

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED DURING OCTOBER 2003  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications, and certain amendments, filed during October 2003, 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:

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**CASE NO. 01CW146, - CITY OF FOUNTAIN c/o Larry Patterson, Utilities Director, 116 S. Main Street, Fountain, CO 80817** (direct all pleadings to Cynthia F. Covell, Alperstein & Covell P.C., 1600 Broadway, Suite 2350, Denver, CO 80202).

Amended Application for Change of Water Rights and Plan for Augmentation, Including Exchange  
El Paso and Pueblo Counties

Paragraph 7 of the application filed in this case on December 28, 2001, is amended by adding a new subparagraph F, as follows:

**F. Name of Structure:** City of Fountain Well No. 5 (Replacement Well plus additional yield); **Well Permit:** To be applied for; **Previous decrees:** Well No. 5 was decreed in Case No. W-425 on April 5, 1972, with a priority date of 1949, and a flow rate of 126 gpm, for municipal uses. The decreed location of the well is 1300 feet west from the east section line, and 2400 feet south from the north section line, in Section 6, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. in El Paso County, Colorado. The well has been drilled and placed to beneficial use, and depletions are augmented as provided in Augmentation Plan I and Augmentation Plan II; **Location:** SW1/4 of the NE1/4 of Section 6, Township 16 South, Range 65 West of the 6<sup>th</sup> P.M. at a point 2498 feet from the north section line and 1642 feet from the east section line of said Section 6, in El Paso County, Colorado; **Uses:** municipal, including domestic, irrigation, fire protection, sewage disposal, sprinkling of lawns, trees, shrubs, flowers and gardens, recreational and aesthetic, manufacturing, commercial and industrial uses, augmentation and exchange; **Capacity:** 126 gpm (pursuant to decree in Case No. W-425); **Additional capacity:** 874 gpm; **Total capacity:** 1000 gpm; **Owner:** City of Fountain. Except as herein amended, the original Application filed December 28, 2001, remains unchanged. All statements of opposition heretofore filed shall be deemed applicable to this Amended Application without the need to file additional or supplemental statements of opposition.

(Amended Application, 6 pages)

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**CASE NO. 03CW87 – WOLF SPRINGS RANCHES, INC., P. O. Box 103, 38198**

**Hwy. 69, Westcliffe, CO 81252** (Please forward all correspondence or inquiries regarding this application to attorneys for Applicant: Joanne Herlihy, Esq., Dufford & Brown, P.C., 1700 Broadway, Suite 1700, Denver, CO 80290-1701)

Application for Change of Water Rights

Huerfano County

**2. Decreed name of structures for which change is sought:** Higby Spring #3, Higby Spring #4, Higby Spring #5, Stanley Creek Spring #1, and Stanley Creek Spring #2. **3. From previous decree: A. Date entered:** November 17, 1982; **Case No.** 81CW223; **Court:** District Court, Water Division 2. **B. Decreed points of diversion (map included with application and available for inspection at the Office of the Clerk for Water Division 2):** Higby Spring #3: At a point located in the Northeast ¼ of the Northwest ¼, Section 19, Township 27 South, Range 71 West of the 6th P.M., in Huerfano County, Colorado. Higby Spring #4: At a point located in the Southwest ¼ of the Southwest ¼, Section 19, Township 27 South, Range 71 West of the 6th P.M., in Huerfano County, Colorado. Higby Spring #5: At a point located in the Southeast ¼ of the Northeast ¼, Section 24, Township 27 South, Range 72 West of the 6th P.M., in Huerfano County, Colorado. Stanley Creek Spring #1: At a point located in the Northwest ¼ of the Southwest ¼, Section 29, Township 27 South, Range 71 West of the 6th P.M., which point lies approximately 1600 feet North of the South line of said Section 29 and approximately 850 feet East of the West line of said Section 29, in Huerfano County, Colorado. Stanley Creek Spring #2: At a point located in the Southeast ¼ of the Southwest ¼, Section 29, Township 27 South, Range 71 West of the 6th P.M., which point lies approximately 500 feet North of the South line of said Section 29 and approximately 1550 feet East of the West line of said Section 29, in Huerfano County, Colorado. **C. Source:** Higby Spring #3: Spring tributary to the Huerfano River, a tributary of the Arkansas River. Higby Spring #4: Spring tributary to the Huerfano River, a tributary of the Arkansas River. Higby Spring #5: Spring tributary to the Huerfano River, a tributary of the Arkansas River. Stanley Creek Spring #1: Spring tributary to the Huerfano River, a tributary of the Arkansas River. Stanley Creek Spring #2: Spring tributary to the Huerfano River, a tributary of the Arkansas River. **D. Appropriation dates:** Higby Spring #3: December 4, 1920; Higby Spring #4 and Higby Spring #5: January 4, 1917; Stanley Creek Spring #1: April 1, 1921; Stanley Creek Spring #2: March 26, 1925. **Amounts decreed:** Higby Spring #3: 0.022 cfs, absolute; Higby Spring #4: 0.017 cfs, absolute; Higby Spring #5: 0.024 cfs, absolute; Stanley Creek Spring #1: 0.040 cfs, absolute; Stanley Creek Spring #2: 0.022 cfs, absolute. **E. Historic use:** Decreed use is stock watering for all springs. **F. Dates water applied to beneficial use:** Higby Spring #3: December 4, 1920; Higby Spring #4 and Higby Spring #5: January 4, 1917; Stanley Creek Spring #1: April 1, 1921; Stanley Creek Spring #2: March 26, 1925. **4. A. Proposed changes:** Recent GPS readings and a re-examination of existing cadastral survey maps indicate that many of the decreed legal descriptions are in error. The correct legal descriptions are as follows: Higby Spring #3: Located on public lands in the SW/4 NW/4 NE/4, Section 19, T27S, R71W, 6th P.M., approximately 700 feet south of the north section line and 2,575

feet west of the east section line (Irregular section). Higby Spring #4: Located on public lands in the SW/4 SW/4 SW/4, Section 19, T27S R71W, 6th P.M., approximately 50 feet north of the south section line and 450 feet east of the west section line (Irregular section). Higby Spring #5: Located on public lands in the SE/4 SE/4 NE/4, Section 24, T27S, R72W, 6th P.M. approximately 2,475 feet south of the north section line and 500 feet west of the east section line (Irregular section). Stanley Creek Spring #1: Located on public lands in the SE/4 SW/4 NW/4, Section 29, T27S, R71W, 6th P.M., approximately 2,300 feet south of the north section line and 800 feet east of the west section line. Stanley Creek Spring #2: Located on public lands in the NE/4 SW/4 SW/4, Section 29, T27S R71W, 6th P.M., approximately 1,200 feet north of the south section line and 875 feet east of the west section line. Applicant also seeks to add wildlife use (absolute) to the decreed use of stock watering to provide for the watering of deer, elk, small mammals, and birds, and for irrigation of wildlife cover and forage adjacent to the springs. **B. Amount of enlargement:** None. **C. Date water applied to beneficial use:** October 3, 2003 for wildlife use. **D. Appropriation date:** October 3, 2003 for wildlife use. **5. Name(s) and address(es) of owner(s) of land on which point of diversion and place of use(s) is(are) located:** All structures and places of use are located on land owned by Applicant Wolf Springs Ranches, Inc. whose address is set forth above. WHEREFORE, Applicant respectfully requests that this Court enter an order finding and for such other and further relief as this Court deems just and proper in the premises.

