv) How appropriation was initiated: By formation of necessary intent and overt acts sufficient to put other parties on notice, including but not limited to the filing of the application herein. (v) Date water applied to beneficial use: N/A (vi) Amount claimed: 1.19 acre feet, CONDITIONAL (vii) Use: Recreation, piscatorial, aesthetic, fire protection, domestic, stock watering and wildlife. (viii) Surface area at high water line: 0.64 acres. (ix) Approximate vertical height of dam: 14 feet. (x) Length of dam: 260 feet. (xi) Total capacity of reservoir: 1.19 acre feet. (xii) Active storage: 1.19 acre feet. (xiii) Dead storage: 0.0 acre feet. D. Tres Valles Pond No. 3-3 (i) Legal description: SE ¼ of the NW ¼ of Section 3, Township 29 South, Range 69 West of the 6th P.M., at a distance of 1,590 feet from the North section line and 2,070 feet from the West section line (37°33'29.18"N, 105°6'0.89"W). A map depicting the location of the Tres Valles Ponds is attached to the Application as Exhibit 1. (ii) Source: Tres Valles Spring No. 3, tributary to South Abeyta Creek, tributary to Cucharas River. (iii) Appropriation date: May 28, 2010 (iv) How appropriation was initiated: By formation of necessary intent and overt acts sufficient to put other parties on notice, including but not limited to the filing of the application herein. (v) Date water applied to beneficial use: N/A (vi) Amount claimed: 2.54 acre feet, CONDITIONAL (vii) Use: Recreation, piscatorial, aesthetic, fire protection, domestic, stock watering and wildlife. (viii) Surface area at high water line: 0.56 acres. (ix) Approximate vertical height of dam: 15.0 feet. (x) Length of dam: 340 feet. (xi) Total capacity of reservoir: 2.54 acre feet. (xii) Active storage: 2.54 acre feet. (xiii) Dead storage: 0.0 acre feet. 5. Name and Address of Owner of Land Where Structures Are Located: Applicant (see above).

REQUEST FOR APPROVAL OF CHANGE OF WATER RIGHT 6. Decreed Water Right for Which Change is Sought: A one-sixtieth (1/60) interest (the "1/60 Interest") in the Coler Ditch and Reservoir System ("Coler System") as defined, established, and described by the Stipulation between the City of Walsenburg and George Habib and others, Civil Action No. 4468, District Court of Huerfano County, Colorado, dated February 5 1975 (and other agreements mentioned therein), and more particularly described as follows: A. Lake Miriam Ditch: (i) The headgate of the Lake Miriam Ditch, which diverts from the Cucharas River, is located in the Northwest quarter of the Southeast quarter of Section 32, Township 28 South, Range 67 West of the 6th P.M., Huerfano County, Colorado. The Lake Miriam Ditch is the feeder canal for Lake Miriam

