

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING SEPTEMBER  
2015  
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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 and/or ordered published during September 2015, 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. 2015CW15 – ELIN PARKER GANSHOW, 300 CR 125, Westcliffe, CO  
81252; (719) 783-2222**  
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Application, as amended, for Simple Change in Surface Point of Diversion Pursuant to § 37-92-305(3.5), C.R.S.

**CUSTER COUNTY**

**Decreed water right for which change is sought:** Name of structure: Ernest Roll #3; **Date of original and all relevant subsequent decrees:** 3/12/1896; **Case No.:** 10501. **Court:** Custer County. **Legal description of structure as described in most recent decree that adjudicated the location:** In the NW quarter of the NE quarter of section 16 on the West side of Grape Creek at a point where the SE corner of the NW quarter of the NE quarter of section 16 bears South 67 degrees West 120 feet and in the NW quarter of the NE quarter of Section 16. General course is NW. **Decreed source of water:** Grape Creek. **Appropriation Date:** 10/01/1878. **Total amount decreed to structure in gallons per minute:** .75 cfs Absolute. **Decreed use or uses:** To irrigate 25 acres in the North half of the NE quarter of Section 16 and in the South half of the SE quarter of Section 9. On the West side of Grape Creek. **Amount of water that applicant intends to change:** .75 cfs Absolute. **Detailed description of proposed change in a surface point of diversion:** There are no intervening water rights involved. The water will be diverted via an existing structure for the Ernest Roll #2 ditch and be measured via an existing weir. Jerry Livengood, our water commissioner, supports this simple change. **Location of the new surface point of diversion: UTM Location (Zone 13; NAD83):** Northing 4202179; Easting 460540. **Source of UTM:** Garmin GPS and ArcGIS. **Accuracy of location displayed on GPS device:** 11.2 feet. **PLSS Legal Description:** Custer County, SE ¼ NW ¼ Section 16, Township 24 South, Range 72 West, 6<sup>th</sup> P.M., 292 feet from the North line and 318 feet from the East line. **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:** Music Meadows, LLC, 6076 CR 119, Westcliffe, CO 81252.

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**CASE NO. 2015CW3044** – This case number does not exist in Water Division 2. It is listed in the resume to account for the case number in consecutive order.  
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**CASE NO. 2015CW3045 (Water Division 2) and Case No. 2015CW3111 – CHAD D. THURBER and CRYSTAL M THURBER, 1474 Lily Lake Drive, Colorado Springs, CO 80921-4109**

(Please address all pleadings and correspondence to Applicants' attorney: Henry D. Worley, Worley Law Firm, LLC, 611 North Weber Street, Suite 104, Colorado Springs, CO 80903; (719) 634-8330)

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:** none. **2. Legal description of wells/location of Applicants' property:** One well in each of the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers is contemplated, plus additional and/or replacement wells as necessary. All such wells shall be located anywhere on Applicants' 6.49 acre property located at 8205 Lakeview Drive, Colorado Springs, CO 80908. The legal description of the Property is Lot 19 in Ponderosa Pines, subdivision no. 2, which is located in the NW1/4 Section 4, T. 12 S., R. 65 W., 6<sup>th</sup> P.M., in El Paso County (the "Property"). Applicants also claim the right to appropriate the water underlying the south half (30 feet) of Lakeview Drive where it is adjacent to the Property. A map showing the Property's general location is attached to the Application as Figure 1; a second more detailed map is attached to the Application as Figure 2. The Applicants' deed is attached as Exhibit A. (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 within Water Division 1. The Property, including the road area, is 6.89 acres. **3. Sources:** not nontributary Dawson aquifer; nontributary Denver aquifer; nontributary Arapahoe aquifer; nontributary Laramie-Fox Hills aquifer. **4. A. Date of appropriation:** Not applicable. **4.B. How appropriation was initiated:** Not applicable. **4.C. Date water applied to beneficial use:** Not applicable. **5. Amount claimed:** Dawson aquifer - 15 gpm, 698 acre feet absolute; Denver aquifer - 15 g.p.m., 479 acre feet absolute; Arapahoe aquifer - 150 g.p.m., 302 acre feet, absolute; Laramie-Fox Hills aquifer - 150 g.p.m., 192 acre feet, absolute. 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, or logs from nearby wells. **6 Proposed uses:** Drinking, cooking and sanitary purposes inside a primary house and a guest house/detached home office; commercial for indoor drinking and sanitary purposes; stock water; hot tub/spa and/or swimming pool; lawn, orchard and garden (including greenhouse) irrigation; other landscaping features; fire suppression; augmentation. **7. Name and address of owner of land on which wells are/will be located:** Chad D. Thurber and Crystal M. Thurber, 1474 Lily Lake Drive, Colorado Springs, CO 80921-4109. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION. Name of structures to be augmented:** Thurber Well, which has not yet been constructed, but will be completed into the Dawson aquifer. **9. Previous decrees for water rights to be used for augmentation:** None. **10. Historic use:** Not applicable. **11. Statement of plan for augmentation:** Applicants seek approval of a plan for augmentation which will allow indoor residential uses, commercial uses (drinking and sanitary purposes only), a detached home office or

