

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND ORDERED PUBLISHED DURING SEPTEMBER 2010

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 September 2010, 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. 10CW61 – PETROGLYPH OPERATING COMPANY, INC., P. O. Box 70019, Boise, ID 83707 (Direct all pleadings to: Steven J. Bushong and Thomas Korver, Porzak Browning & Bushong LLP, Attorneys for Applicant, 929 Pearl Street, Suite 300, Boulder, CO 80302; (303) 443-6800)

Application for Change of Water Rights and Augmentation Plan

HUERFANO COUNTY, COLORADO

2. Overview of Application. Applicant operates a coal bed methane (CBM) field in Huerfano County, Colorado. CBM is produced from the Vermejo Formation, which lies at an average depth of 2,000 feet below the ground surface. Applicant is not producing CBM at this time, but is implementing a methane remediation plan in the more shallow Poison Canyon formation that overlies part of its CBM field. The remediation plan is largely non-depletive with potential depletions from groundwater pumping replaced by accretions from reinjection of that groundwater. This Application involves an augmentation plan to replace any depletions resulting from operation of the remediation plan and a change of water rights associated with the augmentation supply. For purposes of this Application only, Applicant assumes the Vermejo Formation is tributary. Applicant preserves all rights to claim that some or all of the Vermejo Formation is nontributary at a later time, thus potentially eliminating any need for this augmentation plan or providing an alternative augmentation supply. **PLAN FOR AUGMENTATION. 3.**

Augmented Structures. A. Production Wells: i. Rohr 04-10. ii. Rohr 09-10. B. Recovery Wells: i. Recovery 1 Kittleson. ii. Recovery 3 PEI. iii. Recovery 4 Barrett. iv. Recovery 5 Masters. v. Recovery 6 Coleman. None of the above structures have been decreed water rights and no water rights are sought for these structures by virtue of this application. **4. Description of Augmented Structures.** A. Production Wells. The following existing CBM production wells (“Production Wells”) will be used to withdraw groundwater for the remediation plan: i. Rohr 04-10. This well was permitted by the Colorado Oil and Gas Conservation Commission (API # 05-055-6166) and drilled to a depth of 2243 feet into the Vermejo Formation. The Colorado State Engineer permitted this well (well permit no. 70316-F) for a maximum pumping rate of 29 GPM. This well is located in the NW ¼ SE ¼ of Section 4, Township 29 South, Range 67 West of the 6th P.M., at a point 1,987 feet from the South section line and 2,022 feet from the East section line of said section. ii. Rohr 09-10. This well was permitted by the Colorado Oil and Gas Conservation Commission (API # 05-055-6165) and drilled to

a depth of 2243 feet into the Vermejo Formation. The Colorado State Engineer permitted this well (well permit no. 70317-F) for a maximum pumping rate of 29 GPM. This well is located in the NW ¼ SE ¼ of Section 9, Township 29 South, Range 67 West of the 6th P.M., at a point 2,071 feet from the South section line and 2,087 feet from the East section line of said section. B. Recovery Wells. Applicant utilizes recovery wells drilled into the Poison Canyon Formation as part of its remediation plan ("Recovery Wells"). The following Recovery Wells have been or may be used by Applicant: i. Recovery 1 Kittleson, (well permit no. 67660-F), located in the NW ¼ NW ¼ of Section 10, Township 29 South, Range 67 West of the 6th P.M., at a point approximately 566 feet from the North Section line and 879 feet from the West Section line of said Section. The permitted combined pumping rate of this well and well permit nos. 67659-F and 67661-F is 44 GPM. ii. Recovery 3 PEI, (well permit no. 67659-F), located in the SW ¼ SW ¼ of Section 3, Township 29 South, Range 67 West of the 6th P.M., at a point approximately 1,222 feet from the South Section line and 1,073 feet from the West Section line of said Section. The permitted combined pumping rate of this well and well permit nos. 67660-F and 67661-F is 44 GPM. iii. Recovery 4 Barrett, (well permit no. 67661-F), located in the NE ¼ SE ¼ of Section 3, Township 29 South, Range 67 West of the 6th P.M., at a point approximately 2,550 feet from the South Section line and 943 feet from the East Section line of said Section. The permitted combined pumping rate of this well and well permit nos. 67659-F and 67660-F is 44 GPM. iv. Recovery 5 Masters, (well permit no. 68729-F), located in the NW ¼ SW ¼ of Section 10, Township 29 South, Range 67 West of the 6th P.M., at a point approximately 2,450 feet from the South Section line and 600 feet from the West Section line of said Section. This permitted combined pumping rate of this well and well permit nos. 67659-F through 67661-F is 44 GPM. v. Recovery 6 Coleman, (well permit no. 26794), located in the NE ¼ SW ¼ of Section 10, Township 29 South, Range 67 West of the 6th P.M., at a point approximately 2,500 feet from the South Section line and 2,331 feet from the West Section line. Recovery 6 Coleman is a well that has not yet been used for remediation. Applicant seeks approval to allow additional Recovery Wells to be included in this augmentation plan to the extent needed as part of the remediation plan.

