

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING OCTOBER 2008

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 2008, 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. 99CW98 - MAXINE REDDY TRUST, by and through its trustee: Anne Moyer, 610 Poplar, Leadville, CO 80461 (Direct all pleadings to: Glenn E. Porzak and Thomas W. Korver, Porzak Browning & Bushong LLP, Attorneys for Applicant, 929 Pearl Street, Suite 300, Boulder, CO 80302; (303) 443-6800)
Amended Application for Water Rights (Surface)

LAKE COUNTY

1. Amendment of Name and address of Applicant: Maxine Reddy Trust, by and through its trustee: Anne Moyer, 610 Poplar, Leadville, CO 80461. Direct all pleadings to: Glenn E. Porzak, Thomas W. Korver, Porzak Browning & Bushong LLP, 929 Pearl Street, Suite 300, Boulder, CO 80302, (303) 443-6800. **2. Amendment of legal description:** Paragraph 3 of the July 21, 1999 Application is amended to correct the legal descriptions of the points of diversion as follows: **a.** The point of diversion of the Fairview Ditch is located on the west bank of Iowa Gulch in the SE1/4 of the SW1/4 of Section 36, T. 9 S., R. 80 W. of the 6th P.M., at a point 168 feet from the south section line and 1620 feet from the west section line of said Section 36. **b.** The point of diversion of the Brookside No. 1 Ditch is located on the south bank of Iowa Gulch in the SW1/4 of the NW1/4 of Section 2, T. 10 S., R. 80 W. of the 6th P.M., at a point 2501 feet from the north section line and 353 feet from the west section line of said Section 2. **c.** The point of diversion of the Brookside No. 2 Ditch is located on the north bank of Iowa Gulch in the SW1/4 of the NW1/4 of Section 2, T. 10 S., R. 80 W. of the 6th P.M., at a point 2520 feet from the north section line and 110 feet from the west section line of said Section 2. **d.** The point of diversion of the Brookside No. 3 Ditch is located on the west bank of Iowa Gulch in the NE1/4 of the SE1/4 of Section 3, T. 10 S., R. 80 W. of the 6th P.M., at a point 1959 feet from the south section line and 810 feet from the east section line of said Section 3. **e.** The point of diversion of the Brookside No. 4 Ditch is located on the south bank of Iowa Gulch in the SW1/4 of the SE1/4 of Section 3, T. 10 S., R. 80 W. of the 6th P.M., at a point 1174 feet from the south section line and 2092 feet from the east section line of said Section 3. **f.** The point of diversion of the Brookside No. 5 Ditch is located on the north bank of Iowa Gulch in the SW1/4 of the SE1/4 of Section 3, T. 10 S., R. 80 W. of the 6th P.M., at a point 1016 feet from the south section line and 2392 feet from the east section line of said Section 3. **3.**

Application Remains Unchanged: Except as expressly amended herein, the remainder of the July 21, 1999 Application, which is on file with the Water Court, Water Division No. 2, remains unchanged.

CASE NO. 07CW87 - UPPER ARKANSAS WATER CONSERVANCY DISTRICT, P. O. Box 1090, Salida, CO 81201 (Please send all pleadings and correspondence to Applicant's counsel: John R. Hill, Jr. and Marcus J. Lock, Bratton Hill, LLC, Attorneys for Applicant, 232 West Tomichi Avenue, Suite 202, Gunnison, CO 81230; (970) 641-1903)

Second Amended Application for Approval of Plan for Augmentation

CHAFFEE, SAGUACHE, FREMONT, CUSTER, AND LAKE COUNTIES

2. This augmentation plan is being filed in accordance with an Agreement Regarding Augmentation of Silver Creek Lakes, dated June 19, 2007, and entered into between the Upper Arkansas Water Conservancy District ("UAWCD") and Silver Creek Lakes Recreation Association ("Silver Creek"). Silver Creek is the owner of 22 small stream bed reservoirs ("Silver Creek Lakes") located on Silver Creek, a tributary of Poncha Creek, which is a tributary of the South Arkansas River. **3.** Silver Creek Lakes Numbers 1 and 2 were decreed absolute for recreation and fish propagation in Case No. W-524, Water Division 2, on November 10, 1972. Silver Creek Lakes Numbers 3 through 22 were decreed absolute for recreation and fish propagation in Case No. 82CW95, Water Division 2, on November 1, 1982. Further, Case No. 01CW155 added aesthetics as a beneficial use to each of the 22 reservoirs owned by Silver Creek. **4.** The Court in Case No. 01CW155 determined that average evaporation from Silver Creek Lakes exceeds historical depletions only during the months of April and October. During April of each year, evaporation from Silver Creek Lakes exceeds average historical depletions by 1.69 acre feet. During October of each year, evaporation from Silver Creek Lakes exceeds average historical depletions by 1.29 acre feet. **5.** Through this Application for Approval of a Plan for Augmentation, UAWCD, on behalf of Silver Creek, seeks approval of a plan for augmentation that would replace the total depletion attributable to Silver Creek Lakes in April and October in the amount of 2.98 acre feet. **6.** The source of water for Silver Creek Lakes is Silver Creek, a tributary of Poncha Creek, which is a tributary of the South Arkansas River. **7. Location of structures to be augmented:** Applicant will augment out-of-priority depletions attributable to evaporation from Silver Creek Lakes in the amount of 1.69 acre feet in April and 1.29 acre feet in October. The structures to be augmented are specifically described as: A. Silver Creek Lake No. 1, surface area 3.36 acres: The initial point of the survey of the high water line of the reservoir is located at a point whence the U.S.L.M. Homestead Entry Survey No. 55, located in Township 48 North, Range 7 East, N.M.P.M. bears North 33° 10' East for 555 feet. Survey map erroneously shows Silver Creek Lake No. 1 as being in Chaffee County, Colorado, whereas said Silver Creek Lake No. 1 is actually located in Saguache County, Colorado. B. Silver Creek Lake No. 2, surface area 2.51 acres: The initial point of survey of the high water line of the reservoir is located at a point whence the U.S.L.M. Homestead Entry Survey No. 55, located in Township 48

North, Range 7 East, N.M.P.M., bears North 44° 55' East 1,875 feet. Survey map erroneously locates said property in Chaffee County, Colorado; whereas the true location of said property is in Saguache County, Colorado. C. Silver Creek Lake No. 3, surface area 1.27 acres: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 2 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears North 63° 46.9' East 2011.47 feet. D. Silver Creek Lake No. 4, surface area 0.09 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 3 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 34° 51.7' West 794.95 feet. E. Silver Creek Lake No. 5, surface area 0.20 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 3 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M., in Saguache County, Colorado, bears South 39° 23.2' West 665.61 feet. F. Silver Creek Lake No. 6, surface area 0.28 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 3 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 27° 29.4' West 674.73 feet. G. Silver Creek Lake No. 7, surface area 0.08 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 3 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M., Saguache County, Colorado, bears South 14° 35.9' West 504.37 feet. H. Silver Creek Lake No. 8, surface area 0.08 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 3 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 16° 38.6' West 347.61 feet. I. Silver Creek Lake No. 9, surface area 0.24 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 4, (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 87° 55.5' East 572.26 feet. J. Silver Creek Lake No. 10, surface area 0.40 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 4, (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 87° 04.5' East 689.58 feet. K. Silver Creek Lake No. 11, surface area 0.10 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 4, (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears North 88° 43.1' East 745.96 feet. L. Silver Creek Lake No. 12, surface area 0.13 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner

No. 4 (Marked Stone) of Homestead Entry Survey No. 55, Township 43 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears North 86° 31.2' East 883.67 feet. M. Silver Creek Lake No. 13, surface area 0.09 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado bears South 49° 31.7' West 875.93 feet. N. Silver Creek Lake No. 14, surface area 0.14 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 42° 25.9' West 856.18 feet. O. Silver Creek Lake No. 15, surface area 0.26 acre: The initial point of the survey of the high line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 41° 39.6' West 676.23 feet. P. Silver Creek Lake No. 16, surface area 0.20 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 34° 32.4' West 563.9 feet. Q. Silver Creek Lake No. 17, surface area 0.18 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 28° 31.7' West 375.92 feet. R. Silver Creek Lake No. 18, surface area 0.16 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 32° 54.8' West 281.64 feet. S. Silver Creek Lake No. 19, surface area 0.11 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 12° 59.3' West 245.48 feet. T. Silver Creek Lake No. 20, surface area 0.04 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5, (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 6° 36.8' East 260.22 feet. U. Silver Creek Lake No. 21, surface area 0.06 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 4 (Marked Stone) of the Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears North 75° 56' East 233.87 feet. V. Silver Creek Lake No. 22, surface area 0.10 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 3 (Marked Stone) of the

Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears North 87° 14.2' East 485.09 feet. The total surface area of all 22 lakes is shown on Exhibit 1 on file with the Second Amended Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. For additional information pertaining to the capacity, length and height of dams, and other information related to Silver Creek Lakes, please see the decree entered in 01CW155.

8. Previous decrees for water rights to be used for augmentation: A. The following sources of augmentation water will be used to augment out-of-priority depletions attributable to evaporation from Silver Creek Lakes in the amounts described above: All water owned or accessible by Applicant and available for the augmentation purposes described in this application, including:

I. O'Haver Reservoir, with a storage right for 193 acre feet of water, priority date of September 9, 1982, for agricultural, municipal, industrial, replacement, fisheries, augmentation and exchange, and recreation decreed in Case No. 82CW205, Water Division No. 2, on June 28, 1985. The recreational right was decreed absolute in Case No. 88CW75. The source of O'Haver Reservoir is Gray's Creek by means of the O'Haver Filler Ditch. O'Haver Reservoir is located near the center of Section 12, Township 48 North, Range 7 East, N.M.P.M., Chaffee County, Colorado.