guest house, livestock water, landscape and garden/orchard (including greenhouse) irrigation, hot tub and/or swimming pool, fire fighting, dust suppression and augmentation. Indoor use for the primary house is expected to equal at least 0.2 acre foot annually. Treatment of waste water from indoor uses will be achieved using a nonevaporative individual septic tank and leach field system (“ISDS”); consumption of water so treated will not exceed 10 percent of uses, with 90 percent, or 0.18 acre foot annually, accruing to nearby streams. Annual pumping shall be limited to approximately 0.92 acre foot annually. ISDS return flows will equal or exceed the 0.18 acre feet of annual stream depletions during pumping. Applicants propose to replace depletions during pumping with return flows from the ISDS, and to replace post-pumping depletions with the nontributary Denver aquifer water decreed herein, approximately 255 acre feet 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 are no liens against the Applicants’ property, so the notice requirements of C.R.S. 37-92-302(2)(b) do not apply. (2) The El Paso County Board of County Commissioners has been notified of this application. See Exhibit B to the Application. (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 Division 1, where the Property is located. (3) Applicants reserve the right to make minor changes in the amounts claimed for appropriation, the amount of water reserved for replacement of post-pumping depletions, and in the allowable amounts to be pumped annually under the augmentation plan, based on the information contained in the Determinations of Facts and the Consultation Report.

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**CASE NO. 2015CW3046; Previous Case Nos. W-1314; W-1314(77); 1981CW105; 1986CW3; 1990CW3; 1996CW59; 2002CW170; 2009CW63 – OCHS BROTHERS, LLP (“Applicant”), P. O. Box 603, Colorado Springs, CO 80903** (Please address all pleadings and correspondence to Applicant’s Attorneys: Steven T. Monson and Ryan W. Farr, Felt, Monson & Culichia, LLC, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Finding of Reasonable Diligence

**EL PASO COUNTY**

**II. Name of Structure:** Ochs Brothers Well Nos. 1, 2, 3, 4, and 5. **III. Description of Conditional Water Right:** **A. Date of Original Decree:** The original decree was entered on May 11, 1973 in Case No. W-1314, District Court, Water Division No. 2. **B. Previous Diligence Findings:** There have been previous findings of diligence with the last having occurred on September 2, 2009 in Case No. 09CW63, District Court, Water Division 2. **C. Decreed Location:** All structures are located in Township 16 South, Range 65 West of the 6<sup>th</sup> P.M., specifically as follows: i. Ochs Brothers Well No. 1: SE ¼ of the SE ¼, Section 17. ii. Ochs Brothers Well No. 2: SW ¼ of the SW ¼, Section 16, and NW ¼ of the NW ¼, Section 21. iii. Ochs Brothers Well No. 3: NW ¼ of the NW ¼, Section 21. iv. Ochs Brothers Well No. 4: NW ¼ of the NW ¼, Section 21. v. Ochs Brothers Well No. 5: NE ¼ of the NE ¼, Section 20. **D. Source:** All structures are drilled into the alluvium of Fountain Creek, tributary to Fountain Creek, tributary to the Arkansas River. **E. Appropriation Dates and Amounts:** i. Ochs Brothers Well No. 1:

April 3, 1964 for 1.33 c.f.s. ii. Ochs Brothers Well No. 2: April 3, 1964 for 1.22 c.f.s. iii. Ochs Brothers Well No. 3: December 24, 1964 for 1.61 c.f.s. iv. Ochs Brothers Well No. 4: December 24, 1964 for 1.38 c.f.s. v. Ochs Brothers Well No. 5: December 24, 1964 for 0.73 c.f.s. **F. Uses:** All wells were decreed absolutely for irrigation purposes and were conditionally decreed for domestic, municipal, and industrial purposes. **G. Depth:** i. Ochs Brothers Well No. 1: 55 feet. ii. Ochs Brothers Well No. 2: 55 feet. iii. Ochs Brothers Well No. 3: 57 feet. iv. Ochs Brothers Well No. 4: 54 feet. v. Ochs Brothers Well No. 5: 53 feet. **H. Ownership:** Ochs Brothers, LLP, is the owner of easements upon the property where the water rights are located. **IV. 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:** The Ochs Brothers Well Nos. 1 through 5 are part of an integrated domestic and municipal water supply system together with the Ochs Brothers Well, as originally decreed in Case No. W-3205, with diligence last maintained in Case No. 14CW3051 (collectively “Ochs Brothers Wells”). The Ochs Brothers Wells are currently in a position to be developed into a condition to be utilized for the specific demands of an entity that needs to provide water service to the general area where the wells are located. Previous diligence work on the wells has involved conducting an engineering review on all of the Ochs Brothers Wells and the neighboring wells as part of the hydrology of the Fountain Aquifer system, including reliability of the physical production of the wells and their value and significance to the municipal water supply system of the area. At other diligence times portions of this integrated well system have been connected through a common pipeline. At this time, easements continue in place for this pipeline, the wells, and a water treatment site. The integrated ground water system at this point has been completed to the extent practical until actually incorporated into a municipal water supply system, as the redrilling of the wells, the installation of additional pipelines, and implementation of water quality treatment will depend on the demands and requirements of the final user. Current economic conditions and real estate construction in the area of the wells are such that the municipal water demands that could be met by the Ochs Brothers Wells remain in the process of development. The real estate development in this area is dictating when the infrastructure should be constructed and when the water rights will correspondingly be put into service in order for these water rights to be made absolute. Recently, the Applicant has proposed to the City of Fountain that the Ochs Brothers Wells be donated to the City as an additional municipal water supply system. The City of Fountain has expressed interest in receiving such a donation and Applicant has provided the City with a written proposal for the donation of the water rights along with an informational packet regarding all of the wells that would be conveyed to the City of Fountain. Applicant has also paid a total of \$2,968.93 in Colorado Water Protective Development Association (“CWPDA”) membership dues for the Ochs Brothers Wells since 2010. The dues have been for inactive membership in order to maintain membership rights and benefits in the CWPDA for the future use of these groundwater rights. **V. Additional Remarks:** The Ochs Brothers Well Nos. 1, 2, 3, 4, and 5 have absolute decrees for irrigation uses as originally decreed in Case No. W-1314. No part of the conditional decreed uses are requested to be made absolute in this Application.

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**CASE NO. 2015CW3047 (Water Division 2) and CASE NO. 2015CW3119 (Water Division 1) – MORGAN AND CHRISTINE BROWN, GWILYM AND LILLIAN BROWN, MARLENE BROWN, AND MARSHAL AND SARA BROWN, c/o 17435 Roller Coaster Road, Monument, CO 80132-8312**

(Please address all pleadings and correspondence to Applicants' attorney: James J. Petrock, Petrock & Fendel, P.C., 700 17<sup>th</sup> Street, #1800, Denver, CO 80202; (303) 534-0702)

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

**EL PASO COUNTY**

**Decree information for which change is sought:** Case Nos. 08CW206, 08CW315, 08CW316, and 08CW319, Water Division 1, decreed on October 22, 2009. The parcels associated with the decrees are comprised of a total of 59.8 acres and are generally located in the NW1/4 of Section 21, T11S, R66W of the 6<sup>th</sup> P.M., as shown on Attachment A to the Application (Parcels 1, 2, 3 and 6). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Said parcels are contiguous and the water decreed in these cases is owned by Applicants. The groundwater which is the subject of the decrees and this change are not nontributary Dawson and Denver and nontributary Arapahoe and Laramie-Fox Hills aquifer groundwater. Also, Case Nos. 08CW317 and 08CW318, decreed on October 22, 2009, are associated with a total of 95 acres also located in the NW1/4 of Section 21, as shown on Attachment A to the Application (Parcels 4 and 5). **Proposed change:** The decrees in Case Nos. Case Nos. 08CW206, 08CW315, 08CW316, and 08CW319, require that wells to withdraw the decreed groundwater be located on the land which is the subject of that specific decree. By this change, Applicants request that the combined decreed amounts be withdrawn through wells located on any of the parcels which are the subject of those decrees (Parcels 1, 2, 3, and 6). Applicants also request that 12.5 acre-feet per year of not nontributary Dawson aquifer groundwater decreed in Case Nos. 08CW317 and 08CW318, be withdrawn in combination with the Dawson aquifer groundwater decreed in Case Nos. 08CW206, 08CW315, 08CW316, and 08CW319 (57 acre-feet per year total), through wells located on any of the parcels which are the subject of those decrees (Parcels 1 through 6). No other parts of the original decrees will be changed herein. **Description of plan for augmentation:** **Groundwater to be augmented:** 14.25 acre-feet per year over a 300 year period and 14.25 acre-feet per year over a 100 year period of not nontributary Dawson aquifer groundwater decreed in Case Nos. 08CW206, 08CW315, 08CW316, 08CW317, 08CW318, and 08CW319, pursuant to the change requested above. **Water rights to be used for augmentation:** Return flows from the use of not nontributary Dawson aquifer water and return flows or direct discharge of nontributary Arapahoe and Laramie-Fox Hills aquifer groundwater decreed in Case Nos. 08CW206, 08CW315, 08CW316, 08CW317, 08CW318, and 08CW319. **Statement of plan for augmentation:** The 14.25 acre-feet per year of Dawson aquifer groundwater will be used to serve up to nineteen residential lots to be located on Parcels 1, 2, 3, and 6 as shown on Attachment A to the Application, through individual wells for a 300 year period. Each lot will require 0.75 acre-feet per year for in house use (0.4 acre-feet), irrigation of 5000 square feet of home lawn and garden (0.3 acre-feet), and use in a water feature (0.05 acre-feet). The second 14.25 acre-feet per year of Dawson aquifer

