

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING
NOVEMBER 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 November 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. 10CW69; Previous Case Nos. W-27; W-27(74); 79CW84(W-27); 83CW119(W-27); 90CW21(W-27); 96CW102(W-27); and 05CW83(W-27) – THE FORT LYON CANAL COMPANY, 750 Bent Avenue, Las Animas, CO 81054

(John S. Lefferdink, Lefferdink Law Office, LLC, Attorney for Applicant, 409 South Main Street, P. O. Box 110, Lamar, CO 81052; (719) 336-7411)

Application for Finding of Reasonable Diligence and to Make Absolute a Non-Tributary Water Right

PROWERS COUNTY

2. Name of structure: Thurston Pipeline. **3. Describe conditional water right:** **A. Date of Original Decree:** November 20, 1972; **Case No.:** W-27; **Court:** Division 2. **B. Subsequent decrees awarding findings of diligence:** W-27(74), June 13, 1975; 79CW84(W-27), January 11, 1980, nunc pro tunc December 3, 1979; 83CW119(W-27), March 4, 1986; 90CW21(W-27), July 20, 1990; 96CW102(W-27), December 13, 1999; 05CW83(W-27), December 27, 2007. **C. Legal description:** the point of diversion is located at a point whence the section corner common to Sections 7 and 18, Township 21 South, Range 46 and Sections 12 and 13, Township 21 South, Range 47, all West of the 6th P.M., Prowers County, Colorado, bears N 0°41' West, a distance of 1680 feet. **D. Source of water:** Springs in Thurston Reservoir, seepage from all sides, waste water from a canal of The Fort Lyon Canal Company, rainfall and waste water flowing in the lake from land of owners adjoining the reservoir. The water so accumulated is not tributary to any natural stream of the State of Colorado. **E. Appropriation Date:** July 15, 1969; **Amount:** 25 c.f.s. Conditional; 6.68 c.f.s. made absolute in Case No. 83CW119(W-27) and 18.32 c.f.s. remains conditional. **F. Use:** The water has been used for irrigation of lands of stockholders of The Fort Lyon Canal Company which are below the outlet of said pipeline, consisting of approximately 13,760 acres of land. **4. 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:** A. Applicant recently spent in excess of \$200,000 to rehabilitate the Thurston Pipeline. Applicant pumped 25 c.f.s. from Thurston Reservoir into the Thurston Pipeline and

delivered this water to the Fort Lyon Main Canal. The Thurston Pipeline was operated on or about June 15, 2010, July 2, 2010, July 20, 2010, August 6, 2010, August 13, 2010 and August 20, 2010 at a pumping rate of 25 c.f.s. This water was then delivered to shareholders for irrigation and placed to beneficial use. A Location Map of Thurston Reservoir is 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.) B. Fort Lyon is continuing negotiations with the Amity Mutual Irrigation Company concerning an exchange agreement to release water to Thurston Reservoir down the May Valley Drainage Ditch into the Amity Canal, and then exchange this water for water stored by Amity in Queen Reservoir. Fort Lyon and Amity had previously entered into an Exchange Agreement dated December 11, 1974, and there was an exchange of water completed in 1976. A copy of the Exchange Agreement is attached to the Application. Fort Lyon estimates that deliveries to Amity will not exceed 50 c.f.s. Use of the May Valley Drainage Ditch for an exchange will require a further written agreement with Amity. C. Fort Lyon has also completed a topographical survey of Thurston Reservoir to verify the available reservoir storage capacity. This survey includes a contour map at one foot contours of the reservoir bottom and a stage volume table. **5. If claim to make absolute: A. Date water applied to beneficial use:** See Paragraph 4; **Amount:** 25 c.f.s. **Use:** Irrigation. **B. Description of place of use where water is applied to beneficial use:** Land irrigated by stockholders of the Fort Lyon Canal Company which are below the outlet of said pipeline, consisting of approximately 13,760 acres of land. **6. 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:** The Fort Lyon Canal Company, 750 Bent Avenue, Las Animas, CO 81054; Heath R. Perdue and Robyn Y. Perdue, 7315 County Road UU, Lamar, CO 81052; Heather S. Perdue, 5720 E. Caley Ave., Centennial, CO 80111; Amity Mutual Irrigation Company, P. O. Box 187, Holly, CO 81047. **7. Remarks or any other pertinent information:** if the Court determines that this conditional water right should not be made absolute, then Applicant requests that a finding of reasonable diligence be entered by the Court.

