

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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

TO: ALL INTERESTED PARTIES

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

CASE NO. 11CW63 – LISA R. SYTSMA, 2931 S. Rosemary Street, Denver, CO 80231; (303) 752-1812 and KAREN R. RENNIE, 533 Dunraven, Fort Collins, CO 80525; (970) 672-8152

Application for Underground Water Right

PARK COUNTY

Name of well and permit, registration or denial numbers: Clearwater Well; Permit 48229. **Legal description of well:** Park County, SE ¼ of the NE ¼ Section 12, Township 15 South, Range 74 West, 6th P.M. **Street Address:** 659 Eagle Lane, Guffey, CO 80820; **Subdivision:** Pike Trails. **Source of Water:** Ground water. **Depth of well:** 225'. **Date of appropriation:** August 18, 1971. **How appropriation initiated:** Permit approved. **Date water applied to beneficial use:** June 2, 1973. **Amount claimed:** 3.5 gpm Absolute. **Proposed use:** In-house domestic use, one family home. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

CASE NO. 11CW64 – BRADY BROTHERS, INC., 829 Brewster Avenue, Canon City, CO 81212 (Donald F. Cutler, IV, Cutler Law Office, LLC, Attorney for Applicant, 7990 W. Hwy. 50, Suite E, Salida, CO 81201; (719) 539-5017

Application for Underground Water Right

FREMONT COUNTY

Name of well and permit, registration or denial number: Structure ID 1205405. **Legal description of well:** Fremont County, SE ¼ of the SE ¼ Section 31, Township 18 South, Range 70 West, 6th P.M., 394 feet from the South line and 208 feet from the East line. **Street Address:** 829 Brewster Avenue, Canon City, CO 81212. **Source of water:** Groundwater tributary to the Arkansas River. **Depth of well:** 12'. **Date of appropriation:** December 31, 1968; **How appropriation initiated:** Digging of well, nursery irrigation. **Date water applied to beneficial use:** December 31, 1968. **Amount claimed:** 30 gpm Absolute. **Proposed use:** **If irrigation, complete the following:** **Number of acres historically irrigated:** 5 acres; **Total number of acres proposed to be irrigated:** 5 acres; **Legal description of the land irrigated:**

Evergreen and deciduous tree and plant nursery. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** City of Canon City (lease holder), 128 Main Street, Canon City, CO 81212; Dick and Rhoda Brady, 827 Brewster Avenue, Canon City, CO 81212. **Remarks:** Applicant seeks 1968 decreed date of appropriation for inclusion of well in AGUA Rule 14 plan; associated Substitute Water Supply Plan submitted to the State Engineer is currently pending agency review.

CASE NO. 11CW65 – JOSEPH and DEBRA MALONE, P. O. Box 109, La Veta, CO 81055; (719) 738-6294

Application for Underground Water Right

HUERFANO COUNTY

Name of Well: Joseph and Debra Malone. **Permit, Registration, or Denial Number:** 197313. **Legal description of well:** Huerfano County, SW ¼ of the NE ¼ Section 2, Township 28 South, Range 68 West, 6th P.M., 2500 feet from the North line and 2050 feet from the East line. **Street Address:** 7637 CR 521, Walsenburg, CO 81089; **Subdivision:** Majors Ranch, Lot 37, Filing 2. **GPS Location (NAD 83; UTM format; Zone 13; Units in meters):** Were points averaged? No. **Northing** 4166182; **Easting** 503063. **Source of water:** Groundwater tributary to the Arkansas; **Depth of well:** 520. **Date of appropriation:** 5/23/1997; **How appropriation was initiated:** Well Drill Permit; **Date water applied to beneficial use:** May 23, 1997. **Amount claimed:** 1 gpm Absolute. **Proposed use:** Household use, fire protection, 1 acre garden. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

CASE NO. 11CW66; Previous Case Nos. 83CW138, 92CW88, and 99CW81 – FOREST LAKES METROPOLITAN DISTRICT, Ann Nichols, District Manager, 2 North Cascade, Suite 1280, Colorado Springs, CO 80903

(Steven T. Monson and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Finding of Diligence

EL PASO COUNTY

2. Name of Structure: Pinon Lake No. 1. **3. Description of conditional water right:**
A. Date of Original Decree: December 1, 1986. **Case No.:** 83CW138. **Court:** District Court, Water Division 2. **B. Legal Description:** The west abutment of the dam is located in the SE 1/4 of the SE 1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1,000 feet west of the east section line and 350 feet north of the south section line of said Section 27. The dam alignment runs in an easterly direction from the above-described abutment for a distance of approximately 700 feet. The high water line includes portions of the SE 1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado. **C. Sources:** Beaver Creek, and its tributaries, tributary to Monument Creek. **D.**

