DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING DECEMBER 2012

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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and ordered published during December 2012, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CASE NO. 2012CW118 – DANIEL R. ENGELMAN, Rt. 2, Box 18, Beaver, OK 73932; (580) 527-1002**

Application for Change of Water Right

**CUSTER COUNTY**

**Decreed water right for which change is sought: Name of structure:** R. B. & S. Ditch, Priority #498; **Date of original and all relevant subsequent decrees:** Mar. 12, 1896; **Court:** Fremont County District Court. **Legal description of structure as described in most recent decree:** Located on the Eastside of the South Fork of Cottonwood Creek, at a point whence the N4 Cor. Sec. 3 Twp. 25 S Rg 72 W, bears N 74”5’ E 480 ft. and in the NE/4 NW/4 Sec. 3 (shown on map attached to application as R. B. & S. ditch). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Decreed source of water:** South Fork Cottonwood Creek. **Appropriation Date:** July 14, 1890. **Total amount decreed to structure:** 1.21 cfs Absolute. **Decreed use or uses:** Irrigation. **Amount of water that applicant intends to change:** .20 cfs. **Detailed description of proposed change:** Change the decreed use on R. B. & S. Ditch Priority #498 from irrigation to livestock water; as I will never irrigate from this ditch, but I do need the water for livestock. I propose to lay a pipeline in the ditch from the head gate (see topographic map attached to application) to a storage structure 100’ diameter, 10’ deep, (5’ avg. depth), .90 acre ft. This will be constructed on Valley Vista within Capote Springs subdivision (see map attached to application) in Sec. 34, T24S, Range 72 West of the 6th P.M., Custer County, Colorado. The location of storage structure using GPS is North 37°55.140 minutes West 105° 25.683 minutes. The water will return to the creek through an overflow pipeline (see map attached to application). I am lowering the decreed amount from 1.21 cfs to .20 cfs, as this is all that could flow through the proposed line and is all that would be needed. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Daniel and Cindy Engelman, Rt. 2, Box 18, Beaver, OK 73932; and Larry and Debbie Thompson, P. O. Box 178, Beaver, OK 73932

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**CASE NO. 2012CW119 – CASEY L. MUELLER, 1120 Colonial Drive, Cheyenne, WY 82001; (307) 421-5844**

Application for Absolute Surface Water Right and Absolute Water Storage Right

**CUSTER COUNTY**

**APPLICATION FOR SURFACE WATER RIGHT: Name of structure:** Towering Pines Ditch. **Legal description of point of diversion:** **UTM coordinates** (Zone 13; NAD83): Northing +4490045.57; Easting -1662526.74. **Street Address:** 549 Ute Valley Road, Westcliffe, CO 81252; **Subdivision:** Capote Springs; **Lot:** Towering Pines. **Source of UTMs:** Garmin GPS; **Accuracy of location displayed on GPS device:** accurate within 21 ft. **Source:** North Branch of Cottonwood Creek (this may not be the official designation – the USGS Beck Mountain map does not indicate a name). **Date of appropriation:** January 1, 1989; **How appropriation was initiated:** By construction of a pond and ditch prior to 1989. **Date water applied to beneficial use:** January 1, 1989. **Amount claimed:** 45 gpm. **Use:** To maintain a level of water in an existing pond for which a permit application is being made. The permit application for that pond describes uses for livestock watering, trout and wildlife habitat, recreation, beautification, and emergency firewater storage. It has been used for livestock watering and trout habitat since prior to 1989. See USGS Beck Mountain Quadrangle 7.5 minute map attached to application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **APPLICATION FOR ABSOLUTE WATER STORAGE RIGHT. Name of Reservoir:** Pond at Towering Pines. **Legal description of location of dam centerline: UTM coordinates (Zone 13, NAD83):** **Northing** +4490017.28; **Easting** -1662493.34. **Street Address:** 549 Ute Valley Road, Westcliffe, CO 81252; **Subdivision:** Capote Springs; **Lot:** Towering Pines. **Source of UTMs:** Garmin GPS; **Accuracy of location displayed on GPS device:** accurate to within 21 ft. **Source:** North branch of Cottonwood Creek (not certain if this is the official description of this stream – USGS Beck Mountain 7.5 minute map does not indicate a name). **If filled from a ditch:** **Name of ditch used to fill reservoir and capacity in cubic feet of water per second:** Towering Pines Ditch, 0.1 cfs (45 gpm) Absolute. **Legal description of each point of diversion: UTM coordinates** (Zone 13; NAD83): Northing +4490045.57; Easting -1662526.74. **Street Address:** 549 Ute Valley Road, Westcliffe, CO 81252; **Subdivision:** Capote Springs; **Lot:** Towering Pines. **Source of UTMs:** Garmin GPS; **Accuracy of location displayed on GPS device:** accurate to within 21 ft. **Date of appropriation:** January 1, 1989. **How appropriation was initiated:** By construction of a ditch and pond prior to 1989. **Date water applied to beneficial use:** January 1, 1989. **Amount claimed:** 1.98 a.f. (90’ x 120’ x 8’). **If filled from a ditch, rate of diversion:** 45 gpm. **Use:** Livestock watering, trout and wildlife habitat, recreation, beautification, and emergency firewater storage – see USGS Beck Mountain Quadrangle, 7.5 minute map attached to application. **Surface area of high water line:** 10,800 square feet. **Vertical height of dam:** 8 feet. **Length of dam:** There is an earthen berm that extends around the south side of the pond that is approximately one half of the pond’s perimeter in length, or about 210 ft. **Total capacity of reservoir:** 1.98 acre ft.—this is based on a surface area of 120 ft. x 90 ft. x 8 ft. depth. **Active Capacity:** 1.98 a.f. **Dead storage:** 1.86 acre ft. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant. **Remarks or any other pertinent information:** According to the previous landowner the subject pond had been in existence for at least several years when he purchased the property in 1989. The natural course of the creek is to the south of this pond as shown by the USGS map attached to the Application. It appears that when the pond was built, a ditch was dug that diverts water from the creek into the pond. The applicant bought the Towering Pines lot (that the pond is located on) in 2011. The water flows into the west side of the pond and overflows into the same creek from the south end. The applicant does not seek to divert or use any water that does not already flow from the creek into the pond in the same manner as it has for decades. The existing pond and proposed diversion ditch are located entirely on the property of the applicant. A photograph of the water at the point that it flows into the pond is attached to the application.

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**CASE NO. 2012CW120 (Div. 2) and 2012CW294 (Div. 1) – SETH C. HUNT and CYNTHIA J. HUNT, 14671 Highway 83, Larkspur, CO 80118** (Please send copies of all pleadings and correspondence to: Henry D. Worley, Worley Law Firm, LLC, Attorney for Applicants, 611 N. Weber #104, Colorado Springs, CO 80903; (719) 634-8330) Application for Denver Basin Water Rights and Approval of Plan for Augmentation **DOUGLAS COUNTY**

**1. Name and address of Applicants** is shown above. Their phone number is 719.271.7325, their e-mail address is: cindyaeberli@msn.com. Applicants own 56.0 acres of land located in the SE1/4 Section 27, T. 10 S., R. 66 W., 6th P.M. in Douglas County (the “Property”). The Property is located in the Cherry Creek drainage, tributary to the South Platte River. A map showing the location of the Property is attached to the Application as Exhibit A. A copy of the Applicants’ deed to the Property is attached to the Application as Exhibit B.(All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **2. Names of wells and permit, registration, or denial numbers:**  permit no. 33657. This structure is currently permitted as an exempt well in the Dawson aquifer. A copy of that well permit is attached to the Application as Exhibit C. A well permit was issued more recently but it expired when the previous owner did not construct a well pursuant to such permit within the allotted time period. **3. Legal description of wells:** Permit no. 33657 is permitted as being in the SE1/4 SE1/4 Section 27, T. 10 S., R. 66 W., 6th P.M., but no distances from section lines are given. Applicants hereby waive the 600 foot spacing rule in regard to all Dawson aquifer wells constructed on the Property. **4. Source:** Not nontributary Dawson aquifer­. **5.A. Date of appropriation:** Not applicable. **5.B. How appropriation was initiated:** Not applicable. **5.C. Date water applied to beneficial use:** Not applicable. **6. Amount claimed:** Applicants seek the adjudication of 4.0 acre feet of water annually, absolute, at a rate not to exceed 25 gpm, in the not nontributary Dawson aquifer underlying the Property, which was not previously adjudicated in Case No. 05CW234, Water Division 1. In conjunction with the 38.0 acre feet/yr decreed in Case No. 05CW234, this will bring the total of decreed Dawson aquifer water to 42.0 AF/yr). **7. Proposed use:** all beneficial uses, including augmentation, except municipal. **8. Names and addresses of owners of land on which well is located:** Same as Applicants. **9. Remarks**: **A.** There is one lien against the Property. Pursuant to C.R.S. 37-92-302(2)(b), notice has been given to the lienor, Seth Carlton Hunt, 3421 South Oak Court, Denver, CO 80227. A copy of the certified letter, return receipt requested, that was sent to the lienor is attached to the Application as Exhibit C. After entry of the decree adjudicating the additional Dawson aquifer water and approving the plan for augmentation described below, Applicants will apply for a new well permit for their existing well, the terms of which are consistent with the plan for augmentation and with applicable statutes and regulations. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION**. **10. Name of structures to be augmented:** Up to 3 Dawson aquifer wells, including the existing Dawson aquifer well. No other water rights are or will be diverted from these wells. **11. Previous decrees for water rights to be used for augmenta­tion:** 85CW234, Water Division 1, entered February 23, 2006. **12. Historic use:** Not applicable. **13. Statement of plan for augmentation: A. Water Demand.** Applicant may subdivide the Property into as many as 3 lots for single family residences. Uses of water on such lots are expected to be, but shall not be limited to, some or all of the following uses: for indoor uses for drinking and sanitary purposes in the principal houses and in stand-alone home offices or guest cottages, no more than one per lot, for livestock watering, for commercial horse boarding and dog kenneling, for landscape and garden irrigation, hot tubs, swimming pools, and augmentation. Applicants for well permits will indicate on their well permit applications the uses to which they intend to put the water. **B. Water Consumption and Return Flows.** Average annual indoor water usage for each house is assumed to equal 0.30 acre foot. It is generally accepted that no more than ten percent of water used indoors in residences using non-evaporative septic systems and leach fields for wastewater disposal is consumed, with 90 percent (0.27 acre foot per lot, annually) returning to the stream system. Although there will be some return flows from other uses, Applicants will rely only on return flows from septic systems and leach fields for replacement of depletions during a proposed 300 year pumping period. **C. Allowable Annual Pumping and Replacement of Stream Depletions During Pumping.** Based on computer modeling, stream depletions will occur to tributaries of the South Platte and Arkansas Rivers. Applicant proposes to aggregate and replace all stream depletions to Cherry Creek, a tributary of the South Platte River. Computer modeling indicates that during pumping stream depletions will gradually increase to a maximum of 24.6 percent of annual pumping in the 300th year. Table A shows the stream depletions as a percentage of pumping at the end of each 50 year period during a proposed 300 year pumping period, as well as the maximum annual allowable pumping for each well, the volumetric stream depletions based on assumed pumping of the maximum allowable amount, and the septic system return flows generated per lot.