groundwater will be used for irrigation and fire protection use for a 100 year period. Applicants reserve the right to amend these values without amending the application or republishing the same. Sewage treatment for in house use will be provided by non-evaporative septic systems. Return flows associated with in house and irrigation use will be approximately 90% and 15%, respectively. Water used in a water feature is fully consumed. During pumping Applicants will replace actual depletions 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. Based on the location of the Subject Property, return flows from use of the water on the Subject Property may return to the South Platte River and the Arkansas River stream system and such return flows are sufficient to replace the total annual actual depletion. If not, Applicants request that the total actual depletion be returned to the South Platte River stream systems and for a finding that those replacements are sufficient. Applicants will reserve an equal amount of the nontributary groundwater to meet post pumping augmentation requirements. Further, Applicant prays that this Court grant the application and for such other relief as seems proper in the premises.

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**CASE NO. 2015CW3048 – DEBORAH BLOUIN, P.O. Box 1068, La Veta, CO 81055**

(Please address all pleadings and correspondence to Applicant’s attorney: John J. Cyran, John J. Cyran, Attorney at Law LLC, 1600 Broadway, Suite 900, Denver, CO 80202; (303) 746-3802)

Application for Approval of Plan for Augmentation, Appropriative Exchange Rights, and Conditional Water Rights

**HUERFANO COUNTY**

**APPLICATION FOR PLAN FOR AUGMENTATION: Structures to be Augmented:**

**Name of Structures:** Ojo Springs No. 1 and Blouin Spring No. 1. **Date of Original and All Subsequent Decrees:** The Ojo Springs No. 1 was adjudicated in Case No. 11CW45. The Blouin Spring No. 1 has not yet be adjudicated. There are no subsequent decrees.

**Verbatim Legal Description of Structure as Described in Most Recent Decree that Adjudicated the Location:**

(i) Ojo Springs No. 1: SE ¼ of the SE ¼ of Section 31, Township 28 South, Range 69 West, 6th P.M., Huerfano County, Colorado, 390 Feet from the South section line and 110 feet from the East section line of Section 31. (ii) Blouin Spring No. 1: SW ¼ of the SE ¼ of Section 4, Township 29 South, Range 69 West, 6th PM, Huerfano County, Colorado, 1,560 feet from the East section line and 1,090 feet from the South section line of Section 4.

**Decreed Source of Water:** South Abeyta Creek. **Proposed Uses of Water under Augmentation Plan:** Domestic and commercial purposes, and watering of domestic livestock.

**Water Rights to be Used for Augmentation.** Applicant Ms. Deborah Blouin has entered into a lease with the Navajo Western Water District, a Colorado Special District, for 2 acre-feet of water. The water leased to Ms. Blouin is excess augmentation water rights in Coler Ditch and Reservoir System (“Coler Augmentation Water”), which rights were changed in Case No. 02CW121, Water Division No. 2, for augmentation use by Navajo Western Water District. Pursuant to the terms and conditions of the decree in Case No. 02CW121, excess Coler Augmentation Water which Navajo is not using to augment its own water usage is available for lease by Navajo to others for

