

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING JUNE 2007

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications, certain amendments, and petitions filed or order published during June 2007, 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, amendments, or petitions are as follows:

CASE NO. 99CW172 – BJP REAL ESTATE PARTNERSHIP, LTD., c/o William I. Jack or Suzanne B. Jack, 9862 C.R. 170, Westcliffe, CO 81252 (Jack F.

Ross and Joanne Herlihy, Dufford & Brown, P.C., Attorneys for Applicant, 1700 Broadway, Suite 2100, Denver, CO 80290-2101; 303-861-8013)

Petition to Correct Substantive Errors in Judgment and Decree

CUSTER COUNTY

Pursuant to Order of Court entered June 19, 2007, notice of the Petition to Correct Substantive Errors in Judgment and Decree is given as follows:

Applicant, BJP Real Estate Partnership, Ltd., pursuant to C.R.S. § 37-92-304(10) petitions this Court to correct substantive errors in the judgment and decree heretofore entered on March 3, 2004; in support thereof, Applicant avers as follows: 1. The Applicant sought to adjudicate conditional water storage rights for five Rangeland Habitat ponds and to secure judicial approval of terms and conditions to replace out-of-priority evaporative losses from the surfaces of those ponds. 2. As found by this Court in the Decree to be corrected, two water users' Statements of Opposition to the Applicant were withdrawn, the Water Referee entered her ruling and the State and Division Engineers protested that ruling. 3. Subsequent to the filing of the protest to the Water Referee's ruling, the Applicant and those Protestants negotiated a settlement of the issues framed by the State's protests, and each party consented to the entry of the Decree ("Consent Decree"), which was then signed by the Water Judge on March 3, 2004. After entry of the Consent Decree, no ruling of the Referee remained available for anyone to protest. 4. The negotiations which led to the entry of the Consent Decree was premised on the mutually-held belief that the total number of acre feet of water to be stored in those ponds and the total acreage of the exposed surfaces of the ponds would be identical, that is, 22.11 acre feet of water would be stored in the ponds with 22.11 acres of exposed water surface area. 5. Those volumes and acreages were developed from the design criteria provided by the United States Department of Agriculture which designed and oversaw the construction of the project. 6. As a result, the Consent Decree: a. evidenced conditional water storage rights totaling 22.11 acre feet, and b. provided a mechanism for replacing out-of-priority depletions to the stream system resulting from the evaporative losses from 22.11 acres of exposed water surface. 7.

Paragraph 9 of the Findings section of the Consent Decree states that the ponds had been constructed to capacities different from those claimed, noting that the total volume, "is less than the total amount claimed in the Application." But there was no evidence then available to quantify the magnitude of that difference. 8. The magnitude of that difference was not discovered until after May 24, 2006 when the Applicant caused an, "as built", survey to be made of the ponds; it revealed that there were only 11.72 acres of exposed water surface, a difference of 47% below the decreed figure. 9. The consequence of the mutual mistake of fact during the parties' negotiations regarding the capacities of the ponds resulted in the entry of a Consent Decree containing large, and previously unknown substantive errors that adversely affect Applicant's rights by requiring it to dry up significantly more irrigated land and requiring it to forego the use of significantly more water divertible on the priority of the water right decreed to the Freer Beckwith and Kennecott water right than is necessary to replace all of the out-of-priority evaporative losses from the 11.72 surface acres of the Rangeland Habitat ponds. 10. It was impossible for the Applicant or the Protestants to have known the magnitude of those errors at the time the decree was entered or to seek to correct them by any procedure prior to the completion of that survey in 2006. 11. As soon as it was discovered the magnitude of the errors, Applicant informed the Division and State Engineers of it and sought to have them join in this Petition, but, citing policy reasons, they have declined to do so. 12. Correcting the substantive errors in the Decree to reflect the actual conditions on the ground will not injuriously affected the vested rights of other water users. WHEREFORE, Applicant petitions this Court to take the following actions in this matter. a. order such publication of notice of the pendency of these proceedings as the Court deems appropriate under Rule 4 of the Uniform Water Court Rules. b. hold an evidentiary hearing to: (i) determine whether the mutual mistake of the parties during their negotiations and leading to the entry of a Consent Decree based on that mutual mistake precluded Applicant from filing a protest with the Water Clerk prior to the original entry of the Decree herein; (ii) determine the correct evaporative loss replacement obligations of the Applicant; c. enter a revised, corrected decree: (i) decreasing the amount of the conditional water storage rights to a total of 11.72 acre feet; (ii) decreasing the number of acre feet of evaporative loss from the surface of the Rangeland Habitat pond to 11.72 acre feet; (iii) decreasing the number of acres of historically irrigated land to be dried up to 20.41 acres; (iv) decreasing the amount of replacement flows from the use of the Freer Beckwith and Kennecott water right to .373 cfs; and d. such other and further relief as the Court may deem appropriate. Pursuant to the Court's June 19, 2007 Order, Statements of Opposition to this Petition shall be filed no later than August 31, 2007.

CASE NO. 07CW58(00CW113) – MARY A. LaPERRIERE, 5369 County Road 84, Box 394, Florence, CO 81226; 719-784-0104

Application for Finding of Diligence and to Make Absolute

FREMONT COUNTY

2. Name of Structure: LaPerriere Spring. **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **A. Date of Original Decree:** May 8, 2001; **Case No.:** 00CW113; **Court:** District Court Water Division No. 2. **B. Legal description:** Fremont County, SW¼ of the NE¼ Section 16, Township 20 South, Range 70 West, 6th P.M., 2640 feet from the South line and 1850 feet from the East line. **Street Address:** 5369 County Road 84, Florence, Colorado. **C. Source:** Natural Spring. **D. Appropriation Date:** May 8, 2001; **Amount:** 10 gpm. **E. Use:** Domestic use for homestead house, watering of livestock, drip irrigation of orchard (6 acres). **4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** Water has been consistently used for domestic use at homestead house, watering of livestock and drip irrigation of orchard (6 acres). **5. If claim to make absolute:** **A. Date water applied to beneficial use:** 1913; **Amount:** 10 gpm. **Use:** Domestic use for homestead house, watering of livestock and drip irrigation of 6 acres of orchard. **B. Description of place of use where water is applied to beneficial use:** 160 acre ranch with livestock and orchard consisting of six acres to include domestic water for homestead house. **6. 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:** United States Government, San Isabel National Forest, San Carlos Road, 3170 E. Main Street, Canon City, CO 81212.

