

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED DURING FEBRUARY 2006

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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 February 2006, 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. 06CW4 – JEFFREY D. RUSHLO and ELIZABETH J. RUSHLO, P. O. Box 690, Westcliffe, CO 81252**

Application for Surface Water Rights

**Custer County**

**2. Name of structure:** Jakobs Spring. **3. Legal description of each point of diversion:** Custer County, NW ¼ of the SW ¼ Section 31, Township 21 South, Range 73 West, 6<sup>th</sup> P.M., 1990 feet from the South line and 450 feet from the West line. **Street Address:** 575 Custer County Road 179. **Subdivision:** N/A. **4. Source:** Spring which surfaces from the ground. No evidence of running water. **5. A. Date of initiation of appropriation:** Map evidence: Prior to 1958-see map, Prior to 1983 – see signed affidavit from a previous owner. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **B. How appropriation was initiated:** Spring development with a small dam prior to 1958. **C. Date water applied to beneficial use:** Probably prior to 1958; affidavit on file with the Application demonstrates beneficial use in 1983. **6. Amount claimed:** 5 gallons per minute or approximately .0112 cfs Absolute. **7. Use or proposed use:** Livestock water source and source of water for fire suppression. **A. If irrigation, complete the following:** N/A. **B. If non-irrigation, describe purpose fully:** To use stored water for livestock and fire suppression. **8. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants. **9. Remarks:** There is evidence on the USGS “Beckwith Mountain map” dated 1958 that a small dam and pond existed at that time in the location of Jakobs Spring. The original map is on file in the assessor’s office in the Custer County courthouse. Copies are attached to the Application but they are not as clear as the original. The affidavit of initiation of appropriation documents use by livestock in 1983.

(Application and attachments, 8 pages)

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**CASE NO. 06CW5 – THE STEPHEN J. SCHNURR LIVING TRUST, 2010 Fox Mountain Point, Colorado Springs, CO 80906**

(Steven T. Monson and Chris D. Cummins, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903)

Application for Adjudication of Denver Basin Groundwater

**El Paso County**

**II. APPLICATION FOR ADJUDICATION OF DENVER BASIN GROUND WATER RIGHTS.**

**A. Permitted Wells:** 1. State Engineer Well Permit No. 115606. Located in the SW1/4 SW1/4 Section 22, Township 12 South, Range 62 West, 6<sup>th</sup> P.M., and drilled to a depth of 230 feet into the alluvium of an unnamed tributary to East Branch Brackett Creek, within the Upper Black Squirrel Creek Designated Ground Water Basin. While the land overlying the groundwater appropriated by this well is not the subject of this Application, such land is owned by Applicant, and the water rights to be adjudicated pursuant to this Application are to be utilized upon that contiguous property, as discussed in the Remarks section below.

**B. Water Source:** 1. Not-nontributary. The ground water that will be withdrawn from the Denver aquifer of the Denver Basin underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. 37-90-137(9)(c), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. 2. Nontributary. The ground water that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers of the Denver Basin underlying the Applicants' Property is nontributary.

**C. Estimated Rates of Withdrawal and Ground Water Available:** 1. Estimated Rates of Withdrawal.

The pumping rates for wells to be completed to each aquifer are estimated to be between 15 g.p.m. and 110 g.p.m. The actual pumping rate for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests 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. The actual depth of each well to be constructed within the respective aquifers will be determined by actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available.

Applicant requests an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying Applicant's Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4). The estimated average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers will be based upon the Denver Basin Rules. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property of 141.61 acres as follows:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Depth (Feet)</u>	<u>Total Water Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)</u>
Denver	151	200-850	3150	31.50 <sup>1</sup>
Arapahoe	189	900-1430	4510	45.10
Laramie Fox Hills	190	1700-1950	5080	50.80

Pursuant to C.R.S. §37-92-304(11), the Applicant requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **D. Requested Uses:** The Applicant requests 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. The Applicant also requests that the nontributary water may be used, reused and successively used to extinction, both on and off the Applicant's Property subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct a well or use water from the non-nontributary Denver aquifer pursuant to an augmentation plan to be decreed at a later date, covering the replacement of stream depletions from such non-nontributary aquifer in accordance with C.R.S. §37-90-137(9)(c). **E. Well Fields:** Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers 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 Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. **F. Description of Land Overlying Subject Ground Water:** The land overlying the ground water which is the subject of this Application consists of approximately 159 acres in the SE1/4 of Section 22, Township 12 South, Range 62 West, of the 6<sup>th</sup> P.M., El Paso County, Colorado, as more specifically described in Exhibit A 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. **G. Remarks.** 1. Applicant intends to utilize the entirety of its approximately 298 acre property for a gravel mining and processing operation. However, only that portion of the

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<sup>1</sup> The amount of water to be quantified in the Denver aquifer has been reduced by 4.5 annual acre feet of withdrawals (450 total acre feet), reserved to provide for future exempt domestic supply to each of the 35 acre parcels on Applicant's Property, as previously subdivided.

property described in Exhibit A is subject to the jurisdiction of the Water Court, the remainder of Applicant's property being located within the Upper Black Squirrel Creek Designated Ground Water Basin, and therefore subject to the exclusive jurisdiction of the Ground Water Commission. A description of all of Applicant's 298 acre contiguous property upon which the groundwater adjudicated herein is to be utilized is attached to the Application as Exhibit B, and illustrated on Exhibit C attached to the Application. It is the Applicant's intent to utilize the Denver Basin groundwater underlying the entire property described in Exhibit B for the operation of its gravel mining and processing facility, and other uses, and to extract that water through a single well, or through a well field, to each Denver Basin aquifer for such purposes. Applicant has filed simultaneously with this Application, applications for Determination of Water Right Within a Designated Ground Water Basin with the Groundwater Commission concerning that portion of the property which is not subject to the jurisdiction of this Court, being located within the Upper Black Squirrel Creek Designated Groundwater Basin. Upon approval of both this Application and the Applications with the Ground Water Commission, all Denver Basin aquifer water underlying Applicant's property, as described in Exhibit B, will have been properly quantified and be available for use on the Exhibit B 298 acre overlying land through a single well, or through a well field, for each Denver Basin aquifer. 2. Applicants request a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested non-tributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). 3. 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. 4. Before any wells are constructed, applications for well permits will be filed with the State Engineer's office or the Colorado Ground Water Commission, as appropriate, and well permits shall be granted in accordance with the decree pursuant to this application. 5. The Applicant requests 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. 6. The wells shall be installed and metered as reasonably required by the State Engineer and/or the Ground Water Commission. 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 or the Ground Water Commission. 7. The Applicant intends to waive the 600 feet well spacing requirement for the wells to be located upon the Applicant's Property. 8. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(l), and such notice will be sent within 10 days of the filing of this application. **H. Name and Address of the Owner of the Land Upon Which the Wells are to be Located:** The Applicant, as set forth in Section I above is the owner of the property on which the wells are to be located.

