

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED DURING SEPTEMBER 2004  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications, and certain amendments, filed during September 2004, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CASE NO. 98CW130 – DANIEL B. MIKUS and LINDA I. MIKUS, 1523 Poplar, Canon City, CO 81212 and TURKEY TRACK CORPORATION, Box 442, Rye, CO 81069**

Second Amended Application for Water Rights (Surface)  
Huerfano County

**2. Name of structure:** Mikus Spring #2. **3. Legal description of each point of diversion:** Huerfano County, NE ¼ of the NE ¼ Section 35, Township 23 South, Range 70 West, 6<sup>th</sup> P.M., 1320 feet from the North line and 1320 feet from the East line of Section 35. **4. Source:** East Fork of Williams Creek. **5. A. Date of initiation of appropriation:** August 22, 1994. **B. How appropriation was initiated:** July 1995. **C. Date water applied to beneficial use:** August 22, 1994. **6. Amount claimed:** 3 gpm Absolute. **7. Use or proposed use:** Livestock. **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:** Stock water. **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:** Turkey Track Corporation, Box 442, Rye, CO 81069  
(Second Amended Application, 2 pages

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**CASE NO. 04CW72 – W. JOYCE HOLMES, Trustee, W. JOYCE HOLMES REVOCABLE TRUST, 5749 W. 40<sup>th</sup> Street South, Wichita, KS 67215-2012**

Application for Underground Water Right  
Custer County

**2. Name of well and permit, registration, or denial number:** #141660A. **3. Legal description of well:** Custer County, NE ¼ of the SE ¼ Section 1, Township 24 South, Range 69 West, 6<sup>th</sup> P.M., 1600 feet from the South line and 650 feet from the Est line. **Street Address:** 309 San Isabel; **Subdivision:** Lake Addition; **Lot 18; Block 5.** **4. A. Source:** Groundwater; **B. Depth:** 206. **5. A. Date of appropriation:** Old well July 16, 1986, current well 40' NW of old well and drilled Oct. 15, 1985. **B. How appropriation was initiated:** Drilled well; **C. Date water applied to beneficial use:** Oct. 15, 1985. **6. Amount claimed:** 15

gpm Absolute. 7. If well is non-tributary: A. Name of Aquifer: \_\_\_; B. Amount claimed in acre feet annually: \_\_\_\_\_. 8. Proposed use: A. If irrigation, complete the following: (1) Number of acres historically irrigated: 2500 sq. feet. (2) Total number of acres proposed to be irrigated: 2500 sq. feet. (3) The legal description of the land irrigated: Lot 18, Block 5. (4) Area of lawns and gardens irrigated: \_\_\_\_\_. B. If non-irrigation, describe purpose fully: 1 residence; domestic animals. 9. Name and address of owner(s) upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use: Applicant.  
(Application and attachments, 10 pages)

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**CASE NO. 04CW73 (Water Div. 2) and CASE NO. 04CW226 (Water Div. 1) – GEORGE W. RUTTER and VIRGINIA V. RUTTER, P. O. Box 1306, Front Royal, VA 22630** (Henry D. Worley, MacDougall, Woldridge & Worley, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905-1743)

Application for Underground Denver Basin Water Rights and for Approval of Plan for Augmentation in El Paso County, Colorado

