

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING SEPTEMBER 2002

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 September 2002, 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. 02CW123 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 02CW124 – ROGER CAMPER, 776 Co. Rd. 175, Westcliffe, CO 81252

Application for Surface Water Rights and for Water Storage Right
Custer County

APPLICATION FOR SURFACE WATER RIGHT

2. Name of structure: Nellie Camper Spring #1. **3. Legal description of each point of diversion:** SW ¼ NW ¼ Sec. 12, Twp. 22 S., R. 73 W., 6th P.M., 100' from the west line and 2450' from the North line. **4. Source:** Spring. **5. A. Date of initiation of appropriation:** May 1935. **B. How appropriation was initiated:** Spring developed, pond built, water released to irrigate. **C. Date water applied to beneficial use:** 1935. **6. Amount claimed:** .05 cfs Absolute. **7. Use or proposed use:** Storage and irrigation. **A. If irrigation, complete the following: Number of acres historically irrigated:** 3; **Proposed to be irrigated:** **Legal description of acreage:** 3 acres in the SW ¼ NW ¼ Sec. 12, Tw. 22 S., R. 73 W., 6th P.M. **B. If non-irrigation, describe purpose fully:** **8. Name and address of owner of land on which points of diversion and place of use are located:** Applicant. **9. Remarks:** None.

APPLICATION FOR WATER STORAGE RIGHT

2. Name of Reservoir: Nellie Camper Reservoir. **3. Legal description:** **A. Location of Dam:** SW ¼ NW ¼ Sec. 12, Twp. 22 S., R. 73 W., 6th P.M. 2600' from the North line and 250' from the West line. **B. If off-channel reservoir, name and capacity of ditch or ditches used to fill reservoir, and legal description of each point of diversion:** Water is from a spring. **4. Source:** spring. **5. A. Date of appropriation:** May 1935; **B. How appropriation was initiated:** reservoir built; **C. Date water applied to beneficial use:** 1935. **6. Amount claimed:** **A. In acre feet:** 2.87 Absolute. **B. If off-channel reservoir, rate of diversion in cfs for filling the reservoir:** .05 Absolute. **7. Use:** **A. If irrigation, complete the following: (1) Number of acres historically irrigated:** 3; **(2) Total number of acres proposed to be irrigated:** 3; **(3) Legal description of acreage irrigated or to be irrigated:** 3 acres in the SW ¼ NW ¼ Sec. 12, Twp. 22 S., R. 73 W., 6th P.M. **8. Surface area of high**

water line: 250' x 250'. **A. Maximum height of dam in feet: 6'; B. Length of dam in feet: 250'. 9. Total capacity of reservoir in acre feet: 2.87. Active capacity: 2.87; Dead storage: 0. 10. Name and address of owner of land on which structure for the water right is located: Applicant. 11. Remarks or any other pertinent information: Map on file with application and available for inspection at the Office of the Clerk for Water Division No. 2**
(Application and attachments, 5 pages)

CASE NO. 02CW125(95CW165) – SALVADOR J. and SALLY G. PERALTA, 4650 Grove Street, Denver, CO 80211

Application to Make Absolute

Huerfano County

2. Name of structure: Spring #1 and Spring #2. **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:** 9/16/96, 10/30/96; **Case No.** 95CW165; **Court:** Water Div. 2. **B. Legal description:** Spring #1 – Huerfano County SW ¼ of the NE ¼ Section 36, Township 28 South, Range 70 West, 6th P.M., north 3200 feet from the South line and east 2775 feet from the West line. Spring #2 – SE ¼ of the NW ¼ of Sec. 36, T. 28 S., R. 70 W. of the 6th P.M. in Huerfano County, Colorado, being approximately 2,262 feet east of the west line and 2,812 feet north of the south line of said Section 36. **Street Address:** County Road 442, MiddleCreek Road and Hwy 160; La Veta Acres Filing 2, Lot 17, Huerfano County. **C. Source:** Tributary to Abeyta Creek; **D. Appropriation Date:** August 31, 1984; **Amount:** #1 – 8.57 gpm, #2 – 4 gpm. **E. Use:** Domestic. **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:** Presently building a residence structure, building permit 00-144. Installed a 1500 gal. Cistern with overflow valve at spring #1. Installed a water pump, electrical service and water line to the resident structure at Spring #1. **5. If claim to make absolute – Water applied to beneficial use: A. Date:** August 2002; **Amount:** 4 gpm or less; **Use:** domestic. **B. Description of place of use where water is applied to beneficial use:** For resident structures on Lot 17, Filing #2, Huerfano County, Colorado. **6. Names and address of owners of the land on which any 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:** Applicants.