(Application and attachments, 11 pages)

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**CASE NO. 06CW6(97CW158) – BARRY F. O’NEILL, P. O. Box 785, Trinidad, CO 81082** (Please send all correspondence and pleadings to the following: Joanne Herlihy, Dufford & Brown, P.C., Attorneys for Applicant, 1700 Broadway, Suite 2100, Denver, CO 80290-2101)

Application for Hexennial Finding of Reasonable Diligence

**Las Animas County, Colorado**

**2. Description of Conditional Appropriative Right of Substitution and Exchange.**

**A. Date of Original Decree:** February 28, 2000, **Case No.:** 97CW158, **Court:** District Court, Water Division No. 2. **B. Location:** The exchange reach lies between the mouth of Long Canyon at the Las Animas (Purgatoire) River in Las Animas County, Colorado, to the diversion points for the uppermost ponds described in paragraph 2.C.ii.e., below in Colorow Canyon and paragraph 2.C.ii.f., below in Long Canyon. **C. Legal Description of Structures:** **i. Date of Original Decree:** February 28, 2000, Case No. 97CW158, District Court for Water Division No. 2. **ii. Location:** All of the following structures are located in Las Animas County, Colorado. **a.** An off-channel pond in Long Canyon in the NE1/4 Section 27, T-34-S, R-65-W. The point of diversion will be 1250’ from the North line of Section 27 and 2230’ from the East line of Section 27. **b.** An off-channel pond in Long Canyon in the SW1/4 of Section 23, T-34-S, R-65-W. The point of diversion will be 275’ from the South line of Section 23 and 60’ from the West line of Section 23. **c.** An off-channel pond in Colorow Canyon in unsurveyed SE1/4 of Section 24, T-34-S, R-65-W. The point of diversion will be 1450’ from the South line of Section 24 and 800’ from the East line of Section 24. **d.** An off-channel pond in Colorow Canyon at the unsurveyed north line of Section 36, T-34-S, R-65-W. The point of diversion will be 1700’ from the West line of Section 36 and 800’ from the North line of Section 36. **e.** An off-channel pond in Colorow Canyon in unsurveyed NW1/4, Section 1, T-35-S, R-65-W. The point of diversion will be 560’ South of the South line of Section 36 and 1700’ east of the West line of Section 36 projected. **f.** An off-channel pond in Long Canyon in the NE1/4 of Section 33, T-34-S, R-65-W. The point of diversion will be 750’ west of the east line of Section 33 and 650’ south of the north line of Section 33. **D. Source:** The water right originally decreed to the Jose Leon Bialpando Ditch as changed by the decree entered in Case No. 97CW158 including the right to divert that water by exchange. **E. Appropriation Date:** December 30, 1997. **F. Amount:** 1.6 cfs reduced to 1.57 cfs to account for transit loss. **G. Use:** For all of the purposes for which water may lawfully be used through the structures to which the exchanges are made as decreed in Case No. 97CW158 including irrigation for pasture grasses or alfalfa for wildlife grazing and for pond filling, aesthetic, recreational, irrigation, fishing, fishery, wildlife uses, stream-channel restoration uses, and for domestic, lawn and garden use for a single recreational cabin. **H. Remarks:** To allow for operating flexibility and efficiency, Applicant, at its discretion, may divert at any one or more of the exchange to points of diversion so long as uses are within the aggregate limits of the decree. **3. Activities During the Diligence Period.** This Application for Hexennial Finding of Reasonable Diligence is filed pursuant

to the Water Right Determination and Administration Act of 1969, § 37-92-302, C.R.S. In support of this Application, Applicant states as follows: A. Since March, 1, 2000, Applicant has expended in excess of \$491,000.00 in developing the facilities required to permit the exercise of the conditional appropriative right of substitution and exchange in the operation of Applicant's water system. B. During this diligence period, in the development of the conditional appropriative right of substitution and exchange for this water system, Applicant has been engaged in construction of four (4) of the unnamed ponds described in paragraph 2.C. above, and has continued in the planning and design and the exploration of the physical and business problems associated with the construction of the remaining two unnamed ponds to place the water rights involved in the conditional exchange to beneficial use including the following activities: i. Construction of the off-channel unnamed pond located in Colorow Canyon in unsurveyed NW1/4, Section 1, T-35-S, R-65-W at a cost of \$30,000.00 including labor and materials. ii. Construction of the off-channel unnamed pond located in Colorow Canyon at the unsurveyed north line of Section 36, T-34-S, R-65-W at a cost of \$11,000.00 including labor and materials. iii. Construction of the off-channel unnamed pond in Colorow Canyon in unsurveyed SE1/4 of Section 24, T-34-S, R-65-W. The cost of construction to date has been approximately \$200,000.00 including labor and materials. iv. Construction of the off-channel unnamed pond located in Long Canyon in the NE1/4 Section 27, T-34-S, R-65-W. The cost of construction to date has been approximately \$250,000.00 including labor and materials. **4. Names and addresses of owners of land on which structures are or will be located:** Structures are located on the lands of Applicant, Barry F. O'Neill, and, by agreement with Applicant, on the adjacent property of Brian O'Neill and Jennifer O'Neill, 42 Sunset Drive, Englewood, CO 80113. WHEREFORE, Applicant prays that this Court enter a Decree finding that Applicant has exercised reasonable diligence in the development of the conditional appropriative right of substitution and exchange which is the subject of this Application, and for such other and further relief as this Court deems just and proper in the premises.  
(Application, 5 pages)

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**CASE NO. 06CW7 - SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT ("Southeastern"), 31717 United Avenue, Pueblo, CO 81001**  
(Stephen H. Leonhardt, BURNS, FIGA & WILL, P.C., Attorneys for Southeastern, 6400 S. Fiddlers Green Circle, Suite 1000, Greenwood Village, CO 80111).

Application for Conditional Appropriative Rights of Exchange

**Pueblo, Fremont, Chaffee and Lake Counties**

**2. Introduction:** This application requests conditional appropriative rights of exchange for water owned, controlled or leased by Southeastern or by a constituent entity of Southeastern that is stored in Pueblo Reservoir (including the proposed Pueblo Reservoir Enlargement). For the purposes of this Application, a "constituent entity" refers to any entity served by Southeastern and located within the boundaries of the District, whether a political subdivision, an irrigation entity, or other entity. Southeastern seeks a conditional exchange

decree authorizing it to divert water by exchange upstream on the tributaries to the Arkansas River at Turquoise Reservoir (including the proposed Turquoise Reservoir Enlargement) and Twin Lakes Reservoir, and to deliver to the downstream calling water right an equivalent amount of exchange water from storage in Pueblo Reservoir. The water diverted by such exchange will be stored in Turquoise Reservoir or Twin Lakes Reservoir and then released for beneficial uses within Southeastern District boundaries. **3. Exchange Reach:** **a.** The upstream termini of the exchange reach are Turquoise Reservoir and Twin Lakes Reservoir. **b.** The downstream terminus of the exchange reach is Pueblo Reservoir. **4. Exchange from Point:** Pueblo Reservoir, including the proposed Pueblo Reservoir Enlargement (hereinafter "Pueblo Reservoir"). **a. Legal Description of Structure:** At the intersection of Pueblo Dam Axis and the Arkansas River whence the NE corner of Section 36, T20S, R66W, 6th P.M., bears N 61° 21' 20" E a distance of 2,511.05 feet. Said reservoir inundates all or portions of Section 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, T20S, R66W, 6th P.M., Sections 1, 2, 3, 4, 5, 9, 10, and 11, T21S, R66W, 6th P.M., and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23 and 25, T20S, R67W, 6th P.M., Pueblo County, CO. **b. Decrees:** **i.** Pueblo Reservoir was decreed in Case No. B-42135, Pueblo County District Court, on June 25, 1962, with an appropriation date of February 10, 1939 (Priority No. A-22C). The decree was modified in Case No. 80CW6 (Water Division 2) on October 23, 1980 (amended to correct clerical error on April 29, 1981), to conform to the reservoir as built. The conditional portion of the water right has been maintained through a series of diligence proceedings, most recently Case No. 02CW37. **ii.** Pueblo Reservoir is also the subject of Southeastern's pending conditional water rights application for a proposed storage enlargement in Case No. 00CW138 (Water Division 2). **c. Storage Volume:** **i.** The current decreed and existing capacity is 357,678 a.f. Of the decreed amount, 62,972 a.f., together with the right to refill, remain conditional. Southeastern's engineers have estimated that up to 7,738 a.f. of this capacity may have been lost due to silting. **ii. Volume of Enlargement:** 75,000 a.f., conditional. **d. Owner of Land and Facilities:** Pueblo Reservoir and the surrounding land are owned by the U.S. Department of Interior, Bureau of Reclamation ("Reclamation"), Eastern CO Area Office, 11056 West County Rd. 18-E, Loveland, CO 80537-9711. Southeastern holds the water rights and decrees for Pueblo Reservoir as part of the Congressionally-authorized Fryingpan-Arkansas Project pursuant to Contract No. 5-07-70-W0086, as amended, with the United States. **5. Exchange to Points:** **a. Turquoise Reservoir. i. Legal Description of Structure:** The intersection of Sugar Loaf Dam axis and Lake Fork Creek, a point whence the NW corner of Section 16, T9S, R80W, 6<sup>th</sup> P.M., bears N 44° 46' 18" E a distance of 10,344.35 feet. Said reservoir inundates all or portions of Section 7, 8, 17, 18, 19 and 20, T9S, R80W, 6<sup>th</sup> P.M., and Section 10, 11, 12, 13, 14 and 15, T9S, R81W, 6<sup>th</sup> P.M., Lake County, CO. **ii. Previous Decrees:** Turquoise Reservoir was decreed in Civil Action No. 5141, Chaffee County District Court, on July 9, 1969, with an appropriation date of February 10, 1939 (Priority No. A-92C). The decree was modified in Case No. 80CW6 (Water Division 2) on October 23, 1980 (amended