**TABLE A**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Year from start of pumping | Maximum pumping (AF/yr) | Depletions as % of pumping | Maximum annual depletions (AF/yr) | Septic system return flows (AF/yr) |
| 0-50 | 6.58 | 4.1 | 0.27 | 0.27 |
| 51 - 100 | 3.29 | 8.2 | 0.27 | 0.27 |
| 101 - 150 | 2.2 | 12.3 | 0.27 | 0.27 |
| 151 - 200 | 1.65 | 16.4 | 0.27 | 0.27 |
| 201 - 250 | 1.32 | 20.5 | 0.27 | 0.27 |
| 251 - 300 | 1.1 | 24.6 | 0.27 | 0.27 |

These amounts may be adjusted slightly in the decree, to conform with the Division Engineer’s Consultation Report regarding depletions as a percentage of pumping over the proposed 300 year pumping period. If the Consultation Report does not indicate depletions as a percentage of pumping, Applicants will use the figures in the third column of Table A. **D. Replacement of Stream Depletions After Cessation of Pumping**. Applicants agree to replace depletions for the shortest of the following periods: the period provided by the Colorado Legislature, should it eventually specify one and if the Applicants obtain water court approval for such modification, the period determined by the State Engineer, should the State Engineer lawfully establish such a period; the period established through rulings of the Colorado Supreme Court in relevant cases; or until Applicants or their successors petition the water court and after notice to parties in the case prove that they have complied with all statutory requirements. Applic­ants will reserve 2,167 acre feet from the Denver aquifer underlying the Property for the replacement of post-pumping depletions, unless and until such time as any of the above conditions occurs which terminates the obligation to replace post-pumping depletions, or unless Applicants obtain judicial approval of another source of replacement water for post-pumping depletions. Applicants shall make post-pumping replacements annually as required to replace modeled stream depletions. Applicants propose to aggregate all depletions and to replace them to the South Platte drainage. **E. Miscellaneous**. **(1)** As stated above, after entry of this decree, Applicants shall apply for a new well permit for existing permit 33657 on terms consistent with the decree in this case and with applicable regulations and statutes. **(2)** Applicants will establish restrictive covenants on the Property which: (a) limit annual pumping from the proposed Dawson aquifer wells as set forth in Table A above: (b) require the use of non-evaporative septic systems for wastewater treatment; (c) reserve adequate nontributary water for replacement of post-pumping depletions, which reservation may be voided upon the occurrence of any of the events specified above eliminating the need for such reservation; (d) which inform the future owners that utilization of water for indoor residential purposes is required in order to generate the necessary return flows for augmentation; and (e) indicate that the owners will be required to construct a well or wells into the Denver aquifer underlying the Property for replacement of post-pumping depletions if the source of augmentation water is unchanged. Restrictive covenants otherwise limiting the uses to which water may be used on the Property are unnecessary because the annual pumping limitations, and the requirement that non-evaporative septic systems be used, ensures that septic system return flows alone will equal depletions throughout the 300 year pumping period. **(3)** This application is being filed in both Water Divisions 1 and 2 because stream depletions will occur in both the South Platte and Arkansas drainages. After the time for filing statements of opposition has expired, Applicants will seek to consolidate the two applications in Water Division 1.

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**CASE NO. 2012CW121 (Div. 2) and CASE NO. 2012CW299 (Div. 1) – RICK McCULLOUGH, 12645 HERRING ROAD, COLORADO SPRINGS, CO 80908** (Send copies of all pleadings and correspondence to: David M. Shohet, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 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. Underground Water Rights. A. Legal Description**. **1. Property Description**. Applicant seeks the adjudication of the Denver Basin groundwater underlying the Applicant's property consisting of 1.91 acres, more or less, located in the Southwest Quarter of Section 9, Township 12 South, Range 65 West of the 6th P.M., El Paso County, Colorado. The Property is generally shown on the map attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **2. Well.** Applicant desires to drill one well into the not nontributary Dawson Aquifer underlying the Property. Well Permit No. 283679, is currently drilled to the Dawson Aquifer on the Property. No exact location is requested for the proposed well as the Applicant may utilize the existing well structure or abandon the existing well and construct a new well. Accordingly, information regarding the location of the one Dawson Aquifer well will be provided when the Applicant submits a well permit application. Applicant also seeks the right to drill to the Denver, Arapahoe and Larmie-Fox Hills aquifers. Well permit applications for any wells to be drilled pursuant to this application and subsequent decree will be applied for prior to drilling into the Denver Basin aquifers. **B. Water Source.** **1. Not Nontributary.** Applicant’s withdrawal of ground water from the Dawson and Denver aquifers of the Denver Basin underlying the Property are not nontributary. The Denver aquifer underlying the 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 the well into the Denver and aquifer require replacement to the effected stream system of a total amount of water equal to 4 percent of the water withdrawn on an annual basis. Pursuant to C.R.S. 37-90-137(9)(c), the augmentation requirements for the well in the Dawson aquifer will require the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. **2. Nontributary.** The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills Aquifers of the Denver Basin underlying the Property are nontributary. **C. Estimated Rates of Withdrawal and Ground Water Available.** **1. Estimated Rates of Withdrawal.** The actual pumping rate for the well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amount. The actual depth of the 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.** Applicant requests an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the 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). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

Saturated Total Water Annual Average

Thickness Depth Adjudicated Withdrawal

Aquifer (Feet) (Feet) (Acre Feet) (Acre Feet)

Dawson 359 850 137 1.37

Denver 369 1750 120 1.20

Arapahoe 255 2300 83 0.83

Laramie Fox Hills 191 2900 55 0.55

Decreed amount may vary based upon the State’s Determination of Facts and may be reduced to account for well pumping from the one existing Dawson Well located on the property. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **D. Requested Uses.** The Applicant requests the right to use the groundwater for beneficial uses upon the Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, fire protection, central water supply for such uses, and also for exchange and augmentation purposes. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct the 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 Diversions.** Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed from the Denver Basin aquifers underlying the Property, so long as the sum of the total withdrawals from all the wells in the aquifer 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 occurs first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifer underlying the Property. **F. Name and Address of Owner of Land Upon Which Well are to Be Located.** The Property is owned by the Applicant. **III. Plan for Augmentation**. **A. Structure to be Augmented.** The structure to be augmented consist of one well to be completed in the not nontributary Dawson or Denver aquifers of the Denver Basin underlying the Property. **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 and/or Denver aquifer well to be pumped as set forth in this plan for augmentation, together with water rights from the nontributary Arapahoe aquifer for post pumping depletions. **C. Statement of Plan for Augmentation. 1. Diversions.** One augmented well is to be used for the water supply for one single family residences and other uses as stated herein upon the Property including 8,000 square feet of irrigation of lawns, gardens and landscaping plus the watering of two horses. The maximum annual pumping from the well uses shall be approximately 0.8 acre feet per year. The diversion and depletions numbers are approximate and may vary based on final water availability. **2. Depletions.** The Applicant's consultant has operated the State Engineer’s Denver Basin Ground Water Flow Model for the determination of stream depletions from Dawson aquifer well pumping. The actual stream depletions during the plan term are a maximum of approximately 6.5 percent of the Dawson aquifer well pumping, assuming 100 years of withdrawal under this plan. The actual stream depletions associated with the Dawson Aquifer will therefore be a maximum of approximately 0.052 annual acre feet. Attached to the Application as Exhibit B are the ground water flow model Dawson Aquifer stream depletion factors. To the extent Applicant utilizes ground water in the Denver aquifer, 4 percent of the water withdrawn on an annual basis shall be replaced to the effected stream system. **3. Replacement.** Applicant’s augmentation water during the plan term will consist of septic return flow from in-house use. Wastewater from the in-house residential uses will be disposed of through a non-evaporative septic systems that are determined to have return flows to the tributary stream system of 90 percent of the in-house residential pumping of 0.3 annual acre foot. Therefore, return flows total 0.27 annual acre feet. These return flows during the period of the plan will augment the tributary stream system in an amount greater than the maximum actual stream depletion amount from the Dawson aquifer. For the Denver aquifer, the 4 percent replacement requirement totals approximately 0.018 annual acre feet and is exceeded by septic return flow replacement water. Therefore, Applicant’s return flows prevent material injury to other vested water rights. Applicant believes that fifteen percent of irrigation water would accrue to the stream as return flows which could be used for additional augmentation. Applicant does not at this time, claim the irrigation return flows as part of this augmentation plan, but Applicant preserves its claim to those return flows and does not waive its rights or claims thereto. **D. Filing in Both Water Divisions.** This Application is being filed in both Water Divisions 1 and 2 because aquifer depletions will occur in both divisions under the State’s Model. The return flows set forth above will accrue to only the Arkansas River system where most of the depletions occur. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. **E. Post-Pumping Depletions.** For the replacement of post-pumping depletions, Applicant will reserve up to 83 acre feet of water from the nontributary Arapahoe 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. Applicant claims that post pumping depletions will be noninjurious and do not need to be replaced, and under the Court's retained jurisdiction Applicant reserves the right in the future to so prove that post pumping depletions will be noninjurious. The reserved nontributary water will be used, as so necessary, to replace any injurious post pumping depletions. Upon entry of a decreed augmentation plan in this case, the Applicant will be entitled to file for and receive well permits for one Dawson and/or Denver aquifer well for the uses in accordance with this Application. **IV. REMARKS.** Additional remarks are as follows: 1. Applicant requests 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 nontributary well and 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 the well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions will be determined as the average annual withdrawals for all well through cessation of pumping and accrue only to the extent of actual pumping. 3. Applicant will comply with C.R.S. §37-90-137(9)(b) requiring the relinquishment of the right to consume no more than two percent of the amount of the nontributary ground water withdrawn. 4. Applicant will comply, as necessary, with C.R.S. §37-92-302(b) requiring this Application to be supplemented by evidence that the Applicant has, within ten days after filing the application, that Applicant has given notice of the application by registered or certified mail, return receipt requested, to every person who has a lien or mortgage on, or deed of trust to, the overlying land. 5. The Court will retain jurisdiction over this matter for those who object to the application 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. 6. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. 7. The well 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 Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation.

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**CASE NO. 2012CW122 – J-S FARMS, INC. a/k/a J BAR S FARMS, a Colorado Corporation, P. O. Box 1216, Lamar, CO 81052** (Michael L. Nicklos, Attorney for Applicant, P. O. Box 581, La Junta, CO 81050; (719) 384-5946)

Application for Change of Water Right

**PROWERS COUNTY, COLORADO**

**Decreed water right for which change is sought:** Godley Ditch and Reservoir. **Date of original and all relevant subsequent decrees:** October 14, 1918. **Legal description of structure as described in most recent decree:** That said ditch takes its supply of water from percolating, seepage and spring waters arising, flowing and seeping down that certain slough or valley, in Twp. 22 South, Range 45 West, Prowers County, Colorado, commonly known as Paradox Valley. That said headgate of said ditch is located at a point 2023 feet west of the west quarter corner of Sec. 19, Twp. 22 South, Range 45 West, Prowers County, Colorado.” A USGS topographic map is attached to the application showing the Godley Decreed location; the Historic Point of Diversion Godley; and the requested new point of diversion for the Godley. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Decreed source of water:** Paradox Valley. **Appropriation Date:** January 22, 1896. **Total amount decreed to structure:** one cubic foot of water per second of time, absolute. **Decreed use or uses:** Irrigation. **Amount of water that applicant intends to change:** one cubic foot of water per second of time, absolute. **Detailed description of proposed change:** Applicant is seeking to change the decreed and historic point of diversion for the water right to a new and actual point of diversion, all as set forth in the USGS topographic map attached to the Application. The following is the decreed location: **UTM coordinates:** Northing 0716661.6 Easting 4222170.6, Zone 13. **Source of UTMs:** Location provided by Water Commissioner Spady with Delorme model PN 40 GPS. **Accuracy of location displayed on GPS device:** 10 to 20 feet. **The following is the description of the proposed new point of diversion:** UTM coordinates: Northing 0719636; Easting 4221477; Zone 13. **Source of UTMs:** Location provided by Water Commissioner Spady with Delorme model PN 40 GPS. **Accuracy of location displayed on GPS device:** 10 to 20 feet. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

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**CASE NO. 2012CW123 – RILEY L. MAY, 39818 County Road 7, Lamar, CO 81052** (John S. Lefferdink, Lefferdink Law Office, LLC, Attorney for Applicant, P. O. Box 110, Lamar, CO 81052; (719) 336-7411)