(Application and attachments, 7 pages)

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**CASE NO. 03CW88 – WOLF SPRINGS RANCHES, INC., P. O. Box 103, 38198 Hwy. 69, Westcliffe, CO 81252** (Please forward all correspondence or inquiries regarding this application to attorneys for applicant: Joanne Herlihy, Esq.,

Dufford & Brown, P.C., 1700 Broadway, Suite 1700, Denver, CO 80290-1701)

Application for Water Rights (Surface)

Huerfano County

**2. Names of structures:** Witch's Find Spring. **3. Legal description of each point of diversion (map included with Application and is available for inspection at the Office of the Clerk for Water Division No. 2):** Located in the SE/4 SW/4 NW/4, Section 20, T27S, R71W, 6th P.M., approximately 2,100 feet south of the north section line and 700 feet east of the west section line, Huerfano County, Colorado. **4. Source:** Unnamed tributary to Stanley Creek/Huerfano River/Arkansas River. **5. A. Date of appropriation:** October 3, 2003. **B. How appropriation was initiated:** The quality and quantity of water available for livestock and wildlife use was inventoried and public notice of the appropriation was made by filing this application. **C. Date water applied to beneficial use:** October 3, 2003. **6. Amount claimed:** 0.0334 cfs, absolute. **7. Use:** Livestock watering and wildlife. This spring provides water for deer, elk, small mammals, and birds, and for irrigation of wildlife and forage adjacent to the springs. **8. Name and address of owner of land on which points of diversion and place of use are located:** The structure and place of use are located on land owned by Applicant Wolf Springs Ranches, Inc. whose address is set forth above. WHEREFORE, Applicant respectfully requests that this Court enter an

order granting the water right sought herein; and for such other and further relief as this Court deems just and proper in the premises.

(Application and attachments, 4 pages)

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**CASE NO. 03CW89** – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

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**CASE NO. 03CW90 – NORMAN E. SUMMERS, 25550 Highway 94, Calhan, CO 80808**

Application for Change of Water Right  
Lincoln County

**2. Decreed name of structure for which change is sought:** Well. **3. From previous Decree:** **A. Date Entered:** July 13, 1973; **Case No.** W-1840; **Court:** District Court Water Division No. 2. **B. Decreed point of diversion:** Well No. 19765-1 location should be NW ¼ NW ¼ Sec. 3, T. 14 S., R59W. of the 6th P.M., in Lincoln County, Colorado. Well No. 19765-2 location should be SE1/4 NW1/4 Sec. 3, T. 14S., R59W., of the 6th P.M., in Lincoln County, Colorado. **C. Source:** \_\_\_\_\_. **D. Appropriation Date:** June 1, 1949; **Amount:** Well 19765-1, 553.8 g.p.m.; Well 19765-2, 635.4 g.p.m. **E. Historic use:** This request is only to correct location mistake(s) made on original decree. See gps map showing exact location of both wells on file with the application and available for inspection at the Office of the Clerk for Water Division No. 2. **4. Proposed change:** 1. Change incorrect location mistake for Well 19765-1 (incorrectly located in Sec. 13 when it should have read Sec. 3). 2. Change incorrect location mistake for Well 19765-2 (incorrectly located in NE1/4 SW1/4 when it should have read SE1/4 NW1/4). **5. Name and address of owner of the land on which structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicant. (Application and attachments, 10 pages)

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**CASE NO. 03CW91 – ROY AND JANE BATES, 1800 Camino Uva, Los Alamos, NM 87544**

Application for Water Rights (Surface)  
Custer County

**2. Name of structure:** Peek-A-Boo-Spring. **3. Legal description of each point of diversion:** Custer County, SE ¼ of the NE ¼ Section 20, Township 21 South, Range 72 West, 6th P.M., **Street Address:** 3190 CR 220; **Subdivision:** Bull Domingo, Lot 2, Map 28. **4. Source:** Natural Spring. **5. A. Date of initiation of appropriation:** June 2003. **B. How appropriation was initiated:** Found spring and estimated flow. **C. Date water applied to beneficial use:** N/A. **6. Amount claimed:** .05 cfs Conditional. **7. Use or proposed use:** Domestic, livestock, irrigation. **A. If irrigation, complete the following: Number of acres historically irrigated:** None; **Proposed to be irrigated:** 20 acres. **Legal description of acreage:** SE ¼ of NE ¼ Section 20, Township 21 South, Range 72 West. **B. If non-irrigation, describe purpose fully:** Domestic – 1 house, lawn, garden, etc. Livestock – horses and cattle. **8. Name and address of owner of the land upon which any structure is or will be**

located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use: Applicant. **9. Remarks:** \_\_\_\_\_.  
(Application and attachments, 4 pages)

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**CASE NO. 03CW92** – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

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**CASE NO. 03CW93 – MARTIN E. LIEBERG and RUTH G. LIEBERG, 5110 Old Ranch Road, Colorado Springs, CO 80908** (Henry D. Worley, MacDougall, Woldridge & Worley, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905)