Reservoir, Lake Oehm Reservoir, and the Coler Seepage Reservoir. (ii) Lake Miriam Ditch was awarded a decree for a 20 cfs direct flow water right from the Cucharas River, with an appropriation date of March 1, 1884, Priority No. 61, by the District Court of the Third Judicial District, Huerfano County, on June 12, 1889. B. Lake Miriam Reservoir (a/k/a Horseshoe Reservoir): (i) Lake Miriam Reservoir is located in the West half of Section 13 and the Northwest quarter of Section 24, Township 28 South, Range 67 West of the 6th P.M., Huerfano County, Colorado. (ii) Lake Miriam Reservoir was awarded a storage decree for 50,000,000 cubic feet (1,148 acre-feet) of water from the Cucharas River with an appropriation date of April 14, 1901 by the Huerfano County District Court, Water District 16, on October 3, 1921. C. Lake Oehm Reservoir (a/k/a Martin Lake): (i) Lake Oehm Reservoir is located in the East half of Section 13, Township 28 South, Range 67 West of the 6th P.M. and the West half of Section 18, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado. (ii) Lake Oehm Reservoir was awarded a storage decree for 100,000,000 cubic feet (2,296-acre-feet) of water from the Cucharas River with an appropriation date of April 30, 1901 by the Huerfano County District Court, Water District 16, on October 3, 1921. In addition, the Lake Oehm Reservoir Enlargement was decreed for 12,070,000 cubic feet (277 acre-feet) with an appropriation date of November 25, 1905 by the Huerfano County District Court, Water District 16, on October 3, 1921. D. The Coler Reservoir System Cucharas Delivery Flume: Water released to the Cucharas River from storage in the above-described reservoirs is delivered through the Coler Reservoir System Cucharas Delivery Flume, which is located in the Northeast quarter of the Southwest quarter of Section 17, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado at a point approximately 1,600 feet from the West line and 2,150 feet from the South line of said Section 17. E. Civil Actions Nos. 3266 and 3848: On December 30, 1966 in Civil Action Nos. 3266 and 3848 (the "Ackerman Decree"), the Huerfano County District Court, Water District 16, entered a decree changing the above-described Coler System water rights to allow their use as follows: [N]ot only for irrigation, but also for domestic and culinary use, for fire protection, for sewer flushing, for street sprinkling and flushing, for generation of steam and electricity, for manufacturing, for recreation, and for such other purposes and uses as are usual or customary for municipal purposes and for the welfare of the inhabitants of a municipality; PROVIDED, HOWEVER, that "irrigation" as used herein shall mean lawn and garden, park and other municipal irrigation and shall not mean rental or leasing by the City to farmers and ranches for irrigation of crops. F. Case No. 03CV80: The 1/60 Interest in the Coler System water rights was subject to the decree in Case No. 03CV80, District Court, Huerfano County, which, *inter alia*, quieted title to a 4/30 interest in the Coler System water rights in the name of Colorado East Bank & Trust, Custodian for the David Wallerstein IRA ("Wallerstein"). Applicant is currently under contract to purchase the 1/60 Interest from Wallerstein. G. A map showing the location of the structures described above is attached to the Application as Exhibit 2. **7. Description of Proposed Change:** A. Change in Type of Use: Applicant seeks to include augmentation, including augmentation by exchange, as an additional permissible use of the subject 1/60 Interest in the Coler System water rights. B. Change in Place of Use: Applicant seeks to change the place of use of the 1/60 Interest in the Coler System so that the water may be used by exchange at the location of the Tres Valles Ponds as

described in paragraph 4, above. See Exhibit 1. C. A map depicting the approximate location of the historical irrigation use of the 1/60 Interest in the Coler System water rights is attached to the Application as Exhibit 3. D. A summary of diversion records for the Coler System water rights is attached to the Application as Exhibit 4. E. Applicant will quantify the transferable consumptive use associated with the subject 1/60 Interest in the Coler System water rights in order to ensure that no unlawful expansion of use results from the change of water rights sought herein.

8. Name and Address of Owners or Reputed Owners of Land Upon Which Any New Diversion Structure, or Modification to Any Existing Structure is or will be Located: The structures comprising the Coler System are located on land owned by the City of Walsenburg, 525 South Albert Avenue, Walsenburg, Colorado 81089.

REQUEST FOR APPROVAL OF PLAN FOR AUGMENTATION INCLUDING EXCHANGE

9. Structures to be Augmented: Tres Valles Ponds (see paragraph 4, above).

10. Water Rights to Be Used for Augmentation: The 1/60 Interest in the Coler System water rights (see paragraph 6 above).

11. Statement of Plan for Augmentation: A. Applicant proposes to replace out-of-priority depletions caused by surface evaporation from the Tres Valles Ponds using the fully consumptive portion of its 1/60 Interest in the Coler System water rights, described above, as determined herein. Water attributable to Applicant's interest in the Coler System water rights will be released to the Cucharas River on a regular basis to replace out-of-priority depletions caused by evaporative losses from the Tres Valles Ponds, as necessary to prevent injury to vested water rights. Without limiting the foregoing, the Division Engineer may order the release of water attributable to Applicant's 1/60 Interest in the Coler System at such time or times, and at rates of flow, which in the judgment of the Division Engineer will best replace the depletions associated with the Tres Valles Ponds. Such release may be delayed or aggregated in order to maximize the benefit of the release to vested rights of others. B. The net evaporative loss from the Tres Valles Ponds to be replaced under this plan for augmentation is estimated to be approximately 7.9 acre feet annually. Applicant anticipates that the amount of transferable consumptive use attributable to its 1/60 Interest in the Coler System, as quantified in this case, will be sufficient to replace out-of-priority depletions associated with the Tres Valles Ponds, as necessary to prevent injury to vested water rights. C. Applicant will install and maintain such measuring devices and implement such accounting procedures as may be required to verify that the amount of augmentation water provided is sufficient to replace out-of-priority depletions pursuant to the plan approved herein. Releases of augmentation water will be measured and recorded in a manner acceptable to the Division Engineer.