(Application and attachments, 8 pages)

CASE NO. 02CW126(82CW210) - TOWN OF MONUMENT, c/o Rick Sonnenburg, Town Manager, P.O. Box 325, Monument, Colorado 80132

(Robert F.T. Krassa, Krassa & Miller, LLC, Attorneys for Applicant, 1680 - 38th Street, Suite 800, Boulder, CO 80301) **Application for Finding of Reasonable Diligence, El Paso County, Colorado 2. Name of structure:** (wells): Monument Well No. 4 and Monument Well No. 5 **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:** February 8, 1985; **Case No.:** 82CW210, **Court:** District Court, Water Division No. 2; **B. Location:** Both Wells in SW/4 NW/4, Sec. 15, T. 11S. R67 W of the 6th P.M. in El Paso County. No. 4 is 2020 feet from north line and 790 feet from west line said section; No. 5 is 2100 feet from north line and 600 feet from west line said section. **C. Source:** Monument Creek Alluvium **D. Appropriation Date:** December 8, 1982 Amount: No. 4 - 100 gpm, No. 5 - 60 gpm **E. Use:** Municipal, including domestic, industrial, commercial, irrigation, fire protection, stock water, recreation and any other beneficial use. **F. Depth:** Each well is 28 feet deep. **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:** During the diligence period, substantial work was done on the Town's water system of which these wells are integral parts. Well No. 7 was evaluated and rehabilitated. Well No. 8 was completed in the Arapahoe aquifer and equipped. Well No. 1 was redrilled and reequipped. Well No. 2 and Well No. 3 were rehabilitated. The Town has revised its Water Master Plan, completed design/bid packages for improved treatment capacity distribution system upgrades, increased booster pump capacity and a new SCADA system. During the diligence period, Monument has spent over \$2,000,000 on these and other components of its water system, all of which are necessary to accommodate and utilize the subject conditional rights. Monument has in all respects diligently worked toward placing these rights to beneficial use.
(Application and attachments, 3 pages)

CASE NO. 02CW127 – BENT'S FORT WATER COMPANY, 510 Main, P. O. Box 305, La Junta, CO 81050

Application for Change of Water Right
Otero County, Colorado

2. Decreed name of structure for which change is sought: Wells no. 1, no. 2, & no. 3 as set forth in paragraph 3B below. **3. From previous Decree:** **A. Date Entered:** June 7, 1974; Case No. W-3395; District Court in and for Water Division No. 2, State of Colorado. **B. Decreed point of diversion:** Bent's Fort Well No. 1 – permit number 2878-F, which is located in the NW ¼ of Section 36, Township 23 South, Range 55 West of the 6th P.M., approximately 1,000 feet from the North line and 100 feet from the West line. Bent's Fort Well No. 2 – permit number 2879-F, which is located in the NE ¼ of Section 20, Township 23 South, Range 54 West of the 6th P.M., approximately 800 feet from the North line and 700 feet from the East line. Bent's Fort Well No. 3 – permit number 4811-F, which is located on the same tract of land as described under Well No. 1 herein in the NW ¼ of Section 36, Township 23 South, Range 55 West of the 6th P.M., approximately 1,000 feet from the North line and 100 feet from the West line. **C. Source:** Bent's Fort Well No. 1, Bent's Fort Well No. 2, and Bent's Fort Well No. 3 were all adjudicated at a depth of 800 feet in the Dakota Aquifer. **D. Appropriation Date:** Date of appropriation for Bent's Fort Well No. 1 was December 31, 1960; appropriation date for Bent's Fort Well No. 2 was December

