

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING AUGUST 2008

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 August 2008, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. W-116 - IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF: THE CITY OF COLORADO SPRINGS, IN THE ARKANSAS RIVER BASIN, TRIBUTARY INVOLVED: FOUNTAIN CREEK

Joint Motion for Relief Under C.R.C.P. 60(B)

EL PASO COUNTY

COME NOW the **City of Colorado Springs**, by and through its attorney Mark Shea, City Attorney's Office, Utilities Division, Colorado Springs Utilities, 121 S. Tejon Street, Fourth Floor, P. O. Box 1103, MC 940, Colorado Springs, CO 80947-0940; (719) 668-8028; **Security Water and Sanitation District**, by and through its attorneys, Steven T. Monson and Michael J. Gustafson, Felt, Monson & Culichia, LLC, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212; **Stratmoor Hills Water District and Water Resources Development Corporation ("WRDC")**, by and through their attorneys, William B. Tourtillott and Roger T. Williams, Ryley Carlock & Applewhite, 1999 Broadway, Suite 1800, Denver, CO 80203; (303) 863-7500; and **Widefield Water and Sanitation District**, by and through its attorney M. E. MacDougall, MacDougall, Woldridge & Worley, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905; (719) 520-9288, pursuant to C.R.C.P. 60(b) and paragraph 36 of the stipulation executed herein on August 11, 1977 ("Original Stipulation"), and hereby move the Court for relief from the prospective application of the decree herein, and more specifically for relief from the prospective application of the Original Stipulation in favor of a Restatement of Stipulations Concerning the Widefield Aquifer Management Plan ("Restatement of Stipulations"). (Attached to the Motion as Exhibit A). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. As grounds therefore, Movants state as follows: **CERTIFICATION**. Movants certify that they have provided copies of this motion and its supporting documents to all parties, or successors to parties, filing statements of opposition to the original application

herein that have not joined in this Motion.¹ Movants further certify that they conferred in good faith with opposing parties and/or counsel about this Motion and that the following parties do not oppose the relief sought herein: the Pikes Peak Community Foundation, Don Gregory, Anthony T. Accetta & Associates, P.C., RDJ Holdings, LLC, and the Leona Janitell Income Only Trust. The following parties have not consented to the relief sought herein: AVDA and the Southeastern District. AVDA and the Southeastern District waived service of this Motion. **BACKGROUND.** 1. On February 10, 1978, the Court entered its Judgment and Decree in this case by which it incorporated the Stipulation previously executed by Movants (or their predecessors) on August 11, 1977 (the “Original Stipulation”) to govern their respective operations within the Widefield Aquifer. See Exhibit B to the Motion. By the Original Stipulation, Movants agreed to annual and seasonal pumping limitations and to refrain from asserting their well priorities against each other. 2. The Widefield Aquifer is a former channel of Fountain Creek that has been filled by alluvium. It is located on the east side of Fountain Creek and is approximately five miles long and two-thirds of a mile wide. The Widefield Aquifer is bounded on the north by Sand Creek and on the south by the City of Fountain. It is separated from Fountain Creek by a shale ridge barrier; shale bedrock also comprises the bottom of the aquifer. Sources of inflow into the aquifer include Sand Creek and Fountain Creek. Outflows include groundwater pumpage, outflow to Fountain Creek at the southern end of the aquifer, and outflows across the shale ridge. While the Widefield Aquifer is a dynamic system which is affected by a number of variables, storage in the aquifer is estimated to be 18,000 acre feet. If managed within certain bounds, the aquifer is capable of supporting large-scale well production on a sustainable basis. 3. Use of the Widefield aquifer, now fully appropriated, began as early as the 1930s. Historically well owners within the aquifer fought bitterly over priority issues, well-to-well interference problems, localized drawdown problems and increased use of the aquifer for municipal supply. Such issues characterized the conflict between users of the Widefield Aquifer in the landmark case Colorado Springs v. Bender, 366 P.2d 552 (Colo. 1961). 4. In 1975 most of the major well users met to establish guidelines for completing an engineering analysis of the aquifer and developing a cooperative management plan to alleviate the in-fighting and produce a more reliable water

¹ The original application in Case No W-116 was opposed by the Arkansas Valley Ditch Association (“AVDA”), Fred C. Sproul, Antonio Venetucci, Dominic Venetucci, Janitell Farms, Inc., Widefield Homes Water Company, Stratmoor Hills Water District, and the Southeastern Colorado Water Conservancy District (the “Southeastern District”). Security Water and Sanitation District is the successor to Fred C. Sproul and has joined with the City of Colorado Springs, Stratmoor Hills Water District, and Widefield Water and Sanitation District and Water Resources Development Corporation as co-Movants. The Pikes Peak Community Foundation is the successor to Antonio and Dominic Venetucci and the Leona Janitell Income Only Trust, Anthony T. Accetta and Associates, P.C., RDJ Holdings, LLC, and Don Gregory are the successors to Janitell Farms, Inc.

supply for the participants. The first aquifer management stipulation was entered on December 9, 1975 in Case Nos. W-3935, W-4212, and W-4237 by Stratmoor, Security, and Fred C. Sproul, Jr. The Original Stipulation, a subsequent aquifer management stipulation incorporating the December 9, 1975 stipulation, was incorporated into the decree in this case. The basic structure of the Original Stipulation incorporated into this case requires each of the parties to refrain from asserting their well priorities against each other. In addition, the parties agreed upon an allocation program whereby each participant was assigned annual and seasonal pumping limitations. Minimum water levels were identified at various points within the aquifer and a party is responsible for monitoring water levels at certain key wells. If water levels drop below the minimum water levels under the Original Stipulation, then the parties with the producing wells within the subject reach reduce their well diversions until the minimum water levels are restored. 5. The Restatement of Stipulations does not accomplish an enlargement of Movants' decreed water rights and will not result in injury to any other person. The purposes of the Restatement of Stipulations and the Revised Aquifer Management Plan that are the subject of this Motion are: a. To clarify and restate in a single document the previous stipulations and attachments and to incorporate new terms and conditions for the management of the Widefield Aquifer occasioned by the entry of relatively recent decrees for various Movants, and; b. To allow Movants continued flexibility in the internal management of the Widefield Aquifer. **MOTION.** 6. On motion and upon terms as are just, the Court may relieve a party or parties from a final judgment or order if it is no longer equitable that the judgment should have prospective application, or for any other reason justifying relief from the judgment. C.R.C.P. 60(b)(4) and (5); Davidson v. McClellan, 16 P.3d 233 (Colo. 2001). Such motions must be made within a reasonable time. C.R.C.P. 60(b). 7. This Motion is made within a reasonable time. a. Though the Original Stipulation and decree herein have been in place since 1977, many of the Movants have decreed additional water rights during the intervening period that are subject to the terms of the stipulation. b. Further, the Original Stipulation requires that any claim relating thereto shall be settled by petition "in these proceedings." Original Stipulation at ¶36. 8. A party seeking modification of a decree must establish that a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance. Building and Trades Council v. N.L.R.B., 64 F.3d 880, 887 (3d Cir. 1995) (construing federal counterpart to C.R.C.P. 60(b)(4) in context of consent decree) citing Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992). It is no longer equitable that the Original Stipulation should prospectively apply to Movants. While the decree herein should otherwise remain intact, the following changes in facts demonstrate that the Original Stipulation is an incomplete and inadequate tool to prospectively manage Movants' operations in the Widefield Aquifer, justifying relief under C.R.C.P. 60(b)(4): a. On December 9, 1975, in Case Nos. W-3935, W-4212, and W-4237, Stratmoor Hills Water District ("Stratmoor"), Security Water and Sanitation District ("Security"), and Fred C. Sproul, Jr. ("Sproul") entered into a stipulation which described the mutual rights, duties and obligations of Stratmoor,

