

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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

NOTICE OF NATIONAL REGISTER NOMINATION – BEHRMAN RANCH/BERCHERT
RANCH

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 November 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. 11CW74 – CHARLES E. KOCH REVOCABLE LIVING TRUST DATED APRIL 30, 2010, c/o Charles V. Koch and Audrey M. Sandefur, joint Successor Trustees, 1431 Walnut, Canon City, CO 81212 (David M. Shoheit, Felt Monson & Culichia, LLC, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)
Application to Amend Decree to Correct Decreed Source of Water
CUSTER COUNTY

2. Decreed Name of Structure for Which Change is Sought. Bowling Ditch (a/k/a Goodwin Ditch). **3. Summary of Relief Sought.** Applicant is the owner of the Bowling Ditch. A copy of the decree 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.) The decreed source of the Bowling Ditch is a branch of Bothwell Creek (a/k/a Venable Creek). The decreed location of the headgate for the Bowling Ditch, however, is located on Goodwin Creek. Moreover, the Bowling Ditch has always diverted from Goodwin Creek and has been administered in priority on Goodwin Creek since its appropriation. Goodwin Creek is tributary to Taylor Creek, tributary to Grape Creek, tributary to the Arkansas River. The Applicant files this Application to amend the original Bowling Ditch Decree to correct the decreed source of water for the Bowling Ditch from a branch of Bothwell Creek to Goodwin Creek. The Applicant does not seek a change in use from the historic irrigation, the point of diversion, the amount of diversion, or the location of the historically irrigated acres. **4. Information from Previous Decree.** **A. Adjudication Date:** An unnumbered decree entered on May 13, 1893, by the District Court of Fremont County, State of Colorado, in the Matter of the Priorities of Water Rights and in the Adjudication thereof in Water District 13. **B. Point of Diversion:** At a point 555 feet North of the Southwest corner of Section 23, Township 22 South, Range 73 West. **C. Decreed Source:** Bothwell Creek (a/k/a Venable Creek), a tributary of Spring Creek, tributary to Grape Creek, tributary to the Arkansas River. **D. Appropriation Amount and Use.** 1.7 c.f.s., for the irrigation of 70 acres. **E. Appropriation Date.** June 30, 1874, River Priority No. 99. **5. Proposed Change.** Applicant seeks to conform Goodwin Creek as the decreed source of water from the Bowling Ditch. The Applicant does not seek a change in use of the historic

irrigation, decreed point of diversion, the amount of diversions, or the location of the historically irrigated acres. To that end, the decreed source of water for the Bowling Ditch is to be Goodwin Creek. **6. Name and address or owners.** Applicant is the owner of the Bowling Ditch and own all lands irrigated under the ditch.

CASE NO. 11CW75 – DAVID W. BOYER, 13584 Neck Yoke Road, Rapid City, SD 57701; (605) 348-4181

Application for Change of Water Right

CUSTER COUNTY

Decreed water right for which change is sought: Pasture Ditch. **Date of original and all relevant subsequent decrees:** 12 March 1896; **Case No.:** Original Decree; **Court:** Division 2. **Legal description of structure:** Custer County, SW ¼ of the NE ¼ Section 23, Township 23 South, Range 72 West, 6th P.M., 2450 feet from the North line and 2000 feet from the East line. **Decreed source of water:** Cottonwood Creek. **Appropriation Date:** 15 March 1876; **Total amount decreed to structure:** .66 cfs. **Decreed use or uses:** Irrigation. **Amount of water that applicant intends to change:** .66 cfs. **Detailed description of proposed change:** Applicant proposes to change the decreed location of the Pasture Ditch headgate to the decreed location of the Old E. P. Smith Ditch headgate. The decreed irrigated acres will remain the same. **If a change in point of diversion, provide the legal description of decreed location and actual or new location of structure:** Custer County, SE ¼ of the NW ¼ Section 23, Township 23 South, Range 72 West, 6th P.M., 1820 feet from the North line and 2700 feet from the East line.

CASE NO. 11CW76 – MICHAEL and EILEEN BRIECK, 12225 Glenridge Lane, Black Forest, CO 80908 (James J. Petrock, Petrock & Fendel, P.C., 700 Seventeenth Street, Suite 1800, Denver, CO 80202; (303) 534-0702)

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

EL PASO COUNTY

Legal description of subject property: 5.3 acres being the south 726 feet of the north 1980 feet of the E1/2W1/2W1/2NE1/4 of Section 13, T12S, R66W of the 6th P.M., as shown on Attachment A to the Application ("Subject Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Estimated Amounts and Proposed Use:** Not nontributary Dawson: 2 acre-feet; Denver: 4 acre-feet; Arapahoe: 2 acre-feet; and Nontributary Laramie-Fox Hills: 1.5 acre-feet, for domestic, irrigation, stockwatering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property. **Groundwater to be augmented:** 1.5 acre-feet per year of the Dawson aquifer groundwater requested herein. **Water rights to be used for augmentation:** Return flows from the use of not nontributary Dawson aquifer groundwater herein and nontributary groundwater underlying the Subject Property requested herein. **Statement of plan for augmentation:** Applicants will use the Dawson aquifer water for inhouse, irrigation, and stockwatering use through an existing well (Permit No. 69949) at a rate of flow not to exceed 15 gpm. The well will be used for inhouse use in one residence (0.4

acre-feet), irrigation of 17,500 square-feet of lawn, garden and trees (1.0 acre-feet), and stockwatering of 8 large domestic animals (0.1 acre-feet). The water may also be used for storage by reducing the amount of irrigated acreage. Sewage treatment for inhouse use is provided by a non-evaporative septic system. Consumptive use associated with inhouse use will be approximately 10% of water used for that purpose and consumptive use associated with irrigation use will be approximately 90% of water used for that purpose. During pumping Applicants will replace actual depletions to the affected stream system pursuant to 37-90-137(9)(c), C.R.S. Return flows from use of the water accrue to the Arkansas River system, and those return flows are sufficient to replace actual depletions while the subject groundwater is being pumped. Applicants will reserve an equal amount of nontributary groundwater underlying the Subject Property to meet post pumping augmentation requirements. Applicants pray that this Court grant this application and for such other relief as seems proper in the premises.