CASE NO. 10CW70 – ALLAN CRAMER, 150 Rowell Road, Walsenburg, CO 81089; (719) 989-0381 or (719) 989-0380

Application for Underground Water Right
HUERFANO COUNTY

Name of well and permit, registration, or denial number: Cramer's Well; permit 222294. **Legal description of well:** Huerfano County, NW ¼ of the SW ¼ Section 11, Township 29 South, Range 66 West, 6th P.M., 2400 feet from the South line and 200 feet from the West line. **Street Address:** 150 Rowell Road, Walsenburg, CO 81089; **Subdivision:** Silver Spurs Ranch; **Lot:** 36; **Unit:** 2. **Source of water:** Tributary of the Raton Basin. **Depth of well:** 460'. **Date of**

appropriation: 11/24/99; **How appropriation was initiated:** Air Percussion; **Date water applied to beneficial use:** 6/15/2001. **Amount claimed:** 15 gpm Absolute. **Proposed use:** Limited to fire protection, ordinary household use, domestic animals and irrigation of one acre of lawns and gardens. **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.

CASE NO. 10CW71 – EDWARD E. and CAROL J. LYON, 821 Silver Spurs Road, Walsenburg, CO 81089; (719) 989-0826

Application for Underground Water Right
HUERFANO COUNTY

Name of well and permit, registration, or denial number: Lyon Well; Permit No. 196371. **Legal description of well:** Huerfano County, SE ¼ of the NE ¼ Section 10, Township 29 South, Range 66 West, 6th P.M., 1800 feet from the North line and 1000 feet from the East line. **Street Address:** 821 Silver Spurs Road; **Subdivision:** Silver Spurs Ranch; **Lot:** 12; **Filing:** 2. **Source of water:** Ground water. **Depth of well:** 400 ft. **Date of appropriation:** July 8, 1996. **How appropriation was initiated:** Permit granted. **Date water applied to beneficial use:** July 1996. **Amount claimed:** 14 gpm Absolute. **Proposed use:** Fire protection, ordinary household purposes inside 3 single family dwellings, watering of domestic animals, and irrigation of 1 acre of lawns and gardens. **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. 10CW72 – SPENCER and CAROLE SNOW, 166 Chaps Court, Walsenburg, CO 81089; (719) 859-4609

Application for Underground Water Right
HUERFANO COUNTY

Name of well and permit, registration, or denial number: I.D. #1605120; Permit No. 192144. **Legal description of well:** Huerfano County, NE ¼ of the SE ¼ Section 10, Township 29 South, Range 66 West, 6th P.M., 1650 feet from the South line and 937 feet from the East line. **Street Address:** 166 Chaps Court, Walsenburg, CO 81089; **Subdivision:** Silver Spurs Ranch; **Lot:** 18. **Source of water:** Tributary ground water diversions located in Arkansas River Basin. **Depth of well:** 480 feet. **Date of appropriation:** October 31, 1995. **How appropriation was initiated:** Filed for well permit. **Date water applied to beneficial use:** May 27, 1997. **Amount claimed:** 15 gpm Absolute. **Proposed use:** Domestic use for 3 single family dwellings, irrigation of one acre of home gardens, livestock and fire protection. **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. 10CW73 – RICHARD WYLAND, JR., 2822 Silver Spurs Road, Walsenburg, CO 81089; (719) 859-0299

Application for Underground Water Right

HUERFANO COUNTY

Name of well and permit, registration, or denial number: Permit No. 206892.

Legal description of well: Huerfano County, NE ¼ of the NW ¼ Section 23, Township 29 South, Range 66 West, 6th P.M., 330 feet from the North line and 1815 feet from the West line. **Street Address:** 2822 Silver Spurs Road, Walsenburg, CO 81089; **Subdivision:** Silver Spurs Ranches; **Lot:** 112; **Unit:** 5. **Source of water:** Well; Raton Basin Poison Canyon Aquifer. **Depth of well:** 320 ft. **Date of appropriation:** 12-05-1997. **How appropriation was initiated:** Permit #206892. **Amount claimed:** 15 gpm Absolute. **Proposed use:** Domestic use for 1 household; lawn and garden irrigation of approximately 1000 sq. ft. and domestic animals. **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.