Appropriation Date: June 6, 1983. **E. Amount claimed:** 120 acre feet, conditional. **F. Uses:** Domestic, irrigation, industrial, commercial, municipal, augmentation and exchange, including the right to fill, refill and reuse. **G. Dam Height:** 40 feet. **H. Dam Length:** 700 feet. **4. 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:** In Case No. 83CW138, the Court decreed to Forest Lakes Metropolitan District (“Applicant”) the use of Pinon Lake No. 1 for the above stated conditional uses within Applicant’s service area as part of a unified municipal water system. This Court has approved a plan of augmentation for Pinon Lake No. 1 by a decree entered in Case No. 84CW19 on November 17, 1987. Diligence has last been maintained on Pinon Lake No. 1 in Case No. 99CW81, decreed October 10, 2005. During this diligence period, the Applicant, in connection with the development of the District’s service area and as part of the integrated water supply system, has spent substantial time and money on engineering costs for the integrated system infrastructure, administering their water rights, water supply planning, permitting processes and land use approvals. In connection with engineering of the integrated system, Applicant, as part of the master plan for water service developed during this diligence period, has hired engineering consultants to provide engineering and design service for the water, sewer, drainage, and water transmission lines. Specifically, Applicant’s engineers are in the process of final engineering and design for a surface water treatment plant to be located adjacent to Bristlecone Reservoir. Additionally, Applicant’s engineers have designed roads, trails, and public infrastructure needed for the service area. In connection with the development of its physical water supply Applicant has drilled a new Arapahoe aquifer well and has constructed an interim water treatment plant to provide potable water to its customers. Applicant has also redrilled the Dillon Well, decreed in Case No. 81CW213, and has constructed a raw water line from the Dillon Well to the Applicant’s interim water treatment plant. Applicant has extended electric service to the interim plant. Applicant has also commenced with the construction of the water transmission and distributions systems for the eastern half of Applicant’s service area during this diligence period, which includes the construction of a 1.5 mgd water tank. Applicant has also entered into contracts with contractors to build all utilities necessary to provide water and wastewater services to the first phase of development. Applicant has continued with annual maintenance activities on both Pinon and Bristlecone dams, which maintenance during this period includes replacing the gate valve on Pinon Reservoir’s outlet and maintenance on the toe ditch on Bristlecone Reservoir as directed by the State Dam Inspector. Since 2009, Applicant has provided potable water service to two commercial customers. Applicant also continues to provide augmentation water to 11 entities and individuals with ponds and lakes on Hay Creek and Upper Beaver Creek. In regards to administering and developing their water rights as part of the integrated system, Applicant has hired a full time caretaker as well as engineers and a hydrologist who have managed and monitored the Applicant’s resources and water rights that constitute a part of the water supply system as well as retaining legal counsel to provide legal services with respect to the Applicant’s water resources. The Applicant has engaged in numerous discussions and meetings with the District 10 water commissioner and senior water rights holders regarding the water right’s administration of upper Beaver Creek waters, with the parties

coming to terms on a set of administrative procedures for upper Beaver Creek flows. Applicant, in cooperation with other water users, has installed a measuring weir on Beaver Creek to accurately measure water and govern the creek's water rights administration. Applicant has further entered into an agreement with a senior water right holder on Beaver Creek concerning winter diversions and administration on Beaver Creek. Applicant has also spent significant time and effort negotiating with the Town of Monument regarding up-sizing and sharing the capacity of the water tank along with clarifying agreements between the parties regarding well locations, funding for shared infrastructure, and otherwise converting the use of ground water underlying the Applicant's service area. As a result, Applicant has executed an amendment to an 1989 Intergovernmental Agreement with the Town of Monument concerning water infrastructure fees on property located within the Town but serviced by Applicant. Applicant has also negotiated during this diligence with City of Colorado Springs regarding the original easement to Pinon Reservoir and to provide access on by dedicated public rights of way. Negotiations have been also been conducted with Colorado Springs concerning agreements relating to water and treatment of waste water for a portion of the Applicant's service area. During this diligence period, concerning the above matters Applicant has spent \$205,000.00 on district engineering, dam monitoring and water management; \$5,700,000.00 on water system capital; \$235,000.00 on district management; and \$65,000.00 on legal fees. **5. Claim to Make Absolute:** No part of the conditional water right is 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:** Applicant owns the land where Pinon Lake No. 1 is located and the beneficial use of the water from Pinon Lake No. 1 will be within the Applicant's service area.

CASE NO. 11CW67; Previous Case Nos. 83CW139; 92CW89, and 99CW82 - FOREST LAKES METROPOLITAN DISTRICT, Ann Nichols, District Manager, 2 North Cascade, Suite 1280, Colorado Springs, CO 80903 (Steven T. Monson and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Finding of Diligence

EL PASO COUNTY

2. Name of Structure: Bristlecone Lake No. 2. **3. Description of conditional water right:** **A. Date of Original Decree:** December 1, 1986. **Case No.:** 83CW139. **Court:** District Court, Water Division 2. **B. Legal Description:** The south abutment of the dam is located in the SE1/4 of the SW1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 2,500 feet east of the west section line and 20 feet north of the south section line of said Section 27. The dam alignment runs in a northerly direction from the above-described abutment for a distance of approximately 1,600 feet. The high water line includes portions of the SW1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado. **C. Sources:** Beaver Creek, and its tributaries, tributary to Monument Creek. **D. Appropriation Date:** June 6, 1983. **E. Amount claimed:** 1,140 acre feet, conditional. **F. Uses:** Domestic, irrigation, industrial, commercial, municipal,

