

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING MAY 2006

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of application and certain amendments filed during May 2006, 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. 06CW24 – MANUEL GARCIA and SARA GARCIA, 7861 County Road 570, Gardner, CO 81040

Application for Water Storage Right

Huerfano County

2. Name of Reservoir: El Valle. **3. A. Legal description of dam:** Huerfano County, SW ¼ of the NW ¼ Section 32, Township 26 South, Range 70 West, 6th P.M., 1900 feet from the North line and 100 feet from the West line. **Street Address:** 7861 County Road 57, Gardner, CO 81040. **Optional Additional Description:** GPS location information in UTM format. Required settings for GPS units: Zone 13; Units Meters; Datum NAD83; Units set to true north. **Were points averaged:** Yes. **Northing** 0477782; **Easting** 4177528. **4. Source:** Various springs on Applicants' property adjacent to pond site. **5. A. Date of Appropriation:** May 1, 2006. **B. How appropriation was initiated:** Springs improved – Ditch to connect springs. **C. Date water applied to beneficial use:** N/A. **6. Amount claimed (in acre feet):** 3 AF Conditional. **7. Use:** Contain spring water that appear from alluvial gravels and channel to pond. And use for livestock use. Pond size approximately 100' x 200' x 6' deep. **8. Surface area of high water line:** 100' x 200'. **A. Maximum height of dam in feet:** No dam. **B. Length of dam in feet:** No dam. **9. Total capacity of reservoir in acre feet:** 3 a.f. **Active capacity:** 0; **Dead storage:** All. **10. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.

(Application, 3 pages)

CASE NO. 06CW25 – NOLAN G. THORSTEINSON, 33776 Ford Road, Pueblo, CO 81006 and THE MARGIE (DOTTS) M. THORSTEINSON TRUST, 220 Nelson Avenue, Pueblo, CO 81004 (Max I. Exline, Attorney for Applicants, 520 West 9th Street, Pueblo, CO 81003)

**Application for Change of Water Right
Pueblo County**

2. Decreed name of structure for which change is sought: Mexican Ditch.
3. From previous Decree: A. Date Entered: 6-26-1893; **Case No.:** CA2756 and W4117. **Court:** Pueblo County District Court. **B. Decreed point of diversion:** East bank of St. Charles River, N. 20° 10' E. 1435 feet from the S.W. corner of Sec. 7, T. 21 S., R. 63 W., in Pueblo County, Colorado. See map attached to 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. **C. Source:** St. Charles River. **D. Appropriation Date:** 2-20-1867; **Amount:** 4 cu. ft. per second, total 1.04 cu. ft. per second is owned by the Applicants. **E. Historic use:** Irrigation is historic use. 200 acres were historically irrigated, with 15 acres in fruit trees and the balance in alfalfa. **1. Description of water rights to be changed:** The description of the water right to be changed is that portion of the Mexican Ditch flow owned by Nolan G. Thorsteinson and that owned by the Margie (Dotts) M. Thorsteinson Trust, which totals 1.04 cubic feet per second, more specifically described as follows: One portion owned by Nolan G. Thorsteinson and recently acquired from Michael Powers amounts to .04 of a ¼ interest in said ditch, which when calculated based on the original decreed amount of 4 cu. ft. per second would be .04 cu. ft. per second. Nolan G. Thorsteinson also owns one-half of one quarter of the total 4 cu. ft. per second which amounts to .5 cu. ft. per second, for a combined total of .54 cu. ft. per second. The Margie (Dotts) M. Thorsteinson Trust, successor to Margie M. Thorsteinson, is the owner of one-half of a ¼ interest in said ditch, which amounts to .5 cu. ft. per second. **2. Map showing approximately location of historic use of rights:** See Exhibit B which shows the locations of historic uses of the portion of the Mexican Ditch owned by the Applicants. **3. Records of actual diversion:** See Exhibit C. It should be noted that all of the remaining portion of the Mexican Ditch owned by others has already been granted changes of diversion points, so the request of these Applicants should be similarly granted. **4. Proposed change: (a)** Change of diversion point is the only change requested. **(b) Location:** shown on next page is a description of new point of diversion. **If change in point of diversion, provide legal description:** Pueblo County, SW ¼ of the SW ¼ and NW ¼ of the NE ¼, Section 5/6 line, Township 21 South, Range 63 West, 6th P.M. New point of diversion is at the intersection of the S.W. corner of Section 5 and N.W. corner of Section 6; 1525 feet due North of the U.S. Geological Survey pin and on the South Bank of the St. Charles River. Also known as 33707 Ford Road, Pueblo, CO 81006. **Optional Additional Description:** GPS location information in UTM format. Required settings for GPS units: Zone 13; Units Meters; Datum NAD83; Units set to true north. **Were points averaged:** No **Northing** 0545705 (13S