CASE NO. 10CW74 – TODD EDDLEMAN and LORNA EDDLEMAN, P. O. Box 658, Walsenburg, CO 81089; (719) 252-1089

Application for Underground Water Right

HUERFANO COUNTY

Name of well and permit, registration, or denial number: Permit 226636.

Legal description of well: Huerfano County, SE ¼ of the SE ¼ Section 2, Township 29 South, Range 66 West, 6th P.M. 50 feet from the South line and 900 feet from the East line. **Street Address:** 602 Sunrise Rd.; **Subdivision:** Silver Spurs Ranch; **Lot:** 79; **Filing:** 4. **Source of water:** Ground water. **Depth of well:** 500 ft. **Date of appropriation:** 6/21/2000; **How appropriation was initiated:** Well permit. **Date water applied to beneficial use:** 7/20/00. **Amount claimed:** 7 gpm. **Proposed use:** Irrigation of 1 acre, Huerfano County, Section 2, Twp. 29 S., Range 66 W.; Area of lawns and gardens: 50 x 50 garden; 40 x 60 lawn. Use of ground water from this well is for ordinary household purposes inside not more than 3 single family dwellings, fire protection, watering of poultry, domestic animals and livestock, the irrigation of one acre of land which includes our home and gardens and lawn. **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. 10CW75 – This application has not been ordered published.

CASE NO. 10CW76 – JAMES A. AND JUDITH L. DEXTER, 3369 Silver Spurs Road, Walsenburg, CO 81089; (719) 846-4229

Application for Underground Water Right

HUERFANO COUNTY

Name of well and permit, registration, or denial number: James and Judy Dexter; Permit 233121. **Legal description of well:** SE ¼ of the NW ¼ Section 24, Township 29 South, Range 66 West, 6th P.M., 2200 feet from the North line and 1500 feet from the West line. **Street Address:** 3369 Silver Spurs Road, Walsenburg, CO 81089; **Subdivision:** Silver Spurs Ranch; **Lot:** 134; **Filing:** 5. **Depth of well:** 300' +/- . **Date of appropriation:** prior to name change which was effective 12/15/03. **How appropriation was initiated:** purchased home, property and associated well. **Date water applied to beneficial use:** 12/15/03. **Amount claimed:** 12 gpm Absolute. **Proposed use:** Household use. **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. 10CW77 – MITCH AND JENNIFER SAMPLE, 1771 Sunrise Road, Walsenburg, CO 81089 (Chris D. Cummins, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 North Weber, Colorado Springs, CO 80903; (719) 471-1212)

Application for Underground Water Right

HUERFANO COUNTY

2. Application for Underground Water Rights: **A. Name of Well:** Sample Domestic Well. **B. Legal Description:** In the NE1/4 SW1/4 Section 12, Township 29 South, Range 66 West, 6th P.M. on a tract of land of approximately 35.20 acres, more particularly described on Exhibit A attached to the Application, Huerfano County, Colorado. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **C. Source:** Groundwater tributary to Bear Creek, tributary to the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River. The depth of the well is 881 feet. **D. Appropriation:** **(i) Date of Initiation of Appropriation:** November 30, 2006. **(ii) How Appropriation Was Initiated:** Appropriation was initiated by the issuance of an exempt domestic well permit no. 271748 by the Colorado Division of Water Resources on November 30, 2006 together with Applicants' intent to appropriate the water from the well and apply the water to beneficial use. See Exhibit B attached to the Application, Well Permit No. 271748. **(iii) Date Water Applied to Beneficial Use:** April 19, 2007. **E. Amount Claimed:** Up to 15 gpm absolute. **F. Use:** Fire protection, ordinary household uses inside not more than 3 single family dwellings, the irrigation of not more than 1 acre of home gardens and lawns, and the watering of poultry, domestic animals and livestock on a farm or ranch. **G. Land Ownership.** The land upon which the Sample Domestic Well is located is owned by the

Applicants. **H. Remarks:** The well which is the subject of this Application is an exempt well issued pursuant to C.R.S. § 37-92-602(3)(b)(II)(A) for the uses authorized in C.R.S. § 37-92-602(1)(b) and a decree for this exempt well is sought pursuant to C.R.S. § 37-92-602(4).

CASE NO. 10CW78 – This application has not been ordered published.