Application for Finding of Reasonable Diligence

**PROWERS COUNTY, COLORADO**

**Name of Structure:** Well No. 1. **Conditional Water Right: Date of Original Decree:** October 4, 1974, Case No. W-1604. **Findings of Reasonable Diligence:** January 19, 1979, Case No. W-1604 (78); April 21, 1983, Case No. 82CW201 (W-1604); August 24, 1987, Case No. 87CW26 (W-1604); June 26, 2000, Case No. 93CW53 (W-1604); December 5, 2006, Case No. 06CW48 (W-1604). **Location:** Well No. 1 is located in the NW1/4NW1/4 of Section 13, Township 22 South, Range 46 West of the 6th P.M. **Source:** Arkansas River. **Appropriation Date:** June 6, 1956. **Use and Amount:** Irrigation and industrial. Use of water for irrigation was absolutely awarded, for 8.88 cfs, or 4, 000 gpm, but not to exceed 2,840 acre feet per calendar year. Use of water for industrial use was made absolute for 3,618 gpm, or 8.06 cfs, not to exceed 6 acre feet per calendar year. Use of water for industrial use was approved as a conditional water right for the balance of the conditional water right, which is 3,618 gpm, or 8.06 cfs, not to exceed 2,834 acre feet per calendar year. **Work Done to Complete Project:** A. A Judgment and Decree was entered by this Court on December 5, 2006 which found that Applicant had shown reasonable diligence in the development of the industrial use awarded to Well No. 1. B. During the current diligence period, oil and gas drilling, which is the primary industrial use of water from this well, has been minimal. However, in the last two years, it is estimated that over one million acres of mineral rights have been leased in Prowers, Kiowa and Bent Counties in the State of Colorado by various companies, including Diamond Resources, McDonald Land Services, Sullivan Land Resources, Land and Mineral Company of Texas, Westphal Oil Company, TS Dudley Leasing Company, and other leasing companies. It is therefore expected that there will be substantial oil and gas drilling operations in this area, and that a substantial quantity of water will be needed for oil and gas drilling operations. C. During the diligence period, Applicant has maintained the well in good operating condition, and production from the well has been maintained for irrigation and industrial use at or near the maximum decreed rate. D. A photograph of Well No. 1 is attached to the Application as Applicant's Exhibit A which portrays the overhead delivery system which allows water produced by the well to be delivered into water trucks for industrial use. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) E. Water from Well No. 1 can also be used to load in or water pack casing for shut-in oil and gas wells as required by the Colorado Oil and Gas Conservation Commission. F. Applicant has maintained its membership in the Lower Arkansas Water Management Association, and 347 shares of the capital stock of LAWMA owned by Applicant are assigned to Well No. 1 as an augmented structure for augmentation purposes. **Owner of Structure:** Applicant. WHEREFORE, Applicant requests that the Court enter a decree awarding a finding of diligence for the subject conditional water right, continuing the subject conditional water right in full force and effect for an additional six year diligence period, and for such other and further relief as the Court deems just and proper.

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**CASE NO. 2012CW124 – CLIMAX MOLYBDENUM COMPANY (“Climax”), Highway 91, Fremont Pass, Climax, CO 80429** (Please send all pleadings and correspondence to: Brian M. Nazarenus, Esq. and Sheela S. Stack, Esq., Ryley Carlock & Applewhite, Attorneys for Applicant, 1700 Lincoln Street, Suite 3500, Denver, CO 80203; (303) 863-7500)