054 5705 (N) 11; **Easting** 4234052 (42 34 052(E) 11). **(c) Use:** irrigation, as decreed. **(d) Amount:** 1.04 cu. ft. per second. **(e) Operation:** pipe placed in water, connected to a pump, pipeline surface flow to fields where utilized for growing crops. **5. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicants.
(Application and attachments, 7 pages)

CASE NO. 06CW26(99CW75) – GRETCHEN L. SEEBODE, P. O. Box 211, Guffey, CO 80820

**Application to Make Absolute
Park County**

2. Name of structure: Salix Spring. **3. Describe conditional water right:** **A. Date of Original Decree:** 14 April 2000; **Case No.** 99CW75; **Court:** Division 2. **B. Legal description:** Park County, SE ¼ of the NE ¼ Section 12, Township 15 South, Range 73 West, 6th P.M., 386.72 feet from the South line and 11.25 feet from the West line. **C. Source:** Natural spring. **D. Appropriation Date:** June 30, 1997; **Amount:** 6 gpm. **E. Use:** Domestic use inside one single family dwelling, irrigation of lawn and garden, wildlife and livestock watering. **4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** Water collection tank for wildlife use, irrigation hose for garden and domestic use inside single family dwelling, and livestock. **5. If claim to make absolute:** **A. Date water applied to beneficial use:** June 4, 2000; **Amount:** 6 gpm. **Use:** Garden, wildlife, domestic. **B. Description of place of use where water is applied to beneficial use:** Single family dwelling, small garden area near spring with excellent southern exposure and moderate wind protection, minimal erosion issues. **6. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** _____.
(Application and attachments, 4 pages)

CASE NO. 06CW27(96CW224) – SALLY GRIEGO, 8495 County Road 160, Salida, CO 81201

**Application for Finding of Diligence
Chaffee County**

2. Name of structure: Nemmers Landing Spring. **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:** May 31, 2000; **Case No.:** 96CW224; **Court:** Division 2. **B. Legal description:** Chaffee County, SW ¼ of the SE ¼ Section 25, Township 50 North, Range 8 E, NMPM,

1050 feet from the South line and 2490 feet from the East line. **Street Address:** 8495 County Road 160, Salida, CO 81201. **C. Source:** Natural spring. **D. Appropriation Date:** August 28, 1891 (for irrigation), June 1, 1995 (for all other uses); **Amount:** 20 gpm Absolute (for irrigation), 20 gpm Conditional (for all other uses). **E. Use:** Irrigation of up to one acre of land within the SW ¼ of the SE ¼ of Section 25, T50N, R8E, NMPM (Absolute); Recreation, Livestock, Piscatorial, and Wildlife Watering (Conditional). **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:** Applicant purchased property in June of 2003 and has attached information to this filing so as to comply with Rule 9 of the Uniform Local Rules. All attachments mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Applicant understands that during the subject diligence period the previous owner had installed/used an underground pipeline to supply water to a small pond on the property. The pipeline appeared to have been damaged due to subsidence. Since this use did not have a known substitute supply plan in place, the current applicant has disconnected said pipeline and rerouted spring flows to the Arkansas River. Applicant has improved stability of surface lands above the spring source through landscaping and vegetation, and irrigated one acre or less of lands described in the Conditional Decree. Applicant has obtained Engineering Services for assistance in this filing and identification of replacement water amounts and types needed for meeting the needs of senior appropriators for the stated Conditional Uses (20 gpm). Applicant does not wish to apply for an Absolute Decree for said 20 gpm at this time as details, including improvements to the pipeline, and actual purchase of exact amounts of substitute supply water are still being finalized. Applicant submits this and other attached information as required diligence for the Conditional Water Right for 20 gpm as described herein. **6. Name(s) and address(es) of owner(s) of land on which structure 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:** ____.
(Application and attachments, 8 pages)