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

**I. APPLICATION FOR DENVER BASIN WATER RIGHTS 2. Names of wells and permit, registration, or denial numbers:** Well permit 54512A. No other well permits have been applied for or issued. **3. Legal description of wells:** SW1/4 SW1/4 Section 24, T. 12 S., R. 66 W., 6<sup>th</sup> P.M. An additional well in the Dawson aquifer, and all wells to be located in the Denver, Arapahoe and Laramie-Fox Hills aquifers, may be located anywhere on Applicant's 11.36 acre property, the legal description of which is attached to the Application as Exhibit A (the "Property"). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The Property is located in the SW1/4 SW1/4 Section 24, T. 12 S., R. 66 W., 6<sup>th</sup> P.M., in the Monument Creek drainage. A map illustrating the location of the Property is attached to the Application as Figure 1. **4. Source:** Not nontributary Dawson aquifer; not nontributary Denver aquifer; not nontributary Arapahoe aquifer; nontributary Laramie-Fox Hills aquifer. **5.A. Date of appropriation:** Not applicable. **5.B. How appropriation was initiated:** Not applicable. **5.C. Date water applied to beneficial use:** Not applicable. **6. Amount claimed:** Dawson aquifer wells, 15 g.p.m., 4.31 acre feet annually, absolute, which amount includes the water allocated to well permit 54512A. The State Engineer's database indicates that there are only 60 feet of saturated sands in the Dawson aquifer in this location. Based on analysis of geophysical logs for nearby wells, the saturated thickness of the Dawson aquifer in this location is approximately 275 feet. Laramie-Fox Hills aquifer, 100 g.p.m., 3.24 acre feet annually, absolute. There is no unappropriated water in the Denver and Arapahoe aquifers underlying the Property. Except for the discrepancy regarding the Dawson aquifer, the above amounts will be changed in any decree entered herein to conform to the State Engineer's Determination of Facts. The water court will be asked to retain jurisdiction over such decree to enter a final determination of the amount of water available for appropriation from each aquifer based on geophysical logs for such wells. **7. Proposed use:** Indoor domestic, commercial, landscape irrigation, livestock water, augmentation. **8. Name and address of owner of land on which well is located:** Same as Applicants. **9. Remarks:** There are no liens or encumbrances against the Property; thus, the notice provisions of C.R.S. § 37-90-137(4)(b.5) are inapplicable. Applicant intends to waive the 600 foot spacing requirement for all wells to be located on the Property. **II. APPLICATION FOR**

**APPROVAL OF PLAN FOR AUGMENTATION 10. Name of structures to be augmented:** Two Dawson aquifer wells, one of which, permit no. 54512A, is already constructed. No other water rights are or will be diverted from these wells. Upon entry of a decree in this case, the Applicant shall seek a new well permit for the existing Dawson aquifer well, consistent with the terms of the plan for augmentation, and applicable statutes and rules. **11. Previous decrees for water rights to be used for augmentation:** None. **12. Historic use:** Not applicable. **13. Statement of plan for augmentation:** Applicants intend to subdivide the Property into two residential lots. Water from well permit no. 54512A and from one additional Dawson well will be used for domestic purposes, including indoor uses for one house on each of the two lots, landscape irrigation, and for stock watering. These uses do not preclude commercial use for an in-home business which will not significantly increase water demand. Water use criteria for the most likely uses are as follows: indoor uses - 0.26 acre feet annually per single family dwelling which is 10% consumptive; horses (or horse equivalents) - 10 gallons per head per day, 0.011 acre feet annually per head, 100% consumptive; landscape irrigation - 0.034 acre feet annually per 1,000 square feet, 90% consumptive. (So long as a single family dwelling is located on each lot, water in excess of the amount used indoors may be used for any beneficial purpose, because under those circumstances return flows from indoor uses will exceed the maximum modeled depletions of 25.7% of diversions during the assumed 300 year pumping period.) Consumption attributable to indoor uses is predicated on the use of nonevaporative Individual Sewage Disposal Systems ("ISDS"). Change of the type of wastewater treatment to central sewage treatment with direct discharge to the stream shall not require an amendment to this plan for augmentation, but change to any other type of waste water disposal shall require an amendment to the plan for augmentation. Based upon computer modeling, depletions to the South Platte River will be less than one percent of annual pumping in the 100<sup>th</sup> year after pumping begins; notwithstanding that fact, Applicants shall replace to the Arkansas River drainage the combined depletions to the South Platte and Arkansas basins, which are modeled to gradually increase to a maximum of 26.02% of pumping annually in the 320th year after pumping begins. Applicants will replace depletions during pumping with return flows from the ISDS, and to replace injurious post-pumping depletions with the nontributary Laramie-Fox Hills aquifer water decreed herein, which will be dedicated for that purpose. However, Applicants shall reserve the right to replace such depletions with any judicially acceptable source of augmentation water. Applicants further propose to aggregate all depletions and replace them to the Arkansas River drainage. Any final decree entered in this case shall provide that no more than 0.61 acre feet (200,000 gallons) per year may be diverted from each Dawson aquifer well absent an amendment to this plan for augmentation.

(Application and attachments, 6 pages)

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**CASE NO. 03CW94 – DONALA WATER AND SANITATION DISTRICT**  
**("District"), 15850 Holbein, Colorado Springs, CO 80921** (Frederick A.

Fendel, III and Carmen S. Hall, Petrock & Fendel, P.C., Attorneys for Applicant,  
700 Seventeenth Street, Suite 1800, Denver, CO 80202)

Application

El Paso County

**REQUEST FOR WATER RIGHTS.** **2. Structure:** Jake's Lake and Jake's Lake Intake, located in the SE1/4NW1/4 of Section 31, T11S, R66W of the 6th P.M.. The center of said reservoir is located at a point approximately 2370 feet from the west and 1410 feet from the north section lines of said Section 31, as shown on Attachment A to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **2.1. Source:** Unnamed tributary of Monument Creek, tributary to the Arkansas River. **2.2. Date of appropriation:** September 8, 2003. **2.3. How appropriation initiated:** Use of water coupled with intent to appropriate; mapping of location of pond, filing application. **2.4. Amount:** Storage: 10 acre-feet with multiple refills. Direct flow: 1 cfs. **2.5. Uses:** All municipal uses, irrigation, fish and wildlife, recreation, piscatorial. Water may be used directly, after storage, by augmentation or exchange. **REQUEST FOR APPROVAL OF AUGMENTATION**