II. North Fork Reservoir, with a storage right of 595 acre feet of water, priority date of September 9, 1982, for irrigation, municipal, industrial, recreational, and augmentation decreed in case No. 82CW204, Water Division No. 2, Colorado on April 14, 1983. The source for the North Fork Reservoir is the North Fork of South Arkansas River. The North Fork Reservoir is located in the SE1/4 of Section 5, Township 50 North, Range 6 East, N.M.P.M. in Chaffee County, Colorado.

III. North Fork Reservoir, 1984 Enlargement: Date of Original Decree - September 18, 1985, Case No. 84CW141, District Court, Water Division No. 2, Colorado. Its source is the North Fork of the South Arkansas River. North Fork Reservoir is located as follows: Beginning at the Northeasterly point of contact of the dam axis with the existing ground said point being situated whence the Northwest corner of Section 21, T.50N, R.7E, N.M.P.M., in Chaffee, County, Colorado bears South 68°50' East a distance of 31,920 feet; said point being further described by bearing on the Peak of Granite Mountain of North 23°28' West and by bearing on the Peak of Calico Mountain of North 37°03' East, thence South 15°30' West a distance of 500 feet to the Southwesterly point of contact of the dam axis with existing ground, Chaffee County.

IV. State Reservoir, Boss Lake, with a storage right for 688.7 acre-feet of water, appropriation date of March 20, 1893, pursuant to C.R.S. § 37-88-108, located in the NE1/4, Section 29, Township 50 North, Range 7 East, N.M.P.M. Its source is the Lake Fork, tributary to the Middle Fork of the South Arkansas River.

V. Cameron Ditch, adjudicated In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District Number Eleven, District Court, Chaffee County, Colorado on June 19, 1890; from the North Fork of the Little Arkansas River (South Arkansas River), Priority No. 23, appropriation date of January 10, 1868, 9.0 c.f.s., total, and a second water right adjudicated in Case No. 2342, District Court, Chaffee

County, Colorado on July 15, 1913, appropriation date of June 20, 1890, for 8.0 c.f.s. Applicant currently owns 7/8 of a ¼ interest in these water rights; VI. White Ditch: Date of original decree – April 20, 1993, Case No. 91CW19, District Court, Water Division No. 2, appropriation date – May 1, 1874, amount – 26.08 acre feet, uses – storage in North Fork Reservoir for municipal, irrigation, augmentation, and recreational uses; VII. Water and water rights authorized for augmentation or replacement uses that are owned by the City of Salida and stored in North Fork Reservoir pursuant to contract with Applicant including such water as the City of Salida conveys to Applicant pursuant to contract, as such water rights are decreed in Case No. 87CW61 or any other decrees obtained by the City of Salida or Applicant; VIII. Water available pursuant to shares of Twin Lakes Reservoir and Canal Company owned or controlled by Applicant. Applicant may use such water from storage in Twin Lakes Reservoir and by exchange into other reservoirs pursuant to other exchange decrees and administrative approvals. Such water consists of storage and direct flow rights for water diverted from another basin which are available for 100 percent consumptive use and reuse and are available for augmentation. The water rights producing the pro rata interest of Applicant are: a. Colorado River Water Rights: Case No. 3802, District Court, Garfield County, August 25, 1963 and Case No. W-1901, District Court, Water Div. No. 5, May 12, 1976; priority: August 23, 1930, No. 431; source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Div. No. 5; use: direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal, and all beneficial uses; amount: direct flow amount for diversions through transmountain tunnels of 625 c.f.s., with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre-feet; and b. Arkansas River Water Rights: Case No. 2346, District Court, Chaffee County, July 14, 1913 as modified in Case No. W-3965, District Court, Water Div. No. 2, April 19, 1974; priorities: December 15, 1896, No. 3 and March 25, 1897, No. 4; source: Lake Creek and its tributaries, tributary to the Arkansas River; use: storage for irrigation, domestic, commercial, industrial, and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir which are capable of being served by water by diversion from said Arkansas River; amount: 54,452 acre-feet (20,645.3 acre-feet for Priority No. 3 and 33,806.7 acre-feet for Priority No. 4; IX. Water and water rights that may be exchanged and made available for Applicant's use pursuant to the exchanges for which Applicant has an application pending in Case No. 04CW96, District Court, Water Division No. 2; X. Applicant may augment out-of-priority depletions from Silver Creek Lakes with any other water and water rights that Applicant 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 will obtain changes of water rights and/or administrative approvals so as to allow for use of these waters for such purposes, where appropriate, prior to such use. Applicant shall provide such notice as may be required of any such additional water prior to use within this plan. Such water and water rights may include but is not limited to: a. water and water rights acquired on a temporary basis pursuant to leases and

interruptible supply agreements pursuant to C.R.S. § 37-92-309; b. such interest in the following water rights that may be owned by the United States that have been acquired by Applicant by lease: 1. Silvernail Ditch, adjudicated in Civil Action No. 3123, Water District 12, Fremont County District Court, Colorado on February 7, 1910, for diversion from the west bank of Texas Creek whence the quarter corner of the west side of Section 7, T.19S., R.73W. of the 6th P.M. bears North 24 degrees West 3,970.8 feet, for 1.0 c.f.s., with an appropriation date of 4/1/1876; 2. Clayborne Extension of Rodgers Ditch, adjudicated in Civil Action No. 3014, Water District 12, Fremont County District Court, Colorado on April 1, 1909, for diversion from the South bank of the Arkansas River whence the NW corner of Section 20, T.48N., R.11E. of the N.M.P.M. bears South 77 degrees West 275 feet, for 1.0 c.f.s., with an appropriation date of 9/1/1879; and 3. Lester-Attebery Ditch Water Rights diverted on the North side of the Arkansas River at a point on the West line of Section 13, T.19S., R.69W., 6th P.M. at a distance 16.35/100 chains North of the SW corner of said section, consisting of: Priority No. 150 decreed to the Bragg Ditch, Case No. 2622, Water District 12, Fremont County District Court, Colorado on 1/31/1905 for 3.5 c.f.s., with an appropriation date of 4/1/1875, and subsequently transferred to the Lester-Attebery Ditch in Case No. 4669, District Court, Fremont County, Colorado; Priority No. 158 decreed to the Lester-Attebery Ditch on 2/3/1894, District Court, Fremont County, Colorado, for 2.0 c.f.s., with an appropriation date of 4/1/1875; and Priority No. 343½ decreed to the Adobe Ditch in Case No. 2622, Water District 12, Fremont County District Court, Colorado on 1/31/1905, for 3.6 c.f.s., with an appropriation date of 4/1/1887 and later transferred to the Lester-Attebery Ditch in Case No. 4595, District Court, Fremont County, Colorado; and XI. Some or all of the sources of augmentation water listed above could be stored in O'Haver Reservoir, North Fork Reservoir, or State Reservoir, Boss Lake, the locations of which are described above in sections 8(A)(I), (II) and (III) respectively, or in DeWeese Reservoir, Cottonwood Reservoir, or Rainbow Lake, which are located as follows: a. DeWeese Reservoir is located within Sections 20, 29, and 30, Township 21 South, Range 72 West of the 6th P.M., the axis of the dam of which intersects the thread of Grape Creek at a point in the NE ¼ SE ¼ Section 20, Township 21 South, Range 72 West of the 6th P.M. in Custer County, at a point whence the SE corner of said Section 20 bears South 12 degrees East 2350 feet. b. Cottonwood Reservoir a/k/a Cottonwood Lake is located on South Cottonwood Creek, a tributary of Cottonwood Creek, which is a tributary of the Arkansas River, in the SE ¼ of Section 36, Township 14 South, Range 80 West of the 6th P.M., in Chaffee County. c. Rainbow Lake is located on Middle Cottonwood Creek, a tributary of Cottonwood Creek, which is a tributary of the Arkansas River, in the SE ¼ SW ¼, SW ¼ SE ¼, and the SW ¼ SE ¼ of Section 19, and the NE ¼ NW ¼ and the NW ¼ NE ¼ of Section 30, at a point whence the SE corner of Section 19, Township 14 South, Range 79 West of the 6th P.M. bears South 80°34.0' East, 2,110.3 feet, in Chaffee County.

B. Historic use: Since acquisition by Applicant, these water rights have continued to be used for decreed purposes as described in the above referenced Water Court proceedings, or have been used to augment out-of-priority

depletions by structures participating in Applicant's current augmentation plans and Applicant's yearly Rule 14 Replacement Plans. **9. Statement of plan for augmentation, covering all applicable matters under C.R.S. 37-92-103 (9), 302 (1) (2) and 305 (8):** Applicant proposes to replace evaporative depletions attributable to Silver Creek Lakes determined by this Court in Case No. 01CW155 in the amount of 1.69 acre feet during April of each year and in the amount of 1.29 acre feet during October of each year by releasing augmentation water from the various sources described above or from other sources available to Applicant, as needed to prevent injury. Augmentation water to be provided pursuant to this application will be provided at the point of impact but not above the confluence of Grays Creek and Poncha Creek. Releases of augmentation water made pursuant to this augmentation plan would be in lieu of the releases from Silver Creek Lakes mandated by Case No. 01CW155. **10. Names and addresses of owners of land on which structures are located:** A. Silver Creek Lakes are owned by the Silver Creek Lakes Recreational Association, c/o Mr. Mark Kennedy, President, Board of Directors 4807 Indigo Court, Pueblo, CO 81001. B. O'Haver Reservoir, State Reservoir, Boss Lake, North Fork Reservoir, and Cottonwood Reservoir a/k/a Cottonwood Lake are located on lands owned by the United States of America, administered by Salida Ranger District, 325 West Rainbow Boulevard, Salida, CO 81201. C. Rainbow Lake is located on land owned by Rainbow Lake Resort, Inc., 21509 County Road 306, Buena Vista, Colorado 81211. D. Twin Lakes Reservoir is owned by the United States of America, administered by the Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18-E, Loveland, CO 80537. E. DeWeese Reservoir is located on land owned by the DeWeese-Dye Ditch and Reservoir Company, 1631 Chestnut, Canyon City, Colorado 81215. F. The White Ditch is owned by the Applicant, P.O. Box 1090 Salida, CO 81201. G. The Cameron Ditch is a mutually owned ditch, and Applicant owns a portion of the ditch and water right; and H. The water rights described in Section 8(A)(IX)(b) are currently owned by the United States of America, administered by the Bureau of Land Management, Royal Gorge Field Office, 3170 East Main St., Canon City, CO 81212 and are leased to Applicant. Applicant, therefore, requests that this plan for augmentation be approved.