CASE NO. 06CW28 – JAMES T. GIFFORD, 7900 Silver Street, Salida, CO 81201

**Application for Change of Water Right
Chaffee County**

2. Decreed name of structure for which change is sought: CoZinCo Well.
3. From previous Decree: 87CW48. **A. Date Entered:** 12 April 1989. **B. Decreed point of diversion:** Well Permit 049898-F. (Well permit attached to application states location as: NW ¼ NW ¼ Section 31, Twp. 50 N., Range 9 E., NMPM, 80 feet from North Section line and 510 Feet from West Section line.) **C. Source:** Well. **D. Appropriation Date:** 3 May 2006; **Amount:** 7 acre feet, 100% consumptive. **E. Historic use:** 7 acre feet: 100% consumptive use; superheated water used in production of zinc sulfate was released as steam from well number 49898F. **4. Proposed change: (a) describe change requested:**

alternate point of diversion/replacement/change of use. If well, please list pertinent information from the well permit and provide full descriptions for the following. (b) location; (c) use; (d) amount; (e) give proposed plan for operation. a) Change of use; b) NW ¼ NW ¼ S31, T50N, R9E, NMPM; c) 100% consumptive use for bottling water and other drinks and food preparation; d) 7 acre feet per year; e) Production, storage and shopping point for water, water-based drinks and food preparation and leasing to other users. 5. Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:

(Application and attachments, 16 pages)

CASE NO. 06CW29 – MICHAEL A. OCCHIATO, Co-Trustee, Joseph M. Occhiato Trust, 11 Harrogate Court, Pueblo, CO 81001 (Shawn M. Yoxey, Law Office of Shawn M. Yoxey, P.C., Attorneys for Applicant, 327 Colorado Avenue, Pueblo, CO 81004)

**Application for Surface Water Right
Pueblo County**

2. Name of structure for which decree is sought: Occhiato Spring. **3. Location of spring:** NE ¼ NE ¼ of Section 21, Twp. 23 S., R.68W. of the 6th PM, being 600 feet south of the north line and 900 feet west of the east line of said Section 23. **Address where Spring located:** 9213 Pine Drive, Beulah, CO 81023. See Topo Map attached to the application as Exhibit B. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **4. Source:** Underground water source. There is no other identifiable point of diversion from any surface water source. **5. Date of initiation of appropriation:** 1876. **How appropriation initiated:** Applying water from spring to residential use. **6. Amount claimed:** 7 gpm based on measurements of Engineer, Clyde B. Young. See Affidavit of Clyde B. Young attached to application as Exhibit C. **7. Use:** Water from Occhiato Spring is currently and has historically been used for the purpose of supplying water to the residence located on the property. It is not used for irrigation. See Affidavit of Michael Occhiato attached to the Application as Exhibit D.