CASE NO. 07CW59 – RICHARD W. NASBY, 2635 Spaatz Road, Monument, CO 80132; 719-481-6660

Application for Underground Water Right

EL PASO COUNTY

2. Name of well and permit, registration, or denial number: Permit 129148. **3. Legal description of well:** SW¼ of the NE¼ Section 27, Township 11 South, Range 67 West, 6th P.M., 2400 feet from North line and 2100 feet from East line. **Street Address:** 2635 Spaatz Road, Monument, CO 80132; **Subdivision:** Pine Hills; **Lot:** 1; **Block:** 5, Filing/Unit 4. **4. A. Source:** Dawson Aquifer; **B. Depth:** 360 feet. **5. A. Date of appropriation:** Feb. 23, 1983; **B. How appropriation was initiated:** Well permit application. **C. Date water applied to beneficial use:** Sept. 4, 1984. **6. Amount claimed:** 15+ gpm Absolute. **7. If well is nontributary:** **A. Name of Aquifer:** _____. **B. Amount claimed in acre feet annually:** 1.25 acre feet annually. **8. Proposed use:** **A. If irrigation, complete the following:** (1) Number of acres

historically irrigated: ____; (2) Total number of acres proposed to be irrigated: ____; (3) The legal description of the land irrigated: _____. (4) Area of lawns and gardens irrigated: _____. B. If non-irrigation, describe purpose fully: Domestic: single family dwelling, 4 head of livestock, irrigation of 18,000 square feet of home lawn and gardens. 9. 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 pool: Applicant.

CASE NO. 07CW60(82CW212) – TOWN OF MONUMENT, c/o Catherine Green, Town Manager, P. O. Box 325, Monument, CO 80132 (Robert F. T. Krassa, Krassa & Miller, LLC, Attorneys for Applicant, 2344 Spruce Street, Suite A, Boulder, CO 80302-4672; 303-442-2156)

Application for Finding of Reasonable Diligence

EL PASO COUNTY

2. Name of Structures: The conditional water right which is the subject of this Application, is an exchange to the following wells: Monument Wells No. 4, 5, QAL-3, QAL-4, QAL-5, QAL-6, QAL-7, QAL-8, QAL-3(ALT), QAL-4(ALT), QAL-5(ALT), QAL-6(ALT), QAL-7(ALT), and QAL-8(ALT), from Tri-Lakes Waste Water Facility, from distributed return flows and from Monument Wells A-1 and LFH-1.

3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree: a. **Date of Original Decree:** June 7, 1988; Case 82CW212, Water Division No. 2. b. **Location of structures:** The above referenced wells (except Monument Wells A-1 and LFH-1) are located in Sections 14, 15, and 16, Township 11 South, Range 67 West of the 6th P.M. in El Paso County, at specific locations described in the said Decree in Case 82CW212. The above referenced Monument Wells A-1 and LFH-1 are located in Section 15, same range and township, at specific locations described in the said Decree in Case 82CW212. The Tri-Lakes Waste Water Facility is located in the NW 1/4 NE 1/4 Section 27, same range and township. Said Decree may be inspected at the office of the clerk of this Court, and was also recorded on June 13, 1988 at Book 5518, page 1250, reception number 01713104 of the El Paso County Records. c. **Source:** the ultimate source of water exchanged is the nontributary Arapahoe and Laramie Fox Hills aquifers withdrawn from the said Monument Wells A-1 and LFH-1. d. **Date of Appropriation:** December 30, 1982 for exchanges to Monument Wells 4 and 5 with relative priority under CRS 37-92-306 based upon filing of application in calendar year 1982, and March 18, 1986 for exchanges to Monument Wells QAL-3 through QAL-8 and QAL-3(ALT) through QAL-8(ALT) with relative priority dates under CRS 37-92-306 based upon filing during calendar year 1986. Amount: 0.8 cfs, conditional. e. **Exchange reach:** Monument Creek, from the said tri-Lakes Waste Water Facility in the NW 1/4 NE 1/4 Section 27, Township 11 South, Range 67 West of the 6th P.M. in El Paso County upstream to the SE 1/4 Section 9, same range and township. **4. Provide a detailed outline of what has been done toward completion or for completion of appropriation and application of water to a beneficial use as**

conditionally decreed, including expenditures: During the diligence period, Well No. 2 was rehabilitated, Wells No. 4 and 5 were rehabilitated and reequipped, Well No. 3 was rehabilitated, Well No. 7 was rehabilitated and lowered and Well No. 8 was rehabilitated. During the year 2006 a new Water Treatment Plant was constructed for the treatment of the new Well No. 9 and we piped Well No. 3 into this plant for treatment. During the diligence period the Town has spent over \$2,000,000 on these and other water system projects. The Town of Monument has in all respects diligently worked toward placing these conditional water rights to beneficial use.

CASE NO. 07CW61(83CW10) – TOWN OF MONUMENT, c/o Catherine Green, Town Manager, P. O. Box 325, Monument, CO 80132 (Robert F. T. Krassa, Krassa & Miller, LLC, Attorneys for Applicant, 2344 Spruce Street, Suite A, Boulder, CO 80302-4672; 303-442-2156)

Application for Finding of Reasonable Diligence

EL PASO COUNTY

2. Name of Structures: The conditional water right which is the subject of this Application, is an exchange to the following wells: Monument Wells No. 1, 2, 3, 4, 5, QAL-3, QAL-4, QAL-5, QAL-6, QAL-7, QAL-8, QAL-3(ALT), QAL-4(ALT), QAL-5(ALT), QAL-6(ALT), QAL-7(ALT), and QAL-8(ALT), from Tri-Lakes Waste Water Facility, from distributed return flows and from Beaver Creek Wells A-1, A-2, A-3, LFH-1, LFH-2 and LFH-3. **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **a. Date of Original Decree:** June 13, 1988 (First Amendment of Findings, Judgment and Decree); Case 83CW10, Water Division No. 2. **b. Location of structures:** The above referenced wells (except the Beaver Creek wells) are located in Sections 14, 15, and 16, Township 11 South, Range 67 West of the 6th P.M. in El Paso County, at specific locations described in the said Decree in Case 83CW10. The above referenced Beaver Creek wells are located in Sections 27, 28 and 29, same range and township, at specific locations described in the said Decree in Case 83CW10. The Tri-Lakes Waste Water Facility is located in the NW 1/4 NE 1/4 Section 27, same range and township. Said Decree may be inspected at the office of the clerk of this Court, and was also recorded on June 13, 1988 at Book 5518, page 1268, reception number 01713105 of the El Paso County Records. **c. Source:** the ultimate source of water exchanged is the nontributary Arapahoe and Laramie Fox Hills aquifers withdrawn from the said Beaver Creek wells. **d. Date of Appropriation:** December 30, 1982 for exchanges to Monument Wells 1, 2, 3, 4 and 5 with relative priority under CRS 37-92-306 based upon filing of application in calendar year 1982, and March 18, 1986 for exchanges to Monument Wells QAL-3 through QAL-8 and QAL-3(ALT) through QAL-8(ALT) with relative priority dates under CRS 37-92-306 based upon filing during calendar year 1986. Amount: 6.0 cfs, conditional. **e. Exchange reach:** Monument Creek, from the confluence with Beaver Creek in the NW 1/4 SW 1/4 Section 35, Township 11 South, Range 67 West of the 6th P.M. in El Paso County upstream to the SE 1/4 Section 9, same range and township. **4. Provide a detailed outline of what has been done toward completion or for**

completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: During the diligence period, Well No. 2 was rehabilitated, Wells No. 4 and 5 were rehabilitated and reequipped, Well No. 3 was rehabilitated, Well No. 7 was rehabilitated and lowered and Well No. 8 was rehabilitated. During the year 2006 a new Water Treatment Plant was constructed for the treatment of the new Well No. 9 and we piped Well No. 3 into this plant for treatment. During the diligence period the Town has spent over \$2,000,000 on these and other water system projects. The Town of Monument has in all respects diligently worked toward placing these conditional water rights to beneficial use.

CASE NO. 07CW62 – ROBERT C. and MARION E. HUMPERT, 5255 Garton Road, Castle Rock, CO 80104; 303-660-9059

Application for Water Storage Right

CHEYENNE COUNTY

2. Name of Reservoir: Dostal Reservoir. **3. A. Legal description of location of dam:** Cheyenne County, SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ Section 5, Township 14 South, Range 51 West, 6th P.M. 950 feet from the South line and 1700 feet from the East line. **If off-channel reservoir, name and capacity of ditch or ditches uses to fill reservoir, and legal description of each point of diversion:** Dostal Ditch; Cheyenne County, SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ Section 5, Township 14 South, Range 51 West, 6th P.M., 1150 feet from the South line and 2200 feet from the East line. **4. Source:** Aroya Gulch. **5. A. Date of appropriation:** March 1909; **B. How appropriation was initiated:** Construction of ditch and reservoir. **C. Date water applied to beneficial use:** April 1909. **6. Amount claimed:** **A. In acre feet:** 57.148 Absolute; **B. If off-channel reservoir, rate of diversion in cfs for filling the reservoir:** 19.7 cfs Absolute. **7. Use:** **A. If irrigation, complete the following: (1) Number of acres historically irrigated:** 150; **(2) Total number of acres proposed to be irrigated:** 9. **9. Legal description of acreage irrigated or to be irrigated:** SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5, Township 14 South, Range 51 West, 6th P.M. **8. Surface area of high water line:** 13.15 acres. **A. Maximum height of dam in feet:** 15; **B. Length of dam in feet:** 2850 ft. **9. Total capacity of reservoir in acre feet:** 57.148. **Active capacity:** 57.148; **Dead storage:** 0. **10. 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:** Applicant.

CASE NO. 07CW63 – ROXANN VOCATE, 7042 CR 107, Salida, CO 81201; 719-539-4719

Application for Underground Water Right

CHAFFEE COUNTY

2. Name of well and permit, registration, or denial number: Domestic, permit 95141. **3. Legal description of well:** SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ Section 5,

Township 49 North, Range 9 East, N.M.P.M. 250 feet from the South line and 2580 feet from the East line. **Street Address:** 7042 CR 107, Salida, CO 81201. **Subdivision:** Richard Tracts; **Lot:** 1. **4. Source:** Well; **B. Depth:** 27 feet. **5. A. Date of appropriation:** June 19, 1985; **B. How appropriation was initiated:** Well permit; **C. Date water applied to beneficial use:** June 19, 1987. **6. Amount claimed:** 36 gpm absolute. **7. If well is tributary:** NA. **8. Proposed use:** Domestic and livestock. **9. 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 pool:** Roxann L. Vocate and Rosemary Pautler, 7042 CR 107, Salida, CO 81201.

CASE NO. 07CW64 – RONALD G. MILLER and LAURA M. MILLER, 247 S. Montecito Drive, Pueblo West, CO 81007 (James G. Felt and David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903; 719-471-1212)

Application for Water Storage Right

PUEBLO COUNTY

Name of Reservoir: Miller Reservoir **Legal Description of location of dam:** The center of the dam is located in the SE ¼ SE ¼, Section 30, Township 22 South, Range 67W of the 6th p.m., Pueblo County, Colorado, lying 605 feet from the South line and 545 feet from the East line of said section 30, on property whose address is 5100 Siloam Road, Beulah, CO 81023. **Source:** Runoff water within an unnamed water course tributary to Rock Creek, tributary to the Arkansas River. **Date of appropriation:** i. Absolute: approximately June 1940 for livestock watering purposes. ii. Conditional: February 28, 2006. **How appropriation was initiated:** i. Absolute: by construction of a stock water dam impoundment for stock water uses. ii. Conditional: by purchase of property by the Applicants; formation of the intent to irrigate lands and modifying outlet works from dam to irrigate those lands. **Date water applied to beneficial use:** i. Absolute: June 1940 ii. Conditional: water has not been placed to beneficial use. **Amount claimed:** Absolute: 3.14 acre feet; Conditional: 7.86 acre feet **Use:** Absolute: stock water Conditional: irrigation, fire fighting. i. The irrigation uses shall be for the irrigation of 58 acres of land within portions of the SE ¼ SE ¼, Section 30, and SW ¼ SW ¼, Section 29, Township 29 South, Range 67W of the 6th p.m. **Surface area of high water line:** Absolute: 0.7 acre; Conditional: 1.3 acres **Maximum height of dam in feet:** 15 **Length of dam in feet:** 490 **Total capacity of reservoir for both absolute and conditional requests in acre feet:** 11.0 acre feet **Dead Storage:** 0 (zero) **Name and Address of Owners of Land on Which Structures and Places of Use are Located:** All water rights to be adjudicated herein and place of use are located upon the property of the Applicants. (Location maps are attached to the application and are available for inspection at the Office of the Clerk of this Court.) **Remarks:** Irrigation water is diverted from an intermittent water course into a historic on-channel stock water impoundment and thence to the fields to be irrigated.

