

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and ordered published during May 2011, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

**CASE NO. 11CW29 (Water Division 2) and CASE NO. 11CW78 (Water Division 1) – TOM HAHN and JOLENE HAHN, 15540 Park Avenue, Colorado Springs, CO 80921**

(Chris D. Cummins, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation

**EL PASO COUNTY**

**II. Application for Underground Water Rights A. Legal Description of Wells. 1.**

**Property Description.** All wells will be located on Applicant's Property located in SE1/4 SE1/4 of Section 28, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, which contains approximately 2.1 acres, more or less ("Applicants' Property"). Applicants' Property is depicted on the Exhibit A location map attached to the application, and is more particularly described as: Lots 1, 2, and 3, inclusive, of Block 1 of the Black Forest Park Subdivision; aka 15540 Park Avenue, El Paso County, Colorado. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 2. **Existing Wells.** State Engineer Well Permit No. 172943 is an exempt household-use only well currently located in the Applicants' Property, permitted pursuant to C.R.S. §37-92-602(3)(b)(II)(A) in the SE1/4 SE1/4 of Section 28, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., approximately 150 feet from the south section line and 1,200 feet from the east section line of said Section 28 ("Hahn Well #1").

**B. Water Source. 1. Not Nontributary.** The ground water withdrawn from the Dawson aquifer of the Denver Basin underlying Applicants' Property is not-nontributary. Pursuant to C.R.S. 37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual out-of-priority stream depletions caused by such wells. Groundwater from the underlying Denver and Arapahoe aquifers is also not-nontributary. 2. **Nontributary.** The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer of the Denver Basin underlying the Applicants' Property is nontributary.

**C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal.**

Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicants request the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amount. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer

conditions. **2. Estimated Average Annual Amounts of Ground Water Available.** Applicants request an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicants' Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4). Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Depth of Aquifer Base (Feet)</u>	<u>Total Water Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)</u>
Dawson	325	700	137	1.37
Denver	534	1,500	191	1.91
Arapahoe	229	2,000	82	0.82
Laramie-Fox Hills	191	2,800	60	0.60

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **D. Requested Uses.** The Applicants request the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, piscatorial and also for storage, exchange, and augmentation purposes associated with such uses. The Applicants also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicants shall only be entitled to construct a well or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c). **E. Well Fields.** Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants request that these wells be treated as a well field. Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicants' Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicants are entitled to withdraw from the aquifers underlying the Applicants' Property. **F. Name and Address of Owner of Land Upon Which Wells are to Be Located.** The land upon which the wells are and will be located is owned by Applicants. **III. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION** **A. Structures to be Augmented.** The structures to be augmented are Hahn Well #1 in the not-nontributary Dawson aquifer of the Denver Basin underlying the Applicants' Property, and any

replacement wells therefore. There are to be no other water rights diverted from or into this structure. **B. Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during pumping are the pumping and return flows of the nontributary Dawson aquifer from Hahn Well #1 as set forth in this plan for augmentation, together with water rights from the nontributary Laramie-Fox Hills aquifer for post pumping depletions. **C. Statement of Plan for Augmentation.** Applicants wish to provide for the augmentation of stream depletions caused by pumping the nontributary Dawson aquifer well proposed herein for one residential lot. Water use criteria and their consumptive use component for replacement of actual depletions for the lot is as follows: **1. Household Use Only:** 0.27 acre feet annually within one single family dwelling with a ten percent consumptive use based on a nonevaporative septic leach field disposal systems The annual consumptive use for this residence is therefore 0.027 acre feet, with resulting return flows of 0.243 annual acre feet. Any other type of waste water disposal shall require and amendment to this plan of augmentation. **2. Landscape Irrigation:** 0.047 acre feet annually per 1,000 square feet (2.0 acre feet per acre) per year, with a 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.040 acre feet. **3. Horses (or equivalent livestock):** 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. Should the Hahn Well #1 supplying the Applicants' Property pump 0.59 acre feet per year, such quantities pumped would be divided as follows: 0.27 acre feet for in-house use, 0.022 acre feet for watering of up to two (2) head of livestock; with the remaining 0.298 acre feet utilized for the irrigation of up to 6,300 square feet of lawn and garden. Septic return flows are calculated to be 0.243 acre feet annually, with an additional 0.046 acre feet annually of lawn irrigation return flows. Applicants' consultant has calculated that these septic return flows are sufficient to replace depletions occurring during the pumping life of Hahn Well #1 from the Dawson aquifer. Applicants propose to reserve a quantity of water from the nontributary Laramie-Fox Hills aquifer for replacement of post-pumping depletions. This Application is being filed in Water Divisions 1 and 2 because depletions may occur to both divisions. The return flows set forth above will accrue to the Arkansas River system where the majority of depletions occur. Applicants requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. **D. Augmentation of Depletions During Pumping.** Pursuant to C.R.S. §37-90-137(9)(c.5) Applicants are required to replace actual stream depletions attributable to pumping of the Hahn Well #1. Applicants' consultant has calculated maximum depletions during the 100 year pumping life of the Hahn Well #1 to be 7.4% of pumping. Based upon annual pumping of 0.59 acre feet per year, and the requested uses therefrom, Applicants are therefore required to replace a maximum 0.04 acre feet annually. Applicants' have determined that during pumping, septic system return flows from the residence should account for approximately 0.243 acre feet per year. Thus, there are sufficient return flows through the septic system to replace the estimated stream depletions during the pumping life of Hahn Well #1. **E. Augmentation for Post Pumping Depletions.** For the replacement of post-pumping depletions, Applicants will reserve up to 60 acre feet of water from the nontributary Laramie-Fox Hills aquifer underlying the Applicants' Property, less the

amount of actual stream depletions replaced during the plan pumping period. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, Applicants claim that post pumping depletions will be noninjurious and do not need to be replaced. Under the Court's retained jurisdiction, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to file for and receive an amended well permit for the Hahn Well #1 for the uses in accordance with this Application. **F. Remarks.** Additional remarks are as follows: 1. Applicants request a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary well upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). 2. The term of this augmentation plan is for 100 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. 3. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 4. Pursuant to C.R.S. §37-90-137, upon approval of the plan for augmentation requested herein, Applicants will file an application with the State Engineer's office to re-permit the existing well on Applicants' approximately 40.0 acre property (Permit No. 172943) for operation under the plan for augmentation. 5. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 6. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 7. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. 8. Applicants will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 10 days of the filing of this application.