CASE NO. 11CW77 - LOWER ARKANSAS VALLEY WATER CONSERVANCY DISTRICT ("Lower Ark District") AND LARKSPUR, INC. ATTN: Jay Winner, 801 Swink Avenue, Rocky Ford, Colorado 81067.

(Please address all correspondence to: Peter D. Nichols, #33167 Douglas M. Sinor, #31148 Lisa M. Thompson, #35923 Trout, Raley, Montaño, Witwer & Freeman, P.C., Attorneys for Applicant, 1120 Lincoln Street, Suite 1600, Denver, Colorado 80203, Phone: (303) 861-1963, pnichols@troutlaw.com; dsinor@troutlaw.com; ljthompson@troutlaw.com.)

Application for Change of Transmountain Water Rights in Receiving Basin.

IN GUNNISON AND ARKANSAS RIVER BASINS, IN SAGUACHE, GUNNISON, CHAFFEE, FREMONT, CROWLEY, OTERO, BENT, PROWERS, AND PUEBLO COUNTIES, COLORADO

2. Decreed water right for which change is sought. A. Name of structure(s).

Larkspur Ditch system, each structure described below. **B. Date of original and all relevant subsequent decrees.** 1) Original decree (absolute and conditional): April 19, 1943, Case No. 2079, Gunnison County District Court. 2) Decree canceling conditional water right: March 25, 1975, Case No. W-414(74) (listed in the Division of Water Resources files as Case No. 75CW0414), Water Division No. 4. **C. Legal description of structure.** 1) The decreed location of Headgate No. 1 of Larkspur Ditch No. 1 is in Saguache County on the east bank of the West Fork of Millswitch Creek, a tributary of Tomichi Creek and the Gunnison River, whence the northeast corner of Section 25, Township 48, North, Range 6 East, N.M.P.M., bears North 14°40' East 12,993.5 feet. The decreed location of Headgate No. 2 of Larkspur Ditch No. 1 is on the east bank of the East Branch of Millswitch Creek, a tributary of Tomichi Creek and the Gunnison River, at a point whence the northeast corner of Section 25, Township 48 North, Range 6 East, N.M.P.M., bears North 10°44' East 12,674.4 feet. 2) The decreed location of Headgate No. 1 of Larkspur Ditch No. 2 is in Saguache County on the south bank of the East Fork of Harry Creek, a tributary of Tomichi Creek and of the Gunnison River, at a point whence the Southeast corner of Section 24, Township 48 North, Range 6 East, N.M.P.M., bears South 29°11'42" East 12,810.7 feet. The decreed location of Headgate No. 2 of Larkspur Ditch No. 2 is on the north bank of the East Fork of Harry Creek, a tributary of Tomichi Creek and of the Gunnison River as aforesaid, at a point whence the Southeast corner of Section 24, Township 48 North, Range 6 East, N.M.P.M., bears

South 32°46'11" East 11,910.5 feet. 3) The decreed location of the headgate of the Agate Creek Extension of Larkspur Ditch No. 2 is in Gunnison County on the north bank of the East Agate Creek, a tributary of Tomichi Creek and the Gunnison River, at a point whence the Southeast corner of Section 24, Township 48 North, Range 6 East, N.M.P.M., bears South 13°51'18" East 18,343.6 feet. 4) The decreed location of the Harry Creek Extension of said Larkspur Ditch No. 2 is in Gunnison County on the south bank of the North Fork of Harry Creek, a tributary of Tomichi Creek and the Gunnison River, at a point whence the Southeast corner of Section 24, Township 48 North, Range 6 East, N.M.P.M., bears South 36°34'28" East 15,026.7 feet. 5) The Larkspur Ditch structures divert water from the Gunnison River basin across the Continental Divide and discharge the water into Poncha Creek at Marshall Pass. From there, the water flows downstream to the South Arkansas River and to the Arkansas River. 6) The decreed locations of the above-described headgates are shown on the map attached to the Application as Exhibit 1. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **D. Decreed Source of Water.** Harry Creek, Millswitch Creek, and Agate Creek, tributaries of Tomichi Creek, tributary to the Gunnison River. **E. Appropriation date.** June 8, 1931. **F. Total amount decreed to structure.** 10 cfs, absolute. **G. Decreed uses.** Irrigation of lands in the Arkansas River Valley. **H. Amount of water that Applicants intend to change.** The Larkspur Ditch water right is owned by Larkspur, Inc. Lower Ark District has acquired 13,629.17 of the 18,660 outstanding shares of capital stock of Larkspur, Inc. or approximately 73 percent of the outstanding shares. Lower Ark District's shares are represented by stock certificate numbers 1221, 1238, and 1260. In the future, Lower Ark District intends to acquire additional shares of Larkspur, Inc. stock. By this application, Larkspur, Inc. and Lower Ark District seek to quantify and change the entire Larkspur Ditch water right under a ditch-wide quantification method. By resolution dated September 21, 2011, the Board of Directors of Larkspur, Inc. authorized the filing of this application. **3. Detailed description of proposed change. A.** The Larkspur Ditch is decreed for irrigation of lands in the Arkansas River Valley, and was historically used to irrigate lands served by the Excelsior Ditch, Rocky Ford High Line Canal, Fort Lyon Canal and Catlin Canal. A summary of recent diversion records for the Larkspur Ditch is attached to this Application as Exhibit 2. **B.** Lower Ark District does not seek to change the points of diversion for the Larkspur Ditch system. Lower Ark District will continue to divert the Larkspur Ditch water right at the historical locations in the Gunnison River basin and deliver water to Poncha Creek at Marshall Pass. The water will flow down Poncha Creek to the South Arkansas River and into the Arkansas River, as it has historically, where such water will be used for irrigation and the other new uses described below. **C.** The Applicants seek to add the following new uses to the existing irrigation use: domestic, stock watering, replacement of historical return flows associated with changed water rights, augmentation and replacement including, but not limited to, augmentation and replacement under Rule 14 Plans and other decreed or administratively approved augmentation plans, and replacement under Rule 10 Compact Compliance Plans within the Lower Ark District boundaries; recharge of Arkansas River Basin ground water, recharge of Denver Basin aquifers, including relinquishment pursuant to C.R.S. § 37-90-137(9)(b), and recharge of the Upper Black Squirrel Creek Designated Basin alluvial aquifers; all municipal purposes, including