CASE NO. 08CW34 - THOMAS N. LAWRENCE and ANITA AKIN LAWRENCE, 613 Goldeneye Dr, Granbury, TX 76049; LINDA SUE MOORHEAD ZUFLACHT and NANCY MOOREHEAD HOPKINS, 5370 Prue Rd, San Antonio, TX 78240; RUTH ROBINSON YORK and RICHARD L. MATHESON TRUST DATED FEBRUARY 4, 1983, 3557 S. Ivanhoe St, Denver, CO 80237; LARRY D. MORGAN AND PORTIA E. MORGAN REVOCABLE TRUST UTA DATED JUNE 9, 1998, P.O. Box 250, Mesilla Park, NM 88047 (Linda McMillan, Attorney for Applicants, 503 N Main St, #222, Pueblo, CO 81003; (719) 543-8596)

Amended Application for Water Rights (Surface)

HUERFANO COUNTY

Structure: Spruce Creek Spring. **Legal Description of each point of diversion:** Huerfano County, SW ¼ Section 23, T30S, R68W, 6th P.M., 230 ft. from the South line and 2112 ft. from the West line. **GPS Location in UTM Format:** Zone 13; Northing 4,141,031; Easting 0,502,512. **Source:** Tributary to Wahatoya Creek a tributary to the Cucharas River a tributary to the Arkansas River. **Appropriation Date:** Approximately July 1958. **Amount:** 0.27 c.f.s. Absolute. **Historic Use:** The water is used for domestic purposes for eight single family residences on 2-3 acres located on the following described property: SW ¼ §23 T30S R68W of the 6th P.M. **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:** Applicants.

CASE NO. 08CW74 - BEN BOUNDS, 6801 CR #358, P. O. Box 1129, La Veta, CO 81055; (719)250-3647

Application for Underground Water Right

HUERFANO COUNTY

2. Name of well and permit, registration, or denial number: Name: Louise; Permit No. 181278; **3. Legal description of well:** Huerfano County, NE ¼ SW ¼ Section 15, Township 29 South, Range 67 West, 6th P.M., 1830 feet from the South line and 2470 feet from the West line. **Street Address:** 6801 CR #358. **Subdivision:** LaVeta Pines; **Lot:** #1 **4. A. Source:** Sandstone Poison Canyon; **B. Depth:** 320. **5. A. Date of appropriation:** April 1, 1994; **B. How appropriation was initiated:** Owners of said location struck water while drilling for water. **C. Date water applied to beneficial use:** September 1, 1994. **6. Amount claimed:** 7 gpm Absolute. **7. If well is nontributary:** N/A. **8. Proposed use:** Domestic and livestock. **A. If irrigation, complete the following:** **(1) Number of acres historically irrigated:** 0. **(2) Total number of acres proposed to be irrigated:** 1. **(3) The legal description of the land irrigated:** Lot 1, LaVeta Pines Ranches. **(4) Area of lawns and gardens irrigated:** 1 acre. **B. If non-irrigation, describe purpose fully:** Household use. **9. 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: Ben and Melanie Bounds, 6801 CR 358, P. O. Box 1129, La Veta, CO 81055

CASE NO. 08CW75(01CW142) - WILLIAM M. MENG, P. O. Box 890, La Veta, CO 81055 (David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street Colorado Springs, CO 80903; (719) 471-1212; Email: dms@fmcwater.com)

Application for Finding of Reasonable Diligence

HUERFANO COUNTY

2. Name of Structures: Meng Spring No. 1, Meng Spring No. 2. **3. Description of conditional water rights from the Ruling of Referee and Decree:** **A. Date of Original Decree:** November 13, 2002, **Case No.:** 01CW142 **Court:** District Court, Water Division 2. **B. Legal Description:** i. **Meng Spring No. 1:** The point of diversion is located in the Southeast 1/4 of the Southeast 1/4 of Section 11, Township 30 South, Range 68 West, 6th P.M., being 1,000 feet north of the south section line and 1,150 feet west of the east section line of said Section 11, Huerfano County, Colorado. Exhibit A to the Application indicates the approximate location of Meng Spring No. 1. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. ii. **Meng Spring No. 2:** The point of diversion is the Southwest 1/4 of the Southeast 1/4 of Section 11, Township 30 South, Range 68 West, 6th P.M., being 500 feet north of the south section line and 1,550 feet west of the east section line of said Section 11, Huerfano County, Colorado. Exhibit A attached to the application indicates the approximate location of Meng Spring No. 2. **C. Source for Meng Spring Nos. 1 & 2:** Springs tributary to an unnamed drainage in Dry Canyon, tributary to Cherry Creek, tributary to Bear Creek, tributary to the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River. **D. Appropriation Date for Meng Spring Nos. 1 & 2:** July 2, 2001. **E. Amount for Meng Spring Nos. 1 & 2:** 2.0 g.p.m., conditional. **F. Uses of Meng Spring Nos. 1 & 2:** Domestic, irrigation, livestock and poultry watering, fire protection, and wetlands creation. The domestic use is up to three single-family homes with a total of one acre of lawn and garden and for the watering of domestic animals including horses. Any use for wetlands creation shall be for man-made wetlands created by Applicant. **G. Place of Use.** Applicant's property as depicted on Exhibit A and as described in Exhibit B attached to the application. **4. Description of work performed toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** Applicant is the owner of a 5 acre parcel located near the town of La Veta in Huerfano County, Colorado ("Applicant's Property"). Applicant's Property is depicted on the Exhibit A map and described in Exhibit B legal description. In Case No. 01CW142, the Court decreed to Applicant the use of two surface water rights, Meng Spring Nos. 1 and 2, for use on Applicant's Property for the uses of domestic, irrigation, livestock and poultry watering, fire protection, and wetlands creation. The Court decreed

both water rights conditional. These conditional water rights are part of an integrated water supply system for the full development of Applicant's Property. During this diligence period, Applicant surveyed and excavated the ground for the installation of the spring boxes for both Meng Spring Nos. 1 and 2. Applicant constructed and installed spring boxes for both Meng Spring Nos. 1 and 2. Furthermore, Applicant has installed a concrete culvert in the spring box for Meng Spring No. 1 for the future diversion of water for its decreed beneficial uses. In addition to the work described above, during this diligence period, Applicant, in connection with the development of Applicant's Property, as part of the integrated system, has spent considerable time and money constructing a new barn on his property. Applicant has also spent considerable time and money repairing and upgrading the old homestead cabin located on his property. In connection with the repair of the old homestead cabin, Applicant constructed a new foundation and installed a new roof. During this diligence period Applicant has spent the following amounts on the development of Applicant's property and Meng Spring No. 1 and Meng Spring No. 2: \$450.00 on excavation; \$325.00 on materials for spring boxes/pipelines; \$ 75.00 on concrete work for spring boxes; \$4,800.00 on constructing a barn; \$2,400.00 on concrete work for the Homestead; \$26,000.00 on other work and repairs to homestead; \$600.00 on labor. Applicant has spent a total of \$34,650.00 towards the development of Applicant's Property and Meng Spring No. 1 and Meng Spring No. 2. During this diligence period Applicant has, therefore, devoted substantial efforts toward the development of Meng Spring No. 1 and Meng Spring No. 2 and the integrated system, for the further application of water from Meng Spring No. 1 and Meng Spring No. 2 to beneficial use. **5. Claim to Make Absolute:** No part of the conditional water rights decreed in Case No.01CW142 are claimed to be made absolute at this time. **6. Name and address of the owners of land on which structure is located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** All points of diversion and places of use for the water rights are located on lands owned by the Applicant.

CASE NO. 08CW76 - EDWIN S. BROUSSARD and ALICE M. BROUSSARD, High Park Trails Ranch, 2204 High Park Road, Florissant, CO 80816; (515) 673-3362

Application for Water Rights (Surface)

TELLER COUNTY

2. Name of structure: High Park Trails Ranch Spring. **3. Legal description of each point of diversion:** Teller County, SW ¼ of the SW ¼ Section 25, Township 15 South, Range 71 West, 6th P.M., 150 feet from the South line and 875 feet from the West line. **Street Address:** High Park Trails Ranch, 2204 High Park Road, Florissant, CO 80816. **4. Source:** Spring and surface run off. The spring is tributary of High Creek. **5. A. Date of initiation of appropriation:** Jan. 2002; **B. How appropriation was initiated:** Livestock use. **C. Date water applied to beneficial use:** Jan. 2002. **6. Amount claimed:** ± 10 gpm. **7. Use or proposed use:** Development of spring for livestock and wildlife use with use of a tank. **A. If irrigation, complete the following: Number of acres**

historically irrigated: ____; proposed to be irrigated: _____. Legal description of acreage: _____. B. If non-irrigation, describe purpose fully: Development of spring and surface run off to be used for livestock and wildlife watering tank. 8. 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: Applicants. 9. Remarks: Exhibit A (survey) attached to Application. Location of spring and tank is identified as subject location. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court.