CASE NO. 07CW65 – PETITION FOR REVIEW. This case is a petition for review and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 07CW66 – ARTHUR LEBO JR. and THERESA C. LEBO, 13060 Wildoak Drive, Colorado Springs, Colorado 80908 (Henry D. Worley, MacDougall, Woldridge & Worley, PC, Attorneys for Applicants, 530 Communication Circle, Suite 204, Colorado Springs, Colorado 80905; 719-520-9288)

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

EL PASO COUNTY

I. APPLICATION FOR DENVER BASIN WATER RIGHTS. 1. Names of wells and permit, registration, or denial numbers: Well permit 162378, an exempt Dawson aquifer well, also denial no. 3612751. **2. Legal description of wells:** Two 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 Applicants' 12.5 acre property in the SE1/4 NW1/4 Section 7, T. 12 S., R. 65 W., 6th P.M. in El Paso County. The legal description of the Property is attached to the Application as Exhibit A. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The street address is 13060 Wildoak Drive, Colorado Springs, CO 80908. An unnamed intermittent tributary of Kettle Creek runs through the Property, which is located in Water Division 2. **3. Source:** Not nontributary Dawson aquifer; not 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 g.p.m. per well, 7.43 acre feet annually, absolute; Denver aquifer - 100 g.p.m., 9.8 acre feet annually, absolute; Arapahoe aquifer - 200 g.p.m., 5.16 acre feet annually, absolute; Laramie-Fox Hills aquifer - 100 g.p.m., 3.53 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, stock water, fire protection, garden and landscape irrigation, decorative fountains and pools, hot tub/swimming pool, augmentation. **7. Miscellaneous.** There are no liens or encumbrances against the Property, so the notice provisions of C.R.S. 37-92-302(2)(b) are inapplicable. **8. Name and address of owner of land on which well is located:** Same as Applicants. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION. 9. Name of structures to be augmented:** Two Dawson aquifer wells, one of which, permit no. 162378, is already constructed. No other water rights are or will be diverted from these wells. After entry of a

decree, permit no. 162378 will be re-permitted consistent with the provision of the decree. **10. Previous decrees for water rights to be used for augmentation:** None. **11. Historic use:** Not applicable. **12. Statement of plan for augmentation:** Applicants intend to subdivide the Property into two residential lots, each of which will be served by individual on-lot Dawson aquifer wells which will be limited to 0.9 acre feet annually, each. Indoor water usage for each house is expected to equal 0.26 acre foot per house. A typical hot tub may require approximately 1,400 gallons (0.004 acre foot) per year; a swimming pool, 7,500 gallons (0.023 acre foot) per year; landscape irrigation, annual applications of 2.00 acre feet per acre, or 0.046 acre foot per 1,000 square feet; livestock watering, ten gallons per horse per day, or 0.011 acre foot per horse per year. The decree will limit annual diversions to 0.9 acre foot per lot, but will not otherwise limit the uses to which the water may be put. Applicants for well permits will designate how they intend to “allocate” their 0.9 acre foot on their well permit applications, based on the above criteria, or based upon criteria agreed to with the State Engineer for any uses not specified above. Wastewater will be treated in nonevaporative individual sewage disposal systems (ISDS), the return flows from which will be used to replace depletions during the 300 year pumping period. So long as a single family dwelling or commercial facility with bathrooms is located on each lot, water pumped pursuant to the augmentation plan may be used for any beneficial use, because ISDS return flows alone will exceed maximum depletions during pumping. Change of the type of wastewater treatment to central sewage treatment with direct discharge to the stream shall not require an amendment to this plan for augmentation, but change to any other type of waste water disposal shall require an amendment to the plan for augmentation. Based upon computer modeling, depletions to the South Platte and Arkansas basins combined are expected to gradually increase to a maximum of approximately 23% of pumping annually in the 300th year after pumping begins, and will decline thereafter. Applicants propose to replace injurious post-pumping depletions with the nontributary Arapahoe aquifer water decreed herein, which will be reserved for that purpose. However, Applicants shall 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 Arkansas River drainage in the vicinity of Kettle Creek. 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, where the Property is located.

CASE NO. 07CW67 – ZONTA PARTNERSHIP, LTD., L.L.L.P., c/o Ken Barber, 7075 Campus Drive, Suite 200, Colorado Springs, CO 80920 (Henry D. Worley, MacDougall, Woldridge & Worley, P.C., Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905; 719-520-9288)
Application for Change of Water Rights (Change in Points of Diversion)

EL PASO COUNTY

2. Decreed name of structures for which change is sought: Zonta DA-1; Zonta DN-1; Zonta KA-1; Zonta LFH-1. These are wells. **3. From previous**

decree: A. Date entered: February 6, 1996, Case No. 94CW4, Water Division 2.

B. Decreed points of diversion: I. Zonta DA-1: NE1/4 SE1/4 Section 10, Township 11 South, Range 67 West, 6th P.M., at a point 1,700 feet from the south section line and 1,000 feet from the east section line. II. Zonta DN-2: NE1/4 SE1/4 Section 10, Township 11 South, Range 67 West, 6th P.M., at a point 1,700 feet from the south section line and 1,050 feet from the east section line. III. Zonta KA-1: NE1/4 SE1/4 Section 10, Township 11 South, Range 67 West, 6th P.M., at a point 1,750 feet from the south section line and 1,050 feet from the east section line. IV. Zonta LFH-1: NE1/4 SE1/4 Section 10, Township 11 South, Range 67 West, 6th P.M., at a point 1,750 feet from the south section line and 1,000 feet from the east section line. Notwithstanding that the decree in Case No. 94CW4 indicated only the above locations for wells, that decree was entered subsequent to the passage of SB5. The overlying land in Case No. 96CW4 is contiguous to itself such that initial wells and “additional wells” (as that term is defined in 2 CCR 402-7, Rule 2.A.1) in the same aquifer may be located anywhere on the overlying land, and not only at the locations specified in Case No. 94CW4. Even if that were not the case, Applicant claims that right herein.

C. Source: Zonta DA-1, not nontributary Dawson aquifer; Zonta DN-1, not nontributary Denver aquifer; Zonta KA-1, nontributary Arapahoe aquifer; Zonta LFH-1, nontributary Laramie-Fox Hills aquifer.