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

**LAKE, CHAFFEE, FREMONT, and PUEBLO COUNTIES**

**2. Introduction.** Applicant Climax Molybdenum Company ("Climax") owns and operates the Climax Mine located approximately twelve miles northeast of the Town of Leadville, Colorado, at a point intersecting the Continental Divide and encompassing various headwaters of the Arkansas River, Eagle River, and Blue River (Tenmile Creek) watersheds. The Climax Mine has, over the years, appropriated or acquired numerous water rights and constructed a complex network of water diversion, conveyance, and storage facilities to support the mining and milling operations. In 2001, in consolidated Case Nos. 92CW233 and 92CW336, Climax’s water rights located in the Colorado River basin were readjudicated into a single integrated unit known as the Climax Water Supply System. These have since been administered in accordance with the terms and conditions set forth in the decree entered in Consolidated Case Nos. 92CW233 and 92CW336 (“Readjudication Decree”). Certain water rights for the Arkansas River basin are part of the Climax Water Supply System, but were not included in the Readjudication Decree. By this application, Climax seeks to adjudicate those water rights in the Arkansas River basin and appropriate exchanges to structures associated with those water rights. Climax also seeks approval of a plan for augmentation to replace depletions to the Arkansas River caused by the exposure of groundwater at the Jones Gravel Pit (the “Jones Pit”) and out-of-priority depletions resulting from water pumped from the Arkansas River basin via the Arkansas Well and Storke Wastewater Pump Station. The Arkansas Well consists of an infiltration gallery at the headwaters of the Arkansas River. The Arkansas Well and Pipeline system is a trans-basin diversion that moves water from the Arkansas River basin to the Colorado River basin. Water from the Arkansas Well is pumped through the Arkansas Well Pipeline to an interchange location that can route water to either Buffehr’s Lake or Chalk Mountain Reservoir, both of which are in the Colorado River basin, for eventual use by Climax. In addition, water can be delivered from the pipeline for immediate beneficial use by Climax. The Jones Pit is an existing gravel pit operation that was purchased by Climax in 1982 to support the Climax Mine. The Jones Pit is permitted with the Colorado Division of Reclamation, Mining and Safety as Permit No. M-1981-234. The Jones Pit is currently in Temporary Cessation status and a final reclamation plan for the Jones Pit is being developed for implementation prior to the end of the cessation period.  The long-term closure plan for the Jones Pit may include backfilling low areas where groundwater is currently exposed.  The backfilling is intended to eliminate the consumption of groundwater at the site, as well as the need for a replacement water source.  However, in the event that closure of the Jones Pit is delayed or the reclamation design is changed, a plan for long-term replacement of stream depletions resulting from the groundwater consumption at the Jones Pit is needed.  The Storke Wastewater Pump Station (“SWPS”) was originally constructed in the 1970s to pump crusher blowdown slurry from the Storke Crusher and sewerage from the Storke Level dry facilities, all of which are located in the Arkansas River basin. The SWPS has since operated to also route water quality impacted snowmelt runoff and stormwater. This water is currently impounded and pumped across Fremont Pass into the Storke Levels of the Climax Mine within the Colorado River basin, via the Storke pipeline. Water is then pumped out and released into Climax’s Tenmile and Mayflower Tailing Storage Facility reservoirs located in the Colorado River basin for beneficial use and reuse, water quality treatment, and eventual release into Tenmile Creek. A map depicting the general locations of the boundaries of the Climax Mine, Arkansas Well, SWPS, and Jones Pit is attached to the Application as Exhibit 1. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **APPLICATION FOR WATER RIGHTS. 3. Arkansas Well. 3.1. Name of Structure.** Arkansas Well. **3.2. Legal description.** The Arkansas Well is located on Climax property near the headwaters of the East Fork of the Arkansas River in the SE ¼ SE ¼ of Section 10, Township 8 South, Range 79 West of the 6th P.M., whence the Southeast Corner of Section 10 bears south 17°37” east, a distance of 364.8 feet on the East Branch of the Arkansas River in Lake County, Colorado. **3.3. Source.** Run-off, surface flow and groundwater tributary to the East Fork of the Arkansas River. **3.4. Date of appropriation.** June 30, 1964. **3.4.1. How appropriation was initiated.** Well Permit No. 20487 was issued. **3.5. Amount Claimed.** 5.26 c.f.s., absolute, 14.74 c.f.s., conditional. **3.6. Proposed Uses.** The water will be used for all beneficial uses including: domestic, industrial, commercial, evaporation replacement, augmentation, irrigation, recreation, fish and wildlife, snowmaking, mining, milling, mine reclamation and continuing mine depletions from the exposure of groundwater, and fire protection uses. Additionally, Applicant requests that the water may be produced for immediate application to beneficial use; for storage, and subsequent application to beneficial use or release and re‐diversion to storage; for exchange purposes: for replacement of depletions resulting from the use of water from other sources: and for all other augmentation purposes. Additionally, Applicant requests that the water may be used, reused, and successively used to extinction and may be used by disposition to other parties by sale, lease, trade, or other means. The water will be used within the boundaries of the Climax Mine as is currently exists or may exist in the future. **4. Storke Wastewater Pump Station. 4.1. Name of Structure.** Storke Wastewater Pump Station. **4.2. Legal description.**  The Storke Wastewater Pump Station is located near the headwaters of the East Fork of the Arkansas River in the NE ¼ of the NE ¼ of Section 14, Township 8 South, Range 79 West of the 6th P.M., Lake County, Colorado, at a point approximately 400 feet from the North Section line and 850 feet from the East Section line of said Section 14, approximately 10 miles northeast of the town of Leadville in Lake County, Colorado at an elevation of approximately 11,100 feet mean sea level. **4.3. Source.** Surface water and groundwater tributary to the East Fork of the Arkansas River. **4.4. Date of appropriation.** July 13, 1967. **4.4.1. How appropriation was initiated.** Construction and operation of the Storke facilities. **4.5. Amount claimed.**  5.0 c.f.s., absolute, 5.0 c.f.s., conditional. **4.6. Proposed Uses.** The water will be used for all beneficial uses including: domestic, industrial, commercial, evaporation replacement, augmentation, irrigation, recreation, fish and wildlife, snowmaking, mining, milling, mine reclamation and continuing mine depletions from the exposure of groundwater, and fire protection uses. Additionally, Applicant requests that the water may be produced for immediate application to beneficial use; for storage, and subsequent application to beneficial use or release and re‐diversion to storage; for exchange purposes: for replacement of depletions resulting from the use of water from other sources: and for all other augmentation purposes. Additionally, Applicant requests that the water may be used, reused, and successively used to extinction and may be used by disposition to other parties by sale, lease, trade, or other means. The water will be used within the boundaries of the Climax Mine as is currently exists or may exist in the future. **5. Jones Pit. 5.1. Name of Structure.** Jones Pit. **5.2. Legal description.** The Jones Pit is located in the SW¼ of the NE¼ of Section 16, Township 9 South, Range 80 West of the 6th P.M., approximately 2 miles northwest of the town of Leadville in Lake County, Colorado at an elevation of approximately 9,800 feet mean sea level. The pit is located near the confluence of the East Fork of the Arkansas River and Tennessee Creek, which is the beginning of the Arkansas River. **5.3. Source.** Groundwater tributary to the East Fork of the Arkansas River and Tennessee Creek. **5.4. Date of appropriation.** May 27, 1982. **5.4.1. How appropriation was initiated.** The Jones Pit was permitted with the Colorado Division of Reclamation, Mining and Safety as Permit No. M-1981-234. **5.5. Amount Claimed.** 0.1 c.f.s., absolute. **5.6. Proposed Uses.**  The water will be used for all beneficial uses associated with gravel pit mining and mine reclamation, including, but not limited to continuing mine depletions from the exposure of groundwater and evaporative depletions. **6. Name and address of owner or reputed owner of the land upon which any new or existing diversion or storage structure, or modification to any existing diversion of storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.** The Arkansas Well, Jones Pit, and SWPS are all located on lands owned by the Applicant. **APPROPRIATIVE RIGHTS OF EXCHANGE. 7. Names and Legal Descriptions of Structures Involved.** **7.1. Exchange-From Points. 7.1.1. Pueblo Board of Water Works Delivery Locations.** (“Pueblo Delivery Points”). Pueblo may deliver water to Climax from the following structures: 7.1.1.1. Clear Creek Reservoir. Clear Creek Reservoir is located on Clear Creek in all or part of Sections 7 and 8, Township 12 South, Range 79 West of the 6th P.M., and Section 12, Township 12 South Range 80 West of the 6th P.M. in Chaffee County, Colorado. The Clear Creek Reservoir Dam axis and the centerline of Clear Creek intersect at a point whence the South quarter comer of Section 8, Township 12 South, Range 79 West of the 6th P.M. bears South 27° West a distance of 2,255 feet. 7.1.1.2. Turquoise Reservoir. Turquoise Reservoir is located in all or portions of Sections 7, 8, 17, 18, 19, and 20, Township 9 South, Range 80 West, and Sections 10 11, 12, 13, 14, and 15, Township 9 South, Range 81 West of the 6th P.M. The Turquoise Reservoir Dam axis and the centerline of Lake Fork of the Arkansas River intersect at a point whence the Northwest corner of Section 16, Township 9 South, Range 80 West of the 6th P M bears N 44°46’18” East a distance of 10,344.35 feet all as more particularly described in the decree in Civil Action 5141 District Court, Chaffee County, Colorado. 7.1.1.3. Twin Lakes Reservoir. Twin Lakes Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 30, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado. The Twin Lakes Dam axis and centerline of Lake Creek intersect at a point whence the Southeast corner of Section 23, Township 11 South, Range 80 West of the 6th P.M. bears South 54°13’8” East a distance of 3,803.10 feet as more particularly described in the decree in Civil Action No 5141 District Court, Chaffee County, Colorado. 7.1.1.4. Pueblo Reservoir. Pueblo Reservoir is an on channel reservoir formed by the intersection of Pueblo Dam and the Arkansas River at a point whence the Northeast corner of Section 36, Township 20 South, Range 66 West of the 6th P.M. bears North 61°21’20” East a distance of 2,511.50 feet. Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 20 South, Range 66 West of the 6th P.M., Sections 1, 2, 3, 4, 5, 9, 10, and 11, Township 21 South, Range 66 West of the 6th P.M., and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, Township 20 South, Range 67 West of the 6th P.M. 7.1.1.5. Lake Meredith Reservoir. Lake Meredith Reservoir is located in all or portions of Sections 15, 16, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, and 33 in Township 21 South, Range 56 West; Sections 1 and 12 in Township 22 South, Range 57 West; Section 6 in Township 22 South, Range 56 West; and Sections 24, 25, and 36 in Township 21 South, Range 57 West all from the 6th P.M. in Crowley County, Colorado. Lake Meredith Reservoir dam axis and the centerline of the outlet canal intersect at a point located in the NW ¼ of the SW ¼ of Section 12, Township 22 South, Range 57 West of the 6th P.M., at a point from which the West Quarter Corner of said Section 12 bears North 27°14’ West a distance of 53,604 feet. Lake Meredith is authorized to store 26,028.4 acre-feet at a rate of 756.28 c.f.s. under a priority of March 9, 1898. 7.1.1.6. Lake Meredith Outlet Canal. Water released from Lake Meredith Reservoir are carried through the Outlet Canal to a point in the S ½ of Section 21, Township 22 South, Range 57 West of the 6th P.M. where they can be released to the Holbrook Canal and discharged into the Fort Lyon Storage Canal whence they are carried southeasterly approximately one half mile in the Fort Lyon Storage Canal to a point at which they either continue in said Fort Lyon Storage Canal or are discharged through a headgate on it southerly bank in the SW ¼ of Section 22, Township 22 South, Range 57 West of the 6th P.M., in Crowley County, Colorado, whence they travel south southeast approximately one mile to discharge into the Arkansas River in the SE ¼ of Section 27, Township 22 South, Range 57 West of the 6th P.M. in Otero County, Colorado. 7.1.1.7. Lake Henry. Lake Henry is located in all or portions of Sections 31 and 32 T 20 S R 56 W and Sections 5 and 6, Township 21 South, Range 56 West all from the 6th P.M., in Crowley County, Colorado; the primary outlet works for Lake Henry Reservoir are located in the South of said Section 6; and the Lake Henry Reservoir dam axis and the centerline of the outlet canal intersect at a point on the West line of the SE ¼ of said Section 6 a distance of 512 feet south of the center of Section 6, Township 21 South, Range 56 West of the 6th P.M. in Crowley County, Colorado. Lake Henry is decreed to store 6,355 acre-feet at a rate of 756 cfs under a priority of 1891; to store 2,000 acre-feet at a rate of 756 cfs under a priority of September 10, 1900; and to store 3,561 acre-feet at a rate of 756 cfs under a priority of May 15, 1909. 7.1.1.8. Pueblo Municipal Wastewater Treatment Plant. Pueblo Municipal Wastewater Treatment Plant discharges treated waste water to the Arkansas River at a point in the NE ¼ of Section 5, Township 21 South, Range 64 West of the 6th P.M. The approximate latitude of said point is 38°15’22” North and the approximate longitude is 104°34’20” West. 7.1.1.9. Comanche Power Plant. The Comanche Power Plant discharges return flows to the St. Charles River at a point in the NW ¼ of Section 28, Township 21 South, Range 64 West of the 6th P.M. 7.1.1.10. CF&I Steel Plant Wastewater Treatment Plant. The CF&I Steel Plant Wastewater Treatment Plant discharges to the Arkansas River approximately one mile downstream of the Pueblo Municipal Wastewater Treatment Plant discharge. 7.1.1.11. Any other reservoir or place from which Pueblo may legally deliver water from storage or by exchange. **7.1.2. Columbine Ditch.