**I. APPLICATION FOR DENVER BASIN WATER RIGHTS**

**2. Names of wells and permit, registration, or denial numbers:** No wells have been permitted or constructed on the Property. **3. Legal description of wells:** Up to four wells in the Dawson aquifer, and so many wells in each of the Denver, Arapahoe and Laramie-Fox Hills aquifers as are necessary to obtain Applicant's full adjudicated amount of water. The wells may be located anywhere on Applicant's 20± acre property (the "Property"), the legal description of which is Lot 10 in Wildwood Ranch Estates Filing 3. The Property is located in S1/2 SE1/4 Section 32, T. 11 S., R 65 W., 6<sup>th</sup> P.M., El Paso County, Colorado, in the East Cherry Creek basin, as shown on Figure 1 attached to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Applicant waives the 600 foot spacing requirement for all wells constructed on the Property. **4. Source:** Not nontributary Dawson aquifer; nontributary Denver aquifer; nontributary Arapahoe aquifer; nontributary Laramie-Fox Hills aquifer. **5.A. Date of appropriation:** Not applicable. **5.B. How appropriation was initiated:** Not applicable. **5.C. Date water applied to beneficial use:** Not applicable. **6. Amount claimed:** Dawson aquifer: 15 g.p.m. per well, 19.9 acre feet annually, absolute; Denver aquifer: 250 g.p.m. per well, 14.8 acre feet annually, absolute; Arapahoe aquifer: 250 g.p.m. per well, 8.5 acre feet annually, absolute; Laramie-Fox Hills aquifer: 150 g.p.m. per well, 5.6 acre feet annually, absolute. The above amounts will be changed in any decree entered herein to conform to the State Engineer's Determination of Facts. The water court will retain jurisdiction over such decree to enter a final determination of the amount of water available for appropriation from each aquifer based on geophysical logs for such wells. **7. Proposed uses:** indoor residential and commercial (home office), landscaping including irrigation and decorative ponds and fountains, water amenities such as swimming pools and hot tubs, stock water, fire fighting, augmentation. **8. Name and address of**

**owner of land on which well is located:** Same as applicant. A copy of Applicant's deed is attached to the application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **9. Remarks:** There are no liens or encumbrances against the Property, so the notice requirements of C.R.S. 37-92-302(2)(b) are inapplicable. Any decree entered pursuant to this application will require that all wells decreed herein will comply with all relevant provisions of the Denver Basin Rules and Statewide Nontributary Ground Water Rules.

## **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION**

**10. Name of structures to be augmented:** Up to four Dawson aquifer wells. No other water rights are or will be diverted from these wells. **11. Previous decrees for water rights to be used for augmentation:** None. **12. Historic use:** Not applicable. **13. Statement of plan for augmentation:** This application provides for the augmentation of stream depletions caused by pumping Dawson aquifer wells on four residential lots. Anticipated water use criteria for each lot are as follows: indoor uses, 0.27 acre feet annually per single family dwelling which is 10% consumptive; horses (or horse equivalents), 0.011 acre feet annually (10 gallons per day) per head, 100% consumptive; landscape irrigation, 0.046 acre feet annually per 1,000 square feet (2.0 acre feet per acre) per year, 85% consumptive. Consumption attributable to indoor uses is predicated on the use of nonevaporative individual sewage disposal systems ("ISDS"), which shall be required for each lot. Change to any other type of waste water disposal shall require an amendment to the plan for augmentation. **Replacements during pumping.** Based upon computer modeling, depletions to the South Platte and Arkansas basins combined are expected to gradually increase to 18% of pumping annually in the 300<sup>th</sup> year. Each lot shall be limited to pumping of 1.2 acre feet annually, which would result in annual stream depletions, in the 300<sup>th</sup> year, of 0.22 acre foot per lot, or 0.86 acre feet annually total. Return flows from a single ISDS are anticipated to equal 0.24 acre feet annually. Thus, even if all water uses on the Property, other than in-door household uses, are fully consumptive, return flows from ISDS alone are adequate to replace stream depletions during pumping. The only restrictions necessary to ensure that replacements equal or exceed stream depletions are (1) limit annual pumping to 1.2 acre feet per well, and use of ISDS or some other form of wastewater treatment which is no more consumptive. **Replacements after pumping.** Based upon assumed pumping of 4.8 acre feet annually for 300 years, stream depletions will reach a maximum of 18.14% of average annual pumping when pumping ceases, theoretically in the 310<sup>th</sup> year, and will decline thereafter. Applicant shall replace post-pumping depletions with the nontributary Denver aquifer water decreed herein, 1,228 acre feet of which will be reserved for that purpose. However, Applicant reserves the right to replace such depletions with any judicially acceptable source of augmentation water upon application and notice as required by law. Applicant further proposes to aggregate all depletions and replace them to the South Platte River drainage in East Cherry Creek, which flows through the Property. Any final decree entered in this case shall provide that no more than 1.2 acre feet per year may be diverted from each Dawson

aquifer well absent an amendment to this plan for augmentation. Because depletions will occur in both Water Divisions 1 and 2, this application shall appear in the resume for both water divisions. Applicant will thereafter consolidate the two cases in Water Division 1.

