

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING JANUARY 2005

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 January 2005, 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. 04CW30 – SANDY CHARNEY, 9017 Cottontail, Rye, CO 81069

Amended Application for Change of Water Right
Huerfano County

The original application is amended to read in the following manner:

1. Change name from Weston #3 to Rosewater Spring. 2. Change amount of water from 0.04 cfs to 0.3 cfs. Or, allocate an increase in water as a junior water right to the original water right presently owned by the applicant – whichever the court deems as the most appropriate action. 3. This is clarification that 0.267 cfs of the total will be used for non-consumptive power generation. See map for details. (Map is on file with Motion to Amend Application and is available for inspection at the Office of the Clerk for Water Division No. 2). 4. Correct clerical error; change source of water from Meadow Canyon, Apache Creek Drainage to Mexican Branch Canyon, Mexican Creek drainage. 5. Use of the original 0.04 cfs shall include (a) Domestic use for four households; (b) Livestock; (c) Irrigation of lots 52 and 53, Southern Colorado Land and Livestock. 6. This amendment clarifies that the application for increased water is for non-consumptive power generation. After generation is complete, the water is to be returned to the aquifer in the Mexican Springs Drainage.

(Motion to Amend and attachments, 2 pages)

CASE NO. 05CW1 – MISCELLANEOUS CASE. This case is a miscellaneous filings case for 2005, and is simply being listed in the resume to account for the case number in numerical order.

CASE NO. 05CW2 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 05CW3 – VINCENT J. and LINDA J. OUELLETTE, 5090 County Road 271, Westcliffe, CO 81252

Application for Surface Water Rights
Custer County

2. Name of structure: VO Spring. **3. Legal description of each point of diversion:** Custer County, Eagle Springs Ranch Lot 1, Block 1. [Note: GPS Location provided places VO Spring approximately 290 feet from the North line

and 1400 feet from the West line of Section 24, T22S, R71W, 6th P.M.] **Optional Additional Description: GPS location information in UTM format. Required settings for GPS units are as follows: Format must be UTM; Zone must be 13; Units must be Meters; Datum must be NAD83; and Units must be set to true north. Were points averaged? Yes. Northing 4219992; Easting 475569. 4. Source: #2 Hardscrabble. 5. A. Date of initiation of appropriation: 12/7/04. B. How appropriation was initiated: Contacted Charlie Judge. C. Date water applied to beneficial use: N/A. 6. Amount claimed: .01 cfs Conditional. 7. Use or proposed use: Agriculture, fire protection. A. If irrigation, complete the following: Number of acres historically irrigated: 1. proposed to be irrigated: garden use. Legal description of acreage: Eagle Springs Ranch Filing 1, Parcel 1. B. If non-irrigation, describe purpose fully: Livestock, fire protection. 8. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed, upon which water is or will be stored, including any modification to the existing storage pool: _____. 9. Remarks:**
(Application and attachments, 4 pages)

CASE NO. 05CW4 – JON D. GREER and SUSAN A. GREER, 4375 Arrowhead Drive, Colorado Springs, CO 80908 (James G. Felt and Christopher D. Cummins, Attorneys for Applicants, Felt, Monson & Culichia, LLC, 319 North Weber Street, Colorado Springs, CO 80903)

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

El Paso County

II. APPLICATION FOR ADJUDICATION OF DENVER BASIN GROUND WATER RIGHTS. A. Permitted Wells:

1. State Engineer Well Permit No. 159771 (Exempt Domestic). Located in the NW1/4 SE1/4 Section 23, Township 12 South, Range 66 West, 6th P.M., 2040 feet from the south section line of said Section 23, and 2240 feet from the east section line. 2. One additional well may be drilled into the not-nontributary Denver aquifer underlying Applicants' Property, to be located anywhere on Applicants' 14.68 acre property, located in the NW1/4 SE1/4, Section 23, T12S, R66W, 6th P.M. in El Paso County, Colorado. The Applicants' property is more particularly described on the Exhibit A legal description attached to the Application and incorporated herein by reference. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **B. Water Source:** 1. Not-nontributary. The ground water that will be withdrawn from the Dawson, Denver and Arapahoe aquifers of the Denver Basin underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. 37-90-137(9)(c), the augmentation requirements for wells in the Dawson, Denver and Arapahoe aquifers may require the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. However, due to mapping inconsistencies, Applicants at this time are unable to determine whether Applicants' Property is