**  Water from the Columbine Ditch will be delivered to the confluence of Chalk Creek and the East Fork of the Arkansas River. The Columbine Ditch is located in portions of Sections 4, 5, 6 and 9, Township 8 South, Range 79 West, 6th P.M. in Eagle and Lake Counties, Colorado. The Ditch starts at Headgate No. 1, which is the furthest northwest, and runs generally southeast to Headgate No. 2, then to Headgate No. 3, then across the Continental Divide at Columbine Pass and discharges the collected waters into the West Branch of Chalk Creek, a tributary of the Arkansas River. Surface runoff is diverted by the ditch along its entire course. Three unnamed branches of the East Fork of the Eagle River are intercepted by the ditch at the following points of diversion: 7.1.2.1. Headgate No. 1 is situate at a point from whence the southeast corner of Section 5, T8S, R79W, 6th P.M. bears south 55°39' east a distance of 7127.6 feet, in Eagle County, Colorado. The UTM coordinates of this headgate are in Zone 13 North and are as follows: Northing 4360235m, Easting 392178m. 7.1.2.2. Headgate No. 2 is situate at a point from whence the said southeast corner of Section 5, T8S, R79W, 6th P.M. bears south 57°29' east a distance of 4957.3 feet in Eagle County, Colorado. The UTM coordinates of this headgate are in Zone 13 North and are as follows: Northing 4359871.841m, Easting 392690.277m. 7.1.2.3. Headgate No. 3 is situate at a point from whence the said southeast corner of Section 5, T8S, R79W, 6th P.M. bears south 65°38' east a distance of 1091 feet in Eagle County, Colorado. The UTM coordinates of this headgate are in Zone 13 North and are as follows: Northing 4359186.678m, Easting 393634.282m. **7.1.3. Arkansas Well Pipeline Discharge Point.** The Arkansas Well Pipeline runs from a point whence the southeast corner of Section 10, Township 8 South, Range 79 West, 6th P.M. bears south 9°20’ east a distance of 520 feet. The Pipeline outfall is located at the Arkansas Well which is located near the headwaters of the East Fork of the Arkansas River in the SE ¼ SE ¼ of Section 10, Township 8 South, Range 79 West of the 6th P.M., whence the Southeast Corner of Section 10 bears south 17°37” east, a distance of 364.8 feet on the East Branch of the Arkansas River in Lake County, Colorado. **7.2. Exchange-To Points.** 7.2.1. Arkansas Well. *See* paragraph 3.2., above. 7.2.2. Storke Wastewater Pump Station. *See* paragraph 4.2., above. 7.2.3. Jones Pit. *See* paragraph 5.2., above. 7.3. A map depicting the general locations of the Exchange-From and Exchange-To Points is attached to the Application as Exhibit 1. **8. Description of the Exchanges.** The following exchanges will be to the point of depletion to the surface stream adjacent to the Exchange-To Points. **8.1. Pueblo Delivery Points to Jones Pit.** 8.1.1.Exchange Reach. The exchange will run from the Pueblo Delivery Points listed in paragraph 7.1.1., above, to the Jones Pit described in paragraph 5.2, above. The sources of substitute supply listed in paragraph 12, below, will be delivered by exchange to the East Fork of the Arkansas River. Simultaneous with such deliveries, an equal amount of water that would otherwise be out-of-priority shall be delivered to the point of depletion for the Jones Pit located at the confluence of the East Fork of the Arkansas River and Tennessee Creek. 8.1.2. Rate of Exchange. 0.1 c.f.s. 8.1.3. Appropriation Date. December 27, 2012. 8.1.3.1. How Appropriation was Initiated. On or before this date, Climax’s intent to appropriate the exchange rights concurred with overt acts providing notice to others of Climax’s intent, providing notice to others of the nature and scope of the intended appropriations, and constituting a substantial step toward completing the appropriative rights of exchange. On December 27, 2012 Climax posted signs announcing Climax’s appropriations to the public. **8.2. Columbine Ditch to SWPS.** 8.2.1. Exchange Reach. The exchange will run from the Columbine Ditch described in paragraph 7.1.2, above to the SWPS described in paragraph 5.2, above. The sources of substitute supply listed in paragraph 12, below, will be delivered by exchange to the East Fork of the Arkansas River. Simultaneous with such deliveries, an equal amount of water that would otherwise be out-of-priority shall be delivered to the SWPS. 8.2.2. Rate of Exchange. 5.0 c.f.s., absolute, 5.0 c.f.s., conditional. 8.2.3. Appropriation Date. June 7, 2011. **8.3. Pueblo Delivery Points to SWPS.**  8.3.1. Exchange Reach. The exchange will run from the Pueblo Delivery Points listed in paragraph 7.1.1., above, to the SWPS described in paragraph 4.2, above. The sources of substitute supply listed in paragraph 12, below, will be delivered by exchange to the East Fork of the Arkansas River. Simultaneous with such deliveries, an equal amount of water that would otherwise be out-of-priority shall be delivered to the SWPS. 8.3.2. Rate of Exchange. 5.0 c.f.s., conditional. 8.3.3. Appropriation Date. December 27, 2012. 8.3.3.1. How Appropriation was Initiated. On or before this date, Climax’s intent to appropriate the exchange rights concurred with overt acts providing notice to others of Climax’s intent, providing notice to others of the nature and scope of the intended appropriations, and constituting a substantial step toward completing the appropriative rights of exchange. On December 27, 2012 Climax posted signs announcing Climax’s appropriations to the public. **8.4. Columbine Ditch to Arkansas Well.** 8.4.1.Exchange Reach. The exchange will run from the Columbine Ditch described in paragraph 7.1.2, above to the Arkansas Well described in paragraph 3.2, above. The sources of substitute supply listed in paragraph 12, below, will be delivered by exchange to the East Fork of the Arkansas River. Simultaneous with such deliveries, an equal amount of water that would otherwise be out-of-priority shall be delivered to the Arkansas Well. 8.4.2. Rate of Exchange. 20 c.f.s., conditional 8.4.3. Appropriation Date. December 27, 2012. 8.4.3.1. How Appropriation was Initiated. On or before this date, Climax’s intent to appropriate the exchange rights concurred with overt acts providing notice to others of Climax’s intent, providing notice to others of the nature and scope of the intended appropriations, and constituting a substantial step toward completing the appropriative rights of exchange. On December 27, 2012 Climax posted signs announcing Climax’s appropriations to the public. **8.5. Pueblo Delivery Points to Arkansas Well.** 8.5.1. Exchange Reach. The exchange will run from the Pueblo Delivery Points listed in paragraph 7.1.1., above, to the Arkansas Well described in paragraph 3.2, above. The sources of substitute supply listed in paragraph 12, below, will be delivered by exchange to the East Fork of the Arkansas River. Simultaneous with such deliveries, an equal amount of water that would otherwise be out-of-priority shall be delivered to the Arkansas Well. 8.5.2. Rate of Exchange. 20 c.f.s., conditional. 8.5.3. Appropriation Date. December 27, 2012. 8.5.3.1. How Appropriation was Initiated. On or before this date, Climax’s intent to appropriate the exchange rights concurred with overt acts providing notice to others of Climax’s intent, providing notice to others of the nature and scope of the intended appropriations, and constituting a substantial step toward completing the appropriative rights of exchange. On December 27, 2012 Climax posted signs announcing Climax’s appropriations to the public. **8.6. Arkansas Well Pipeline Discharge Point to SWPS.** 8.6.1. Exchange Reach. The exchange will run from the Arkansas Well Pipeline Discharge Point described in paragraph 7.1.3., above to the SWPS described in paragraph 4.2, above. The sources of substitute supply listed in paragraph 12, below, will be delivered to the East Fork of the Arkansas River. Simultaneous with such deliveries, an equal amount of water that would otherwise be out-of-priority shall be delivered to the SWPS. 8.6.2 Rate of Exchange. 10 c.f.s. 8.6.3. Appropriation Date. December 27, 2012. 8.6.3.1. How Appropriation was Initiated. On or before this date, Climax’s intent to appropriate the exchange rights concurred with overt acts providing notice to others of Climax’s intent, providing notice to others of the nature and scope of the intended appropriations, and constituting a substantial step toward completing the appropriative rights of exchange. On December 27, 2012 Climax posted signs announcing Climax’s appropriations to the public. **8.7.** The Applicant requests the right to exchange from any of the exchange-from points identified in paragraph 7.1. to any of the exchange-to points identified in paragraph 7.2. In addition, the Applicant requests the right to exchange water between any existing or future constructed facilities within the defined exchange reach. **9. Sources of Substitute Supply.** The source of substitute supply for these exchanges are any waters owned, leased, controlled, or available for use by the Applicant that may be lawfully diverted from the Arkansas River in Pueblo, Chaffee, Fremont, and Lake Counties, including but not limited to those sources listed in paragraph 12, below. **10. Proposed Uses.** Water will be used for domestic, industrial, commercial, evaporation replacement, augmentation, irrigation, recreation, fish and wildlife, snowmaking, mining, milling, mine reclamation and continuing mine depletions from the exposure of groundwater, and fire protection uses. Water may be produced for immediate application to beneficial use; for storage, and subsequent application to beneficial use or release and re‐diversion to storage; for exchange purposes: for replacement of depletions resulting from the use of water from other sources: and for all other augmentation purposes. Water may be used, reused, and successively used to extinction and may be used by disposition to other parties by sale, lease, trade, or other means. The place of use for the water claimed for the appropriative rights of exchange applied for here shall be all areas within the boundaries of the Climax Mine, as it currently exists or may exist in the future. **APPROVAL OF PLAN FOR AUGMENTATION. 11. Descriptions of structures to be augmented.** 11.1. Arkansas Well. The Arkansas Well is located on Climax property near the headwaters of the East Fork of the Arkansas River in the SE ¼ SE ¼ of Section 10, Township 8 South, Range 79 West of the 6th P.M., whence the Southeast Corner of Section 10 bears south 17°37” east, a distance of 364.8 feet on the East Branch of the Arkansas River in Lake County, Colorado. A new water right for the Arkansas Well is claimed in paragraph 3, above. 11.2. Storke Wastewater Pump Station. The Storke Wastewater Pump Station is located near the headwaters of the East Fork of the Arkansas River in the NE ¼ of the NE ¼ of Section 14, Township 8 South, Range 79 West of the 6th P.M., Lake County, Colorado, at a point approximately 400 feet from the North Section line and 850 feet from the East Section line of said Section 14, approximately 10 miles northeast of the town of Leadville in Lake County, Colorado at an elevation of approximately 11,100 feet mean sea level. A water right for the SWPS is claimed in paragraph 4, above. 11.3. Jones Pit. The Jones Pit is located in the SW¼ of the NE¼ of Section 16, Township 9 South, Range 80 West of the 6th P.M., Lake County, Colorado, approximately 2 miles northwest of the town of Leadville in Lake County, Colorado at an elevation of approximately 9,800 feet mean sea level. The pit is located near the confluence of the East Fork of the Arkansas River and Tennessee Creek, which is the beginning of the Arkansas River. A water right for the Jones Pit is claimed in paragraph 5, above. **12. Water rights to be used for augmentation.** **12.1. Columbine Ditch.**  12.1.1. Date of original and all relevant subsequent decrees. Civil Action No. 963, District Court for Eagle County, entered on October 3, 1936. The Columbine Ditch water right was changed for use by the Board of Water Works of Pueblo in Case No. 90CW340, District Court, Water Division 5 (consolidated with Case No. 90CW052, District Court, Water Division 2), in which a decree was entered November 15, 1993. An application is pending in Case No. 09CW187, District Court, Water Division 5 to change the type and place of use of the Columbine Ditch water right for use by Climax and the City of Aurora. An application is pending in Case No. 09CW188, District Court, Water Division 5 to adjudicate a junior direct flow right for 60 c.f.s for municipal, domestic, industrial, and all other beneficial uses. 12.1.2. Legal description of points of diversion. The Columbine Ditch is located in portions of Sections 4, 5, 6 and 9, Township 8 South, Range 79 West, 6th P.M. in Eagle and Lake Counties, Colorado. 12.1.3. Source of water. Three unnamed branches of the East Fork of the Eagle River, as well as snowmelt, sheet flow and surface runoff tributary to the East Fork above the line of the Columbine Ditch and from other water along the course of the ditch. 12.1.4. Amount decreed. 60 c.f.s., and subject to additional quantitative limitations contained in the 90CW340 decree. 12.1.5. Decreed uses. All beneficial uses, including municipal, domestic, irrigation, commercial, industrial, mechanical, power generation and cooling, waste water treatment, recreation, fish and wildlife, replacement, exchange, augmentation, substitution and storage in aid of the foregoing purposes, together with the right to use, reuse, and successively use to extinction the water changed as foreign water pursuant to C.R.S. § 37-82-106. The pending application in Case No. 09CW187 adds the uses of: fire protection, creation and maintenance of wetlands, stock watering, revegetation, mining purposes; milling purposes, including but not limited to flotation, drying, and in scrubbers and to transport tailing slurry, processing waste rock and to settle out tailing in the decant water pool, concrete batching, reclamation, dust suppression, maintenance of storage reserves, reservoir evaporation replacement, disposition following initial use, and reuse until extinction. **12.2. Chalk Mountain Reservoir.** 12.2.1. Date of original and all relevant subsequent decrees. The Chalk Mountain Reservoir storage right was decreed on October 23, 1953 by the Eagle County District Court in Civil Action 1193, and changed by the Readjudication Decree. The Readjudication Decree determined the historic consumptive use and associated consumptive use credits for the Climax Mine’s water rights in Tenmile Creek and the Eagle River, including Chalk Mountain Reservoir. 12.2.2. Legal Description. Chalk Mountain Reservoir is a 205 acre feet reservoir located in the drainage of the East Fork of the Eagle River in the Southwest corner of Section 34, Township 7 South, Range 79 West, 6th P.M. 12.2.3. Sources of Water. Tenmile Creek and tributaries thereof, as decreed by the Summit County District Court in Civil Action 1710; also, that part of the drainage basin of the East Fork of the Eagle River lying above and tributary to Chalk Mountain Reservoir, being an area of approximately .32 square miles, including both surface run-off and underground flow. 12.2.4. Appropriation date. July 24, 1951. 12.2.5. Amount. 204.1 acre feet. 12.2.6. Decreed Uses. The Chalk Mountain Reservoir water right is decreed by the Readjudication Decree for delivery to the Arkansas River basin for exchange, replacement and augmentation purposes. **12.3. Leased Water from Pueblo.** Climax is currently negotiating a lease for delivery of fully consumable water from the Pueblo Board of Water Works (the “Board”). Under the lease, Climax will take delivery of the water at or upstream of the confluence of Chalk Creek and the East Fork of the Arkansas River. The water rights to be used as sources for this leased water include the Board’s ownership or contract rights in the Ewing Placer Ditch, the Warren E. Wurtz Ditch, the Busk-Ivanhoe System, the Homestake Project and the Independence Pass Transmountain Diversion System, described below. The Board has agreed to deliver to Climax transmountain water or other totally consumable water, including, but not limited to, reusable return flows from transmountain water rights or other fully consumable water. **12.3.1.