CASE NO. 08CW77 - CURTIS A. and COLLEEN D. ARMSTRONG, P. O. Box 57, Rye, CO 81069; (719) 489-3018

Application for Underground Water Right

PUEBLO COUNTY

2. Name of well and permit, registration, or denial number: Armstrong Well. 3. Legal description of well: NE ¼ of the NE ¼ Section 36, Township 24 South, Range 68 West, 6th P.M., 1002 feet from North line and 660 feet from East line. Street Address: 8214 Park Road, Rye, Colorado. Subdivision: State Addition to Rye, Pueblo County. Lot: W ½ Lot 5, All Lot 6, E ½ Lot 7. 4. A. Source: Ground Water Well. B. Depth: 40 feet. A. Date of appropriation: 01/01/1919; B. How appropriation was initiated: 01/01/1919. C. Date water applied to beneficial use: 01/01/1919. 6. Amount claimed: 10 gpm Absolute. 7. If well is nontributary: _____. 8. Proposed use: A. If irrigation, complete the following: (1) Number of acres historically irrigated: 1 acre; (2) total number of acres proposed to be irrigated: 1 acre. (3) The legal description of the land irrigated: W ½ Lot 5, All Lot 6, E ½ Lot 7, State Addition Rye Pueblo County. (4) Area of lawns and gardens irrigated: 1 acre. B. If non-irrigation, describe purpose fully: Household use in addition to fire protection, lawn and garden irrigation and livestock watering. 9. 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: Applicants.

CASE NO. 08CW78(01CW136) - JEFFREY and JANET MANCUSO, 1251 Antelope Trail, Cotopaxi, CO 81223; (719) 942-3092

Application for Finding of Diligence

FREMONT COUNTY

2. Name of structure: Davis #1 Spring. 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: 10/15/2002. Case No. 01CW136. Court: District Court Water Division 2. B. Legal description: Fremont County, Township 50 North, Range 12 East, N.M.P.M., 76' from ____

and 40' from West line. [Note: Ruling of Referee entered in Case No. 01CW136 describes diversion point for Davis #1 Spring as Corner #3 of TR-99H, T. 50 N., R. 12 E., N.M.P.M., Fremont County, Colorado, bears S. 33° 40' 00" W., a distance of 76± feet from the point of diversion, being the point where the Davis #1 Spring surfaces.] **Street Address:** Nesterville Road. **Optional Additional Description:** **GPS location information in UTM format. Required settings for GPS units are as follows: Format must be UTM; Zone must be 13; Units must be Meters Datum must be NAD83 and; Units must be set to true north. Were points averaged? ____.** **Northing** 426692; **Easting** 443932. [Note: Ruling of Referee entered in 01CW136 provided GPS information in NAD27 datum.] **C. Source:** Spring. **D. Appropriation Date:** 12/31/1918 (stock water) and 12/14/2001 (domestic). **Amount:** 2.5 gal. per minute. **E. Use:** Stock watering - conditional for domestic purposes up to 2 single family dwellings and irrigation to 1 acre lawns. **4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** We recently purchased this property from the Davis Family and plan to make improvements in the future. Currently, there is a pipe and water stock barrel for cattle and wildlife. **Name(s) and address(es) of owner(s) of 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: ____.**

CASE NO. 08CW79(01CW137) - JEFFREY and JANET MANCUSO, 1251 Antelope Trail, Cotopaxi, CO 81223; (719) 942-3092

Application for Finding of Diligence

FREMONT COUNTY

2. Name of structure: Davis Diversion TR-99G. **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:** 10/8/2002. **Case No.** 01CW137. **Court:** District Court Water Division 2. **B. Legal description:** Fremont County, Township 50 North, Range 12 East, N.M.P.M., 50' from East line. [Note: Ruling entered in 01CW137 indicates point of diversion for Davis Diversion TR-99G to be Corner #1 of TR-107, T. 50 N., R. 12 E., N.M.P.M., Fremont County, Colorado, bears S. 89° 50' 06" E., a distance of 433± feet from the point of diversion, being the point in the gulch where the water leaves TR-99G. Case No. 01CW137 further changed ½ of the conditional water right to be diverted at the following two points of diversion: Diversion Point 1 shall serve Lot 64-E in the amount of 1.25 gpm, and uses for Lot 64-E shall be domestic purposes inside one single-family residence, livestock, and irrigation of up to 7260 square feet o home gardens and lawns. Livestock use shall be limited to 40 head of cattle total on Lots 99G, 99A, 99B, 99D, 64D, and 64E. Diversion Point 2: TR-64D, Township 50 North, Range 12 East, N.M.P.M., Fremont County, Colorado. Tie to the Northwest Corner of TR-64D also being the AP4 of Tract 64, Township 50 North, Range 12 East, N.M.P.M., N. 73° 27' 18" W a distance of 1,296.48'. This point of diversion is the same point of diversion awarded to Davis Spring No. 8 in Case No. 02CW174. Diversion Point 2 shall

serve Lot 64-D in the amount of 1.25 gpm, and uses for Lot 64-D shall be domestic purposes inside one single-family residence, livestock and irrigation of up to 7,260 square feet of home gardens and lawns. Livestock use shall be limited to 40 head of cattle total on Lots 99G, 99A, 99B, 99D, 64D and 64E. Lot 99-B: Lot 99B may be served by either Diversion Point 2 or Diversion Point 1 at a rate of 1.25 gpm, and uses on Lot 99-B shall be domestic purposes inside one single-family residence, livestock, and irrigation of up to 7,260 square feet of home lawns and gardens. Livestock use shall be limited to 40 head of cattle total on Lots 99G, 99A, 99B, 99D, 64D and 64E. As soon as a determination has been made as to which Diversion Point will serve Lot 99-B, the owner or user shall provide written notice to the Court and the Division of Water Resources.] **Street Address:** Nesterville Road. **Optional Additional Description:** **GPS location information in UTM format. Required settings for GPS units are as follows: Format must be UTM; Zone must be 13; Units must be Meters Datum must be NAD83 and; Units must be set to true north. Were points averaged? _____. Northing 444574; Easting 4266962.** [Note: Ruling entered in 01CW137 provided GPS information in NAD27 datum.] **C. Source:** Unnamed gulch which is a branch of East Gulch. **D. Appropriation Date:** 12/31/1918 and 12/14/2001. **Amount:** 7.5 gpm. [See note above]. **E. Use:** Absolute to stockwatering and 1 single family dwelling (domestic inside use) and conditional for domestic purposes inside 5 additional single family dwellings and irrigation to 1 acre lawn. [See note above]. **Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** We recently purchased this property from the Davis Family and plan to make improvements in the future. Currently, there is a pipe and water stock barrel for cattle and wildlife. **Name(s) and address(es) of owner(s) of 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:** _____.

CASE NO. 08CW80(01CW147) - PAULA A. MOORE and GREGORY R. MOORE, 2096 S. Xenia Way, Denver, CO 80231 (Michael J. Gustafson and James W. Culichia, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212). E-mail: mjpg@fmcwater.com.

Application for Finding of Reasonable Diligence

PUEBLO COUNTY

2. Name of Structures: Coyote Spring and Antelope Spring. **3. Description of conditional water rights from the Ruling of Referee and Decree:** **A. Date of Original Decree:** September 27, 2002, **Case No.:** 01CW147, **Court:** District Court, Water Division 2. **B. Legal Description:** I. Coyote Spring: The point of diversion is located in the Southeast 1/4 of the Northeast 1/4, Section 10, Township 24 South, Range 65 West of the 6th P.M., being 2,362.08 feet south of the north section line and 545.10 feet west of the east section line of said Section 10, Pueblo County, CO. II. Antelope Spring: The point of diversion is located in

the Southeast 1/4 of the Northeast 1/4, Section 10, Township 24 South, Range 65 West of the 6th P.M., being 2,487.00 feet south of the north section line and 1090.63 feet west of the east section line of said Section 10, Pueblo County, CO.

C. Source: The source of Coyote Spring and Antelope Spring are springs tributary to an unnamed drainage, tributary to Salt Creek, tributary to Greenhorn Creek, tributary to the St. Charles River, tributary to the Arkansas River. **D. Appropriation Date:** I. Coyote Spring and Antelope Spring: July 5, 2001. **E. Amount:** I. Coyote Spring: 2.0 gallons per minute, conditional. II. Antelope Spring: 6.5 gallons per minute, conditional. **F. Use:** I. Coyote Spring and Antelope Spring: Fish propagation, wetlands creation, erosion control, livestock and poultry watering, domestic, irrigation, recreation, aesthetics, and fire protection.