12. Appropriative Right of Exchange: Applicant claims a conditional appropriative right of exchange to augment depletions associated with the Tres Valles Ponds by exchange from the downstream location where Coler System water is introduced to the Cucharas River system. A. Exchange reach: (i) Upstream points: Tres Valles Ponds Nos. 2-1 and 3-1, as described in paragraph 4 above, located on unnamed tributaries to South Abeyta Creek. (ii) Downstream point: The location of the Coler Reservoir System Cucharas Delivery Flume described in paragraph 6(D) above. (iii) A map depicting the approximate extent of the exchange reach is attached to the Application as Exhibit 5. B. Appropriation: (i) Appropriation date: May 28, 2010. (ii) How appropriation was initiated: By formation of necessary intent and overt acts sufficient to put other parties

on notice, including but not limited to the filing of the application herein. C. Rate of exchange: 1.0 cubic feet per second, CONDITIONAL D. Use: Augmentation in the plan for augmentation described herein. **13. Name and Address of Owners of Land Upon Which Structures are Located:** A. Applicant (see above). B. City of Walsenburg 525 South Albert Avenue Walsenburg, Colorado 81089 WHEREFORE, Applicant respectfully requests that this Court enter a judgment and decree which: A. Grants the Application herein; B. Finds that all notice and jurisdictional requirements have been met, including, without limitation, as required by C.R.S. § 37-92-302; C. Confirms the requested conditional water rights; D. Approves the requested change of water rights; E. Approves the plan for augmentation, including appropriate right of exchange; F. Finds that no injury will occur to vested water rights or decreed conditional water rights as a result of the change of water right and approval of plan for augmentation requested herein; and such other relief as the Court deems just and proper.

CASE NO. 10CW36; Previous Case Nos. 84CW133, 89CW59, 96CW31 and 03CW56 – LUCKY 4 WATER ASSOCIATION, INC. and CECIL D. SMISCHNY, P. O. Box 401, Green Mountain Falls, CO 80819 (Paul L. Murphy, Attorney for Applicants, 611 North Weber Street, #104, Colorado Springs, CO 80903; (719) 471-3389)

Application for Finding of Diligence

EL PASO COUNTY

Name of Structures: Smischny Well No. 1 (Permit #29659-F) and Smischny Well No. 2 (Permit #29662-F). **Describe conditional water right** (as to each structure) including the following information from the Referee’s Ruling and Judgment and Decree: **Date of original Decree:** Referee's Ruling dated October 17, 1985, and Judgment and Decree dated November 15, 1985, in Case No. 84CW133, District Court, Water Division No. 2.

Subsequent decrees awarding findings of diligence (Case No. and date of decree): March 13, 1990 in Case 89CW59; June 11, 1997 in Case 96CW31; and May 17, 2004 in Case 03CW56. **Legal description: (PLSS) :** (1) Smischny Well No. 1, El Paso County, NW ¼ of the NW ¼ Section 9, Township 13 South, Range 68 West, 6th P.M., 975 feet from the North section line and 1110 feet from the West Section line.

