

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING AUGUST 2005

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications, and certain amendments, filed during August 2005, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 02CW115 – RON ANDERSON, 4800 North Creek Road, Beulah, CO 81023 (Matthew S. Poznanovic, Petrock & Fendel, P.C., 700 Seventeenth Street, Suite 1800, Denver, CO 80202)

Amended Application for Water Right and Approval of Plan for Augmentation
Pueblo County

2. This amendment seeks to revise the description of the plan for augmentation as follows: “Applicant will use water from Well No. 1 for inhouse commercial use at a retreat center and inhouse residential for separate housing units, for stockwatering and for irrigation of approximately 2500 square feet all in the vicinity of Well No. 1 Applicant will withdraw up to approximately 2.63 acre-feet per year for the inhouse commercial and inhouse residential uses, approximately 0.025 acre-feet per year for stock watering and approximately 0.024 acre-feet per year for the above-described irrigation use, for a total annual withdrawal of up to approximately 2.679 acre-feet per year, at a flow rate of 15 gpm.” **3.** In addition to the uses identified in the original application, this amendment seeks to add the following uses to the request for approval of water right: stockwatering and irrigation of approximately 2500 square feet. **4.** This amendment also seeks to revise the annual consumptive use to be augmented pursuant to the request for approval of plan for augmentation from approximately 0.26 acre-feet per year as described in the original application to approximately 0.305 acre-feet per year, and to revise the annual withdrawal from approximately 2.63 acre-feet per year to approximately 2.679 acre-feet per year. **5.** All other matters remain as presented in the original application. **WHEREFORE,** Applicant requests a conditional water right for the well and approval of the plan for augmentation, all as described above, and for such other and further relief as appears proper.
(Amended Application and attachments, 5 pages)

CASE NO. 05CW53 – OJO SPRINGS BOTTLING COMPANY, R. Michael McCauley, President, P. O. Box 10, 5101 US Hwy. 160, La Veta, CO 81055

(Gerald B. McDaniel, Attorney for Applicant, 485 Guyout Ridge Ct., Colorado Springs, CO 80919-1910)

Application for Approval of Plan for Augmentation
Huerfano County

2. Name of structure to be augmented: Ojo Springs #1 – 80 gpm and Ojo Springs #2 – 20 gpm both located within the 127 acre tract upon which the 2-acre bottling plant operation is located at 5190 Hwy 160. Said plant is located in the NW1/4 of Sec. 5, T29 S, R 69 W, 6th PM, Huerfano County, and is illustrated on Exhibit A attached to the application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **3. Previous decree(s) for water right(s) to be used for augmentation:**

a. Date entered: i. June 12, 1889 General Adjudication Decree ("Reed Decree"); ii. June 19, 1968 Change Decree. **b. Case No.:** i. Reed General Adjudication Decree of 1889; ii. No. 4090. **c. Court:** District Court, Huerfano County, Colorado (both decrees). **d. Type of water right:** Surface rights for irrigation. **e. Legal description of point of diversion:** 40' west of the intersection of Oak St. and Ryus Ave., La Veta, Colorado. **f. Source:** Cucharas River tributary to Huerfano River tributary to the Arkansas River. **g. Amount:** 1.5 c.f.s. adjudicated to the Calf Pasture Ditch in the Reed Decree; Alternate points of diversion and places of use obtained for 1 c.f.s. of that 1.5 in Case No. 4090; **Only .5 c.f.s. of the changed 1.0 c.f.s. in said Case No. 4090 is the basis of this application.** **h. Appropriation:** May 1871. **i. Decreed Use:** Originally decreed for diversion in the Calf Pasture Ditch for irrigation of lands thereunder in said Reed Decree; Subsequently decreed in Case No. 4090 for alternate points of diversion for irrigation in the Francisco & Daigre Mill Ditch (for change of place of use within the SW1/4NW1/4, NW1/4SW1/4, Sec. 28, T 29 S, R 68 W, 6th P.M.); or the Butte Ditch (for change of place of use within the S1/2NE1/4, Sec. 6, T 30 S, R 69 W, 6th P.M.); or the Rocky Ford Ditch (for change of place of use within the S1/2SE1/4, Sec. 20, T 29 S, R 68 W, 6th P.M.)

4. Historic Use: The Calf Pasture Ditch water right has been used consistently in said ditch for irrigation of up to 60 acres of land both before and after the 1968 Change Decree in Case No. 4090. Exhibit B attached to the application and incorporated herein by reference shows the general area where the Calf Pasture Ditch historical irrigation occurred. **5. Statement of plan of augmentation:**

a. It is estimated that the current bottling capacity at one shift per day (8 hours) will require 11 acre feet of water per year and 2 shifts, if employed in the future, will require 22 acre feet. The current source of water for bottling comes from Ojo Spring #1 (80 gpm) with approximately 20 gpm currently required for production. Ojo Spring #2 (20 gpm) would be an auxiliary or alternate source. The springs are tributary to South Abeyta Creek which joins Middle Creek about 1 ¾ mile upstream of the Cucharas River. 100% of the bottled water will be removed ("consumed") from the stream system and must therefore be replaced the entire year to allow year-round production. **b.** Applicant owns .5 c.f.s. of the Calf