(Application and attachments, 6 pages)

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**CASE NO. 04CW74 – DAVID W. and MARTA (Martha) K. MOORE, P. O. Box 1144, County Road 360, #3812, La Veta, CO 81055**

Application for Underground Water Right

Huerfano County

**2. Name of well and permit, registration, or denial number:** Well Permit Number 256444. **3. Legal description of well:** Huerfano County, NW ¼ of the SE ¼ Section 3, Township 30 South, Range 68 West, 6<sup>th</sup> P.M., 2552 feet from the South line and 2450 feet from the East line (97' south of the East-West Centerline of Section 3). **Street Address:** 3500 County Road 360. **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 NAD27 (CONUS); and Units must be set to true north. Were points averaged? Yes. **Northing** 4,146,404; **Easting** 13,501,090. **4. A. Source:** Huajatolla valley; **B. Depth:** 67 feet; **5. A. Date of appropriation:** April 16, 2004. **B. How appropriation was initiated:** Well Permit was applied for; **C. Date water applied to beneficial use:** July 15, 2004. **6. Amount claimed:** 15 gpm Absolute. **7. If well is non-tributary:** N/A. **8. Proposed use:** **A. If irrigation, complete the following:** (1) Number of acres historically irrigated: \_\_\_; (2) Total number of acres proposed to be irrigated: \_\_; (3) The legal description of the land irrigated: \_\_\_\_; (4) Area of lawns and gardens irrigated: 1 acre. **B. If non-irrigation, describe purpose fully:** domestic and livestock. **9. Names and address of owners upon which any structure is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** Applicants.

(Application and attachments, 4 pages)

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**CASE NO. 04CW75(89CW12) – DONALD F. REEVES and CAROLYN J. REEVES, 9952 Hwy. 67, Florence, CO 81226**

Application to Make Absolute

Fremont County

**2. Name of structures:** Reeves Springs No. 1, 2, 3, 4, 5, 6, 7, 8 and 9. **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:** February 27, 1990; **Case No.** 89CW12; **Court:** Water Division 2. **B. Legal description:** Reeves Spring No. 1 – SE ¼ of NE ¼ of Section 15, Township 20 South, Range 69 West of the 6<sup>th</sup> P.M., in Fremont County, Colorado, being 57 feet West of the East line and 2585 feet South of the North line of said Section 15. Reeves Spring No. 2 – SE ¼ of NE ¼ of Section 15, Township 20 South, Range 69 West of the 6<sup>th</sup> P.M., in Fremont County,

Colorado, being 120 feet West of the East line and 2601 feet South of the North line of said Section 15. Reeves Spring No. 3 – SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 15, Township 20 South, Range 69 West of the 6<sup>th</sup> P.M., in Fremont County, Colorado, being 183 feet West of the East line and 2613 feet South of the North line of said Section 15. Reeves Spring No. 4: SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 15, Township 20 South, Range 69 West of the 6<sup>th</sup> P.M., in Fremont County, Colorado, being 228 feet West of the East line and 2607 feet South of the North line of said Section 15. Reeves Spring No. 5: SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 15, Township 20 South, Range 69 West of the 6<sup>th</sup> P.M., in Fremont County, Colorado, being 273 feet West of the East line and 2598 feet South of the North line of said Section 15. Reeves Spring No. 6: SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 15, Township 20 South, Range 69 West of the 6<sup>th</sup> P.M., in Fremont County, Colorado, being 312 feet West of the East line and 2592 feet South of the North line of said Section 15. Reeves Spring No. 7: SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 15, Township 20 South, Range 69 West of the 6<sup>th</sup> P.M., in Fremont County, Colorado, being 348 feet West of the East line and 2592 feet South of the North line of said Section 15. Reeves Spring No. 8: SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 15, Township 20 South, Range 69 West of the 6<sup>th</sup> P.M., in Fremont County, Colorado, being 714 feet West of the East line and 2514 feet South of the North line of said Section 15. Reeves Spring No. 9: NW  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Section 15, Township 20 South, Range 69 West of the 6<sup>th</sup> P.M., in Fremont County, Colorado, being 1761 feet West of the East line and 1944 feet North of the South line of said Section 15. **C. Source:** Natural springs. **D. Appropriation Date:** March 14, 1989. **Amount:** Reeves Spring No. 1 – 2 gpm; Reeves Spring No. 2 – 6 gpm; Reeves Spring No. 3 – 10 gpm; Reeves Spring No. 4 – 12 gpm; Reeves Spring No. 5 – 14 gpm; Reeves Spring No. 6 – 2 gpm; Reeves Spring No. 7 – 3 gpm; Reeves Spring No. 8 – 1 gpm; Reeves Spring No. 9 – 50 gpm. **E. Use:** Irrigation, garden, livestock and domestic. **F. Depth (if well):** N/A. **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:** Have installed collection boxes consisting of three 6'x12'x3' concrete tanks with 6" walls and 10" lids and bottoms, have diverted water into tanks set at flow level, which then flows through a 6" pipe 520 feet below diversion point into two 6'x12'x6' concrete tanks where the water is pooled and pumped with a 5 horsepower electric pump through a 3" flow meter to an irrigation system. As of May 3, 2001 a new permanent service was intalled to pump site by San Isabel Electric Association, Inc. at a cost of \$2070.00. **5. If claim to make absolute – Water applied to beneficial use:** **A. Date:** April 1, 1989; **Amount:** 100 gpm; **Use:** Irrigation, garden, livestock and domestic. **B. Description of place of use where water is applied to beneficial use:** Lawn and garden at 9952 Hwy. 67, 5 acres of hay field in the SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ , Section 14, Township 20 South, Range 69 West, and livestock watering. **6. Names and address of owners of 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.  
(Application and attachments, 7 pages)