to correct clerical error on April 29, 1981), to conform to the reservoir as built. The conditional portion of the water right has been maintained through a series of diligence proceedings, most recently Case No. 02CW37 (Water Division 2). **iii. Storage Volume: (a)** The current decreed and existing capacity is 129,432 a.f., plus a right to refill. Of the decreed amounts, only the right to refill remains conditional. **(b)** The volume of the enlargement proposed in Case No. 00CW139 is 19,600 a.f., all of which, if decreed, would be conditional. **iv.** Turquoise Reservoir is owned by Reclamation, whose address is set forth above. The surrounding land is owned by Reclamation and/or the U.S. Department of Agriculture, Forest Service, 2015 N. Poplar, Leadville, CO 80461. Southeastern holds the water rights and decrees for Turquoise Reservoir, pursuant to Contract No. 5-07-70-W0086, as amended, with the United States. **b. Twin Lakes Reservoir. i. Legal Description of Structure:** The intersection of Twin Lakes Dam axis and Lake Creek, a point whence the SE corner of Section 23, T11S, R80W, 6<sup>th</sup> P.M., bears S 54°13'08" E a distance of 3,803.10 feet. Said reservoir inundates all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 30, T11S, R80W, 6<sup>th</sup> P.M., Lake County, CO. **ii. Previous Decrees:** Twin Lakes Reservoir was decreed in Civil Action No. 5141, Chaffee County District Court, on July 9, 1969, with an appropriation date of February 10, 1939 (Priority No. A-93C). The decree was modified in Case No. 80CW6 (Water Division 2) on October 23, 1980 (amended to correct clerical error on April 29, 1981), to conform to the reservoir as built. The conditional portion of the water right has been maintained through a series of diligence proceedings, most recently Case No. 02CW37. **iii. Storage Volume:** The current decreed and existing capacity is 141,000 a.f., plus a right to refill. Of the decreed amount, 1,250 a.f. and the right to refill remain conditional. **iv.** Twin Lakes Reservoir is owned by Reclamation, whose address is set forth above. The surrounding land is owned by Reclamation and/or the Forest Service, whose addresses are set forth above. Southeastern holds the water rights and decrees for Twin Lakes Reservoir, pursuant to Contract No. 5-07-70-W0086, as amended, with the United States. **6. Source of Water Rights Used for Exchange: a.** The water used for these exchanges will be "Non-Project Water," defined as any water rights now or hereafter decreed for use in Water Division 2 (including any reusable return flows therefrom) that may be stored in Pueblo Reservoir directly or by exchange, and used for exchange pursuant to decree or statutorily authorized administrative approval (including but not limited to such approval as authorized by C.R.S. §§ 37-92-308, 37-92-309, 37-80-120, 37-80.5-101, *et seq.* or 37-83-101, *et seq.*), which is owned, controlled or leased by Southeastern or by a constituent entity, other than the Fryingpan-Arkansas Project water (including return flows therefrom), for which Southeastern already holds decrees, including exchange rights. **b.** This application and any decree herein do not in any way modify Southeastern's decrees for the Fryingpan-Arkansas Project water rights. The description of or reference to structures and water rights herein, other than the proposed exchanges described in this application, does not in any way seek to amend or limit the decrees for those structures and water rights, and omissions in such descriptions and references shall in no way prejudice the owners of those

structures and water rights. **c.** This application does not seek to adjudicate any particular source of exchange water. Any source of exchange water, as described above, may be used for exchange only if such use is authorized, either by decree or statutorily authorized administrative approval. **7. Conditional Appropriative Rights of Exchange:** **a. Sources:** Arkansas River, Lake Fork Creek, and Lake Creek. The sources of exchange water are described in ¶ 6 above. **b. Date of Initiation of Appropriation:** August 17, 2000. Following widespread public notice, Southeastern's District Board approved a Preferred Storage Options Plan Report with recommendations including use of exchanges of Non-Project Water into existing and expanded reservoirs as described herein. **c. Date Water Applied to Beneficial Use:** n/a. **d. Amount Claimed:** Southeastern's exchanges will be operated at a rate up to the rate at which inflows at Twin Lakes or Turquoise Reservoir would have passed through the reservoir had no exchange been made, but not to exceed 400 c.f.s. total. Southeastern's exchanges pursuant to this application will be further limited to 19,600 a.f. per year. **e. Uses:** The water will be used beneficially for the same purposes for which Southeastern's Fryingpan-Arkansas Project water rights were decreed. These uses occur within the Southeastern District boundaries, and include domestic; municipal; irrigation; manufacturing; power purposes; flood control; recreation; fish and wildlife conservation; all municipal purposes, including human consumption, fire protection, sewage treatment, street sprinkling, watering of parks, lawns, and grounds, and maintaining adequate storage reserves; all farming purposes, including the growing of crops of all kinds, stock water, and the watering of lawns, trees and shrubs; all industrial purposes; replacement, augmentation, substitution and exchange; and for reuse and succession of such uses to extinction, to the extent the exchange source water is decreed for such reuse and succession of use. **8. Relation Back:** Southeastern seeks to relate back the filing date of this application for exchanges to December 2005, based on the exchange applications then filed in Case Nos. 05CW95, 05CW96, and 05CW105, pursuant to C.R.S. § 37-92-306.1. **9. Description of Exchange:** Applicant seeks to adjudicate conditional appropriative rights of exchange. The purpose of the exchanges is to store Non-Project Water in Turquoise and Twin Lakes Reservoirs (including Turquoise Reservoir Enlargement space) for subsequent use by entities within the Southeastern District (all within the drainage basin of the Arkansas River downstream from Turquoise and Twin Lakes Reservoirs). The exchanges will be operated by Southeastern in consultation with the Division Engineer. The water exchanged will be replaced to the Arkansas River by releases from Pueblo Reservoir, which are of a quality and continuity to meet downstream senior appropriators' normal use requirements. Any water exchanged shall be owned, controlled or leased by Southeastern or one of its constituent entities. Such constituent entities may include Non-Project Water available to them in these exchanges by agreement with Southeastern. Southeastern, in consultation with the Division Engineer and Reclamation, will utilize appropriate measurements and accounting to determine accurately on a daily basis the amounts of Non-Project Water that are available for exchange hereunder, stored by exchange in

Turquoise Reservoir or Twin Lakes Reservoir pursuant to this decree, and released to the Arkansas River. Whenever water is stored by exchange pursuant to this decree, an equivalent amount of Non-Project Water shall be released to the Arkansas River to satisfy calling downstream senior water rights below Pueblo Reservoir. **10.** Southeastern proposes the following terms and conditions to assure that no injury to senior vested water rights will occur by the operation of these exchanges: **a.** Southeastern's exchanges of Non-Project Water will not impair or interfere with any operations of the Fryingpan-Arkansas Project, including the Winter Water Storage Program as decreed in Case No. 84CW179 (Water Division 2), and the Upper Arkansas River Voluntary Flow Management Program as it has been operated on an annual basis since 1991 by agreement among Reclamation, Southeastern and the CO Department of Natural Resources. **b.** Storage of Non-Project Water in Pueblo, Turquoise and Twin Lakes Reservoirs will be governed by applicable Operating Principles for the Fryingpan-Arkansas Project, applicable contracts with the United States, and existing contractual spill priorities. **c.** Storage of Non-Project Water in the Pueblo Reservoir Enlargement and Turquoise Reservoir Enlargement will be governed by Southeastern's agreements with the United States and with other enlargement storage participants, and by any applicable terms and conditions decreed in Case Nos. 00CW138 and 00CW139. **d.** Southeastern does not in this matter seek a transit loss credit, and no such credit will be awarded herein.  
(Application, 8 pages)