** **The Ewing Placer Ditch (as known as the Ewing Ditch)**. Ewing Placer Ditch diverts water from Piney Creek, a tributary of the Eagle River, and carries the water across the Continental Divide into Tennessee Creek for delivery to the Arkansas River. The Ewing Placer Ditch was decreed a water right for 18.5 c.f.s. on November 13, 1911, with an appropriation date of June 1, 1906, by the District Court, Eagle County, Civil Action No. 507. 12.3.1.1. Decreed Point of Diversion. The headgate of the ditch is located at a point on the left bank of said Piney Creek, whence the Northwest Corner of Section 14, Township 8 South, Range 80 West of the 6th P.M., bears South 72°45' West 5,436 feet. 12.3.1.2. Decreed Use. By decree dated November 15, 1993, the District Court for Water Division No. 5, in Case No. 90CW340, changed the use of the water right to include, in addition to the originally decreed uses of direct flow and storage for irrigation and agricultural use in the Arkansas River watershed, the Board’s use of the water rights for all beneficial uses related to the Board’s operation, including municipal, domestic, irrigation, commercial, industrial, mechanical, power generation and cooling, waste water treatment, recreation, fish and wildlife, replacement, exchange, augmentation, substitution, and storage in aid of the foregoing purposes, together with the right to use, reuse, and successively use to extinction as foreign water pursuant to C.R.S. § 37-82-106. **12.3.2.** **The Warren E. Wurtz Ditch (also known as the Warren E. Wurts Ditch)**. Warren E. Wurtz Ditch diverts water from Bennett Creek, Mitchell Creek, and tributaries of those creeks, all of which are tributaries of the Eagle River. The ditch carries water across the Continental Divide into West Tennessee Creek for delivery to the Arkansas River. The Warren E. Wurtz Ditch was decreed a water right for a total of 85 c.f.s. on October 3, 1936, with an appropriation date of June 8, 1929, by the District Court, Eagle County, Civil Action No. 963. 12.3.2.1. Decreed Points of Diversion. 12.3.2.1.1. Headgate No. 1 is located at a point on the right bank of Bennett Creek, a tributary of the Eagle River, from which it derives 60 cubic feet per second of time of its supply of water, whence the Southeast corner of Section 32, Township 7 South, Range 80 West of the 6th P.M., bears South 66°58' East 3,307.9 feet. 12.3.2.1.2. Headgate No. 2 is located at a point on the right bank of the South Fork of Bennett Creek from which it derives 15 cubic feet per second of time of its supply of water, whence the Southeast corner of Section 32, Township 7 South, Range 80 West of the 6th P.M., bears South 89°3' East 2,547 feet. 12.3.2.1.3. Headgate No. 3 is located at a point on the right bank of Mitchell Creek, a tributary of the Eagle River, from which it derives 18 cubic feet per second of time of its supply of water, whence the Southwest corner of Section 8, Township 8 South, Range 80 West of the 6th P.M., bears South 22°23' West 3,902 feet. 12.3.2.1.4. Headgate No. 4 is located at a point on the right bank of a small tributary of said Mitchell Creek from which it derives 2 cubic feet per second of time of its supply of water, whence the Southwest corner of Section 8, Township 8 South, Range 80 West of the 6th P.M., bears South 24°3' West 3,800 feet. 12.3.2.1.5. Headgate No. 5 is located at a point on the right bank of the South Fork of said Mitchell Creek from which it derives 5 cubic feet per second of time of its water, whence the Southwest corner of Section 8, Township 8 South, Range 80 West of the 6th P.M., bears South 50°48' West 2,799 feet. 12.3.2.2. Decreed Uses. By decree dated November 15, 1993, the District Court for Water Division No. 5, in Case No. 90CW340, changed the use of the water right to include, in addition to the originally decreed uses of irrigation of land for agricultural purposes in the Arkansas River Valley, the same new uses decreed to the Ewing Ditch described above. **12.3.3. The Busk-Ivanhoe System.** Busk-Ivanhoe System diverts water from Hidden Lake Creek, Pan Creek, Lyle Creek, and Ivanhoe Creek, all tributaries of the Fryingpan and Roaring Fork Rivers, and carries such water through the Continental Divide for delivery into the headwaters of the Arkansas River. The System was decreed by absolute decree of the District Court, Garfield County, in Case No. 2621 dated January 9, 1928, with appropriation dates differing for various components of the system as more fully set forth in the referenced decree. Other absolute decrees were entered in Civil Actions No. 3082 and 4033. The decrees were entered by the District Court, Garfield County. The Board owns an undivided one-half interest in these water rights. Sources: Ivanhoe Creek, Hidden Lake Creek, Pan Creek and Lyle Creek, all tributary to the Fryingpan River. This water is carried across the continental divide and delivered into the Board’s storage space in Turquoise Reservoir. Appropriation Dates: Ivanhoe Reservoir: June 27, 1921; Ivanhoe Tunnel: June 27, 1921; Lyle Ditch: September 28, 1924; Pan Ditch: October 5, 1924; Hidden Lake Creek Ditch: August 30, 1927. Amounts: Ivanhoe Reservoir: 1200 acre-feet; Ivanhoe Reservoir and Tunnel: 35 c.f.s.; Lyle Ditch: 50 c.f.s.; Pan Ditch: 25 c.f.s.; Hidden Lake Creek Ditch: 70 c.f.s., all subject to the limitations contained in the decree dated November 15, 1993, the District Court for Water Division No. 5, in Case No. 90CW340. 12.3.3.1. Decreed Points of Diversion. 12.3.3.1.1. Ivanhoe Reservoir is formed by a dam approximately 21 feet high across the natural bed of Ivanhoe Creek, a tributary of Frying Pan Creek, and situated in the SE¼ SW¼ of Sec. 12 in Township 9 South of Range 82 West of the 6th P.M. with its northeasterly end located at or about a point from which the Southeast Corner of Section 13 in the township and range aforesaid bears South 26°45' East, 7,021.3 feet, and by a bulkhead dam approximately 10 feet high at the upper end of said reservoir situated in the SE¼ NE¼ of Section 13 in the township and range aforesaid and with its southerly end located at or about a point from which the Southeast Corner of said Section 13 bears South 8°11' East, 2,739.2 feet, it overflows all or portions of the SE¼ SW¼ and SW¼ SE¼ of Section 12 and the NE¼ NW¼ and NE¼ of Section 13. The Lyle, Pan and Hidden Lake Creek Ditches, which divert from the points described below, all flow into Ivanhoe Reservoir. 12.3.3.1.2. Ivanhoe Tunnel has its westerly portal at or about a point from which the Southeast corner of Section 13, Township 9 South, Range 81 West, 6th P.M., bears South 8°11' East, 2,739.2 feet, runs from thence South 54°25' East a distance of approximately 9,400 feet to its easterly portal in the NE¼ SW¼ of Section 20 in Township 9 South of Range 81 West of the 6th P.M., crosses in its course all or parts of the SE¼ NE¼ and the NE¼ SE¼ of Section 13 in Township 9 South of Range 82 West of the 6th P.M., and the SW¼ and SW¼ SE¼ of Section 18, and the NE¼ of Section 19 and the S½ NW¼ and the N½ SW¼ of Section 20, all in Township 9 South of Range 81 West of the 6th P.M. 12.3.3.1.3. Lyle Ditch diverts from Lyle Creek, a tributary of Ivanhoe Creek at or about a point on the southeast bank of said stream in the NW¼ NE¼ of Section 2 in Township 9 South of Range 82 West of the 6th P.M., from which the Southeast Corner of Section 13 in township and range aforesaid bears South 23°19' East, 16,607.2 feet, runs from thence in southeasterly direction a distance of about 2 miles to said Ivanhoe Reservoir. 12.3.3.1.4. Pan Ditch diverts from Pan Creek, a tributary of South Fryingpan Creek at the north bank of said stream in the NW¼ of NE¼ of Section 24 in Township 9 South of Range 82 West of the 6th P.M., from which the Southeast Corner of Section 13 in said township and range bears North 52°14' East, 2,022.1 feet, will run thence in a northwesterly direction a distance of about 1.6 miles to said Ivanhoe Reservoir. 12.3.3.1.5. Hidden Lake Creek Ditch: diverts from Hidden Lake Creek a tributary of Ivanhoe Creek at the east bank of said stream in the NE¼ SW¼ of Section 11, Township 9 South, Range 82 West of 6th P.M., from which the Southeast Corner of Section 13 in said township and range bears South 46°14' East, 11,392.5 feet, will run thence in a southeasterly direction a distance of about 1.1 miles to said Ivanhoe Reservoir. 12.3.3.2. Decreed Uses. By decree dated November 15, 1993, the District Court for Water Division No. 5, in Case No. 90CW340, changed the use of the water right to include, in addition to the originally decreed uses of irrigation of lands along Lake Fork Creek and the Arkansas River, the same new uses decreed to the Ewing Ditch described above. **12.3.4. The Homestake Project.** The Homestake Project diverts water from the headwaters of tributaries of the Eagle River in Eagle County. The water rights were conditionally adjudicated by the decree in Civil Action No. 1193 (District Court, Eagle County) dated June 8, 1962. These water rights have an appropriation date of September 22, 1952. These water rights have been made absolute in part, and the remaining conditional components have been the subject of subsequent diligence findings. The legal descriptions of certain of the remaining conditional water rights of the Homestake Project were corrected, and alternate points of diversion added, by the Decree entered by the District Court in and for Water Division No. 5 in Cases No. 85CW151, 85CW582 and 85CW583 on August 10, 1988. By an assignment of interest from the City of Aurora, the Board has the annual right to receive 2,500 acre feet of Homestake Project Water delivered at Turquoise Lake. **12.3.5. The Independence Pass Transmountain Diversion System (“IPTDS”).** IPTDS diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County in Water Division No. 5, and delivers the same to Twin Lakes Reservoir in Water Division No. 2. The water rights were adjudicated by a decree in Civil Action No. 3082 (District Court, Garfield County) dated August 25, 1936, and were modified by a decree in Case No. W-1901 (District Court, Water Division No. 5), dated May 12, 1976. These water rights have an appropriation date of August 23, 1930. The Board has the right to utilize a portion of such waters and the return flows therefrom by virtue of its ownership of shares of the Twin Lakes Reservoir and Canal Company. **13. Complete statement of plan for augmentation.** Under this plan for augmentation, Applicant proposes to use the sources described in paragraph 12, above, for replacement of depletions to the Arkansas River caused by mine depletions from the exposure of groundwater and evaporative depletions at the Jones Pit and from out-of-priority depletions resulting from water pumped from the Arkansas River basin via the Arkansas Well and SWPS. Out-of-priority depletions resulting from pumping the Arkansas Well and from the SWPS for the uses described in paragraphs 3.2. and 4.2., above, will be replaced using the sources described in paragraph 12, above. Depletions at the Jones Gravel Pit result from water surface evaporation, phreatophyte consumption of groundwater, and groundwater removed with the mining product. **13.1. Delivery of the Replacement Water.** 13.1.1. Chalk Mountain Reservoir. Replacement water will be pumped from Chalk Mountain Reservoir, using existing pump stations and pipelines. This water will then be delivered via the Arkansas Well Pipeline to the Arkansas River basin at the Climax Mine property near Fremont Pass, where it will be measured and released into a tributary stream of the East Fork of the Arkansas River. 13.1.2. The Columbine Ditch. The Columbine Ditch conveys water from the Eagle River basin through an irrigation ditch along Fremont Pass into the Arkansas River basin. The Columbine Ditch is located in close proximity to the western boundary of Climax Mine and could be conveyed through a constructed gravity pipeline, extending to Chalk Mountain Reservoir, where the replacement water could be stored. This water will then be delivered via the Arkansas Well Pipeline to the Arkansas River basin at the Climax Mine property near Fremont Pass, where it will be measured and released into a tributary stream of the East Fork of the Arkansas River. 13.1.3. Pueblo Leased Water. Climax will take delivery of the leased water from Pueblo at or upstream of the confluence of Chalk Creek and the East Fork of the Arkansas River. The replacement water released for exchange will be measured and recorded, and when applicable, Climax shall bear such transit losses as may be reasonably and lawfully assessed by the Division Engineer for the carriage of water through stream reaches. **14. Names and addresses of landowners or reputed landowners.** To the best of Applicant’s knowledge, the owners of the underlying land on which the structures listed above are as follows: 14.1. The Arkansas Well is owned by Climax and located on lands owned by Climax. 14.2. The Storke Wastewater Pump Station is owned by Climax and located on lands owned by Climax. 14.3. The Jones Pit is owned by Climax and located on land owned by Climax. 14.4. Clear Creek Reservoir is located on land owned by the Board of Water Works of Pueblo, Colorado, Attn: Executive Director, 319 West Fourth Street, Pueblo, Colorado 81003, and the United States Forest Service, San Isabel National Forest, 2840 Kachina Drive, Pueblo, Colorado 81008. 14.5. Turquoise Reservoir is located on land owned by the United States Department of Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18-E, Loveland, Colorado 80537-9711. 14.6. Twin Lakes Reservoir is located on land owned by the United States Department of Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18-E, Loveland, Colorado 80537-9711. 14.7. Pueblo Reservoir is located on land owned by the United States Department of Interior, Bureau of Reclamation, 11056 West County Road 18E, Loveland, CO 80537-9711. 14.8. Lake Meredith Reservoir is located on land owned by Colorado Canal Company, P.O. Box 8, 331 Main St., Ordway, CO 81063. 14.9. Lake Henry is located on land owned by Colorado Canal Company, P.O. Box 8, 331 Main St., Ordway, CO 81063. 14.10. Pueblo Municipal Wastewater Treatment Plant is located on land owned by the Board of Water Works of Pueblo, Colorado, Attn: Executive Director, 319 West Fourth Street, Pueblo, Colorado 81003, 14.11. Comanche Power Plant is located on land owned by the Board of Water Works of Pueblo, Colorado, Attn: Executive Director, 319 West Fourth Street, Pueblo, Colorado 81003. 14.12. CF&I Steel Plant Wastewater Treatment Plant is located on land owned by the Board of Water Works of Pueblo, Colorado, Attn: Executive Director, 319 West Fourth Street, Pueblo, Colorado 81003. 14.13. The Columbine Ditch is located on land owned by the United States Forest Service, White River National Forest, 900 Grand Avenue, P.O. Box 948, Glenwood Springs, Colorado 81602, and on land owned by Climax. 14.14. Chalk Mountain Reservoir is owned by Climax and located on lands owned by Climax. **15.** C.R.S. Section 37-92-102(3)(b) provides that any minimum stream flow appropriated by the Colorado Water Conservation Board "shall be subject to the present uses or exchanges of water being made by other water users pursuant to . . . practices in existence on the date of such appropriation, whether or not previously adjudicated." Therefore, the Storke Pump Station Water Right claimed in this application may affect the priority of the Colorado Water Conservation Board’s minimum stream flow rights decreed in Case No. 89CW209 by antedating the priority dates of said water rights. WHEREFORE, Applicant respectfully requests that this Court enter a decree granting the application for water rights and appropriative rights of exchange and approving the plan for augmentation requested herein.