augmentation through a water court decree or a substitute supply plan, subject to the terms and conditions of the decree in Case No. 02CW121. The Coler Augmentation Water may also be used by exchange. Ms. Blouin also seeks the ability to add additional or alternative sources of replacement water to the proposed plan for augmentation pursuant to C.R.S. § 37-92-305(8)(c) or successor statutes. **Detailed Description of Plan for Augmentation:** In Case No. 2011CW45, Water Division 2, Applicant Ms Blouin obtained a decree awarding a conditional surface water right for Ojo Springs No. 1, a surface spring tributary to South Abeyta Creek and the Cucharas River. The 2011CW45 decree provided that “no use of the waters from Ojo Springs No. 1 shall be diverted or used UNTIL Applicant obtains an augmentation source and secures a decree from this Court providing for replacement of any out-of-priority depletions by such augmentation.” Case No. 2011W45 Decree, at p. 4 (emphasis original). Consistent with the 11CW45 Decree, Ms. Blouin has obtained from Navajo Western Water District an augmentation source to fully replace any out-of-priority depletions from the Ojo Spring No. 1 water right. By this Application, and pursuant to the 11CW45 decree, Ms. Blouin now seeks approval of an augmentation plan authorizing use of the Navajo Western Water District replacement source to fully augment any out-of-priority depletions from Ojo Springs No. 1. In addition, Ms. Blouin seeks approval under this augmentation plan to fully augment out-of-priority depletions for additional uses from the Ojo Spring No. 1, for which uses Ms. Blouin by this application seeks an additional conditional water right; as well as out-of-priority depletions from an additional surface water diversion structure (the “Blouin Spring No. 1”) to be located at a point upstream on South Abeyta Creek, for which structure Ms. Blouin by this application also seeks a new conditional surface water right. Water will be diverted from the Ojo Springs No. 1 and Blouin Spring No. 1 and hauled by truck for commercial and domestic uses and the watering of domestic livestock. The proposed augmentation plan provides replacement water in an amount sufficient to fully augment all out-of-priority depletions from Ojo Springs No. 1 and Blouin Spring No. 1. No credit is sought for any return flows; accordingly, the amount of replacement water provided under this plan will be equal to the amount of water diverted out-of-priority. The Navajo Western Water District replacement water leased by Ms. Blouin is water from the Coler Ditch and Reservoir System, as changed in Case No. 02CW121. Replacement credits from this source accrue to the Cucharas River downstream of the confluence of the Cucharas River and South Abeyta Creek. Accordingly, the proposed augmentation plan operates by virtue of exchanges, for which conditional appropriate rights are also sought in this application. The Applicant’s augmentation and exchange waters as leased from the Navajo Western Water District will be released from the Coler Reservoir System including the Lake Miriam and Lake Oehm Reservoirs. These augmentation and exchange releases will be measured at the Coler Reservoir System Cucharas Delivery Flume and immediately delivered to the Cucharas River. The Coler Reservoir System Cucharas Delivery Flume is located in the Northeast quarter of the Southwest quarter 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. Once delivered to the Cucharas River, these augmentation waters will be exchanged up the Cucharas River to its confluence with Middle Creek, then up Middle Creek to this stream’s confluence with South Abeyta

Creek and then up South Abeyta Creek to the Applicant's two diversion points at the Ojo Springs No. 1 and the Blouin Spring No. 1. Applicant has conferred with the Water Commissioner, and additionally commissioned an engineering study, to demonstrate that there is sufficient exchange potential between the exchange-from and exchange-to points to allow for operation of the augmentation plan a significant portion of the year. At times when the exchange(s) between these points are not in priority, Applicant will not operate such exchanges or divert water pursuant to this augmentation plan. Because both augmented structures divert surface water, operating the plan in such manner will not result in any lagged out-of-priority depletions, or result in injury to any vested water rights. **APPLICATION FOR CONDITIONAL WATER RIGHTS: Name of Structures:** Ojo Springs No. 1 and Blouin Spring No. 1. **Legal Description of Structure:** (i) Ojo Springs No. 1: SE ¼ of the SE ¼ of Section 31, Township 28 South, Range 69 West, 6th P.M., Huerfano County, Colorado, 390 Feet from the South section line and 110 feet from the East section line of Section 31. (ii) Blouin Spring No. 1: SW ¼ of the SE ¼ of Section 4, Township 29 South, Range 69 West, 6th PM, Huerfano County, Colorado, 1,560 feet from the East section line and 1,090 feet from the South section line of Section 4. **Decreed Source of Water:** Springs Tributary to South Abeyta Creek, tributary to Middle Creek, Tributary to Cucharas River. **Proposed Uses of Water:** Domestic and commercial purposes, and watering of domestic livestock. **Dates of Appropriation:** September 30, 2015, the date of filing of the Application. **Amount:** 0.2 cubic foot per second, CONDITIONAL. **APPLICATION FOR APPROPRIATIVE RIGHTS OF EXCHANGE: Description of Exchanges:** Applicant Ms. Blouin claims a water right to operate two exchanges, from the exchange-from point to the two exchange-to points listed below, for the amounts listed below, for the purpose of operating the plan for augmentation described above. **Points of Release of Substitute Supply ("exchange-from points"):** The Coler Reservoir System Delivery Flume on the Cucharas River. The Coler Reservoir System Cucharas Delivery Flume is located in the Northeast quarter of the Southwest quarter 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. **Points of Diversion ("exchange-to points"):** **Name of Structures:** Ojo Springs No. 1 and Blouin Spring No. 1. **Location of Structures:** (i) Ojo Springs No. 1: SE ¼ of the SE ¼ of Section 31, Township 28 South, Range 69 West, 6th PM, Huerfano County, Colorado, 390 Feet from the south line and 110 feet from the east section line of Section 31. (ii) Blouin Spring No. 1: SW ¼ of the SE ¼ of Section 4, Township 29 South, Range 69 West, 6th PM, Huerfano County, Colorado, 1,560 feet from the East section line and 1,090 feet from the South section line. **Water Rights to be Used by Exchange:** Applicant Ms. Deborah Blouin has entered into a lease with the Navajo Western Water District, a Colorado Special District, for 2 acre-feet of water. The water leased to Ms. Blouin is excess augmentation water rights in Coler Ditch and Reservoir System ("Coler Augmentation Water"), which rights were changed in Case No. 02CW121, Water Division No. 2, for augmentation use by Navajo Western Water District. Pursuant to the terms and conditions of the decree in Case No. 02CW121, excess Coler Augmentation Water which Navajo is not using to augment its own water usage is available for lease by Navajo to others for augmentation through a water court decree or a substitute supply plan, subject to the terms and conditions of the decree in