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**CASE NO. 11CW30 – COMPLAINT.** This case is a complaint and is listed in the resume to account for the case number in consecutive order.

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**CASE NO. 11CW31 – COMPLAINT.** This case is a complaint and is listed in the resume to account for the case number in consecutive order.

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**CASE NO. 11CW32 – TAYLOR/OSWALD TRUST, P. O. Box 304, Cotopaxi, CO 81223** (John A. Kintzele, Sr., Attorney for Applicant, 1317 Delaware Street, Denver, CO 80204; (303) 892-6494)

Application for Water Rights (Surface)

**FREMONT COUNTY**

**Name of structure:** Taylor Spring. **Legal description:** Fremont County, SE ¼ of the SE ¼ Section 20, Township 47 North, Range 12 East, NMPM, 626 feet from the South line and 292 feet from the East line. **GPS Location in UTM format (Zone 13; NAD83):** Northing 4239765; Easting 442553. **Source:** Unnamed tributary to McCoy Gulch, tributary to Sand Gulch, a normally dry tributary to the Arkansas River. **Date of initiation of appropriation:** 1948; **How appropriation was initiated:** By installation of perforated pipe to drain the spring. **Date water applied to beneficial use:** 1948. **Amount claimed:** 0.25 cfs Absolute. **Use or proposed use:** Irrigation, stockwater, fisheries, wildlife and fire suppression. **If irrigation, complete the following: Number of acres historically irrigated:** 43 acres; **proposed to be irrigated:** 43 acres. **Legal description of acreage:** Field 1 – NE ¼ SE ¼, S20, T47N, R12E, NMPM; Field 2 – Parts of SWNW, SENW, NWNW of S21 T47N R12E NMPM. **If non-irrigation describe purpose fully:** Livestock water, wildlife, fisheries and fire suppression in the SE ¼ SE ¼ Section 20, T47N, R12E, NMPM. **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:** Applicant.

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**CASE NO. 11CW33 – TAYLOR/OSWALD TRUST, P. O. Box 304, Cotopaxi, CO 81223** (John A. Kintzele, Sr., Attorney for Applicant, 1317 Delaware Street, Denver, CO 80204; (303) 892-6494)

Application for Water Rights (Surface)

**FREMONT COUNTY**

**Name of structure:** Kaess Spring. **Legal description:** Fremont County, NE ¼ of the SW ¼ Section 21, Township 47 North, Range 12 East, NMPM, 1,801 feet from the South line and 1,381 feet from the West line. **Source:** Unnamed tributary to McCoy Gulch, tributary to Sand Gulch, a normally dry tributary to the Arkansas River. **Date of initiation of appropriation:** 1948; **How appropriation was initiated:** By construction of a dam to impound the spring. **Date water applied to beneficial use:** 1948. **Amount claimed:** 0.01 cfs Absolute. **Use or proposed use:** Irrigation, stockwater, fisheries, wildlife and fire suppression. **If irrigation, complete the following: Number of acres historically irrigated:** 24 acres; **proposed to be irrigated:** 24 acres. **Legal description of acreage:** Parts of SWNW, SENW, NWSW and NESW of S21 T47N R12E NMPM. **If non-irrigation describe purpose fully:** Kaess Spring feeds Kaess Reservoir which is used to water livestock and wildlife and supports a viable trout fishery. In case of a wildfire, water is pumped from this reservoir for fire suppression. **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: Applicant.

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**CASE NO. 11CW34 – TAYLOR/OSWALD TRUST, P. O. Box 304, Cotopaxi, CO 81223** (John A. Kintzele, Sr., Attorney for Applicant, 1317 Delaware Street, Denver, CO 80204; (303) 892-6494)

Application for Water Storage Right

**FREMONT COUNTY**

**Name of Reservoir:** Taylor Reservoir. **Legal description of location of dam centerline:** Fremont County, SE ¼ of the SE ¼ Section 20, Township 47 North, Range 12 East, NMPM, 1,100 feet from the South line and 420 feet from the East line. **Source:** Unnamed tributary to McCoy Gulch, tributary to Sand Gulch, a normally dry tributary to the Arkansas River. **Name of ditch used to fill reservoir and capacity in cfs:** 3 drain pipes from Taylor Spring, totaling 0.14 cfs. **If off-channel reservoir, name and capacity of ditch or ditches used to fill reservoir, and legal description of each point of diversion:** Taylor Spring, Fremont County, SE ¼ SE ¼ Section 20, Township 47 North, Range 12 East, NMPM, 600 feet from South line and 300 feet from East line. **Date of appropriation:** 1948; **How appropriation was initiated:** By construction of a dam. **Date water applied to beneficial use:** 1948. **Amount claimed: In acre feet:** 3.3 AF Absolute. **If off-channel reservoir, rate of diversion in cfs:** 0.14 cfs Absolute. **Use: If irrigation, complete the following: Number of acres historically irrigated:** 19 acres; **total number of acres proposed to be irrigated:** 19 acres. **Legal description of acreage irrigated or to be irrigated:** NE ¼ SE ¼, S20, T47N, R12E, NMPM. **If non-irrigation describe purpose fully:** Stockwater, fisheries, wildlife and fire suppression **Surface area of high water line:** 0.59 acres. **Vertical height of dam in feet measured vertically from the elevation of the lowest point of the natural surface of the ground where that point occurs along the longitudinal centerline of the dam up to the crest of the emergency spillway of the dam:** 11.4 ft. **Length of dam in feet:** 228 ft. **Total capacity of reservoir in acre feet:** 3.3 acre feet; **Active capacity:** 3.3 acre feet; **Dead storage:** 0. **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:** Applicant.