(Application and attachments, 9 pages)

CASE NO. 06CW30 (Water Division 2) and CASE NO. 06CW126 (Water Division 1) – G. THOMAS and ROBIN LYNNE MORGAN, c/o 17583 Colonial Park Drive, Monument, CO 80132 (Scott M. Huyler, Petrock & Fendel, P.C., Attorneys for Applicants, 700 Seventeenth Street, Suite 1800, Denver, CO 80202)

**Application for Plan for Augmentation
El Paso County**

2. Description of plan for augmentation: A. Groundwater to be augmented: 49.4 acre-feet per year of not nontributary Dawson aquifer groundwater to be

withdrawn over a 300 year pumping period as decreed in Case No. 99CW126, Water Division 1. (361.3 acre-feet per year was decreed in the Dawson aquifer in Case No. 99CW126). The property which is the subject of the decree is approximately 373 acres located in part of the W1/2 of Section 30, T11S, R65W, and the E1/2SE1/4 of Section 25, T11S, R66W of the 6th P.M., as described and shown on Attachment A to the Application (Subject Property). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **B. Water rights to be used for augmentation:** Return flows from the use of not nontributary Dawson aquifer water and return flows and direct discharge of nontributary aquifer groundwater as previously decreed in Water Division 1 in the decree described above. **C. Statement of plan for augmentation:** 44.4 acre-feet per year will be used for inhouse, irrigation, and stockwatering purposes to serve approximately 74 residential lots on the Subject Property for 300 years. The lots will be served by individual wells which will withdraw at rates of flow of 15 gpm. For purposes of this application, Applicants estimate that each lot will require approximately 0.6 acre-feet annually for inhouse use (0.3 acre-feet), irrigation use 4000 square-feet of home lawn and garden (0.25 acre-feet), and stockwatering of up to 4 large domestic animals (0.05 acre-feet). Applicants reserve the right to revise the number of lots to be served and the referenced demand without the need of revising or republishing this application. Applicants will also use 5 acre-feet per year for irrigation of open space. Each lot will utilize non-evaporative septic systems. Consumptive use associated with inhouse use will be approximately 10% of water used and it is estimated that approximately 10% of water used for irrigation will be returned to the stream system. Stockwatering use will be 100% consumed. **D.** During pumping Applicants will replace an amount equal to 4% of the annual amount withdrawn to the affected stream systems pursuant to Section 37-90-137(9)(c), C.R.S. Because depletions may occur to stream systems in Water Divisions 1 and 2, this application is being filed in both divisions. Return flows from use of the water on the Subject Property may return to the South Platte stream system and the Arkansas stream system and such return flows are sufficient to replace the required amount of replacement. If not, Applicants request that the total actual amount of depletion to all stream systems be returned to the South Platte River stream system and for a finding that those replacements are sufficient. Applicants will reserve an adequate amount of the nontributary groundwater underlying the land to meet post pumping augmentation requirements, but reserve the right to substitute the use of other nontributary groundwater underlying other land, including return flows, for replacement of post-pumping depletions at such time that post-pumping depletions may begin.
(Application and attachments, 5 pages)

CASE NO. 06CW31(98CW177) – MICHAEL P. FERREE, 8554 West Highway 50, Salida, CO 81201 (Anthony L. Martinez, Attorney for Applicant, 249 E Street, P. O. Box 767, Salida, CO 81201)

**Application to Make Absolute a Conditional Water Right
Chaffee County**

2. Name of structure: FERREE SPRING #1. **3. Description of conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **A. Date of Original Decree:** March 29, 2000. **Case No.:** 98CW177; **Court:** District Court, Water Division 2, Colorado. **B. Location:** NE ¼ of the NW ¼ of Section 13, Township 49 North, Range 8 East, NMPM, Chaffee County, Colorado, 1325 feet South of the North section line and 2050 feet East of the West section line of said Section 13. **C. Source:** Spring tributary to King Gulch, an intermittent tributary of the South Aransas River. **D. Appropriation Date:** June 1, 1998; **Amount:** 10 gpm. **E. Use:** Livestock, wildlife, recreation purposes consisting of enjoyment of riparian area adjacent to Ferree Spring #1 and irrigation of up to one acre of gardens. **Land Irrigated:** Up to one acre of gardens located within the N ½ NW ¼ NE ¼ and the N ½ NE ¼ NW ¼ Section 13, Township 49 North, Range 8 East, NMPM, Chaffee County, Colorado. **4.** Applicant demonstrated beneficial use of spring by constructing a ground irrigation system including a more than nine hundred thousand (900,000+) gallon holding pond for spring water and a pressurized, zoned water distribution system for the application of the spring water and applying the water to beneficial use during the 2004 and 2005 irrigation season.
(Application, 2 pages)