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**CASE NO. 2012CW125 – UNITED STATES OF AMERICA – DEPARTMENT OF THE INTERIOR, Bureau of Land Management, Royal Gorge Field Office, 3028 E. Main Street, Canon City, CO 81212; and PARK CENTER WATER DISTRICT, P. O. Box 1406, 1660 Reservoir Road, Canon City, CO 81215** (Service of all pleadings, etc. should be made on: Kristen C. Guerriero, Attorney for Applicant United States of America, Office of the Regional Solicitor, 755 Parfet Street, Suite 151, Lakewood, CO 80215; (303) 231-5353; and Larry Dean Allen, Attorney for Park Center Water District, P. O. Box 166, Canon City, CO 81215-0166; (719) 275-7593

Application for Plan of Augmentation

**FREMONT AND CUSTER COUNTIES**

**2.** **General Application Description:**  The Park Center Well is an artesian well located north of Canon City adjacent to Fourmile Creek. The Bureau of Land Management (BLM) leases water produced from the well to the Park Center Water District (District). The District treats the water and distributes it to customers in a service area located north of Canon City. The BLM operates the Park Center Well pursuant to the water court decree in case number 97 CW 169. The decree authorizes diversions of up to 227 acre feet annually for domestic, municipal, irrigation, and augmentation purposes. The decree specifies that the first 227 acre feet diverted annually from the well is non-tributary, but makes no findings with regard to diversions in excess of 227 acre feet. Drought conditions have severely limited alternative water supplies available to the District. Accordingly, the District seeks to divert volumes from the well that are in excess of the 227 acre-foot annual limit specified in case number 97 CW 169. The District believes that diversions in excess of 227 acre feet could continue beyond 2013 if drought conditions continue. The Park Center Well has also developed leaks around its aging casing. These leaks flow to the ground surface and then into Fourmile Creek, which is immediately adjacent to the well. In addition, the BLM has implemented additional diversions from the well in order to reduce the pressure on the deteriorating well casing. The leaks, along with diversions to reduce well pressures, will result in additional diversions from the well that may exceed the 227 acre-foot limit. The BLM has initiated a long-term process to replace the existing well and ultimately plug and abandon the existing well. The BLM anticipates that beneficial usage from the existing well by the Park Center District will continue through 2013 as this replacement project is implemented. In addition, BLM anticipates that leakage and diversions to reduce well pressure will also continue through 2013. The BLM seeks to make beneficial use of the additional diversions and leakage from the well until the leakage is stopped. The Division 2 Engineer has formally notified BLM that the Colorado Division of Water Resources believes diversions from the well in excess of 227 acre feet annually are tributary to the Arkansas River. He has also informed BLM that a substitute water supply plan must be obtained to implement diversion and beneficial use beyond the 227 acre feet limit. Accordingly, this application for a plan of augmentation is accompanied by an application to the Colorado Division of Water Resources for a temporary substitute water supply plan (SWSP) pursuant to C.R.S. 37-92-308(4). A copy of the SWSP application is available upon request. The sole purpose of this water court application is to comply with the Colorado Division of Water Resources requirement that a substitute water supply plan be filed. The applicants anticipate that the augmentation plan requested herein will be operated only on a short-term basis until the well leakage situation at the Park Center Well is resolved and drought conditions recede. By submitting this application to comply with the Division’s substitute water supply plan requirement to address this temporary situation, the BLM makes no admission that the Park Center Well is tributary. Accordingly, the Applicants will seek “no precedent” language in the decree that limits the water court findings to a temporary time period. **3.** **Structures To Be Augmented**: Park Center Well **A.** **Location:** SW ¼ SW ¼, Section 34, T17S R70W, Sixth P.M., 713 feet from the south section line and 1,080 feet from the west section line. 481280mE 4263631mN, Zone 13, NAD83. **B.** **Well Permit Number:** 76841-F **C.** **Well Depth:** 3,216 feet **D.** **Source:** Fountain Formation **E.** **Maximum Diversion Rate Authorized:** 2.67 cfs **4.** **Proposed Withdrawal Amount:** 770 acre feet annually  **5.** **Proposed Beneficial Use**: The proposed withdrawal amount will be routed and beneficially used via two alternative methods. Under the first routing method, diversions will be made to the Park Center District water treatment plant and distributed to customers within the District for domestic, municipal and irrigation uses. Any portions of the amount withdrawn that are in excess of the volume needed to meet Park Center District’s water demands will be routed to the Canon Heights Ditch. Water routed to the Canon Heights Ditch is comprised exclusively of additional diversions that are designed to reduce wellhead pressures. The applicants in this case do not claim to capture and subsequently use any water that is released to the Canon Heights Ditch for the temporary purpose of reducing pressures at the well head. Rather, that water becomes temporarily available to shareholders in the ditch for irrigation and livestock watering purposes. The second routing method is to divert leakage from the Park Center Well directly to Fourmile Creek, which runs adjacent to the well. This water will be captured for subsequent use by employing one of two alternative methods. The first method will entail releasing water to Fourmile Creek and then capturing the water in BLM’s “if and when” storage account at Pueblo Reservoir. This method will be implemented only when a live stream exists on Fourmile Creek between the Park Center Well and the confluence with the Arkansas River. Water captured and stored at Pueblo Reservoir will be subsequently exchanged upstream to BLM’s storage account at Deweese Reservoir on Grape Creek. The second capture and beneficial method will be to release water to Fourmile Creek and exchange an equivalent volume of water to Mt. Pisgah Reservoir. Water that is stored via exchange at either Deweese Reservoir or Mt. Pisgah Reservoir will then be released for municipal, domestic, irrigation, and augmentation uses, as specified in the decree for the Park Center Well. **6.** **Places of Storage and Subsequent Use:** Mt. Pisgah Reservoir – The reservoir is located within the NW ¼ of Section 31 and the SW ¼ of Section 30, T14S R70W, Sixth P.M. Park Center District – The service area of the District is located within Sections 8, 9, 10, 15, 16, 17, 20, 21, 22, and 23 in T18S R70W, Sixth P.M. The service area for the Canon Heights Ditch also lies within the boundaries of the Park Center District. Deweese Reservoir – The reservoir is located within Sections 19, 20, 29, and 30 of T21S R72W, Sixth P.M. Deweese Reservoir Service Area – The service area for the Deweese-Dye Ditch and Reservoir Company is located within Sections 2, 3, 4, 5, 9, 10, and 11, T19S R70W, Sixth P.M. **7.** **Water Source To Be Used For Augmentation Purposes:** Augmentation water will consist of two alternative water sources: A. Park Center District’s allotments of Southeastern Colorado Water Conservancy District (Southeastern) water, which will be exchanged to Mt. Pisgah Reservoir and released to Fourmile Creek upstream of the contact with the Fountain Formation outcrop on said creek. The District is a member of Southeastern and has received annual allotments averaging 200 acre-feet per year since 2001, and there are currently 752 acre-feet in the District’s account. B. Non-tributary water, diverted at Park Center Well pursuant to the decree in case number 97 CW 169, and then released into Fourmile Creek. **8.** **Calculation of Depletions Associated With Well Operations**: As stated in the introduction, the Applicants assert that the Park Center Well is non-tributary, pursuant to the decree in case number 97 CW 169. However, to comply with the administrative requirement that a substitute water supply be filed, the Applicants have performed a Glover analysis, using aquifer parameters and geometry supplied by the Colorado Division of Water Resources. The preliminary Glover analysis submitted with the substitute water supply plan application showed that estimated depletions are very close to the statutory threshold used to define nontributary groundwater in C.R.S. 37-90-103 (10.5): “deplete the flow of a natural stream … at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal.” **9.** **Operation of Plan of Augmentation**. **9A. Measurement of Diversions.** Diversions from the Park Center Well will be measured in two locations. Diversions routed to the District for municipal use and diversions designed to reduce wellhead pressure will be measured by existing Parshall flumes located at the end of the water delivery pipeline from the Park Center Well to the District’s water storage reservoir. These flumes measure water deliveries to Park Center District’s Ott Reservoir and to the Canon Heights Ditch. Diversions to Fourmile Creek will be measured by an existing measurement station installed by the BLM adjacent to Fourmile Creek. **9B. Transit Losses.** Transit losses will be assessed on any replacement water released from Mt. Pisgah Reservoir at the rate prescribed by the Division of Water Resources. Additional releases will be made to make up any transit losses between Mt. Pisgah Reservoir and the outcrop of the Fountain Formation, which is a distance of approximately 22.3 miles. Transit losses will be also be assessed on any water routed from the Park Center Well to Pueblo Reservoir, at the rate prescribed by the Division of Water Resources. At times when Fourmile Creek is dry between the Park Center Well and Pueblo Reservoir, the Applicants will continue to account for any water delivered to Fourmile Creek, but Applicants will not seek to capture and claim credit for those deliveries at Pueblo Reservoir. **9C. Replacement Water Deliveries.**  During the year in which the delayed stream depletions occur, the Applicants will release water from Mt. Pisgah Reservoir or from the Park Center Well. The volume of water to be released will be the cumulative total of depletions caused by each year that this augmentation plan is operated. At the end of each year of operation, the applicant will provide a report to the Division Engineer showing total diversions in that year and depletions caused by those diversions. Augmentation water releases will be made at rate and timing specified by the Division Engineer. **9D. Accounting.** An accounting report will be submitted to the Division Engineer no later than February 15 annually. The report will contain monthly summaries of the volumes diverted to the Park Center District, Canon Heights Ditch, and Fourmile Creek, and will calculate the actual volume of diversions that exceed that 227 acre foot annual diversion limit authorized in case number 97 CW 169. The report will also contain a follow-up Glover analysis, using the actual diversion from 2013, specifying the actual depletion volumes and dates on which depletions will occur. During years in which replacement releases are made, an accounting report will be provided to the Division Engineer specifying the location, timing, rate, and volume of replacement water releases. **10.** **Names and addresses of owners of land on which points of diversion, places of use, and structures referenced in this application are located:**  United States of America – Department of the Interior, Bureau of Land Management, Royal Gorge Field Office, 3028 E. Main St., Canon City, CO 81212. Park Center District, P.O. Box 1406, 1660 Reservoir Road, Canon City, CO 81215. The Deweese-Dye Ditch and Reservoir Company, Inc.**,** 1411 Walnut Street, Canon City, CO 81212. United States Bureau of Reclamation, Eastern Colorado Projects Office, 11056 West County Road 18E, Loveland, CO 80537. Canon Heights Irrigation and Reservoir Company, P.O. Box 1456, Canon City, CO  81215-1456.