Security and Sproul in the operation and management of their wells in the Widefield Aquifer; b. On August 11, 1977, Stratmoor, Sproul, Security, the City of Colorado Springs ("Colorado Springs"), Widefield Homes Water Company and Widefield Homes, Inc. entered into the Original Stipulation which incorporated the stipulation referenced in the preceding paragraph and which described the mutual rights, duties and obligations of Stratmoor, Sproul, Security, Colorado Springs, Widefield Homes Water Company and Widefield Homes, Inc., in the operation and management of their wells in the Widefield Aquifer; c. On December 31, 1981, the Original Stipulation expired by its own terms but was renewed and extended indefinitely by a supplemental stipulation dated July 1, 1982 and filed herein; d. On June 25, 1984, in Case No. 84CW11, Stratmoor, Security, Colorado Springs, Widefield Homes Water Company, Widefield Homes, Inc. and Raylan and Beverly J. Evans ("Evans") entered into a stipulation which incorporated the stipulations referenced in the preceding paragraphs and which described the mutual rights, duties and obligations of the above-mentioned parties in the operation and management of their wells in the Widefield Aquifer; e. Several parties to the Original Stipulation and the supplemental stipulations, for example Sproul, Widefield Homes Water Company, and Raylan and Beverly J. Evans, conveyed their interest(s) in the facilities or water rights governed by the Original Stipulation and accordingly lack any rights, duties or obligations thereunder, which have been assumed by various Movants; f. Security has obtained Water Court approval in Case No. 90CW28 for additional augmentation and recharge water and substitute sites for providing effective recharge to the Widefield Aquifer, matters contemplated by the Original Stipulation but which need to be brought expressly within the scope and terms of the Restatement of Stipulations; g. Stratmoor has obtained Water Court approval in Case No. 91CW24 for designation of two additional well sites, additional recharge sources, and a new recharge facility, matters contemplated by the Original Stipulation but which need to be brought expressly within the scope and terms of the Restatement of Stipulations; h. El Paso County, which is also a party to the Restatement of Stipulations, has obtained Water Court approval of the application in Case No. 98CW126, matters contemplated by the Original Stipulation but which need to be brought expressly within the scope and terms of the Restatement of Stipulations. 9. The forgoing events demonstrate the inadequacy of the Original Stipulation and the need to update, clarify and consolidate Movants' agreement, for a period certain, as to their respective rights, duties and obligations for the prospective operation and management of the Widefield Aquifer. The rule authorizes relief from a final judgment, however, only "upon terms as are just." C.R.C.P. 60(b)(4) and (5); see also Building and Trades Council, 64 F.3d at 887 (proposed modification must be suitably tailored to changed circumstances). The terms of the Restatement of Stipulations are just and suitably tailored to changed circumstances for the following reasons: a. The Restatement of Stipulations does not enlarge any of Movants' decreed water rights and will not injure or prejudice any other person or party. The following significant differences between the Original Stipulation and the Restatement of Stipulations are each independently supported by valid decrees: i. The

Restatement of Stipulations establishes the rights, duties and obligations of El Paso County relating to the operation of the Evans Well, see, e.g., ¶16, absent from the original Stipulation. Though El Paso County was not a party to the Original Stipulation, which did not address the Evans Well, the decrees in Case Nos. W-368, 84CW11 and 98CW126, Water Division No. 2, established El Paso County's rights, duties and obligations relating to the Evans Well consistently with the provisions of the Restatement of Stipulations. ii. The Restatement of Stipulations fully establishes the rights, duties and obligations of Stratmoor, including Stratmoor's volumetric entitlement to water from the Widefield Aquifer. See ¶9. That entitlement was not contained in the Original Stipulation but instead was established by Exhibit C thereto. The volume established by the Restatement of Stipulations is consistent with that Exhibit C. iii. The Restatement of Stipulations fully establishes the rights, duties and obligations of Security, including Security's total volumetric entitlement to water from the Widefield Aquifer. See ¶¶12-15. Security's original entitlement was established in ¶12 of the Original Stipulation in conjunction with Exhibit C thereto. The volume set forth in the Restatement of Stipulations constitutes an increased allocation to Security over that established by the combined Original Stipulation and Exhibit C but is consistent with those documents, with the decree in Case No. 90CW28, Water Division No. 2, and with Security's acquisition of additional historic wells diverting from the Widefield Aquifer. iv. Security and Stratmoor each have decreed additional wells in Case Nos. 90CW28 and 91CW24, respectively, Water Division No. 2. Those wells are decreed as alternate points of diversion and are subject to the terms of the Restatement of Stipulations, precluding an enlargement of the rights of those movants. b. The Restatement of Stipulations is an internal agreement governing Movants' diversions from the Widefield Aquifer and does not affect or modify their augmentation obligations to Fountain Creek which are established by Movants' respective plans for augmentation. Movants must still operate their wells in a manner that does not cause injury to other water users, either within or outside of the aquifer, and must meet the augmentation requirements under their decrees, and; c. The Restatement of Stipulations does not supersede the authority of the State and Division Engineers to administer the Widefield Aquifer under the priority system. 10. Movants are also entitled to relief under the residuary clause of C.R.C.P. 60(b)(5), which provides relief from a judgment "for any other reason justifying relief." The residuary clause applies in the case of extreme situations or extraordinary circumstances and considers factors such as agreement among the parties that the court consider the motion, and prejudice to opposing parties. Davidson v. McClellan, 16 P.3d at 238. a. As noted above in the Certification, each of the Movants and the Pikes Peak Community Foundation, Don Gregory, Anthony T. Accetta & Associates, P.C., RDJ Holdings, LLC, and the Leona Janitell Income Only Trust successors to the opposers in Case No. W-116, consent to the instant Motion and the substitution of the Restatement of Stipulations for the Original Stipulation. The contents of the forgoing ¶9.a. demonstrate that there will be no prejudice to other parties because the Restatement of Stipulations does not enlarge any of Movants' rights, but instead restates those already decreed rights in a single, comprehensive

document. Further, Movants must still operate their wells in a manner that will not cause injury to other water users and, accordingly, Movants' operations remain subject to the administrative authority of the State and Division Engineers. 11. Notice of this Motion and the relief requested will be published in the August 2008 Water Resume. FOR THE FORGOING REASONS, Movants request this Court to grant their joint motion by entering an order: 1. Determining that service upon all parties to this case is just and is consistent with the Original Stipulation; 2. Relieving them from prospective application of the Original Stipulation, and; 3. Substituting the Restatement of Stipulations, as amended from time to time, for the Original Stipulation.

CASE NO. 07CW87 - UPPER ARKANSAS WATER CONSERVANCY DISTRICT, P. O. Box 1090, Salida, CO 81201 (Please send all pleadings and correspondence to Applicant's counsel: John R. Hill, Jr. and Marcus J. Lock, Bratton Hill, LLC, 232 West Tomichi Avenue, Suite 202, Gunnison, CO 81230; (970) 641-1903)

Amended Application for Approval of Plan for Augmentation

CHAFFEE, CUSTER, FREMONT, LAKE, SAGUACHE COUNTIES

2. This augmentation plan is being filed in accordance with an Agreement Regarding Augmentation of Silver Creek Lakes, dated June 19, 2007, and entered into between the Upper Arkansas Water Conservancy District ("UAWCD") and Silver Creek Lakes Recreation Association ("Silver Creek"). Silver Creek is the owner of 22 small stream bed reservoirs ("Silver Creek Lakes") located on Silver Creek, a tributary of Poncha Creek, which is a tributary of the South Arkansas River. 3. Silver Creek Lakes were decreed absolute for recreation and fish propagation in Case No. W-524, Water Division 2, on November 10, 1972. Further, Case No. 01CW155 added aesthetics as a beneficial use to each of the 22 reservoirs owned by Silver Creek. 4. The Court in Case No. 01CW155 determined that average evaporation from Silver Creek Lakes exceeds historical depletions only during the months of April and October. During April of each year, evaporation from Silver Creek Lakes exceeds average historical depletions by 1.69 acre feet. During October of each year, evaporation from Silver Creek Lakes exceeds average historical depletions by 1.29 acre feet. 5. Through this Application for Approval of a Plan for Augmentation, UAWCD, on behalf of Silver Creek, seeks approval of a plan for augmentation that would replace the total depletion attributable to Silver Creek Lakes in April and October in the amount of 2.98 acre feet. 6. The source of water for Silver Creek Lakes is Silver Creek, a tributary of Poncha Creek, which is a tributary of the South Arkansas River. 7. **Location of structures to be augmented:** Applicant will augment out-of-priority depletions attributable to evaporation from Silver Creek Lakes in the amount of 1.69 acre feet in April and 1.29 acre feet in October. The structures to be augmented are specifically described as: A. Silver Creek Lake No. 1, surface area 3.36 acres: The initial point of the survey of the high water line of the reservoir is located at a point whence the U.S.L.M. Homestead Entry Survey No. 55, located in Township 48 North, Range 7 East, N.M.P.M. bears North 33° 10' East for 555 feet. Survey map erroneously shows Silver Creek