4. Description of work performed toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: Coyote Spring and Antelope Spring are part of the water supply for the development of Applicants' property. During this diligence period, Applicants have spent considerable time and money on engineering, developing the springs for irrigation and livestock watering purposes, water supply planning, and developing their property. For example Applicants conducted the following activities: A. Hired civil engineer Clyde Young to provide them with recommendations for developing the springs, applying the associated water to beneficial uses, and addressing siltation and runoff issues; B. Researched the systems available for applying the spring water to beneficial use, including attending seminars and researching the types of pumps, stock tanks and power systems available for use in connection with the springs; C. Acquired Lot 74 of the Hatchet Ranch Phase V to provide them with vehicular access to the springs and surrounding property; D. Cleared invasive weeds from around the springs to allow access for maintenance and animal watering; E. Fenced in a portion of the property to minimize damage caused by livestock to structures, trees, and vegetables while ensuring continued access to the springs by livestock; F. Researched the types of crops that are viable in the geographic area and methods for irrigating the crops using water from the springs; G. Constructed raised vegetable beds for future use in evaluating irrigation requirements and methods; H. Planted native trees near the springs and watered the trees with water from Antelope Spring; I. Built a single-family residence that is located approximately 100 yards from Coyote Spring and 200 yards from Antelope Spring; and J. Built a utility building near the springs that is used to store tools, equipment, fencing and other materials for management of their property. Applicants have devoted substantial efforts toward the development of their property and the further application of water from Coyote Spring and Antelope Spring to beneficial use during this diligence period. Applicants have spent the following amounts on the development of their property and the springs during this diligence period: A. \$200.00 on engineering; B. \$50.00 on planting and watering native trees; C. \$510.00 on attending seminars and researching the development of their water rights; D. \$1,400.00 on fencing in the springs; E. \$220.00 on constructing vegetable beds and planting and watering the vegetables; F. \$1,440.00 on traveling to and from

Denver to conduct investigations into development of the springs and watering the trees; G. \$37,000.00 on constructing the utility building and purchasing ranch maintenance equipment; and H. \$48,500.00 on acquiring Lot 74 of Hatchet Ranch. Thus, during this diligence period, Applicants have spent a total of \$89,320.00 on development of their property of which Coyote Spring and Antelope Spring are an integral part. **5. Claim to Make Absolute:** Although applicants have applied a small amount of water from Antelope Spring to livestock watering and irrigation uses, no part of the conditional water rights decreed in Case No. 01CW147 are claimed to be made absolute at this time. **6. Name and address of the owners of land on which structure is located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** The points of diversion for the Coyote Spring and Antelope Spring are located on land owned by the Applicants.

CASE NO. 08CW81 - MOUNTAIN SPRINGS CHURCH, 7345 E. Woodman Road, Colorado Springs, CO 80908 (Petrock & Fendel, P.C., James J. Petrock, Atty. Reg. #2881, Attorneys for Applicant, 700 Seventeenth Street, Suite 1800, Denver, Colorado 80202, Telephone: (303) 534-0702, jjp@petrockfendel.com;)

Application for Plan for Augmentation

EL PASO COUNTY

2. Description of plan for augmentation: A. Groundwater to be augmented: One acre-foot per year over a 300 year period of not nontributary Denver aquifer groundwater as decreed in Case No. 00CW123, District Court, Water Division 2. Applicant has an approved plan for augmentation as also decreed in Case No. 00CW123 for the withdrawal of 1.7 acre-feet per year for 300 years of not nontributary Denver aquifer groundwater, for commercial use in Applicant's church and associated buildings and limited irrigation use on Applicant's approximately 18.33 acres located in part of the N1/2N1/2 of Section 8, T13S, R65W of the 6th P.M., as described and 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. By this application, Applicant requests that the additional 1 acre-foot be withdrawn in combination with the 1.7 acre-feet per year previously approved, through an existing well located on the Subject Property which is the subject of Permit No. 57282-F, for use inside the church and buildings located on the Subject Property; **B. Water rights to be used for augmentation:** Return flows from the use of not nontributary Denver aquifer water and return flows or direct discharge of nontributary Arapahoe aquifer groundwater as decreed in Case No. 03CW078, District Court, Water Division 2, located in part of Section 22, T12S, R65W. Applicant has entered into a purchase agreement for 3 acre-feet per year of nontributary Arapahoe aquifer groundwater decreed in Case No. 03CW078, for use in this augmentation plan; **C. Statement of plan for augmentation:** The subject Denver aquifer groundwater will be used in combination with the previously approved 1.7 acre-feet as decreed in Case No. 00CW123, for only commercial use in the church or associated buildings. Sewage treatment is

provided by non-evaporative septic systems. Return flows associated with said commercial use will be approximately 90% of water used. D. During pumping Applicant will replace actual depletions to the affected stream systems pursuant to Section 37-90-137(9)(c), C.R.S. Return flows from use of the water on the Subject Property accrue to the Arkansas River stream system and such return flows are sufficient to replace actual depletions caused by pumping of the additional 1 acre-foot of Denver aquifer groundwater. Applicant will reserve the nontributary Arapahoe aquifer groundwater described above for replacement of post-pumping depletions, but reserves the right to substitute the use of other nontributary groundwater underlying other land, including return flows, for replacement of post-pumping depletions at such time that post-pumping depletions may begin. **3. Remarks:** Applicant will withdraw the not nontributary Denver aquifer water in combination with the previously approved amount of Denver aquifer water as described above under the plan of augmentation requested herein pursuant to Section 37-90-137(9)(c), C.R.S. WHEREFORE, Applicant prays that this Court enter a Decree: 4. Granting the application herein and specifically determining that vested or conditionally decreed water rights of others will not be materially injured by the withdrawals of groundwater and the plan for augmentation proposed herein;

CASE NO. 08CW82 - CHEROKEE METROPOLITAN DISTRICT, c/o Kevin I. Petersen, General Manager, 6250 Palmer Park Blvd., Colorado Springs, CO 80915 (James W. Culichia and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212; E-mail: jwc@fmcwater.com; dms@fmcwater.com)

II. Summary of Application. This Application involves a change of Applicant's conditional groundwater rights known as the Sweetwater Wells to add the new and supplemental uses of replacement, augmentation and aquifer recharge to the already decreed uses of those Wells. In Case No. 53483, the Pueblo County District Court granted, without limitation, conditional water rights for irrigation, domestic or mechanical purposes to Applicant's Sweetwater Wells. Continuing diligence has been found on the Sweetwater Wells, without limitation, in Case Nos. W-44, W-4406(76), 80CW35, 84CW48, 84CW55, 88CW49, and most recently in 98CW80. Applicant currently has an application pending, Case No. 05CW06,¹ seeking a finding of continuing diligence for Sweetwater Well Nos. 2, 5, 13, 15, 16. Case 05CW06 also seeks to make absolute the Sweetwater Well Nos. 9, 8, 3, and 11, in the amounts of 32, 308, 219 and 548 annual acre feet, respectively. Sweetwater Well Nos. 9, 8, 3, and 11 are also known as Cherokee

¹ Applicant filed its Application in Case No. 05CW06 on February 14, 2005, seeking to make absolute Sweetwater Nos. 9, 8, and 3 a/k/a Cherokee Well Nos. 14, 15, and 16, respectively. Case No. 05CW20, filed by Applicant on March 9, 2005, seeks continuing diligence on the remaining conditional Sweetwater Well water rights decreed in Case No. 53483. Those two applications have been consolidated into Case No. 05CW06 pursuant to an Order of the Referee dated November 2, 2007, and was amended, without limitation, to include an absolute claim for Sweetwater No. 11, a/k/a Cherokee Well No. 17.

Well Nos. 14, 15, 16 and 17, respectively. This Court, pursuant to the Colorado Supreme Court's decision in Sweetwater Development Corp. v. Schubert Ranches Inc., 535 P.2d 215 (Colo. 1975), has jurisdiction over the conditional rights subject of this Application. The Sweetwater Wells are located within the Upper Black Squirrel Ground Water Management District generally located in eastern El Paso County. The March 8, 1999 decree entered in Case No. 98CW80 limits the amount of diversions from all of Cherokee's Sweetwater Wells to no more than 6,258 acre-feet annually. Therefore, the parties to that stipulation and decree agreed to 6,258 annual acre feet as the contemplated draft of all of the Cherokee owned the Sweetwater Wells. The 98CW80 Stipulation and Decree also requires Cherokee to abandon any portion of the remaining conditional water right not made absolute in the first instance. The parties to that stipulation include, without limitation, Applicant, the Upper Black Squirrel Creek Management District, the Colorado Ground Water Commission and the State and Division Engineers. The stipulation and decree finding the contemplated draft for the Sweetwater Wells in Case No. 98CW80 is binding as a matter of *res judicata*. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997). The change sought by this Application does not involve an expanded use over the amount stipulated to and decreed in Case No. 98CW80. By statute, the legislature has ordained that a conditional water right may be the subject of a change in use and a historical average for conditional water rights is not appropriate as it would negate this intent. Twin Lakes Reservoir and Canal Co. v. City of Aspen, 568 P.2d 45 (1977).

III. Application for Changes of Water Right.

1. Name of Structure. The name of the structures for which the change of water right is sought are the Sweetwater Wells described below.

2. Information from Previous Decree.

A. The conditional water rights which are the subject of this application for diligence were originally confirmed by judicial decree on April 28, 1972 in Case No. 53483 by the Pueblo County District Court. The source of all of the conditional rights is groundwater tributary to Black Squirrel Creek.