D. Appropriation Date: These are Denver Basin water rights which have no appropriation dates.

E. Historic use: These structures, and the water rights associated with them, have never been used.

4. Proposed change. Applicant is in the process of having the overlying land in Case No. 94CW4 annexed by the Town of Monument. The Town does not want to be limited to withdrawing the water rights decreed in Case No. 94CW4 from the overlying land in that case. Applicant and the Town jointly desire to change the water rights decree in 94CW4 so that for purposes of withdrawing the water decreed in 94CW4, that overlying land will be considered a well field with the land beneath which the Town of Monument obtained water rights in the Arapahoe and Laramie-Fox Hills aquifers in Case No. 82CW211. Thus, the withdrawal of water rights decreed in Case No. 94CW4 can occur from wells in the same aquifer located anywhere on the overlying land in Case No. 94CW4, and anywhere on the overlying land in Case No. 82CW211, at both currently decreed and permitted wells and well sites and at new ones. The overlying land in Case No. 94CW4 is shown on the map attached to the Application as Exhibit A and legally described in Exhibit C. The overlying land in Case No. 82CW211 is shown on the map 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 intends to supplement this application with a legal description of the overlying land in 82CW211; for present purposes, it is located in portions of Sections 10, 11, 14, 15, and 23, and possibly small portions of Sections 16 and 26, T. 11 S., R. 67 W., 6th P.M. Case No. 82CW211 did not decree water rights for the not nontributary Dawson and Denver aquifers underlying the overlying land in that case. The not nontributary water rights in the Dawson and Denver aquifers decreed in Case No. 94CW4 may be withdrawn from wells in the overlying land in Case No. 82CW211 only

after the Town of Monument has adjudicated the not nontributary Dawson and Denver aquifers underlying its “overlying land,” and obtained judicial approval of one or more plans for augmentation which allow the pumping of all such not nontributary water. Applicant acknowledges that this application will not result in the Town of Monument being allowed to withdraw the water decreed in Case No. 82CW211 from the overlying land in Case No. 94CW4. It is Applicant’s understanding that at some future date, the Town may seek that ability, but it is not involved in this case. This application is intended and designed to comply with numbered paragraphs 1, 2 and 3 on page 2 of the State Engineer’s Guideline 2006-2 regarding application of Rule 11.A. of 2 CCR 402-7. The Town of Monument has no objection to the relief sought in this application.

CASE NO. 07CW68 – CITY OF FOUNTAIN, COLORADO, c/o Larry Patterson, Utilities Director, 116 South Main Street, Fountain, CO 80817 (Please direct all pleadings and other filings to Applicant’s attorneys, Cynthia F. Covell and Andrea L. Benson, Alperstein & Covell, 1600 Broadway, Suite 2350, Denver, CO 80202; 303-894-8191)

Application for Plan for Augmentation and Change of Water Rights

EL PASO AND PUEBLO COUNTIES

II. Background and Summary of Application. Applicant City of Fountain (“Fountain”) supplies water to its customers from wells tributary to Fountain Creek and Jimmy Camp Creek, in El Paso County, Colorado and from Fryingpan-Arkansas Project water (“Project Water”) purchased from the Southeastern Colorado Water Conservancy District (“Southeastern”) through the auspices of the Fountain Valley Authority, a water authority public entity of the State of Colorado of which Fountain is a member. Well depletions are augmented pursuant to augmentation plans decreed in Case Nos. W-4396 and W-4559 (consolidated) (Augmentation Plan I) and Case No. 85CW110 (Augmentation Plan II), and Case No. 91CW121 (which incorporates an additional well into Augmentation Plan II). The water rights used for augmentation pursuant to the decrees in Augmentation Plan I and Augmentation Plan II include (1) irrigation and storage rights attributable to 358 shares of the Fountain Mutual Irrigation Company (“FMIC”) and (2) reusable return flows from Project Water. Augmentation credit is supplied to Fountain Creek from return flows attributable to Project Water and by delivery of Fountain’s FMIC shares to Fountain Creek at the Cruse Gulch augmentation station. After the decrees were obtained in Augmentation Plan I and Augmentation Plan II, Fountain acquired additional FMIC shares which it seeks to change to municipal uses (including augmentation and exchange), and has added several wells to its water supply system. An application for change of the additional FMIC shares and inclusion of the additional wells is presently pending in Case No. 2001CW146 (“Augmentation Plan III”). In addition, Fountain has two exchange applications pending (Case No. 2001CW108 and 2006CW122), in which it seeks to exchange fully-consumable water from a variety of sources to storage on the Arkansas River for later delivery to Fountain via the Fountain Valley Conduit and the planned Southern Delivery Pipeline system. Following decrees upon the

exchange applications, such fully consumable water may be used in the City of Fountain, and return flows therefrom may be used for augmentation as provided in future water court decrees. Fountain has entered into a Water Rights Sublease dated December 15, 2006, with Security Water District (“Security”) and Widefield Water & Sanitation District (“Widefield”) for the use of water from certain wells, known as the “Venetucci Wells” located within the Widefield Aquifer. The Water Rights Sublease is recorded in the records of El Paso County at Reception No. 207004948. Security and Widefield, in turn, are parties to a December 15, 2006 Water Rights Lease between Pikes Peak Community Foundation, as lessor, and Security and Widefield, as lessees (“Primary Lease”) pertaining to the Venetucci Wells. The Widefield Aquifer is tributary to Fountain Creek where the ancient channel joins the present Fountain Creek and its alluvium. The municipal users within the Widefield Aquifer have entered into a Widefield Aquifer Management Agreement (“Widefield Aquifer Stipulation”) which allocates the annual aquifer yield among those parties based on historical use of the parties’ wells within various production zones (“reaches”) of the aquifer. The Widefield Aquifer Stipulation was approved by the Court in Case No. W-116 and has been incorporated into the applicable decrees and plans for augmentation of the participants. The purpose of this Application is to decree Fountain’s use of water withdrawn directly from the Venetucci Wells or, as a backup, from certain other wells owned by Security as alternate points of diversion for the Venetucci Wells, and for augmentation of Fountain Creek to the extent of the out-of-priority well depletions caused by Fountain’s use of said wells pursuant to the Water Rights Sublease. Security and Widefield have filed their own applications with respect to the Venetucci Wells in Case No. 2007CW51 (Application of Security and Fountain Mutual Irrigation Company) and Case No. 2007CW54 (Application of Widefield.) The applications filed by Security, Widefield and Fountain are each intended to govern the respective applicant’s use and augmentation of water withdrawn from the Venetucci Wells. The amount of water each is entitled to withdraw, and the terms and conditions of such withdrawal, are set forth in the Primary Lease and the Water Rights Sublease. **A. Structures to be Augmented.** The structures to be augmented are the Venetucci Wells, as described in the Primary Lease, all of which wells are located in Township 15 South, Range 66 West, 6th P.M., El Paso County, Colorado, and described as follows: 1. Venetucci Well No. 4. Venetucci Well No. 4 is located in the SE1/4 SW1/4 of Section 11, under Well Permit No. 18664-R, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.78 cfs for municipal use with a priority date of August 1, 1954. 2. Venetucci Well No. 5. Venetucci Well No. 5 is located in the SE1/4 SW1/4 of Section 11, under Well Permit No. 17490-U, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.78 cfs for municipal use with a priority date of August 1, 1954. 3. Venetucci Well No. 7. Venetucci Well No. 7 is located in the SW1/4 SE1/4 of Section 11, under Well Permit No. 4869-F, as decreed on December 31, 1973 in Case No. W-568, District Court for Water Division 2, for 2.67 cfs for domestic, municipal and industrial use, with a priority date of December 10, 1963. 4. Venetucci Well No. 8. Venetucci Well No. 8 is located in