**PLAN** **3. Structure to be augmented:** Jake's Lake and Jake's Lake Intake, described above. **4. Uses:** Irrigation of golf course generally located in the N1/2 of Section 6, T12S, R66W of the 6th P.M., and S1/2 of Sec. 31, T11S, R66W of the 6th P.M., fish and wildlife, recreation, and piscatorial. Municipal uses may be made by augmentation of diversions pursuant to present or future augmentation plans. **5. Source of augmentation:** Return flows from irrigation and through the District's wastewater treatment plant, located in the SW ¼ of Section 35, T11S, R67W of the 6th P.M., associated with use of nontributary and not nontributary groundwater used by the District. Nontributary and not nontributary groundwater. The District presently has rights to nontributary and not nontributary ground water decreed in W-4216, 85CW7, 90CW45, 91CW16 and 93CW169, 95CW111, 97CW61, and 99CW6, District Court, Water Division 2. Other reusable water rights and ground water rights, and/or return flows from their use, may be used for augmentation under this plan as such rights become available to Donala without further notice. **6. Description of plan for augmentation:** To allow continuous diversion and use of the water and maintenance of lake levels, Applicant will replace depletions from the use of the water by release of effluent from the treatment plant into Monument Creek and by return flow from irrigation. Following either direct flow diversion or storage in Jake's Lake, water may be stored in ponds on the golf course. Evaporative loss will also be quantified and replaced as necessary. Irrigation return flow is calculated and accounted for under Donala's various decrees for its augmentation plan allowing use of not nontributary groundwater. **7. Owner of land on which structure is located:** Gleneagle North Homeowners Association, P. O. Box 1922, Monument, CO 80132. WHEREFORE, Applicant prays that this Court enter a decree granting the application requested herein, and for such other and further relief as this Court deems just and proper in the premises.

(Application, 4 pages)

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**CASE NO. 03CW95 – BONNIE BELL, 624 Gingko Avenue, Niceville, FL 32578**

Application for Water Rights (Surface and Storage)  
Fremont County

**APPLICATION FOR SURFACE RIGHTS. 2. Names of structures:** ZayitBranch I; ZayitBranch II; and Zayitpond Spring. **3. Legal description of each point of diversion:** ZayitBranch II – SE ¼ of the SE ¼ Section 29, Township 50 North, Range 12 East, N.M.P.M., 1025 feet from the South section line and 8 feet from the East section line. Street Address: 4962 CR 16, Cotopaxi, CO 81223; Subdivision: Montana Verdi, Lot 27. ZayitBranch I – SE ¼ of the SE ¼ Section 29, Township 50 North, Range 12 East, N.M.P.M., 835 feet from the South line and 1292 feet from the East line. Zayitpond Spring: SE ¼ of the SE ¼ Section 29, Township 50 North, Range 12 East, N.M.P.M., 959 feet from the South line and 1300 feet from the East line. **4. Source:** spring water. **5. A. Date of initiation of appropriation:** 10/31/03. **B. How appropriation was initiated:** Filed for Water Rights. **C. Date water applied to beneficial use:** \_\_\_\_\_. **6. Amount claimed:** 30 gpm Conditional for each spring. **7. Use or proposed use:** Greenhouse, garden and water animals, domestic and commercial use. **A. If irrigation, complete the following: Number of acres historically irrigated:** \_\_\_\_\_. **Proposed to be irrigated:** 15 acres. **Legal description of acreage:** SE ¼ SE ¼ Section 29, T50N, Range 12E. **B. If non-irrigation, describe purpose fully:** Greenhouse for plants, vegetables and fruit trees, etc. and water animals. **8. Name and address of owner of land upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicant.

**APPLICATION FOR STORAGE RIGHT. 2. Name of Reservoir:** Zayit Pond. **3. A. Legal description of location of dam:** SE ¼ of the SE ¼ Section 29, Township 50 North, Range 12 East, N.M.P.M., 959 feet from the South line and 1300 feet from the East line. Street Address: 4962 C.R. 16, Cotopaxi, CO 81223. Subdivision: Montana Verdi, Lot 27. **4. Source:** Spring. **5. A. Date of appropriation:** 10/31/03. **B. How appropriation was initiated:** Filed for water rights. **C. Date water applied to beneficial use:** \_\_\_\_\_. **6. Amount claimed:** **A. In acre feet:** 0.6 Conditional. **7. Use:** **A. If irrigation, complete the following: (1) Number of acres historically irrigated:** \_\_\_\_\_. **(2) Total number of acres proposed to be irrigated:** 15. **Legal description of acreage irrigated or to be irrigated:** SE ¼ SE ¼ Sec. 29, T50N, R12E. **B. If non-irrigation, describe purpose fully:** Greenhouse for plants, vegetables and fruit trees, etc. Water animals and commercial and domestic use. **8. Surface area of high water line:** 2500 sq. ft. **A. Maximum height of dam in feet:** 10 feet. **B. Length of dam in feet:** 100 feet. **9. Total capacity of reservoir in acre feet:** .6; **Active capacity:** .6; **Dead storage:** 0. **10. Name and address of owner of land upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicant.

(Application and attachments, 8 pages)

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**CASE NO. 03CW96, Water Division No. 2, and CASE NO. 03CW367, Water Division No. 1 – STANLEY REISS, c/o Terry Schooler, 520 E. Colorado, Colorado Springs, CO 80903** (Steven T. Monson, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903)

Application for Underground Water Rights and Plan for Augmentation  
El Paso and Douglas Counties

**II. APPLICATION FOR UNDERGROUND WATER RIGHTS.** **A. Well Permits.** Well permit applications for the wells to be drilled pursuant to this application and subsequent decree will be applied for prior to drilling wells into the Denver Basin aquifers which are the subject of this application. **B. Legal Description of Wells.** All wells will be located on the Applicant's property, consisting of approximately 99 acres within the Southwest quarter of Section 9, Township 11 South Range 66 West of the 6th P.M., in El Paso County, Colorado ("Applicant's Property"). The Applicant's Property is more particularly described in the Exhibit A legal description attached to the Application and incorporated by reference. No exact location is requested for the proposed wells, as that information will be provided when the well permit applications are submitted. Attached as Exhibit B to the Application is a plat of the Applicant's property. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **C. Water Source.** 1. Not Nontributary. The ground water that will be withdrawn from the Dawson Aquifer of the Denver Basin underlying the Applicant's Property is not nontributary. Pursuant to C.R.S. 37-90-137(9)(c), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. 2. Nontributary. The ground water that will be withdrawn from the Denver, Arapahoe and Laramie-Fox Hills Aquifers of the Denver Basin underlying the Applicant's Property is nontributary. **D. Estimated Rates of Withdrawal and Ground Water Available.** 1. Estimated Rates of Withdrawal. The pumping rates for wells to be completed to each aquifer are estimated to be between 15 gpm and 250 gpm. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts, which may be less than or exceed the above estimates. The actual depth of each well to be constructed within the respective aquifers will be determined by actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying Applicant's Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4), or withdrawn over a longer time based upon actual withdrawals or local government regulations. The estimated average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers will be based upon the Denver Basin Rules. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

<u>Aquifer</u>	<u>Acres</u>	<u>Saturated Thickness (Feet)</u>	<u>Annual Average Withdrawn (Acre Feet)</u>
Dawson	99	430	74 *
Denver	99	560	94
Arapahoe	99	270	45
Laramie-Fox Hills	99	210	31

\* This amount is reduced due to the cylinder of appropriation for pre 1973 Well no. 17798-F. The area of the property was reduced to 85 acres.

Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **E. Requested Uses.** The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, fire protection, central water supply for such uses, and also for exchange and augmentation purposes. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall not be entitled to construct a well or use water from the not nontributary Dawson aquifer until a decreed augmentation plan has been entered by this Court, covering the stream depletions from such not nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c). **F. Well Field.** Applicant requests that it be permitted to produce the full legal entitlement from the respective Denver Basin aquifers underlying Applicant's Property through any combination of wells constructed into each aquifer on the Applicant's Property. Applicant requests that these wells be treated as a well field. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed from the Denver Basin aquifers underlying Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifer does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever occurs first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifer underlying Applicant's Property. **G. Description of Land Overlying Subject Ground Water.** The land overlying the ground water which is the subject of this application consists of 99 acres within the SW1/4 of Section 9, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado. The Applicant's Property is more particularly described in the Exhibit A legal description. **H. Name and Address of Owner of Land Upon Which Wells are to Be Located.** The Applicant, as set forth in Section I above, is the owner of the property on which the wells are to be located. **III. PLAN FOR AUGMENTATION. A. Structures to be Augmented.** The structures to be augmented consist of up to a maximum of 35 wells completed or to be completed in the not nontributary Dawson aquifer of the Denver Basin underlying the

Applicant's Property, including any replacement wells. Applicant requests the right to have a central well system as an alternative for all or part of the water allotment for the individual wells. **B. Water Rights to be Used for Augmentation.** The water rights to be used for augmentation are during pumping the return flows of the not nontributary Dawson aquifer wells to be pumped as set forth in this plan for augmentation, together with water rights from the nontributary Arapahoe and Laramie-Fox Hills aquifer for post pumping depletions hereunder. **C. Statement of Plan for Augmentation.** The 35 augmented wells are to be used for the water supply for up to 35 single family residences upon the Applicant's property. The maximum annual diversions from the wells shall not exceed 0.7 acre feet per well and a total of 24.5 acre feet for all 35 wells. The Applicant's consultant has operated the State Engineer's Denver Basin Ground Water Flow Model for the determination of stream depletions from the Dawson aquifer pumping. The actual stream depletions during the plan term are a maximum of 24.38 percent of the Dawson Aquifer well pumping, assuming 300 years of withdrawal under this plan. The actual stream depletions will therefore be a maximum of 0.17 annual acre feet per residence with a total depletion under this plan of approximately 6 annual acre feet. Attached to the Application as Exhibit C are the Dawson Aquifer stream depletion factors under the ground water flow model. Waste water from the in-house residential uses will be disposed of through non-evaporative septic systems that is determined to have return flows to the tributary stream system of ninety percent of the in-house residential pumping of 0.3 annual acre foot per unit. In-house consumptive use is ten percent of diversions and return flows for each in-house residential use will therefore be ninety percent of the above 0.3 annual acre feet of pumping, or 0.27 acre feet per residence. Total return flows from the in-house use from 35 wells or residences will be 9.45 annual acre feet. These return flows will augment the tributary stream system in excess of the maximum actual stream depletion amount of approximately 6 annual acre feet and will prevent material injury to other vested water rights. Applicant's use of the remaining pumping allotment will be for stock watering, recreational use, wildlife, commercial (i.e., in home occupation), fire protection and/or for the irrigation of lawns, gardens and landscaping. Applicant also believes that fifteen percent of irrigation water would accrue to the stream as return flows which could be used for additional augmentation. The irrigation return flows are not to be used as part of this augmentation plan, but Applicant preserves his claim to those return flows and does not waive his rights thereto. The total number of augmented units and the total pumping per well may vary depending upon the development considerations for the property, provided however that the total annual pumping of 24.5 annual acre feet shall not be exceeded and septic return flows from in-house use, as calculated above, shall equal or exceed the maximum stream depletions. This Application is being filed in Water Divisions 1 and 2 because depletions may occur to both divisions. The return flows set forth above will accrue to the South Platte River system where most depletions occur. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. For the replacement of post-pumping depletions, Applicant will reserve up to 7,350 acre

feet of water from the nontributary Laramie-Fox Hills and Arapahoe aquifers underlying the Applicant's Property, less the amount of actual stream depletions replaced during the plan pumping period. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Applicant claims that post pumping depletions will be noninjurious and do not need to be replaced, and under the Court's retained jurisdiction the Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used to replace any injurious post pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to file for and receive well permits for up to 35 Dawson aquifer wells for the uses in accordance with this Application. **IV. REMARKS.** Additional remarks are as follows: 1. Applicant requests a finding that it has complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested nontributary wells and by the requested not nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). 2. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. 3. Applicant will comply with C.R.S. §37-90-137(9)(b) requiring the relinquishment of the right to consume no more than two percent of the amount of the nontributary ground water withdrawn. 4. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 5. Before any wells are constructed, applications for well permits will be filed with the State Engineer's office, and well permits shall be granted in accordance with the decree pursuant to this application. 6. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 7. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 8. The Applicant intends to waive the 600 feet well spacing requirement for the wells to be located upon the Applicant's Property. 9. There are no encumbrances of record on the property, therefore any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(l) are not applicable to this matter. **WHEREFORE**, the Applicant requests that its Application for Underground Water Rights and Plan for Augmentation, as stated and set forth herein, be granted and a decree entered, and for such other and further relief as the Court deems appropriate.