CASE NO. 06CW32 – UPPER ARKANSAS WATER CONSERVANCY DISTRICT, P. O. Box 1090, Salida, CO 81201 (Julianne M. Woldridge, MacDougall, Woldridge & Worley, Attorneys for Applicant, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905)

**Application for Approval of Plan for Augmentation
Chaffee and Fremont Counties, Colorado**

2. This augmentation plan is designed to supplement Applicant's previously decreed augmentation plans by approving the use of augmentation water not already included in those plans and the augmentation of additional types of structures not already covered by those plans. **3. Location of structures to be augmented:** Applicant will augment out-of-priority depletions from structures in the following areas: **a.** "92CW84 Area" - those lands in Fremont and Chaffee Counties included within the boundaries of the augmentation plan approved in Case No. 92CW84, Water Division No. 2 as depicted on the map on file with the Division Engineer, Water Division No. 2, a rough area map of which is attached to the Application as Exhibit A, excluding those areas already covered by augmentation plans approved in Case Nos. 94CW41 and 94CW42 (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court); and **b.** "Cottonwood Area" - those lands in Chaffee County included within the boundaries of the augmentation plans approved in Case Nos. 94CW5 and 96CW17 more particularly described as areas within the Cottonwood Creek drainage and all tributaries thereof lying northerly and westerly of the "blue-line" as described in Case 92CW84..., and as depicted on the official map on file with the Division Engineer, Water Division No. 2; **4. Applicant will augment the following types of structures** (all of which will be referred to as "Augmented Structures") located within the above-described

areas within the boundaries of the Upper Arkansas Water Conservancy District (other water rights may be diverted from these structures): **a.** Wells and evaporative, consumptive, and initial fill and refill depletions from on-stream reservoirs – although some of these types of structures may already be covered by Applicant’s previously decreed augmentation plans, this plan provides for additional sources of augmentation water to augment such structures; and **b.** Surface diversions and evaporative, consumptive, and initial fill and refill depletions from off-stream reservoirs: **5. Previous decrees for water rights to be used for augmentation:** **a.** The following sources of augmentation water will be used to augment out-of-priority depletions from “Augmented Structures” in the 92CW84 Area: **1).** Such Fryingpan-Arkansas Project water (“Project Water”) as Applicant may obtain the right to use from time to time. Applicant is eligible to receive annual allocations of Project water, which it may purchase and use after it is allocated to Applicant by the Southeastern Colorado Water Conservancy District (“SECWCD”), based on SECWCD’s principles, policies, rules, and regulations, as such may be amended. Applicant may use such water from storage in Turquoise Reservoir, located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19, and 20, Township 9 South, Range 80 West, 6th P.M. and Sec. 10, 11, 12, 13, 14, and 15, Township 9 South, Range 81 West, 6th P.M., in Lake County, the dam axis of which intersects the centerline of Lake Fork Creek at a point whence the NW corner of Sec. 16, Township 9 South, Range 80 West, 6th P.M. bears North 44°46’18” East a distance of 10,344.35 feet, as more particularly described in the decree in Civil Action No. 5141, District Court, Chaffee County, issued July 9, 1969 and as modified in Case No. 80CW6 on October 23, 1980, from storage in Twin Lakes Reservoir, located on Lake Creek in Sec. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 30, Township 11 South, Range 80 West, 6th P.M., the dam axis of which intersects Lake Creek at a point whence the SE corner of Sec. 23, Township 11 South, Range 80 West, 6th P.M. bears South 54°13’08” East a distance of 3,803.10 feet, as more particularly described in the decree in Civil Action No. 5141, District Court, Chaffee County, issued on July 9, 1969 and as modified in Case No. 80CW6 on October 23, 1980, from storage in Pueblo Reservoir, located on the Arkansas River in Sec. 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, 6th P.M., Sec. 1, 2, 3, 4, 5, 9, 10, and 11, Township 21 South, Range 66 West, 6th P.M., and Sec. 5, 8, 9, 13, 14, 15, 16, 22, 23, and 25, Township 20 South, Range 67 West, 6th P.M., the dam axis of which intersects the Arkansas River whence the NE corner of Sec. 36, Township 20 South, Range 66 West, 6th P.M. bears North 61°21’20” East a distance of 2,511.05 feet; and by exchange into other reservoirs pursuant to other exchange decrees and administrative approvals. The water rights of the Project consist of: **a).** West Slope Decrees: The Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County, Colorado. The principal water rights were adjudicated by the decrees in Civil Action No. 4613, District Court, Garfield County on June 20, 1958 and August 3, 1959, and were modified by the Decree in Case No. W-829-76, District Court, Water Division No. 5, dated November 27, 1979, and supplemented by the Decree in Case No. 83CW352, District Court,