5. Water Rights to be Used for Augmentation. A. Coler Ditch and Reservoir System Water Rights. Described in more detail in paragraph 10, below. Applicant will seek a decree that allows the addition of other sources of augmentation water to be included so long as those sources are permitted or decreed to allow for augmentation.

6. Statement of Plan for Augmentation. The methane remediation plan involves the use of Recovery Wells that pump groundwater from the Poison Canyon formation to allow methane removal, then that groundwater is re-injected back into the Poison Canyon formation by gravity using injection wells as described in paragraph 7, below. The remediation plan also includes the use of the Production Wells to pump groundwater from the Vermejo formation for injection into the Poison Canyon formation with the injection wells in order to help control the movement of methane. A map depicting the location of these structures is attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Applicant proposes to replace out-of-priority depletions associated with the use of the Production Wells and Recovery Wells in the remediation plan, or any wells drilled to replace those wells, as may be necessary to prevent injury

to vested water rights. Water attributable to Applicant's interest in the Coler System water rights described in paragraph 10, below, will be released to the Cucharas River as a replacement source. Applicant will install and maintain such measuring devices and implement such accounting as may be reasonably required to replace depletions under the approved augmentation plan. **7. Injection Wells.** The injection wells used in the remediation plan are not permitted to withdraw any groundwater. For informational purposes, the existing eight injections wells are permitted under well permit nos. 276424 through 276428, and 276430 through 276432, and their location is depicted on Exhibit A. The wells are generally located in the NW ¼ NW ¼, NE ¼ NE ¼ of Section 3, NW ¼ SW ¼ of Section 2, NW ¼ SE ¼ of Section 4, SW ¼ NE ¼ of Section 9, NW ¼ SW ¼, SW ¼ NE ¼, NE ¼ NE ¼ of Section 10, all located in Township 29 South, Range 67 West of the 6th P.M. in Huerfano County, Colorado. Additional injection wells may be added at a later time. **8. Depletions Associated with Augmented Structures.** Groundwater pumped from the Vermejo Formation with the Production Wells is assumed to be tributary to the Cucharas River until proven otherwise, with depletions to the Cucharas River at the outcrop of the Vermejo Formation near Walsenburg, Colorado. The groundwater is re-injected into the Poison Canyon Formation and returns to the Cucharas River upstream of the Vermejo Formation outcrop. Thus, in determining the potential out-of-priority depletions caused by pumping the Production Wells, Applicant will offset such depletions by the timing and amount of return flows or accretions from the re-injected groundwater. Groundwater withdrawn from the Poison Canyon Formation by the Recovery Wells is returned to the same formation from which it was withdrawn and does not result in depletions unless this groundwater is first treated before re-injection. Any brine stream resulting from treatment of groundwater from the Production Wells and/or from the Recovery Wells ("Brine Stream") will be accounted for separately. If the Brine Stream is treated and returned to the Cucharas River, Applicant will take credit for that return flows against any net depletion to the Cucharas River. Using conservative estimates regarding the operation of the methane remediation plan, stream depletions were initially estimated at a maximum of less than 3.0 acre-feet a year after 20 years. **9. Name and address of the owners, or reputed owners, of the land upon which any new diversion structure or modification to any existing diversion structure is or will be constructed.** Although no changes are sought in the permitted operation of the Augmented Structures, the Augmented Structures not located on land owned by Applicant are located on land owned by the following: Daniel & Marieke Kittleson, 2437 E. 16th Pl., Thornton, CO 80233; Todd Barrett, 3805 Chimayo Rd., Littleton, CO 80123; William Todd Masters, 7984 E. Inspiration Dr., Parker, CO 80138; William and Alice Rohr, 3346 County Road MM, Wiley, CO 81092; Vince Coleman, 10307 S. Dahlberg Rd., Franktown, CO 80116. **REQUEST FOR APPROVAL OF CHANGE OF WATER RIGHT. 10. Description of Decreed Water Right for Which Change is Sought.** Applicant entered into an option contract to purchase a one-sixtieth (1/60th) interest (the "1/60th Interest") in the Coler Ditch and Reservoir System ("Coler System") as defined, established, and described by the Stipulation between the City of Walsenburg and George Habib and others, Civil Action No. 4468, District Court of Huerfano County, Colorado, dated February 5, 1975 (and other agreements mentioned therein), and more particularly described as follows: A. **Lake Miriam Ditch:** (i) The headgate of the Lake Miriam Ditch, which diverts from