Lake No. 1 as being in Chaffee County, Colorado, whereas said Silver Creek Lake No. 1 is actually located in Saguache County, Colorado. B. Silver Creek Lake No. 2, surface area 2.51 acres: The initial point of survey of the high water line of the reservoir is located at a point whence the U.S.L.M. Homestead Entry Survey No. 55, located in Township 48 North, Range 7 East, N.M.P.M., bears North 44° 55' East 1,875 feet. Survey map erroneously locates said property in Chaffee County, Colorado; whereas the true location of said property is in Saguache County, Colorado. C. Silver Creek Lake No. 3, surface area 1.27 acres: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 2 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears North 63° 46.9' East 2011.47 feet. D. Silver Creek Lake No. 4, surface area 0.09 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 3 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 34° 51.7' West 794.95 feet. E. Silver Creek Lake No. 5, surface area 0.20 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 3 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M., in Saguache County, Colorado, bears South 39° 23.2' West 665.61 feet. F. Silver Creek Lake No. 6, surface area 0.28 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 3 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 27° 29.4' West 674.73 feet. G. Silver Creek Lake No. 7, surface area 0.08 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 3 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M., Saguache County, Colorado, bears South 14° 35.9' West 504.37 feet. H. Silver Creek Lake No. 8, surface area 0.08 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 3 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 16° 38.6' West 347.61 feet. I. Silver Creek Lake No. 9, surface area 0.24 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 4, (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 87° 55.5' East 572.26 feet. J. Silver Creek Lake No. 10, surface area 0.40 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 4, (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South 87° 04.5' East 689.58 feet. K. Silver Creek Lake No. 11, surface area 0.10 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner

No. 4, (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears North $88^{\circ} 43.1'$ East 745.96 feet. L. Silver Creek Lake No. 12, surface area 0.13 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 4 (Marked Stone) of Homestead Entry Survey No. 55, Township 43 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears North $86^{\circ} 31.2'$ East 883.67 feet. M. Silver Creek Lake No. 13, surface area 0.09 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado bears South $49^{\circ} 31.7'$ West 875.93 feet. N. Silver Creek Lake No. 14, surface area 0.14 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South $42^{\circ} 25.9'$ West 856.18 feet. O. Silver Creek Lake No. 15, surface area 0.26 acre: The initial point of the survey of the high line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South $41^{\circ} 39.6'$ West 676.23 feet. P. Silver Creek Lake No. 16, surface area 0.20 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South $34^{\circ} 32.4'$ West 563.9 feet. Q. Silver Creek Lake No. 17, surface area 0.18 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South $28^{\circ} 31.7'$ West 375.92 feet. R. Silver Creek Lake No. 18, surface area 0.16 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South $32^{\circ} 54.8'$ West 281.64 feet. S. Silver Creek Lake No. 19, surface area 0.11 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5 (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South $12^{\circ} 59.3'$ West 245.48 feet. T. Silver Creek Lake No. 20, surface area 0.04 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 5, (Marked Stone) of Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears South $6^{\circ} 36.8'$ East 260.22 feet. U. Silver Creek Lake No. 21, surface area 0.06 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 4 (Marked Stone) of the Homestead Entry

Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears North 75° 56' East 233.87 feet. V. Silver Creek Lake No. 22, surface area 0.10 acre: The initial point of the survey of the high water line of the reservoir located at the outlet is located at a point from whence Corner No. 3 (Marked Stone) of the Homestead Entry Survey No. 55, Township 48 North, Range 7 East of the N.M.P.M. in Saguache County, Colorado, bears North 87° 14.2' East 485.09 feet. The surface area of the stream channel between the lakes is 1.15 acres. The total surface area of all 22 lakes and the stream channel is 11.23 acres, all as shown on Exhibit 1 to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. For additional information pertaining to the capacity, length and height of dams, and other information related to Silver Creek Lakes, please see the decree entered in 01CW155.

8. Previous decrees for water rights to be used for augmentation: A. The following sources of augmentation water will be used to augment out-of-priority depletions attributable to evaporation from Silver Creek Lakes in the amounts described above: All water owned or accessible by Applicant and available for the augmentation purposes described in this application, including: I. O'Haver Reservoir, with a storage right for 193 acre feet of water, priority date of September 9, 1982, for agricultural, municipal, industrial, replacement, fisheries, augmentation and exchange, and recreation decreed in Case No. 82CW205, Water Division No. 2, on June 28, 1985. The recreational right was decreed absolute in Case No. 88CW75. The source of O'Haver Reservoir is Gray's Creek by means of the O'Haver Filler Ditch. O'Haver Reservoir is located near the center of Section 12, Township 48 North, Range 7 East, N.M.P.M., Chaffee County, Colorado. In addition, the Southeastern Colorado Water Conservancy District has a pending application for an appropriative right of exchange in Case No. 97CW160, Water Division No. 2 that will operate to place Fryingpan-Arkansas Project water in O'Haver Reservoir for use by Applicant; II. North Fork Reservoir, with a storage right of 595 acre feet of water, priority date of September 9, 1982, for irrigation, municipal, industrial, recreational, and augmentation decreed in Case No. 82CW204, Water Division No. 2, Colorado on April 14, 1983. The source for the North Fork Reservoir is the North Fork of the South Arkansas River. The North Fork Reservoir is located in the SE1/4 of Section 5, Township 50 North, Range 6 East, N.M.P.M. in Chaffee County, Colorado. III. North Fork Reservoir, 1984 Enlargement: Date of Original Decree - September 18, 1985, Case No. 84CW141, District Court, Water Division No. 2, Colorado. Its source is the North Fork of the South Arkansas River. North Fork Reservoir, 1984 Enlargement is located as follows: Beginning at the Northeasterly point of contact of the dam axis with the existing ground said point being situated whence the Northwest corner of Section 21, T.50N, R.7E, N.M.P.M., in Chaffee, County, Colorado bears South 68°50' East a distance of 31,920 feet; said point being further described by bearing on the Peak of Granite Mountain of North 23°28' West and by bearing on the Peak of Calico Mountain of North 37°03' East, thence South 15°30' West a distance of 500 feet to the Southwesterly point of contact of the dam axis with existing ground, Chaffee County. In addition, the Southeastern Colorado Water