B. The conditional water rights subject of this application for diligence are described as follows (collectively these water rights are referred to as the "Sweetwater Wells"):

i. Sweetwater No. 2: 0.6 c.f.s., conditional, with an appropriation date of June 6, 1966, local priority number 72-83, located 30 feet east and 30 feet south of the Northwest corner of Section 25, Township 15 South, Range 63 West of the 6th P.M., for domestic, irrigation, and mechanical purposes (municipal purposes).

ii. Sweetwater No. 3 (a/k/a Cherokee No. 16): 4.0 c.f.s, conditional, with an appropriation date of June 6, 1966, local priority number 72-82, located 3500 feet east and 50 feet south of the NW corner of Section 35, Township 15 South, Range 63 West of the 6th P.M., for domestic, irrigation, and mechanical purposes (municipal purposes).

iii. Sweetwater No. 5: 4.0 c.f.s., conditional, with an appropriation date of Dec. 31, 1965, local priority number 72-77, located 3,200 feet east and 3,000 feet south of the Northwest corner of Section 24, Township 15 South, Range 63 West of the 6th P.M., for domestic, irrigation, and mechanical purposes (municipal purposes).

iv. Sweetwater No. 8 (a/k/a Cherokee No. 15): 4.0 c.f.s, conditional, with an appropriation date of Dec. 31, 1965, local priority number 72-75, located 5200

feet east and 50 feet south of the northwest corner of Section 35, Township 15 South, Range 63 West of the 6th P.M., for domestic, irrigation, and mechanical purposes (municipal purposes). v. Sweetwater No. 9 (a/k/a Cherokee No. 14): 4.0 c.f.s, conditional, with an appropriation date of June 6, 1966, local priority number 72-79, located 100 feet north and 2400 feet east of the SW corner of Section 23, Township 15 South, Range 63 West of the 6th P.M., for domestic, irrigation, and mechanical purposes (municipal purposes). vi. Sweetwater No. 11 (a/k/a Cherokee No. 17): 4.0 c.f.s, conditional, with an appropriation date of December 31, 1965, local priority number 72-73, located in 50 feet north and 2700 feet east from the Southwest corner of Section 35, Township 15 South, Range 63 West of the 6th P.M., for domestic, irrigation, and mechanical purposes (municipal purposes). vii. Sweetwater No. 13: 4.0 c.f.s, conditional, with an appropriation date of July 14, 1964, local priority number 72-36, located 700 feet north and 1,100 feet east of the Southwest corner of Section 23, Township 15 South, Range 63 West of the 6th P.M., for domestic, irrigation, and mechanical purposes (municipal purposes). viii. Sweetwater No. 15: 4.0 c.f.s, conditional, with an appropriation date of Dec. 31, 1965 , local priority number 72-72, located 1,600 feet east and 2,500 feet south of the Northwest corner of Section 25, Township 15 South, Range 63 West of the 6th P.M., for domestic, irrigation, and mechanical purposes (municipal purposes). ix. Sweetwater No. 16: 4.0 c.f.s, conditional, with an appropriation date of Dec. 31, 1965, local priority number 72-71, located 1,000 feet east and 50 feet south of the Northwest corner of Section 36, Township 15 South, Range 63 West of the 6th P.M., for domestic, irrigation, and mechanical purposes (municipal purposes).

3. Historical Use. Applicant has not completed a historical average for the conditional Sweetwater Rights sought to be changed by this Application as a historical average for conditional water rights is not appropriate for conditional water rights. Twin Lakes Reservoir and Canal Co. v. City of Aspen, 568 P.2d 45 (1977). In addition, Applicant does not seek to change the underlying decreed uses of its water rights. Rather, it simply seeks to supplement the existing uses with the proposed new uses. Therefore, the change sought by the Applicant does not involve an expanded use over that amount as stipulated to and decreed in Case No. 98CW80 for the Sweetwater Wells.

4. Changes Sought. Applicant seeks to add the following supplemental uses to the Sweetwater Wells described above to include the secondary uses of augmentation, replacement and aquifer recharge to the already decreed conditional uses.

5. Name and address of the owners of land on which structure is located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use. The wells are located on lands owned by Triple Bar Ranch, c/o Rodney J. Preisser, 31 E Platte Ave., Ste 200, Colorado Springs, Co 80903 and Joseph and Edna Farmer, 23550 Farmer Rd., Colorado Springs, CO 80928.

CASE NO. 08CW83 - FIVE RIVERS RANCH CATTLE FEEDING LLC, d/b/a COLORADO BEEF, 2258 U.S. Highway 50, Lamar, CO 81052 (Please direct

all correspondence to: Anne J. Castle and William H. Caile, Holland & Hart, LLP, Attorneys for Applicant, 555 Seventeenth Street, Suite 3200, P. O. Box 8749, Denver, CO 80201-8749; (303) 295-8000)

Application for Change of Water Rights and for Conditional Water Storage Right
OTERO, BENT, KIOWA, CROWLEY, PUEBLO AND PROWERS COUNTIES

2. Overview of Application. a. Colorado Beef operates a cattle feedlot located near Lamar, Colorado. The current water supply for the Colorado Beef feedlot is alluvial wells tributary to the Arkansas River. Colorado Beef seeks to develop a supplemental water supply and has purchased 492 shares of the capital stock of the Fort Lyon Canal Company (“FLCC”) (Colorado Beef’s 492 FLCC shares are referred to herein as the “Fort Lyon Shares”). The Fort Lyon Shares were historically used for irrigation on the former Ullom Farm which is located immediately to the north of the Colorado Beef feedlot. With this Application, Colorado Beef seeks confirmation from the Court of a change of water right for the Fort Lyon Shares to allow use for commercial, stockwatering and feedlot purposes at the Colorado Beef feedlot and storage in Colorado Beef Reservoir described below for later beneficial use, upon such terms and conditions as are necessary to prevent injury. No change in point of diversion is requested. b. Colorado Beef plans to construct an approximately 500 acre foot lined reservoir (“Colorado Beef Reservoir”) on the former Ullom property, and a conditional water storage right is being requested herein. In the future, Colorado Beef will continue to take delivery of the Fort Lyon Shares through the Stoney Point Lateral off the Fort Lyon Canal down to the former Ullom Farm, in the same way that the Fort Lyon Shares were delivered in the past. Colorado Beef will deliver the water directly to the feedlot, or store the water in the Colorado Beef Reservoir for later delivery. c. Colorado Beef seeks confirmation by the Court of a change of water right for two alluvial wells owned by Colorado Beef in order to increase production, add allowable uses including replacement of return flows, decree the Colorado Beef feedlot as an additional place of use, and to correct errors in the decreed and permitted locations of the wells. Out-of-priority depletions associated with Colorado Beef’s alluvial wells are currently replaced under the augmentation plan operated by the Lower Arkansas Water Management Association (“LAWMA”) and decreed in Case No. 02CW181, Water Division 2 (“LAWMA Augmentation Plan”) and under LAWMA’s Replacement Plan approved pursuant to Rule 14 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin (“LAWMA Rule 14 Plan”). In the future, out-of-priority depletions associated with Colorado Beef’s alluvial wells will continue to be augmented under the LAWMA Augmentation Plan and LAWMA Rule 14 Plan, or pursuant to any other suitable augmentation plan, replacement plan, or substitute water supply plan approved by the Water Court or the Colorado State Engineer in subsequent proceedings.
Claim for Change of Water Rights for Fort Lyon Shares. 3. Decreed Name of Structures for Which Change is Sought: See paragraph 4 below.

Colorado Beef seeks to change, as described in paragraph 6 below, its pro rata share of water rights owned or controlled by the Fort Lyon Canal Company and available to FLCC shareholders by virtue of their ownership of shares. Colorado Beef's ownership of the Fort Lyon Shares is represented by Certificate No. 9882, issued on November 14, 2007. The Fort Lyon Canal Company is a mutual ditch company with approximately 93,989.4166 shares of capital stock issued and outstanding. Colorado Beef's 492 Fort Lyon Shares represent slightly more than 0.05 percent (one half of one percent) of the total outstanding capital stock in the FLCC.

4. From Previous Decrees: a. The FLCC has decreed points of diversion or rights of use at the following structures. An area map is attached to the Application as Exhibit 1. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court.

(i) Fort Lyon Canal: The decreed point of diversion of the Fort Lyon Canal is located in the NE 1/4 of Section 32, Township 23 South, Range 55 West of the 6th P.M. in Otero County, Colorado.

(ii) Fort Lyon Storage Canal: The diversion dam straddles the Crowley / Otero county line. The point of diversion is located on the north bank of the Arkansas River, at a point in the NW 1/4 of the SE 1/4 of Section 20, Township 22 South, Range 57 West of the 6th P.M., in Crowley County.

(iii) Horse Creek Reservoir: is located in portions of Sections 29, 30, and 31 of Township 21 South, Range 53 West, and Sections 6 and 7 of Township 22 South, Range 53 West, and in portions of Sections 25, and 36 of Township 21 South, Range 54 West, and Sections 1, 2, and 12 of Township 22 South Range 54 West of the 6th P.M., in Otero County. The dam for the reservoir is located in Sections 6 and 7, Township 22 South, Range 53 West, and in Sections 1 and 12, Township 22 South, Range 54 West of the 6th P.M., all in Bent and Otero Counties.

(iv) Horse Creek Supply Ditch: The decreed point of diversion of the Horse Creek Supply Ditch is located in the SW 1/4 of Section 6, Township 22 South, Range 54 West of the 6th P.M.

(v) Adobe Creek Reservoir: is located in portions of Sections 27, 28, 29, 32, 33, and 34 of Township 20 South, Range 52 West, and in portions of Sections 3, 4, 5, 6, 7, 8, 9, 17, and 18, of Township 21 South, Range 52 West, in Kiowa and Bent Counties. The dam for the reservoir is located in Sections 7, 17, and 18 of Township 21 South, Range 52 West of the 6th P.M., in Bent County.

(vi) Adobe Creek Supply Ditch: The point of diversion is located in the NW 1/4 of Section 26, Township 20 South, Range 53 West of the 6th P.M. in Kiowa County.

(vii) Thurston Reservoir (originally decreed as Prince Reservoir): is located in portions of Section 18 of Township 21 South, Range 46 West and Section 13 of Township 21 South, Range 47 West, in Prowers County. The points of diversion for the Thurston Pipeline are located in/at the Thurston Reservoir.