the Cucharas River, is located in the NW ¼ of the SE ¼ of Section 32, Township 28 South, Range 67 West of the 6th P.M., Huerfano County, Colorado. The Lake Miriam Ditch is the feeder canal for Lake Miriam Reservoir, Lake Oehm Reservoir, and the Coler Seepage Reservoir. (ii) Lake Miriam Ditch was awarded a decree for a 20 cfs direct flow water right from the Cucharas River, with an appropriation date of March 1, 1884, Priority No. 61, by the District Court of the Third Judicial District, Huerfano County, on June 12, 1889. B. Lake Miriam Reservoir (a/k/a Horseshoe Reservoir): (i) Lake Miriam Reservoir is located in the W ½ of Section 13 and the NW ¼ of Section 24, Township 28 South, Range 67 West of the 6th P.M., Huerfano County, Colorado. (ii) Lake Miriam Reservoir was awarded a storage decree for 50,000,000 cubic feet (1,148 acre-feet) of water from the Cucharas River with an appropriation date of April 14, 1901 by the Huerfano County District Court, Water District 16, on October 3, 1921. C. Lake Oehm Reservoir (a/k/a Martin Lake): (i) Lake Oehm Reservoir is located in the E ½ of Section 13, Township 28 South, Range 67 West of the 6th P.M. and the W ½ of Section 18, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado. (ii) Lake Oehm Reservoir was awarded a storage decree for 100,000,000 cubic feet (2,296 acre-feet) of water from the Cucharas River with an appropriation date of April 30, 1901 by the Huerfano County District Court, Water District 16, on October 3, 1921. In addition, the Lake Oehm Reservoir Enlargement was decreed for 12,070,000 cubic feet (277 acre-feet) with an appropriation date of November 25, 1905 by the Huerfano County District Court, Water District 16, on October 3, 1921. D. The Coler Reservoir System Cucharas Delivery Flume: Water released to the Cucharas River from storage in the above-described reservoirs is delivered through the Coler Reservoir System Cucharas Delivery Flume, which is located in the NE ¼ of the SW ¼ of Section 17, Township 28 South, Range 66 West of the 6th P.M., Huerfano County, Colorado at a point approximately 1,600 feet from the West line and 2,150 feet from the South line of said Section 17. E. Civil Action Nos. 3266 and 3848: On December 30, 1966 in civil Action Nos. 3266 and 3844 (the “Ackerman Decree”), the Huerfano County District Court, Water District 16, entered a decree changing the above-described Coler System water rights to allow their use as follows: Not only for irrigation, but also for domestic and culinary use, for fire protection, for sewer flushing, for street sprinkling and flushing, for generation of steam and electricity, for manufacturing, for recreation, and for such other purposes and uses as are usual or customary for municipal purposes and for the welfare of the inhabitants of a municipality; PROVIDED, HOWEVER, that “irrigation” as used herein shall mean lawn and garden, park and other municipal irrigation and shall not mean rental or leasing by the City to farmers and ranches for irrigation of crops. F. Case No. 03CV80: The 1/60th Interest in the Coler System water rights was subject to the decree in Case No. 03CV80, District Court, Huerfano County, which, *inter alia*, quieted title to a 4/30th interest in the Coler System water rights in the name of Colorado East Bank & Trust, Custodian for the David Wallerstein IRA (“Wallerstein”). Applicant is currently under an option contract to purchase the 1/60th Interest from Wallerstein. G. Case No. 02CW121: A portion of the Coler System water rights was changed to allow augmentation by decree entered in Case No. 02CW121, Water Division No. 2, dated March 18, 2005. H. A map showing the location of the structures described above is attached to the Application as Exhibit B. **11. Description of Proposed Change.** A. Proposed Change of Water Rights: Applicant seeks to include augmentation, including