without limitation, domestic, agricultural, industrial, commercial, irrigation, stock watering, fire protection, recreation, fish and wildlife preservation and propagation, and all other beneficial purposes within the service areas of the City of Colorado Springs, the members of the Pikes Peak Regional Water Authority (including, among others, the City of Fountain, the Town of Monument, the Town of Palmer Lake, Cherokee Metropolitan District, Donala Water & Sanitation District, and Triview Metropolitan District), and the City of Aurora, as such service areas exist now and in the future, and by customers of Stonewall Springs Quarry, LLC. **D.** The water diverted may be used, reused, successively used and disposed to extinction for the above-described purposes. **E. Manner of use.** Following diversion and delivery to the Arkansas River, water from the Larkspur Ditch may be used by crediting it directly for augmentation and replacement purposes or rediverting it for direct use, use by storage and subsequent release, by recharge, and by substitution and exchange. **F. Points of rediversion and storage.** In addition to re-diverting water at the Catlin Canal for irrigation use, Lower Ark District may re-divert and store transmountain water from the Larkspur Ditch in Pueblo Reservoir, Lake Henry, Lake Meredith, Holbrook Reservoir, Dye Reservoir, Adobe Reservoir, and Horse Creek Reservoir. Lower Ark District also seeks the right to re-divert and store such transmountain water at other diversion points on the Arkansas River in the future without limitation, provided Lower Ark District maintains dominion over such water. All deliveries of water from the Larkspur Ditch system to points of augmentation/ replacement and re-diversion shall be subject to assessment of appropriate transit losses. **4. Remarks. A.** The water delivered to the Arkansas River by the Larkspur Ditch is foreign and imported transmountain water. Under C.R.S. § 37-82-106, Applicants are entitled to use, reuse, and make successive use of such water to extinction. **B.** The water from the Larkspur Ditch system is delivered from the Gunnison River basin to the Arkansas River basin by transmountain diversion. So far as appropriators of water from the Gunnison River basin are concerned, use of water from the Larkspur Ditch on the east slope is 100% consumptive. See *Twin Lakes Reservoir and Canal Co. v. City of Aspen*, 193 Colo. 478, 568 P.2d 45 (1977). **C.** Appropriators of water from the Arkansas River and its tributaries have no vested rights to the continued importation of transmountain water from the Larkspur Ditch system or to return flows generated from the use of water from the Larkspur Ditch. See *City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1 (Colo. 1996). **5. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.** A. Larkspur Ditch system: United States Forest Service, Gunnison Ranger District, John Murphy, District Ranger, 216 N. Colorado, Gunnison, CO 81230. B. Pueblo Reservoir: United States Department of Interior, Bureau of Reclamation, 11056 West County Road 18E, Loveland, CO 80537-9711 C. Lake Meredith/Lake Henry: Colorado Canal Company, P.O. Box 8, 331 Main St., Ordway, CO 81063. D. Holbrook Reservoir/Dye Reservoir: Holbrook Mutual Irrigation Company, 23207 Hwy 266, Rocky Ford, CO 81067 E. Adobe Reservoir/Horse Creek Reservoirs: Fort Lyon Canal Company, 750 Bent Avenue, Las Animas, CO 81054.

**CASE NO. 11CW78 – NOAH H. (BUDDY) TAYLOR, JR. AND DIANE R. TAYLOR,
0496 County Road 9A, Canon City, CO 81212**

(Michael F. Browning, Porzak Browning & Bushong, LLP, Attorney for Applicants, 929 Pearl Street, Suite 300, Boulder, CO 80302; (303) 443-6800)

Application for Determination of Water Rights (Surface)