(Application and attachments, 10 pages)

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**CASE NO. 03CW97 – MARIA LAKE GRAZING ASSOCIATION, LLP, 8008 E. Arapahoe Court, Suite 100, Englewood, CO 80112 (Mark Whalin, Resident Caretaker of Applicant, 686 County Road 120, Walsenburg, CO 81089** (Jack Ross and Joanne Herlihy, Dufford & Brown, P.C., Attorneys for Applicants, 1700 Broadway, Suite 1700, Denver, CO 80290-1701)

Application for Changes of Water Rights  
Huerfano County

**2. Decreed names of structures for which changes are sought:** 2.1. The Stevens Reservoir. 2.2. The Maria Reservoir. Water available from the exercise of both water rights is stored in the same place of storage. **3. From Previous Decrees:** **3.1. For the Stevens Reservoir:** **3.1.1. Date Entered:** June 12, 1889 (“Reed’ Decree), as modified *nunc pro tunc* by Decree dated February 16, 1894. **Case No.** (not applicable). **Court:** District Court of Huerfano County. **3.1.2. Decreed point of diversion and Off channel place of storage** (see map appended 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.): **3.1.2.1. Point of diversion of feeder ditch from Cucharas River (from Decree):** On the North bank of the Cucharas River at a point whence the NW corner of SE1/4 of NW1/4 of Section 29-T27S-R65W bears N 50 degrees 20 minutes W for 331 and 1/3 feet. **3.1.2.2. Location of Place of Storage (from Decree):** In the SW1/4 of Section 21; the NW1/4 of Section 28, the N1/2SE1/4 of Section 20 and the E1/2 of the NE1/4 of Section 29, Township 27 South, Range 65 West of the 6th P.M. in Huerfano County, Colorado. **3.1.3. Source:** Cucharas River. **3.1.4. Appropriation Date:** August 8, 1887; **Amount:** 1258 acre feet; **Decreed Uses:** Irrigation and domestic. **3.1.5. Historic Uses:** Irrigation and domestic uses in an area adjacent to the reservoir as shown on the map appended to the Application as Exhibit 1 as well as piscatorial and fish culture and recreational uses of the water stored in the reservoir itself; summaries of the records, to the extent that they exist, of water stored in the exercise of that right and the Maria right are appended to the Application as Exhibit 2. **3.2. For the Maria Reservoir:** **3.2.1. Date Entered:** February 12, 1898 (“Killian Decree”) as modified by Decree of the District Court of Huerfano County on November 27, 1928. **Case No.** (Not applicable). **Court:** District Court of Huerfano County. **3.2.2. Decreed point of Diversion and Off Channel place of Storage:** **3.2.2.1. Point of diversion of feeder ditch from Cucharas River (from Decree):** On the North bank of the Cucharas River at a point whence the NW corner of SE1/4 of NW1/4 of Section 29-T27S-R65W bears N 50 degrees 20 minutes W for 331 and 1/3 feet. **3.2.2.2. Location of Place of Storage (from Decree):** In the SW1/4 of Section 21; the NW1/4 of Section 28, the N1/2SE1/4 of Section 20 and the E1/2 of the NE1/4 of Section 29, Township 27 South, Range 65 West of the 6th P.M. in Huerfano County, Colorado. **3.2.3. Source:** Cucharas River. **3.2.4. Appropriation Date:** May 3, 1872; **Amount:** 238 acre feet; **Decreed Use:** Irrigation. **3.2.5. Historic Uses:** Irrigation uses in an area adjacent to the reservoir as shown on the map appended to the Application as Exhibit 1 as well as piscatorial and fish culture and recreational uses of the water stored in the reservoir itself; summaries of the records, to the extent that they exist, of water stored in the exercise of that right and the Stevens

right are appended as Exhibit 2. **4. Proposed Changes to the decrees for both rights:** **4.1. Change Requested:** Without changing the point of diversion of the feeder ditch from the Cucharas River or the place of storage, this Application seeks to confirm the previous *de facto* changes of use of both storage rights which occurred prior to June 6, 1969, by including in the decrees for those rights, in addition to their previously decreed uses, the right to store water diverted from the Cucharas River in the exercise of the priorities originally decree to those structures for piscatorial and fish culture and recreational uses. **5.** The name and address of the owner of the land on which the reservoir to which both rights are decreed is the Applicant whose addresses are listed above. (Application and attachments, 7 pages)

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**CASE NO. 03CW98(86CW119) – JOHN D. ATWATER and NANCY L. ATWATER, 5555 County Road 197, Star Route, Box 39, Ramah, CO 80832**  
(Robert F. T. Krassa, Krassa & Miller, LLC, Attorneys for Applicants, 1680 – 38th Street, Suite 800, Boulder, CO 80301)

Application for Finding of Reasonable Diligence  
Elbert County, Colorado

**2. Name of structure:** Reservoir - Atwater Pond 2. **3. Describe conditional water right (as to each structure) giving the following from the Referee's Ruling and Judgment and Decree:** **a. Date of Original Decree:** December 18, 1989; **Case No.** 86CW119; District Court, Water Division No. 2, Colorado, **b. Location:** **Atwater Pond No. 2.** In the SW 1/4 NW 1/4 Section 3, Township 13 South, Range 57 West of the 6<sup>th</sup> P.M. in Elbert County. The axis of the dam intersects South Rush Creek approximately at a point 2,600 feet south of the north section line and 1,050 feet east of the west section line of said Section 3. **c. Source of Water:** South Rush Creek **d. Amount, and Date of Appropriation:** 34 acre feet, conditional, April 28, 1984. **e. Use:** Irrigation. **4. Provide a detailed outline of what has been done toward completion or for completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** Subsequent to the previous diligence decree, entered on October 30, 1997, in Case 95CW236, Applicants have expended over \$25,000 on the irrigation project of which Atwater Pond #2 is an integral part. Progressing from the completion of Pond #1 which is part of the same project, Applicants have installed pipelines and sprinkler equipment necessary to utilize the water to be stored in Pond #2, and have done work in the streambed to determine soil and siltation information. Applicants have in all respects diligently worked toward placing this water right to beneficial use. (Application, 3 pages)

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**CASE NO. 03CW99 – SADDLE MOUNTAIN MUTUAL WATER COMPANY (“Company”), c/o Blatchley Associates, Inc., 2525 South Wadsworth Boulevard, #306, Denver, CO 80227** (David L. Harrison and Gabriel D. Carter, Moses, Wittemyer, Harrison & Woodruff, P.C., Attorneys for Applicant, P. O. Box 1440, Boulder, CO 80306-1440)

Application for Change of Water Rights and Approval of Plan for Augmentation  
Teller County