augmentation by exchange, as an additional permissible use of the subject 1/60th Interest in the Coler System water rights. B. Historically Irrigated Lands. A map depicting the approximate location of the historical irrigation use, which includes the 1/60th Interest in the Coler System water rights, is attached to the Application as Exhibit C. C. Historical Use. A summary of diversion records associated with the historical irrigation use is attached to the Application as Exhibit D. A summary of diversion records for the Lake Miriam Ditch is attached to the Application as Exhibit E. Applicant will quantify the transferable consumptive use associated with the subject 1/60th Interest in the Coler System water rights in order to ensure that no unlawful expansion of use results from the change of water rights sought herein. **12. Name and address of the owners, or reputed owners, of the land upon which any new diversion structure or storage structure, or modification to any existing diversion structure or storage structure, is or will be constructed:** The structures comprising the Coler System are located on land owned by the City of Walsenburg, 525 South Albert Avenue, Walsenburg, Colorado 81089. WHEREFORE, Applicant requests that the Court approve the augmentation plan and change of water rights requested herein and such other relief as may be appropriate.

CASE NO. 10CW62 – DWAIN AND DONNA EATON, 1004 East Maple Street, Lamar, CO 81052; (719) 336-5068

Application for Change of Water Right

PROWERS COUNTY

Decreed water right for which change is sought: Name of Structure: Mead Seepage Ditch and Smith Seepage Ditch. **Date of original and all relevant subsequent decrees:** Mead 11/13/1905; Smith: 4/11/1911. (Note: Information submitted with the application shows that the Mead Seepage Ditch and Smith Seepage Ditch were decreed in Bent County District Court on 10/14/1918. An additional water right was decreed to the Smith Seepage Ditch in Bent County District Court on June 3, 1922). **Decreed legal description of structures:** Mead Seepage Ditch: Bent County at a point on the north boundary line of the southwest quarter of Section 19, Township 22 South, Range 45 West of the 6th P.M., which point is 8.3 chains west of the northeast corner of said quarter section. Smith Seepage Ditch: Bent County at a point in Section 19, Township 22 South, Range 45 West, whence the Northwest corner of Section 19 bears north 48 degrees, 00' west and distant therefrom 2522 feet. **Decreed source of water:** Mead & Smith Seepage. **Appropriation Date:** Mead Seepage Ditch: 11/13/1905. Smith Seepage Ditch: 4/11/1911. **Decreed use:** Irrigation. **Amount of water that applicant intends to change:** 4 cfs. **Detailed description of proposed change:** To change the decreed points of diversion for the Mead Seepage Ditch and the Smith Seepage Ditch to their actual physical point of diversion as follows: Bent County, NE ¼ SW ¼ Section 19, Township 22 South, Range 45 West, 6th P.M., 2660 feet from the North line and 2080 feet from the West line of Section 19. **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. 10CW63 – THE CITY OF FLORENCE, a Colorado Statutory City, c/o Lew Quigley, City Manager, 600 West 3rd Street, Florence, CO 81226; THE TOWN OF COAL CREEK, a Colorado Statutory Town, c/o the Honorable Connie Higgs, Mayor pro tem, 311 Main Street, Coal Creek, CO 81221; and THE TOWN OF WILLIAMSBURG, a Colorado Statutory Town, c/o The Honorable Ron Mares, Mayor pro tem, 19 John Street, Williamsburg, Florence, CO 81226 (Robert F. T. Krassa and Robin A. Byers, Krassa & Miller, LLC, Attorneys for Applicants, 2344 Spruce Street, Suite A, Boulder, CO 80302; (303) 442-2156)