Conservancy District has a pending application for an appropriative right of exchange in Case No. 97CW160, Water Division No. 2 that will operate to place Fryingpan-Arkansas Project water (described above) in North Fork Reservoir for use by Applicant; IV. State Reservoir, Boss Lake, with a storage right for 688.7 acre-feet of water, appropriation date of March 20, 1893, pursuant to C.R.S. § 37-88-108, located in the NE1/4, Section 29, Township 50 North, Range 7 East, N.M.P.M. Its source is the Lake Fork, tributary to the Middle Fork of the South Arkansas River. Applicant, together with Salco Associates, L.L.P. has a pending application for an appropriative right of exchange in Case No. 97CW31, Water Division No. 2, and the Southeastern Colorado Water Conservancy District has a pending application for an appropriative right of exchange in Case No. 97CW160, Water Division No. 2, both of which will operate to place Fryingpan-Arkansas Project water (described above) in Boss Lake for use by Applicant; V. Cameron Ditch, adjudicated In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District Number Eleven, District Court, Chaffee County, Colorado on June 19, 1890; from the North Fork of the Little Arkansas River (South Arkansas River), Priority No. 23, appropriation date of January 10, 1868, 9.0 c.f.s., total, and a second water right adjudicated in Case No. 2342, District Court, Chaffee County, Colorado on July 15, 1913, appropriation date of June 20, 1890, for 8.0 c.f.s. Applicant currently owns 7/8 of a ¼ interest in these water rights; VI. White Ditch: Date of original decree – April 20, 1993, Case No. 91CW19, District Court, Water Division No. 2, appropriation date – May 1, 1874, amount – 26.08 acre feet, uses – storage in North Fork Reservoir for municipal, irrigation, augmentation, and recreational uses; VII. Water and water rights authorized for augmentation or replacement uses that are owned by the City of Salida and stored in North Fork Reservoir pursuant to contract with Applicant including such water as the City of Salida conveys to Applicant pursuant to contract, as such water rights are decreed in Case No. 87CW61 or any other decrees obtained by the City of Salida or Applicant; VIII. Water available pursuant to shares of Twin Lakes Reservoir and Canal Company owned or controlled by Applicant. Applicant may use such water from storage in Twin Lakes Reservoir and by exchange into other reservoirs pursuant to other exchange decrees and administrative approvals. Such water consists of storage and direct flow rights for water diverted from another basin which are available for 100 percent consumptive use and reuse and are available for augmentation. The water rights producing the pro rata interest of Applicant are: a. Colorado River Water Rights: Case No. 3802, District Court, Garfield County, August 25, 1963 and Case No. W-1901, District Court, Water Div. No. 5, May 12, 1976; priority: August 23, 1930, No. 431; source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Div. No. 5; use: direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal, and all beneficial uses; amount: direct flow amount for diversions through transmountain tunnels of 625 c.f.s., with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre-feet; and b. Arkansas River Water Rights: Case No. 2346, District Court, Chaffee County, July 14, 1913 as modified in Case No. W-3965, District Court, Water Div. No. 2, April 19, 1974; priorities:

December 15, 1896, No. 3 and March 25, 1897, No. 4; source: Lake Creek and its tributaries, tributary to the Arkansas River; use: storage for irrigation, domestic, commercial, industrial, and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir which are capable of being served by water by diversion from said Arkansas River; amount: 54,452 acre-feet (20,645.3 acre-feet for Priority No. 3 and 33,806.7 acre-feet for Priority No. 4; IX. Water and water rights that may be exchanged and made available for Applicant's use pursuant to the exchanges for which Applicant has an application pending in Case No. 04CW96, District Court, Water Division No. 2; X. Applicant may augment out-of-priority depletions from Silver Creek Lakes with any other water and water rights that Applicant has or may acquire that legally can be used to augment or replace out-of-priority depletions, provided the amounts of such water available for such uses have been adjudicated and quantified for such use. Applicant will obtain changes of water rights and/or administrative approvals so as to allow for use of these waters for such purposes, where appropriate, prior to such use. Applicant shall provide such notice as may be required of any such additional water prior to use within this plan. Such water and water rights may include but is not limited to: a. water and water rights acquired on a temporary basis pursuant to leases and interruptible supply agreements pursuant to C.R.S. § 37-92-309; b. such interest in the following water rights that may be owned by the United States that have been acquired by Applicant by lease: 1. Silvernail Ditch, adjudicated in Civil Action No. 3123, Water District 12, Fremont County District Court, Colorado on February 7, 1910, for diversion from the west bank of Texas Creek whence the quarter corner of the west side of Section 7, T.19S., R.73W. of the 6th P.M. bears North 24 degrees West 3,970.8 feet, for 1.0 c.f.s. with appropriation date of 4/1/1876; 2. Clayborne Extension of Rodgers Ditch, adjudicated in Civil Action No. 3014, Water District 12, Fremont County District Court, Colorado on April 1, 1909, for diversion from the South bank of the Arkansas River whence the NW corner of Section 20, T.48N., R.11E. of the N.M.P.M. bears South 77 degrees West 275 feet, for 1.0 c.f.s. with appropriation date of 9/1/1879; and 3. Lester-Attebery Ditch Water Rights diverted on the North side of the Arkansas River at a point on the West line of Section 13, T.19S., R.69W., 6th P.M. at a distance 16.35/100 chains North of the SW corner of said section, consisting of: Priority No. 150 decreed to the Bragg Ditch, Case No. 2622, Water District 12, Fremont County District Court, Colorado on 1/31/1905 for 3.5 c.f.s. with appropriation date of 4/1/1875, and subsequently transferred to the Lester-Attebery Ditch in Case No. 4669, District Court, Fremont County, Colorado; Priority No. 158 decreed to the Lester-Attebery Ditch on 2/3/1894, District Court, Fremont County, Colorado, for 2.0 c.f.s. with appropriation date of 4/1/1875; and Priority No. 343½ decreed to the Adobe Ditch in Case No. 2622, Water District 12, Fremont County District Court, Colorado on 1/31/1905, for 3.6 c.f.s. with appropriation date of 4/1/1887 and later transferred to the Lester-Attebery Ditch in Case No. 4595, District Court, Fremont County, Colorado; and XI. Some or all of the sources of augmentation water listed above could be stored in O'Haver Reservoir, North

Fork Reservoir, or State Reservoir, the locations of which are described above in sections 8(A)(I), (II), and (III) respectively, or in DeWeese Reservoir, Cottonwood Reservoir, or Rainbow Lake, which are located as follows: a. DeWeese Reservoir is located within Sections 20, 29, and 30, Township 21 South, Range 72 West of the 6th P.M., the axis of the dam of which intersects the thread of Grape Creek at a point in the NE ¼ SE ¼ Section 20, Township 21 South, Range 72 West of the 6th P.M. in Custer County, at a point whence the SE corner of said Section 20 bears South 12 degrees East 2350 feet. b. Cottonwood Reservoir a/k/a Cottonwood Lake is located on South Cottonwood Creek, a tributary of Cottonwood Creek, which is a tributary of the Arkansas River, in the SE ¼ of Section 36, Township 14 South, Range 80 West of the 6th P.M., in Chaffee County. c. Rainbow Lake is located on Middle Cottonwood Creek, a tributary of Cottonwood Creek, which is a tributary of the Arkansas River, in the SE ¼ SW ¼, SW ¼ SE ¼, and the SW ¼ SE ¼ of Section 19, and the NE ¼ N/W ¼ and the N/W ¼ NE ¼ of Section 30, at a point whence the SE corner of Section 19, Township 14 South, Range 79 West of the 6th P.M. bears South 80°34.0' East, 2,110.3 feet, in Chaffee County. **B. Historic use:** Since acquisition by Applicant, these water rights have continued to be used for decreed purposes as described in the above referenced Water Court proceedings, or have been used to augment out-of-priority depletions by structures participating in Applicant's current augmentation plans and Applicant's yearly Rule 14 Replacement Plans. **9. Statement of plan for augmentation, covering all applicable matters under C.R.S. 37-92-103 (9), 302 (1) (2) and 305 (8):** Applicant proposes to replace evaporative depletions attributable to Silver Creek Lakes determined by this Court in Case No. 01CW155 in the amount of 1.69 acre feet during April of each year and in the amount of 1.29 acre feet during October of each year by releasing augmentation water from the various sources described above or from other sources available to Applicant, as needed to prevent injury. Augmentation water to be provided pursuant to this application will be provided at the point of impact but not above the confluence of Grays Creek and Poncha Creek. Releases of augmentation water made pursuant to this augmentation plan would be in lieu of the releases from Silver Creek Lakes mandated by Case No. 01CW155. **10. Names and addresses of owners of land on which structures are located:** A. Silver Creek Lakes are owned by the Silver Creek Lakes Recreational Association, c/o Mr. Mark Kennedy, President, Board of Directors 4807 Indigo Court, Pueblo, CO 81001. B. O'Haver Reservoir, State Reservoir, Boss Lake, North Fork Reservoir, and Cottonwood Reservoir a/k/a Cottonwood Lake are located on lands owned by the United States of America, administered by Salida Ranger District, 325 West Rainbow Boulevard, Salida, CO 81201. C. Rainbow Lake is located on land owned by Rainbow Lake Resort, Inc., 21509 County Road 306, Buena Vista, Colorado 81211. D. Twin Lakes Reservoir is owned by the United States of America, administered by the Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18-E, Loveland, CO 80537. E. DeWeese Reservoir is located on land owned by the DeWeese-Dye Ditch and Reservoir Company, 1631 Chestnut, Canon City, Colorado 81215. F. The White Ditch is owned by the Applicant, P.O. Box 1090,

Salida, CO 81201. G. The Cameron Ditch is a mutually owned ditch, and Applicant owns a portion of the ditch and water right; and H. The water rights described in Section 8(A)(IX)(b) are currently owned by the United States of America, administered by the Bureau of Land Management, Royal Gorge Field Office, 3170 East Main St., Canon City, CO 81212 and are leased to Applicant.