**I. CHANGE OF WATER RIGHTS. A. Names of structures sought to be changed:** Watson Ditch No. 1 and Welty Ditch. **B. Previous decrees:** **1. Watson Ditch No. 1 (Four Mile Creek Priority No. 32 and Arkansas River Priority No. 90 in Former Water District No. 12):** **Adjudication date:** February 3, 1894. **Case No.:** In the Matter of the Adjudication of Water Rights in Water District No. 12. **Court:** District Court of Fremont County, State of Colorado. **Decreed point of diversion:** The headgate is located on the east side of Four Mile Creek in the NE1/4 of the NE1/4 of Section 1, Township 15 South, Range 71 West of the 6<sup>th</sup> P.M., Teller County, Colorado. However, the previous decreed change of 1.46 cfs of the Watson Ditch No. 1, entered April 8, 1986 in Case No. 85CW78, District Court for Water Division No. 2, confirmed that the Watson Ditch No. 1 has been diverted for many years and continues to be diverted along with the Wilson Ditch water right at the outlet works on the left abutment of Wright's (Pisgah) Reservoir located in Section 31, Township 14 South, Range 70 West of the 6<sup>th</sup> P.M. This practice has been permitted for many years by the local Water Commissioner and the Division Engineer so as to permit a better head of water for irrigation. **Source:** Four Mile Creek, tributary to the Arkansas River. **Appropriation date:** May 1, 1872. **Amount:** 1.6 cfs, of which the Company seeks to change 0.14 cfs herein. **Decreed use:** Irrigation. **Historic use:** The Watson Ditch No. 1 was decreed for the irrigation of 40 acres of pasture and hay meadows located in the SW1/4 of Section 31, Township 14 South, Range 70 West, in the NW1/4 of Section 6, Township 15 South, Range 70 West, and in the NE1/4 of Section 1, Township 15 South, Range 71 West of the 6<sup>th</sup> P.M., Teller County, Colorado. These historically irrigated lands are located on a gravel terrace along the east side of Four Mile Creek as depicted on the figure 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. A summary of diversion records for the Watson Ditch No. 1 water right for the period of 1942 through 2002 is attached to the Application as Exhibit B. In the decree entered April 8, 1986 in Case No. 85CW78, the District Court for Water Division No. 2 approved a change of 1.46 cfs of the Watson Ditch No. 1 water right to augmentation use, among other purposes. That decree established that the Watson Ditch No. 1 historically diverted an average of 186.0 acre-feet per year, with an average annual historic consumptive use of 1.07 acre-feet per acre. See 85CW78 Decree, Findings of Fact ¶ 10. On that basis, the Company's water engineers have determined that the 0.14 cfs of the Watson Ditch No. 1 water right sought to be changed herein historically irrigated approximately 2.81 acres, which have been dried up to yield approximately 3.01 acre-feet of consumptive use per year. As discussed below, the Company's ownership interest in the Watson Ditch No. 1 sought to be changed herein was dried up and dedicated to an "augmentation plan" administratively approved by the State Engineer in 1972 and in effect since then. **Proposed change:** The Company seeks to change the use of 0.14 cfs of the Watson Ditch No. 1 water right to add augmentation use to the decreed irrigation use of this water right. **2. Welty Ditch (Four Mile Creek Priority No. 64½ and Arkansas River Priority No. 280½ in Former Water District No. 12):** **Adjudication date:** June 13, 1904. **Case No.:** Civil Action No. 2452. **Court:** District Court of Fremont County, State of Colorado. **Decreed point of diversion:** The headgate is

located on the west bank of Hay Creek approximately 200 yards south of the quarter corner of the north line of Section 17, Township 14 South, Range 70 West of the 6<sup>th</sup> P.M., Teller County, Colorado. **Source:** Hay Creek, tributary to Four Mile Creek, tributary to the Arkansas River. **Appropriation date:** September 1, 1880. **Amount:** 2.0 cfs, of which the Company seeks to change 0.04 cfs herein. **Decreed use:** Irrigation. **Historic use:** The Welty Ditch water right was decreed for the irrigation of seventy (70) acres of land in the E1/2 of the NW1/4 and the E1/2 of the SW1/4 of Section 17, and the N1/2 and the SW1/4 of the NW1/4 of Section 20, all in Township 14 South, Range 70 West of the 6<sup>th</sup> P.M., Teller County, Colorado. Historical investigation by the Company's water engineers, however, shows that up to 113 acres of primarily hay meadow crops were historically irrigated under the Welty Ditch water right, as depicted on Exhibit C attached to the Application. A summary of diversion records for the Welty Ditch water right for the period of 1942 through 1982 is attached to the Application as Exhibit D. The Company's water engineers have conservatively estimated that, on average, only approximately 58 of the 113 acres under the Welty Ditch were consistently irrigated. Based on historical evidence, the Company's water engineers have determined that irrigation of the grass crops on those 58 acres consumed an average of 72 acre-feet per year, or 1.24 acre-feet per acre per year of consumptive use. On that basis, the Company's water engineers have calculated that the 0.04 cfs of the Welty Ditch water right sought to be changed herein historically irrigated approximately 0.894 acres, which have been dried up to yield approximately 1.11 acre-feet of consumptive use per year. As discussed below, the Company's ownership interest in the Welty Ditch sought to be changed herein was dried up and dedicated to an "augmentation plan" administratively approved by the State Engineer in 1972 and in effect since then. **Proposed change:** The Company seeks to change the use of 0.04 cfs of the Welty Ditch water right to add augmentation use to the decreed irrigation use of this water right. **Names and addresses of owners of land on which structures located:** **Watson Ditch No. 1:** John T. Hatton, 230 Ute Trail, Woodland Park, Colorado 80863. **Welty Ditch:** Andrew McKee, 51 Carriage Drive, Florissant, Colorado 80816 . **II. PLAN FOR AUGMENTATION. Structures to be augmented:** The Company seeks a decree approving a plan for augmentation to replace water depletions on lots and outlots within certain platted and approved subdivisions or portions of subdivisions located in Water Division No. 2, including: Saddle Mountain Heights Filing Nos. 1 through 3; Saddle Mountain Ranch Filing No. 4, Units 1 and 2; and Deer View Filing No. 1. The number of lots included in those subdivisions are set forth below:



<b>Table 1 APPROVED PLATTED LOTS AND OUTLOTS</b>	
<b>Subdivision</b>	<b>Lots in Water Division No. 2</b>
Saddle Mountain Heights Filing No. 1	131 (a)
Saddle Mountain Heights Filing No. 2*	102 (b)
Saddle Mountain Heights Filing No. 3	34
Saddle Mountain Ranch Filing No. 4, Unit 1	7
Saddle Mountain Ranch Filing No. 4, Unit 2	20
Deer View Filing No. 1	30 (c)
<b>TOTAL:</b>	<b>324</b>

(a) Includes four outlots.

(b) Includes three outlots.

(c) Includes one outlot.

\* The 145 lots within the Saddle Mountain Heights Filing No. 2 Subdivision of the original Slater Creek Ranch which are located in Water Division No. 1 are not covered by this plan.