CASE NO. 10CW79; Previous Case Nos. 93CW86; 04CW14(93CW86) – THE BOARD OF WATER WORKS OF PUEBLO, COLORADO, c/o Alan C. Hamel, Executive Director, 319 W. 4th Street, P. O. Box 400, Pueblo, CO 81002
(William A. Paddock and Beth Ann J. Parsons, Carlson, Hammond & Paddock, Attorneys for Applicant, 1700 Lincoln Street, Suite 3900, Denver, CO 80203; (303) 861-9000)

Application for Sexennial Finding of Reasonable Diligence and to Make Conditional Water Right Absolute, in Part

PUEBLO COUNTY, COLORADO

The Board of Water Works of Pueblo, Colorado, seeks a sexennial finding of reasonable diligence for conditional rights originally decreed on February 19, 1998, in Case No. 93CW86, District Court, Water Division No. 2, and seeks to make conditional water rights absolute, in part. The decree in Case No. 93CW86 adjudicated claims for conditional rights for beneficial use as part of the Historic Arkansas River Project (“HARP”), as well as approval of a plan for augmentation for out-of-priority depletions. **I. APPLICATION FOR FINDING OF**

REASONABLE DILIGENCE Name of Structures: A. The Historic Arkansas River Project: (1) HARP Water Right: a. Legal Description of Point of Diversion and Physical Reach: i. Point of Diversion: A point located approximately whence the West quarter corner of Section 36, Township 20 South, Range 65 West of the 6th P.M., bears South 65 degrees, 30 minutes West, a distance of 1,090 feet. The point of diversion is the same as or near to the present point in the flood control levee of the Arkansas River where the Southern Colorado Power Company water right is diverted through the levee into the historical Arkansas River channel (the “HARP Water Right Diversion”). ii. Physical Reach: The Board controls the HARP Water Right from the HARP Water Right Diversion to the lower terminus of the HARP Project Area by the construction and placement of facilities in the historical Arkansas River channel and the Convention Center Connection to divert, direct, control, and store water therein. b. Date of Original Decree: February 19, 1998, Case No. 93CW86, District Court, Water Division No. 2, State of Colorado. On November 24, 2004, in Case No. 04CW14, District Court, Water Division No. 2, State of Colorado, the Court entered a Ruling that the HARP Water Right had been made absolute. c. Source: The Arkansas River. d. Appropriation Date: August 17, 1993. e. Amount: 30 cubic feet per second, absolute. (2) HARP Tailwater Right: a. Legal Description of Point of Diversion and Physical Reach: i. Point of Diversion: A point located where the tailwater (unconsumed cooling water) discharged from the Southern Colorado Power Company water right, now used in the Black Hills Energy Company Power Plant or discharged into the historical Arkansas River channel at or near the point

where Victoria Street in the City of Pueblo crosses the historical Arkansas River channel in the SW¼ NE¼ of Section 36, Township 20 South, Range 65 West of the 6th P.M. ii. Physical Reach: The Board has and will control the HARP Tailwater Right from its point of diversion to the lower terminus of the HARP Project Area by the construction and placement of facilities in the historical Arkansas River channel and the Convention Center Connection to divert, direct, control, and store water therein. A map indicating the location of the HARP Tailwater Water Right and physical reach 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.) b. Date of Original Decree: February 19, 1998, Case No. 93CW86, District Court, Water Division No. 2, State of Colorado. On November 24, 2004, the Court entered a Ruling that the Board had been diligent in development of the conditional HARP Tailwater Right and that a portion of the water right had been made absolute. c. Source: The tailwater and/or wastewater flows discharged into the historical Arkansas River channel at the point of discharge of the Black Hills Energy Company Power Plant at or near the point where Victoria Street crosses the historical Arkansas River channel and any other water entering the historical Arkansas River channel below the point of diversion and above the lower terminus of the HARP Project Area. d. Appropriation Date: August 17, 1993. e. Amount: 166.25 c.f.s., conditional; 33.75 c.f.s., absolute. B. Beneficial Use: All beneficial uses in connection with HARP, a development of a portion of the historical Arkansas River channel as a scenic, aesthetic, recreational, economic development, and park amenity in downtown Pueblo. 2. Provide a detailed outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures. A. HARP is an urban waterfront park and associated public amenities that, in part, reestablished the flow of the Arkansas River to its historical location in downtown Pueblo. The current location serves the community by revitalizing a segment of the downtown area that was previously unsightly and unusable. This urban development helped transform the downtown area and has attracted new businesses, shoppers, tourists, and others to the area. B. During the Diligence Period of March 2004 to November 2010, the HARP Authority has continued to manage and operate HARP, including its recreational boating operations. The Authority has incurred yearly operating expenses ranging from \$808,171.00 to \$1,083,828.00 for the entire HARP project. C. In addition to the HARP Authority, during the Diligence Period, the Pueblo community made the following investments in HARP: 1. HARP artwork – \$229,000.00. 2. Gateway Park Construction – \$3,383,419.01. 3. HARP Visitors Center: – \$183,027.92. 4. Veteran’s Bridge – \$1,673,919.86. D. HARP is a single, integrated project of water diversion, control, and beneficial use. For purposes of showing diligence in completing the conditional water rights originally decreed in Case No. 93CW86, work on one feature of the Project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project system, pursuant to C.R.S. § 37-92-307(4)(b). The work performed and actions taken during the Diligence Period demonstrate the