31, 1960; and appropriation date for Bent's Fort Well No. 3 was November 30, 1966. **Amount:** Bent's Fort Well No. 1 is 0.089 c.f.s., or 40 g.p.m.; Bent's Fort Well No. 2 is 0.089 c.f.s., or 40 g.p.m.; and Bent's Fort Well No. 3 is 0.089 c.f.s., or 40 g.p.m. **E. Historic Use:** The water from all three wells has been used historically to provide domestic water through a pipeline distribution system to residences and farms in North La Junta and along Highway 194 to the Otero-Bent County Line. Attached to the Application as Exhibit A and hereby incorporated by reference is a location map done as of April of 2001 which sets forth the Bent's Fort Water Company service area boundaries as well as the permitted wells utilized by the company, including the wells referenced in this application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. **4. Proposed Change:** Well Permit No. 057143-F is permitted and has been approved by the Office of the State Engineer as a supplemental point of diversion for Well Nos. 1, 2, and 3 mentioned above. The well represented by this permit is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, Township 23 South, Range 55 West of the 6th P.M., Otero County, Colorado, and is approximately 100 feet from the South section line and 1350 feet from the West section line. The well will be used in such a way as to cause no material injury to existing water rights and the construction of the well shall be in compliance with water well construction rules. The use of ground water from this well is limited to ordinary household purposes for residences and farms within the Bent's Fort Water Company's distribution system. The maximum pumping rate of this well shall not exceed 8 g.p.m. The combined maximum pumping rate of this well and Well Nos. 1, 2, and 3 mentioned above, and all other supplemental points of diversions to said wells, shall not exceed 120 g.p.m. The maximum average amount of ground water to be appropriated by this well shall not exceed 12.9 acre feet. the combined average annual amount of ground water to be appropriated by this well and Well Nos. 1, 2, and 3 mentioned above and all other supplemental points of diversion to said wells shall not exceed 45.1 acre feet from the Dakota Aquifer, or 107.4 acre feet from all aquifer sources (123.4 acre feet when including the 16 acre feet appropriation from non-decreed Well No. 17534-RF). Production is limited to the Dakota Aquifer which is located 510 feet below land surface and extends to a depth of 616 feet. A metering method will be established for this well and Well Nos. 1, 2, and 3 mentioned above and all other supplemental points of diversion to said wells pursuant to the Amended Rules Governing the Measurement of Tributary Ground Water Diversions located in the Arkansas River Basin. Lastly, the well shall be at least 600 feet from any existing well completed in the same aquifer that is not owned by the Applicant, but not more than 200 feet from the location specified in the permit, and the well structure identification number is 1706414. Well Permit No. 057144-F is permitted and has been approved by the Office of the State Engineer as a supplemental point of diversion for Well Nos. 1, 2, and 3 mentioned above. The well represented by this permit is located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, Township 23 South, Range 55 West of the 6th P.M., Otero County, Colorado, and is approximately 1750 feet from the North section line and 1250 feet from the West section line. The well will be used in such a way as to

cause no material injury to existing water rights and the construction of the well shall be in compliance with water well construction rules. The use of ground water from this well is limited to ordinary household purposes for residences and farms within the Bent's Fort Water Company's distribution system. The maximum pumping rate of this well shall not exceed 10 g.p.m. The combined maximum pumping rate of this well and Well Nos. 1, 2, and 3 mentioned above, and all other supplemental points of diversion to said wells, shall not exceed 120 g.p.m. The maximum average annual amount of ground water to be appropriated by this well shall not exceed 16.1 acre feet. The combined average annual amount of ground water to be appropriated by this well and Well Nos. 1, 2, and 3 mentioned above and all other supplemental points of diversion to said wells shall not exceed 45.1 acre feet from the Dakota Aquifer, or 107.4 acre feet from all aquifer sources (123.4 acre feet when including the 16 acre feet appropriation from non-decreed Well No. 17534-RF). Production is limited to the Dakota Aquifer which is located 490 feet below land surface and extends to a depth of 580 feet. A metering method will be established for this well and Well Nos. 1, 2, and 3 mentioned above and all other supplemental points of diversion to said wells pursuant to the Amended Rules Governing the Measurement of Tributary Ground Water Diversions located in the Arkansas River Basin. Lastly, the well shall be at least 600 feet from any existing well completed in the same aquifer that is not owned by the Applicant, but not more than 200 feet from the location specified in the permit, and the well structure identification number is 1706413. **5. Names and addresses of owners of the 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:** The wells will be located upon lands owned by the Applicant.
(Application and attachments, 5 pages)