Water Division No. 5, dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through the Boustead Tunnel and empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir, and elsewhere, and applied to beneficial use within the SECWCD's boundaries. **b).** East Slope Decrees: The Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont, and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141, District Court, Chaffee County, dated July 9, 1969, and Civil Action No. B-42135, District Court, Pueblo County, dated June 25, 1962, and were modified and supplemented by the Decree in Case No. 80CW6, District Court, Water Division No. 2, dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for reuse and exchange for beneficial use within the SECWCD's boundaries; **2).** North Fork Reservoir, 1984 Enlargement: Date of Original Decree - September 18, 1985, Case No. 84CW141, District Court, Water Division No. 2, Colorado. Its source is the North Fork of the South Arkansas River. North Fork Reservoir is located as follows: Beginning at the Northeasterly point of contact of the dam axis with the existing ground, said point being situated whence the Northwest corner of Section 21, T.50N., R.7E, N.M.P.M., in Chaffee, County, Colorado bears South 68°50' East a distance of 31,920 feet; said point being further described by bearing on the Peak of Granite Mountain of North 23°28' West and by bearing on the Peak of Calico Mountain of North 37°03' East, thence South 15°30' West a distance of 500 feet to the Southwesterly point of contact of the dam axis with existing ground, Chaffee County. In addition, the Southeastern Colorado Water Conservancy District has a pending application for an appropriative right of exchange in Case No. 97CW160, Water Division No. 2 that will operate to place Fryingpan-Arkansas Project water (described above) in North Fork Reservoir for use by Applicant; **3).** O'Haver Reservoir, with a storage right for 193 acre feet of water, priority date of September 9, 1982, for irrigation, municipal, industrial, recreational, and augmentation purposes, decreed in Case No. 82CW205, Water Division No. 2, on June 28, 1985. Its source is Gray's Creek. O'Haver Reservoir is located near the center of Section 12, Township 48 North, Range 7 East, N.M.P.M. In addition, the Southeastern Colorado Water Conservancy District has a pending application for an appropriative right of exchange in Case No. 97CW160, Water Division No. 2 that will operate to place Fryingpan-Arkansas Project water (described above) in O'Haver Reservoir for use by Applicant; **4).** State Reservoir, Boss Lake, with a storage right for 30,000,000 cubic feet of water, appropriation date of March 20, 1893, pursuant to C.R.S. § 37-88-108, located in the NE1/4, Section 29, Township 50 North, Range 7 East, N.M.P.M. Its source is the Lake Fork, tributary to the Middle Fork of the South Arkansas River. Applicant, together with Salco Associates, L.L.P. has a pending application for an appropriative right of exchange in Case No. 97CW31, Water Division No. 2, and the Southeastern Colorado Water Conservancy District has a pending application