Pasture Ditch water rights (priority #17 on the Cucharas River) and proposes to divert Calf Pasture Ditch consumptive use water in the Rocky Ford Ditch (point of diversion described herein above), as currently permitted by decree in Case No. 4090, and store said water in a reservoir to be constructed within and upon Applicant's land located in Sec. 32, T29S, R68W, 6th PM more particularly illustrated in Exhibit B. Historic diversion records for the Calf Pasture Ditch are attached to the Application as Exhibit C and incorporated herein by reference. The appropriate portion of said Calf Pasture lands will be designated for dry up after consultation with Otto and Jackie Goemmer, current owners of the remaining #17 water. c. Applicant estimates that 48 acre feet of consumptive use water will be available for the .5 c.f.s. of said #17 water leaving 37 acre feet for evaporative and transportation losses. Releases back into the Cucharas River will be through a pipeline and over an easement located within and upon the Otto and Jackie Goemmer property. The release pipeline through the easement is depicted in Exhibit B. The point of discharge in the Cucharas River is approximately 2 miles upstream of the confluence of South Abeyta/Middle Creek and the Cucharas River. The reach of South Abeyta/Middle Creek upstream of said confluence will not receive the benefit of the released augmentation water. Applicant's diversions will be subject to terms and conditions which will allow bottling water at such times as hydrologic conditions permit, or no call is placed upon the bottling plant by water users within said reach above the confluence. d. Consumptive use water stored in Applicant's augmentation reservoir in priority will be released back to the Cucharas River through the year, and a portion of consumptive-use water from said priority #17 may be left in the stream during portions of the irrigating season for real time and immediate augmentation of bottling operations. Appropriate measuring and release devices will be installed to enable proper releases of the stored augmentation water to cover material injury downstream. The net consumptive use water from the said #17 Calf Pasture Ditch will be the limit of the amount of bottled water. **6. Name(s) and address(es) of owner(s) of land on which structure(s) is or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** a. **Owner of land where springs are diverted for commercial use and augmentation reservoir:** Ojo Springs Bottling Plant (P. O. Box 10) 5101 U. S. Hwy. 160, La Veta, CO 81055; b. **Owner of land burdened by release-flow pipeline easement:** Otto and Jackie Goemmer, La Veta, CO 81055. **7. Remarks:** Applicant has an application for a substitute water supply plan currently pending before the State Engineer which is based upon a short term lease of a different water supply than the foregoing plan is based upon.
(Application and attachments, 7 pages)

CASE NO. 05CW54 – THE TOWN OF SWINK, COLORADO, 301 Columbia Avenue, Swink, CO 81077; and ALVIN GARDNER and LINDA GARDNER, 26825 County Road DD, Rocky Ford, CO 81067 (Michael L. Nicklos, Attorney

for Applicants, 13 West Second Street, P. O. Box 581, La Junta, CO 81050)

Application for Change of Water Right

Otero County, Colorado

3. This Application for Change is filed as relates to two wells, one well owned by Co-Applicant THE TOWN OF SWINK, State Engineer's Permit No. 23035 F R, and one well owned by Co-Applicants ALVIN GARDNER and LINDA GARDNER, State Engineer's Permit No. 6050 R. **4.** As concerns THE TOWN OF SWINK well, previous Decree was entered on November 15, 1973, in Case No. W-2594 in the District Court in and for Water Division No. 2, State of Colorado. The well was designated as Well No. 3 in the Decree, and was located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, Township 23 South, Range 56 West of the 6th P.M., in Otero County, Colorado. The depth was 33 feet and the priority date was July 1, 1946. The amount adjudicated was .28 cfs, or 125 gpm, for municipal and domestic purposes, and the means of diversion was by well and pump. As concerns Co-Applicants GARDNERS well, it was adjudicated in Case No. W-320 in the District Court in and for Water Division No. 2, State of Colorado, where the applicant was Ruth Watts Reynolds, the predecessor in title to the GARDNERS. The well was designated as Well No. 6050 located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, Township 23 South, Range 56 West of the 6th P.M., in Otero County, Colorado. The depth was 59 feet and the priority date was August of 1955. The amount adjudicated was 0.8888 cfs, or 400 gpm but not to exceed in the aggregate of a total of more than 285 acre feet in any one calendar year, for irrigation purposes, and the means of diversion was by electric motor and pump. **5.** The historic use of the TOWN OF SWINK well was for municipal and domestic diversions, and the historic use for the GARDNER well was for irrigation diversions. **6.** The proposed change is to request a change in point of diversion of the current GARDNER well to a new point of diversion, and in turn to request a change in point of diversion of the current TOWN OF SWINK well to the current location of the GARDNER well. In its simplest terms, Co-Applicants GARDNERS have agreed to allow Co-Applicant TOWN OF SWINK to apply to the Court for a change in point of diversion to the current GARDNER well, provided that the GARDNERS are able to obtain appropriate Order from this Court allowing them to change their point of diversion of the current well to a new location. Each requested new point of diversion and location would be identical in terms of the amount of water being adjudicated as relates to the well being relocated. Specifically, the new point of diversion for the GARDNER well would be limited to .888 cfs, or 400 gpm but not to exceed in the aggregate a total of more than 285 acre feet in any one calendar year, and would be limited to use by irrigation. Likewise, the new location of the TOWN OF SWINK well would be limited to 0.28 cfs, or 125 gpm and could be used only for municipal and domestic purposes. This Application is being filed as a Co-Application because Co-Applicants GARDNER have agreed to allow the TOWN OF SWINK to apply for the change

in point of diversion only if the GARDNERS are able to obtain a change in point of diversion. 7. Attached to the Application is a map which is marked as Exhibit A. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The location marked with an "x" nearest the center of the map is the current location of the TOWN OF SWINK well. The "x" which is Southwest of the current TOWN OF SWINK well location (marked as bearing 242.4°T, 1,463.5 ft.) is the current well location of GARDNER. Lastly, the "x" which is Southeast of the current GARDNER well (marked as bearing 249.5°T, 597.5 ft.) is the proposed location of the new well for GARDNER. 8. Marked as Exhibit B and attached to the Application and hereby incorporated by reference is an additional map which sets forth the three well sites, this map also showing the acreage to be irrigated by the new GARDNER well, such acreage consisting of 70 acres, more or less. 9. For further reference and for purposes of location, the current TOWN OF SWINK well is located in the SW ¼ SE ¼ of Section 25, Township 23 South, Range 56 West of the 6th P.M., such location being 2,825 feet from the West Section line and 971 feet from the South Section line. The current GARDNER well is located in the SE ¼ SW ¼ of Section 25, Township 23 South, Range 56 West of the 6th P.M., such location being 1,564 feet from the West Section line and 284 from the South Section line. Lastly, the proposed location for the new GARDNER well is in the SW ¼ SW ¼ of Section 25, Township 23 South, Range 56 West of the 6th P.M., such location being 947 feet from the West Section line and 54 feet from the South Section line. 10. ALVIN GARDNER and LINDA GARDNER are the owners of the land upon which the new point of diversion is being requested. **WHEREFORE**, the Co-Applicants request that the Court grant and adjudicate the proposed changes in points of diversion, as set forth herein, and grant such further and other relief as may be appropriate.