the SW1/4 SE1/4 of Section 11, under Well Permit No. 4907-F, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.56 cfs for municipal use with a priority date of December 17, 1963. 5. Venetucci Well No. 1 and Well No. 1 as Enlarged. Venetucci Well No. 1 and Well No. 1 as Enlarged is located in the NE1/4 SW1/4 of Section 11, under Well Permit Nos. 17490-R and 4835-F, respectively, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.562 cfs and up to 306 annual acre feet for irrigation of 170 acres in combination with Well Nos. 2 and 3, with priority dates of November 1, 1941 for 1.003 cfs and December 3, 1963 for 1.559 cfs. 6. Venetucci Well No. 2 and Well No. 2 as Enlarged. Venetucci Well No. 2 and Well No. 2 as Enlarged is located in the NE1/4 SW1/4 of Section 11, under Well Permit Nos. 17490-S and 4915-F, respectively, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 2.784 cfs and up to 332 annual acre feet for irrigation of 170 acres in combination with Well Nos. 1 and 3, with priority dates of November 1, 1941 for 1.225 cfs and December 3, 1963 for 1.559 cfs. 7. Venetucci Well No. 3. Venetucci Well No. 3 is located in the SE1/4 NW1/4 of Section 11, under Well Permit No. 17490-T, as decreed on May 27, 1971 in Case Nos. 103 through 111, District Court for Water Division 2, for 1.78 cfs and up to 212 annual acre feet for irrigation of 170 acres in combination with Well Nos. 1 and 2, with a priority date of November 1, 1941. **B. Water Rights to Be Used for Augmentation.** The water rights to be used for augmentation of the Venetucci Wells shall be water rights associated with Fountain's FMIC shares, Fountain's reusable Project Water return flows, and other water rights or fully-consumable supplies that may be decreed for such use in the future. 1. FMIC Shares. Fountain owns 548 FMIC shares. Three hundred fifty-eight (358) FMIC shares are included in Augmentation Plans I and II, and have been decreed for augmentation by the City of Fountain. An additional 190 FMIC shares are included in Augmentation Plan III, presently pending in the water court. The FMIC shares were historically diverted to the Fountain Mutual Ditch from Fountain Creek, tributary to the Arkansas River, at the FMIC headgate located in the SW1/4 of Section 20, Township 14 South, Range 66 West, 6th P.M. FMIC's water rights were originally decreed for irrigation purposes. Those water rights have been the subject of numerous change actions and plans of augmentation, including Fountain's Augmentation Plans I and II. FMIC water rights are decreed as follows:

DIRECT FLOW

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

STORAGE

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

Fountain's 548 FMIC shares will be used to augment depletions from Fountain's municipal wells, as provided in Augmentation Plans I, II and III, and to augment the Venetucci well depletions pursuant to this application. As provided in Augmentation Plans I and II, the 358 FMIC shares that are presently decreed for augmentation use yield an average of approximately 250.6 acre-feet of fully-consumable water each year. The remaining 190 FMIC shares are the subject of Augmentation Plan III, and are expected to yield an average of approximately 133 acre-feet of fully-consumable water each year. Altogether, Fountain's 548 FMIC shares represent an average annual consumptive use of 383.6 acre-feet which may be used for replacement water for Fountain's well depletions. The Venetucci Wells (including alternate points of diversion herein applied for) will also be augmented by the 548 FMIC shares. In this case, Fountain relies upon the prior determinations in Augmentation Plan I and II, and the other prior determinations that form the basis of its calculations in Augmentation Plan III, so diversion records and a map are not submitted. 2. Fryingpan-Arkansas Project Water Return Flows. Fountain is a member of the Fountain Valley Authority ("FVA") which purchases and transports to Fountain and other FVA members, through the Fountain Valley Conduit, the members' allocations of Project Water. Fountain currently has the contractual right to annual delivery of 2,000 acre-feet of Project Water, delivered from Pueblo Reservoir through the Fountain Valley

¹FMIC's interest in Priority No. 4 is 5.38 cfs.

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

Conduit. Project Water is allocated by Southeastern and is currently made available to Fountain pursuant to an agreement dated July 10, 1979 as well as a number of contracts concerning the Fryingpan-Arkansas Project, the Fountain Valley Conduit, and the Fountain Valley Authority. Project Water is fully consumable. Fountain has the right to purchase from Southeastern all rights to reuse and successively use its Project Water after its initial use, and such reusable Project Water will be available for augmentation subject to the terms and conditions of the decree in Augmentation Plan III, when entered, and the decree entered on this application. If and to the extent Fountain acquires a contractual right to annual delivery of additional Project Water (beyond the 2,000 acre-feet described above), and provided such water is also controlled by Southeastern, reusable return flows from such additional Project Water may also be used by Fountain for augmentation pursuant to the terms of the parties' contracts and applicable water court decrees, including any decree entered on this application. Fountain claims the right to use, reuse, and successively use to extinction the Project Water return flows for augmentation hereunder in combination with its existing and pending augmentation plans. The project water rights are described as follows: West Slope Decrees: The Fryingpan-Arkansas Project diverts water from the headwaters of Hunter Creek and the Fryingpan River and its tributaries in Pitkin County, Colorado. The principal water rights were adjudicated by the decrees in C.A. 4613 (District Court, Garfield County, Colorado) dated June 20, 1958 and August 3, 1959, and were modified by the decree in Case No. W-829-76 (District Court, Water Division 5, Colorado) dated November 27, 1979, and were supplemented by the decree in Case No. 83-CW-352 (District Court, Water Division No. 5), dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir, and elsewhere, and applied to beneficial use within the boundaries of Southeastern. Because the water is imported from another river basin, it is fully consumable in Water Division No. 2. East Slope Decrees: The Fryingpan-Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties. Such water rights are decreed for use, exchange, reuse and successive use to extinction for beneficial uses within Southeastern's boundaries. The principal rights were adjudicated by the following decrees: Civil Action No. 5141 (District Court, Chaffee County, Colorado) dated July 9, 1969, and Civil Action No. B-42135 (District Court, Pueblo County), dated June 25, 1962. The water rights were modified and supplemented by the judgment and decree in Case No. 80-CW-6 (District Court, Water Division No. 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, with an appropriation date of February 10, 1939. No decree entered upon this application will modify or is intended to modify Southeastern's decrees for the project water rights. Southeastern allocates Project Water annually based on its principles, policies, rules and regulations. Any and all use of Project Water and return flows therefrom will be