CASE NO. 08CW59 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 08CW60 (Water Division 2) and CASE NO. 08CW177 (Water Division 1) - ROBERT and LAURA BIMM, 18470 Appaloosa Road, Monument, CO 80908 (Christopher Cummins and Michael J. Gustafson, Felt, Monson & Culichia, LLC, Attorneys for Applicants, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation

EL PASO COUNTY

II. Application for Underground Water Rights A. Legal Description of

Wells. 1. **Property Description.** All wells will be located on a property consisting of Tract 107, Canterbury East Subdivision, which contains 5.06 acres, more or less, located in NW 1/4 NE 1/4 Section 16, Township 11 South, Range 66 W., 6th P.M. (“Applicants’ Property”). Applicants’ Property is generally shown on the Exhibit A map 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. 2. **Existing Wells.** State Engineer Well Permit No. 251884 is a domestic well currently located in the NW 1/4 NE 1/4 Section 16, Township 11 South, Range 66 W., 6th P.M., approximately 200 feet from the North section line and 1450 feet from the East section line of said Section 16 (“Bimm Well”).

B. Water Source. 1. **Not Nontributary.** The ground water withdrawn from the Dawson and Denver aquifers of the Denver Basin underlying Applicants’ 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. The Denver aquifer underlying the Applicants’ Property is more than one mile from any point of contact between any natural stream, including its alluvium. Pursuant to C.R.S. §37-90-137(9)(c), the augmentation requirements for wells into the Denver and Arapahoe aquifers will require the replacement to the effected stream system of a total amount of water equal to 4 percent of the water withdrawn on an annual basis. 2. **Nontributary.** The groundwater 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.** Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicants request the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The

actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. **2. Estimated Average Annual Amounts of Ground Water Available.** Applicants request an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicants' 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). Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Specific Yield (%)</u>	<u>Total Water Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)</u>
Dawson	433	.20	438	4.38
Denver	559	.17	481	4.81
Arapahoe	259	.17	223	2.23
Laramie Fox Hills	206	.15	156	1.56

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **D. Requested Uses.** The Applicants request the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, fire protection, and also for exchange and augmentation purposes. The Applicants also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicants shall only be entitled to construct a well or use water from the not nontributary Dawson or Denver aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c). **E. Well Fields.** Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants request that these wells be treated as a well field. Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicants' 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 Applicants are entitled to withdraw from the aquifers underlying the Applicants' Property. **F. Name and Address of Owner of Land Upon Which Wells are to Be Located.** The land upon which the wells are and

will be located is owned by Applicants. **III. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION**

A. Structures to be Augmented. The structure to be augmented is the Bimm Well in the not nontributary Dawson aquifer of the Denver Basin underlying the Applicants' Property. There are to be no other water rights diverted from this structure.

B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows of the not nontributary Dawson aquifer from the Bimm Well as set forth in this plan for augmentation, together with water rights from the nontributary Laramie-Fox Hills aquifer for post pumping depletions.

C. Statement of Plan for Augmentation. Applicants wish to provide for the augmentation of stream depletions caused by pumping the not nontributary Dawson aquifer well proposed herein for one residential lot. Water use criteria and their consumptive use component for replacement of actual depletions for the lot is as follows:

1. Household Use Only: 0.30 acre feet annually per single family dwelling with a ten percent consumptive use based on nonevaporative septic leach field disposal systems. The annual consumptive use for this residence is therefore 0.030 acre feet. Any other type of waste water disposal shall require an amendment to this plan of augmentation.

2. Landscape Irrigation: 0.046 acre feet annually per 1,000 square feet (2.0 acre feet per acre) per year, with a 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet irrigated is therefore 0.039 acre feet.

3. Horses (or equivalent livestock): 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. The well supplying the Applicants' Property should therefore be able to pump 0.607 acre feet per year, which is sufficient to support in-house use in one single family residence, the watering of seven horses, and the irrigation of a maximum of 5,000 square feet of lawn or garden. This Application is being filed in Water Divisions 1 and 2 because depletions may occur to both divisions. The return flows set forth above will accrue to the South Platte River system where the majority of depletions occur. Applicants requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient.

D. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c) Applicants are required to replace actual stream depletions attributable to pumping of the Bimm Well to the extent necessary to prevent injurious effect. Based upon annual pumping of 0.607 acre feet per year, Applicants are required to replace 0.302 acre feet annually. Applicants' have determined that during pumping, septic system return flows from the residence should account for approximately 0.27 acre feet per year and return flows from irrigation will total 0.034 acre feet, for total return flows of 0.304. Thus, there is enough return flows through the septic system and irrigation return flows to replace the estimated stream depletions.

E. Augmentation for Post Pumping Depletions. For the replacement of post-pumping depletions, Applicants will reserve up to 481 acre feet of water from the nontributary Laramie-Fox Hills aquifer underlying the Applicants' Property, less the amount of actual stream depletions replaced during the plan pumping period.

Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, Applicants claim that post pumping depletions will be noninjurious and do not need to be replaced. Under the court's retained jurisdiction, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to file for and receive a well permit for the Bimm Well for the uses in accordance with this Application. **F. Remarks.** Additional remarks are as follows: 1. 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 not-nontributary well upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). 2. The term of this augmentation plan is for 100 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. 3. 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. Pursuant to C.R.S. §37-90-137, upon approval of the plan for augmentation requested herein, Applicants will file an application with the State Engineer's office to re-permit the existing well on Applicants' 5.06 acres (Permit No. 251884) for operation under the plan for augmentation. 5. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 6. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 7. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. 8. Applicants 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)(I), and such notice will be sent within 10 days of the filing of this application.

CASE NO. 08CW61 - CITY OF MANITOU SPRINGS, a Colorado municipal corporation, 606 Manitou Avenue, Manitou Springs, CO 80929 (Henry D. Worley, MacDougall, Woldridge & Worley, P.C., Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905-1743; (719) 520-9288)

Applications for Conditional Appropriative Rights of Exchange

PUEBLO AND EL PASO COUNTIES

2. Descriptions of water rights: A. Manitou Springs Fountain Creek Exchange. I. Location: From the confluence of Fountain Creek and the Arkansas River in the SE1/4 NE1/4 Section 6, T. 21 S., R. 64 W., 6th P.M., up Fountain Creek, French Creek and the North Fork of French Creek to Manitou Reservoir, the dam for which is located in the SE1/4 NE1/4 Section 33, T. 13 S., R. 68 W., 6th P.M. **II. Amount:** 5.0 cfs, conditional **III. Appropriation date:** November 10, 2005, the date upon which Manitou Springs entered into a contract with Colorado Springs Utilities which anticipated the exchange of Project Water into Manitou Reservoir. **IV. Water to be exchanged:** Fryingpan-Arkansas Project water (Project Water) that has been allocated to and purchased by Manitou Springs from the Southeastern Colorado Water Conservancy District (Southeastern), including both current year allocations and prior year amounts that remain in Project water carryover storage space, to the extent such storage space may be available to Manitou Springs. Also, Project Return Flows, to the extent that Manitou Springs has purchased such Project Return Flows from Southeastern and has stored such Project Return Flows in Project Reservoirs, including Pueblo Reservoir, Turquoise Reservoir and Twin Lakes Reservoir. Project Water will be released from Pueblo Reservoir at the time of the exchange, in the same rate of flow as is being exchanged, to the extent practicable. Project Return Flows will be released from such reservoir as they are stored in at a time which results in such water being present at the confluence of the Arkansas River and Fountain Creek contemporaneously with the call on Fountain Creek from the Arkansas River main stem. **V.** This appropriative right of exchange shall be exercised only when the call on Fountain Creek is from a water right located on the main stem of the Arkansas River, and when Colorado Springs Utilities' and Fountain Mutual Irrigation Company's senior surface water rights, including appropriative rights of exchange, are diverting as much water as is desired and is physically and legally capable of being diverted at the time the exchange is occurring. **B. Manitou Springs Upper Fountain Creek Exchange. I. Location:** from the outlet of the existing Colorado Springs Utilities' Las Vegas Street Wastewater Treatment Plant, located in the S1/2 SW1/4 Section 20, T. 14 S., R. 66 W., 6th P.M., up Fountain Creek, French Creek and the North Fork of French Creek to Manitou Reservoir, the dam for which is located in the SE1/4 NE1/4 Section 33, T. 13 S., R. 68 W., 6th P.M. **II. Amount:** 3.5 cfs, conditional. **III. Appropriation date:** November 10, 2005, the date upon which Manitou Springs entered into a contract with Colorado Springs Utilities which anticipated the exchange of Project Water into Manitou Reservoir. **IV. Water to be exchanged.** Project Return Flows, to the extent that Manitou