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**CASE NO. 04CW76 – FLYING HORSE RANCH, a Colorado limited partnership and KING’S DEER DEVELOPMENT, LLC, 2790 N. Academy, #312, Colorado Springs, CO 80917** (Matthew S. Poznanovic, Petrock & Fendel, P.C., Attorneys for Applicants, 700 Seventeenth Street, Suite 1800, Denver, CO 80202)

Application for Change of Water Right  
El Paso County

**2. Decree information for which change is sought:** The Applicants request a change in the terms of a plan for augmentation as decreed in Consolidated Case Nos. 2000CW85, Water Division 2, and 2000CW175, Water Division 1, on November 27, 2001 (“Decree”). This is an augmentation plan allowing the withdrawal of 81 acre-feet per year of not nontributary Dawson aquifer groundwater over a 300 year period associated with approximately 681.69 acres located in parts of Sections 1 and 2, T12S, R66W of the 6<sup>th</sup> P.M., as shown on Attachment A to the Application (“Subject Property”). All attachments mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. 71 acre-feet of this amount was decreed for domestic use, and 10 acre-feet per year was decreed for storage. The change requested herein only affects the 10 acre-feet per year of storage water. The domestic use water is not affected by this requested change. **3. Proposed change:** Applicants request that the augmentation plan for the withdrawal of the 10 acre-feet per year decreed for storage use, be changed to allow that same 10 acre-feet per year to be used for commercial use inside a community recreational center (5 acre-feet per year) and for irrigation use (5 acre-feet per year) on the Subject Property. Pursuant to the Decree, wells to withdraw this water will be located at any location on the Subject Property and the wells will withdraw the water at rates of flow necessary to efficiently withdraw the entire decreed amount. In the Decree, the 10 acre-feet per year to be used for storage was assumed to be 100% consumed. Pursuant to the new uses, approximately 90% of the water used for the commercial use through a non-evaporative septic system, and 10% of the water used for irrigation will return to the stream system. Therefore, more return flows will accrue to the stream system than in the Decree. Total depletion at 300 years is approximately 23.9% of the 10 acre-feet or 2.39 acre-feet. Return flow from use of the water for only the commercial use is approximately 4.5 acre-feet which is more than sufficient to replace the amount of actual depletion caused by pumping the 10 acre-feet per year. Depletions occur to the South Platte and Arkansas stream systems. Pursuant to the Decree, total depletions will be returned to the Arkansas stream system. Return flows from use of the water accrue to the Arkansas stream system. No other parts of the original decree will be changed, including any terms and conditions concerning use of augmented Dawson aquifer water for domestic use. WHEREFORE, Applicants pray that this Court enter a decree granting this

application and for a finding that the change requested herein will not injuriously affect other owners or users of vested or conditional water rights, and for such other relief as it deems proper in the premises.