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**CASE NO. 06CW8 - SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT ("Southeastern"); 31717 United Avenue, Pueblo, CO 81001**

(Stephen H. Leonhardt, BURNS, FIGA & WILL, P.C., Attorneys for Southeastern, 6400 S. Fiddlers Green Circle, Suite 1000, Greenwood Village, CO 80111)

Application, as amended, for Conditional Appropriative Rights of Exchange  
**Pueblo, Crowley and Otero Counties**

**2. Introduction:** This application requests conditional appropriative rights of exchange for water owned, controlled or leased by Southeastern or by a constituent entity of Southeastern that is stored in Holbrook Reservoir No. 1 or Dye Lake, or diverted at the Catlin Canal Headgate, High Line Canal Headgate, Holbrook Canal Headgate, the Oxford Farmers Ditch Headgate or the Rocky Ford Ditch Headgate. For the purposes of this Application, a "constituent entity" refers to any entity served by Southeastern and located within the boundaries of the District, whether a political subdivision, an irrigation entity, or other entity. Southeastern seeks a conditional exchange decree authorizing it to divert water by exchange upstream on the Arkansas River at Pueblo Reservoir (including the proposed Pueblo Reservoir Enlargement), and to deliver to the downstream calling water right an equivalent amount of exchange water from storage in Holbrook Reservoir No. 1 or Dye Lake, or from diversions at the Catlin Canal Headgate, High Line Canal Headgate, Holbrook Canal Headgate, Oxford Farmers Ditch Headgate or Rocky Ford Ditch Headgate. Southeastern anticipates that water diverted at the Holbrook Headgate will be returned to the Arkansas River at the Holbrook Reservoir No. 1 outlet or at the Dye Lake outlet.

Water diverted at any other headgate described herein may be returned to the Arkansas River at a point within the exchange reach described herein, including but not limited to the augmentation stations specifically described herein. The water diverted by such exchange will be stored in Pueblo Reservoir and then released for beneficial uses within Southeastern District boundaries. **3. Exchange Reach:** **a.** The upstream terminus of the exchange reach is Pueblo Reservoir. **b.** The downstream terminus of the exchange reach is the outlet for Holbrook Reservoir No. 1. **4. Exchange From Points:** Southeastern anticipates that water diverted at the Holbrook Headgate will be returned to the Arkansas River at the Holbrook Reservoir No. 1 outlet or at the Dye Lake outlet. Water diverted at any other ditch headgate described herein may be returned to the Arkansas River at a point under the ditch within the exchange reach described herein, including but not limited to the headgate locations and augmentation stations specifically described herein, and the confluence with Timpas Creek described below. **a. Holbrook Reservoir No. 1. i. Point of Diversion:** N bank of the Arkansas River in NE ¼, Section 24, T22S, R58W, 6<sup>th</sup> P.M., Crowley County, CO. **ii. Storage Location.** Holbrook Reservoir No. 1 inundates portions of Sections 6, 7, and 8, T23S, R55W, 6<sup>th</sup> P.M., Otero County, CO. **iii. Storage Volume:** Holbrook No. 1 is decreed for a total storage volume of 7,472 a.f. as adjudicated in Bent County District Court on April 8, 1905 and February 3, 1927. **iv.** Holbrook No. 1 Outlet is located in NE ¼ SE ¼, Section 8, T23S, R55W, 6<sup>th</sup> P.M., Otero County, CO and returns such water to the Arkansas River in NE ¼ SE ¼, Section 24, T23S, R56W, 6<sup>th</sup> P.M., Otero County, CO. **b. Dye Lake. i. Point of Diversion:** N bank of the Arkansas River in NE ¼, Section 24, T22S, R58W, 6<sup>th</sup> P.M., Crowley County, CO. **ii. Storage Location:** Dye Lake inundates portions of Sections 32 and 33, T22S, R56W, 6<sup>th</sup> P.M., Otero County, CO. **iii. Storage Volume:** Dye Lake is decreed for a total storage volume of 7,986 a.f. as adjudicated in Bent County District Court on February 3, 1927. **iv.** Dye Lake Outlet is in SE ¼, Section 5, T23S, R56W, 6<sup>th</sup> P.M., Otero County, CO. The diversion into the reservoir from the canal, which can also act as a release back to the storage canal, in NE ¼, Section 5, T23S, R56W, 6<sup>th</sup> P.M., Otero County, CO. **c. Catlin Canal Headgate. i. Point of Diversion:** S bank of the Arkansas River immediately below the confluence of the Apishapa and Arkansas Rivers, in Sections 18 and 19, T22S, R58W, 6<sup>th</sup> P.M., Otero County, CO. **ii. Diversion Rate:** Decreed for a total of 345 c.f.s. as adjudicated in Bent County District Court on April 8, 1905. **d.** Catlin Canal Timpas Creek Augmentation Station, which returns water to Timpas Creek in SW ¼ SW ¼, Section 18, T24S, R56W, 6<sup>th</sup> P.M., Otero County, CO. **e. High Line Canal Headgate. i. Point of Diversion:** S bank of Arkansas River, Pueblo County, CO, NE ¼ NE ¼, Section 17, T21S, R61W, 6<sup>th</sup> P.M. bearing S 48°28'W, 459.36 feet from the corners of Sections 8, 9, 16 and 17, T21S, R61W, 6<sup>th</sup> P.M. This location description also includes any return flow channel from the Canal back to the River below the Canal's head gate flow quantification apparatus. **ii. Diversion Rate:** Decreed for a total of 501.6 c.f.s. as adjudicated in Pueblo County District Court on March 23, 1896, September 15, 1905, and July 23, 1971. **f. Holbrook Canal Headgate. i. Point of Diversion:** N bank of the Arkansas River in NE ¼, Section 24, T22S,

R58W, 6<sup>th</sup> P.M., Crowley County, CO. **ii. Diversion Rate:** Decreed for a total of 600 c.f.s., as adjudicated in Bent County District Court on April 8, 1905. **g. Oxford Farmers Ditch Headgate. i. Point of Diversion:** S bank of the Arkansas River in NW corner, Section 31, T21S, R60W, 6<sup>th</sup> P.M., Pueblo County, CO. **ii. Diversion Rate:** Decreed for a total of 129.4 c.f.s., as adjudicated in Pueblo County District Court on March 23, 1896. **h. Oxford Farmers Ditch Augmentation Station,** which returns water to the Arkansas River in NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , Section 20, T22S, R59W, 6<sup>th</sup> P.M., Otero County, CO. **i. Rocky Ford Ditch Headgate. i. Point of Diversion:** S bank of the Arkansas River in NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ , Section 30, T22S, R57W, 6<sup>th</sup> P.M., Otero County, CO. **ii. Diversion Rate:** Decreed for a total of 207.76 c.f.s., as adjudicated on April 8, 1905 in Pueblo County District Court. **j. Rocky Ford Ditch Augmentation Station,** which returns water to the Arkansas River in N  $\frac{1}{2}$ , Section 29, T22S, R57W, 6<sup>th</sup> P.M., Otero County, CO. **k.** The confluence of Timpas Creek with the Arkansas River, located in NW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , Section 25, T23S, R56W, 6<sup>th</sup> P.M., Otero County, CO. **5. Exchange To Point:** Pueblo Reservoir, including the proposed Pueblo Reservoir Enlargement (hereinafter "Pueblo Reservoir"). **a. Legal Description of Structure:** Intersection of Pueblo Dam Axis and the Arkansas River whence the NE corner of Section 36, T20S, R66W, 6<sup>th</sup> P.M., bears N 61°21'20" E a distance of 2,511.05 feet. Said reservoir inundates all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, T20S, R66W, 6<sup>th</sup> P.M., Sections 1, 2, 3, 4, 5, 9, 10, and 11, T21S, R66W, 6<sup>th</sup> P.M., and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, T20S, R67W, 6<sup>th</sup> P.M., Pueblo County, CO. **b. Decrees:** **i.** Case No. B-42135, Pueblo County District Court, on June 25, 1962, with an appropriation date of February 10, 1939 (Priority No. A-22C). The decree was modified in Case No. 80CW6 (Water Division 2) on October 23, 1980 (amended to correct clerical error on April 29, 1981), to conform to the reservoir as built. The conditional portion of the water right has been maintained through a series of diligence proceedings, most recently Case No. 02CW37. **ii.** Pueblo Reservoir is also the subject of Southeastern's pending conditional water rights application for a proposed storage enlargement in Case No. 00CW138. **c. Storage Volume:** **i.** The current decreed and existing capacity is 357,678 a.f. Of the decreed amount, 62,972 a.f., together with the right to refill, remain conditional. Southeastern's engineers have estimated that up to 7,738 a.f. of this capacity may have been lost due to silting. **ii. Volume of Enlargement:** 75,000 a.f., conditional. **6. Source of Water Rights Used for Exchange:** **a.** The water used for these exchanges will be "Non-Project Water," defined as any water rights now or hereafter decreed for use in Water Division 2 (including any reusable return flows therefrom) that may be stored in Pueblo Reservoir directly or by exchange, and used for exchange pursuant to decree or statutorily authorized administrative approval (including but not limited to such approval as authorized by C.R.S. §§ 37-92-308, 37-92-309, 37-80-120, 37-80.5-101, *et seq.* or 37-83-101, *et seq.*), which is owned, controlled or leased by Southeastern or by a constituent entity, other than the Fryingpan-Arkansas Project water (including return flows therefrom), for which Southeastern already holds decrees, including exchange rights. **b.** This application and any decree