Springs has purchased such Project Return Flows from Southeastern. Such Return Flows shall be from Manitou Springs' first use of Project Water which has been stored in Manitou Reservoir via the exchanges of such water sought herein, or from Project Water which has been delivered to Manitou Springs by Colorado Springs Utilities via the cross-connection between Colorado Springs Utilities' old North Slope Pipeline and Manitou Springs' pipeline from its diversion structure on French Creek, and then delivered directly to Manitou Springs' water treatment plant. Such Project Return Flows shall accrue from water that has been utilized in Manitou Springs' municipal water system and thereafter treated at the Colorado Springs Utilities Las Vegas Street Wastewater Treatment Plant and discharged into Fountain Creek. **V.** This appropriative right of exchange shall be exercised only using Project Return Flows, and only when Colorado Springs Utilities' and Fountain Mutual Irrigation Company's senior surface water rights, including appropriative rights of exchange, are diverting as much water as is desired and is physically and legally capable of being diverted at the time the exchange is occurring. **C. Manitou Springs French Creek Exchange. I. Location:** From Manitou Springs' diversion facilities on French Creek, located at a point whence the NE corner of Section 35, T. 13 S., R. 68 W., 6th P.M. bears north 62 degrees 12 minutes east 3,030 feet, up French Creek and the North Fork of French Creek to Manitou Reservoir, the dam for which is located in the SE1/4 NE1/4 Section 33, T. 13 S., R. 68 W., 6th P.M. **II. Amount:** 3.5 cfs, conditional. **III. Appropriation date:** November 10, 2005, the date upon which Manitou Springs entered into a contract with Colorado Springs Utilities which anticipated the exchange of Project Water into Manitou Reservoir. **IV.** Manitou Springs' pipeline from its French Creek diversion structure for the Manitou Water Works Pipe Line has a cross connection with Colorado Springs Utilities' old North Slope Pipeline. Manitou Springs also has an agreement with Colorado Springs Utilities wherein Colorado Springs Utilities agrees to deliver up to 250 acre feet annually of Manitou Springs' annual allocation of Project Water to Manitou Springs at such cross connection. This agreement is scheduled to expire on November 10, 2009, but is expected to be extended or replaced with another agreement with similar delivery provisions. Conceptually, this is an exchange of Project Water from within the Manitou Springs pipeline up to the point of diversion for the Manitou Water Works Pipe Line on French Creek, and thence up French Creek and the North Fork of French Creek to Manitou Reservoir; in practice, it will involve the delivery of water at a given rate to Manitou Springs at the cross connection, the storage of water in Manitou Reservoir at the same rate at the same time, and the simultaneous reduction of diversions at Manitou Springs' French Creek diversion structure for the Manitou Water Works Pipe Line in a like amount. For example, if Manitou Springs were diverting 3.0 cfs through the Manitou Water Works Pipe Line, and then CSU began to deliver 1.0 cfs through the cross-over connection, Manitou Springs could operate the exchange by storing 1.0 cfs in Manitou Reservoir and simultaneously reducing its Manitou Water Works Pipe Line diversions from French Creek by 1.0 cfs. **3. Comments. A.** Any decree entered in this case shall contain provisions substantially as follows: "This decree does not give

Manitou Springs any rights of use of Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocations of Fryingpan-Arkansas Project Water or Project Return Flows from the Fryingpan-Arkansas Project, but does not alter any existing rights Manitou Springs may otherwise have. Fryingpan-Arkansas Project Water and Project Return Flows that have been allocated to and purchased by Manitou Springs from Southeastern, including both current year allocations and prior year amounts that remain in any storage space available to Manitou Springs, may be diverted by exchange at Manitou Reservoir as provided herein. Manitou Springs' purchase and use of Fryingpan-Arkansas Project Water and of Project 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. This decree does not modify Southeastern's Fryingpan-Arkansas Project water rights and exchange decrees. Manitou Springs will utilize Fryingpan-Arkansas Project Water and Project Return Flows as a supplemental water supply only for beneficial uses which are consistent with Southeastern's decrees for Project Water and Project Return Flows, including municipal uses, and only within Manitou Springs' municipal water service area (including storage in Manitou Reservoir, the ultimate end use of which is in Manitou Springs' municipal water service area), which is also within Southeastern's boundaries. Manitou Springs will not use such Project Water to irrigate a parcel larger than one (1) acre of agricultural land, absent prior approval by Southeastern of such irrigation use, based on Southeastern's principles and policies regarding allocation of Project Water as a supplemental water supply for irrigation use." **B.** To the extent that Manitou Springs ever has Project Return Flows which are discharged and measured from the CSU Las Vegas Street Wastewater Treatment Plant but which are not diverted at Manitou Reservoir pursuant to the Upper Fountain Creek Exchange described above, Manitou Springs claims the ability to exchange such Project Return Flows up the Arkansas River to Pueblo Reservoir pursuant to Southeastern's 1939 exchange priority, as decreed in Case No. B-42135 (Pueblo County District Court), and subject to the 1989 Stipulation among Southeastern, Colorado Springs, Pueblo and AVDA in Case Nos. 88CW43 and 84CW56. Such exchange is further subject to transit losses down Fountain Creek as determined by the transit loss model as it currently exists or as it may be amended from time to time, and to the availability of storage space in Pueblo Reservoir to store such Project Return Flows for use by Manitou Springs. **C.** Manitou Springs acknowledges that operation of the exchanges described herein will require coordination with the water commissioner to ensure that the exchange is operated only at times when the senior water rights of others are not adversely affected, and will develop such procedures and accounting practices to ensure that no such injury occurs.

CASE NO. 08CW62 (Water Division 2) and CASE NO. 08CW188 (Water Division 1) - SEARLE RANCH, INC., c/o Stan Searle, 2500 East Highway 105, Monument, CO 80132-8366

(Steven T. Monson and Michael J. Gustafson, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Modification of Plan for Augmentation

EL PASO COUNTY

II. GENERAL STATEMENT OF APPLICANT'S PLAN AND REQUESTED CHANGES.

On May 31, 2007, Applicant received a final decree for underground water rights and a plan for augmentation in Consolidated Case No. 05MDL04, Water Court Division 1 Case No. 04CW299 and Water Court Division 2 Case No. 04CW104 ("Augmentation Plan"). The Augmentation Plan adjudicated Applicant's water rights in the Denver Basin aquifers underlying a 231 acre parcel described in Exhibit A to the Application ("Applicant's Property") and an augmentation plan for up to 46 wells to be drilled into the Dawson Aquifer underlying Applicant's Property. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Applicant's water rights in the Denver, Arapahoe, and Laramie-Fox Hills aquifers of the Denver Basin were adjudicated in Case No. 85CW230 District Court for Water Division 1. The water rights were decreed for domestic, commercial (i.e. in home occupations), irrigation, stock water, recreation, wildlife, fire protection, central water supply, exchange, and augmentation purposes. The depletions resulting from the diversions from the 46 wells are replaced by septic return flows associated with in-house uses from up to 46 single family residences to be built on Applicant's Property. Post pumping depletions associated with the 46 wells are replaced with water Applicant reserved in the nontributary Laramie-Fox Hills and Arapahoe aquifers underlying the Applicant's Property. El Paso County has informed the Applicant that it will only approve a maximum of 42 lots on Applicant's Property. Thus, Applicant wishes to remove the water from the Dawson, Arapahoe and Laramie-Fox Hills aquifers associated with 4 of the 46 lots from the Augmentation Plan. This case is being filed in Water Divisions 1 and 2 since depletions associated with the Augmentation Plan may accrue to both Divisions.