Applicant's continuing intent to develop the conditional HARP Tailwater Right described in this Application. The Applicant has shown that it can and will divert, store, or otherwise capture, possess, or control and beneficially use the conditional rights and that the subject rights can and will be completed with diligence and within a reasonable time. E. The work performed and actions taken by the Board during the Diligence Period demonstrate the Board's continuing intent to develop the conditional portion of the HARP Tailwater Right. The Board has met all applicable standards in demonstrating reasonable diligence.

II. APPLICATION TO MAKE CONDITIONAL RIGHT ABSOLUTE, IN PART

3. Describe Applicant's use of conditional water right sought to be made absolute:

A. HARP Tailwater Right: (1) During the Diligence Period of March 2004 to November 2010, the Applicant has diverted water in priority under the HARP Tailwater Right to be used for the decreed purposes within the reach of the HARP Project as described in Paragraph 2, above. The maximum rate of diversion was 56.87 c.f.s. on August 9, 2007. An accounting of the Applicant's diversion under the HARP Tailwater Right during the Diligence Period is attached to the Application as Exhibit B. (2) The Applicant requests the court to enter a decree making the conditional HARP Tailwater Right decreed in Case No. 93CW86 absolute, in part, in the amount of 56.87 c.f.s., with 143.13 c.f.s. remaining conditional. (3) The Applicant further requests that if it applies more than 56.87 c.f.s. to beneficial use prior to entry of a decree herein that the Court grant it an absolute water right in the amount proven without republication of notice of the Application.

III. RELIEF REQUESTED

4. Except to the extent the conditional water rights are claimed to be and are made absolute in this proceeding, the Applicant seeks a finding of reasonable diligence for the full amount of all remaining conditional water rights decreed in Case No. 93CW86. The Applicant seeks to make the amounts set forth in Paragraphs 3.A. absolute.

5. The Applicant requests the court to enter a decree:

A. Finding that the Applicant has shown reasonable diligence in development of the remaining conditional rights originally decreed in Case No. 93CW86 and finding, to the extent that such rights are not made absolute, that the Applicant has met all applicable legal requirements and is entitled to a decree continuing the conditional rights in good standing and fixing a date when the next application for a finding of reasonable diligence is required;

B. Confirming that the Applicant maintains a single unified and integrated water supply system and that diligence on any feature of that system shall be considered in finding reasonable diligence in the development of all conditional features of the system, including the conditional water rights that are the subject of this Application;

C. Making absolute, in part, the HARP Tailwater Right diverted through HARP in the amount of 56.87 c.f.s.;

D. Determining that the Applicant is entitled to a decree making absolute all quantities of water diverted and applied to beneficial use prior to the time of entry of a decree herein, even if that amount is greater than the amount stated herein.

E. Granting such other relief as the court deems proper.

CASE NO. 10CW80 – ALEBRIE, LLC, Attn: Fredric Speaker, 351 Greener Hills Rd., Heber City, UT 84032 (Steven P. Jeffers, Madoline Wallace-Gross, Lyons Gaddis Kahn & Hall, PC, Attorneys for Applicant, P.O. Box 978, Longmont, CO 80502-0978, (303) 776-9900)