FREMONT COUNTY, COLORADO

2. Description of Subject Water Rights. The Applicants own the following water rights: A. Chivvis No. 1 Ditch, on Tallahassee Creek, decreed location at a point on the North Fork thereof at a point bearing N 84°26' W, 2375 feet, from the E ¼ corner of Section 9, T17S, R73W of the 6th P.M., decreed for 2.0 cfs, with an appropriation date of May 31, 1878, for the irrigation of eight acres, and an an appropriation date of May 31, 1881, for the irrigation of an additional seven acres, by the District Court in and for Fremont County on February 3, 1894. B. Chivvis No. 2 Ditch, on Tallahassee Creek, decreed location at a point on the North Fork thereof bearing 75°32' E, 1600 feet from the W1/4 corner of Section 9, T17S, R73W of the 6th P.M., decreed for 2.0 cfs, with an appropriation date of May 31, 1878 by the District Court in and for Fremont County on February 3, 1894. C. Chivvis No. 3 Ditch, on Tallahassee Creek, decreed location at a point on the North Fork thereof bearing N 84°25', 2375 feet from the E ¼ corner of Section 9, T17S, R73W of the 6th P.M., decreed for 1.5 cfs, with an appropriation date of May 15, 1875 by the District Court in and for Fremont County on February 3, 1894. D. Pioneer North Ditch, on Tallahassee Creek, decreed location (apparently), at a point on the North side of the North Fork thereof 30 rods N and 10 rods W of the SE corner of the NW ¼ SE ¼ of Section 7, T17S, R73W, of the 6th P.M., decreed for 2.0 cfs, with an appropriation date of May 10, 1880, and for an additional amount of unspecified flow with an appropriation date of May 31, 1885 by the District Court in and for Fremont County on February 3, 1894. E. Pioneer South Ditch, on Tallahassee Creek, decreed location at a point on the South side of the North Fork thereof 30 rods N and 10 rods W of the SE corner of the NW ¼ SE ¼ of Section 7, T17S, R73W, of the 6th P.M., decreed for 1.0 cfs, with an appropriation date of May 10, 1879 by the District Court in and for Fremont County on February 3, 1894. F. North Squaw Ditch, on Squaw Creek, decreed location at a point 69 rods E and 9 rods S of the NW corner of the SW ¼ of Section 5, T17S, R73W, of the 6th P.M., decreed for an unspecified amount of flow for the irrigation of four acres, with an appropriation date of May 30, 1887, by the District Court in and for Fremont County on February 3, 1894. G. South Squaw Ditch, on Squaw Creek, decreed location at a point being the NW corner of the SW1/4 of Section 5, T17S, R73W, of the 6th P.M., decreed for unspecified amounts with appropriation dates of May 30, 1887, 1888 and 1889, for the irrigation of a total of ten acres, by the District Court in and for Fremont County on February 3, 1894. H. Black Ditch No. 1, on Squaw Creek, decreed location at a point bearing N 84°40' E, 1200 feet from the SW corner of Section 33, T16S, R73W, of the 6th P.M., decreed for 1.0 cfs, with an appropriation date of June 1, 1876, for the irrigation of 12 acres, and an appropriation date of November 30, 1882, for the irrigation of nine acres, by the District Court in and for Fremont County on February 3, 1894. I. Black Ditch No. 2, on Squaw Creek, decreed location at a point bearing S 85°30' E, 800 feet from the SW corner of Section 33, T16S, R73W, of the 6th P.M., decreed for 0.9 cfs, with an appropriation date of November 1, 1882, by the District

Court in and for Fremont County on February 3, 1894. J. Hodges Ditch No. 1, on Cottonwood Creek, decreed location at a point bearing S 88°04' W, 728 feet from the quarter corner on the E line of Section 34, T16S, R73W, of the 6th P.M., decreed for 2.0 cfs, with an appropriation date of December 1, 1870, by the District Court in and for Fremont County on February 3, 1894. K. Hodges Ditch No. 2, on Cottonwood Creek, decreed location at a point bearing 48° East 1,811 feet from the Southwest corner of Section 34, T16S, R73W, of the 6th P.M., decreed for 2.5 cfs, with an appropriation date of November 15, 1870, by the District Court in and for Fremont County on February 3, 1894. L. Cottonwood North Side Ditch, on Cottonwood Creek, decreed location at a point in the SE1/4 of the SE1/4 of Section 2, T17S, R73W, of the 6th P.M., decreed an unspecified rate, with an appropriation date of February 29, 1872, for the irrigation of six acres, and an appropriation date of December 31, 1880 for the irrigation of five acres, by the District Court in and for Fremont County on February 3, 1894. **3. Background.** The Subject Water Rights are all decreed for irrigation use. The Subject Water Rights were included in an augmentation plan sought by Cyprus Mines Corporation ("Cyprus") and approved by this Court by decree dated March 7, 1980 in Case No. W-4806 (the "Aug Plan") to replace projected depletion from a large open pit uranium mine and mill Cyprus was planning on the land historically irrigated by the Subject Ditches and surrounding land. The Aug Plan listed three conditions before operations could commence under the Aug Plan, being the conveyance of the Subject Water Rights and other water rights to a trust, the recording of dry-up covenants against the historically irrigated land, and the posting of a performance bond. The price of uranium plummeted shortly before entry of the Aug Plan decree as a result of the Three Mile Island accident and Cyprus abandoned the project without ever constructing the proposed mine or mill. Cyprus never satisfied any of the decree conditions required to commence operation of the Aug Plan and no operations under the Aug Plan ever occurred. Instead, Cyprus re-conveyed the Subject Water Rights to the Applicants along with the associated land. Cyprus no longer exists and the Applicants' mineral lease with Cyprus has long since expired. The Applicants continued their irrigation use of the Subject Water rights before and after the Aug Plan and continue to use the Subject Water Rights for irrigation purposes. **4. Relief Requested.** Applicants request the Court to enter any order confirming that irrigation remains a valid use of the Subject Water Rights despite approval of the Aug Plan since augmentation was only an alternative and contingent use, the conditions for implementation of the Aug Plan have never been satisfied, and the Subject Water Rights have never been used for augmentation purposes and have instead continued to be used for irrigation purposes. No changes in the Subject Water Rights are sought in this Application. **5. Land Ownership.** Applicants own the land upon which the Subject Water Rights divert and are used for irrigation.