CASE NO. 02CW128(W-29) – HUERFANO CUCHARAS IRRIGATION COMPANY, 215 W. Second Street, Pueblo, CO 81003 (William F. Mattoon, Petersen & Fonda, P.C., Attorneys for Applicant, 215 W. Second Street, Pueblo, CO 81003)

Application for Finding of Diligence
Huerfano County

2. Name of structure: Reservoir. No. 65 Cucharas Valley Reservoir; Appropriation Priority No. 354c; Reservoir Priority No. 66c. **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **A. Date of Original Decree:** 3/14/1906; **Case No.:** W-29 **Court:** Pueblo District. **B. Legal description:** Huerfano County Cucharas Valley Reservoir No. 5, and the dam across the Cucharas River creating said reservoir, all located in Sections 25, 26, 35 and 36, Twp. 26 S., Rge. 65 W., Sections 30 and 31, Twp. 26 S., Rge. 64 W., Sections 6 and 7, Twp. 27 S., Rge. 64 W., and Sections 1, 2, 3, 10, 11, 12, 14 and 15, Twp. 27 S., Rge. 64 W., in the County of Huerfano, State of Colorado. **C. Source:** Cucharas River. **D. Appropriation Date:** 3/14/1906; **Amount:** 34,404 acre feet. **E. Use:** Irrigation. **F. Depth: (if well):** N/A. **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: Since the last filing for reasonable diligence, the Huerfano Cucharas Irrigation Company has incurred expense and performed work toward completing the appropriation of its conditional water decrees. The most directly significant action was the hiring of Clyde B. Young, Jr., P.E., to produce a topographic map of the reservoir. The process has been commenced with the expenditure of \$8,700.00 for aerial photography necessary to produce such a map. This information is significant in any extension or improvement of the dam and reservoir to increase storage capacity for use of conditional decreed water storage and it would also be important if a replacement dam downstream were to be undertaken, assuming economic capability on the part of the company or a possible purchaser of the reservoir. Statement of Clyde B. Young, Jr., P.E. is on file with the Application and available for inspection at the Office of the Clerk for Water Division No. 2. The company has also expended funds in continued monitoring of the dam and repairs or replacements of gates and valves which, at least in part, would need to be accomplished for increased water storage and use. A schedule of expenditures is on file with the Application and available for inspection at the Office of the Clerk for Water Division No. 2. These expenditures are in addition to the \$92,000.00 the company has repaid to CoBank during the past six years. Borrowings from CoBank have been utilized over the years for repairs, extensions and other work in part related to the increased ability to store water under the company's conditional decree. A statement detailing the expenditures for the past six years related to making possible increased storage under the conditioned decrees, but not including the payments to CoBank, is on file with the Application and available for inspection at the Office of the Clerk for Water Division No. 2.

5. If claim to make absolute – Water applied to beneficial use: A. Date: ____; Amount: ____; Use: ____.

B. Description of place of use where water is applied to beneficial use: Water is used and will be used on the lands of the shareholders of the Huerfano Cucharas Irrigation Company along the Huerfano Valley Ditch.

6. Names and addresses of owners of the 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: Water is used and will be used on the lands of the shareholders of the Huerfano Cucharas Irrigation Company along the Huerfano Valley Ditch. A list of the names and addresses of the shareholders is on file with the Application and available for inspection at the Office of the Clerk for Water Division No. 2.