Application for Change of Water Rights

FREMONT COUNTY

2. Decreed name of structure for which change is sought: Union Ditch. This Application is for change of a total of 520 shares in the Union Ditch and Water Company acquired by Applicants after November 30, 1999. Ownership among the three co-applicants is: City of Florence 437 shares, Town of Coal Creek 37 shares and Town of Williamsburg 46 shares. Shares of Union Ditch previously changed by decree in case 80CW93 entered August 3, 1982 and by decree in case 99CW149 entered July 20, 2010 in this court are not part of the present application. **3. From previous decrees for the water rights of Union Ditch** (see also decrees in change cases 80CW93 and 99CW149 mentioned above): **A. Date entered:** February 3, 1894 (no case number). **B. Decreed Point of Diversion:** on the South side of the Arkansas River at a point North 41 degrees and 28 minutes West fifteen and nine tenths chains (15.9 chains) from the center of Section 7 Township 19 South of Range 69 West. Since approximately 1941, the Union Ditch water has been diverted at the headworks of the Minnequa Canal, which is located on the south bank of the Arkansas River in the NW/4NW 1/4, Sec.7, T. 19S., R 69W. of the 6th P.M. in Fremont County at a point approximately 750 feet from the west line and 1200 feet from the north line of said Section 7 (see also map attached to the Application as Exhibit A. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). **C. Decreed source:** Arkansas River., **D. Appropriation Date:** November 30, 1861, **E. Amount:** 48 cfs, **F. Decreed use of water:** irrigation, **G. Amount of water that Applicants intend to change:** any and all water to which they are entitled as owners of the subject 520 shares. There are approximately 30,000 shares issued and outstanding in the Union Ditch and Water Company. **4. Historic Use:** The water rights listed in paragraph 2 of this Application have historically been used for irrigation purposes with a consumptive use of 30.2% as a percentage of water diverted. The area historically irrigated is shown on the map attached to the Application as Exhibit B. Summaries of diversion records are attached to the Application as Exhibit C. **5. Proposed Change:** Applicants propose to change the use of the subject water to municipal, domestic, industrial, agricultural, commercial, irrigation, stock watering, recreation, fish and wildlife, fire protection and other beneficial uses including augmentation, substitution and exchange. Such water may be immediately applied to beneficial use, or stored and subsequently applied to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for all other augmentation purposes including taking credit for all return flows as augmentation for or as offsets against out-of-priority tributary depletions as