Case No. 02CW121. The Coler Augmentation Water may also be used by exchange. Ms. Blouin also seeks the ability to add additional or alternative sources of replacement water for use pursuant to this exchange for purposes of the proposed plan for augmentation pursuant to C.R.S. § 37-92-305(8)(c) or successor statutes. **Claimed Exchange Rate:** The maximum rate of exchange from the exchange-from point to each exchange-to point is 0.2 cubic foot per second, CONDITIONAL. **Proposed Uses:** For purposes of operating the plan for augmentation described above. **Dates of Appropriation:** The date of filing of this application, September 30, 2015. **NAME AND ADDRESS OF OWNER OF LAND UPON WHICH ANY MODIFICATION TO EXISTING DIVERSION STRUCTURE WILL BE CONSTRUCTED:** Darrel Freeman, P.O. Box 921, La Veta, CO 81055; Michael McCauley, P.O. Box 10, 5101 US Highway 160, La Veta, CO 81055; Department of Transportation, State of Colorado, 4201 East Arkansas Avenue, Denver, Colorado 80222

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**CASE NO. 2015CW3049 – ACADEMY WATER AND SANITATION DISTRICT (“District”), c/o President, 1755 Spring Valley Drive, Colorado Springs, CO 80921**

(Please address all pleadings and correspondence to Applicant’s attorney: Gilbert Y. Marchand, Jr., P.C., Gilbert Y. Marchand, Jr., 2737 Mapleton Avenue, Suite 202, Boulder, CO 80304, phone: 303-444-4256)

Application to Amend Location of Replacement Water Delivery in Decreed Augmentation Plan and for Appropriative Right of Substitution and Exchange

**EL PASO COUNTY**

**2. Description of application:** The District provides water and sewer service in an area encompassing approximately 315 acres on the western edge of the Black Forest area north of Colorado Springs and northeast of the United States Air Force Academy and east of I-25. The District operates a central water system that obtains its supply from permitted and augmented wells, two of which pump from the alluvium of Smith Creek, and one of which pumps from the Dawson and Denver aquifers tributary to Smith Creek. The District also operates a central sewage collection system and treatment plant which discharges to Smith Creek. The discharge from the treatment plant consists of wastewater return flows (“Existing Wastewater Return Flows”) resulting from use of the District’s wells. The location of the discharge is in the reach of Smith Creek where depletions from the District’s well pumping accrue. The District has determined that its existing wastewater treatment facility will not be able to meet future water quality regulatory requirements. To address this problem, the District has reached an agreement in concept with Donala Water and Sanitation District (“Donala”). Pursuant to a proposed intergovernmental agreement (“IGA”) between the District and Donala, the District will connect to Donala’s wastewater collection and conveyance system, and Donala will treat the District’s wastewater at the Upper Monument Creek Regional Wastewater Treatment Facility (“UMCR WWTF”), thereby causing the District’s wastewater return flows to be discharged to Monument Creek at a point upstream from its confluence with Smith Creek. The purpose of this application is to incorporate the proposed new location of replacement water delivery into the District’s existing augmentation plan. The locations of the UMCR WWTF, the existing wastewater treatment facility, and the three wells are depicted on the Location Map attached to the application filed with the water court and incorporated herein by this