herein do not in any way modify Southeastern's decrees for the Fryingpan-Arkansas Project water rights. The description of or reference to structures and water rights herein, other than the proposed exchanges described in this application, does not in any way seek to amend or limit the decrees for those structures and water rights, and omissions in such descriptions and references shall in no way prejudice the owners of those structures and water rights. c. This application does not seek to adjudicate any particular source of exchange water. Any source of exchange water, as described above, may be used for exchange only if such use is authorized, either by decree or statutorily authorized administrative approval. **7. Conditional Appropriative Rights of Exchange:** a. **Source:** Arkansas River. The sources of exchange water are described in paragraph 6 above. b. **Date of Initiation of Appropriation:** For exchanges for domestic and municipal use east of Pueblo, October 2, 1972. This was the date of publication of the widely circulated "Report on Arkansas Valley Conduit for Southeastern Colorado Water Conservancy District, Four Corners Regional Commission and U.S. Bureau of Reclamation" by Black and Veatch. August 17, 2000 for all other uses. Following widespread public notice, Southeastern's District Board approved a Preferred Storage Options Plan Report with recommendations including use of exchanges of Non-Project Water into existing and expanded reservoirs as described herein. c. **Date Water Applied to Beneficial Use:** n/a. d. **Amount Claimed:** Southeastern's exchanges will be operated at a rate up to the rate at which inflows at Pueblo Reservoir would have passed through the reservoir had no exchange been made, but not to exceed 594 c.f.s. for exchanges from Dye Lake and 185 c.f.s. from Holbrook Reservoir No. 1. In addition, total exchanges from storage (Holbrook Reservoir No. 1 and Dye Lake) shall not exceed 15,000 acre feet per year. Direct flow exchanges will not exceed 50 c.f.s. or 20,000 acre feet per year. e. **Uses:** The water will be used beneficially for the same purposes for which Southeastern's Fryingpan-Arkansas Project water rights were decreed. These uses occur within the Southeastern District boundaries, and include domestic and municipal uses by delivery through the proposed Arkansas Valley Conduit or release from Pueblo Reservoir; irrigation; manufacturing; domestic; power purposes; flood control; recreation; fish and wildlife conservation; all municipal purposes, including human consumption, fire protection, sewage treatment, street sprinkling, watering of parks, lawns, and grounds, and maintaining adequate storage reserves; all farming purposes, including the growing of crops of all kinds, stock water, and the watering of lawns, trees and shrubs; all industrial purposes; replacement, augmentation, substitution and exchange; and for reuse and succession of such uses to extinction, to the extent the exchange source water is decreed for such reuse and succession of use. **8. Names and Addresses of Owners of Land on which the Structures are Located:** a. Holbrook Reservoir No. 1, Dye Lake and the Holbrook Canal Headgate are owned by the Holbrook Mutual Irrigating Company, P.O. Box 511, La Junta, CO 81050-0511. b. According to the real property records of Crowley County, CO, the land underlying the Holbrook Canal Headgate is owned by William Stewart Carle, 3 Mirada Rd., Colorado Springs, CO 80906. c. According to the real property

records of Otero County, CO, portions of the land inundated by Dye Lake are owned by Quarter Circle LT, Inc., 2475 Lane 16, Ordway, CO 81063; and Raymond E. and Frances A. Carter, 17248 County Road HH.50, Rocky Ford, CO 81067. **d.** Portions of the land underlying the Dye Lake outlet are owned by Frank Minor Blackford, P.O. Box 293, La Junta, CO 81050. **e.** Portions of the land inundated by Holbrook Reservoir No. 1 are owned by the State of CO, John W. Suthers, Esq., CO Attorney General, 1525 Sherman St., 5th Floor, Denver, CO 80203. **f.** Portions of the land underlying the outlet for Holbrook Reservoir No. 1 are owned by Dale L. and Muriel M. McClelland, 14102 E. Linvale Place, Apt. 112, Aurora, CO 80014-3710. **g.** Portions of the land underlying the Holbrook No. 1 return to the Arkansas River are owned by Larry N. and Nancy A. McElroy, P.O. Box 471, Swink, CO 81077. **h.** The Catlin Canal Headgate and the Catlin Canal Augmentation Stations are owned by the Catlin Canal Company, P.O. Box 174, Manzanola, CO 81058. **i.** The High Line Canal Headgate is owned by the High Line Canal Company, 963 Elm Ave., Rocky Ford, CO 81067. **j.** Portions of the land underlying the diversion point for the High Line Canal are owned by Valerie Harris, 5735 E. Highway 50, Boone, CO 81025. **k.** The Oxford Farmers Ditch Headgate and Augmentation Station are owned by the Oxford Farmers Ditch Company, 7150 Hwy 50, Manzanola, CO 81058. **l.** Portions of the land underlying the diversion point for the Oxford Farmers Ditch are owned by Daniel J. & Barbara J. Gaudreault, P.O. Box 69, Elizabeth, CO 80107. **m.** Portions of the land underlying the Oxford Farmers Ditch Augmentation Station are owned by Leonard Joe and Jean Marie Corsentino, 33138 County Rd. 3, Fowler, CO 81039. **n.** The Rocky Ford Ditch Headgate and Augmentation Station are owned by the Rocky Ford Ditch Company, 17850 RD JJ, Rocky Ford, CO 81067. **o.** Portions of the land underlying the Rocky Ford Ditch Augmentation Station are owned by Larry Hammond, 32797 County Rd. 14.50, Rocky Ford, CO 81067. **p.** Pueblo Reservoir and the surrounding land are owned by the U.S. Department of Interior, Bureau of Reclamation, ("Reclamation"), Eastern Colorado Area Office, 11056 West County Rd. 18-E, Loveland, CO 80537-9711. Southeastern holds the water rights and decrees for Pueblo Reservoir as part of the Congressionally-authorized Fryingpan-Arkansas Project pursuant to Contract No. 5-07-70-W0086, as amended, with the United States. **q.** Portions of the land surrounding the confluence of Timpas Creek and the Arkansas River are owned by Larry N. and Nancy A. McElroy, whose address is stated above, and Timpas Feedyard LLC, P.O. Box 826, Rocky Ford, CO 81067. **9. Relation Back:** Southeastern seeks to relate back the filing date of its initial application and amended application for exchange rights to December 2005, based on the exchange applications then filed in Case Nos. 05CW95, 05CW96, 05CW105 and 05CW107, pursuant to C.R.S. § 37-92-306.1 and C.R.C.P. 15(c). **10. Description of Exchange:** Applicant seeks to adjudicate conditional appropriative rights of exchange. The purpose of the exchanges is to store Non-Project Water in Pueblo Reservoir (including Pueblo Reservoir Enlargement space) for subsequent use by entities within the Southeastern District (all within the drainage basin of the Arkansas River). The exchanges will be operated by Southeastern in consultation with the Division Engineer. The