pursuant to and subject to the above-referenced decrees for the Fryingpan-Arkansas Project, and to all lawful rules, regulations, policies, and contract obligations of Southeastern. Any decree entered in this case will not give Fountain any rights to use Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocations of Project Water or return flows therefrom, but will not alter the existing rights, including allocation rights, held by Fountain. Fountain's augmentation use of Project Water will be only to augment or replace depletions resulting from Fountain's beneficial use of water within Southeastern District boundaries. Fountain may use and exchange Project Water and return flows therefrom only if, when, and to the extent such water is allocated and/or sold to Fountain by Southeastern. Fountain's purchase and use of Project Water and return flows therefrom shall be consistent with the Allocation Principles of the Southeastern Colorado Water Conservancy District (as they may from time to time be amended), and the lawful rules, regulations, policies, procedures, contracts, charges and terms as may be lawfully determined from time to time by Southeastern in its discretion.

3. Other Augmentation Supplies. Fountain also plans to store additional non-Project water and/or Project Water return flows in Pueblo Reservoir and other locations on the Arkansas River, as described in Case No. 2001CW108 and 2006CW122, presently pending in the Water Court. In the future, Fountain may also obtain additional augmentation supplies from other sources. Any additional augmentation supplies, including reusable return flows from other fully-consumable water delivered to Fountain via the Fountain Valley Conduit and/or the planned Southern Delivery Pipeline may be used to augment depletions from the Venetucci wells following entry of an appropriate water court decree regarding such other augmentation supplies.

C. Statement of Plan for Augmentation

1. Calculation of Well Depletions. The Water Rights Sublease allows Fountain to lease, consistent with the Widefield Aquifer Stipulation, 1,125 annual acre-feet from the Venetucci Wells (to be withdrawn from the Venetucci Wells or Security's wells as alternate points of diversion) through December 31, 2011, *provided*, however, that this amount may be increased as provided in the Water Rights Sublease under certain circumstances as therein provided. Beginning January 1, 2012, Fountain may sublease water available to Widefield and Security from the Venetucci wells if and when Widefield and Security are unable to use or do not wish to use such water, *provided*, however, that the amount of such water available to Fountain is limited by the Widefield Aquifer Stipulation, and will not exceed 1,633 acre-feet per year. In addition, commencing January 1, 2012, Fountain shall be entitled to sublease in perpetuity an amount equal to 10% of the Maximum Lease Quantity of water from the Venetucci Wells as defined in the Primary Lease. Depletions from the Venetucci Wells in the Widefield Aquifer will be calculated on a monthly basis as set forth under Security's existing augmentation decree in Case No. 90CW28, considering the system wide municipal depletion percentages from wells in the Widefield Aquifer and the lagged depletions from the Venetucci Wells and Security's wells within the Widefield Aquifer that are used as alternate points of diversion for the Venetucci Wells.

2. Augmentation Supplies from FMIC Shares. Fountain's

Augmentation Plans provide for delivery of water from the FMIC shares, in the quantities set forth in the Augmentation Plans, and subject to the operational constraints of FMIC, to the Cruse Gulch augmentation station (located at the confluence of Cruse Gulch and Fountain Creek in Section 24, Township 15, South, Range 66 West of the 6th P.M. in El Paso County) for return to the Fountain Creek system to augment Fountain's well depletions. As is the case in the Augmentation Plans, the replacement credits under this plan for FMIC shares will be computed as a percentage of actual FMIC in-priority diversions applied to the above monthly replacement credit schedule. Those replacement credits at the augmentation station will be assessed a transit loss from the augmentation station to the point of depletion based upon the current Fountain Creek Transit Loss Model. Fountain's pro rata share of water attributable to its FMIC shares may also be placed into storage in FMIC's 10,000 acre feet of decreed storage in Big Johnson Reservoir (which is located in Sections 8, 17 and 18, Township 15 South, Range 65 West, 6th P.M.), together with any excess consumptive use credits from FMIC shares put through the augmentation station. Such storage and use shall be in accordance with FMIC rules and regulations, and water so stored may also be used for augmentation. The water so stored in Big Johnson Reservoir to be used as augmentation may be delivered down the ditch to the Cruse Gulch augmentation station. As an alternative to the delivery of water to the Cruse Gulch augmentation station, if FMIC constructs a new augmentation station on the Fountain Mutual Ditch down gradient from Big Johnson Reservoir, Fountain's replacements may also be made by releasing water from Big Johnson Reservoir and returning it to Fountain Creek at the new augmentation station, in addition to the Cruse Gulch augmentation station. Such releases can be made at any time to the extent that Fountain owns a pro rata portion of the water stored in Big Johnson Reservoir.