CASE NO. 11CW79 – L.G. OXFORD and DOROTHY L. OXFORD, 231 Park Lane, Canon City, CO 81212 (Marcus J. Lock and Kendall K. Burgemeister, Wilderson Lock & Hill, LLC, Attorneys for Applicant, 525 North Main Street, Gunnison, CO 81230; (970) 641-1903

Application for Absolute and Conditional Surface Water Rights, Absolute Storage Water Rights, Conditional Appropriative Right of Exchange, and Approval of Plan for Augmentation

FREMONT COUNTY

Overview. The purpose of the Application is to provide a water supply for piscatorial, recreational, wildlife propagation, aesthetic and irrigation purposes on the Silver Spruce Ranch, located on Stout Creek, a tributary of the Arkansas River. The proposed uses include the filling of a series of ponds with a total of approximately 4.179 acre-feet of volume and 0.966 acres of surface area, and the irrigation of approximately 1,000 square-feet of grass. When there is no local call on Stout Creek, out of priority depletions will be augmented by the appropriative right of exchange on Stout Creek requested in this Application. When there is a local call on Stout Creek, out of priority depletions will be augmented by release of water previously exchanged to and stored on the Silver Spruce Ranch property. The source of replacement water for all out of priority depletions is a long term lease with the Upper Arkansas Water Conservancy District ("UAWCD"). **Application for Water Storage Rights** **Name of Reservoir:** SILVER SPRUCE RANCH POND NO. 1; **Legal description of outlet:** A point in the NW1/4SW1/4 of Section 23, Township 48N, Range 10E, N.M.P.M., 1831 feet from the south section line and 230 feet from the west section line. This location is indicated on the map attached as Exhibit A to this Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Source:** Stout Creek, tributary to the Arkansas River; **Structure used to fill reservoir:** SILVER SPRUCE RANCH PIPELINE, as described below; **Date of Initiation of Appropriation:** May 8, 1999; **How appropriation was initiated:** Construction of the pond, and filling the pond. Subsequent to filling the pond, Applicant has also engaged a water resources engineer and a surveyor to calculate the capacity of the pond, and engaged legal counsel to prosecute this Application; **Amount:** Volume: 1.140 acre-feet; Maximum Rate of Diversion: 0.421 cfs; **Proposed Use:** recreational, piscatorial, wildlife propagation, aesthetic, augmentation; **Surface area at high water line:** 0.262 acres; **Vertical height of dam:** Less than 10 feet. Existing pond depth is approximately 7 feet; **Length of dam:** 240 feet; **Capacity:** 1.140 acre-feet (live); **Remarks:** The pond is currently constructed with a capacity of 0.728 acre-feet. Upon approval of the plan for augmentation requested herein, the pond will be lined and expanded to a capacity of 1.140 acre-feet; **Name of Reservoir:** SILVER SPRUCE RANCH POND NO. 2; **Legal description of location of dam centerline:** A point in the NW1/4SW1/4 of Section 23, Township 48N, Range 10E, N.M.P.M., 2343 feet from the south section line and 453 feet from the west section line. This location is indicated on the map attached as Exhibit A to this Application; **Source:** Stout Creek, tributary to the Arkansas River; **Structure used to fill reservoir:** SILVER SPRUCE RANCH PIPELINE, as described below; **Date of Initiation of Appropriation:** May 8, 1999; **How appropriation was initiated:** Construction of the pond, and filling the pond. Subsequent to filling the pond, Applicant has also engaged a water resources engineer and a surveyor to calculate the capacity of the pond, and engaged legal counsel to prosecute this Application; **Amount:** Volume: 0.437 acre-feet; Maximum Rate of Diversion: 0.421 cfs; **Proposed Use:** recreational, piscatorial, wildlife propagation, aesthetic, augmentation; **Surface area at high water line:** 0.184 acres; **Vertical height of dam:** Less than 10 feet. Pond depth is approximately 5.6 feet; **Length of dam:** 195 feet; **Capacity:** 0.437 acre-feet (0.146 acre-feet live, and 0.291 acre-feet dead); **Name of Reservoir:** SILVER SPRUCE RANCH POND NO. 3; **Legal description of location of dam centerline:** A point in the