water exchanged will be replaced to the Arkansas River or its tributaries within the reach between Pueblo Reservoir and John Martin Reservoir, at or upstream from the location of the calling water right. Any water exchanged shall be owned, controlled or leased by Southeastern or one of its constituent entities, and will be of a quality and continuity to meet downstream senior appropriators' normal use requirements. Such constituent entities may include Non-Project Water available to them in these exchanges by agreement with Southeastern. Southeastern, in consultation with the Division Engineer, will utilize appropriate measurement and accounting methods to determine accurately on a daily basis the amount of Non-Project Water accruing to the Arkansas River, and to determine the extent to which such Non-Project Water is available for exchange hereunder. An equivalent amount of water will be stored in Pueblo Reservoir pursuant to this decree, in exchange for the Non-Project Water that shall remain in the Arkansas River to satisfy calling downstream senior water rights below Pueblo Reservoir.

**11.** Southeastern proposes the following terms and conditions to assure that no injury to senior vested water rights will occur by the operation of these exchanges: **a.** Southeastern's exchanges of Non-Project Water will not impair or interfere with any operations of the Fryingpan-Arkansas Project, including the Winter Water Storage Program, as decreed in Case No. 84CW179 (Water Division 2). Storage of Non-Project Water in Pueblo Reservoir will be governed by applicable Operating Principles for the Fryingpan-Arkansas Project, applicable contracts with the United States, and existing contractual spill priorities. **b.** Southeastern shall not operate the exchanges decreed herein between November 15 and March 15, inclusive, to avoid injury to the Winter Water Storage Program as decreed in Case No. 84CW179 (Water Division 2). **c.** Storage of Non-Project Water in the Pueblo Reservoir Enlargement will be governed by Southeastern's agreements with the United States and with other enlargement storage participants, and by any applicable terms and conditions decreed in Case No. 00CW138. **d.** Southeastern does not in this matter seek a transit loss credit, and no such credit will be awarded herein. **e.** Southeastern will continue participating in a long-term water quality and monitoring and maintenance program as set forth in Southeastern's Implementation Committee Report dated April 19, 2001. **f.** Applicant is a party to the Intergovernmental Agreement among the Cities of Pueblo, Fountain, Colorado Springs, and Aurora, the Southeastern Colorado Water Conservancy District and the Board of Water Works of Pueblo, effective May 27, 2004, as such Agreement may be amended from time to time ("Regional IGA"). A copy of the Regional IGA is attached as Exhibit 2 to the Stipulation between City of Pueblo and Southeastern Colorado Water Conservancy District in Case No. 01CW160 (Water Division 2). Applicant acknowledges that nothing in this Application changes, modifies, or amends any element of the Regional IGA.

(Amended Application, 11 pages)

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**CASE NO. 06CW9 – BELLA VISTA RANCH, LLC, 3033 West Gulf Drive, Sanibel, FL 33957** (Peter F. Michaelson, Attorney for Applicant, P. O. Box 1249, Westcliffe, CO 81252)

Application for Surface Water Rights

**Custer County, Colorado**

**2. Name of structure:** Bella Vista Ranch Spring. **3. Legal description of point of diversion:** 600 feet west of the east section line, and 700 feet north of the south section line, Section 13, T21S, R72W, 6<sup>th</sup> P.M., Custer County, State of Colorado. **4. Source:** Groundwater rising into a spring. **5. Appropriation Information:** a. **Date of initiation of appropriation:** @1960; b. **How Appropriation was initiated:** Spring box; pipe and tank developed; c. **Date water applied to beneficial use:** @1960. **6. Amount claimed:** .1 c.f.s. Absolute. **7. Use Information:** a. **Type of use:** Livestock, fire control, and storage for same. **8. Name and address of owner 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:** Applicant. **9. Remarks:** This spring rises and falls on real property owned by Applicant. Historical information related to the development of the spring box was derived from witnesses, including John Rusher, but more certain dates were not available.

(Application, 3 pages)

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**CASE NO. 06CW10 – COMPLAINT.** This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

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**CASE NO. 06CW11 (Water Division 2) and CASE NO. 06CW47 (Water Division 1) - MICHAEL D. ROKES and PAMELA S. ROKES, 8155 Poco Road, Colorado Springs, CO 80908-4728** (Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905)

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:** Well permit 160716, an exempt Dawson aquifer well. **2. Legal description of wells:** Three additional wells in the Dawson, and one in each of the Denver, Arapahoe and Laramie-Fox Hills aquifers, plus all necessary additional and/or replacement wells, to be located anywhere on Applicant's 21.12 acre property described as Lot 1, Stroschein Ranch subdivision, and Lot 3, Block 2, Wildridge Subdivision No. 1, El Paso County. This property is located primarily in the NW1/4 SW1/4 Section 28, T. 12 S., R. 65 W., 6<sup>th</sup> P.M., but approximately two acres lie in the NE1/4 SE1/4 Section 29. This property lies between Cottonwood Creek and Sand Creek in the Fountain Creek drainage. **3. Sources:** Not nontributary Dawson aquifer; not

nontributary Denver aquifer; nontributary and not-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 g.p.m. per well, 6.9 acre feet annually, absolute; Denver aquifer - 100 g.p.m., 10.4 acre feet annually, absolute; not-nontributary Arapahoe aquifer - 200 g.p.m., 0.9 acre feet annually, absolute; nontributary Arapahoe aquifer - 200 g.p.m., 8.4 acre feet annually, absolute; Laramie-Fox Hills aquifer - 100 g.p.m., 4.4 acre feet annually, absolute. The above amounts will be changed in any decree entered herein to take into account the State Engineer's Determination of Facts. 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. **6. Proposed use:** Indoor residential and commercial (home office use); swimming pool and hot tub; landscaping including irrigation and water "amenities" such as decorative pools and fountains, stock water, fire protection and augmentation. **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:** Four Dawson aquifer wells, one of which, permit no. 160716, is already constructed. No other water rights are or will be diverted from these wells. After entry of a decree, the existing Dawson aquifer well will be re-permitted consistent with the provisions of the decree. **9. Previous decrees for water rights to be used for augmentation:** None. **10. Historic use:** Not applicable. **11. Statement of plan for augmentation:** Applicants intend to subdivide the Property into four residential lots, each of which will be served by individual on-lot Dawson aquifer wells, which may pump no more than 0.6 acre foot annually, each. Indoor use for each of four houses is expected to equal 0.30 acre foot annually. Treatment of waste water from indoor uses will be achieved using nonevaporative individual septic tanks and leach field systems ("ISDS"); consumption of water so treated will not exceed 10 percent of uses, with 90 percent, or 1.08 acre feet total, returning to the nearest stream. Depletions in the 300<sup>th</sup> year are modeled to equal 56 percent of annual pumping, or 1.08 acre feet based on annual pumping of 1.92 acre feet. So long as a single-family dwelling is located on each lot, ISDS return flows alone will equal or exceed maximum depletions during pumping. Change of the type of wastewater treatment to a central sewage treatment with direct discharge to any tributary of Fountain Creek shall not require an amendment to this plan for augmentation, but change to any other type of waste water disposal shall require an amendment. Applicants propose to replace depletions during pumping with return flows from the ISDS, and to replace injurious post-pumping depletions with the nontributary Arapahoe aquifer water decreed herein, approximately 343 acre feet of which will be reserved for that purpose. However, Applicants seek to reserve the right to replace such depletions with any judicially acceptable source of augmentation water. Applicants further propose to aggregate all depletions and replace them to the Fountain Creek drainage. Any final decree entered in this case shall provide that no more than 0.6 acre foot per year may be diverted

from each of the four Dawson aquifer wells absent an amendment of this plan for augmentation. Because depletions will occur in both Water Divisions 1 and 2, this application is being published in both water divisions, and will be consolidated in Water Division 2.