(viii) Thurston Pipeline: The point of diversion for the Thurston Pipeline is located at a point whence the section corner common to sections 7 and 18, Township 21 South, Range 46 and Sections 12 and 13, Township 21 South, Range 47, all West of the 6th P.M., Prowers County Colorado, bears north 0 degrees 41 minutes West a distance of 1680 feet. There is an alternate point of diversion located at a point whence the S 1/4 corner of Section 18, Township 21 South, Range 46 West of the 6th P.M., Prowers County, Colorado bears South 10 degrees East, 10 minutes East a

distance of 2297 feet. (ix) Pueblo Reservoir: is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 20 South, Range 66 West, Sections 1, 2, 3, 4, 5, 9, 10, and 11, Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, Township 20 South, Range 67 West of the 6th P.M., in Pueblo County. The dam for the reservoir is located in Sections 25 and 36 of Township 20 South, Range 66 West, and Section 1, Township 21 South, Range 66 West, in Pueblo County. (x) John Martin Reservoir: is located in all or portions of Sections 24, 25, 26, 27, 33, 34, 35, and 36, Township 22 South, Range 51 West, Sections 28, 29, 30, 31, 32, 33, 34, and 35, Township 22 South, Range 50 West, Sections 5, 6, 7, 8, 17, and 18, Township 23 South, Range 49 West, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, and 30, Township 23 South, Range 50 West, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, and 18, Township 23 South, Range 51 West, and Sections 1, 12, and 13, Township 23 South, Range 52 West, in Bent County. The dam for the reservoir is located in Sections 5, 8, and 17 of Township 23 South, Range 49 West, in Bent County. (xi) Queen Reservoir (a/k/a Neeskah Reservoir): is located in Townships 19, 20, and 21 South, Ranges 46, 47 and 48 West of the 6th P.M. in Kiowa and Prowers County, Colorado. b. The FLCC was originally decreed three direct flow water rights in Bent County Court with an original adjudication date of April 8, 1905. The first water right is for 164.64 cubic feet per second (“cfs”) with an appropriation date of April 15, 1884. The second right is for 597.16 cfs with an appropriation date of March 1, 1887. The third is for 171.20 cfs with an appropriation date of August 31, 1893. These water rights total 933 cfs and are summarized in Table 1 below.

Table 1
Fort Lyon Canal Company – Direct Flow Water Rights

Identification of Water Right	Amount (cfs)	Source	Appropriation Date
Fort Lyon Canal	164.64	Arkansas River	Apr. 15, 1884
Fort Lyon Canal	597.16	Arkansas River	Mar. 1, 1887
Fort Lyon Canal	171.20	Arkansas River	Aug. 31, 1893

c. The FLCC also owns several water rights to divert and store water in Horse Creek and Adobe Creek Reservoirs. The FLCC may divert from both the Arkansas River (via the Fort Lyon Storage Canal) and from Horse Creek (via the Horse Creek Feeder Ditch, or Supply Canal) to store up to 28,000 acre feet (“AF”) in the Horse Creek Reservoir. The FLCC may divert from the Arkansas River (via the Fort Lyon Storage Canal) and Adobe Creek (via the Adobe Creek Feeder Ditch, or Supply Canal) to store up to 87,000 AF in the Adobe Creek Reservoir. These water rights were decreed in Bent County District Court and are summarized in Table 2 below.

Table 2
Storage Rights – Horse Creek Reservoir and Adobe Creek Reservoir

Identification of Water Right	Amount	Source	Appropriation Date
Horse Creek Reservoir Original Construction	2,000 cfs 840 cfs 1,466 cfs 11,400 af	Horse Creek Arkansas River Arkansas River	Aug. 15, 1900 Jan. 25, 1906 Mar. 1, 1910
Horse Creek Reservoir 1 st Enlargement	840 cfs 5,000 cfs 1,466 cfs 15,487 af	Arkansas River Horse Creek Arkansas River	Jan. 25, 1906 Dec. 20, 1907 Mar. 1, 1910
Horse Creek Reservoir 2 nd Enlargement	5,000 cfs 840 cfs 1,466 cfs 1,113 af	Horse Creek Arkansas River Arkansas River	Jun. 12, 1908 Jun. 12, 1908 Mar. 1, 1910
Adobe Creek Reservoir Original Construction	8,631 cfs 840 cfs 1,466 cfs 61,575 af	Adobe Creek Arkansas River Arkansas River	Jan. 25, 1906 Jan. 25, 1906 Mar. 1, 1910
Adobe Creek Reservoir Enlargement	8,631 cfs 840 cfs 1,466 cfs 25,425 af	Adobe Creek Arkansas River Arkansas River	Dec. 29, 1908 Dec. 29, 1908 Mar. 1, 1910

d. Additionally, the FLCC owns a right to store 1,515 AF of water in Thurston Reservoir via the Main Canal for up to 355.20 cfs. The right was originally decreed for Prince Reservoir, but was conditionally transferred to Thurston Reservoir in 1972 in Case Number W-27, Water Division 2, and made absolute in 1979 in Case Number 79CW085, Water Division 2. The Thurston Pipeline, from Thurston Reservoir, was constructed to allow the FLCC to pump nontributary water back into the Main Canal. The right associated with this pipeline is for 25 cfs; 6.68 cfs is absolute and 18.32 cfs is conditional (Case No. 96CW102). These water rights are summarized in Table 3 below.

Table 3
Storage Rights – Thurston Reservoir and Pipeline

Identification of Water Right	Amount	Source	Appropriation Date
"Prince Reservoir"	355.20 cfs 1,515 af Absolute	Arkansas River	Aug. 12, 1889
"Prince Reservoir" Transfer to Thurston Pipeline	355.20 cfs 1,515 af Absolute	Arkansas River	Aug. 12, 1889

Thurston Pipeline	Original Claim 25 cfs Conditional Continued as 6.68 cfs Absolute 18.32 cfs Conditional through due diligence application	Thurston Lake whose water is accumulated from springs in said lake, seepage flowing into the lake, waste water from a canal of the Fort Lyon Canal Company, rainfall and waste water flowing into the lake from land of owners adjoining the lake. Pursuant to the decree in W-27, the water so accumulated is not tributary to any natural stream of the State of Colorado.	Jul. 15, 1969
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e. In addition to its original direct flow and storage rights discussed above, the FLCC owns and/or operates several additional water rights and water supply agreements, summarized in Table 4 below.

Table 4
Other Water Rights

Identification of Water Right	Case Number	Amount	Storage/Source
Amity Mutual Irrigation Company – Queens Reservoir	80CW019 89CW076	5,483 AF	Queen Reservoir Horse Creek Reservoir Adobe Creek Reservoir John Martin Reservoir
John Martin Reservoir Change	79CW160 79CW161 80CW051	Cumulative 5,000 AF	Horse Creek Reservoir Adobe Creek Reservoir Queen Reservoir
Change in Diversion Point	79CW178	933 cfs	Horse Creek Reservoir Adobe Creek Reservoir John Martin Reservoir
Winter Water Storage Program	84CW179	38,160 AF of the first 100,000 AF and 38.16% of all water over 103,106 AF	Horse Creek Reservoir Adobe Creek Reservoir Thurston Reservoir
John Martin Reservoir Exchange	90CW047	Absolute: flow rate 544 cfs, annual limit 15,288.95 AF Conditional: 606 cfs	John Martin Reservoir
John Martin Operating Plan 1980	Arkansas River Compact Administration April 24, 1980	20,000 AF	John Martin Reservoir
Fryingpan-Arkansas Project		Varies depending on hydrologic conditions	
Informal Basis	Periodically the FLCC works with other area canals to increase water availability to shareholders		

5. Maps and Diversion Records: Pursuant to C.R.S. § 37-92-302(2)(a), a map showing the location of the historical irrigation use of the Fort Lyon Shares is attached to the Application as Exhibit 2, and a summary of FLCC diversions is attached as Exhibit 3. **6. Description of Change:** The Fort Lyon Shares have historically been used to irrigate lands located in Section 19, Township 22 South,

Range 47 West of the 6th P.M. in Prowers County, Colorado. See Exhibit 2. With this Application, Colorado Beef is seeking judicial approval to change the place of use and type of use of the Fort Lyon Shares so that they may be used as a water supply at the Colorado Beef feedlot. No change in point of diversion is requested. a. Change in place of use: In addition to use on the Ullom Farm, water delivered pursuant to Colorado Beef's Fort Lyon Shares will be used at the Colorado Beef Lamar feedlot located in Sections 29 and 30, Township 22 South, Range 47 West of the 6th P.M. in Prowers County. See Exhibit 2. b. Change in type of use: In addition to irrigation use, water delivered pursuant to the Fort Lyon Shares may be used for commercial, stock watering and other purposes associated with the Colorado Beef feedlot. Such water may be used directly for the allowable purposes, or may first be stored in the Colorado Beef Reservoir for later release and use for such purposes. Subject to the terms and conditions of any decree entered in this proceeding, including without limitation maintenance of historical return flow obligations as needed to prevent injury to other water rights, Colorado Beef claims the right to use and reuse to extinction all water delivered pursuant to the Fort Lyon Shares. c. Remarks regarding change of Fort Lyon Shares: (i) Colorado Beef will continue to take delivery of direct flow and stored water associated with the Fort Lyon Shares in rotation in the same manner as other FLCC shareholders. Colorado Beef will continue to take delivery of the Fort Lyon Shares through the Stoney Point Lateral off the Fort Lyon Canal and through the former Ullom Farm headgate, in the same way that the Fort Lyon Shares have been delivered historically. (ii) Colorado Beef proposes to quantify the portion of the water historically consumed in the irrigation use of the Fort Lyon Shares, together with the historical return flows. Colorado Beef will maintain return flows in the amounts, times and at locations necessary to prevent material injury to affected water users and as needed to prevent material depletions to usable stateline flows. This may include aggregating return flows into the irrigation season. (iii) To ensure that there is no material injury to other vested water rights or decreed conditional water rights from the proposed change, Colorado Beef will provide water to maintain the return flows from the historical irrigation use of the Fort Lyon Shares. To satisfy the return flow obligation determined herein, Colorado Beef may use any legally available source of water, including: (a) bypasses or releases from storage of water derived from the Fort Lyon Shares; (b) pumping of Colorado Beef's alluvial wells; or (c) pursuant to an agreement with LAWMA under which LAWMA will make replacement water available to the Arkansas River. Any out-of-priority depletions associated with replacement of return flows by the Colorado Beef alluvial wells will be fully accounted for and augmented under the terms of the LAWMA Augmentation Plan or other suitable augmentation plan, replacement plan, or substitute water supply plan as may be approved by the Water Court or the Colorado State Engineer in subsequent proceedings and upon proper notice. (iv) Colorado Beef may continue to use the Fort Lyon Shares for their decreed irrigation purposes until such time as water is converted to use at the Colorado Beef feedlots, at which time Colorado Beef will retire the historically irrigated lands from irrigation and cause such lands to be dried up, except to the extent