Application For Water Storage Right And Approval Of Plan For Augmentation

FREMONT COUNTY

2. Background: Applicant owns land in the SW ¼ SW ¼ of Section 23 and SE ¼ SE ¼ of Section 22, Township 49 North, Range 9 East, N.M. P.M., in Fremont County, Colorado. Applicant seeks to adjudicate a water storage right for a small pond on Applicant's property and approval of a plan for augmentation, including exchange, to replace out-of-priority depletions from the pond. I. **WATER STORAGE RIGHT** **3. Name of Reservoir:** Alebrie Pond. **4. Location of dam:** The centerline of the dam is located in the SW ¼ SW ¼ of Section 23, Township 49 N, Range 9 East of the N.M. P.M., at a point approximately 500 feet from the South section line and 200 feet from the West section line. The street address for the property where the pond is located is 1146 County Road 49, Salida CO 81201. A map showing the location of the pond is attached to the Application as Appendix A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **5. Source:** Bear Creek, tributary to the Arkansas River. The pond is adjacent to Bear Creek and is filled through two 4-inch diameter PVC pipes that divert from Bear Creek at a point approximately 235 feet from the South line and 80 feet from the West line of Section 23. The pond discharges back to Bear Creek through an outlet in the dam. **6. Appropriation Date:** December 6, 1973. **How Appropriation was Initiated:** By filing application for livestock water tank, approval of the application by the State Engineer, construction and filling the pond. A copy of the livestock tank permit is attached to the Application as Appendix B. **Date Water Applied to Beneficial Use:** December 31, 1974. **7. Amount:** 2.70 acre-feet, ABSOLUTE, with a right to fill and continuously refill the pond and maintain freshening flows when water is available. **Diversion Rate:** 75 gpm. **8. Use:** Recreation, aesthetic, livestock and wildlife watering, and fish propagation. All uses are for in-reservoir purposes on Applicant's property. **9. Surface Area of High Water Line:** 0.42 acres. **Vertical Height of Dam:** 9 feet. **Length of Dam:** 150 feet. **10. Total Capacity of Reservoir:** 2.7 acre-feet. **Active Capacity** 1.4 acre-feet. **Dead Storage** 1.3 acre-feet. II. **PLAN FOR AUGMENTATION, INCLUDING EXCHANGE** **11. Name of Structure to be Augmented:** Alebrie Pond. **12. Water Rights to be Used for Augmentation:** Applicant has entered into a 20-year lease for delivery of up to 1.0 acre-feet per year of fully consumable water from the Upper Arkansas Water Conservancy District. The lease includes water supplies in Twin Lakes Reservoir, Pueblo Reservoir and other sources owned or controlled by the District. A copy of the lease is attached to the Application as Appendix C. **13. Statement of Plan for Augmentation:** Applicant plans to store water in the pond and divert water through the pond for freshening flows whenever the pond is in priority, and at all other times to the extent Applicant is able to replace all out of priority depletions from the pond or otherwise prevent

injury to downstream senior appropriators. Diversions from Bear Creek will flow through the pond and immediately return to Bear Creek about 270 feet downstream. All uses are non-consumptive, except for evaporation, which will be replaced by this plan. The maximum annual out of priority depletion is estimated to be 1.09 acre feet per year, equal to the annual evaporation from the pond surface assuming it is full at all times. No evaporation losses will occur when the pond surface is frozen. Water leased from the Upper Arkansas Water Conservancy District will be delivered to the Arkansas River to replace out-of-priority depletions from the pond. Applicant will utilize this water through an exchange on Bear Creek described below. If augmentation water is not available at the time, place or location needed to prevent injury to the calling water right, Applicant will stop diverting water into the pond or make releases from the pond to Bear Creek to offset the current out-of-priority depletions. **14. Conditional Appropriative Right of Exchange:** Water released to the Arkansas River will be exchanged up Bear Creek. **14.1. Location:** The downstream terminus of the exchange is the confluence of the Arkansas River and Bear Creek in the NE ¼ NE ¼ of Section 15, Township 49 N, Range 9 East of the N.M.P.M., approximately 630 feet from the North section line and 250 feet from the East section line. The upstream terminus of the exchange is the pond intake, at the location described in Paragraph 4. **14.2. Source:** The source for diversion is Bear Creek. The source of exchange water is the lease from the District. **14.3. Appropriation Date:** November 8, 2010, the date of Applicant's lease from the District. **14.4. Amount:** The maximum rate of the exchange is 0.167 cfs (75 gpm), up to 1 acre feet per year, CONDITIONAL. **14.5. Use:** The water will be exchanged for all uses claimed for Alebrie Pond and for replacement of depletions from the pond. **15. Owner of Land upon which Structures are Located:** Applicant.