(Application, 3 pages)

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**CASE NO. 06CW12 – PENROSE WATER DISTRICT, c/o Ron Gasser, District Manager, 240 Grant Street, Penrose, CO 81240** (Steven P. Jeffers, Esq., and Mark D. Detsky, Esq., Bernard, Lyons, Gaddis & Kahn, P.C., Attorneys for Applicant, P.O. Box 978, Longmont, CO 80502-0978, (303) 776-9900).

Application for Change of Water Rights and Appropriative Rights of Exchange

**Fremont, Custer, Teller and Pueblo Counties**

**FIRST CLAIM: CHANGE OF WATER RIGHTS. 2. Decreed Name of Structure for Which Change is Sought:** Pleasant Valley Ditch. **3. Previous**

**Decrees for Water Rights to be Changed:** The Pleasant Valley Ditch is decreed for a total diversion of 10 cfs. This amount includes the original appropriation for the Pleasant Valley Ditch and a transfer to the Pleasant Valley Ditch of the water right decreed to the Alexander Ditch. Applicant owns and seeks to change a 10/12<sup>th</sup> interest in both priorities. **A. Pleasant Valley Ditch** i)

**Date entered:** February 3, 1894, District Court, Fremont County ii) **Legal**

**Description of Point of Diversion:** The decreed point of diversion is on the north side of the Arkansas River in the SE<sup>1</sup>/<sub>4</sub> of the SW<sup>1</sup>/<sub>4</sub>, Section 27, T49N,

R10E, N.M.P.M., Fremont County, Colorado. iii) **Source:** Arkansas River. iv) **Appropriation Date:** May 31, 1883, Priority 291. v) **Amount:** 6.67 cfs out of 8

cfs. vi) **Decreed use:** Irrigation. **B. Alexander Ditch** i) **Date entered:** July 2,

1906, District Court, Fremont County. ii) **Legal description of point of**

**diversion:** Same as Pleasant Valley Ditch. iii) **Source:** Arkansas River. iv) **Appropriation Date:** December 31, 1877, Priority 194. v) **Amount:** 1.667 cfs

out of 2 cfs. vi) **Decreed use:** Irrigation. **4. Historical Use of Water Rights to**

**be Changed:** Applicant's interest in the Pleasant Valley Ditch has been used

historically to irrigate up to 204 acres of alfalfa and grass pasture on the Goodwin Ranch comprising approximately 449 acres located generally in portions of

Sections 1, 2, 11 and 12, T48N, R10E, N.M.P.M. in Fremont County, Colorado. Summaries of diversion records for the subject ditch are attached to the

Application as Exhibit A. A map showing the general location of the Goodwin Ranch, including the historically irrigated lands 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. Applicant proposes to

permanently dry up the historically irrigated lands in order to use the subject water rights for the changed purposes. Applicant requests a determination of the

full amount of historical use, depletions and return flows from the subject water rights. **5. General Description of Proposed Changes:** Applicant has acquired

water rights in the Pleasant Valley Ditch for conversion to all municipal uses within the Penrose Water District service area and other locations that may be

served by contract, lease or other agreement with Penrose. Applicant proposes to deliver the water rights downstream on the Arkansas River for direct diversion

at existing and proposed structures for delivery to the Penrose water treatment plant. Applicant also proposes to deliver such water for storage in De Weese Reservoir, Pueblo Reservoir, lined gravel pit reservoirs near Penrose, Brush Hollow Reservoir, Skaguay Reservoir, and Phantom Canyon Reservoir, and any expansion or enlargement of such reservoirs. Applicant requests approval of exchanges of such water from Pueblo Reservoir upstream on the Arkansas River to various points of diversion and storage described below, including exchanges up Grape Creek, Eightmile Creek, Brush Hollow Creek, Beaver Creek and West Beaver Creek to De Weese Reservoir, Phantom Canyon Reservoir, Brush Hollow Reservoir and Skaguay Reservoir, and any expansion or enlargement of such reservoirs. **6. Change to Alternate Points of Diversion:** Applicant requests approval of a change in point of diversion to include the Pleasant Valley Ditch and the following diversion points: i) One or more alternate points of diversion on the Arkansas River located between the confluence of Eightmile Creek and the Arkansas River located in the SW $\frac{1}{4}$  Section 14, T19S, R69W, and the eastern Fremont County line located on the east line of Section 1, T18S, R68W, all in the 6<sup>th</sup> P.M. in Fremont County, including but not limited to: (a) The Lester and Attebery Ditch, located on the north side of the Arkansas River in the SW $\frac{1}{4}$ , SW $\frac{1}{4}$ , Section 13, T19S, R69W, at a point approximately 660 feet from the south section line and 660 feet from the west section line; (b) One or more proposed well fields located along the Arkansas River; (c) A proposed pump station with intake located in the Blue Heron Ponds, a series of reservoirs located generally in the W $\frac{1}{2}$ , Section 13, T19S, R69W; (d) A proposed pump station with intake located in the Grisenti Ponds located generally south of Hwy 115 and north of the Arkansas River in Section 13, T19S, R69W; and (e) The Ideal Cement Pump Plant located in the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 20, T19S, R68W. ii) The Phantom Canyon Diversion proposed to be located on Eightmile Creek in the NE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 4, 1,300 feet from the east line and 2,320 feet from the south line, and the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 9, 1,429 feet north and 245 feet west of the  $\frac{1}{4}$  corner on the east line of Section 9, all in T18S, R69W, 6<sup>th</sup> P.M. in Fremont County; iii) The Beaver Park Ditch the headgate of which is located on the west side of Beaver Creek approximately in the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 16, T18S, R68W, 6<sup>th</sup> P.M. in Fremont County; and iv) The Penrose Beaver Creek Diversion, the headgate of which is proposed on the west side of Beaver Creek in the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 16, T18S, R68W, 6<sup>th</sup> P.M. in Fremont County, approximately 500 feet from the north line and approximately 500 feet from the east line. **7. Changes from Direct Diversion to Direct Diversion and/or Storage.** Applicant proposes to change its water rights to allow direct diversion and/or storage by pipeline or use of the following structures: i) One or more reservoirs to be located on the Goodwin Ranch through the Pleasant Valley Ditch; ii) De Weese Reservoir located on Grape Creek in portions of Sections 19, 20, 29 and 30, T21S, R72W, 6<sup>th</sup> P.M., in Custer County; iii) The Blue Heron Ponds through the Lester and Attebery Ditch or Applicant's proposed well field; iv) The Grisenti Ponds through the Lester and Attebery Ditch or Applicant's proposed well field; v) Brush Hollow Reservoir, located on Brush Hollow Creek in the E $\frac{1}{2}$  Section 24, W $\frac{1}{2}$  Section 19, NE $\frac{1}{4}$  Section 25 and NW $\frac{1}{4}$  Section 30, T18S, R69W, 6<sup>th</sup> P.M.,