3. Augmentation Supplies from Non-Irrigation Project Water Return Flows. Non-irrigation return flows from Project Water will be returned to Fountain Creek together with all other non-irrigation return flows from Fountain's uses hereunder via the wastewater treatment facilities of the Fountain Sanitation District and the Widefield Water & Sanitation District. The locations of return of treated effluent are on Fountain Creek at points located (a) in the NW1/4 of Section 17, T. 16 S., R. 65 W. of the 6th P.M. (Fountain Sanitation District plant) and (b) in the NE1/4 of Section 25, T. 15 S., R. 66 W. of the 6th P.M. (Widefield Water & Sanitation District plant.) Most of Fountain's treated wastewater is presently treated in the wastewater treatment facilities of Fountain Sanitation District, but a small amount is treated by the Widefield Water & Sanitation District plant. Fountain, Fountain Sanitation District, and Widefield have entered into an agreement dated November 11, 2003 whereby Fountain's effluent treated by the Widefield Water & Sanitation District plant will be quantified and reported to Fountain. Fountain also has agreements with Fountain Sanitation District and Widefield whereby Fountain retains and may implement rights to reuse, successively use, or dispose of to extinction, by exchange or otherwise, all of Fountain's legally reusable water delivered to the wastewater plants. The Fountain Sanitation District no longer uses lagoons in its wastewater treatment process; therefore, well depletions and available reuse

credit from Project Water return flows are calculated in the manner set forth in Augmentation Plan II for “future conditions,” which reflects cessation of use of lagoons in the wastewater treatment process. The “future conditions” depletions are estimated and based on an assumption that for each acre-foot of wastewater treated, not more than 0.007 acre of exposed water surface area shall be attributable to treatment of Fountain’s wastewater.

4. Augmentation Supplies from Project Water Reusable Irrigation Return Flows. A portion of the return flows from Fountain’s water deliveries, including Project Water return flows, will accrue to the Fountain Creek alluvium as return flows from irrigation of lawns, parks and open spaces. Project Water return flows from such irrigation uses will be accounted for as provided in Augmentation Plan II.

5. Locations at which Effluent Discharges and Irrigation Return Flows Accrue to Fountain Creek. Return flows from wastewater effluent discharges and irrigation return flows will accrue to the Fountain Creek system within the reach of Fountain Creek bounded on the upstream terminus by a point located in the NE1/4 of Section 25, T. 15 S., R. 66 W. of the 6th P.M. and the NW corner of Section 10, T. 17 S., R. 65 W. of the 6th P.M. as the point of downstream terminus.

6. Replacement of Well Depletions. Fountain will replace all depletions from the wells identified in Augmentation Plans I, II and III, and the Venetucci Wells (including replacements and alternate points of diversion thereof) by providing replacement water to balance the well depletions on the basis of schedules which determine depletions as a percentage of diversions by wells (calculated, for the Venetucci Wells, as provided in Security’s decree in Case No. 90CW28), replacement credit available from FMIC shares as a percentage of water delivered from the Fountain Mutual system to the Cruse Gulch augmentation station, and replacement credit from Project Water return flows as a percentage of Project Water use. Replacement water from the Project Water return flows and the FMIC shares will be provided to replace the above-described monthly well depletions. These replacements will prevent injury to others with vested water rights or decreed conditional water rights.

III. Change of Water Rights. Fountain requests a change of water rights for the Venetucci Wells 4, 5, 7 and 8, as necessary, to change the place of use of the Venetucci Wells to the entirety of Fountain’s existing boundaries and its future annexations and service areas. Fountain’s current boundaries and general future service areas are generally described and shown, on Exhibit A, although future boundaries are not limited to those shown on Exhibit A. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Fountain also seeks alternate points of diversion for the Venetucci Wells 4, 5, 7, and 8 at Venetucci Wells 1, 2, and 3 and at Security’s existing wells S-2, S-3, S-4, S-7, S-8, S-11, S-12, S-15 and S-16 within Sections 11 and 14 of Township 15 South, Range 66 West, 6th P.M. These existing wells of Security are further described in Exhibit B, and are located within the same reaches of the Widefield Aquifer as the Venetucci Wells, and such alternate points of diversion are allowed pursuant to the terms of the Widefield Aquifer Stipulation. The Security wells will be alternate points of diversion used by Fountain as a backup when the Venetucci wells cannot be used to provide the physical supply to which Fountain is entitled pursuant to the

Water Rights Sublease. As the Venetucci Wells constitute junior water rights, depletions from all out-of-priority diversions will be fully augmented to Fountain Creek as previously set forth in this Application. In accordance with the Water Rights Sublease, the Venetucci Wells water rights are to be included within the terms, provisions and obligations of the Widefield Aquifer Stipulation for purposes of the Water Rights Lease and Fountain will comply with the terms, provisions, and diversion limits of said Stipulation as applied to Venetucci Wells. **IV. Name and Address of Owner of Land Upon Which Structures are Located.** The Venetucci Wells are located upon land owned by Pikes Peak Community Foundation, 730 N. Nevada Avenue, Colorado Springs, CO 80903, and the Diocese of Colorado Springs, 228 N. Cascade Avenue, Colorado Springs, CO 80903. Easements are in place from these owners to enable Fountain's use of the Venetucci Wells under the terms of the Water Rights Lease. The Security Wells S-2, S-3, S-4, S-7, S-8, S-11, S-12, S-15 and S-16 are located on land or easements owned by Security Water District, 231 Security Blvd, Colorado Springs, CO 80911. The Fountain Mutual Ditch headgate, and Cruse Gulch Augmentation Station are located upon land or easements owned by FMIC, 487 Anaconda Drive, Colorado Springs, CO 80919. **V. Terms and Conditions.** Fountain proposes the following additional terms and conditions, consistent with those proposed in Case No. 2007CW51 and 2007CW54, to prevent injury to other vested water rights by this plan for augmentation and change of water right: A. Totalizing flow meters will be maintained on all of Venetucci Wells to allow accurate monitoring and administration of this augmentation plan. B. Weekly accountings shall be made to the Division Engineer demonstrating compliance with this plan for each well, including diversions for each well, total stream depletions, available augmentation water credit and also any intraditch exchange and release of storage water under Fountain's FMIC shares. C. Fountain shall measure and account for its entitlement under its FMIC shares through use of the Cruse Gulch augmentation station. D. Only that amount of water actually available and attributable to Fountain's 548 shares of FMIC stock will be made available for purposes of this augmentation plan and Fountain's other pending and decreed plans for augmentation using FMIC shares. E. The Division Engineer will assess appropriate transit losses to the point of depletion. F. Fountain will curtail its well diversions if the augmentation water available under this augmentation plan is not sufficient to fully augment the depletions from its municipal wells. WHEREFORE, Fountain requests this Application for Plan for Augmentation and Change of Water Rights be granted as requested herein, and for other and further relief as the Court deems appropriate.

THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) AND PETITION 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, application as amended, or petition to correct substantive errors 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 August 2007, (forms available at www.courts.state.co.us; filing fee \$90.00). The foregoing are resumes and the entire application, amendments, petitions, 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 _____ day of July, 2007

/s/ Mardell R. DiDomenico

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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