for an appropriative right of exchange in Case No. 97CW160, Water Division No. 2, both of which will operate to place Fryingpan-Arkansas Project water (described above) in Boss Lake for use by Applicant; and **5**). Water and water rights that may be exchanged and made available for Applicant's use pursuant to the exchanges for which Applicant has an application pending in Case No. 04CW96, District Court, Water Division No. 2; **b**. The following sources of augmentation water will be used to augment out-of-priority depletions from "Augmented Structures" in the Cottonwood Area: **1**). Water available pursuant to shares of Twin Lakes Reservoir and Canal Company owned or controlled by Applicant. Applicant may use such water from storage in Twin Lakes Reservoir and by exchange into other reservoirs pursuant to other exchange decrees and administrative approvals. Such water consists of storage and direct flow rights for water diverted from another basin which are available for 100 percent consumptive use and reuse and are available for augmentation. The water rights producing the pro rata interest of Applicant are: **a**). Colorado River Water Rights: Case No. 3802, District Court, Garfield County, August 25, 1963 and Case No. W-1901, District Court, Water Div. No. 5, May 12, 1976; priority: August 23, 1930, No. 431; source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Div. No. 5; use: direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal, and all beneficial uses; amount: direct flow amount for diversions through transmountain tunnels of 625 c.f.s., with an annual limit of 68,000 acre-feet, a running ten year limit of 570,000 acre-feet; and **b**). Arkansas River Water Rights: Case No. 2346, District Court, Chaffee County, July 14, 1913 as modified in Case No. W-3965, District Court, Water Div. No. 2, April 19, 1974; priorities: December 15, 1896, No. 3 and March 25, 1897, No. 4; source: Lake Creek and its tributaries, tributary to the Arkansas River; use: storage for irrigation, domestic, commercial, industrial, and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir which are capable of being served by water by diversion from said Arkansas River; amount: 54,452 acre-feet (20,645.3 acre-feet for Priority No. 3 and 33,806.7 acre-feet for Priority No. 4; and **2**). Water and water rights that may be exchanged and made available for Applicant's use pursuant to the exchanges for which Applicant has an application pending in Case No. 04CW96, District Court, Water Division No. 2; **c**. In addition, Applicant may augment out-of-priority depletions from "Augmented Structures" in the 92CW84 Area and the Cottonwood Area with any other water and water rights that Applicant has or may acquire that legally can be used to augment or replace out-of-priority depletions, provided the amounts of such water available for such uses have been adjudicated and quantified for such use. Applicant will obtain changes of water rights and/or administrative approvals so as to allow for use of these waters for such purposes, where appropriate, prior to such use. Applicant shall provide such notice as may be required of any such additional water prior to use within this plan. Such water and water rights may include but are not limited to: **1**). water and water rights acquired on a temporary basis pursuant to leases and interruptible supply agreements pursuant to C.R.S. § 37-92-309; **2**). such interest in the following water rights that may be owned by the United States that