Each of the above lots is or will be supplied water by individual wells, and wastewater treatment on the lots is or will occur by individual septic tank/soil absorption systems. No other water rights will divert from these structures. Approximately 70 well permits have been issued to date, but only approximately 32 wells have been constructed thus far. Augmentation of other uses besides domestic use on developed lots within these subdivisions, including stockwatering, lawn irrigation and other uses, may be allowed by the Company on a limited basis depending upon the availability of surplus consumptive use credits to augment such other uses; provided, however, that the Company will not exceed the total augmentation supply as determined herein at any given time. **Water rights to be used for augmentation:** Augmentation of water depletions occurring on lots in the specified subdivisions will occur under the above-described 0.14 cfs of the Watson Ditch No. 1 water right and 0.04 cfs of the Welty Ditch water right as changed herein. **Description of plan for augmentation:** The Company has been recently incorporated as a non-profit mutual ditch and reservoir company to hold the subject water rights in trust for the benefit of its shareholders, and to provide a unified organization to obtain and administer the plan for augmentation for all subdivisions included therein, as set forth above. Attached to the Application as Exhibit E is a general location map of the service area of the Company. The above-described Watson Ditch No. 1 and Welty Ditch water rights were dedicated to an administratively-approved "augmentation plan" approved by the State Engineer on August 14, 1972, which has been in effect since then. That plan provided for the replacement of out-of-priority depletions on 904 total lots within various subdivisions located in Water Division Nos. 1 and/or 2. The Company seeks a decree approving the existing plan as to those subdivisions and/or lots located within Water Division No. 2; the 145 lots approved for the Saddle Mountain Heights Filing No. 2 Subdivision

(Slater Creek Ranch) in Water Division No. 1 are not included herein. The plan approved by the State Engineer in 1972 was predicated on the following water use assumptions in the subject subdivisions, for which the Company seeks approval herein: (a) 90% of the lots within the subdivisions are second homes for the purchasers of lots and have only seasonal occupancy, with a daily per capita water requirement of 60-80 gallons per day per capita. (b) Owners of such second home lots on average spend two weeks on the lots during the summer months, and 16 days throughout the other nine months of the year. (c) The remaining 10% of lots within the subdivisions are year-round residences, with a daily per capital water requirement of 80-100 gallons per day per capita. (d) The estimated population of all residences on lots within the subdivisions is 3.5 people per unit. (e) 10% of the water used in residences on lots within the subdivisions is consumed in-house and in the individual septic systems. Based on the above assumptions, the following Table 2 sets forth the estimated water use within the subject subdivisions, for which replacement water is required:

<b>Table 2</b>	
<b>Saddle Mountain Subdivisions</b>	
<b>ESTIMATED WATER USE REQUIREMENTS AND CONSUMPTION</b>	
	<b>Water Division 2</b>
Total Lots	324
Full-Time Lots	32
Second Home Lots	292
Annual Water Use Full-Time Lot (acre-feet/year)	0.314
Annual Second Home Use (acre-feet/year)	0.0258
Total Full-Time Use (acre-feet/year)	10.05
Total Second Home Use (acre-feet/year)	7.54
Annual Total Water Use (acre-feet/year)	17.59
Annual Replacement Requirements (acre-feet/year)	1.759

The monthly distribution of consumptive use available under the Watson Ditch No. 1 and Welty Ditch water rights, as changed herein, is set forth in the following Table 3:

<b>Table 3</b>					
<b>Saddle Mountain Subdivisions</b>					
<b>MONTHLY DISTRIBUTION OF CONSUMPTIVE USE</b>					
<b>324 LOTS IN WATER DIVISION 2</b>					
<b>Month</b>	<b>No. of Lots Within Basin</b>	<b>CU for 32 Full Time Occupancy (AF) (a)</b>	<b>2<sup>nd</sup> Home Occupancy Days (b)</b>	<b>CU for 292 2<sup>nd</sup> Home Lots (AF/month)</b>	<b>Total Basin Annual CU (AF/month)</b>
January	324	0.0837	1.78	0.0447	0.1284
February	324	0.0837	1.78	0.0447	0.1284
March	324	0.0837	1.78	0.0447	0.1284
April	324	0.0837	1.78	0.0447	0.1284
May	324	0.0837	1.78	0.0447	0.1284
June	324	0.0837	4.67	0.1173	0.2010
July	324	0.0837	4.67	0.1173	0.2010
August	324	0.0837	4.67	0.1173	0.2010
September	324	0.0837	1.78	0.0447	0.1284
October	324	0.0837	1.78	0.0447	0.1284
November	324	0.0837	1.78	0.0447	0.1284
December	324	0.0837	1.78	0.0447	0.1284
<b>TOTALS</b>		<b>1.0044</b>	<b>30.03</b>	<b>0.7542</b>	<b>1.7586</b>

- (a) 10% of the lots are assumed to be full time occupancy.
- (b) 90% of the lots are assumed to be 2<sup>nd</sup> homes with 30 days occupancy per year.

Table 3 indicates that 1.7586 acre-feet of replacement water is required to augment water depletions within the subject subdivisions, which augmentation will occur under the 4.12 acre-feet of consumptive use available annually under the changed Watson Ditch No. 1 and Welty Ditch water rights. By foregoing diversions and leaving consumptive use from the subject water rights in the stream, the Company will provide replacement water of the same quality and quantity as required to meet the demands of senior water rights. If, in the future, the Company permits outdoor water uses within the subdivisions covered by this augmentation plan, such as turf irrigation and stockwatering, the water required to replace depletions associated with such outside uses in conjunction with in-house and septic uses shall not exceed 4.12 acre-feet per year of consumptive use credits. Shareholders of the Company shall be required to comply with the Company's Articles of Incorporation and Bylaws in order to be covered by this augmentation plan. The Company shall be responsible for enforcing water use and replacement requirements within the subject subdivisions, and for accounting for the operation of this augmentation plan at least annually on forms acceptable to the Division Engineer. WHEREFORE, the Company requests the Court to grant a change in use of the above-described interests in the Watson Ditch No. 1 and Welty Ditch water rights to add augmentation use, to approve a plan for augmentation to replace water depletions occurring within the above-described subdivisions, and to grant any other relief the Court deems appropriate.

(Application and attachments, 16 pages)

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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 December 2003, (forms available at Clerk's office, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$70.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this \_\_\_\_\_ day of November,  
2003.

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

(Court seal)  
Published: November \_\_\_\_\_, 2003