NW1/4SW1/4 of Section 23, Township 48N, Range 10E, N.M.P.M., 2465 feet from the south section line and 716 feet from the west section line This location is indicated on the map attached as Exhibit A to this Application; **Source:** Stout Creek, tributary to the Arkansas River; **Structure used to fill reservoir:** SILVER SPRUCE RANCH PIPELINE, as described below; **Date of Initiation of Appropriation:** May 8, 1999; **How appropriation was initiated:** Construction of the pond, and filling the pond. Subsequent to filling the pond, Applicant has also engaged a water resources engineer and a surveyor to calculate the capacity of the pond, and engaged legal counsel to prosecute this Application; **Amount:** Volume: 2.586 acre-feet; **Maximum Rate of Diversion:** 0.421 cfs; **Proposed Use:** recreational, piscatorial, wildlife propagation, aesthetic, augmentation; **Surface area at high water line:** 0.502 acres; **Vertical height of dam:** Less than 10 feet. Pond depth is approximately 7.6 feet; **Length of dam:** 400 feet; Capacity: 2.586 acre-feet (0.862 acre-feet live and 1.724 acre-feet dead); **Name of Reservoir:** SILVER SPRUCE RANCH POND NO. 4; **Legal description of location of dam centerline:** A point in the NW1/4SW1/4 of Section 23, Township 48N, Range 10E, N.M.P.M., 2424 feet from the south section line and 621 feet from the west section line. This location is indicated on the map attached as Exhibit A to this Application; **Source:** Stout Creek, tributary to the Arkansas River; **Structure used to fill reservoir:** SILVER SPRUCE RANCH PIPELINE, as described below; **Date of Initiation of Appropriation:** May 8, 1999; **How appropriation was initiated:** Construction of the pond, and filling the pond. Subsequent to filling the pond, Applicant has also engaged a water resources engineer and a surveyor to calculate the capacity of the pond, and engaged legal counsel to prosecute this Application; **Amount:** Volume: 0.006 acre-feet; **Maximum Rate of Diversion:** 0.421 cfs; **Proposed Use:** recreational, piscatorial, wildlife propagation, aesthetic; **Surface area at high water line:** 0.008 acres; **Vertical height of dam:** Less than 10 feet. Pond depth is approximately 2.3 feet; **Length of dam:** 16 feet. **Capacity:** 0.006 acre-feet (all live); **Name of Reservoir:** SILVER SPRUCE RANCH POND NO. 5; **Legal description of location of dam centerline:** A point in the NW1/4SW1/4 of Section 23, Township 48N, Range 10E, N.M.P.M., 2224 feet from the south section line and 821 feet from the west section line. This location is indicated on the map attached as Exhibit A to this Application; **Source:** Stout Creek, tributary to the Arkansas River; **Structure used to fill reservoir:** SILVER SPRUCE RANCH PICNIC AREA PIPELINE, as described below; **Date of Initiation of Appropriation:** May 8, 1999; **How appropriation was initiated:** Construction of the pond, and filling the pond. Subsequent to filling the pond, Applicant has also engaged a water resources engineer and a surveyor to calculate the capacity of the pond, and engaged legal counsel to prosecute this Application; **Amount:** Volume: 0.002 acre-feet; **Maximum Rate of Diversion:** 0.001 cfs (0.45 gpm); **Proposed Use:** recreational, piscatorial, wildlife propagation, aesthetic; **Surface area at high water line:** 0.002 acres; **Vertical height of dam:** Less than 10 feet. Pond depth is approximately 1 foot; **Length of dam:** 10 feet; **Capacity:** 0.002 acre-feet (all live); **Name of Reservoir:** SILVER SPRUCE RANCH POND NO. 6; **Legal description of location of dam centerline:** A point in the NW1/4SW1/4 of Section 23, Township 48N, Range 10E, N.M.P.M., 2237 feet from the south section line and 831 feet from the west section line. This location is indicated on the map attached as Exhibit A to this Application; **Source:** Stout Creek, tributary to the Arkansas River; **Structure used to fill reservoir:** SILVER SPRUCE RANCH PICNIC

AREA PIPELINE, as described below; **Date of Initiation of Appropriation:** May 8, 1999; **How appropriation was initiated:** Construction of the pond, and filling the pond. Subsequent to filling the pond, Applicant has also engaged a water resources engineer and a surveyor to calculate the capacity of the pond, and engaged legal counsel to prosecute this Application; **Amount:** Volume: 0.003 acre-feet; Maximum Rate of Diversion: 0.001 cfs (0.45 gpm); **Proposed Use:** recreational, piscatorial, wildlife propagation, aesthetic; **Surface area at high water line:** 0.003 acres; **Vertical height of dam:** Less than 10 feet. Pond depth is approximately 1 foot; Length of dam: 8 feet; **Capacity:** 0.003 acre-feet (all live); **Name of Reservoir:** SILVER SPRUCE RANCH POND NO. 7; **Legal description of location of dam centerline:** A point in the NW1/4SW1/4 of Section 23, Township 48N, Range 10E, N.M.P.M., 2244 feet from the south section line and 857 feet from the west section line. This location is indicated on the map attached as Exhibit A to this Application; **Source:** Stout Creek, tributary to the Arkansas River; **Structure used to fill reservoir:** SILVER SPRUCE RANCH PICNIC AREA PIPELINE, as described below; **Date of Initiation of Appropriation:** May 8, 1999; **How appropriation was initiated:** Construction of the pond, and filling the pond. Subsequent to filling the pond, Applicant has also engaged a water resources engineer and a surveyor to calculate the capacity of the pond, and engaged legal counsel to prosecute this Application; **Amount:** Volume: 0.005 acre-feet; Maximum Rate of Diversion: 0.001 cfs (0.45 gpm); **Proposed Use:** recreational, piscatorial, wildlife propagation, aesthetic, augmentation; **Surface area at high water line:** 0.005 acres; **Vertical height of dam:** Less than 10 feet. Pond depth is approximately 1 foot; **Length of dam:** 10 feet; **Capacity:** 0.005 acre-feet (all live); **Application for Surface Water Rights:** **Structure:** SILVER SPRUCE RANCH PIPELINE (Conditional); **Point of Diversion:** A point on the west bank of Stout Creek in the NW1/4SW1/4 of Section 23, T48N, R10E, NMPM, 1365 feet from the south section line and 240 feet from the west section line; **Source:** Stout Creek, tributary to the Arkansas River; **Date of Initiation of Appropriation:** November 30, 2011; **How appropriation was initiated:** Formation of intent to complete the appropriation plus the performance of several overt acts including, but not limited to construction of the ponds described above, engagement of a water resources engineer and a surveyor to calculate the capacity of the ponds, engagement of legal counsel to prosecute this Application; and the filing of this Application; **Amount:** 0.421 cfs (Conditional); **Capacity:** To be determined, at least 0.421 cfs; **Use:** recreational, piscatorial, wildlife propagation, aesthetic, and augmentation through the filling and refilling of the Silver Spruce Ranch Pond Nos. 1-4; **Remarks:** The location of the point of diversion and the location of the ponds to be filled are illustrated on Exhibit A to the Application. Although Applicant seeks absolute rights for the Silver Spruce Ranch Pond Nos. 1-4, Applicant only seeks a conditional right for this structure. The ponds were previously filled via a different structure; **Structure:** SILVER SPRUCE RANCH PICNIC AREA PIPELINE; **Point of Diversion:** east bank of Stout Creek in the NW1/4 of the SW1/4 of Section 23, T48N, R10E, NMPM, 2077 feet from the south section line and 696 feet from the west section line (Easting 13S 0427054, Northing 4250009, NAD83); **Source:** Stout Creek, tributary to the Arkansas River; **Date of Initiation of Appropriation:** May 8, 1999; **How appropriation was initiated:** Installation of the pipeline, and using the pipeline to fill Silver Spruce Ranch Pond Nos. 5-7. Subsequent to installation and use of the pipeline, Applicant has also