have been acquired by Applicant by lease: **a).** Silvernail Ditch, adjudicated in Civil Action No. 3123, Water District 12, Fremont County District Court, Colorado on February 7, 1910, for diversion from the west bank of Texas Creek whence the quarter corner of the west side of Section 7, T.19S., R.73W. of the 6th P.M. bears North 24 degrees West 3,970.8 feet, for 1.0 c.f.s. with appropriation date of 4/1/1876; **b).** Clayborne Extension of Rodgers Ditch, adjudicated in Civil Action No. 3014, Water District 12, Fremont County District Court, Colorado on April 1, 1909, for diversion from the South bank of the Arkansas River whence the NW corner of Section 20, T.48N., R.11E. of the N.M.P.M. bears South 77 degrees West 275 feet, for 1.0 c.f.s. with appropriation date of 9/1/1879; and **c).** Lester-Attebery Ditch Water Rights diverted on the North side of the Arkansas River at a point on the West line of Section 13, T.19S., R.69W., 6th P.M. at a distance 16.35/100 chains North of the SW corner of said section, consisting of: Priority No. 150 decreed to the Bragg Ditch, Case No. 2622, Water District 12, Fremont County District Court, Colorado on 1/31/1905 for 3.5 c.f.s. with appropriation date of 4/1/1875, and subsequently transferred to the Lester-Attebery Ditch in Case No. 4669, District Court, Fremont County, Colorado; Priority No. 158 decreed to the Lester-Attebery Ditch on 2/3/1894, District Court, Fremont County, Colorado, for 2.0 c.f.s. with appropriation date of 4/1/1875; and Priority No. 343½ decreed to the Adobe Ditch in Case No. 2622, Water District 12, Fremont County District Court, Colorado on 1/31/1905, for 3.6 c.f.s. with appropriation date of 4/1/1887 and later transferred to the Lester-Attebery Ditch in Case No. 4595, District Court, Fremont County, Colorado; **3).** Cameron Ditch, adjudicated In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District Number Eleven, District Court, Chaffee County, Colorado on June 19, 1890; from the North Fork of the Little Arkansas River (South Arkansas River), Priority No. 23, appropriation date of January 10, 1868, 9.0 c.f.s., total, and a second water right adjudicated in Case No. 2342, District Court, Chaffee County, Colorado on July 15, 1913, appropriation date of June 20, 1890, for 8.0 c.f.s. Applicant currently owns 7/8 of a ¼ interest in these water rights; and **4).** Water and water rights authorized for augmentation or replacement uses that are owned by the City of Salida and stored in North Fork Reservoir pursuant to contract with Applicant including such water as the City of Salida conveys to Applicant pursuant to contract, as such water rights are decreed in Case No. 87CW61 or any other decrees obtained by the City of Salida or Applicant; **d. Historic use:** Since acquisition by Applicant, these water rights have continued to be used for decreed purposes as described in separate change and quantification proceedings, or have been used to augment out-of-priority depletions by structures participating in Applicant's current augmentation plans and Applicant's yearly Rule 14 Replacement Plans. **6. Statement of plan for augmentation, covering all applicable matters under C.R.S. 37-92-103 (9), 302 (1) (2) and 305 (8).** Applicant proposes to calculate the replacement requirements for participating structures using the replacement requirements provided for in its general plan of augmentation decreed in Case No. 92CW84, District Court, Water Division No. 2. The Judgment and Decree in Case No. 92CW84 was recorded in the Chaffee County real estate records on

February 24, 1994 at book 544, page 456. The replacement requirements will be met by releases of the augmentation water from the various sources described above. **7. Names and addresses of owners of land on which structures are located:** **a.** Augmented Structures – located on properties owned by the participants; **b.** Cottonwood Reservoir, North Fork Reservoir, State Reservoir, Boss Lake, and O’Haver Reservoir are located on land owned by the United States Forest Service, P.O. Box 25127, Lakewood, CO 80225; **c.** Rainbow Lake is located on land owned by Rainbow Lake Resort, Inc., 21509 County Road 306, Buena Vista, CO 81211; **d.** Pueblo Reservoir, Turquoise Reservoir and Twin Lakes Reservoir are owned by the United States Department of the Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18-E, Loveland, CO 80537; **e.** The Cameron Ditch is a mutually owned ditch, and Applicant owns a portion of the ditch and the water right; and **f.** The BLM water rights are currently owned by the United States Bureau of Land Management, Royal Gorge Field Office, 3170 East Main St., Canon City, CO 81212 and are leased to Applicant. Applicant, therefore, requests that this plan for augmentation be approved.

(Application and attachments, 10 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 July 2006, (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 8th day of June, 2006.

/s/ Mardell R. DiDomenico

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

(Court seal)
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