augmentation and exchange, including the right to fill, refill and reuse. **G. Dam Height:** 80 feet. **H. Dam Length:** 1,600 feet. **4. 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:** In Case No. 83CW139, the Court decreed to Forest Lakes Metropolitan District (“Applicant”) the use of Bristlecone Lake No. 2 for the above stated conditional uses within Applicant’s service area as part of a unified municipal water system. This Court has approved a plan of augmentation for Bristlecone Lake No. 2 by a decree entered in Case No. 84CW19 on November 17, 1987. Diligence has last been maintained on Bristlecone Lake No. 2 in Case No. 99CW82, decreed October 10, 2005. During this diligence period, the Applicant, in connection with the development of the District’s service area and as part of the integrated water supply system, has spent substantial time and money on engineering costs for the integrated system infrastructure, administering their water rights, water supply planning, permitting processes and land use approvals. In connection with engineering of the integrated system, Applicant, as part of the master plan for water service developed during this diligence period, has hired engineering consultants to provide engineering and design service for the water, sewer, drainage, and water transmission lines. Specifically, Applicant’s engineers are in the process of final engineering and design for a surface water treatment plant to be located adjacent to Bristlecone Reservoir. Additionally, Applicant’s engineers have designed roads, trails, and public infrastructure needed for the service area. In connection with the development of its physical water supply Applicant has drilled a new Arapahoe aquifer well and has constructed an interim water treatment plant to provide potable water to its customers. Applicant has also redrilled the Dillon Well, decreed in Case No. 81CW213, and has constructed a raw water line from the Dillon Well to the Applicant’s interim water treatment plant. Applicant has extended electric service to the interim plant. Applicant has also commenced with the construction of the water transmission and distributions systems for the eastern half of Applicant’s service area during this diligence period, which includes the construction of a 1.5 mgd water tank. Applicant has also entered into contracts with contractors to build all utilities necessary to provide water and wastewater services to the first phase of development. Applicant has continued with annual maintenance activities on both Pinon and Bristlecone dams, which maintenance during this period includes replacing the gate valve on Pinon Reservoir’s outlet and maintenance on the toe ditch on Bristlecone Reservoir as directed by the State Dam Inspector. Since 2009, Applicant has provided potable water service to two commercial customers. Applicant also continues to provide augmentation water to 11 entities and individuals with ponds and lakes on Hay Creek and Upper Beaver Creek. In regards to administering and developing their water rights as part of the integrated system, Applicant has hired a full time caretaker as well as engineers and a hydrologist who have managed and monitored the Applicant’s resources and water rights that constitute a part of the water supply system as well as retaining legal counsel to provide legal services with respect to the Applicant’s water resources. The Applicant has engaged in numerous discussions and meetings with the District 10 water commissioner and senior water rights holders regarding the water right’s administration of upper Beaver Creek waters, with the parties coming to terms on a set of administrative procedures for upper Beaver Creek flows. Applicant, in cooperation with

other water users, has installed a measuring weir on Beaver Creek to accurately measure water and govern the creek's water rights administration. Applicant has further entered into an agreement with a senior water right holder on Beaver Creek concerning winter diversions and administration on Beaver Creek. Applicant has also spent significant time and effort negotiating with the Town of Monument regarding up-sizing and sharing the capacity of the water tank along with clarifying agreements between the parties regarding well locations, funding for shared infrastructure, and otherwise converting the use of ground water underlying the Applicant's service area. As a result, Applicant has executed an amendment to an 1989 Intergovernmental Agreement with the Town of Monument concerning water infrastructure fees on property located within the Town but serviced by Applicant. Applicant has also negotiated during this diligence with City of Colorado Springs regarding the original easement to Pinon Reservoir and to provide access on by dedicated public rights of way. Negotiations have been also been conducted with Colorado Springs concerning agreements relating to water and treatment of waste water for a portion of the Applicant's service area. During this diligence period, concerning the above matters Applicant has spent \$205,000.00 on district engineering, dam monitoring and water management; \$5,700,000.00 on water system capital; \$235,000.00 on district management; and \$65,000.00 on legal fees. **5. Claim to Make Absolute:** No part of the conditional water right is 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:** Applicant owns the land where Bristlecone Lake No. 2 is located and the beneficial use of the water from Bristlecone Lake No. 2 will be within the Applicant's service area.

CASE NO. 11CW68; Previous Case Nos. 83CW140, 92CW90, and 99CW83 – FOREST LAKES METROPOLITAN DISTRICT, Ann Nichols, District Manager, 2 North Cascade, Suite 1280, Colorado Springs, CO 80903 (Steven T. Monson and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, Colorado 80903, Phone: (719) 471-1212)

Application for Finding of Diligence
EL PASO COUNTY

2. Name of Structure: Willow Lake No. 3. **3. Description of conditional water right:**
A. Date of Original Decree: December 1, 1986. **Case No.:** 83CW140. **Court:** District Court, Water Division 2. **B. Legal Description:** The south abutment of the dam is located in the SE1/4 of the SE1/4, Section 28, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 900 feet west of the east section line and 350 feet north of the south section line of said Section 28. The dam alignment runs in a northerly direction from the above described abutment for a distance of approximately 800 feet. The high water line includes portions of the S1/2 of the SE1/4, Section 28, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado. **C. Sources:** Beaver Creek, and its tributaries, tributary to Monument Creek. **D. Appropriation Date:** June 6, 1983. **E. Amount claimed:** 70 acre feet, conditional. **F. Uses:** Domestic, irrigation, industrial, commercial, municipal, augmentation and exchange, including the right to fill, refill and reuse. **G. Dam Height:** 35 feet. **H. Dam Length:** 800 feet. **4. 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:

In Case No. 83CW140, the Court decreed to Forest Lakes Metropolitan District (“Applicant”) the use of Willow Lake No. 3 for the above stated conditional uses within Applicant’s service area as part of a unified municipal water system. This Court has approved a plan of augmentation for Willow Lake No. 3 by a decree entered in Case No. 84CW19 on November 17, 1987. Diligence has last been maintained on Willow Lake No. 3 in Case No. 99CW83, decreed October 10, 2005. During this diligence period, the Applicant, in connection with the development of the District’s service area and as part of the integrated water supply system, has spent substantial time and money on engineering costs for the integrated system infrastructure, administering their water rights, water supply planning, permitting processes and land use approvals. In connection with engineering of the integrated system, Applicant, as part of the master plan for water service developed during this diligence period, has hired engineering consultants to provide engineering and design service for the water, sewer, drainage, and water transmission lines. Specifically, Applicant’s engineers are in the process of final engineering and design for a surface water treatment plant to be located adjacent to Bristlecone Reservoir. Additionally, Applicant’s engineers have designed roads, trails, and public infrastructure needed for the service area. In connection with the development of its physical water supply Applicant has drilled a new Arapahoe aquifer well and has constructed an interim water treatment plant to provide potable water to its customers. Applicant has also redrilled the Dillon Well, decreed in Case No. 81CW213, and has constructed a raw water line from the Dillon Well to the Applicant’s interim water treatment plant. Applicant has extended electric service to the interim plant. Applicant has also commenced with the construction of the water transmission and distributions systems for the eastern half of Applicant’s service area during this diligence period, which includes the construction of a 1.5 mgd water tank. Applicant has also entered into contracts with contractors to build all utilities necessary to provide water and wastewater services to the first phase of development. Applicant has continued with annual maintenance activities on both Pinon and Bristlecone dams, which maintenance during this period includes replacing the gate valve on Pinon Reservoir’s outlet and maintenance on the toe ditch on Bristlecone Reservoir as directed by the State Dam Inspector. Since 2009, Applicant has provided potable water service to two commercial customers. Applicant also continues to provide augmentation water to 11 entities and individuals with ponds and lakes on Hay Creek and Upper Beaver Creek. In regards to administering and developing their water rights as part of the integrated system, Applicant has hired a full time caretaker as well as engineers and a hydrologist who have managed and monitored the Applicant’s resources and water rights that constitute a part of the water supply system as well as retaining legal counsel to provide legal services with respect to the Applicant’s water resources. The Applicant has engaged in numerous discussions and meetings with the District 10 water commissioner and senior water rights holders regarding the water right’s administration of upper Beaver Creek waters, with the parties coming to terms on a set of administrative procedures for upper Beaver Creek flows. Applicant, in cooperation with other water users, has installed a measuring weir on Beaver Creek to accurately measure water and govern the creek’s water rights administration. Applicant has further entered into an agreement with a

senior water right holder on Beaver Creek concerning winter diversions and administration on Beaver Creek. Applicant has also spent significant time and effort negotiating with the Town of Monument regarding up-sizing and sharing the capacity of the water tank along with clarifying agreements between the parties regarding well locations, funding for shared infrastructure, and otherwise converting the use of ground water underlying the Applicant's service area. As a result, Applicant has executed an amendment to an 1989 Intergovernmental Agreement with the Town of Monument concerning water infrastructure fees on property located within the Town but serviced by Applicant. Applicant has also negotiated during this diligence with City of Colorado Springs regarding the original easement to Pinon Reservoir and to provide access on by dedicated public rights of way. Negotiations have been also been conducted with Colorado Springs concerning agreements relating to water and treatment of waste water for a portion of the Applicant's service area. During this diligence period, concerning the above matters Applicant has spent \$205,000.00 on district engineering, dam monitoring and water management; \$5,700,000.00 on water system capital; \$235,000.00 on district management; and \$65,000.00 on legal fees. **5. Claim to Make Absolute:** No part of the conditional water right is 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:** Applicant owns the land where Willow Lake No. 3 is located and the beneficial use of the water from Willow Lake No. 3 will be within the Applicant's service area.

CASE NO. 11CW69; Previous Case Nos. 83CW141, 92CW91, and 99CW84 - FOREST LAKES METROPOLITAN DISTRICT, Ann Nichols, District Manager, 2 North Cascade, Suite 1280, Colorado Springs, CO 80903 (Steven T. Monson and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Finding of Diligence