III. SUMMARY OF DECREED AUGMENTATION PLAN.

A. Adjudicated Water Rights: The following water rights in the Dawson, Arapahoe and Laramie Fox-Hills Aquifers were adjudicated to Applicant's Property in Case No. 05MDL04 and Case No. 85CW230.

	<u>Total Decreed Water</u>	<u>Annual Diversion Amounts</u>
Dawson	19,826 AF	198.30 AF
Denver	21,569 AF	215.70 AF
Arapahoe	10,797 AF	107.97 AF
Laramie-Fox Hills	6,930 AF	69.30 AF

B. The structures augmented under the Augmentation Plan are up to 46 wells to be drilled into the Dawson Aquifer. The Augmentation Plan provided that the maximum annual diversions from each of the 46 Dawson Aquifer wells is 1 acre foot, which amounts to a maximum of 46 annual acre feet of withdrawals and

13,800 acre feet of total withdrawals over a 300 year pumping period. **C.** The Augmentation Plan provides that stream depletions associated with the 46 wells will be a maximum of 24.38 percent of well pumping which totals a maximum of 11.21 annual acre feet of depletions during pumping. The Augmentation Plan committed the septic return flows from the 46 Dawson Aquifer wells as replacement water during pumping. These return flows were determined to equal 12.42 annual acre feet. **D.** The Augmentation Plan requires Applicant to reserve 6,930 acre feet of the Laramie-Fox Hills Aquifer and 7,152 acre feet of the Arapahoe Aquifer to replace post-pumping depletions to the stream system caused by the 46 Wells. Ninety-eight percent of this reserved amount equals the maximum pumping under the 300 year life of the plan. **IV. APPLICANT'S REQUESTED CHANGE.** **A.** Applicant requests that the Augmentation Plan be amended to withdraw the ground water from 4 of the augmented structures and to therefore augment a total of 42 wells to be drilled into the Dawson Aquifer underlying Applicant's Property. Maximum annual pumping from each of the 42 wells shall remain at 1 acre foot, which amounts to a maximum of 42 acre feet of annual withdrawals and 12,600 acre feet of withdrawals over a 300 year pumping period. Thus, Applicant requests that a total of 4 annual acre feet totaling 1,200 acre feet from the Dawson Aquifer be removed from the Augmentation Plan. The maximum annual depletions associated with the remaining 42 Dawson Aquifer wells will total 10.23 acre feet. Annual septic return flows from the 42 Dawson Aquifer wells will equal 11.34 acre feet which is more than adequate to replace depletions during plan pumping under the amended plan. **B.** Applicant also requests that it be allowed to withdraw the amount of water reserved in the Arapahoe and Laramie-Fox Hills Aquifers to replace post pumping depletions for 4 wells. The maximum total pumping over the 300 year life of the plan for the 42 wells equals 12,600 acre feet. To insure that injurious post-pumping depletions are replaced, Applicant will continue to reserve 6,930 acre feet from the Laramie-Fox Hills Aquifer and 5,670 acre feet from the Arapahoe Aquifer. Ninety-eight percent of this reserved amount equals the maximum pumping over the life of the amended plan. Thus, Applicant desires to remove a total of 1,482 acre feet of the Arapahoe Aquifer from dedication to the Augmentation Plan. **C.** All of the terms and conditions of the Augmentation Plan, other than those necessarily changed by the withdrawal of 4 augmentation structures, will remain in full force and effect.

CASE NO. 08CW63 - 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; (303) 442-2156)

Application for Adjudication of Denver Basin Aquifer Ground Water

EL PASO COUNTY, COLORADO

2. Introduction, Existing Decrees. This application requests adjudication of the Town of Monument's undivided one third interest in the ground water in the Denver Aquifer underlying a parcel of about 1086 acres which has been known as the Residential Parcel of Forest Lakes, previously known as Beaver Creek

Ranch, and which is referred to herein as the Property. Monument has previously adjudicated its undivided interest in the ground water in the Arapahoe and Laramie-Fox Hills aquifers under the Property, in Case 83CW9. A decree was entered in that case by this court on August 13, 1987, which decree was recorded at reception number 0161103, book 5412, page 788, records of El Paso County, copy attached to the Application as Exhibit A. Monument had originally, in that case, also requested adjudication of its Denver aquifer ground water but that aquifer was withdrawn from Case 83CW9 by the amendment as approved by order entered in that case on February 26, 1986. Nevertheless, certain determinations were made by the Court in said case 83CW9 which are now res judicata. Monument does not claim any interest in the undivided two-thirds interest in the ground water in the Denver Aquifer under the Property owned by Forest Lakes LLC (herein "Forest Lakes"). Forest Lakes' predecessor in interest, Great American Mortgage Services Corp., et al, adjudicated their two-thirds interest in the Denver aquifer under the Property in Case 83CW142, decree entered September 25, 1987. All decrees and exhibits mentioned in this Application may be inspected at the office of the Clerk of the Water Court, and all recorded documents mentioned herein may be inspected at the office of the El Paso County Clerk and Recorder. **3. Overlying Land Description and Water Ownership.** Pursuant to a Special Warranty Deed from Charles A. Helenberg recorded March 7, 1984 at Book 3842, page 1529, records of El Paso County (copy attached to the Application as Exhibit B), Monument owns all rights, including the rights of an overlying landowner, to an undivided one-third of the water recoverable from the Denver, Arapahoe and Laramie-Fox Hills aquifers under a tract of land comprising about 1086 acres, more particularly described as follows (all in Township 11 South, Range 67 West of the 6th P.M. in El Paso County, Colorado): Section 26 - metes and bounds tract of about 1.6 acres in SW/4. May be referred to as the "Metes and Bounds Tract", detailed map attached to the Application as Exhibit C and legal description attached to the Application as Exhibit D; S/2 Section 27 (except 2.1 acre tract at Book 50, page 23), records of El Paso County); S/2 Section 28; SE/4 and E/2SW/4, Section 29; E/2NW/4 Section 32; and E/2NW/4 and SW/4NW/4 Section 33. This overlying land is shown on the map attached to the Application as Exhibit E. **4. Overlying Land Ownership and Notice.** Monument is the record title owner of all of the water and water rights which are the subject of this Application. However, Monument does not own the overlying lands nor does it provide water service to the overlying lands comprising the Property. Pursuant to §37-92-302(2)(b), C.R.S. Monument will, within ten days after the filing of this Application, give notice thereof by certified mail, return receipt requested, to every owner of the overlying land and every person who has a lien or mortgage on or deed of trust to the overlying land, to the last address shown for such owners in the public records of El Paso County. Monument has relied on the real estate records of the El Paso County Assessor or the records of the El Paso County Clerk and Recorder, as searched by Land Title Guarantee Company and the Applicant, in determining such owners and lien holders. **5. Well Locations.** The wells which will withdraw groundwater from the Denver aquifer may be located at any point