reference. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **3. Description of the District's existing augmentation plan:** **3.A. Decree information:** The augmentation plan ("98CW110 Augmentation Plan") was approved by the District Court, Water Division No. 2, in a decree entered on January 5, 2007, in Case No. 98CW110 ("98CW110 Decree"). **3.B. Names of augmented structures:** Well No. 1R (also known and referred to herein as Well No. 1) (Permit No. 68062-F, formerly Permit No. 6790-F-R); Well No. 2R (also known as Well No. 2-F-R, and referred to herein as Well No. 2) (Permit No. 10532-F-R); and Well No. 3 (Permit No. 6892-F). **3.C. Other decrees for augmented structures:** The original decree for Well Nos. 1 through 3 was entered in Case No. W-143 by the District Court, Water Division No. 2, on June 22, 1971. Pursuant to the decree entered by the same Court in Case No. 81CW124, the decreed location of Well No. 2 was changed to conform to its actual location. Subsequent diligence decrees were entered by the same Court in Case No. W-143-(73) on May 16, 1975; Case No. 79CW72 on December 23, 1981, nunc pro tunc, November 18, 1981; Case No. 85CW106 on September 5, 1986; Case No. 89CW73 on April 4, 1990; Case No. 96CW45 on October 30, 1996; Case No. 02CW152 on June 5, 2007; and Case No. 13CW3019 on November 22, 2013. **3.D. Location:** **3.D.(1)** Well No. 1: The presently permitted, actual location of Well No. 1 is in the southwest quarter of the northwest quarter of section 33, Township 11 South, Range 66 West, 6th P.M., El Paso County, Colorado, approximately 1,410 feet from the north section line and 950 feet from the west section line. The decreed location (per Case No. W-143) is described as being in the northwest quarter of the northwest quarter of Section 33, Township 11 South, Range 66 West, 6th Principal Meridian, El Paso County, Colorado, beginning at the southwest corner of Lot 2, Block 2, Filing No. 2 of Pleasant View Estates, El Paso County, Colorado, thence 244 feet east, thence 577 feet south. **3.D.(2)** Well No. 2: The presently permitted, actual location of Well No. 2 is in the southeast quarter of the northeast quarter of section 32, Township 11 South, Range 66 West, 6th P.M., El Paso County, Colorado, approximately 1,770 feet from the north section line and 220 feet from the east section line. The decreed location (per Case No. 81CW124) is described as being in that portion of the northeast quarter of Section 32 and the northwest quarter of section 33, all in Township 11 South, Range 66 West, 6th Principal Meridian, in El Paso County, Colorado, beginning at the northeasterly corner of Lot 1, Block 4, Filing No. 2 of Pleasant View Estates, El Paso County, Colorado, thence north 35 degrees, 28 minutes, 35 seconds, east, on Spring Valley Drive R.O.W. line 70.00 feet; thence south 54 degrees, 31 minutes, 25 seconds, east, 80.00 feet, thence south 35 degrees, 28 minutes, 35 seconds, west, 70.00 feet; thence south 71 degrees, 27 minutes, 02 seconds, west, 69.55 feet to a point on the easterly line of said Lot 1, Block 4, Pleasant View Estates, Filing No. 2; thence north 00 degrees, 39 minutes, 39 seconds, east, 68.56 feet to the point of beginning. **3.D.(3)** Well No. 3: Per the decree in W-143, the location of Well No. 3 is in the northeast quarter of the northwest quarter of section 33, Township 11 South, Range 66 West, 6th Principal Meridian, in El Paso County, Colorado, beginning at the southwest corner of Lot 3, Block 2, Filing No. 1 of Pleasant View Estates, El Paso County, Colorado, thence west 189 feet, thence south 18 feet. **3.E. Amount:** **3.E.(1)** Well No. 1: 50 gallons per minute ("gpm")/0.11 cubic feet per second ("cfs"), conditional, pursuant to the decree in Case No. W-143. Up to 100 gpm