(Application and attachments, 5 pages)

**CASE NO. 05CW55(98CW108) – HENRI'S HAVEN, INC., c/o Henrietta Hehn,
3925 Crescent Drive, Fort Collins, CO 80526**

Application for Finding of Diligence
Chaffee County

2. Name of structure: MAHRE Springs (originally applied for as MARHE). **3. Describe conditional water right (as to each structure) giving the following from the Referee's Ruling and Judgment and Decree:** **A. Date of Original Decree:** August 9, 1999; **Case No.** 98CW108; **Court:** Water District #2. **B. Legal description:** Chaffee County, SE ¼ of the SW ¼ Section 31, Township 50 North, Range 8 East, NMPM. Proposed pond and dam immediately below Mahre Springs. Dam located on a bearing of 30 to the Northwest corner of Sect. 31, Township 50N, Range 8E at a distance of 5050 ft. **C. Source:** Blank Gulch, South Arkansas River. **D. Appropriation Date:** July 10, 1998; **Amount:** .1 cfs. **E. Use:** Storage and irrigation. **4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including**

expenditures: There was a transfer of property and water rights from DeLuca Ranches to Henri's Haven, Inc. February 27, 2002. Nothing has been done to this point – would like more time to complete project. **5. If claim to make absolute:** N/A.

(Application and attachments, 7 pages)

CASE NO. 05CW56 – LEADVILLE REALTY GROUP #2, LLC, c/o Bob Borne, P. O. Box 970, Cortez, FL 34215 (Attorneys for Applicant: Felt, Monson & Culichia, LLC, Chris D. Cummins, Steven T. Monson, 319 North Weber St., Colorado Springs, CO 80903)

Application for Plan for Augmentation

Lake County

II. Summary of Plan for Augmentation: A. Names of Structures to be Augmented. 15 wells located in Filing 5 and 6 of the Mountain Pines Ranch Subdivision. B. Plan for Augmentation. Applicant seeks an augmentation plan covering depletions caused by the pumping of 15 wells ("Filing 5 & 6 Wells") for in-house use in 15 single family dwellings, and irrigation of a maximum area of 0.015 acres (approximately 650 square feet) of shrubbery and trees on 15 lots (0.225 acres total). The Filing 5 & 6 Wells, and the single family dwellings they service, will be located within lots 1-15, filing nos. 5 and 6 of the Mountain Pines Ranch Subdivision ("Lots"). The Mountain Pines Ranch Subdivision, Filings 5 and 6, is a 30 acre property ("Property") approximately one mile west of the town of Leadville, located in Section 22, T9S, R80W of the 6th P.M., Lake County, Colorado. Plans for Augmentation were decreed for prior phases of the Mountain Pines Ranch Subdivision under case nos. 97CW53 and 02CW12. The Filings 5&6 Property is more particularly described as follows: NW1/4 SW1/4 of Section 22, Township 9 South, Range 80 West of the 6th P.M., being part of the Almon Placer, M.E. #335, County of Lake and State of Colorado. A map depicting the individual Lots within the Filings 5 and 6 Property is attached to the Application as Exhibit A. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. The Filing 5 & 6 Wells will withdraw water from tributary ground water sources that are in the alluvial plain of the Arkansas River. There are and will be no other water rights diverted from the Wells. Applicant proposes to augment depletions caused by the in-house and irrigation uses using one share of stock it owns in the Twin Lakes Reservoir and Canal Company. The Filing 5 & 6 Wells will be drilled over time as build out of the Lots occurs. All Filing 5 & 6 Wells will be drilled pursuant to permits issued under C.R.S. § 37-90-137, and will be located within the Lots of Filings 5 & 6. **III. Water Rights to be Used for Augmentation:** Applicant proposes to augment depletions resulting from use of the Wells for in-house and irrigation uses using a portion of one share of stock in the Twin Lakes Reservoir and Canal Company ("Twin Lakes"). Applicant's share of stock in Twin Lakes is represented in Twin Lakes Share Certificate No. 8455, a copy of which is attached to the Application as Exhibit B ("Twin Lakes Share"). The Twin Lakes Share represents a pro rata interest in native Arkansas River diversions and the Independence Pass transmountain diversion system which

diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County for storage in the Twin Lakes Reservoirs in Lake County, Colorado. Twin Lakes Shares consist of direct flow and storage rights which are available for 100 percent consumptive use and reuse and are available for augmentation. The water rights producing the pro rata interest of the Applicant are described as follows: A. Colorado River Water Rights 1. Decree: a. Case No. 3082, District Court, Garfield County, August 25, 1936. b. Case No. W-1901, District Court, Water Division 5, May 12, 1976. 2. Priority: August 23, 1930, No. 431. 3. Source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Division 5, as more fully set forth in the above referenced Decrees. 4. Use: Direct flow and storage purposes, for irrigation, domestic, commercial, industrial, municipal and all beneficial uses. 5. Amount: Direct flow amount for diversions through transmountain tunnels of 625 cfs with an annual limit of 68,000 acre feet, a running ten year limit of 570,000 acre feet, and other limitations set forth in the decrees. B. Arkansas River Water Rights 1. Decree: a. Original Decree, Case No. 2346, District Court, Chaffee County, July 14, 1913. b. Modified, Case No. W-3965, District Court, Water Division 2, April 19, 1974. 2. Priorities: December 15, 1896, No. 3, and March 25, 1897, No. 4. 3. Source: Lake Creek and its tributaries tributary to the Arkansas River. 4. Use: Storage for irrigation, domestic, commercial, industrial and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir which are capable of being served water by diversion from said Arkansas River. 5. Amount: 54,452 acre feet (20,645.3 acre feet -Priority No. 3; 33,806.7 acre feet - Priority No. 4). **IV. Statement of Plan for Augmentation Covering All Applicable Matters Under C.R.S. §§ 37-92-103(9), 37-92-302(1) and (2), and 37-92-305(8): A. Water Demand and Depletions.** Applicant seeks an augmentation plan covering depletions caused by the pumping of the Filing 5 & 6 Wells for in-house use in 15 single family dwellings, and the irrigation of a maximum of 0.015 acres (650 square feet) of shrubs and trees upon each of those same Lots. Each Lot will be served by one individual well. At full build out, this will result in a total of 15 wells. Assuming 3.5 persons per single family residence, total diversion for in-house use should be 0.31 acre-feet per year per dwelling, and for 0.032 acre-feet per year for irrigation uses. Each single family dwelling will be connected to the Leadville Sanitary District wastewater treatment system. On this basis, consumptive use for in-house use is calculated at 5 percent of annual diversions, or 0.015 acre-feet of depletions per single family dwelling per year for in house use, for a total in-house use depletion on all Lots of 0.24 acre feet. Each Lot will likewise be entitled to the irrigation of trees and shrubs over a maximum of 0.015 acres, with a total irrigated acreage of 0.225 acres. Utilizing the same conservative consumptive use analysis accepted by this Court in decreeing the plan for augmentation in 97CW53, as amended by 02CW12, assuming depletion of 1.5 acre feet per acre per year, an efficiency of 0.7, and diversions of 2.14 acre feet per year, depletions would be a maximum of 0.48 acre feet per year on the entire 15 Lots, or 0.032 acre feet per Lot. See August 15, 2005 report of Erin M. Wilson, P.E., Leonard Rice Engineers, Inc., Applicant's engineering consultant, attached to the Application as Exhibit C. The