(Application and attachments, 15 pages)

CASE NO. 02CW129 - DAVID E. ESCH, 845 Heartstrong Street, Superior, CO 80027 (M. E. MacDougall, MacDougall, Woldridge & Worley, P.C., 530 Communication Circle, Suite 204, Colorado Springs, CO 80905-1743, Attorneys for Applicant)

Application for Change of Water Rights – Consolidating Points of Diversion and Place of Use, Fremont County

2. Decreed name of structure for which change is sought: The Thomas Johnson Ditch and the Stonehocker Ditch. **3. From previous Decree: A. Date entered:** February 3, 1894; Case No.: First General Adjudication - No. Case number; Court: Fremont District; **B. Decreed point of diversion (include map):** The original decree states: No. 44 - The Thomas Johnson Ditch. That this ditch is entitled to Arkansas River priorities Nos. 45, 106, and 365, which are Eight Mile Creek priorities Nos. 3, 5, and 11 respectively; that said ditch takes its water from Eight Mile Creek, and that its headgate is situate on the South bank of said creek South 34 degrees and 39 minutes West 1367.6 feet from the N.E. corner of the N.W. 1/4 of the S.E. 1/4 of Section 22, Township 18 S., Range 69 West; that said ditch is used for the irrigation of forty-four (44) acres of land; and that there be allowed to flow into said ditch, under and by virtue of priority No. 45, one cubic foot of water per second of time for such time and times as shall be necessary for the irrigation of fifteen (15) acres of land; that there be allowed to flow into said ditch, under and by virtue of priority No. 106, constantly during the irrigation season, the further amount of one cubic foot of water per second of time; and that the cubic foot of water first herein decreed to this ditch, under priority No. 45, be allowed to flow into said ditch, under and by virtue of said priority No. 365, for such additional time and times as shall be necessary to irrigate six (6) acres in addition to the before mentioned fifteen acres; the total amount decreed to this ditch being an amount not exceeding two cubic feet of water per second of time. No. 150 - The Stonehocker Ditch. That said ditch is entitled to Arkansas River priorities No's. 131, 178, and 297, which are also Eight Mile Creek priorities No's. 6, 9, and 7; that said ditch takes its water from the North side of Eight Mile Creek, S. 25 degrees and 52 minutes W, 505 feet, from the N.E. corner of the N.W. 1/4 of the S.E. 1/4 of Section 22, Township 18 South, Range 69 West; that said ditch is used for irrigation of 20 acres of land; that there be allowed to flow into said ditch, under and by virtue of priority No. 131, one cubic foot of water per second of time for and during such time and times as shall be sufficient to irrigate twelve acres of land; that said cubic foot of water per second of time be further allowed to flow into said ditch, under and by virtue of priority No. 178, for such additional time and times as shall be sufficient to irrigate six acres of additional land; and that said cubic foot of water be further allowed to flow into said ditch, under and by priority No. 297, for such still additional time and times as shall be sufficient to irrigate two (2) acres of additional land. **C. Source:** Eight Mile Creek; **D. Appropriation Date:** Stonehocker Ditch - 1 c.f.s.; December 31, 1873 - 12 Acres; December 31, 1876 - Additional 6 Acres; December 31, 1883 - Additional 2 Acres; Total of 20 Acres - Stonehocker Ditch. Thomas Johnson Ditch - 1 c.f.s. May 31, 1869 and 1 c.f.s. December 31, 1872; May 31, 1869 - 15 Acres; December 31, 1872 - 23 Acres; December 31, 1888 - Additional 6 Acres; Total of 44 Acres - Thomas Johnson Ditch. **E. Historic use:** (Include a description of all water rights to be changed, a map showing the approximate location of historic use of the rights and records or summaries of records of actual diversions of each right the applicant intends to rely on to the extent such records exist.) Applicant, David E. Esch, purchased the Thomas Johnson Ditch and the Stonehocker Ditch from Todd S. Kelly in August 1985,

along with the NW1/4 SE1/4 Section 22, Township 18 South, Range 69 West, 6th P.M. (except 5 acre feet from priority No. 45 which Todd Kelly reserved). At that time, and ever since then, the water rights were diverted at the "new" point of diversion described in paragraph 4 below, and used upon the land described in paragraph 4 below. Todd Kelly, now deceased made an Affidavit dated August 9, 1985, which was recorded in the Fremont County records on August 12, 1985, at Book 728, Page 95, a copy of which is attached to the Application on file with the Clerk of the Water Court. Applicant, David E. Esch, purchased part of SE1/4 SW1/4 of Section 22 and part of NE1/4 NW1/4 Section 27, Township 18 South, Range 69 West, from Jeffrey D. Lamborn and Bambi L. Lamborn in January 2000, including that land described in paragraph 4 below. Applicant, David E. Esch, installed a 6-inch Parshall flume measuring device and a lockable headgate (Waterman C-10) in 2002, as requested by the Water Commissioner.