Street Address: 7250 Lucky 4 Road, Green Mountain Falls, CO 80819. **Owner of land:** Cecil D. Smischny; 7250 Lucky 4 Rd., P.O. Box 401, Green Mountain Falls, CO 80819. (2) Smischny Well No. 2. El Paso County, SW ¼ NW ¼ Section 9, Township 13 South, Range 68 West, 6th P.M., 75 feet from the West section line and 1750 feet from the North section line. **Source:** (for both wells) Groundwater from the underground aquifer in the drainage area of Fountain Creek which is tributary to the Arkansas River. **Appropriation Date and Amount:**

<u>NAME</u>	<u>AMOUNT</u>	<u>PRIORITY</u>	<u>DEPTH</u>
Smischny Well No. 1	25 gpm/0.055 cfs	8/15/83	250 ft.
Smischny Well No. 2	25 gpm/0.055 cfs	8/15/83	200 ft.

Use: (for both wells) municipal, domestic, irrigation, recreational, piscatorial, wildlife. **Depth (if well):** (1) Smischny Well No. 1: 250 ft; (2) Smischny Well No. 2: 200 Ft. **Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** The wells are a part of an integrated water supply system now owned and operated by Lucky 4 Water Association, Inc., a

non-profit corporation, to provide a water supply and service for 16 taps for properties which are all located in Section 9, Township13 South, Range 68 West of the 6th P.M. in El Paso County, Colorado, for municipal, domestic, irrigation, recreational, piscatorial, wildlife uses. Since the last reasonable diligence application and decree additional water line was installed by the personal labor of, and using the personal machinery and equipment of, applicant having a value in excess of \$1,000.00. Water lines have now been added to all properties including the last 45 acres of the land to be serviced with 4 taps which latter property is described as the South 1/2 of NW4 of NE4, and the SW4 of NW4 of NE4, and E2 of NE4 of NW4, and NE4 of SE4 NW4 in El Paso County, Colorado except any part previously conveyed, in Section 9, Township13 South, Range 68 West of the 6th P.M. in El Paso County, Colorado. The total water used has now increased by approximately fifty percent (the total still being within the decreed maximum). **Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.** A. For Smischny Well No. 1: Cecil D. Smischny, P.O. Box 401, Green Mountain Falls, CO 80819-0401. B. For Smischny Well No. 2: Lucky 4 BL72, LLC, P.O. Box 401, Green Mountain Falls, CO 80819-0401. G. D. Smischny, P.O. Box 283, Pelican Rapids, MN 56572-0283. **Remarks or any other pertinent information:** Smischny Well No. 1 (Permit 29659-F) was originally applied to beneficial use on December 13, 1986, at an initial sustained pumping rate of 5 g.p.m. or 0.011 c.f.s., and Smischny Well No. 2 (Permit 29662-F) was applied to beneficial use on December 28, 1986, at an initial sustained pumping rate of 20 g.p.m. or 0.045 c.f.s. The original decree for said wells in Case 84CW133 authorized each as an alternate point of diversion for the other and approved a plan for augmentation using transmountain water diverted by the City of Colorado Springs. At the time of the original decree and at the time of the subsequent findings of reasonable diligence the subject wells and water rights awarded in the original Case No. 84CW133 were owned by Cecil D. Smischny. Cecil D. Smischny transferred title to said water rights and wells to Lucky 4 Enterprises, LLLP by warranty deed dated December 27, 2004 and recorded December 28, 2004 at Reception No. 204209863 of the records of the Clerk and Recorder of El Paso County, Colorado. Lucky 4 Enterprises, LLLP transferred title to the water rights and wells to Lucky 4 Water Company, LLC by warranty deed dated May 27, 2004 and recorded December 28, 2004 at Reception No. 20469862 of the records of the Clerk and Recorder of El Paso County, Colorado. Lucky 4 Water Company, LLC transferred title to the water rights and wells to Lucky 4 Water Association, Inc. by warranty deed dated May 27, 2004 and recorded December 28, 2004 at Reception No. 20469862 of the records of the Clerk and Recorder of El Paso County, Colorado. WHEREFORE, Applicant prays that the Court make a finding of reasonable diligence in the development and completion of the subject appropriation and that remaining conditionally decreed water rights which have not previously been made absolute be continued as conditional subject to the requirement for applicant to demonstrate reasonable diligence hereafter as provided by law. Applicant also prays that the Court enter such other orders be just and proper in the premises.

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 2010, (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 7th day of June, 2010.



Mardell R. DiDomenico

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

(Court seal)
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