more than one mile from any point of contact between any natural stream, which would allow for replacement of only four percent of the amount of non-tributary water withdrawn. 2. Nontributary. The ground water that will be withdrawn from the Laramie-Fox Hills aquifer of the Denver Basin underlying the Applicants' Property is nontributary. **C. Estimated Rates of Withdrawal and Ground Water Available:** 1. Estimated Rates of Withdrawal. The pumping rates for wells to be completed to each aquifer are estimated to be between 15 g.p.m. and 100 g.p.m. The actual pumping rate for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts, which may be less than or exceed the above estimates. The actual depth of each well to be constructed within the respective aquifers will be determined by actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying Applicant's Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4), but for the purposes of this Application, withdrawals must be limited to the 300-year subdivision water supply requirements of El Paso County. The estimated average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers will be based upon the Denver Basin Rules. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property of 14.68 acres as follows:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Depth (Feet)</u>	<u>Total Water Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)¹</u>
Dawson	37	0-300	110	0.36
Denver	375	300-1180	940	3.13
Arapahoe	280	1180-1700	700	2.33
Laramie Fox Hills	190	1700-2300	420	1.40

Pursuant to C.R.S. §37-92-304(11), the Applicant requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **D. Requested Uses:** The Applicants request the right to use the ground water for all beneficial uses including, without limitation, domestic, commercial, industrial, irrigation, stock water, recreation, fish and wildlife propagation, fire protection, central water supply for such uses and also for exchange and augmentation purposes. **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 it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the

¹ Based upon a 300 year aquifer life.

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. Description of Land Overlying Subject Ground Water: The land overlying the ground water which is the subject of this Application consists of 14.68 acres, as more specifically described in Exhibit A attached to the Application.

G. Remarks. The existing Exempt Domestic Well, Permit No. 159771, will be re-permitted upon approval of this Application, and used as a non-exempt well pursuant to the following plan for augmentation. The Applicant may also reserve some additional ground water from quantification in the Denver aquifer for use by an exempt well pursuant to C.R.S. §37-92-602.

H. Name and Address of the Owner of the Land Upon Which the Wells are to be Located: The Applicants are the owners of the property on which the wells are to be located.

III. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION.

A. Name of Structures to be Augmented: Up to two (2) Denver aquifer wells (including Well Permit No. 159771). There are no other water rights diverted from these well structures.

B. Water Rights to be Used for Augmentation: The water rights to be used for augmentation during pumping are return flows from the not nontributary Denver aquifer wells to be pumped as set forth in this plan of 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 Denver aquifer wells proposed herein for up to two (2) residential lots. Water use criteria and their consumptive use component for replacement of actual depletions for each of the lots is as follows:

- 1. Household Use Only:** 0.27 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 each home is therefore 0.027 acre feet. Any other type of waste water disposal shall require an amendment to this plan of augmentation.
- 2. Horses (or equivalent livestock):** 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component.
- 3. Landscape Irrigation:** 0.046 acre feet annually per 1,000 square feet (2.0 acre feet per acre) per year, with a 90% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet irrigated is therefore 0.041 acre feet. Should it be determined that Applicants' Property is not over one mile from the nearest live natural stream, actual stream depletions will need to be replaced. The two (2) homeowners should be able to pump a combined 1.40 acre feet per year which is sufficient to support in house purposes, the watering of four horses, and the irrigation of approximately 10,500 square feet of lawn or garden. As one of the two lots on Applicant's property will be considerably larger than the other, Applicant reserves the right to apply up to 0.9 acre feet per year to the larger parcel, leaving 0.5 acre feet per year for the smaller parcel. Conversely, based upon anticipated depletions, a three hundred year aquifer life, and the

assumption that Applicants are required to replace only four percent of actual diversions, the two households should be able to pump a combined 3.13 acre feet per year from the two Denver aquifer wells, which is sufficient to support in house uses for each parcel, the watering of two horses on each parcel, and the irrigation of approximately 23,000 square feet of lawn or garden on the southern 5 acre parcel (assuming 1.0 acre feet total diversions), and of approximately 50,000 square feet of lawn and garden on the northern 9.6 acre parcel (assuming 2.13 acre feet of total diversions).