EL PASO COUNTY

2. Name of Structure: Spruce Lake No. 4. **3. Description of conditional water right:**
A. Date of Original Decree: December 1, 1986. **Case No.:** 83CW141. **Court:** District Court, Water Division 2. **B. Legal Description:** The south abutment of the dam is located in the NE1/4 of the NW1/4, Section 33, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 2,450 feet east of the west section line and 50 feet south of the north section line of said Section 33. The dam alignment runs in a northerly direction from the above described abutment for a distance of approximately 1,200 feet. The high water line includes portions of the SW1/4, Section 28; the SE1/4 of the SE 1/4, Section 29; all in Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado. **C. Sources:** Beaver Creek, and its tributaries, tributary to Monument Creek. **D. Appropriation Date:** June 6, 1983. **E. Amount claimed:** 2,000 acre feet, conditional. **F. Uses:** Domestic, irrigation, industrial, commercial, municipal, augmentation and exchange, including the right to fill, refill and reuse. **G. Dam Height:** 110 feet. **H. Dam Length:** 1,200 feet. **4. 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: In Case No. 83CW141, the Court decreed to Forest Lakes Metropolitan District (“Applicant”) the use of Spruce Lake No. 4 for the above stated conditional uses within Applicant’s service area as part of a unified municipal water system. This Court has approved a plan of augmentation for Spruce Lake No. 4 by a decree entered in Case No. 84CW19 on November 17, 1987. Diligence has last been maintained on Spruce Lake No. 4 in Case No. 99CW84, decreed October 10, 2005. During this diligence period, the Applicant, in connection with the development of the District’s service area and as part of the integrated water supply system, has spent substantial time and money on engineering costs for the integrated system infrastructure, administering their water rights, water supply planning, permitting processes and land use approvals. In connection with engineering of the integrated system, Applicant, as part of the master plan for water service developed during this diligence period, has hired engineering consultants to provide engineering and design service for the water, sewer, drainage, and water transmission lines. Specifically, Applicant’s engineers are in the process of final engineering and design for a surface water treatment plant to be located adjacent to Bristlecone Reservoir. Additionally, Applicant’s engineers have designed roads, trails, and public infrastructure needed for the service area. In connection with the development of its physical water supply Applicant has drilled a new Arapahoe aquifer well and has constructed an interim water treatment plant to provide potable water to its customers. Applicant has also redrilled the Dillon Well, decreed in Case No. 81CW213, and has constructed a raw water line from the Dillon Well to the Applicant’s interim water treatment plant. Applicant has extended electric service to the interim plant. Applicant has also commenced with the construction of the water transmission and distributions systems for the eastern half of Applicant’s service area during this diligence period, which includes the construction of a 1.5 mgd water tank. Applicant has also entered into contracts with contractors to build all utilities necessary to provide water and wastewater services to the first phase of development. Applicant has continued with annual maintenance activities on both Pinon and Bristlecone dams, which maintenance during this period includes replacing the gate valve on Pinon Reservoir’s outlet and maintenance on the toe ditch on Bristlecone Reservoir as directed by the State Dam Inspector. Since 2009, Applicant has provided potable water service to two commercial customers. Applicant also continues to provide augmentation water to 11 entities and individuals with ponds and lakes on Hay Creek and Upper Beaver Creek. In regards to administering and developing their water rights as part of the integrated system, Applicant has hired a full time caretaker as well as engineers and a hydrologist who have managed and monitored the Applicant’s resources and water rights that constitute a part of the water supply system as well as retaining legal counsel to provide legal services with respect to the Applicant’s water resources. The Applicant has engaged in numerous discussions and meetings with the District 10 water commissioner and senior water rights holders regarding the water right’s administration of upper Beaver Creek waters, with the parties coming to terms on a set of administrative procedures for upper Beaver Creek flows. Applicant, in cooperation with other water users, has installed a measuring weir on Beaver Creek to accurately measure water and govern the creek’s water rights administration. Applicant has further entered into an agreement with a senior water right holder on Beaver Creek concerning winter diversions and administration on Beaver Creek. Applicant has also

spent significant time and effort negotiating with the Town of Monument regarding up-sizing and sharing the capacity of the water tank along with clarifying agreements between the parties regarding well locations, funding for shared infrastructure, and otherwise converting the use of ground water underlying the Applicant's service area. As a result, Applicant has executed an amendment to an 1989 Intergovernmental Agreement with the Town of Monument concerning water infrastructure fees on property located within the Town but serviced by Applicant. Applicant has also negotiated during this diligence with City of Colorado Springs regarding the original easement to Pinon Reservoir and to provide access on by dedicated public rights of way. Negotiations have been also been conducted with Colorado Springs concerning agreements relating to water and treatment of waste water for a portion of the Applicant's service area. During this diligence period, concerning the above matters Applicant has spent \$205,000.00 on district engineering, dam monitoring and water management; \$5,700,000.00 on water system capital; \$235,000.00 on district management; and \$65,000.00 on legal fees. **5. Claim to Make Absolute:** No part of the conditional water right is 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:** Applicant owns the land where Spruce Lake No. 4 is located and the beneficial use of the water from Spruce Lake No. 4 will be within the Applicant's service area.

CASE NO. 11CW70; Previous Case Nos. 83CW145, 92CW92, and 99CW85 - FOREST LAKES METROPOLITAN DISTRICT, Ann Nichols, District Manager, 2 North Cascade, Suite 1280, Colorado Springs, CO 80903 (Steven T. Monson and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Finding of Diligence

EL PASO COUNTY

2. Name of Structures: Monument Creek Diversion No. 2 & Beaver Creek Diversion No. 3. **3. Description of conditional water right:** **A. Date of Original Decree:** December 1, 1986. **Case No.:** 83CW145. **Court:** District Court, Water Division 2. **B. Legal Description:** **1. Monument Creek Diversion No. 2.** In the SE1/4 of the SE 1/4, Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point on the left bank of Monument Creek approximately 479 feet from the east section line and 38 feet from the south section line of said Section 35. **2. Beaver Creek Diversion No. 3.** In the SW 1/4 of the SE 1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, located approximately 8 feet from the south line and 1,388 feet from the east line of said Section 27. **C. Sources:** **1. Monument Creek Diversion No. 2.** Monument Creek and its tributaries. **2. Beaver Creek Diversion No. 3.** Beaver Creek, and its tributaries. **D. Appropriation Dates:** December 30, 1983 for each structure. **E. Amount claimed:** 10 c.f.s, conditional for each structure. **F. Uses:** Each structure will divert water to be used in a unified municipal water system to be used, reused, successively used and otherwise disposed of for all beneficial purposes including municipal, domestic, irrigation, industrial, commercial, stock watering, recreational, fire protection, fish and wildlife, for direct use, for storage, for subsequent application to such uses, for