Fremont County, Colorado, through the Beaver Park Ditch or Penrose Beaver Creek Diversion; vi) Skaguay Reservoir (a/k/a Reservoir No. 1 of the Arkansas Valley Railway Light and Power Company), located on West Beaver Creek, located in portions of Section 31, T15S, R68W; Section 36, T15S, R69W; Section 1, T16S, R69W; and Section 6, T16S, R68W, all in the 6<sup>th</sup> P.M., Teller County, Colorado; vii) Phantom Canyon Reservoir through the Phantom Canyon Diversion. The center of the dam is proposed in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 23, T18S, R69W, 6<sup>th</sup> P.M., Fremont County, 2,580 feet from the north line and 920 feet from the east line; and viii) Pueblo Reservoir, located on the Arkansas River at a point whence the NE corner of Section 36, T20S, R66W of the 6<sup>th</sup> P.M., bears North 61°21' 20" East a distance of 2,511.05 feet. Pueblo Reservoir inundates all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, T20S, R66W of the 6<sup>th</sup> P.M.; Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, T20S, R67W of the 6<sup>th</sup> P.M., Pueblo County, Colorado. **8. Change in Place of Use:** Applicant seeks to change the place of use of the subject water rights to include continued irrigation use on the Goodwin Ranch or use within the service area of the Penrose Water District as it now exists or may be amended in the future, and to any location served by lease, contract or other agreement with Penrose. The present service area of Penrose includes portions of Sections 17, 20, 21, 27-35, T18S, R68W; Sections 2 – 16, T19S, R68W; and Sections 25 and 36, T18S, R69W, 6<sup>th</sup> P.M. in Fremont County, Colorado. **9. Change of Type of Use:** Applicant seeks to change the type of use to include continued irrigation on the Goodwin Ranch or use for all municipal purposes including domestic, commercial, industrial, fire fighting, irrigation, aesthetic, recreational, fish and wildlife, augmentation, replacement, substitution, exchange, and other beneficial uses. Such change shall include the right to use, reuse and fully consume the historical depletive portion of the subject water rights for the purposes described above, whether for immediate use, or storage and subsequent use, including the right to reclaim and use any reusable return flows, and to lease, sell or otherwise dispose of such water to the extent not needed immediately by Penrose. **SECOND CLAIM: APPROPRIATIVE RIGHTS OF EXCHANGE** **10. Name of structures involved in exchanges and legal descriptions:** Applicant seeks adjudication of conditional appropriative rights of exchange on the Arkansas River, Grape Creek, Eightmile Creek, Brush Hollow Creek, Beaver Creek and West Beaver Creek utilizing the subject water rights as follows (reference to all reservoirs includes any future expansions or enlargements): **A. Penrose Pueblo Reservoir Exchanges:** Fully consumable water to which the Applicant is entitled will be stored in Pueblo Reservoir during the irrigation season. Once stored, such water may be exchanged up the Arkansas River and its tributaries for direct diversion and or storage at the points described above. The downstream point of the exchange is Pueblo Reservoir. The furthest upstream point of this exchange on the Arkansas River is its confluence with Grape Creek. This exchange may also operate on the following tributaries: (1) on Grape Creek up to De Weese Reservoir; (2) on Eightmile Creek up to the Phantom Canyon Diversion; (3) on Brush Hollow Creek up to Brush Hollow Reservoir; (4) on Beaver Creek up to the headgate of the Beaver

Park Ditch or the Penrose Beaver Creek Diversion; and (5) on Beaver Creek and West Beaver Creek up to Skaguay Reservoir. **B. Penrose De Weese Reservoir Exchange:** From the confluence of the Arkansas River and Grape Creek in Section 6, T19S, R70W, 6<sup>th</sup> P.M., Fremont County, Colorado, up Grape Creek to De Weese Reservoir. **C. Penrose Phantom Canyon Exchange:** From the confluence of the Arkansas River and Eightmile Creek in Section 14, T19S, R69W, 6<sup>th</sup> P.M., Fremont County, Colorado, up Eightmile Creek to the Phantom Canyon Diversion. **D. Penrose Brush Hollow Creek Exchange:** From the confluence of the Arkansas River and Brush Hollow Creek in Section 13, T19S, R68W, 6<sup>th</sup> P.M., Fremont County, Colorado, up Brush Hollow Creek to Brush Hollow Reservoir. **E. Penrose Beaver Creek Exchange:** From the confluence of the Arkansas River and Beaver Creek in Section 26, T19S, R68W, 6<sup>th</sup> P.M., Fremont County, Colorado, up Beaver Creek to the headgate of the Beaver Park Ditch or Penrose Beaver Creek Diversion. **F. Penrose Skaguay Reservoir Exchange:** From the confluence of the Arkansas River and Beaver Creek in Section 26, T19S, R68W, 6<sup>th</sup> P.M., Fremont County, Colorado, up Beaver Creek and West Beaver Creek to Skaguay Reservoir. **G. Amount:** The exchanges are claimed for the following amounts: (1) Penrose Pueblo Reservoir Exchanges: 50 cfs, conditional; (2) All other exchanges: 8.333 cfs, conditional. **11.** Applicant claims an appropriation date of July 12, 2005 for all the described exchanges, based on the date that Penrose completed its purchase of the Goodwin Ranch and water rights. **12. Names and addresses of owners 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:** A. The Pleasant Valley Ditch and historically irrigated lands on the Goodwin Ranch are owned by Applicant. B. The Pleasant Valley Ditch may also be owned by Robert and Helen Williams, whose address is County Road 47, Howard, CO 81233-9500, Guy and Carol McEnulty, whose address is 1149 County Road 69, Canyon City, CO 81212, and Glen Vista Property Owners Association, Patti Myers, P.O. Box 1140, Canon City, CO 81215. C. The Lester and Attebery Ditch and the Blue Heron Ponds are located on land owned by the United States Bureau of Land Management, whose address is ATTN Roy Masinton, Field Manager, 3170 E. Main St., Canon City, CO 81212. D. The Lester and Attebery Ditch and Grisenti Ponds are located on land owned by Grisenti family, whose address is Brush Hollow Partnership ATTN: James J. Grisenti, 15000 Hwy. 115, Florence, CO 81226. E. The Ideal Cement Pump Plant is owned by Holcim Inc., 6211 N. Ann Arbor Rd., Dundee, MI 48131. F. The Phantom Canyon Diversion is on land owned by Dick H. Chess, 4193 County Road 67, Penrose, CO 81240. G. The Phantom Canyon Reservoir is on land owned by Phantom Canyon Ranch Land and Cattle Co., LLC and Morley Companies Family Investment, LLLP, 20 Boulder Crescent, 2<sup>nd</sup> Floor, Colorado Springs, CO 80903. H. De Weese Reservoir is owned by De Weese-Dye Ditch and Reservoir Co., 1631 Chestnut, Canon City, CO 81212. I. Skaguay Reservoir is located on lands owned by the State of Colorado Department of Natural Resources, Division of Wildlife, whose address is 6060

Broadway, Denver, CO 80216 and Central Telephone and Utilities Corporation, whose address is 115 W. 2<sup>nd</sup> St., Pueblo, CO 81003. J. Pueblo Reservoir is located on land owned by the United States Bureau of Reclamation, whose address is ATTN Fred Ore, Area Manager, Eastern Colorado Area Office, 11056 W. County Rd. 18E, Loveland, CO 80537-9711. K. The Beaver Park Ditch headgate and Brush Hollow Reservoir are on land owned by Beaver Park Water, Inc., P.O. Box 286, Penrose, CO 81240, and the State of Colorado, c/o Fremont County Assessor, P.O. Box 306, Canon City, CO 81212. L. The proposed Penrose Beaver Creek Diversion is located on land owned by the Colorado State Land Board, 1313 Sherman Street, Room 621, Denver, CO 80203. M. The land upon which the proposed well field or other diversion points on the Arkansas River may be located is owned by one or more of the people described above and/or the following people: Gene M. Colon, 202 MacKenzie Ave., Canon City, CO 81212-9317. Colo Venture IV, LLC and Rocolo VIII, LLC, 20 Boulder Crescent Street, 2<sup>nd</sup> Floor, Colorado Springs, CO 80903. Rodger E. Beck and Albert I. Beck, 2000 Fremont County Road 112, Florence, CO 81226. Penrose Ranch I, LLC, 2010 Fox Mountain Point, Colorado Springs, CO 80906-6909. Ranch Land, LLC, 3925 Hill Dr., Colorado Springs, CO 80904-1183. Mary Wallace, 307 W. 19<sup>th</sup> Street, Pueblo, CO 81003-2607. Jessie M. Grisenti, 14662 State Highway 115, Florence, CO 81226. **13.** Applicant acknowledges that it must first obtain permission from the owners of the existing and proposed structures described herein that it does not own, before using any of those structures. Applicant acknowledges that any water right that may be adjudicated pursuant to this Application will not confer any right to use structures owned by others. WHEREFORE, Applicant requests that the Court enter a decree approving applicant's change of water rights and appropriate rights of exchange.

(Application and attachments, 12 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 April 2006, (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.

Witness my hand and the seal of this Court this 8th day of March, 2006.

/s/ Mardell R. DiDomenico

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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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