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**CASE NO. 11CW35 – TAYLOR/OSWALD TRUST, P. O. Box 304, Cotopaxi, CO 81223** (John A. Kintzele, Sr., Attorney for Applicant, 1317 Delaware Street, Denver, CO 80204; (303) 892-6494)

Application for Water Storage Right

**FREMONT COUNTY**

**Name of Reservoir:** Kaess Reservoir. **Legal description of location of dam centerline:** Fremont County, NE ¼ of the SW ¼ Section 21, Township 47 North, Range 12 East, NMPM, 2006 feet from the South line and 1392 feet from the West line. **Source:** Unnamed tributary to McCoy Gulch, tributary to Sand Gulch, a normally dry tributary to the Arkansas River. **Name of ditch used to fill reservoir and capacity in cfs:** Kaess Spring, 0.01 cfs. **If off-channel reservoir, name and capacity of ditch or**

**ditches used to fill reservoir, and legal description of each point of diversion:** Kaess Spring, Fremont County, NE ¼ SW ¼ Section 12, Township 47 North, Range 12 East, NMPM, 1801 feet from South line and 1381 feet from West line. **Date of appropriation:** 1953; **How appropriation was initiated:** By construction of a dam. **Date water applied to beneficial use:** 1953. **Amount claimed:** In acre feet: 2.5 AF Absolute. **If off-channel reservoir, rate of diversion in cfs:** 0.01 cfs Absolute. **Use:** **If irrigation, complete the following:** **Number of acres historically irrigated:** 24 acres; **total number of acres proposed to be irrigated:** 24 acres. **Legal description of acreage irrigated or to be irrigated:** Parts of SWNW, SENW, NWSW of Section 21, T47N, R12E, NMPM. **If non-irrigation describe purpose fully:** Stockwater, fisheries, wildlife and fire suppression **Surface area of high water line:** 0.47 acres. **Vertical height of dam in feet measured vertically from the elevation of the lowest point of the natural surface of the ground where that point occurs along the longitudinal centerline of the dam up to the crest of the emergency spillway of the dam:** 12.5 ft. **Length of dam in feet:** 196 ft. **Total capacity of reservoir in acre feet:** 2.5 acre feet; **Active capacity:** 2.5 acre feet; **Dead storage:** 0. **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:** Applicant. **Remarks:** In the application for a surface water right for Kaess Spring, the appropriation date is 1948. The appropriation was initiated by construction of a dam to impede the spring. This was a small dam that was replaced in 1953 by construction of a larger dam, thus creating the existing Kaess Reservoir.

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**CASE NO. 11CW36 – CHRISTA KAPP, P. O. Box 881, Indian Hills, CO 80454; (720) 299-7258**

Application for Underground Water Right

**PARK COUNTY**

**Name of Well and permit, registration or denial number:** Well 1, Well 2, Well 3 (Permit 217296). **Legal description of wells:** Well 1, Lot 198 Badger Creek Ranch No. 3: SW ¼, Section 15, Township 15 South, Range 76 West, 912 Frees Loop, Hartsel, CO. Well 2, Lot 145, Badger Creek Ranch No. 2: NW ¼, Section 15, Township 15 South, Range 76 West, 273 Hunters Glen Road, Hartsel, CO. Well 3, Lot 146 Badger Creek Ranch No. 2: NE ¼ NW ¼ Section 22, Township 15 South, Range 76 West, 6<sup>th</sup> P.M., 300 feet from the north section line and 2000 feet from the west section line; 311 Hunters Glen Road, Hartsel, CO. **Source of water:** ground water. **Depth of well:** Well 3, 105'. **Date of appropriation:** Wells 1 and 2: 4-28-11; Well 3: 4-14-1972. **How appropriation was initiated:** Wells 1 and 2: Applied for water right; Well 3: Applied for well permit. **Date water applied to beneficial use:** Well 3: 11-16-1999. **6. Amount claimed:** Well 1 – 15 gpm Conditional; Well 2 – 15 gpm Conditional; Well 3 - 7 gpm Absolute. **Proposed use:** Each well will be used for household use only; no outside uses. **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: Applicant.