exchange, for replacement of depletions resulting from the use of water from other sources and for all other augmentation purposes. **4. 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:** In Case No. 83CW145, the Court decreed to Forest Lakes Metropolitan District ("Applicant") the use of Monument Creek Diversion No. 2 & Beaver Creek Diversion No. 3 for the above stated conditional uses within Applicant's service area as part of a unified municipal water system. This Court has approved a plan of augmentation for Monument Creek Diversion No. 2 & Beaver Creek Diversion No. 3 by a decree entered in Case No. 84CW19 on November 17, 1987. Diligence has last been maintained on Monument Creek Diversion No. 2 & Beaver Creek Diversion No. 3 in Case No. 99CW85, decreed October 10, 2005. During this diligence period, the Applicant, in connection with the development of the District's service area and as part of the integrated water supply system, has spent substantial time and money on engineering costs for the integrated system infrastructure, administering their water rights, water supply planning, permitting processes and land use approvals. In connection with engineering of the integrated system, Applicant, as part of the master plan for water service developed during this diligence period, has hired engineering consultants to provide engineering and design service for the water, sewer, drainage, and water transmission lines. Specifically, Applicant's engineers are in the process of final engineering and design for a surface water treatment plant to be located adjacent to Bristlecone Reservoir. Additionally, Applicant's engineers have designed roads, trails, and public infrastructure needed for the service area. In connection with the development of its physical water supply Applicant has drilled a new Arapahoe aquifer well and has constructed an interim water treatment plant to provide potable water to its customers. Applicant has also redrilled the Dillon Well, decreed in Case No. 81CW213, and has constructed a raw water line from the Dillon Well to the Applicant's interim water treatment plant. Applicant has extended electric service to the interim plant. Applicant has also commenced with the construction of the water transmission and distributions systems for the eastern half of Applicant's service area during this diligence period, which includes the construction of a 1.5 mgd water tank. Applicant has also entered into contracts with contractors to build all utilities necessary to provide water and wastewater services to the first phase of development. Applicant has continued with annual maintenance activities on both Pinon and Bristlecone dams, which maintenance during this period includes replacing the gate valve on Pinon Reservoir's outlet and maintenance on the toe ditch on Bristlecone Reservoir as directed by the State Dam Inspector. Since 2009, Applicant has provided potable water service to two commercial customers. Applicant also continues to provide augmentation water to 11 entities and individuals with ponds and lakes on Hay Creek and Upper Beaver Creek. In regards to administering and developing their water rights as part of the integrated system, Applicant has hired a full time caretaker as well as engineers and a hydrologist who have managed and monitored the Applicant's resources and water rights that constitute a part of the water supply system as well as retaining legal counsel to provide legal services with respect to the Applicant's water resources. The Applicant has engaged in numerous discussions and meetings with the District 10 water commissioner and senior water rights holders regarding the water right's administration

of upper Beaver Creek waters, with the parties coming to terms on a set of administrative procedures for upper Beaver Creek flows. Applicant, in cooperation with other water users, has installed a measuring weir on Beaver Creek to accurately measure water and govern the creek's water rights administration. Applicant has further entered into an agreement with a senior water right holder on Beaver Creek concerning winter diversions and administration on Beaver Creek. Applicant has also spent significant time and effort negotiating with the Town of Monument regarding up-sizing and sharing the capacity of the water tank along with clarifying agreements between the parties regarding well locations, funding for shared infrastructure, and otherwise converting the use of ground water underlying the Applicant's service area. As a result, Applicant has executed an amendment to an 1989 Intergovernmental Agreement with the Town of Monument concerning water infrastructure fees on property located within the Town but serviced by Applicant. Applicant has also negotiated during this diligence with City of Colorado Springs regarding the original easement to Pinon Reservoir and to provide access on by dedicated public rights of way. Negotiations have been also been conducted with Colorado Springs concerning agreements relating to water and treatment of waste water for a portion of the Applicant's service area. During this diligence period, concerning the above matters Applicant has spent \$205,000.00 on district engineering, dam monitoring and water management; \$5,700,000.00 on water system capital; \$235,000.00 on district management; and \$65,000.00 on legal fees. **5. Claim to Make Absolute:** No part of the conditional water right is 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:** Applicant owns the land where Monument Creek Diversion No. 2 & Beaver Creek Diversion No. 3 are located and the beneficial use of the water from Monument Creek Diversion No. 2 & Beaver Creek Diversion No. 3 will be within the Applicant's service area.

CASE NO. 11CW71 – JACK GAFFNEY, P. O. Box 757, Cripple Creek, CO 80313
(Please send pleadings to: Steven P. Jeffers, Esq., Lyons Gaddis Kahn & Hall, P.C., Attorneys for Applicant, P. O. Box 978, Longmont, CO 80502-0978; (303) 776-9900)
Application for Approval of Change of Water Rights

TELLER COUNTY

CHANGE OF WATER RIGHTS. 2. Decreed water rights for which change is sought: 2.1 Marcott Ditch 2.1.1. Date of original and all relevant subsequent decrees: The original decree was entered on February 3, 1894, by the Fremont County District Court. **2.1.2. Legal description of structure:** The decreed location of the headgate is on the east side of Four Mile Creek in the NE ¼ NE ¼ of Section 12, Township 15 South, Range 71 West, of the 6th P.M., in Teller County, Colorado, approximately 175 feet from the SW corner of the NE ¼ NE ¼ of that section. The actual location of the headgate is on the east side of Four Mile Creek in the SE ¼ NE ¼ of Section 1, Township 15 South, Range 71 West, of the 6th P.M., approximately 2560 feet from the North line and 920 feet from the East line. **2.1.3. Decreed source:** Four Mile Creek. **2.1.4. Appropriation Date** April 30, 1870. **2.1.5. Total Amount decreed to structure:** 1.6 cfs. **2.1.6. Decreed use:** Irrigation of 40 acres. **2.1.7. Amount of water that Applicant intends to change:** 1.6 cfs. **2.2. Kittredge No. 2 Ditch 2.2.1. Date of**