CASE NO. 10CW81; Previous Case Nos. 84CW181, 03CW79, 93CW17 and 93CW18 – PUEBLO SPRINGS RANCH II, LLC, 10701 S. Eastern Avenue, Suite 1022, Henderson, NV 89052 (Steven T. Monson and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903, (719) 471-1212)

Application for Finding of Reasonable Diligence

PUEBLO COUNTY

II. Names of Structures. Newbery Water Intake. **III. Description of Conditional Water Right.** **A. Date of Original Decree.** The original decree was entered on March 26, 1987, in Case No. 84CW181, Water Division 2. **B. Legal Description of Point of Diversion.** The initial point of gathering of the underflow or subterranean waters is located in the valley of Fountain Creek on the westerly side thereof whence the South quarter corner of Section 19, Township 18 South, Range 64 West of the 6th P.M. bears North 10° 22' East 1,280 feet; from said point submerged pipelines are extended up across the valley of said river a distance of about one mile, and thereby the subterranean or underflow waters of said river are brought to said initial point; from said initial point the said pipeline runs in a general southerly and southwesterly direction to

a point where it has been plugged with concrete at the furthest downstream point of withdrawal of water from said pipeline approximately 2,000 feet North of the South line of Section 31, Township 18 South, Range 64 West of the 6th P.M. **C. Source.** The source of the Newbery Water Intake is Fountain Creek, a tributary of the Arkansas River. **D. Appropriation Date.** The appropriation date for the Newbery Water Intake is August 31, 1984. **E. Use.** The decreed use of this water right is for domestic, irrigation, municipal, commercial, industrial, fire protection, fish and wildlife, recreational, stock watering and any other beneficial purposes. The water claimed may be produced for immediate application to beneficial use, for storage and subsequent application to beneficial use. **F. Depth of Intake Galleries.** The intake galleries for the Newbery Water Intake is approximately up to 10 feet below the bed of Fountain Creek. **IV. Outline of Work Done Towards Completion of Appropriation and Application of Water to Beneficial Use.** In Case No. 84CW79, the Court decreed the use of Newbery Water Intake for domestic, irrigation, municipal, commercial, industrial, fire protection, fish and wildlife, recreational, stock watering and any other beneficial purposes. The Newbery Water Intake is a junior water right diverting from the structure also commonly known as the Fountain Valley Underflow and diverts ground water which is tributary to Fountain Creek. Diversions from the Newbery Water Intake are required to be augmented in accordance with the plan for augmentation decreed in Case No. 84CW182 and under the terms of the decree entered in consolidated Case Nos. 93CW17 and 93CW18. A finding of reasonable diligence and an award continuing diligence for the Newbery Water Intake was most recently found in Case No. 03CW79, decreed on November 3, 2004. During this diligence period, Applicant, in connection with the development of its property upon which the Newbery Water Intake is located, has proceeded with significant planning, surveying, subdivision, and development of their property that would include using the Newbery Water Intake as a physical source of water for such development. Applicant has also spent considerable time and efforts towards annexation of its land into the City of Pueblo with the Newbery Water Intake being an integrated part of any development through any annexation. Applicant has proceeded forward with the development of the Newbery Water Intake and the integrated distribution system, by retaining the services of civil engineering consultants, land planning consultants, transportation engineering consultants, environmental consultants, geotechnical consultants, and water resource engineering firms. Applicant has also already annexed a portion of its property into the City of Pueblo. Applicant's engineering firm, CVL Consultants of Colorado, Inc., has provided the Applicant with engineering, surveying and land planning services towards the development of the Applicant's land which development would include, in part, use of the Newbery Water Intake. Survey work completed since the last award of due diligence includes, land surveying services for ALTA surveys, boundary surveys, topographic surveys, legal descriptions, survey exhibits, and survey testimony at public hearings. Applicant has also completed significant preliminary work towards civil engineering aspect of the development of Applicant's land. Such work includes the completion of a Master Utility Study, Master Water Supply and