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**CASE NO. 11CW37 (Water Division 2) and CASE NO. 11CW82 (Water Division 1) – MICHAEL S. LUDWIG, 12855 Linnwood Lane, Colorado Springs, CO 80908**

(Chris D. Cummins, Felt, Monson & Culichia, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Underground Water Rights, Surface Water Rights, and for Amendment of Plan for Augmentation

**EL PASO COUNTY**

**II. APPLICATION FOR UNDERGROUND WATER RIGHTS A. Legal Description of**

**Wells.** 1. **Property Description.** Applicant seeks adjudication of up to three wells to be constructed to either of the Dawson or Denver aquifers, Ludwig Well Nos. 1, 2, and 3 as described herein, and as originally authorized in consolidated Case Nos. 07CW49 (Div. 2) and 07CW104 (Div. 1) (consolidated in Division 2 Case No. 07CW79). Applicant owns a 3/4 (75%) interest in the water rights decreed therein, vesting to Applicant all uses and entitlements therefrom, and the right to withdraw the groundwater from the Dawson and/or Denver aquifers as adjudicated in Consolidated Case Nos. 07CW49 underlying Applicant's Property from these structures, as well as any substitute or replacement for these structures in the future, in addition to the underlying nontributary Arapahoe and Laramie-Fox Hills aquifers. Applicant seeks a total of three wells, which may be completed to either the not-nontributary Dawson aquifer, or the not-nontributary Denver aquifer. Of these three wells, Ludwig Well Nos. 1 and 2 have been constructed to the Dawson aquifer, as described below, and Applicant anticipates construction of Ludwig Well No. 3 to the Denver aquifer following completion of this adjudication. While the three wells sought herein, and replacements thereof, may be completed to a combination of the Dawson or Denver aquifers, no single well shall be completed to more than one aquifer. Applicant also seeks adjudication of a fourth well, Ludwig Pond Well, a structure to be permitted upon completion of this adjudication and representing any groundwater contribution to Ludwig Pond, as described and requested herein. 2. **Existing Wells.** a. State Engineer Well Permit No. 74768-F (replacement for former permit no. 28311) is a well located on the Applicant's Property, permitted pursuant to C.R.S. §37-90-137(4) and pursuant to the Plan for Augmentation decreed in Case No. 07CW49, in the NW1/4 SE1/4 of Section 9, Township 12 South, Range 65 West of the 6th P.M., approximately 1,511 feet from the south section line and 1,460 feet from the east section line of said Section 9 ("Ludwig Well No. 1"); UTM coordinates: Easting 528705, Northing 4318733 (Zone 13, NAD83). This well is currently permitted and constructed to the Dawson aquifer. b. State Engineer Well Permit No. 74767-F is a well located on the Applicant's Property, permitted pursuant to C.R.S. §37-90-137(4) and pursuant to the Plan for Augmentation decreed in Case No. 07CW49, in the NW1/4 SE1/4 of Section 9, Township 12 South, Range 65 West of the 6th P.M., approximately 1,887 feet from the south section line and 2,017 feet from the east section line of said Section 9 ("Ludwig Well No. 2"); UTM coordinates: Easting 528535, Northing 4318846 (Zone 13, NAD83). This well is currently permitted and constructed to the Dawson aquifer. **B. Water Source.** 1. The ground water to be withdrawn from Ludwig Well Nos. 1, 2 and 3 is ground water from the Dawson and/or Denver aquifers of the Denver



Basin underlying Applicant's Property, and both such aquifers are not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c), the augmentation requirements for wells in the Dawson aquifer require the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. Applicant's rights to Dawson aquifer wells were vested by the decree in Case No. 07CW49. The Denver aquifer in this location, as previously adjudicated in Case No. 07CW49, is greater than 1 mile from any natural surface stream, and therefore Applicant must replace four percent (4%) of water withdrawn from the Denver aquifer on an annual basis, pursuant to C.R.S. §37-90-137(9)(c). 2. The ground water to be withdrawn from the Ludwig Pond Well is shallow ground water tributary to Burgess Creek, tributary to Kettle Creek, tributary to Monument Creek, tributary to Fountain Creek, tributary to the Arkansas River. While no structure is to be developed for the active withdrawal of such ground water from the Ludwig Pond Well, because Ludwig Pond is excavated and therefore may intercept ground water, permitting of the Ludwig Pond Well will be necessary and "withdrawals" therefrom will be limited to, at most, the evaporative losses from Ludwig Pond. Applicant will seek a permit for Ludwig Pond Well upon completion of this adjudication in a manner acceptable to the Division Engineer.

**C. Rates of Withdrawal and Ground Water Available.**

**1. Rates of Withdrawal.** Pumping from the Ludwig Well Nos. 1, 2, and 3 shall not exceed 15 gpm per well. The actual pumping rates for the wells will vary according to aquifer conditions and well production capabilities. While the Decree in Case No. 07CW49 limited withdrawals from the Dawson aquifer to 0.7 annual acre feet per well, the Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts from each of the Denver Basin aquifers.

**2. Average Annual Amounts of Ground Water Available.** The Denver Basin ground water underlying Applicant's Property was previously adjudicated and quantified in consolidated Case No. 07CW49. Of the water adjudicated therein, Applicant is the owner of the absolute water rights for the groundwater which is underlying Applicant's 30-acre property representing 3/4 (75%) of the water so adjudicated, and the amounts of such groundwater which may be withdrawn from the aquifers as set forth in C.R.S. §37-90-137(4) and the decree in Case No. 07CW49 as described as follows, are representative of the Denver Basin aquifers underlying Applicants' Property:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Specific Yield (%)</u>	<u>Total Water Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)</u>
Dawson	410.7	.20	2464	8.2 <sup>1</sup>
Denver	366.6	.17	1869	6.2 <sup>1</sup>
Arapahoe	254.9	.17	1297	12.9
Laramie Fox Hills	191.1	.15	860	8.6

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<sup>1</sup> The Dawson and Denver Annual Average Withdrawals above represent not the 100-year aquifer life discussed in C.R.S. 37-90-137(4), but rather a 300-year aquifer life as adjudicated in 07CW49 for provision of a 300-year water supply in compliance with El Paso County Land Development Code for the original subdivision approval of the Applicant's Property, along with Lot 1 of the Walker Place Subdivision.