original and all relevant subsequent decrees: The original decree was entered on February 3, 1894, by the Fremont County District Court. **2.2.2. Legal description of structure:** The decree does not describe the location of a headgate. Based on testimony in the original adjudication, the original diversion was accomplished by means of a dam without a headgate. The diversion point was located in the SW $\frac{1}{4}$ of Section 2, Township 15 South, Range 71 West, of the 6th P.M., in Teller County, Colorado. The current ditch has two diversion points. The first diversion point is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, Township 15 South, Range 71 West, of the 6th P.M., approximately 894 feet from the South line and 1800 feet from the West line. The second diversion point is located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, Township 15 South, Range 71 West, of the 6th P.M., approximately 1960 feet from the South line and 2480 feet from the East line. **2.2.3. Decreed source:** West Four Mile Creek. **2.2.4. Appropriation Date:** April 31, 1870. **2.2.5. Total Amount decreed to structure:** 2.0 cfs. **2.2.6. Decreed use:** Irrigation of 100 acres. **2.2.7. Amount of water that Applicant intends to change:** 2.0 cfs. **3. Detailed description of proposed change of the Marcott Ditch:** **3.1. Complete statement of change of Marcott Ditch.** Applicant seeks approval to change the point of diversion of the Marcott Ditch from its original decreed location to the existing point of diversion. The existing diversion point was constructed by a prior owner of the property, and has been in use for many years. Applicant believes the existing diversion structure was constructed to accommodate changes in the location and elevation of the stream channel caused by prior erosion. The existing diversion point is located approximately 4,000 feet upstream from the original headgate. Diversion at the current headgate location is necessary to allow delivery of water to the decreed irrigated area. This change in point of diversion is required to accommodate changes in the stream bed as permitted by C.R.S. § 37-86-111. To the extent the changes in streambed location and ditch location have changed the place of use, Applicant also requests approval of the current place of use. Applicant does not request a change in type of use or increase in irrigated acres. **3.2. If a change in point of diversion or storage, provide existing and new location of structures.** The decreed location and the existing location are described in paragraph 2.1.2 above. No change is proposed from the existing diversion point. **3.3. Historical use.** Attached to the Application as Exhibit A is a map showing the location of the original point of diversion and current point of diversion, and historical irrigation under the Marcott Ditch. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The current irrigated area is approximately 22 acres. Attached to the Application as Exhibit B is a summary of historical diversions under the ditch. **4. Detailed description of proposed change of the Kittridge Ditch No. 2:** **4.1. Complete statement of change of Kittridge Ditch No. 2.** Applicant seeks approval to change the point of diversion of the Kittridge Ditch No. 2 from its original location to the two existing diversion points. The existing diversion points were constructed by a prior owner of the property, and have been in use for many years. It appears that the stream channel has meandered a substantial distance to the east and to the north, leaving a portion of the historically irrigated lands on both sides of the creek. Applicant believes the existing diversion structures were constructed to accommodate this shift in the stream channel. Use of both of the existing diversion points is needed for continued irrigation of the decreed and historically irrigated area. This change in point of diversion

is required to accommodate changes in the stream bed as permitted by C.R.S. § 37-86-111. To the extent the changes in streambed location and ditch location have changed the place of use, Applicant also requests approval of the current place of use. Applicant does not request a change in type of use or increase in irrigated acres. **4.2. If a change in point of diversion or storage, provide existing and new location of structures.** The decreed location and the existing locations are described in paragraph 2.2.2 above. No change is proposed from the existing diversion points. **4.3. Historical use.** Attached to the Application as Exhibit A is a map showing the approximate location of the original diversion point and current points of diversion, and historical irrigation under the Kittridge No. 2 Ditch. The current irrigated area is approximately 93 acres. Attached to the Application as Exhibit C is a summary of historical diversions under the ditch. **5. Names and addresses of owners or reputed owners of land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored including any modification to the existing storage pool.** Applicant is the owner of the land upon which the Kittridge Ditch No. 2 is located. The existing Marcott Ditch headgate is located on land owned by John T. Hatton, whose address is 230 Ute Trail, Woodland Park, CO 80863. WHEREFORE, Applicant requests the Court to enter a decree approving the change of water rights.

CASE NO. 11CW72 – COLORADO WATER CONSERVATION BOARD, IN CHAPARRAL CREEK, A NATURAL STREAM IN THE HUERFANO WATERSHED, 1313 Sherman Street, Suite 721, Denver, CO 80203 (Peter C. Johnson, Assistant Attorney General, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5018)

Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree

HUERFANO COUNTY, COLORADO

2. Name of natural stream: Chaparral Creek tributary to the Huerfano River tributary to the Arkansas River. **3. Location:** The natural stream channel from the headwaters extending to the U.S. Forest Service boundary, being a distance of approximately 3.11 miles. This segment can be located on the Cuchara and Cucharas Pass U.S.G.S. quadrangles. a. Upper Terminus = Headwaters in the Vicinity of PLSS: NE SE Section 18, Township 31 South, Range 68 West of the 6th PM, 495' West of the East Section Line, 1898' North of the South Section Line, UTM: Northing: 4133085.93 Easting: 497282.98 (NAD 1983 Zone 13 North), Lat/Long: latitude 37° 20' 40.05"N and longitude 105° 01' 50.43. b. Lower Terminus = U.S. Forest Service Boundary at PLSS: NE NW Section 1, Township 31 South, Range 69 West of the 6th PM, 2558' East of the West Section Line, 1611' South of the North Section Line, UTM: Northing: 4137348.62 Easting: 495039.93 (NAD 1983 Zone 13 North) Lat/Long: latitude 37° 22' 58.34"N and longitude 105° 3' 21.70"W. The Public Land Survey System (PLSS) location in this decree was derived using 2005 PLSS data from the U.S. Bureau of Land Management's Geographic Coordinate Database. Termini locations derived using CWCB's GIS system. **4. Date of initiation of appropriation:** Appropriation and beneficial use occurred on January 25, 2011 by the action of the CWCB under the provisions of §§ 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. **5. Amount**

of water claimed: Instream flow of 2.5 cfs (May 1 – June 30), 1.0 cfs (July 1 – August 15), 0.45 cfs (August 16 – March 31) and 0.85 cfs (April 1 – April 30), absolute. **6. Remarks:** This appropriation is made pursuant to the provisions of Sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. The purpose of this appropriation by the State of Colorado is to preserve the natural environment to a reasonable degree. At its regular meeting on May 18, 2011, the Board determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the Board's water right herein, if granted; and that such environment can exist without material injury to water rights. **7.** This Application is for an instream flow water right, exclusive to the CWCB pursuant to section 37-92-102(3) C.R.S., and as such there are no proposed diversion structures or storage involved, nor does it affect ground water described in section 37-90-137(4), C.R.S.. See City of Thornton By and Through Utilities Bd. v. City of Fort Collins, 830 P.2d 915, 931 (Colo.,1992) ("A minimum stream flow does not require removal or control of water by some structure or device. A minimum stream flow between two points on a stream or river usually signifies the complete absence of a structure or device."). Therefore, the notice provision contained in section 37-92-302(2)(b) C.R.S. is not applicable.

CASE NO. 11CW73 – COLORADO WATER CONSERVATION BOARD, IN DODGETON CREEK, A NATURAL STREAM IN THE HUERFANO WATERSHED,

1313 Sherman Street, Suite 721, Denver, CO 80203 (Peter C. Johnson, Assistant Attorney General, Attorney for Applicant, 1525 Sherman Street, 7th Floor, Denver, CO 80203; (303) 866-5018)

Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree

HUERFANO COUNTY, COLORADO

2. Name of natural stream: Dodgeton Creek tributary to the Huerfano River tributary to the Arkansas River. **3. Location:** The natural stream channel from the headwaters extending to the U.S. Forest Service boundary, being a distance of approximately 3.43 miles. This segment can be located on the Cuchara and McCarty Park U.S.G.S. quadrangles. a. Upper Terminus = Headwaters in the Vicinity of: PLSS: NE SW Section 1, Township 31 South, Range 70 West of the 6th PM, 890' East of the West Section Line, 2121' North of the South Section Line, UTM: Northing: 4136570.57 Easting: 485352.65 (NAD 1983 Zone 13 North), Lat/Long: latitude 37° 22' 32.73"N and longitude 105° 09' 55.58"W. b. Lower Terminus = U.S. Forest Service Boundary at: PLSS: NE NW Section 4, Township 31 South, Range 69 West of the 6th PM, 2577' East of the West Section Line, 1787' South of the North Section Line, UTM: Northing: 4137318.86 Easting: 490231.55 (NAD 1983 Zone 13 North), Lat/Long: latitude 37° 22' 57.24"N and longitude 105° 06' 37.23"W. The Public Land Survey System (PLSS) location in this decree was derived using 2005 PLSS data from the U.S. Bureau of Land Management's Geographic Coordinate Database. Termini locations derived using CWCB's GIS system. **4. Date of initiation of appropriation:** Appropriation and beneficial use occurred on January 25, 2011 by the action of the CWCB under the provisions of §§ 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. **5. Amount of water claimed:** Instream flow of 1.5 cfs (May 1 – July 31), 0.80 cfs (August

1 – October 31), 0.50 cfs November 1 – March 31) and 0.80 cfs (April 1 – April 30), absolute. **6. Remarks:** This appropriation is made pursuant to the provisions of Sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. The purpose of this appropriation by the State of Colorado is to preserve the natural environment to a reasonable degree. At its regular meeting on May 18, 2011, the Board determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the Board's water right herein, if granted; and that such environment can exist without material injury to water rights. **7.** This Application is for an instream flow water right, exclusive to the CWCB pursuant to section 37-92-102(3) C.R.S., and as such there are no proposed diversion structures or storage involved, nor does it affect ground water described in section 37-90-137(4), C.R.S.. See City of Thornton By and Through Utilities Bd. v. City of Fort Collins, 830 P.2d 915, 931 (Colo.,1992) ("A minimum stream flow does not require removal or control of water by some structure or device. A minimum stream flow between two points on a stream or river usually signifies the complete absence of a structure or device."). Therefore, the notice provision contained in section 37-92-302(2)(b) C.R.S. is not applicable.

THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of December 2011, (forms available at Clerk's office or at www.courts.state.co.us, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 4th day of November, 2011.



Mardell R. DiDomenico

Mardell R. DiDomenico, Clerk
District Court, Water Div. 2
Pueblo County Judicial Building
320 W. 10th Street
Pueblo, CO 81003; (719) 583-7048

(Court seal)

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