maximum annual combined depletions from in-house use in 15 single family dwellings (0.24 acre feet) and for irrigation of trees and shrubs on a maximum of 0.225 acres for all 15 Lots (0.48 acre feet) is 0.72 acre feet. Applicant reserves the right to utilize irrigation return flows to augment depletions from the Filing 5 and 6 Wells. **B. Operation of Plan for Augmentation.** Well pumping will occur on a year round basis, and in-house use from the Wells will be year-round, resulting in year-round depletions. The Wells will be located approximately 5,600 feet from the Arkansas River and will be drilled into its alluvium. Applicant's engineer completed a lag depletion analysis using the Glover method for Applicant's previously decreed plans for augmentation, and that same analysis is utilized here. Applicant will augment depletions using augmentation water represented by its Twin Lakes Share. The release of the augmentation water from the Twin Lakes Share will be made to replace, in proper place, time and amount, those monthly depletions as calculated in accordance with a Glover analysis for diversions from the Wells. At current administrative levels, each share of Twin Lakes stock has a firm consumptive use yield of 0.78 annual acre-feet of water that can be used to replace depletions. Assuming maximum potential depletions of 0.72 annual acre-feet occur at full build out, 0.92 percent of Applicant's one Twin Lakes Share will need to be committed to this augmentation plan and released to cover those depletions. Applicant's Twin Lakes Share fully augments the maximum potential consumptive use for the Lots by replacing actual depletions in time, place, and amount. Applicant reserves the right to retain and exclude from this augmentation plan any portion of the Twin Lakes Share not needed to replace depletions as build out occurs, should such depletions total less than the maximum potential depletions of 0.72 annual acre-feet, or should a portion of the share go unutilized as part of this augmentation plan, as may be determined by the Court. **V. Name and Address of Owners of Land on which Structures Will Be Located:** The land, referred to herein as the Lots, on which the Filing 5 & 6 Wells will be located and upon which the water will be placed to beneficial use is owned by the Applicant. The address of the Applicant is as set forth in Paragraph I above. **VI. Additional Terms and Conditions that Will Help in the Administration of this Augmentation Plan Include the Following:** A. Compliance with the bylaws of the Twin Lakes Reservoir and Canal Company relative to submission of the shares of stock for legending restrictions on sale or transfer, and a specific restriction that only that amount of water that is actually available for replacement purposes from the shares of stock will be available for this plan. At the direction of the Division Engineer, additional shares of stock in the Twin Lakes Reservoir and Canal Company may be added to this plan by an amendment to the plan with resume notice. B. The Applicant shall install and maintain such water measuring devices as deemed essential by the State Engineer or Division Engineer and the same shall be installed and operated in accordance with the instruction of that office.

(Application and attachments, 11 pages)

CASE NO. 05CW57, WATER DIVISION 2, and CASE NO. 05CW211, WATER DIVISION 1 – BISSELL ENTERPRISES, LLLP, c/o Mark Bissell, 10160 Vollmer Road, Colorado Springs, CO 80908

(Henry D. Worley, MacDougall, Woldridge & Worley, P.C., Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905)

Application for Approval of Plan for Augmentation

El Paso County

2. Name of structures to be augmented: Twelve Dawson aquifer wells. No other water rights will be diverted from these wells. **3. Previous decrees for water rights to be used for augmentation:** Case No. 94CW46, Water Division 2, entered June 4, 1996. In that case, Emily L. Bissell, Applicant's predecessor in interest, obtained a decree for 58.3 acre feet annually from the not nontributary Dawson aquifer, 75.5 acre-feet annually from the not nontributary Denver aquifer, 64.8 acre feet annually from the nontributary Arapahoe aquifer, and 42.5 acre feet annually from the nontributary Laramie-Fox Hills aquifer. The amount of water available for appropriation from the Dawson aquifer was based on only 120 of the 149 acres of land owned by Emily L. Bissell, due to the presence of pre-existing wells or other water rights. The decree in Case No. 94CW46 did not specify a beneficial use for the water rights. Pursuant to the recent Colorado Supreme Court decision in East Cherry Creek Valley Water and Sanitation District v. Rangeview Metropolitan District, 04SA6 (Colo. 2005), Applicant or its successors will request Dawson aquifer well permits which allow any beneficial non-speculative use, including without limitation indoor domestic and commercial uses, stock water, landscape purposes, including irrigation, decorative pools and fountains, hot tubs and swimming pools, fire fighting and augmentation. **4. Historic use:** Not applicable. **5. Statement of plan for augmentation:** Applicant intends to subdivide the Property into twelve parcels for single-family residences, as well as an 85 acre parcel to be placed in a conservation easement. Each well shall be limited to 0.58 acre foot (189,000 gallons) annually. Water use criteria for the most likely uses are as follows: indoor uses – 0.30 acre foot annually per single family dwelling which is 10% consumptive; horses (or horse equivalents) – 10 gallons per head per day, 0.011 acre foot annually per head, 100% consumptive; landscape irrigation – 0.046 acre foot annually per 1,000 square feet (2.0 acre feet per acre), 85% consumptive. Consumption attributable to indoor uses is predicated on the use of nonevaporative Individual Sewage Disposal Systems ("ISDS"). Change of the type of wastewater treatment to central sewage treatment with direct discharge to the Fountain Creek drainage shall not require an amendment to this plan for augmentation, but change to any other type of waste water disposal shall require an amendment to the plan for augmentation. Applicant shall replace to the Arkansas River drainage the combined depletions to the South Platte and Arkansas basins, which are modeled to gradually increase to a maximum of approximately 46.13 percent of pumping annually in the 300th year of pumping. Applicant will replace depletions during pumping only with return flows from the ISDS. Applicant will reserve and dedicate to this plan for augmentation up to