on the Property, except that Monument does not intend to construct wells within the high water lines of Bristlecone or Pinon Reservoirs so long as those sites are used for reservoir purposes. **6. Source of Water.** The groundwater to be withdrawn from the Denver aquifer is not-nontributary, as defined at §37-90-103(10.7), C.R.S. Prior to the use of any water which is decreed as not nontributary groundwater, Monument will obtain judicial approval of a plan for augmentation in accordance with §37-90-137(9)(c), C.R.S. **7. Depth of Wells.** The actual depth of each well to be constructed may fully penetrate the Denver aquifer but will be determined by topography and actual aquifer conditions. **8. Appropriation Date.** To the extent that a date of appropriation is applicable, it is December 16, 1982, the date that Monument's Board of Trustees authorized the original filing in said Case 83CW9. For purposes of applying §37-90-137(10), C.R.S., the date which shall be used by the State Engineer when considering permits for additional wells shall be December 16, 1982. **9. Estimated Average Annual Amounts of Water.** (a) Monument seeks a determination that it has the right to withdraw one third of the groundwater in the Denver aquifer legally available under the Property. Monument's engineers have made the following determinations pursuant to the State Engineer's Denver Basin Rules, 2 CCR 402-6. (1) 780.1 acres of the overlying land are more than one (1) mile from the contact between the Denver aquifer and any natural stream or its alluvium. Those 780.1 acres have an average saturated thickness of 184 feet for a total of 244.0 acre feet per year of available groundwater under that area, of which Monument owns one-third, which is an average 81.3 acre feet per year. (2) 305.9 acres of the overlying land are less than one (1) mile from the contact between the Denver aquifer and any natural stream or its alluvium. Those 305.9 acres have an average saturated thickness of 335 feet for a total of 174.2 acre feet per year of available groundwater under that area, of which Monument owns one-third, which is an average 58.1 acre feet per year. The total for Monument's interest in the Denver Aquifer under the Property is an average of 139.4 AF/yr. The wells which will withdraw the water will operate at rates of flow from approximately 100 to 1000 gpm. (b) Monument requests that in the event the Court determines that any water in the Denver aquifer underlying the Property is legally unavailable to Monument at this time because such water is within the cylinder of appropriation of one or more wells or water rights which conform to the definition of §37-90-137(5), C.R.S. and such cylinder is later reduced, or has been reduced subsequent to entry of any previous decrees upon which the estimated amounts stated herein are based, that the amount of water available to Monument hereunder be increased correspondingly under the retained jurisdiction of this Court. **10. Proposed Uses.** The subject wells will be used as sources of supply in a unified water system to serve the present and future service area of Monument. All of the groundwater may be used, reused and successively used, and otherwise disposed of for municipal, domestic, industrial, agricultural, commercial, irrigation, stock watering, recreation, fish and wildlife, fire protection and other beneficial uses including augmentation, substitution and exchange. Such water may be withdrawn through the wells described herein for immediate application to beneficial use, for storage and subsequent application

to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for all other augmentation purposes including taking credit for all return flows as augmentation for or as offsets against out-of-priority tributary depletions as provided in augmentation plan decrees of this Court. **11. Well Sites - Names and Addresses of Owners of Land on Which Wells Will be Located.** Monument owns, or has the right to use pursuant to a certain Agreement between Monument and Charles A. Helenberg dated January 26, 1984 and recorded January 27, 1984 at Book 3829, page 335, records of El Paso County (copy attached to the Application as Exhibit F), all well sites and other property interests considered necessary at this time to withdraw the subject groundwater. Monument does not intend to construct wells within the high water lines of Bristlecone or Pinon Reservoirs so long as those sites are used for reservoir purposes. The names and addresses of the record title owners of the overlying land, upon which wells or other structures may be located, are: a. USDA Forest Service, Rocky Mountain Region, Pikes Peak Ranger District, 601 South Weber, Colorado Springs, CO 80903; b. Forest Lakes, LLC, 2 North Cascade Avenue, Suite 1280, Colorado Springs, CO 80903; c. El Paso County, 27 East Vermijo Avenue, Colorado Springs, CO 80903; d. Forest Lakes Metro District, 2 North Cascade, Suite 1280, Colorado Springs, CO 80903; e. MHW, LLC, 20 Boulder Crescent, 2d Floor, Colorado Springs, CO 80903; f. Kenneth Ash, 1690 Colgate Drive, Colorado Springs, CO 80918. g. Kenneth Ash, John R. Crist, Steven L. Everson, William D. Schuck: 2 N. Cascade Ave., Ste. 1280, Colorado Springs, CO 80903-1631. **12. Well Permits.** No applications for well permits for wells on the parcel described in paragraph 3 for which ground water adjudication is requested have been filed by Monument with the State Engineer's office. Prior to any hearing or trial on the merits herein, this application will be supplemented by evidence that the State Engineer has issued or failed to issue a determination as to the facts of this application within four months of the filing of this application under §37-92-302(2), C.R.S. When wells are required on the Property, application will be made pursuant to the provisions of the decree to be entered pursuant to this application. In any event, well permits will be applied for prior to construction of any wells on the Property. **13. Adjustment of Amount.** Monument requests that the Court retain jurisdiction to provide for the adjustment of the amounts of groundwater which are available for withdrawal under the Property from the Denver aquifer, based on actual aquifer characteristics, and to authorize Monument to invoke such retained jurisdiction at any time after such data becomes available. **14. Well Field Operation.** Monument requests that it be permitted to produce its full legal entitlement from the Denver Aquifer through any combination of wells in that aquifer on the Property. (a) Monument requests judicial approval of well field operation under which all of its rights to groundwater from the Denver aquifer under the Property can be withdrawn from a minimum number of suitably located wells with maximum flexibility as to pumping rates of such wells. All wells in the said aquifer will be referred to herein as a "well field". The term "well field" shall include all of the rights and operational flexibility of "well field" as that term is defined in Rule 4.A.13 of the Statewide Nontributary Ground Water Rules, 2 CCR

402-7, and all of the rights and operational flexibility which can be attained by judicial approval for all the wells in a well field to be alternate points of diversion for each other. (b) In addition, such additional wells as are constructed pursuant to the provisions of the decree entered pursuant to the present application, to maintain production of and to recover the amount of groundwater to which Monument is entitled from each aquifer, shall be included among the wells in said well field. (c) Each well in the above described well field, including additional wells, shall be an alternate point of diversion for all of the other wells in that well field. (d) If Monument constructs any additional, alternate point or supplemental wells pursuant to the decree to be entered herein, each such well shall be automatically a part of the well fields requested herein without the necessity to amend this application or any decree entered herein. **15. Description of Land to be Irrigated.** Any land served or committed to be served by Monument's municipal water system as it now exists or as it may grow in the future. Such land is generally contained in Township 11 South, Range 67 West of the 6th P.M., in El Paso County, but Monument may serve others outside its boundaries pursuant to contract or its rules and regulations. **16. Banking.** Monument requests the right to withdraw an amount of water in excess of the decreed allowed average annual amount of withdrawal for each well field, as long as the total amount of water withdrawn from each well field does not exceed the product of the number of years since the date of issuance of the original permit or the original decree for each water right described herein, whichever is first, times the decreed allowed average annual amount of withdrawal. **17. Pumping Rates.** Monument may withdraw the total annual average amount of water provided herein from any well or combination of the wells on the Property. The pumping rates may be at a rate of flow as necessary to withdraw Monument's entire entitlement. **18. Water Service Entitlements.** Nothing herein is intended to create any implication that the granting of the present application will affect the entitlement of any person to receive water service from Monument. Rights to water service will continue to be governed by the applicable Annexation Agreements, other Contracts and Agreements, and Monument's municipal ordinances. **19. Pre SB-213 Wells.** There are no pre-SB-213 cylinders affecting the Denver aquifer that overlap the property. **20. Records.** Monument will maintain such records and make such measurements of water as may be reasonably required by the Division Engineer. **21. Well Construction.** This is not an application which will require the construction of a well within the meaning of §37-92-302(2), C.R.S. **22. Well Permit Issuance.** Monument requests the Court to order that in considering any well permit applications, the State Engineer shall be governed by the Findings of Fact, Conclusions of Law, and Decree herein which may result from this Application and shall issue said permits in accordance with the provisions of such decree and §37-90-137(10) C.R.S., and that Monument shall not be required to submit any additional proof or evidence of matters finally determined in such decree when making application for wells to withdraw the water rights confirmed therein. Monument further requests the Court to order that any failure to construct a well necessary to produce groundwater hereunder within the period of time specified in any well permit not

be deemed to extinguish the underlying right to water. **23. Non-Injury.** No legal injury will occur to the owner of any vested or conditionally decreed water right from the granting of this application. **24. Jurisdiction.** This Court has jurisdiction over the subject matter of this Application pursuant to Sections 37-92-203(1), 37-92-302(2) and 37-90-137(6), C.R.S. WHEREFORE, Monument prays that the Court enter a decree: 1) adjudicating Monument's undivided one third interest in the ground water in the Denver Aquifer under the Property; 2) determining that all of the Denver aquifer under the Property is a single well field; and 3) granting this application and such other and additional relief as it deems proper in the premises.

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 October 2008, (forms available at Clerk's office or at www.courts.state.co.us, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 4th day of September, 2008.

/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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