provided in said decree in 80CW93 and any decree entered in this case. Applicants also propose to store subject water in the Florence-Coal Creek-Williamsburg Reservoir, located on Oak Creek in the west half, Sec. 17 and east half of Sec. 18, T19S, R69W of the 6th P.M. in Fremont County. This reservoir was adjudicated by Decree dated May 26, 1982 (recorded June 11, 1982 at reception no. 487401, Book 677, Page 456) in Case 80CW92 in this Court. This reservoir has as its source Oak Creek water and Arkansas River water diverted at the said Minnequa Canal. No change in the point of diversion from the Arkansas River is requested. Applicants' proposed plan of operation is the same as in Case 80CW93, as that was revised by the Decrees of this Court in Cases 86CW120 and 99CW149. **PLAN FOR AUGMENTATION.** **6. Name of Structure to be augmented:** The Florence-Coal Creek-Williamsburg direct flow right adjudicated by Decree of this Court dated November 8, 1982 as amended February 11, 1985 in Case 80CW91 (recorded February 20, 1985 at Book 715, Page 455), as changed to divert at the above described headworks of the Minnequa Canal by decree of this Court dated December 31, 1987 in Case 86CW120, which decree was recorded January 13, 1988 at Book 853, page 277, records of Fremont County. The 80CW91 water right has an appropriation date of August 26, 1980, source is Arkansas River, decreed amount is 7.6 cfs and decreed uses are irrigation, domestic, municipal and all other beneficial uses. **7. Previous decrees for water rights to be used for augmentation:** as stated in paragraph 3 above. **8. Historic use:** See paragraph 3.F. above. **9. Statement of plan for augmentation:** The plan will use the historical consumptive use of the water right listed in paragraph 2 hereof to replace the consumptive use of water diverted under the right described in paragraph 6 hereof. **GENERAL ALLEGATIONS.** **10.** The Decrees in said cases 80CW93 and 99CW149 are res judicata as to all matters here presented. **11. Proposed Provisions under § 37-92-304(3.5).** The changes pursuant to 80CW93 and 99CW149 caused no substantiated complaints as to injurious "shrink" (seepage and evaporation). Applicants propose to install up to a total of three measurement devices, in addition to those already in use, on a when and as needed basis, to determine whether structural improvements are needed to avoid an increase in the share of shrink borne by other shareholders in those companies as a result of the proposals herein. Applicants disclaim any responsibility for shrink caused by changes in irrigation practices or use of water as a result of actions of other shareholders. **12. Ownership of structures.** Applicants own or have the right to use all structures involved in this case. This application does not contemplate any new diversion or storage structures. The Minnequa Canal and its headworks are owned by Rocky Mountain Steel Mills, 1612 E. Abriendo Ave., Pueblo, CO 81004. The Union Ditch is owned by The Union Ditch and Water Company, P.O. Box 71, Florence, CO 81226. WHEREFORE, Applicants pray that this Court enter a decree: (a) Allowing Applicants to use their said water rights for municipal and other purposes, and to store said water in the reservoir described in said paragraph 5, all as described herein; (b) Approving Applicants' plan for augmentation proposed herein; (c) Determining that the change of Applicants' water rights, as well as operation of the proposed plan for augmentation, will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right and (d) For such further and additional relief as the Court may deem proper.

CASE NO. 10CW64 (Water Division 2) and CASE NO. 10CW242 (Water Division 1)
– PALMER DIVIDE WATER COMPANY, 2760 N. Academy, #314, Colorado
Spring, CO 80917 (James J. Petrock and Kara N. Godbehere, Petrock & Fendel,
P.C., Attorneys for Applicant, 700 Seventeenth Street, Suite 1800, Denver, CO 80202;
(303) 534-0702)