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**CASE NO. 2012CW126 – JAMES H. and MARY E. KIRKLAND, P. O. Box 580, Rye, CO 81069-0580** (Please serve all correspondence and pleadings on: David M. Shohet, Felt, Monson & Culichia, LLC, Attorney for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application to Change Water Rights and for New Surface Water Right and Storage Right

**PUEBLO COUNTY, COLORADO**

**II. SUMMARY OF APPLICATION.** Applicants are the owners of the Stalf Springs Ditch and Stalf Springs Well and Pipeline (collectively, the "Water Rights"). The Water Rights have separately decreed points of diversion approximately 250 feet apart from each other. The Water Rights, however, have been diverted at the same point of diversion for over forty years. By this application, Applicants seek to correct the point of diversion for the Water Rights at one single point of diversion as diverted for their historical uses. Applicants further seek to reduce the decreed appropriation of the Stalf Springs Ditch and to change the decreed irrigated acreage. Lastly, Applicants seek a new water right to irrigate additional acres on the Applicants' property and to add new uses to the Water Rights together with the right to store water for the existing decreed uses and new uses. **III. PREVIOUS DECREE INFORMATION. A. Name of Decreed Water Rights.** Stalf Springs Ditch and Stalf Springs Well and Pipeline. **B. Information from Previous Decree.** 1. Case No.: W-2045. 2. Court: District Court, Water Division 2. 3. Date of Entry of Decree: October 7, 1977. **C. Decreed Point of Diversion.** 1. Stalf Springs Ditch: At a point within the SW1/4 of the NW1/4 of Section 7, Township 25 South, Range 67 West of the 6th P.M., from whence the West 1/4 corner of said Section 7 bears South 34° 14' West 718 feet. 2. Stalf Springs Well and Pipeline: At a point in the SW1/4 of the NW1/4 of Section 7, Township 25 South, Range 67 West of the 6th P.M., from whence the West 1/4 corner of said Section 7 bears South 34° 12' West 460 feet. **C. Decreed Source:** 1. Stalf Springs Ditch: A spring seepage area tributary to Little Graneros Creek, Arkansas River Watershed. 2. Stalf Springs Well and Pipeline: None specified in the original decree. This water right is a collection gallery located 8 feet from the surface. The Stalf Springs Pipeline collects springs tributary to Little Graneros Creek, tributary to the Arkansas River. **D. Appropriation Amount and Use.** 1. Stalf Springs Ditch: 4.3 c.f.s., absolute, for irrigation. 2. Stalf Springs Well and Pipeline: .022 c.f.s., absolute, for domestic and livestock. **E. Appropriation Date.** 1. Stalf Springs Ditch: May 16, 1951. 2. Stalf Springs Well and Pipeline: December 31, 1891. **IV. APPLICATION TO CHANGE THE WATER RIGHTS A. Change in Point of Diversion.** The Stalf Springs Ditch and Stalf Springs Well and Pipeline have separate decreed points of diversion, which points of diversions are approximately 250 feet apart from each other. The Water Rights, however, have been diverted from a single point of diversion for at least forty years. Applicants request that the point of diversion for Stalf Springs Ditch and Stalf Springs Pipeline be changed to the following described unified point of diversion: SW ¼ of the NW ¼, Section 7, Township 25 South, Range 67 West, 6th PM, approximately 2,440 feet from the north section line and 210 feet from the west section line (13S 505372, 4193480). **B. Change in Decreed Amount and Place of Use for the Stalf Springs Ditch.** The Stalf Springs Ditch is decreed for 4.3 c.f.s. for irrigation of the NW 1/4 of the SW ¼ of Section 6, Township 25, South, Range 67 West of the 6th P.M. Applicants request that the Stalf Springs Ditch be reduced to 0.5 c.f.s., for irrigation purposes. In addition to the decreed place of use, the Applicants further request that the Stalf Springs Ditch be allowed to irrigate 40 acres of the Applicants' property in the NE ¼ of the SW ¼ all in Section 6, Township 25 South, Range 67 West of the 6th P.M. **C. Confirmation of Place of Use of the Stalf Springs Well and Pipeline.** The Stalf Springs Well and Pipeline is decreed for domestic and livestock purposes. Case No. W-2045 did not decree a place of use for this water right. Applicants seek confirmation that they may use the Stalf Springs Well and Pipeline for domestic and livestock uses on the Applicants' property located in the South 1/2 of Section 6, Township 25 South, Range 67 West of the 6th P.M., consisting of 75.8 acres, more or less ("Applicants' Property"). **V. APPLICATION FOR NEW SURFACE WATER RIGHTS. A. Name of Structure.** Stalf Springs Ditch and Pipeline. **B. Legal Description of Point of Diversion:** SW ¼ of the NW ¼, Section 7, Township 25 South, Range 67 West, 6th PM, approximately 2,440 feet from the north section line and 210 feet from the west section line The actual location of the Stalf Spring Well and Pipeline collection point of diversion is (13S 505372, 4193480). **C. Source:** Springs and seeps tributary to Little Graneros Creek, tributary to Graneros Creek, tributary to Greenhorn Creek, tributary to the St. Charles River, tributary to the Arkansas River. **D. Date of Initiation of Appropriation:** Applicant claims a date of appropriation of December 31, 2012, by formation of intent to appropriate, field location and measurement of the nature and extent of the appropriation, and the filing of this application. **E. Amount Claimed:** 0.5 c.f.s., absolute. **F. Use or Proposed Uses:** Irrigation of Applicants' property, domestic, livestock, piscatorial, wildlife habitat, aesthetics, recreation, and firefighting. In addition, waters from the surface water rights may be diverted year round and stored in either the reservoir sought to be adjudicated herein or in non-adjudicated structures or cisterns. **VI. APPLICATION FOR WATER STORAGE RIGHT. A. Name of Reservoir:** Kirkland Reservoir. **B. Legal Description of the Reservoir's Dam:** NE 1/4 of the SW 1/4 of Section 6, Township 25 South, Range 67 West of the 6th P.M., approximately 2,300 feet from the south section line and 2040 feet from the west section line. (13S 505927, 4194913).  **C. Source:** Stalf Springs Ditch, Stalf Springs Well and Pipeline, Stalf Springs Ditch and Pipeline. **D. Date of Appropriation:** December 31, 2012, by formation of the intent to appropriate water field location and measurement of the proposed structures and the filing of this application. **E. Amount Claimed:** 1.5 acre feet, absolute. **F. Use:** Domestic, livestock, irrigation, piscatorial, wildlife habitat, aesthetics, recreation, firefighting and erosion control. **G. Surface Area of Reservoir:** 0.5 acres. **H. Height of Dam:** 3 feet. **I. Length of Dam:** 80 feet. **V. REMARKS**. A. David and Helen Wade, whose address is PO Box 147, Rye, Colorado, 81069, are the owners of the land where the point of diversion of the Stalf Springs Ditch, Stalf Springs Well and Pipeline, Stalf Springs Ditch and Pipeline is located. Applicant is the owner of Applicants' Property, upon which all of the remaining structures sought to be adjudicated herein are located and upon which the place of use of the water from all of the structures is intended. B. Diversions may be placed in lined or piped ditches to the irrigated fields and irrigation may occur by pipeline, hand watering, drip irrigation or other efficient means. C. There are no intervening water rights between the originally decreed points of diversion for the Water Rights and the new point of diversion. The Water Rights are diverted in the Little Graneros Creek basin and have been historically used in the Greenhorn Creek basin. Accordingly, no injury will occur as a result of the changes for the Water Rights as requested herein. D. Applicants will obtain Water Commissioner approval for any diversions from pursuant to C.R.S. §37-92-502(2)(a). E. The reservoir sought herein will be constructed with a suitable spillway to pass high water flows. F. Applicants seek the right to divert a total of not more than 0.5 c.f.s. Stalf Springs Ditch, Stalf Springs Well and Pipeline, Stalf Springs Ditch and Pipeline year round for their decreed uses. G. The adjudication of the Kirkland Reservoir includes a series of small cascading ponds and one large pond. WHEREFORE, the Applicants request that this Application be granted as requested herein together with any other relief the Court deems necessary.

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**CASE NO. 2012CW127 – TORRES TROUT HATCHERY, c/o Ken Torres, 5359 C.R. 12, Weston, CO 81091** (Gerald B. McDaniel, Gerald B. McDaniel, P.C., Attorney for Applicant, 485 Guyout Ridge Ct., Colorado Springs, CO 80919; (719) 260-9304)

Application for Absolute Water Storage Right

**LAS ANIMAS COUNTY**

**Name of Reservoir:** Torres Fisheries Pond 3 and Torres Fisheries Pond 4. **Legal description of location of dam centerline: UTM Coordinates (Zone 13, NAD83):** Northing 148.189.1500 (Pond 3); 148 366.5430 (Pond 4); Easting 129603.6570 (Pond #3); 129848.0090 (Pond 4). **Street Address:** Near the residence of Ken Torres, 5359 C.R. 12, Weston, CO 81091. **PLSS Legal Description:** Ponds 3 and 4 located as follows within the Maxwell Land Grant: Las Animas County, SW ¼ of the NE ¼ Section 24, Township 34 South, Range 69 West, 6th P.M. **Source of PLSS Information:** Gary Terry Surveying, PLS 12160. **Source:** Lower Vallejos Creek (North Branch of the South Fork of the Purgatoire River). **If filled from a ditch, Name of ditches used to fill reservoir and capacity in cubic feet of water per second:** Torres Hatchery Diversion #1, capacity, 2 c.f.s. Absolute; Torres Hatcher Diversion #2 Alternate (Leandro Duran Martinez headgate on the South Branch of the South Fork), capacity 1.5 cf.s. **Legal description of each point of diversion: UTM Coordinates (Zone 13; NAD83):** Northing 150 396.37 (Vallejos Creek #1); Northing 147 775.6134 (Leandro Duran Martinez headgate on South Fork – Alternate Diversion #2); Easting 2132 404.46 (Vallejos Creek Diversion #2); Easting: 128 854.6958 (Leandro Duran Martinez Alternate Diversion #2 South Fork). **Street Address:** Near the residence of Ken Torres, 5359 C.R. 12, Weston, CO 81091. **Source of UTMs:** Gary Terry Surveying performed; model of GPS unit not known. **Accuracy of location displayed on GPS device:** Not known. **PLSS Legal Description:** Las Animas County, NE ¼ of the NE ¼ Section 22, Township 34 South, Range 69 West, 6th P.M. See Exhibit A to the Application, map Maxwell Land Grant. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Source of PLSS information:** Gary L. Terry Surveying PLS #12160. **Date of appropriation:** 1959 for Pond #3; 1989 for Pond #4. **How appropriation was initiated:** Diversion of surface flows into ponds for raising fish (Note: Then water commissioner (Bob Mariano) advised that no adjudication was needed for water passed through the ponds and back to the stream). **Date water applied to beneficial use:** 1959 upon initial appropriation for Pond #3; and 1989 upon initial appropriation after construction and filling of Pond #4. **Amount claimed:** Pond 3 – 3 AF Absolute; Pond 4 – 1.5 AF Absolute. **If filled from a ditch, rate of diversion in cfs:** Conditional, Alternate Diversion #2 from South Fork, 1 c.f.s.; Absolute: 1 c.f.s. from Vallejos Creek Diversion #1. **Use or proposed use:** Commercial fish production. Water will be diverted from Vallejos Creek primarily for pass through Ponds 3 and 4 and release back to the stream. Only in the event of inadequate water in Vallejos Creek will the conditional diversion through the historic Leandro Duran Martinez headgate be used. All consumptive use will be replaced by current SWSP based upon pending application for permanent augmentation plan in Case # 2002CW151, Water Division #2. **Surface area of high water line:** 1.1 acre for Pond #3; .88 acre for Pond #4. **Vertical height of dam in feet:** Pond #3: 8.3 ft.; Pond #4: 5.5 ft. **Length of dam in feet:** Pond #3 – 180’; Pond #4 – 220’. See Exhibits 1 and 2 attached to the Application. **Total Capacity of Reservoir:** Pond 3 – 3 acre feet; pond 4 – 1.5 acre feet. **Dead storage:** All storage held for fish production with spillway at top of berm of each pond. See Exhibit 3 attached to the Application. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** NOTE: Both ponds 3 and 4 and both diversion points described herein are on the lands currently in the estate of Juanita Torres, c/o Ida Priscilla Torres, Personal Representative, 315 State St., Trinidad, CO 81082. **Remarks or any other pertinent information:** Torres Hatchery, consisting of Manuel Torres (father) and Ken Torres, has diverted water from Vallejos Creek annually since the late 1950’s for fish production. Vallejos Creek water temperature and quality is better for fish production than the South Fork water due to significant agricultural production. The alternate point of diversion on the South Fork is for emergency purposes. Applicant has, and desires to continue to raise fish in cooperation with The State Division of Wildlife and for other commercial purposes.

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THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of February 2013, (forms available at Clerk’s office or at [www.courts.state.co.us](http://www.courts.state.co.us), must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee $130.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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Witness my hand and the seal of this Court this 8th day of January, 2013.



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Mardell R. DiDomenico, Clerk

District Court, Water Div. 2

Pueblo County Judicial Building

320 W. 10th Street

Pueblo, CO 81003; (719) 583-7048

(Court seal)

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