engaged a water resources engineer and a surveyor to calculate the capacity of the ponds, and engaged legal counsel to prosecute this Application; **Amount:** 0.001 cfs (0.45 gpm) (Absolute); **Capacity:** At least 0.001 cfs; **Use:** recreational, piscatorial, wildlife propagation, and aesthetic through the filling and refilling of the Silver Spruce Ranch Pond Nos. 5-7, and irrigation of approximately 1,000 square feet of grass; **Remarks:** The location of the point of diversion, the location of the ponds to be filled, and the location of the grass to be irrigated by this water right are illustrated on Exhibit A to the Application; **Application for Conditional Appropriative Right of Exchange;** **Name:** SILVER SPRUCE RANCH EXCHANGE; **Lower Terminus:** Confluence of the Arkansas River and Stout Creek; **Upper Terminus:** The point of diversion for the Silver Spruce Ranch Pipeline, as described above. Water will also be diverted at the Silver Spruce Ranch Picnic Area Pipeline point of diversion, which lies within the exchange reach; **Source of Substitute Supply:** Water leased pursuant to a 1-year and a 30-year lease agreement with the Upper Arkansas Water Conservancy District ("UAWCD"). The water delivered by UAWCD may be any fully consumable water that UAWCD owns or has a right to use, which may include: Water attributable to shares of stock in Twin Lakes Reservoir and Canal Company, water stored in North Fork Reservoir (Case Nos. 82CW204, 84CW141), water stored in O'Haver Reservoir (Case No. 82CW205), UAWCD's interest in the White Ditch No. 1 (Case No. 91CW19), all as described further in the Application, water and water rights that UAWCD exchanges and makes available for UAWCD's use pursuant to the application pending in Case No. 04CW96, District Court, Water Division No. 2, only after a decree has been entered. Any other water and water rights that UAWCD has or may acquire that legally can be used to augment or replace out-of-priority depletions, provided the amounts of such water available for such uses have been adjudicated and quantified for such use. Applicant shall provide such notice as may be required of any such additional water prior to use within this plan. Fryingpan-Arkansas Project water will **not** be used as a source of substitute supply for this exchange or the plan for augmentation described below. **Date of initiation of appropriation:** November 30, 2011; **How appropriation was initiated:** Formation of intent to complete the appropriation plus the performance of several overt acts including, but not limited to installation of a pipeline, construction of the ponds, engagement of a water resources engineer to calculate the quantity of water that is needed, obtaining a lease with UAWCD, engagement of legal counsel to prosecute this Application; and the filing of this Application; **Amount (conditional):** Maximum rate: 0.421 cfs; Maximum volume exchanged per year: 7.45 acre-feet; **Proposed beneficial uses:** Augmentation of the beneficial uses described above pursuant to the plan for augmentation described in this application; **Remarks:** Applicant is **not** seeking antedation of an existing exchange pursuant to C.R.S. § 37-92-305(10). The exchange will only be operated when there is no controlling call from a senior water right on Stout Creek. Applicants entered into a 1-year lease with UAWCD for a quantity of water sufficient to allow an initial fill of the ponds plus transit loss from the point of release by UAWCD. **Application for Approval of Plan for Augmentation;** **Structures to be augmented:** SILVER SPRUCE RANCH POND NOS. 1-7, SILVER SPRUCE RANCH PIPELINE, SILVER SPRUCE RANCH PICNIC AREA PIPELINE, all as described above (all currently undecreed); **Water right(s) to be used for augmentation:** The sources of replacement water are the 1-year and 30-year leases with UAWCD, by operation of the