**D. Uses of Groundwater.** 1. As to Ludwig Well Nos. 1, 2, and 3, as decreed in Case No. 07CW49, the underlying ground water has been decreed for the following beneficial uses upon the Applicant's Property: domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, piscatorial and also for storage, exchange, and augmentation purposes associated with such uses. Applicant seeks to adjudicate the same uses for the withdrawal of such groundwater from Ludwig Well Nos. 1, 2, and 3, as described herein. 2. As to Ludwig Pond Well, Applicant seeks uses consistent with the requested uses of Ludwig Pond, which may intercept shallow ground water, such uses being: recreation, fish propagation, stock water, wetlands, wildlife habitat and fire protection, irrigation and augmentation, with wetlands and wildlife habitat uses are limited to the surface of the pond itself and its immediate perimeter, and augmentation uses are limited to the plan adjudicated herein. **E. Appropriation:** Applicant claims an appropriation date of May 18, 2011 for Ludwig Well Nos. 1, 2 and 3 and for the Ludwig Pond Well, with the filing of this Application, representing Applicant's demonstration of intent to appropriate ground water and apply the same to beneficial use, and notice to third parties of such appropriations. **F. Amounts:** As to Ludwig Well Nos. 1, 2 and 3, the amounts appropriated are limited to the underlying Denver Basin ground water, as described above, which shall be withdrawn at a rate of no greater than 15 gallons per minute, per well. As to the Ludwig Pond Well, Applicant claims no actual use of ground water will be made, but at most diversions shall be limited to evaporative loss from Ludwig Pond, calculated to be a maximum of 0.68 annual acre feet, as discussed below. **G. Name and Address of Owner of Land Upon Which Wells are to Be Located.** The land upon which the wells are and will be located is owned by Applicants.

**III. APPLICATION FOR SURFACE WATER STORAGE RIGHT.** Applicant desires to adjudicate one surface water storage right in El Paso County, Colorado, for an existing pond upon Applicant's Property. **A. Name of Structure:** Ludwig Pond **B. Legal Description of Structure:** The center of the dam is located in the NW1/4 SE1/4 of Section 9, Township 12 South, Range 65 West of the 6th P.M., being approximately 1,500 feet from the south line, and 1925 feet from the east line of said Section 9; UTM coordinates: Easting 0528555, Northing 4318747 (Zone 13, NAD83). **C. Source:** The source for the filling and maintenance of this off-channel pond is precipitation and flows of an unnamed intermittent gulch, tributary to Burgess Creek, tributary to Kettle Creek, tributary to Monument Creek, tributary to Fountain Creek, tributary to the Arkansas River. The source for this pond also may include underlying shallow ground water. Ludwig Pond is not located on a live stream. **D. Appropriation:** The Applicant's right in Ludwig Pond was appropriated long before Applicant's purchase of the property with construction of Ludwig Pond estimated to have occurred sometime in the 1960's. Applicant caused improvements to that structure in 2010 and 2011, including improvement of outlet/overflow structures, and a lowering of the high water line from its original design. Applicant asserts that, if not prior, an in-priority fill of this structure occurred in June or July of 1999 when free-river conditions existed upon the Arkansas River and its tributaries. Applicant claims an appropriation date of May 18, 2011, representing Applicant's filing of this Application placing other parties on notice of such appropriation and application to beneficial use. **E. Amount Claimed:** 1.0 acre feet absolute, with the right to fill and refill, and freshening flows. **F. Use or Proposed Uses:** Recreation, fish propagation, stock water, wetlands, wildlife habitat and fire

protection, irrigation and augmentation. Wetlands and wildlife habitat uses are limited to the surface of the pond itself and its immediate perimeter, and augmentation uses are limited to the plan adjudicated herein. **G. Pond Specifications:** Ludwig Pond has a maximum surface area at the high water line of approximately 0.19 acres (8,000 square feet). The maximum height of the dam is approximately 3 feet and the length of the dam is approximately 100 feet. **H. Total Capacity of Pond:** Approximately 1.0 acre feet, all of which is dead storage. **I. Land Ownership:** The land upon which all points of diversion and places of use are located are owned by the Applicant set forth in Section I of this Application, which consists of approximately 30 acres and is more particularly described in Exhibit A ("Applicant's Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **J. Additional Remarks:** Ludwig Pond is an excavated structure and may intercept shallow groundwater, and therefore will require a well permit from the Division of Water Resources, as represented by the Ludwig Pond Well, requested herein. Applicant will apply for and obtain such well permit upon approval of this application and the amendment of the plan for augmentation requested herein. **IV. APPLICATION FOR AMENDMENT OF DECREED PLAN FOR AUGMENTATION.** Applicant is the owner of a 3/4 (75%) interest in the plan for augmentation approved and decreed by the Water Court in Case No. 07CW49, as the owner of 30 of the 40 acres covered thereby, and Applicant therefore is the owner of three of the four "lots" addressed therein. Applicant seeks to amend the plan for augmentation in Case No. 07CW49 only as to Applicant's 3/4 (75%) interest, and it is not Applicant's intent that this amendment in any way affect the remaining 1/4 (25%) interest in that plan for augmentation vested in the owners of Lot 1 of the Walker Place subdivision. It is Applicant's intent that the decreed plan for augmentation in Case No. 07CW49 be effectively replaced with the terms herein, only as to Applicant's 3/4 (75%) interest in that plan, and Applicant's respective 30-acre property, with no affect on the rights, entitlements and obligations of the remaining 1/4 (25%) interest owner of Lot 1 of the Walker Place subdivision. While the original decree in Case No. 07CW49 addressed augmentation only of withdrawals from the Dawson aquifer, Applicant seeks amendment herein to also allow for withdrawals from a portion of the Denver aquifer as well, and to specify as augmented structures Ludwig Well Nos. 1, 2, and 3, and Ludwig Pond/Ludwig Pond Well, as described herein. Applicant further seeks to substitute the reservation of nontributary groundwater in the Arapahoe aquifer with a reservation of nontributary groundwater in the Laramie-Fox Hills aquifer, as more specifically described below, for use in replacement of post-pumping depletions which may occur as a result of the use and operation of Ludwig Well Nos. 1, 2 and 3. **A. Structures to be Augmented Pursuant to this Amendment.** The structures to be augmented are the Ludwig Well Nos. 1, and 2 as currently constructed to the not-nontributary Dawson aquifer, and Ludwig Well No. 3 as anticipated to be constructed to the not-nontributary Denver aquifer underlying the Applicant's Property described below, and any replacement or substitute wells for any of these structures to be constructed to either the Dawson or Denver aquifers. Ludwig Pond, as requested and described herein, and the Ludwig Pond Well, a to-be-permitted structure representing the contribution of shallow groundwater to Ludwig Pond, are likewise augmented structures hereunder. There are to be no other water rights diverted from or into these structures. **B. Water Rights to be Used for Augmentation.** The