(Application and attachments, 4 pages)

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**CASE NO. 04CW77 – HARLEY W. EDWARDS and ROSE L. EDWARDS, 3980 S. Enoch Road, Colorado Springs, CO 80930; and LESLIE F. EDWARDS, 3780 S. Enoch Road, Colorado Springs, CO 80930** (James G. Felt and Chris D. Cummins, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903)

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

**II. APPLICATION FOR ADJUDICATION OF DENVER BASIN GROUND WATER RIGHTS. A. Permitted Wells:**

1. State Engineer Well Permit No. 173263 (Expansion of Permit No. 138922, Exempt Domestic). Located in the SE1/4 NE1/4 Section 2, Township 15 South, Range 64 West, 6<sup>th</sup> P.M., 2500 feet from the north section line of said Section 2, and 150 feet from the east section line. 2. State Engineer Well Permit No. 185840 (Exempt Domestic). Located in the SW1/4 NE1/4 Section 2, Township 15 South, Range 64 West, 6<sup>th</sup> P.M., 1975 feet from the north section line of said Section 2, and 1400 feet from the east section line. 3. State Engineer Well Permit No. 139098-A (Exempt Domestic). Located in the NE 1/4 NE 1/4, Section 2, Township 15 South, Range 64 West, 6<sup>th</sup> P.M., 1140 feet from the north section line of said Section 2, and 120 feet from the east section line. 4. Up to 24 additional wells will be drilled into the Laramie-Fox Hills aquifer and to be located anywhere on Applicants' one hundred sixty (160) acre property, located in the NE¼, Section 2, T15S, R64W, 6<sup>th</sup> P.M. in El Paso County, Colorado. The Applicants' property is more particularly described on the Exhibit A legal description attached to the Application and incorporated herein by reference. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **B. Water Source:**

The not nontributary Laramie-Fox Hills aquifer is the only Denver Basin aquifer underlying the Applicants' property and is primarily tributary to Chico Creek, tributary to Lower Black Squirrel Creek, tributary to the Arkansas River and Williams Creek, tributary to Fountain Creek, tributary to the Arkansas River. **C. Depth:**

The depth of Well Permit No. 173263 is 500 feet. The depth of Well Permit No. 185840 is 360 feet. The depth of Well Permit No. 139098-A is 620 feet. The top of the Laramie-Fox Hills aquifer is estimated at 400 feet below ground surface extending to a depth of approximately 650 feet. **D. Estimated Rates of Withdrawal of Ground Water Available:**

**1. Estimated Rates of Withdrawal.** The pumping rates for wells to be completed into the Laramie-Fox Hills aquifer are estimated to be between 15 g.p.m. and 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicants request the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts, which may be less than or exceed the above estimates. **2. Estimated Average**

**Annual Amounts of Ground Water Available.** Applicants request an absolute water right for the withdrawal of all legally available ground water in the not nontributary Laramie-Fox Hills aquifer underlying Applicants' Property. Said amount may be withdrawn over the 100 year life span of the aquifers as set forth in C.R.S. §37-90-137(4), but withdrawals must be limited to the 300-year subdivision water supply requirements of El Paso County. Applicants estimate that the supply of water underlying Applicants' Property, consisting of only the Laramie-Fox Hills aquifer is approximately 3,860 acre feet. Based on withdrawal of water for a 300 year period, Applicants may pump 12.86 acre feet per year. The above amounts may be changed in any decree entered herein to conform to the State Engineer's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer.

**E. Requested Uses:** The Applicants request the right to use the ground water for all beneficial uses including, without limitation, domestic, commercial, industrial, irrigation, stock water, recreation, fish and wildlife propagation, fire protection, central water supply for such uses and also for exchange and augmentation purposes.

**F. Well Fields:** Applicants request that they be permitted to produce the full legal entitlement from the Laramie-Fox Hills aquifer underlying Applicants' Property through any combination of wells. Applicants request that these wells be treated as a well field. Applicants request that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the Laramie-Fox Hills aquifer beneath the Applicants' Property, so long as the sum of the total withdrawals from all the wells in the aquifer does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicants are entitled to withdraw from the aquifer underlying the Applicants' Property.