Silver Spruce Ranch Exchange, described above; **Statement of Plan for Augmentation:** Because the Arkansas River system is over-appropriated, all depletions caused by the uses of water described in this Application are assumed to be out of priority depletions that will be replaced pursuant to this Plan for Augmentation; Water acquired under the leases with UAWCD will be released by UAWCD as directed by the office of the Division Engineer. Such water will be delivered to the confluence of Stout Creek and the Arkansas River. UAWCD may provide the substitute supply of water for the Silver Spruce Ranch Exchange by direct application and credit of augmentation water to the stream system at or above the controlling water right or by releasing a substitute supply of water from storage at or above the controlling water right. If an exchange is required for direct application and credit of a substitute supply of water to the stream system, UAWCD may do so pursuant to a decreed or administratively approved exchange operated by UAWCD that is not the subject of this Application; Such water will provide a replacement supply for pond filling and for recurring annual depletions when no local call is in effect on Stout Creek. When a local call is in effect on Stout Creek, water previously exchanged into storage in the Silver Spruce Ranch Pond Nos. 1-3 will be released to augment out of priority depletions caused by the evaporation of water from the surface of Silver Spruce Ranch Pond Nos. 1-7 and from the irrigation of approximately 1000 square feet of grass; UAWCD will not be responsible for operating the diversion structures and ponds on the Silver Spruce Ranch Property. Such operation will be by the office of the Division Engineer and / or by the Applicant as directed by the office of the Division Engineer; In the first year of operation of the plan for augmentation, a quantity of water (approximately 4.19 acre-feet) will be leased on a one-time basis from the UAWCD to complete an initial fill of Silver Spruce Ranch Pond Nos. 1-7 by the Silver Spruce Ranch Exchange. This will occur when no local call is in effect on Stout Creek; In all years, a quantity of water (approximately 3.42 acre-feet) leased from UAWCD on a long-term basis will be used to replace all out of priority depletions from pond evaporation, irrigation of approximately 1000 square feet of grass, and refilling Silver Spruce Ranch Pond Nos. 4-7, which will be drained annually. It is estimated that depletions from pond evaporation will be approximately 3.20 acre-feet, depletions from irrigation will be approximately 0.046 acre-feet, and depletions from draining and refilling Pond 4-7 will be approximately 0.016 acre-feet. Thus, recurring annual depletions will be approximately 3.26 acre-feet. The additional leased amount will cover transit loss on the Arkansas River; Beginning on November 1 of each year after the first year, the Silver Spruce Ranch Exchange will be operated to refill the Silver Spruce Ranch Pond Nos. 1-3 (due to augmentation releases made in the previous water year). In an average year, the amount diverted to refill these ponds is estimated to be 1.56 acre-feet (this amount is part of, and not in addition to, the 3.42 acre-feet described in the preceding paragraph); In addition, beginning on November 1, depletions from fall, winter, and spring pond evaporation will be replaced pursuant to the Silver Spruce Ranch Exchange. In the spring, when the Silver Spruce Ranch Picnic Area Pipeline begins to divert, depletions resulting from the filling of Ponds 4, 5, 6 and 7 and from irrigation will be replaced via the Silver Spruce Ranch Exchange. The amount diverted through the Picnic Area Pipeline to fill Ponds 5, 6, and 7 will be 0.01 acre-feet; In the summer, if a local call comes on Stout Creek, operation of the Silver Spruce Ranch Exchange will cease. While such local call is in

effect, Silver Spruce Ranch Pond Nos. 1, 2, and 3 will be managed to ensure that the volume in storage in these ponds drops by an aggregate amount each month sufficient to replace the out of priority depletions caused by pond evaporation from all seven ponds and from the irrigation of no more than 1000 square feet of grass. Releases will be made first from Pond 1. Releases from Pond 1 will be conveyed from the outlet works of Pond 1 directly by pipeline back to Stout Creek at a location on the Silver Spruce Ranch above any downstream water right. Once Pond 1 is empty, releases will be made from Ponds 2 and 3. Releases from Pond 2 will flow down through Pond 3 and then to Stout Creek. Releases from Pond 3 (including all water released from Pond 2) will be made directly to Stout Creek, at a location on the Silver Spruce Ranch above any downstream water right, from a secondary outlet located in the NW1/4SW1/4 of Section 23, T48N, R10E, NMPM, 2465 feet from the south section line and 716 feet from the west section line; Staff gages will be installed and stage capacity tables will be made available for Ponds 1, 2, and 3. Pond 1 will be equipped with an outlet works which draws water from the bottom of the pond. Ponds 2 and 3 will be equipped with water level control structures such as stop logs or an Agridrain in each outlet which will allow desired water levels to be set and maintained in each pond; The total live storage of Ponds 1-3 will be 2.15 acre-feet; Ponds 5, 6, and 7 will be operated as flow-through ponds. The continuous flow rate of water through the pipeline to be used for freshening Ponds 5, 6, and 7 will be 0.45 gallons per minute. There are no decreed structures on Stout Creek between the point of diversion for the Silver Spruce Ranch Picnic Area Pipeline and the point at which flows return to the creek; In the event that it is determined that the Applicants' proposed uses of water cause depletions in a quantity of water greater than that quantity currently under lease from UAWCD, Applicant will either reduce the scope of the proposed uses or seek to amend the leases to increase the quantity of water leased; **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** 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 January 2012, (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 5th day of December, 2011.



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 ____, 2011

National Register Nomination for Behrman Ranch/Berchert Ranch, 31715 Hwy 24 N (5CF.2820), which includes an unnamed historic lateral that exists only on this property (affiliated water rights are not a part of the nomination), per HB11-1289.

Applicant: Edward C. Nichols, State Historic Preservation Officer, History Colorado, 1200 Broadway, Denver, CO (contact: Heather L. Bailey, Ph.D., State & National Register Historian, History Colorado. 303-866-4683)

Owners of private properties nomination to the National Register have an opportunity to concur with or object to listing in accord with the National Historic Preservation Act and 36 CFR 60. Any owner or partial owner of an individually nominated property who chooses to object to National Register listing may submit to the State Historic Preservation Officer (SHPO) a notarized statement certifying that the party is the sole or partial owner of the private property and objects to the listing. Each owner, be it individual or corporation, has one vote. In a historic district, each owner or partial owner of the property in the district may also object to the district listing by submitting a notarized statement to the SHPO that the party is the sole or partial owner of the private property within the boundaries of the historic district. Each owner or partial owner within a historic district has one vote regardless of the number of properties owned in the district. If the majority of owners in a historic district object, the district will not be listed. However, the SHPO shall submit the nomination to the Keeper of the National Register for a determination of eligibility of the property for listing in the National Register. If the property is determined eligible for listing, although not formally listed, Federal agencies will be required to allow the Advisory Council on Historic Preservation the opportunity to comment before the agency may fund, license, or assist a project which will affect the property. If you choose to object to the listing of your property, the notarized objection must be submitted by January 13, 2012, to: Edward C. Nichols, State Historic Preservation Officer, History Colorado, 1200 Broadway, Denver, CO 80203. If you wish to comment on the nomination of the property to the National Register, please send your comments to the State Historic Preservation Office before the Colorado Historic Preservation Review Board considers this nomination on January 20, 2012.