water rights to be used for augmentation during pumping are the pumping and return flows from Ludwig Well Nos. 1, 2 and 3, as well as return flows from any replacement/substitute wells, as set forth in this plan for augmentation, together with water rights from the nontributary Laramie-Fox Hills aquifer for post pumping depletions.

**C. Statement of Plan for Augmentation.** Applicant wishes to provide for the augmentation of stream depletions caused by pumping the not-nontributary Dawson and Denver aquifer wells proposed herein, as well as for evaporative depletions associated with the use and operation of Ludwig Pond, and the Ludwig Pond Well associated therewith. Water use criteria and their consumptive use component for replacement of actual depletions is as follows: 1. **Household Use Only:** 0.26 acre feet annually within each of up to three single family dwellings or similar structures, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for each dwelling is therefore 0.026 acre feet (maximum total of 0.078 consumed), with resulting combined return flows of 0.70 annual acre feet. Any other type of waste water disposal shall require and amendment to this plan of augmentation. These figures are as originally decreed in Case No. 07CW49. 2. **Landscape Irrigation:** Application of 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with a 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre feet. These figures are as originally decreed in Case No. 07CW49. 3. **Horses (or equivalent livestock):** 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component<sup>2</sup>. These figures are as originally decreed in Case No. 07CW49. 4. **Hot Tub Use:** 0.006 acre feet (2100 gallons) annually, based upon six fillings per year, with a 50% consumptive use rate. The annual consumptive use for each hot tub is therefore 0.003 acre feet (1050 gallons). These figures are as originally decreed in Case No. 07CW49. 5. **Swimming Pool Use:** 0.153 acre feet (50,000 gallons) annually, based upon two fillings per year, with a 50% consumptive use rate. The annual consumptive use for each swimming pool is therefore 0.076 acre feet. These figures are as originally decreed in Case No. 07CW49. 6. **Pond Evaporation:** Applicant has determined the net evaporative depletions anticipated from Ludwig Pond based on the application of local climate data to the standards of the State Engineer's Office for the determination of pond evaporation. Based thereon, the net evaporation from the surface area of Ludwig Pond is determined to be approximately 2.62 acre feet per acre of exposed surface area. Ludwig Pond has a maximum of approximately 0.19 acres of exposed surface area, and therefore has associated evaporative depletions of approximately 0.50 annual acre feet. Because outlet structures are located upon Ludwig Pond at a level above the water table, no active storage of intercepted groundwater will occur in Ludwig Pond, rather any such intercepted groundwater will be in dead storage, and no

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<sup>2</sup> The 10 gallon per day figure is commonly accepted and appropriate for large livestock such as horses and cattle. Applicant may elect to water smaller stock such as goats and sheep, and for these animals asserts that a consumptive use figure of 2.5 gallons per day per animal, 100% consumptive, for a total usage per small stock animal of 0.003 acre feet per year. Applicant's accounting will reflect this level of detail as to stock watering.

out-of-priority use of groundwater are anticipated to result. Maximum out-of-priority depletions attributable to the Ludwig Pond Well and Ludwig Pond, combined, are therefore considered to be the entire 0.50 annual acre feet of maximum evaporative depletions. Applicant will replace depletions resulting from the pumping of Ludwig Well Nos. 1, 2, and 3 during the pumping life of such wells, and depletions resulting from the use and operation of Ludwig Pond/Ludwig Pond Well, utilizing septic return flows, lawn irrigation return flows and additional pumping to the stream from Ludwig Well Nos. 1, 2, and 3. Applicant seeks to vacate the prior reservation of a portion of the Arapahoe aquifer for replacement of any injurious post-pumping depletions, and substitute the Laramie-Fox Hills aquifer in its stead. This Application is being filed in Water Divisions 1 and 2 because depletions may occur to both divisions. The return flows set forth above will accrue to the Arkansas River system where the majority of depletions occur. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and as previously decreed in Case No. 07CW49, and for a finding that those replacements are sufficient. Applicant notes that no amendment of the decreed plan for augmentation is requested to the decreed use of the Dawson aquifer from Case No. 07CW49, but rather only amendment to augment uses from the Denver aquifer as well, and to add augmented structures to the plan for augmentation.