Application for Approval of Plan for Augmentation

EL PASO COUNTY

2. Description of plan for augmentation: A. Groundwater to be augmented: 46.5 acre-feet per year of not nontributary Dawson aquifer groundwater to be withdrawn over a 100 year pumping period as decreed in Consolidated Case Nos. 93CW75, Water Division 2, and 93CW147, District Court, Water Division 1, and 87.15 acre-feet per year of not nontributary Dawson aquifer groundwater to be withdrawn over a 300 year pumping period as decreed in Consolidated Case Nos. 94CW49(A) and (B), Water Division 2, and 94CW144(A) and (B), District Court, Water Division 1. The land which is the subject of the decree is approximately 1802 acres located in Sections 4, 5, 7, 8, 9, and 17, T11S, R66W of the 6th P.M., as shown on Attachment A to the Application (Subject Property). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Applicant is the owner of the groundwater which is the subject of this application. **B. Water rights to be used for augmentation:** Return flows from the use of not nontributary Dawson aquifer water and return flows and direct discharge of nontributary groundwater as decreed Case No. 85CW230, District Court, Water Division 1. **C. Statement of plan for augmentation:** The purpose of this augmentation plan is to supplement withdrawals from individual not nontributary Dawson aquifer wells as also previously decreed in the decrees described in paragraph 2.A above. In Consolidated Case Nos. 93CW75, Water Division 2, and 93CW147, District Court, Water Division 1, an augmentation plan was approved for the use of 119 individual Dawson aquifer wells to withdraw 0.38 acre-feet per year (0.27 for inhouse use and 0.11 acre-feet for irrigation of 3000 square-feet of irrigated area). In Consolidated Case Nos. 94CW49(A) and (B), Water Division 2, and 94CW144(A) and (B), District Court, Water Division 1, an augmentation plan was approved for the use of 390 individual Dawson aquifer wells to withdraw 0.419 acre-feet per year (0.27 for inhouse use and 0.149 acre-feet for irrigation of 3000 square-feet of irrigated area). By this application an additional withdrawal of 0.62 acre-feet and 1 acre-foot total will be available through 75 of the wells in Consolidated Case Nos. 93CW75, Water Division 2, and 93CW147, District Court, Water Division 1, and an additional withdrawal of 0.581 acre-feet and 1 acre-foot total will be available through 150 of the wells in Consolidated Case Nos. 94CW49(A) and (B), Water Division 2, and 94CW144(A) and (B), District Court, Water Division 1. The additional annual amounts will provide additional inhouse use and irrigation of an additional 7000 square feet of irrigated area per well. Residential lots on which this water will be used utilize non-evaporative septic systems and consumptive use associated with inhouse use will be approximately 10% of water used and consumptive use associated with irrigation use will be approximately 90% of water used. Applicant requests that this plan for augmentation be operated in combination with the augmentation plans previously approved and described above. Lot owners operating wells under this new plan for augmentation will report all annual

pumping to the Kings Deer Homeowners Association in a timely manner. **D.** Actual depletions to the affected stream systems will be replaced during pumping pursuant to Section 37-90-137(9)(c), C.R.S. Depletions 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 return to the South Platte River stream system and such return flows are sufficient to replace the required amount of replacement. Applicant requests that the total actual depletion to all stream systems be returned to the South Platte River stream system and for a finding that those replacements are sufficient. Additional amounts of nontributary groundwater as decreed in Case No. 85CW230 will be reserved to meet any additional post pumping augmentation requirements. Lot owners operating wells under this plan will be responsible for any post pumping depletions which may occur by the pumping of these additional annual amounts, unless approved by the Kings Deer Homeowners Association. **WHEREFORE**, Applicant prays 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.

CASE NO. 10CW65 - CHRISTOPHER J. RODACY and MARY C. RODACY, 12630 Milam Road, Colorado Springs, CO 80908 (Henry D. Worley, MacDougall, Woldridge & Worley, PC, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905-1743, Phone: (719) 520-9288)