**G. Description of Land Overlying Subject Ground Water:** The land overlying the ground water which is the subject of this Application consists of 160 acres, specifically the NE1/4 of Section 2, Township 15 South, Range 64 West, 6<sup>th</sup> principal Meridian in El Paso County, Colorado.

**H. Name and Address of the Owner of the Land Upon Which the Wells are to be Located:**

The Applicants, as set forth in Section I above are the owners of the property on which the wells are to be located.

**III. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.**

**A. Name of Structures to be Augmented:** Up to twenty-seven (27) Laramie-Fox Hills aquifer wells (including Well Permit Nos. 139098A, 173263 and 185840). There are no other water rights diverted from these well structures.

**B. Water Rights to be Used for Augmentation:** The water rights to be used for augmentation during pumping are return flows from the not nontributary Laramie-Fox Hills aquifer wells to be pumped as set forth in this plan of augmentation. Post-pumping depletions will be augmented by the dedication of two shares of Fountain Mutual Irrigation Company stock.

**C. Statement of Plan for Augmentation:** Applicants wish to provide for the augmentation of stream depletions caused by pumping the not nontributary Laramie-Fox Hills aquifer wells proposed herein for up to 27 residential lots.

Water use criteria for each of the lots is as follows: **1. Household Use Only:** 0.27 acre feet annually per single family dwelling with a ten percent consumptive use based on nonevaporative septic leach field disposal systems. Any other type of waste water disposal shall require an amendment to this plan of augmentation. **2. Horses (or equivalent livestock):** 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. **3. Landscape Irrigation:** 0.046 acre feet annually per 1,000 square feet (2.0 acre feet per acre) per year, with a 90% assumed consumptive use rate. Based on these consumptive use components and a three hundred year aquifer life, each of the 27 homeowners should be able to pump 0.47 acre feet per year which is sufficient to support in house purposes, the watering of four horses, and the irrigation of approximately 2,300 square feet of lawn or garden. **D. Augmentation of Depletions During Pumping:** Through computer groundwater flow modeling, it has been theoretically demonstrated that pumping the Laramie-Fox Hills wells proposed in this augmentation plan over one hundred years, will deplete surface water flows at a greater rate than 0.1 percent of the pumping rate. Using the State Engineer's aquifer database, the modeling demonstrates that after one hundred years of pumping, the total stream depletions are 0.6 percent of pumping (0.07 acre feet per year). This total depletion rate increases to 5.46 percent (0.642 acre feet per year) after three hundred years of well pumping. See Exhibit B Ground Water Consultation Report of William Curtis Wells dated February 26, 2004, Revised September 22, 2004, and its Table 1. Exhibit B and its Table 1 are attached to the Application and may be examined in the Office of the Clerk for Water Division 2. During pumping, septic system return flows from the twenty four residences should account for approximately 6.6 acre feet per year. Thus, there is more than enough return flows through the septic system alone to replace the estimated stream depletions. **E. Augmentation for Post Pumping Depletions:** **1. Augmentation to Fountain Creek:** Once pumping ceases, it is assumed that there would be no return flows to meet the ongoing post pumping stream depletion obligations. Applicants' wells are remote from any live flows in Chico Creek, Williams Creek, Lower Black Squirrel Creek and Fountain Creek. The water resource investigation entitled The Lower Black Squirrel, Chico and Haines Creek Basin, El Paso and Pueblo Counties, prepared by John C. Romero of the Colorado Division of Water Resources in cooperation with the Colorado State Board of Land Commissioners dated 1992, concluded that vast amounts of nonbeneficial consumptive use occurs to the Chico/Black Squirrel Creek basin. Therefore, Applicants requests the Court allow post pumping depletions be replaced to Fountain Creek, tributary to the Arkansas River. A similar request has been granted by this Court in 01CW66, entered January 14, 2003. Applicants will dedicate two shares of Fountain Mutual Irrigation Company ("FMIC") common stock to the Division Engineer for administration to replace any injurious post pumping depletions which may occur to the Arkansas River and its tributaries as a result of the pumping of Applicants wells. **2. Change of FMIC Shares to Augmentation Use:** The State Engineer's model predicts maximum post pumping depletions of approximately 10.0 percent of maximum historic

pumping, or 1.2 acre feet, 600 years after cessation of pumping. A FMIC share has been determined in many cases to produce 0.7 acre feet per year of replacement water. Two shares of FMIC stock represented by FMIC Share Certificate Nos. 1556 and 1557 shall be dedicated to such replacement purposes after up to three hundred years of pumping. a. **Previous decrees for water rights to be used for augmentation:** The water rights decreed to FMIC are as follows:

DIRECT FLOW

Fountain Creek Priority No. 1	Priority Date	Decree Date	Total Decree (cfs)
4	9/21/1861	3/6/1882	9.84 (5.38) <sup>1</sup>
7	4/1/1862	3/6/1882	1.125
11	2/1/1863	3/6/1882	16.69
17	12/31/1863	3/6/1882	4.25 (2.125) <sup>2</sup>
21	12/31/1864	3/6/1882	4.65
28	12/31/1866	3/6/1882	8.48
29	12/31/1867	3/6/1882	9.68
41	9/21/1874	3/6/1882	17.05
168	1/31/1903	6/2/1919	343.2

STORAGE

Fountain Creek Priority No.	Priority Date	Decree Date	Total Decree (cfs)
Fountain	3/18/1903	6/2/1919	10,000

<sup>1</sup>FMIC's interest in Priority No. 4 is 5.38 cfs. The amount of 1.73 cfs was changed on application of Security Water District in Case No. 90CW28. In addition to the 5.38 cfs, FMIC claims the right to divert any of the remaining 2.73 cfs decreed to this priority which is not used by the other owners thereof.

<sup>2</sup> Priority No. 17 is referred to as the Janitell's right and FMIC has used ½ of the water, or 2.125 cfs, in return for the carriage of the other 2.125 cfs to its owner through the FMIC ditch. By Decree Authorizing Change in Point of Diversion in Civil Action No. 38180, entered July 29, 1959, the point of diversion for this 4.25 cfs of Priority No. 17 of the Laughlin Ditch was changed to the headgate of the Fountain Mutual Ditch.

All of these rights are diverted through the Fountain Mutual Ditch from Fountain Creek, at its headgate located in the SW1/4 of Section 20, Township 14 S., Range 66 West of the 6<sup>th</sup> P.M. the original use for all of these rights was irrigation. **b. Historic Use:** FMIC water rights have been decreed for augmentation/replacement use in numerous other changes of water rights and plans of augmentation. In those previous cases, this Court has determined that each share of FMIC has historically yielded on the average the equivalent of 0.7 acre feet of net replacement or consumptive use water each year, which number represents a portion of the farm headgate delivery. These findings have been previously established by this Court, without limitation, in the decrees in Case Nos. 90CW28, 95CW3, 90CW7 (entered November 13, 2000), 99CW146 (entered November 15, 2000), 00CW152 (entered August 29, 2001), 01CW153 (entered May 15, 2002), and 01CW66 (entered January 14, 2003), Water Division 2. The replacement of augmentation credit allowed to FMIC water rights, as also determined in these prior cases, is a percentage of the FMIC actual delivery to its shareholders computed on the basis of the following table:

FMIC REPLACEMENT CREDIT

<u>Month</u>	<u>Replacement Credit as a Percentage of Farm Headgate Delivery</u>
January	47
February	58
March	70
April	70
May	70
June	70
July	72
August	72
September	74
October	66
November	40
December	49

This historic consumptive use of FMIC shares has been used in several prior cases, which findings are binding as a matter of res judicata. Williams v. Midway Ranches Property Owners Association, Inc., 938 P.2d 515 (Colo. 1997). There have been no material changed circumstances since the last decree to modify these historic consumptive use determinations. Applicants request that the Court find that each FMIC share has historically yielded on the average the equivalent of 0.7 acre feet of net replacement or consumptive use water each year, which number represents a portion of the farm headgate delivery. The total amount of consumptive use under the FMIC water rights varies from year to year based upon the amount of water available for diversion under those rights. Therefore, the actual consumptive use available from such shares shall be based on actual in-priority diversions applied to the above monthly replacements credits schedule. Since FMIC relies upon these prior determinations, diversion records and a map are not submitted. **L. Remarks:** Additional remarks are as follows:  
 1. Applicants request a finding that it has complied with C.R.S. §37-90-137(4),