**D. Augmentation of Depletions During Pumping.** Pursuant to C.R.S. §37-90-137(9)(c) replacement of actual stream depletions attributable to pumping of the Ludwig Well Nos. 1, 2 and 3 was required to the extent necessary to prevent injurious effect, to the extent such wells are constructed to the Dawson aquifer, as previously decreed in Case No. 07CW49. The Denver aquifer in this location, as previously adjudicated in Case No. 07CW49, is greater than 1 mile from any natural surface stream, and therefore Applicant must replace four percent of water withdrawn from the Denver aquifer on an annual basis, pursuant to C.R.S. §37-90-137(9)(c). As decreed in Case No. 07CW49, maximum depletions during the 300 year pumping life of subject wells if constructed to the Dawson aquifer will be 21.97% of pumping in year 300. It is Applicant's current intent to make the following uses of water from Ludwig Well Nos. 1, 2, and 3: 0.26 acre feet for one single family dwelling, 0.26 acre feet for an outbuilding with guest quarters, shop facilities and restroom facilities (single family equivalent), 1.1 acre feet for watering of up to 10 head of livestock; 2.18 acre feet for the irrigation of up to 1 acre of lawns, landscaping, and gardens, and 0.50 acre feet for replacement of evaporative depletions from Ludwig Pond/Ludwig Pond Well. In such instance, assuming for conservatism that all diversions were from the Dawson aquifer requiring replacement of actual stream depletions, maximum depletions resulting from pumping would be approximately 0.94 acre feet ( $4.30 \times 21.97\%$ ), while the combination of septic return flows (0.47 acre feet), and irrigation return flows (0.33 acre feet) resulting from such pumping would total 0.8 annual acre feet. As such, Applicant would in such scenario further "overpump" one or more of the wells in an amount sufficient to make up the 0.14 acre foot deficit, plus the additional 21.97% maximum depletion resulting from such overpumping, for a total "overpumping" of 0.17 acre feet, and total pumping of 4.47 annual acre feet, for purposes of this example. Were Applicant to instead construct Ludwig Well Nos. 1, 2, and 3 to the Denver aquifer, replacement of 4% of the anticipated 4.3 annual acre feet would be required, resulting in a total replacement requirement of 0.17 annual acre feet, which would be replaced by

the anticipated 0.8 acre feet of return flows from Applicant's uses. More likely is construction of a combination of wells to the Dawson and Denver aquifers, making it unlikely that overpumping of any wells will be necessary to achieve adequate replacement of depletions during the pumping life of Ludwig Well Nos. 1, 2, and 3. Such scenarios are provided as examples only, and Applicant will provide accounting to the satisfaction of the State and Division Engineers evidencing that sufficient return flows from such uses and direct pumping to the stream from Ludwig Well Nos. 1, 2, and 3, in combination, are sufficient for the replacement of the 0.50 annual acre feet of maximum evaporation from Ludwig Pond, a minimum of 21.97% of pumping from Dawson aquifer wells, and a minimum of 4% of pumping from Denver aquifer wells, regardless of uses made therefrom. As such, provided Applicant pumps from one or more of the Dawson and/or Denver aquifer wells sufficient excess ground water to replace depletions associated with the uses therefrom and the operation of Ludwig Pond/Ludwig Pond Well not otherwise augmented by return flows from such uses, and provided such excess pumping is not otherwise used or consumed, all depletions associated with Applicant's use of water and the operation of Ludwig Pond/Ludwig Pond Well and Ludwig Well Nos. 1, 2, and 3 will be replaced in time, place and amount, during the pumping life of the wells, thereby preventing injury to other vested water rights, and Applicant may therefore withdraw up to 12.54 annual acre feet in combination from the Denver and Dawson aquifers provided such augmentation is made, as limited by water dedicated to replacement of post-pumping depletions, discussed below.

**E. Augmentation for Post Pumping Depletions.** For the replacement of post-pumping depletions, Applicants request the substitution of the Applicant's 573.75 acre foot share (75%) of the previously decreed reservation of 765 acre feet of water from the nontributary Arapahoe aquifer underlying the Applicant's Property from Case No. 07CW49 with a reservation of the 860 acre feet of groundwater adjudicated in the nontributary Laramie-Fox Hills aquifer. As decreed in Case No. 07CW49, the maximum post-pumping depletions resulting from the pumping of Ludwig Well Nos. 1, 2, and 3 is 22.89% of pumping in the 335<sup>th</sup> year. The 860 acre feet of nontributary Laramie Fox Hills groundwater reserved represents said 22.39% of pumping, assuming a maximum of 12.54 annual acre feet is withdrawn in combination from the Dawson and Denver aquifers for the 300 year pumping life of the Ludwig Well Nos. 1, 2, and 3, less 2% not to be consumed per statute. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, Applicant claims that post pumping depletions will be noninjurious and do not need to be replaced. Under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used to replace any injurious post-pumping depletions. By this reservation of the Laramie Fox-Hills aquifer, it is Applicant's intent that the entire 1,297 acre foot portion of the Arapahoe aquifer allocated to Applicant based upon Applicant's 3/4 (75%) interest in the ground water adjudicated in 07CW49, be again made available to Applicant's use without reservation or restriction. Upon entry of a decree in this case, the Applicant will be entitled to file for and receive amended well permits for the Ludwig Well Nos.1, 2, and 3, and the Ludwig Pond Well, for the uses in accordance with this Application and the plan for

augmentation herein. **F. Remarks.** Additional remarks are as follows: 1. Applicant requests a finding that he has complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). 2. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. 3. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 4. Pursuant to C.R.S. §37-90-137, upon approval of the plan for augmentation requested herein, Applicants will file an application with the State Engineer's office to re-permit the existing well(s) on Applicant's approximately 30.0 acre property for operation under the plan for augmentation. 5. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 6. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 7. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. 8. Applicant has no lienholders on Applicant's property and therefore is in compliance with all lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(l).