1,444 acre feet of Laramie-Fox Hills aquifer water for the replacement of post-pumping depletions. However, Applicant reserves the right to replace such depletions with any judicially acceptable source of augmentation water. Any final decree entered in this case shall provide that no more than 0.58 acre foot per year may be diverted from each Dawson aquifer well absent an amendment to this plan for augmentation. **6. Other.** (A) Applicant's property is located in parts of Sections 21 and 28, T. 12 S., R. 65 W., 6th P.M., in the Fountain Creek drainage. A map is attached to the Application as Figure 1. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. (B) This application is being filed in Water Divisions 1 and 2 because computer modeling demonstrates that depletions will occur in both basins. After the time for filing statements of opposition have passed, Applicant will seek to consolidate the cases in Water Division 2, where the property is located.

(Application and attachments, 4 pages)

CASE NO. 05CW58(90CW28) – SECURITY WATER DISTRICT, 231 Security Boulevard, Colorado Springs, CO 80911 (Attorneys for Applicant: Steven T. Monson and Karen L. Remling, Felt, Monson & Culichia, LLC, 319 N. Weber Street, Colorado Springs, CO 80903)

Application for Hexannual Finding of Reasonable Diligence
El Paso County

2. Name of structure: Exchange of Applicant's wastewater return flows from its allocation of Frying Pan Arkansas Project water, delivered via the Fountain Valley Conduit. **3. Description of conditional water right:** **A. Date of original decree:** July 6, 1992, in Case No. 90CW28, District Court, Water Division 2, State of Colorado. **B. Location:** The exchange is from the Applicant's wastewater treatment outfall at its treatment facility discharging into Fountain Creek. Location of such discharge is in the NW 1/4 of Section 24, Township 15 S, Range 66 W, 6th P.M. The exchange is operated to the intake structure of the Fountain Mutual Ditch, whose headgate is located in the SW 1/4 of Section 20, Township 14 S, Range 66 W, 6th P.M. **C. Source:** The source of the exchange water is the Applicant's wastewater return flows from Frying Pan Arkansas Project water which the Applicant is entitled to purchase and to deliver via the Fountain Valley Conduit. Under the terms of the decree in Case No. 90CW28, the Applicant is entitled to exchange the wastewater return flows from its use of the Fryingpan-Arkansas Project water, delivered by the Fountain Valley Authority via the Fountain Valley conduit, from the point of its wastewater treatment plant discharging into Fountain Creek up to the headgate of the Fountain Mutual Ditch. Under agreement with the Southeastern Water Conservancy District, the Applicant is entitled to a right of first refusal to these return flows for its special district uses. Those return flows are used in part to augment the Applicant's wells under its decreed plan of augmentation in Case No. 90CW28. It is the remaining return flow credits under the Applicant's right of first refusal which are the subject of this exchange. The decree requested will not give Applicant any rights of use of Fryingpan-Arkansas Project structures, or

any rights of ownership or rights to purchase or receive allocations of Fryingpan-Arkansas Project Water or return flows from Fryingpan-Arkansas Project Water, but will not alter any existing rights Applicant may otherwise have. Return flows from the Fryingpan-Arkansas Project Water will be utilized in Applicant's exchanges only after they are purchased from Southeastern. Applicant's purchase and use of Fryingpan-Arkansas Project Water and of return flows therefrom shall be consistent with the Allocation Principles of the Southeastern Colorado Water Conservancy District (as they may from time to time be amended), and the policies, procedures, contracts, charges and terms as may be lawfully determined from time to time by the Southeastern District. **D. Appropriation date:** June 29, 1990. **E. Amount of exchange:** The amount of the exchange is for a diversion of up to 6.0 cfs at the headgate of the Fountain Mutual Ditch. **F. Use:** The water under the plan of exchange is to be used, reused and successively used to extinction by recharge for the following beneficial uses: municipal, domestic, fire protection, sewage disposal, irrigation, manufacturing, industrial, commercial, augmentation, recharge, and exchange. Under the conditional decree, the Applicant is entitled to recharge and augment the Widefield Aquifer by exchanging the Project Water wastewater return flows to a recharge facility in order to provide "effective recharge" to the Widefield Aquifer as required under the terms of the Widefield Aquifer Stipulation in Case No. W-116, Division 2. This recharge and augmentation is the subject of Applicant's pending Case No. 01CW149. **4. Outline of work done towards completion of appropriation and application of water to beneficial use.** Since the date of the last diligence, the Applicant has performed the following diligence work on its conditional exchange: A. The Applicant has filed and proceeded with a plan for augmentation in Case No. 01CW149, whereby the Applicant seeks to use and reuse FVA wastewater return flows, as exchanged to the FMIC headgate, as effective recharge and augmentation of the Widefield Aquifer, to name additional recharge facilities, to change certain water rights, and to amend and supplement the Applicant's existing plan for augmentation in Case No. 90CW28. The Applicant has developed engineering and has prepared a proposed ruling of referee which has been circulated among the objectors, and the Applicant is continuing with additional engineering in order to negotiate the various provisions of the aquifer recharge and plan for augmentation with the objectors. B. The Applicant has participated in updating and supplementing the transit loss model for Fountain Creek which will be used in the accounting, administration and implementation of Applicant's exchange of FVA sewer return flows. C. The Applicant's engineers have developed water resource reports summarizing and updating the water supply available to the Applicant to meet the demands of existing and anticipated future growth. The reports include the development of the exchange project including water treatment, aquifer recharge, and recovery of the recharged water in the Widefield Aquifer. D. The Applicant retained engineering and ground water modeling consultants who modeled, analyzed, and developed various aquifer recharge, yield and recovery scenarios for the exchanged water to be placed in the Widefield Aquifer. E. The Applicant participated in the formation and implementation of the Widefield Aquifer