Distribution Study, and Master Drainage Study. These studies evaluate utility infrastructure to the property, sanitary sewer, storm drainage, and roads and transportation networks for Applicant's property. Additionally, preliminary grading plans, off-site utility extension plans, and multiple supporting exhibits have been prepared for the development of the land. Applicant has also spent significant resources and time towards developing land use plans, including, phasing maps, and individual detailed land use plans for 22 use areas. Therefore, during this diligence period Applicant has devoted substantial time and money towards land development, which includes the use and development of the Newbery Water Intake as part of the integrated water system. Applicant has also hired a water resource engineer, W.W. Wheeler, to review the physical and legal supplies of water to serve the Applicant's land. Applicant's water resource engineer has prepared a water supply report detailing the Applicant's physical and legal availability of its water resources. The Newbery Water Intake is a component of the development of the Applicant's property. During this diligence period Applicant has, therefore, devoted substantial efforts toward the development of its overlying property, the present and further application of groundwater from the Newbery Intake to beneficial use, and the integrated water system of distribution for the development of the Applicant's property. Significant engineering efforts have been expended in the analysis and the development of Applicant's water rights, integrated system of distribution, and the development and the Applicant's land. During this diligence period, Applicant has spent approximately \$900,000.00 on such development of the Applicant's property, which includes the Newbery Water Intake, as part of an integrated water supply and distribution system. **WHEREFORE**, the Applicants request that this application be granted and that continued diligence be found for the Newbery Water Intake, plus such other and further relief as the Court deems appropriate.

CASE NO. 10CW82 – COLORADO WATER CONSERVANCY BOARD, 1313 Sherman Street, Suite 721, Denver, CO 80203 (Jennifer Mele, Assistant Attorney General, Attorney for Applicant, 1525 Shreman Street, 7th Floror, Denver, CO 80203; (303) 866-5033)

Application For Water Rights To Preserve The Natural Environment To A Reasonable Degree

HUERFANO COUNTY, COLORADO

2. Name of natural stream: Cucharas Creek tributary to the Huerfano River tributary to the Arkansas River **3. Location:** **a. Legal description of the stream segment through which an instream flow is claimed:** The natural stream channel from the headwaters in the vicinity of latitude 37° 17' 46.95"N and longitude 105° 09' 27.75"W as the upstream terminus and extending to the State Highway 12 at latitude 37° 19' 54.10"N and longitude 105° 5' 47.58"W as the downstream terminus, being a distance of approximately 4.7 miles. This segment can be located on the Trinchera Peak and Cucharas Pass U.S.G.S. quadrangles. **b. For administrative purposes only:** Upper Terminus = SE SE S36 T31S R70W 6th PM, 972' West of the East Section Line, 353' North of the South Section Line, UTM North: 4127762.6 UTM East: 486022.5, Lower

Terminus = NE SW S22 T31S R69W 6th PM, 1367' East of the West Section Line, 2530' North of the South Section Line, UTM North: 4131674.4 UTM East: 491446.9

4. a. Date of initiation of appropriation: December 31, 2010, **b. Date water applied to beneficial use:** Water was first applied to beneficial use on or before January 26, 2010. The appropriation was completed on January 26, 2010 by the action of the Colorado Water Conservation Board under the provisions of Sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2009). **c. How appropriation was initiated:** At its regular meeting on January 26, 2010, the Colorado Water Conservation Board appropriated this water right pursuant to the Rules Concerning the Colorado Instream Flow and Natural Lake Program, 2 CCR 408-2. **5. Amount of water claimed (ABSOLUTE):** Instream flow of 4.9 cfs (May 15 – June 30), 2.5 cfs (July 1 – August 14), 1.6 cfs (August 15 – September 15), 1.2 cfs (September 16 – April 14) and 3.0 cfs (April 15 – May 14). **6. Remarks:** This appropriation is made pursuant to the provisions of Sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2009). The purpose of this appropriation by the State of Colorado is to preserve the natural environment to a reasonable degree. At its regular meeting on November 16, 2010, the Board determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the Board's water right herein, if granted; and that such environment can exist without material injury to water rights. **7.** This Application is for an instream flow water right, exclusive to the CWCB pursuant to section 37-92-102(3) C.R.S., and as such there are no proposed diversion structures or storage involved, nor does it affect ground water described in section 37-90-137(4), C.R.S.. See City of Thornton By and Through Utilities Bd. v. City of Fort Collins, 830 P.2d 915, 931 (Colo.,1992) ("A minimum stream flow does not require removal or control of water by some structure or device. A minimum stream flow between two points on a stream or river usually signifies the complete absence of a structure or device."). Therefore, the notice provision contained in section 37-92-302(2)(b) C.R.S. is not applicable.

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 January 2011, (forms available at Clerk's office or at www.courts.state.co.us, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments,

exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 6th day of December, 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)
Published: December _____, 2010