that future irrigation or other water uses on such lands is lawfully allowed. When lands are dried up, Colorado Beef will implement provisions to revegetate and control noxious weeds on such lands. **7. Name and Address of Owners of Land Upon Which Any New Structures Will be Located:** Five Rivers Ranch Cattle Feeding LLC, d/b/a Colorado Beef. See Paragraph 1, above. **Claim for Conditional Water Storage Right.** **8. Name of Structure:** Colorado Beef Reservoir. **9. Legal Description:** Colorado Beef Reservoir will be located in the NE 1/4 of Section 19, Township 22 South, Range 47 West of the 6th P.M. in Prowers County, Colorado. Depending on final construction, Colorado Beef Reservoir may extend into other portions of Section 19, Township 22 South, Range 47 West of the 6th P.M. See Exhibit 2. **10. Source:** The source of water will be deliveries pursuant to the Fort Lyon Shares, additional FLCC shares that may be acquired and changed in the future, runoff, storm water, and wastewater. **11. Appropriation:** a. Date of appropriation: October 31, 2008. b. How appropriation was initiated: Formation of intent to appropriate combined with overt acts sufficient to put other water users on notice, including without limitation field inspections, water supply planning and engineering analyses, and the filing of the application herein. c. Date water was applied to beneficial use: Not applicable. **12. Amount Claimed:** a. Capacity: 500 acre feet, CONDITIONAL. b. Rate of delivery for filling of reservoir: 10 cfs, CONDITIONAL. c. Colorado Beef claims the right to continuously fill and refill the reservoir as needed and as dictated by Colorado Beef's feedlot demands and operations and the pattern of deliveries of water pursuant to Colorado Beef's ownership of shares in the FLCC. **13. Use:** Water stored in Colorado Beef Reservoir may be used for irrigation, commercial, stock watering and other purposes associated with the Colorado Beef feedlot, including augmentation, substitution and replacement of return flows. **14. Surface Area at High Water Line:** Approximately 40 acres. **15. Total Capacity of Reservoir in Acre-Feet:** 500 acre feet. **16. Name and Address of Owners or Reputed Owners of Land on which Reservoir is Located:** Five Rivers Ranch Cattle Feeding LLC, d/b/a Colorado Beef. See Paragraph 1, above. **17. Remarks Regarding Conditional Water Storage Right:** Colorado Beef Reservoir will be a lined gravel pit reservoir. It will be constructed as a non-jurisdictional structure. **Claim for Change of Water Right for Colorado Beef Wells.** **18. Decreed Name of Structures for Which Change is Sought:** a. Colorado Beef Well No. 1, Well Permit No. 42941-F ("Main Well"). b. Colorado Beef Well No. 2, Well Permit No. 42942-F ("Farm Well"). The Main Well and the Farm Well are collectively referred to herein as the "Colorado Beef Wells." **19. From Previous Decree:** a. The Colorado Beef Wells were decreed in Case No. W-2028, September 20th, 1973, Water Division 2. b. Decreed point of diversion: (i) Well No. 1: SE 1/4 of SW 1/4 of Section 30, Township 22 South, Range 47 West of the 6th P.M, in Prowers County. (ii) Well No. 2: NE 1/4 of NW 1/4 of Section 31, Township 22 South, Range 47 West of the 6th P.M., in Prowers County. c. Source: Ground water tributary to the Arkansas River. d. Appropriation dates: (i) Well No. 1: June 1, 1956. (ii) Well No. 2: June 7, 1956. e. Amounts: (i) Well No. 1: 2.16 cfs, or 975 gallons per minute ("gpm"), but not to exceed 690 AF in any one calendar year. (ii) Well No. 2: 2.16 cfs, or 975 gpm,

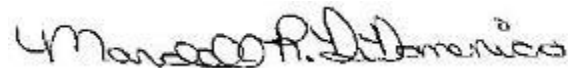
but not to exceed 690 AF in any one calendar year. f. Historic use: The Colorado Beef Wells were originally decreed for irrigation of lands in Sections 28, 29, and 30, Township 22 South, Range 47 West of the 6th P.M, in Prowers County. **20. Description of Change**: With this Application Colorado Beef seeks to change the type, amount, and place of use of the Colorado Beef Wells. Colorado Beef also seeks to change the decreed location of the wells, to correct a discrepancy in the original decree and well permits. a. Change in type of use: In addition to irrigation, the Colorado Beef Wells may be used for commercial, stock watering and other purposes associated with the Colorado Beef feedlot, augmentation, substitution, and replacement, including without limitation the maintenance of historical return flows associated with the change of the Fort Lyon Shares requested herein. b. Change in amount: The decreed rates for Well No. 1 and Well No. 2 will be increased to 2.28 cfs (approximately 1,025 gpm), and the annual volumetric limits for Well No 1 and Well No. 2 will be increased to 850 acre feet/year for each well. c. Change in place of use: In addition to the historically irrigated acreage, water from the Colorado Beef Wells may be used at the Colorado Beef Lamar feedlot located in Sections 29 and 30, Township 22 South, Range 47 West of the 6th P.M. in Prowers County. See Exhibit 2. d. Change in decreed location of wells: The decree in Case No. W-2028 incorrectly stated the legal descriptions for the Colorado Beef Wells. The actual locations of the existing wells are: (i) Well No. 1: SE 1/4 of SW 1/4 of Section 30, Township 22 South, Range 47 West of 6th P.M. at a distance of approximately 4,675 feet from the North Section Line and 1,900 feet from the West Section Line, in Prowers County. (ii) Well No. 2: SE 1/4 of SW 1/4 of Section 30, Township 22 South, Range 47 West of 6th P.M. at a distance of approximately 4,965 from the North Section Line and 2,005 feet from the West Section Line, in Prowers County. e. Remarks: (i) The Colorado Beef Wells are decreed for irrigation use on lands near the Colorado Beef feedlot (“Irrigation Uses”), but have also previously been granted permits for expanded uses of stockwatering and commercial uses at the Colorado Beef feedlot (“Feedlot Uses”). (ii) The Colorado Beef Wells are “LAWMA Structures” that are covered under the LAWMA Augmentation Plan. Feedlot Uses of the Colorado Beef Wells are uses that were permitted after December 31, 1985, and are therefore augmented pursuant to the LAWMA Augmentation Plan. Feedlot Uses of the Colorado Beef Wells are deemed to be 100% consumptive. (iii) Irrigation Uses of the Colorado Beef Wells are uses that were decreed prior to January 1, 1986, and are therefore covered by LAWMA’s Rule 14 Plan pursuant to Colorado Beef’s continuing membership in LAWMA. Irrigation Uses of the Colorado Beef Wells are measured and accounted for separately from the Feedlot Uses. (iv) By the Application herein, Colorado Beef seeks to confirm and maintain the Irrigation Uses and the Feedlot Uses, while adding additional decreed uses of augmentation, substitution and replacement (“Additional Uses”). (v) The Additional Uses of the Colorado Beef Wells will be considered 100% consumptive. All out-of-priority depletions associated with the Additional Uses will be fully accounted for and augmented under the terms of the LAWMA Augmentation Plan or other suitable augmentation plan, replacement plan, or

substitute water supply plan as may be approved by the Water Court or the Colorado State Engineer in subsequent proceedings and upon proper notice. (vi) Concurrently with the filing of the Application herein, Colorado Beef will file applications for new well permits for the Colorado Beef Wells with the State Engineer that are consistent with the uses, amounts, and locations claimed herein. (vii) The Colorado Beef Wells are located on land owned by Five Rivers Ranch Cattle Feeding LLC, d/b/a Colorado Beef. See Paragraph 1 above. A location map and diversion summaries are attached to the Application as Exhibits 4 and 5. WHEREFORE, Colorado Beef requests that Water Court: A. Approve the requested change of type of use and place of use of the Fort Lyon Shares; B. Confirm the requested conditional water storage right for the Colorado Beef Reservoir; C. Approve the requested changes of type, amount, and place of use, and correction of decreed locations for the Colorado Beef Wells; D Approve such terms and conditions as are necessary to avoid material injury to other water rights; and E. Grant any other relief as the Court deems just and proper.

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 2008, (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 November, 2008.



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

(Court seal)
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