D. Augmentation of Depletions During Pumping: Through computer groundwater flow modeling, it has been theoretically demonstrated that pumping the Denver wells proposed in this augmentation plan over one hundred years, will deplete surface water flows at a greater rate than 0.1 percent of the pumping rate. Using the State Engineer's aquifer database, the modeling demonstrates that after one hundred years of pumping, the total stream depletions are 2.63 percent of pumping (0.037 - 0.082 acre feet per year). This total depletion rate increases to 13.8 percent (0.193 - 0.432 acre feet per year) after three hundred years of well pumping. See Exhibit B, Ground Water Consultation Report of William Curtis Wells dated January 14, 2005, and its Table 1 attached to the Application. During pumping, septic system return flows from the two residences should account for approximately 0.5 acre feet per year. Thus, there is more than enough return flows through the septic systems alone to replace the estimated stream depletions whether replacement of actual depletions or four percent of diversions is required.

E. Augmentation for Post Pumping Depletions: For the replacement of post-pumping depletions, Applicant will reserve up to 420 acre feet of water from the nontributary Laramie-Fox Hills aquifer underlying the Applicant's Property, less the amount of actual stream depletions replaced during the plan pumping period. Applicant also reserves 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, Applicant claims that post pumping depletions will be noninjurious and do not need to be replaced. Under the court's retained jurisdiction, Applicant reserves 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 Applicant will be entitled to file for and receive well permits for the subject Denver aquifer wells for the uses in accordance with this Application.

F. Remarks: Additional remarks are as follows: 1. Applicants request a finding that it has 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 wells 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 300 years, however the length of the plan for a particular well or wells 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. Before any wells are constructed, applications for well permits will be filed with the State Engineer's office, and well permits shall be granted in accordance with the decree pursuant to this application. 5. Exempt Domestic Wells, Permit Nos. 159771 will be repermited as necessary upon approval of this Application. 6. 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. 7. 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 Applicant 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. 8. The Applicants intend to waive the 600 feet well spacing requirement for the wells to be located upon the Applicant's Property. 9. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(l), and such notice will be sent within 10 days of the filing of this application.
(Application and attachments, 14 pages)

CASE NO. 05CW5 – ROBERT McCLAIN REVOCABLE TRUST; ROSE D. McCLAIN REVOCABLE TRUST, 1210 Hopkins Avenue, Rocky Ford, CO 81067

Application for Change of Water Right
Otero County

2. Decreed name of structure for which change is sought: Well #1 & 2 (B Battery); W-2505. **3. From previous Decree:** **A. Date Entered:** Nov. 1, 1973; **Case No.:** W2505; **Court:** Division 2 Water Court. **B. Decreed point of diversion:** SE NE S19 T23S R56W 6PM Otero Co. 515 F.E.L., 1545 F.N.L. (See map attached to application and available for inspection at the Office of the Clerk for Water Division No. 2). **C. Source:** Shallow ground water. **D. Appropriation Date:** Sept. 31, 1924; **Amount:** 0.278 CFS (125 GPM) < = 90 AC/FT. **E. Historic use:** Irrigation. **4. Proposed change:** Change of use to include additional uses: Domestic, commercial, industrial. **5. Names and address of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.
(Application and attachments, 7 pages)

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 March 2005, (forms available at Clerk's office, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$70.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this _____ day of February, 2005.

Mardell R. DiDomenico, Clerk
District Court Water Div. 2
203 Judicial Bldg., 320 W. 10th Street
Pueblo, CO 81003 Tel. 583-7048

(Court seal)
Published: February _____, 2005