4. Proposed change: (a) describe change requested: alternate point of diversion/replacement/change of use; (if well, please list pertinent information from well permit) (b) location; (c) use; (d) amount; (e) give proposed plan for operation (if (b) thru (e) applicable, please give full descriptions.) To change the headgate and point of diversion of both the Stonehocker Ditch and the Thomas Johnson Ditch to a point located North 51 degrees 50 minutes East 401 feet from the Northeast Corner of the Northwest Quarter Southeast Quarter (NW1/4 SE1/4) of Section 22, Township 18 South, Range 69 West, 6th P.M., Fremont County, Colorado; and To change the place of use of both the Stonehocker Ditch and the Thomas Johnson Ditch to land described as: Not more than 64 acres lying and being in the NW1/4 SE1/4 and SE1/4 SW1/4 Section 22, Township 18 South, Range 69 West of the 6th P.M., Fremont County, Colorado. The original points of diversion for the Thomas Johnson Ditch and the Stonehocker Ditch are located in places where it is obvious that the channel of 8-Mile Creek was so cut out, lowered, turned aside, or otherwise changed as to prevent the Thomas Johnson Ditch and the Stonehocker Ditch from receiving the proper inflow of water to which they are entitled from said 8-Mile Creek. It is also obvious that the head of both the Thomas Johnson Ditch and the Stonehocker Ditch was extended up the stream, before 1985, for the purpose of receiving water into the same. Applicant claims the rights and benefits accorded by C.R.S. 37-86-111 for this purpose, including that (quoting part of C.R.S. 37-86-111): "The priority of right to take water from such stream through such ditch, canal, or feeder as to any such ditch, canal, or feeder shall remain unaffected in any respect by reason of such extension;" Similarly, the place of use of the Stonehocker Ditch, described above in this Paragraph 4, is the same place of use as existed in 1985, and probably long before that. The original place of use of the Thomas Johnson Ditch is believed to have been on the east side of 8-Mile Creek. It appears that the course of 8-Mile Creek may have changed over the years, putting some of the land originally irrigated on the other side of the Creek from the Thomas Johnson Ditch. Applicant wishes to use the Thomas Johnson Ditch on the west side of 8-Mile Creek, but on the same 40 acre Quarter Quarter Section as originally irrigated. The relief Applicant seeks in this proceeding is merely to confirm the point of

diversion and places of use which existed when he bought the water rights from Todd Kelly in 1985. If a change in point of diversion, please provide legal description, and include distance and bearing from established government section corner or quarter corner; or distances from section lines, and indicate 1/4 1/4 section number, township, range and meridian; include map). The location may include UTM coordinates based on Zone 13 and NAD27 (CONUS) datum. In urban areas, include street address, lot, block, and subdivision:

| | | | | | | |
|--|-----------------|-------|---------------|----------------------|------------------|---------------------------------------|
| Required Description: Fremont County | SE1/4 of the | NE1/4 | Section 22 | Township 18 South | Range 69 West | Principal Meridian 6 th |
| Distance from section lines (section lines are typically not property lines) 2840 Feet from South and 980 Feet from East. | | | | | | |

5. 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: The point of diversion and the upper part of the ditches has been and is located on land owned by Marcy Ann Kelly, 1725 Fremont County Road 132, Penrose, CO 81240.
(Application and attachments, 10 pages)

CASE NO. 02CW130 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 02CW131 - AGILE STONE SYSTEMS, INC., Attn: Raymond L. Marshall, 31 North Tejon, Suite 400, Colorado Springs, CO, 80903 (Henry D. Worley, MacDougall, Woldridge & Worley, P.C., Attorneys for Applicant, 530 Communications Circle, Suite 204, Colorado Springs, CO, 80905)
Application for Approval of Plan for Augmentation
Fremont County