pursuant to Permit No. 68062-F and the 98CW110 Decree. **3.E.(2)** Well No. 2: 200 gpm/0.45 cfs, conditional, pursuant to the decree in Case No. W-143. **3.E.(3)** Well No. 3: 200 gpm/0.45 cfs, absolute, pursuant to the decree in Case No. W-143. **3.E.(4)** Note that the 98CW110 Decree incorrectly refers to Well No. 1's 50 gpm amount as being "absolute" and to Well No. 3's amount as being "conditional." **3.F. Source: 3.F.(1)** The source for all three wells is described in the decree in Case No. W-143 as "[g]roundwater from the underground aquifer in the drainage area of Smith Creek which is tributary to Fountain Creek, which is tributary to the Arkansas River." The sources are also described as follows: **3.F.(2)** Well Nos. 1 and 3: alluvium of Smith Creek, tributary to Monument Creek, tributary to Fountain Creek, tributary to the Arkansas River; **3.F.(3)** Well No. 2: ground water from the Dawson and Denver aquifers, tributary to Smith Creek, tributary to Monument Creek, tributary to Fountain Creek, tributary to the Arkansas River. **3.G. Appropriation dates: 3.G.(1)** Well No. 1: February 25, 1965; **3.G.(2)** Well No. 2: January 31, 1966; **3.G.(3)** Well No. 3: April 2, 1965. **3.H. Uses:** municipal, domestic, fire protection, and augmentation pursuant to the terms and conditions of the W-143 and 98CW110 Decrees. **3.I. Augmentation source:** The augmentation source is wastewater return flows resulting from use of the District's wells as described in sections 8.B. and 8.C. of the 98CW110 Decree. **3.J. Statement of plan for augmentation:** Pursuant to the 98CW110 Augmentation Plan, the District takes credit for its Existing Wastewater Return Flows as an offset against its well pumping depletions, and balances pumping of its two alluvial wells (Well Nos. 1 and 3) with the pumping of its deep, Dawson/Denver aquifer well (Well No. 2) in such a manner as to generate a stream accretion or a zero depletion net effect. The plan for augmentation is described in detail in sections 8.C. and 8.D. of the 98CW110 Decree. **4. Description of new location of delivery of replacement water:** By this application, the District seeks to change the location where replacement water is delivered in the 98CW110 Augmentation Plan. Instead of the location on Smith Creek, where Existing Wastewater Return Flows are discharged, replacement water ("Future Wastewater Return Flows") will be delivered at the UMCR WWTF's point of discharge to Monument Creek, which point is in the southeast quarter of the southeast quarter of Section 35, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, and is depicted on the Location Map. The source of replacement water remains wastewater return flows resulting from use of the District's wells. **5. Appropriate right of substitution and exchange:** The District claims an appropriative right of substitution and exchange pursuant to Sections 37-80-120 and 37-92-302(1)(a), C.R.S. The reach of the exchange is on Smith Creek from its confluence with Monument Creek which is depicted on the Location Map and is in the southwest quarter of the northeast quarter of Section 12, Township 12 South, Range 67 West, 6th P.M., El Paso County, Colorado, to the most upstream point of the reach on Smith Creek where depletions from pumping Well No. 3 accrue, which point is depicted on the Location Map and is in the northwest quarter of the northwest quarter of Section 33, Township 11 South, Range 66 West, 6th P.M., El Paso County, Colorado. The date of appropriation of the substitution and exchange is September 30, 2015, the date this application was filed in the Division 2 water court. The appropriation was initiated by the District's formation of the intent to appropriate followed by actions to further and give notice of the appropriation including, but not limited to, the filing of this application. The maximum

rate of exchange is 0.2 cfs. The sources of substitute supply for the exchange are Future Wastewater Return Flows as described herein. The proposed use is augmentation and replacement of the District's well pumping depletions. **6. Continued operations under 98CW110 Decree:** The new location where replacement water will be delivered and the appropriate right of substitution and exchange claimed herein will not be implemented until the Future Wastewater Return Flows begin to be treated at the UMCR WWTF. The District will continue operating with its Existing Wastewater Return Flows under the existing 98CW110 Decree as necessary until treatment of the Future Wastewater Return Flows has been fully implemented and/or established at the UMCR WWTF. **7. 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:** There are no such new or modified structures. The subject wastewater collection system and portion of the UMCR WWTF wastewater treatment facility to be used by the District as described herein is owned by Donala Water and Sanitation District, Attn.: Manager, 15850 Holbein Drive, Colorado Springs, Colorado 80921. **WHEREFORE**, the District requests the Court to enter a decree approving the new location of replacement water delivery; approving the claimed appropriate right of substitution and exchange; finding that the new location of replacement water delivery and the claimed appropriate right of substitution and exchange will not cause injury to any owner or person entitled to use water under a vested water right or decreed conditional water right if granted on the terms and conditions proposed and/or to be determined herein; and to grant such other relief as the Court deems proper under the circumstances.

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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 2015, (forms available at Clerk's office or at [www.courts.state.co.us](http://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.

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Witness my hand and the seal of this Court this 5th day of October, 2015.



*Mardell R. DiDomenico*

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Mardell R. DiDomenico, Clerk  
District Court, Water Div. 2  
Pueblo Judicial Building  
501 N. Elizabeth Street, Suite 116  
Pueblo, CO 81003; (719) 404-8832

(Court seal)

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