and that the ground water requested herein is legally available for withdrawal by the requested nontributary wells and by the requested not nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). 2. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. 3. Applicants will comply with C.R.S. §37-90-137(9)(b) requiring the relinquishment of the right to consume no more than two percent of the amount of the nontributary ground water withdrawn. 4. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 5. Before any wells are constructed, applications for well permits will be filed with the State Engineer's office, and well permits shall be granted in accordance with the decree pursuant to this application. 6. Exempt Domestic Wells, Permit Nos. 139098A, 173263 and 185840, will be repermited upon approval of this Application. 7. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 8. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 9. The Applicants intend to waive the 600 feet well spacing requirement for the wells to be located upon the Applicant's Property. 10. There are no encumbrances of record on the property, therefore any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(l) are not applicable to this matter.

(Application and attachments, 15 pages)

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**CASE NO. 04CW78 (Water Div. 2) and CASE NO. 04CW244 (Water Div. 1) – FLYING HORSE RANCH, a Colorado limited partnership and KING'S DEER DEVELOPMENT, LLC, 2790 N. Academy, #312, Colorado Springs, CO 80917**

(Matthew S. Poznanovic, Petrock & Fendel, P.C., Attorneys for Applicants, 700 Seventeenth Street, Suite 1800, Denver, CO 80202

Application for Plan for Augmentation

El Paso County

**2. Description of plan for augmentation: A. Groundwater to be augmented:** 36 acre-feet per year of not nontributary Denver aquifer groundwater to be withdrawn over a 300 year pumping period as decreed in Consolidated Case Nos. 2000CW85, Water Division 2, and 2000CW175, Water Division 1, on November 27, 2001. The property which is the subject of the decree is approximately 681.69 acres located in parts of Sections 1 and 2, T12S, R66W of

the 6th P.M., as shown on Attachment A to the Application (Subject Property). All attachments mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **B. Water rights to be used for augmentation:** Return flows from the use of not nontributary Denver aquifer water and return flows and direct discharge of nontributary Arapahoe aquifer groundwater underlying the Subject Property as previously decreed in this court in the decree described above. **C. Statement of plan for augmentation:** The subject Denver aquifer groundwater will be used for irrigation, storage, and limited commercial use on the Subject Property over a 300 year period. The water will be withdrawn through one or more wells and operate at rates of flow which may be necessary to efficiently withdraw the water herein. Applicants estimate that irrigation use will require approximately 22 acre-feet per year, storage will require approximately 13 acre-feet per year, and commercial use will require approximately 1 acre-foot per year. All storage structures will be lined. Applicants reserve the right to amend these values without amending this application or republishing the same. Sewage treatment for the commercial use will be provided by a non-evaporative septic system. Consumptive use associated with the commercial use will be approximately 10% of water used, and it is estimated that approximately 10% of water used for irrigation will be returned to the stream system. Water used for storage will also be used for subsequent irrigation, but for purposes of this application is considered to be 100% consumed. Before any other type of sewage treatment is proposed in the future, including incorporation of the lots into a central sewage collection and treatment system, Applicants, or successors and assigns, will amend this decree prior to such change and thereby provide notice of the proposed change to other water users by publication procedures in use at that time. **D.** During pumping Applicants will replace an amount equal to 4% of the annual amount withdrawn to the affected stream systems pursuant to Section 37-90-137(9)(c), C.R.S. Because depletions may occur to stream systems in Water Divisions 1 and 2, this application is being filed in both divisions. Return flows from use of the water on the Subject Property may return to the South Platte stream system and the Arkansas stream system and such return flows are sufficient to replace the required amount of replacement. If not, Applicants request that the total actual amount of depletion to all stream systems be returned to the Arkansas stream system and for a finding that those replacements are sufficient. Applicants will reserve an equal amount of nontributary Arapahoe aquifer groundwater underlying the Subject Property to meet future augmentation requirements. **WHEREFORE, Applicants pray that this Court enter a Decree:** 3. 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; FURTHER, Applicants pray that this Court grant such other relief as seems proper in the premises.

(Applicants and attachments, 4 pages)

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

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of November 2004, (forms available at Clerk's office, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$70.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this \_\_\_\_\_ day of October, 2004.

\_\_\_\_\_  
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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