The applicant in this case is Agile Stone Systems, Inc. / Attn: Raymond L. Marshall / 31 North Tejon, Suite 400 / Colorado Springs, CO 80903 / 719-884-8800. Notice should also be mailed to Agile Stone Systems, Inc. / Larry Harkins, Project Manager / P.O. Box 1026 / Canon City, CO 81215. **1. Name of structure to be augmented:** The structure to be augmented is a pump and pipeline placed in the Arkansas River in the NW1/4 NW1/4 of Section 13, T. 18 S., R. 72 W., 6th P.M., approximately 900 feet from the west section line and 1200 feet from the north section line. There are no water rights decreed to be diverted from this structure. Applicant seeks to pump up to 1000 gpm from this structure. Such diversions will be metered and reported monthly to the Division of Water Resources. **2. Previous decree for water rights to be used for augmentation:** Applicant owns five shares of Twin Lakes Reservoir and Canal Company stock. Decree information for Twin Lakes Reservoir and Canal Company is as follows: **a. Twin Lakes Reservoir and Canal Company - Independence Pass Transmountain Diversion System.** The Independence Pass Transmountain Diversion System diverts water from the headwaters of Roaring Fork River and its tributaries, and carries such water through the Continental Divide for delivery to Lake Creek, a tributary of the Arkansas River. The System is decreed for 625 c.f.s. through the transmountain tunnel by decree dated August 25, 1936, with an appropriation date of August 23, 1930, by the District

Court, Garfield County, Civil Action No. 3082. The original decree for the system was modified by a decree in Case No. W-1901 (District Court, Water Division No. 5), dated May 12, 1976, which decree contains additional limits more fully set forth therein. The land upon which most of the above diversion system is located is owned by the United States of America and is administered by the Department of Agriculture, National Forest Service Rocky Mountain Regional Office, 740 Simms, P.O. Box 25127, Lakewood, CO 80225. Its phone number is 303 275-5350. **b. Twin Lakes Canal and Reservoir Company - Twin Lakes Reservoir and**

Twin Lakes Reservoir Enlargement. Native water stored in Twin Lakes Reservoir pursuant to the decrees for the Twin Lakes Reservoir and Canal Company adjudicated in Civil Action No. 2346, District Court, Chaffee County, on July 14, 1913, with an appropriation date of December 15, 1896, for 20,645.3 acre-feet and March 29, 1897, for 33,806.7 acre-feet, as changed by decree in Case No. W-3965, Water Division No. 2, entered April 19, 1974. The land upon which Twin Lakes Reservoir is located is owned by United States of America, and is administered by the Department of Agriculture, National Forest Service Rocky Mountain Regional Office, address listed above, and/or Twin Lakes Canal and Reservoir Company, 331 Main Street, Ordway, CO 81063. Applicant has also leased 50 acre feet per year of fully consumable water from Pueblo Board of Water Works. The lease is for ten years and commenced on April 10, 2001. A copy is attached to the Application in support of this application. All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. This water may be released from Turquoise Reservoir, Twin Lakes Reservoir, Clear Creek Reservoir or Pueblo Reservoir, at the option of the lessor. **3. Complete statement of plan for augmentation:**

Applicant operates a quarry near Parkdale, Colorado. No ground water is exposed by operation of this quarry at the present time; however, it is anticipated that ground water will eventually be intercepted as the quarry is deepened. At such time, Applicant shall seek to amend this plan for augmentation or shall seek approval of a new plan for augmentation to address replacement of evaporation from exposed ground water. Water is currently used for product washing and dust control. Consumption is determined as follows: **A. Product washing.** All washed product is weighed. Four percent by weight of washed product is assumed to be entrained in the washed materials and consumed. Wash water will be recirculated to the extent possible; “blow-down” water will be discharged to an infiltration basin. **B. Evaporation.** Water will also be consumed by evaporation from the infiltration basin; significant amounts of water will seep into the ground from the infiltration basin and return to the nearby Arkansas River. As detailed on Table 1 attached to the Application, net monthly evaporation at the site is calculated to be the following:

| | | | | | |
|----------|---------|--------|---------|-----------|---------|
| January | 0.09 ft | May | 0.36 ft | September | 0.32 ft |
| February | 0.11 ft | June | 0.48 ft | October | 0.22 ft |
| March | 0.16 ft | July | 0.48 ft | November | 0.11 ft |
| April | 0.26 ft | August | 0.40 ft | December | 0.09 ft |