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

EL PASO COUNTY

I. APPLICATION FOR DENVER BASIN WATER RIGHTS. 1. Names of wells and permit, registration, or denial numbers: Permit No. 126857. **2. Legal description of wells:** Permit No. 126857 is constructed in the Dawson aquifer in the SE1/4 SE1/4 Section 11, T. 12 S., R. 66 W., 6th P.M. Up to three additional wells may be constructed in the Dawson aquifer. One well in each of the Denver, Arapahoe and Laramie-Fox Hills aquifers is contemplated, plus all necessary additional and/or replacement wells, to be located anywhere on Applicants' 20 acre property located in the SE1/4 E1/4 Section 11, T. 12 S., R. 66 W., 6th P.M., in El Paso County, other than on 2.1 acres which is subject to an easement for road purposes owned by El Paso County, which easement allows Applicants to continue to use that land for "all purposes not inconsistent with the purposes set forth in this Easement"). The address of the property is 12630 Milam Road, Colorado Springs, CO 80908; its legal description is attached to the Application as Exhibit A. A map showing its general location is attached to the Application as Exhibit B. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Property is located entirely within the Arkansas River drainage. **3. Sources:** not nontributary Dawson aquifer; not nontributary Denver aquifer; not nontributary Arapahoe aquifer; nontributary Laramie-Fox Hills aquifer. **5. Amount claimed:** Dawson aquifer - 15 gpm, 16.0 AF/yr, absolute; Denver aquifer - 15 g.p.m., 15.98 AF/yr, absolute; Arapahoe aquifer - 150 g.p.m., 8.37 AF/yr, absolute; Laramie-Fox Hills aquifer - 150 g.p.m., 5.63 AF/yr, absolute. These amounts include the water underlying the 2.1 acre easement previously mentioned. The water court will be asked to retain jurisdiction over such decree to enter a final

determination of the amount of water available for appropriation from each aquifer based on geophysical logs for such wells. The water claimed in the Dawson aquifer exceeds the amount shown in the State's database; the variation is based on an analysis of the well log for the nearby well permit 23227-F in the Denver aquifer. **6. Proposed use:** all beneficial uses including augmentation, except municipal uses. **7. Name and address of owner of land on which wells are/will be located:** Same as Applicants. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.** **8. Name of structures to be augmented:** Well permit 126857. No other water rights are or will be diverted from that well. After entry of a decree, permit 126857 will be re-permitted consistent with the provisions of the decree. Also, up to three additional Dawson aquifer wells. **9. Previous decrees for water rights to be used for augmentation:** None. **11. Statement of plan for augmentation:** Well permit 126857 is permitted for domestic uses. Applicants seek approval of a plan for augmentation which will allow additional uses from this well, including *without limitation* indoor residential uses, commercial uses, a detached home office or guest house, landscape and garden irrigation, stock water, hot tub and/or swimming pool. In addition, Applicants seek approval of a plan for augmentation which will allow the same kinds of uses from up to three additional Dawson aquifer wells. Indoor use for residences is expected to equal 0.3 acre foot annually. Treatment of waste water from indoor uses will be achieved using nonevaporative individual septic tanks and leach fields ("ISDS"); consumption of water so treated will not exceed 10 percent of residential indoor uses, or 0.03 acre foot annually, with 90 percent, or 0.27 acre foot annually, returning to the nearest stream. Depletions in the 300th year are modeled to equal 24.5 percent of annual pumping. Total annual pumping shall not exceed 2.0 acre feet; each Dawson aquifer well will be limited to 2.0 acre feet annually, divided by the number of lots. Based on total annual pumping of 2.0 acre feet, depletions in the 300th year will equal 0.49 acre foot. So long as there are ISDS return flows from at least two single family dwellings, such return flows alone will equal at least 0.54 acre foot annually, which exceeds stream depletions each year during pumping. Change to a type of wastewater disposal other than nonevaporative ISDS shall require an amendment of this plan for augmentation. Applicants propose to replace depletions during pumping with Dawson aquifer return flows from the ISDS, and to replace post-pumping depletions with the nontributary Laramie-Fox Hills aquifer water decreed herein, all of which will be reserved for that purpose. Applicants will reserve the right to replace such depletions with any other judicially acceptable source of augmentation water, upon judicial approval after appropriate notice. **12. Miscellaneous provisions.** (1) There is one lien against the Applicants' property, the lienor will be notified of this application pursuant to C.R.S. 37-92-302(2)(b). (2) Applicants are sending a copy of this letter to the Board of County Commissioners of El Paso County by certified mail. (3) This application is being filed in Water Divisions 1 and 2. After the period for filing statements of opposition has expired, Applicants will seek to consolidate the two cases in Water Division 2, where the Property is located.

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 2010, (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 7th day of October, 2010.



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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