Recharge Association (“WARA”), which is a joint project between the Widefield Water and Sanitation District and Security Water District. WARA is the entity by which the Applicant has proceeded with the planning and development of effective recharge of the exchanged water to the Widefield Aquifer and its withdrawal. As part of the Widefield Aquifer recharge project, the Applicant has investigated the use of a supplemental division structure within the exchange reach as a point of takeout for the exchanged Project Water sewer return flows. The Applicant has expended monies for engineering fees to plan the development of the recharge facilities. F. The Applicant has proceeded with negotiations with the Fountain Mutual Irrigation Company for the carriage and transport of the exchanged FVA return flows through the Fountain Mutual Ditch to the point of treatment and subsequent recharge. These negotiations, in part, resulted in the amendment of an existing agreement between Applicant and FMIC for the transport of the exchange water in the FMIC ditch to the recharge treatment site. G. The Applicant has investigated potential sites and easements which the Applicant may acquire in connection with the Widefield Aquifer recharge project for water treatment facilities and transmission lines to the point of recharge. H. The Applicant has also participated in negotiations to update and amend the Widefield Aquifer Stipulation, approved in Case No. W-116, which governs effective recharge of the Widefield Aquifer. I. The plan to exchange the Applicant’s sewer return flows from its allocation of Project water, and to subsequent recharge that treated water to the Widefield Aquifer is a material part of the integrated municipal water supply system of the District and, therefore, work performed by the District on the various components of its integrated water system constitutes diligence in the development of its conditional right of exchange as decreed in Case No. 90CW28. During this diligence period, the District has expended approximately \$615,569.00 in the repair and maintenance of its water supply system and approximately \$6,141,493.00 in the expansion and capital improvement of its water supply system. In addition, the District has incurred legal and engineering fees during this diligence period of approximately \$1,012,667.00 related to the above integrated municipal water system consisting of, without limitation, water supply and distribution analysis, water rights planning and Water Court filings, protection of its water rights, well permitting, aquifer recharge analysis and planning, and water rights administration matters. These legal and engineering expenses are inclusive of the specific work detailed above in relation to the Applicant’s ability to utilize its conditional rights of exchange. These figures do not include the substantial administrative time and costs in the development of the conditional exchange. 5. All of the aforementioned work performed by the Applicant represents a significant and diligent effort throughout the diligence period to fully develop the conditional water right and put the water to beneficial use pursuant to the conditional decree. 6. There is no claim made herein to make any portion of this conditional right absolute.

(Application, 5 pages)

CASE NO. 05CW59, WATER DIVISION 2, and CASE NO. 05CW214, WATER DIVISION 1 – JON NEWBY, 290 Winding Meadow Way, Monument, CO 80132 (Attorneys for Applicant: Felt, Monson & Culichia, LLC, James G. Felt and Chris D. Cummins, 319 North Weber Street, Colorado Springs, CO 80903)
 Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation

El Paso County

II. APPLICATION FOR ADJUDICATION OF DENVER BASIN GROUND WATER RIGHTS

A. Permitted Wells: 1. State Engineer Well Permit No. 251857 (Exempt Domestic). Located in the NE1/4 NE1/4 Section 16, Township 11 South, Range 66 West, 6th P.M., 1278 feet from the north section line of said Section 16, and 1278 feet from the east section line of said Section 16. This permit has been issued to the Denver aquifer, however, this well has not been constructed.

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

C. Estimated Rates of Withdrawal and Ground Water Available: 1. Estimated Rates of Withdrawal. The pumping rates for wells to be completed to each aquifer are estimated to be between 15 g.p.m. and 100 g.p.m. The actual pumping rate for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts, which may be less than or exceed the above estimates. The actual depth of each well to be constructed within the respective aquifers will be determined by actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicants request an absolute water right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying Applicants’ Property. Said amounts may be withdrawn over the 100-year life of the aquifers as set forth in C.R.S. §37-90-137(4). The estimated average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers will be based upon the Denver Basin Rules. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants’ Property of 4.95 acres as follows:

<u>Aquifer</u>	<u>Saturated Thickness (Feet)</u>	<u>Depth (Feet)</u>	<u>Total Water Adjudicated (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)</u>
Dawson	435	31-899	430	4.30
Denver	560	923-1700	471	4.71
Arapahoe	257	1753-2236	216	2.16
Laramie Fox Hills	204	2662-2959	152	1.52

Pursuant to C.R.S. §37-92-304(11), the Applicant requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **D. Requested Uses:** The Applicant requests the right to use the ground water for all beneficial uses including, without limitation, domestic, commercial, industrial, irrigation, stock water, recreation, fish and wildlife propagation, fire protection, central water supply for such uses and also for exchange and augmentation purposes. The Applicant also requests that the nontributary water may be used, reused and successively used to extinction, both on and off the Applicant's Property subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct a well or use water from the non-nontributary Dawson aquifer pursuant to the augmentation plan to be decreed herein, covering the stream depletions from such non-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c). **E. Well Fields:** Applicant requests that he be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field. Applicant requests that he be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. **F. Description of Land Overlying Subject Ground Water:** The land overlying the ground water which is the subject of this Application consists of 4.95 acres in the NE1/4 NE1/4 Section 16, Township 11 South, Range 66 West, 6th P.M., El Paso County, Colorado, as more specifically described in Exhibit A attached to the Application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **G. Remarks.** The existing Exempt Domestic Well, Permit No. 251857, will be repermited upon approval of this Application, and used as a non-exempt well to the Dawson aquifer pursuant to the following plan for augmentation. **H. Name and Address of the Owner of the Land Upon Which the Wells are to be Located:** The Applicant, as set forth in Section I above is the owner of the property on which the wells are to be located.

III. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION **A. Name of Structures to be Augmented:** One (1) Dawson aquifer well (including Well Permit No. 251857). There are no other water rights diverted from this well structure. **B. Water Rights to be Used for Augmentation:** The water rights to be used for augmentation during pumping are return flows from the not nontributary Dawson aquifer well to be pumped as set forth in this plan of augmentation, together with water rights from the nontributary Laramie-Fox Hills aquifer for post pumping depletions. **C. Statement of Plan for Augmentation:**

Applicant wishes to provide for the augmentation of stream depletions caused by pumping the not nontributary Dawson aquifer well proposed herein. Water use criteria and their consumptive use component for replacement of actual depletions is as follows: **1. Household Use:** 0.30 acre feet annually for a single family dwelling with a 10% consumptive use based on nonevaporative septic leach field disposal systems. The annual consumptive use household use is therefore 0.03 acre feet, based upon an annual return flow of 0.27 acre feet. Any other type of waste water disposal shall require an amendment to this plan of augmentation. **2. Landscape Irrigation:** 0.046 acre feet annually per 1,000 square feet (2.0 acre feet per acre) per year, with a 90% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet irrigated is therefore 0.041 acre feet. As Applicant's Property is not over one mile from the nearest live natural stream, actual stream depletions will need to be replaced. Applicant should be able to pump a combined 3.20 acre feet per year which is sufficient to support in house purposes, and the irrigation of approximately 63,043 square feet (1.44 acres) of lawn or garden. This Application is being filed in Water Divisions 1 and 2 because depletions may occur to both divisions. The return flows set forth above will accrue to the South Platte River system where the majority of depletions occur. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. **D. Augmentation of Depletions During Pumping:** Through computer groundwater flow modeling, it has been theoretically demonstrated that pumping the Dawson wells proposed in this augmentation plan over one hundred years, will deplete surface water flows at a greater rate than 0.1 percent of the pumping rate. Using the State Engineer's aquifer database, the modeling demonstrates that after one hundred years of pumping, the anticipated pumping life of the well, the total stream depletions are 8.48 percent of pumping (0.270 acre feet per year), with a maximum post-pumping depletion occurring in year 120 at 8.90 percent of pumping (0.284 acre feet per year). See Exhibit B Ground Water Consultation Report of William Curtis Wells dated July 26, 2005, and its Table 1 attached to the Application. During pumping, septic system return flows from the Applicant's residence should account for approximately 0.27 acre feet per year. Thus, there is sufficient return flows through the septic systems alone to replace the estimated stream depletions during pumping of Applicant's well. **E. Augmentation for Post Pumping Depletions:** For the replacement of post-pumping depletions, Applicant will reserve up to 149 acre feet of water from the nontributary Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property, less the amount of actual stream depletions replaced during the plan pumping period. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, Applicant claims that post pumping depletions will be noninjurious and do not need to be replaced. Under the court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious.

The reserved nontributary water will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to file for and receive well permits for the subject Dawson aquifer well for the uses in accordance with this Application. **F. Remarks:** Additional remarks are as follows: 1. Applicant requests a finding that he has complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). 2. The term of this augmentation plan is for 100 years, however the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. 3. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. 4. Before any wells are constructed, applications for well permits will be filed with the State Engineer's office, and well permits shall be granted in accordance with the decree pursuant to this application. 5. Exempt Domestic Well, Permit No. 251857 will be repermited as necessary upon approval of this Application. 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 wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. 8. The Applicant intends to waive the 600 feet well spacing requirement for the well to be located upon the Applicant's Property. 9. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(l), and such notice will be sent within 10 days of the filing of this Application.

(Application and attachments, 13 pages)

CASE NO. 05CW60(W-90) – JOHN C. OXLEY AND THOMAS E. OXLEY, CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF JOHN T. OXLEY, DECEASED; MARY JANE TRITSCH and R. H. HARBAUGH, JR., AS SUCCESSOR TRUSTEES OF THE MARY JANE TRITSCH TRUST, CREATED BY DECLARATION OF TRUST DATED SEPTEMBER 3, 1952, AS EXTENDED AND AMENDED; AND R. H. HARBAUGH, JR., AS SUCCESSOR TRUSTEE OF THE THOMAS E. OXLEY TRUST, CREATED BY DECLARATION OF TRUST DATED SEPTEMBER 3, 1952, AS EXTENDED AND AMENDED, c/o Russell H. Harbaugh, Jr., Boulder Towers, 1437 South Boulder, #770, Tulsa, OK 74119 (Robert V. Trout, Trout, Raley, Montano, Witwer & Freeman, P.C., Attorneys for Applicants, 1120 Lincoln Street, Suite 1600, Denver, CO 80203)
Application for Finding of Diligence
Las Animas County

2. Name of structure: Black Hills Reservoir. **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **A. Date of Original Decree:** December 13, 1972, effective as of May 25, 1972. **B. Case No.** W-90, Water Division No. 2. **C. Legal description:** The initial point of survey of the zero point of the high water line of the reservoir is located at a point whence the NW corner of Section 25, Township 31 South, Range 63 West, of the 6th P.M., bears North 70 Degrees, 07 Minutes, West 4725 feet, and is situated in Las Animas County, Colorado. **D. Source:** Purgatoire River and flood waters from Leitensdorfer, Chicosa and Black Hills Arroyos. **E. Appropriation Date:** The priority date of this water right shall be the date upon which storage of Model Reservoir Right, Priority No. 168, in the amount of 20,000 acre-feet, began in Trinidad Reservoir, pursuant to a statutory decree for change of place of storage, dated April 15, 1965, in Civil Action No. 19793, in the District Court in and for Las Animas County, State of Colorado, or September 1, 1977. **F. Amount:** 22,819.84 conditional, 1,303.16 absolute, per decree entered in Case No. 99CW159, Water Division No. 2, dated June 23, 2000. **G. Uses:** Domestic, agricultural, industrial, recreational, and other beneficial purposes. **4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures.** **A.** Between August 1999, the date of the last diligence decree, and May 2005 Applicant spent more than \$1,125,000 rehabilitating the outlet works of the Black Hills Reservoir dam so that water could be stored in the reservoir. **B.** Between August 1999, the date of the last diligence decree, and July 2005, water has not been available in priority to store under the Black Hills Reservoir water right when water could physically be stored in the reservoir. **5. Names(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:** No new diversion or storage structures will be constructed and none will be modified. No new lands will be inundated by the storage pool.
(Application, 3 pages)