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**CASE NO. 11CW38 – SAMUEL N. KNIGHT, JR. 5603 Pennock Point, Jupiter, FL 33458** (Jefferson V. Houpt, Esq., Beattie, Chadwick & Houpt, LLP, Attorney for Applicant, 932 Cooper Avenue, Glenwood Springs, CO 81601; (970) 945-8659)  
Application for Change of Conditional Water Right, for Findings of Reasonable Diligence and to Make Conditional Water Rights Absolute

**HUERFANO COUNTY, COLORADO**

**Structure:** Dalton Pump & Pipeline. **Original decree:** Case No. 98CW172. **Location:** SE¼NE¼ Sec 7, T 30 S, R 68 W, 6<sup>th</sup> PM, at a point 450 ft W of E Sec Line and 1,530 ft S of N Sec Line of Sec 7. **Source:** Cucharas River. **Appropriation date:** 9/3/93. **Decreed amount:** 2.0 cfs, conditional. **Decreed uses:** Piscatorial, aesthetic, recreational, and wildlife propagation. Applicant proposes to change the previously-decreed point of diversion of this water right to comport with its as-built location, described as follows: In the SE¼NE¼, Sec 7, T 30 S, R 68 W, 6<sup>th</sup> PM, at a point located 2,510 ft S of N Sec Line and 885 ft W of E Sec Line of Sec 7. No other change to this water right is proposed. **Application for Diligence and to make absolute: Structure:** Little Lake Dalton. **Original decree:** Case No. 98CW172. **Location:** Center point of dam is in the SE¼NE¼ Sec 7, T 30 S, R 68 W, 6<sup>th</sup> PM, 890 ft W of E Sec Line and 1,853 ft S of N Sec Line of Sec 7. **Ditch used to fill reservoir:** Dalton Pump & Pipeline. **Source:** Cucharas River and local surface in-flow tributary to the Cucharas River.

**Appropriation date:** 9/3/93. **Decreed amount:** 27.3 af, conditional, with right to fill and refill in priority and when out of priority but fully augmented. **Max rate of diversion for filling the reservoir:** 2.0 cfs. **Use:** Piscatorial, aesthetic, recreational, and wildlife propagation. **Surface area:** 3.43 acres. **Max height of dam:** 14 ft. **Total capacity of reservoir:** 27.3 af. **Active capacity:** 26.9 af. **Dead storage:** 0.4 acre feet. Following entry of the decree in Case No. 98CW172, final construction plans were prepared by Gamba and Associates in September, 2004. The reservoir was constructed by Paul Morgan Excavating Company during the 2005 construction season. The diversion structure, headgate and flume were installed on January 4, 2006. Water was diverted via the Dalton Pump and Pipeline into and stored within the reservoir beginning on January 4, 2006, and the initial fill of the reservoir was completed several months later. The reservoir has operated since then in accordance with the terms and conditions of the augmentation plan approved in Case No. 98CW172. The reservoir has been stocked with trout. FIN-UP Habitat Consultants, Inc. was engaged to develop and implement a habitat enhancement plan. Implementation of that plan was completed in 2007. **Date of first use:** 1/4/06. **Amount:** 26.358 af. **Use:** Piscatorial, aesthetic, recreational, and wildlife propagation. **Place of use:** Within the reservoir. **Structure:** Dalton Pump & Pipeline. **Original decree:** Case No. 98CW172. **Decreed point of diversion:** SE¼NE¼ Sec 7, T 30 S, R 68 W, 6th PM, at a point 450 ft W of E Sec Line and 1,530 ft S of N Sec Line of Sec 7. **Date of appropriation:** 9/3/93. **Max rate of diversion:** 2.0 cfs, conditional. **Use:** Piscatorial, aesthetic, recreational, and wildlife propagation. **Outline of what has been done for completion of the appropriation:** See above. **Date of first use:** 1/4/06. **Amount:** 2.0 cfs. **Use:** Piscatorial, aesthetic, recreational and wildlife propagation. **Place of use:** Little Lake Dalton. **Remarks:** The water rights described above are operated pursuant to the plan for augmentation approved in Case No. 98CW172. Owner of land on which all structures and places of use are located. Applicant.

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**CASE NO. 11CW39 – DAVID MITCHELL, 16410 DeLozier Street, Houston, TX 77040; (713) 805-3215**

Application for Water Rights (Surface)

**HUERFANO COUNTY**

**Name of structure:** Silver Spring #4. **Legal description of each point of diversion:** Huerfano County, NE ¼ SW ¼ Section 34, Township 27 South, Range 69 West, 6<sup>th</sup> P.M., 2300 feet from the South line and 1650 feet from the West line. **Subdivision:** Majors Ranch; **Lot:** 18B. **Source:** Huerfano River. **Date of appropriation:** 3-15-2011; **How appropriation was initiated:** Contacted Ojo Springs for gallon per minute estimate. **Date water applied to beneficial use:** 9/15/11. **Amount claimed in gpm:** 1.6 gpm Absolute. **Use or proposed use:** Single residence. Supply water for household of two adults, water plants (hanging plants around house that we grow). Also water for 3 dogs. **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:** Applicant.



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 2011, (forms available at Clerk's office or at [www.courts.state.co.us](http://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.

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Witness my hand and the seal of this Court this 3rd day of June, 2011.



*Mardell R. DiDomenico*

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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)  
Published: June \_\_\_\_\_, 2011