CASE NO. 05CW61(96CW227) – BLUEGREEN CORPORATION OF THE ROCKIES, 61 Main Street, Suite 244, North Adams, MA 01247 (Attorneys for

Applicant: James G. Felt and Karen L. Remling, Felt, Monson & Culichia, LLC, 319 North Weber Street, Colorado Springs, CO 80903)

Application for Hexannual Finding of Reasonable Diligence

Huerfano County

3. Name of structures: A. Frank Spring No. 1, B. Frank Spring No. 2, **4.**

Description of conditional water right: A. Date of original decree: August 23, 1999, in Case No. 96CW227, District Court, Water Division 2, State of Colorado. **B. Location:** 1. Frank Spring No. 1- The Point of Diversion is located in the NW 1/4 NW 1/4 Section 3, Township 28 South, Range 69 West, 6th

P.M., approximately 651 feet from the west section line and 720 feet from the north section line, in Huerfano County, Colorado. 2. Frank Spring No. 2- The Point of Diversion is located in the NW 1/4 SW 1/4 Section 3, Township 28 South, Range 69 West, 6th P.M., approximately 100 feet from the west section line and 2982 feet from the north section line, in Huerfano County, Colorado. **C.**

Source: The source of the springs is groundwater tributary to the Huerfano River, tributary to the Arkansas River. **D. Appropriation date:** 1. Frank Spring No. 1- December 28, 1996 for conditional uses; October 6, 1906 for absolute uses. 2. Frank Spring No. 2- December 28, 1996 for conditional uses; June 1, 1924 for absolute uses. **E. Amount of appropriation:** 1. Frank Spring No.

1-.011 c.f.s., conditional; .011 c.f.s., absolute. 2. Frank Spring No. 2- .007 c.f.s., conditional; .007 c.f.s., absolute. **F. Use:** Both springs were awarded absolute decrees for livestock and wildlife watering. Both springs were further awarded conditional decrees for domestic uses. **5. Outline of work done towards completion of appropriation and application of water to beneficial use.** A.

These two conditional water rights are being developed as an integral part and component of the overall development of a residential subdivision commonly known as Yellowstone Creek Ranch Subdivision, located in sections 4, 5, 8, 9 & 17 of Township 28 South, Range 69 West in Huerfano County, Colorado. Yellowstone Creek Ranch subdivision is being developed in two phases. Phase One consists of 31 building lots for sale and contains approximately 1280 acres. Bluegreen Corporation of the Rockies has sold 16 of the 31 original lots in Phase One. With respect to the development of Phase One, Bluegreen Corporation has completed the construction of all private easement roads within this Phase One, together with all electric and telephone connection services within the utility easement. With respect to the water resources in Phase One, Bluegreen Corporation has completed cleaning out the water ditches and has built concrete water heads for the diversion structures. With respect to the various springs located in Phase One for which Bluegreen Corporation obtained absolute decrees in Case No. 96CW227, Bluegreen Corporation has transferred one half of these water rights to the owner of Lot No. 4 in Phase One. The two water rights which are the subject of this diligence application are located in Phase Two, which consists of 11 building lots for sale and contains approximately 440 acres. With respect to the development of Phase Two, Bluegreen Corporation of

the Rockies has completed the construction of all private easement roads within this Phase Two, together with all electric and telephone connection services within the utility easement. It is also Bluegreen Corporation's intent to transfer and convey the two water rights which are the subject of this diligence application when the lots upon which they sit are sold. Bluegreen Corporation has attached the associated letter of intent 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. B. During this diligence period, the Applicant hired Mangini & Associates, Inc., to create a plat map of Yellowstone Creek Ranch subdivision which includes both Phase One and Two, and has marked the location of the two conditional water rights on this plat map, attached to the Application as Exhibits B and C. The two conditional water rights are located in Phase Two, on Parcel Nos. 43 and 41, attached to the Application as Exhibit B. The Applicant expended approximately \$25,000 in having the surveys and plat maps prepared. C. During this diligence period, the Applicant also created a topographic map of Yellowstone Creek Ranch subdivision which shows the natural gradient of each lot, natural features such as streams, ponds, gullies and forested areas, and the approximate location of the two conditional springs upon Lots 41 and 43 within Phase Two of the development. This map is attached to the Application as Exhibit D. D. Also during this diligence period, the Applicant has designed a delivery system to develop this spring which consists of a 12" perforated PVC pipe to be installed in the ground at each spring's point of diversion, which will serve as a collection and conveyance structure. Currently one of the conditional water rights is partially developed, consisting of a 12" perforated PVC pipe installed at the point of diversion, which collects and transports water to a stock trough for holding. Once each lot is sold and conveyed, each conditional water right will be fully developed, and water will be transported from the spring to each future proposed single family residence by means of a 2 inch water pipeline. E. Also during this diligence period, the Applicant has further expended approximately \$2500.00 in engineering and technical fees, and \$600.00 in miscellaneous fees such as marketing and advertising expenses, in developing these two springs and the lots upon which they sit. These figures are proportional, based upon the amount that the Applicant has spent to date in developing the Yellowstone Creek Ranch subdivision as a whole. F. It is the Applicant's intent to transfer these water rights appurtenant to the sale and conveyance of each lot upon which these two springs are located. At which point in time, the owner-occupant will perfect the appropriation by conveying the water from the spring to the single family residence via a pipeline for its domestic needs, after which the owner-occupants will petition the Water Court to make these conditional water rights absolute in nature. G. During this diligence period, the Applicant also expended approximately \$2800.00 in legal fees to Felt, Monson & Culichia, LLC., to prepare, review, negotiate, and participate in the various activities described herein. 6. All of the aforementioned work performed by the Applicant, Bluegreen Corporation of the Rockies, represents a significant and diligent effort to fully develop the conditional water rights located upon the Yellowstone Creek Ranch

subdivision and put the water to beneficial use for domestic purposes pursuant to the conditional decree. 7. There is no claim made herein to make any portion of this conditional right absolute.

(Application, 12 pages)

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

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of October 2005, (forms available at Clerk's office, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$70.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

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

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

(Court seal)

Published: September _____, 2005