Monthly evaporation will be determined at the end of each month by determining the surface area of the exposed water, if any, and multiplying that area by the above amounts of evaporation. Glover analysis indicates that 95 percent of

seepage water returns to the Arkansas River within two months, the remaining 5% returns later. Because Applicant has been washing sand and gravel for many months, it will be assumed that a steady state has been reached in regard to return flows to the Arkansas River, and Applicant does not propose to account further for such lagged return flows. Should it be necessary to do so, Applicant shall account for the lagged return flows. C. Water for all other uses, primarily for dust control in aggregate processing equipment and on project roads, will be separately metered. All such water shall be assumed to be consumptively used. At the end of each month, Applicant shall calculate consumption attributable to water entrained in washed product, infiltration basin evaporation and dust control, and shall report diversions and consumption to the Division of Water Resources on an accounting form substantially as attached to the Application as Exhibit A. The accounting form contains a column which indicates the remaining available augmentation water. Replacements shall first be made using the water leased from Pueblo Board of Water Works, and Applicant's water attributable to its shares of stock in Twin Lakes Reservoir and Canal Company shall be used for replacement purposes only after Pueblo Board of Water Works has satisfied its obligations for delivery under the lease. Replacement water shall be assessed a transit loss as determined by the Division Engineer, which loss is 6.5% for water released from Twin Lakes Reservoir.
(Application and attachments, 16 pages)

CASE NO. 02CW132 - KIEWIT WESTERN CO., c/o Paul White, 1000 Kiewit Plaza, Omaha, NE 68131 (M. E. MacDougall, MacDougall, Woldridge & Worley, P.C., Attorneys for Applicants, 530 Communication Circle, Suite 204, Colorado Springs, CO 80905-1743)

Application for Approval of Plan for Augmentation, Including Exchanges, El Paso County

Direct all pleadings to M. E. MacDougall, MacDougall, Woldridge & Worley, P.C., 530 Communication Circle, Suite 204, Colorado Springs, CO 80905-1743; telephone: (719) 520-9288. **2. Background:** Kiewit operates a gravel mine known as "Fountain Colony Pit", located in portions of the South Half of Section 7, the Southwest Quarter of Section 17, and Section 18, all in Township 16 South, Range 65 West, 6th P.M., within the City of Fountain, County of El Paso, State of Colorado, including the planned uses for a concrete batch plant and an asphalt hot mix plant. Kiewit has a "Raw Water Agreement" between the City of Fountain and Kiewit Western Co., dated September 1, 2001, whereby the City of Fountain ("Fountain") agrees to provide non-potable water for uses at Kiewit's gravel mine and associated plants ("Raw Water Agreement"). The water rights to be used for augmentation include (1) reusable return flows from Fryingpan-Arkansas Project Water, (2) irrigation and storage rights attributable to shares of the Fountain Mutual Irrigation Company (the "Changed Fountain Mutual Shares"), and (3) other fully consumable water owned by the City of Fountain which may lawfully be used for augmentation. Augmentation credit is supplied to Fountain Creek from return flows attributable to Project Water and by delivery of the Changed Fountain Mutual Shares to Fountain Creek at the Cruse Gulch

augmentation station, or other lawfully decreed facility. The water rights of Fountain have been, or are in the process of being, changed in Cases W-4396, W-4559, 85 CW 110, 91 CW 121, 01 CW 108 and 01 CW 146. The water rights decreed to Fountain Mutual Irrigation Company ("FMIC") are described as follows:

Fountain Mutual Irrigation Company Direct Flow Rights

| Fountain Creek Priority | Priority Date | Decree Date | Total Decree (cfs) |
|-------------------------|---------------|-------------|--------------------|
| 4 | 9/21/1861 | 3/6/1882 | 9.84 (5.38)* |
| 7 | 4/1/1862 | 3/6/1882 | 1.125 |
| 11 | 2/1/1863 | 3/6/1882 | 16.69 |
| 17 | 12/31/1863 | 3/6/1882 | 4.25 (2.125)** |
| 21 | 12/31/1864 | 3/6/1882 | 4.65 |
| 28 | 12/31/1866 | 3/6/1882 | 8.48 |
| 29 | 12/31/1867 | 3/6/1882 | 6.45 |
| 41 | 9/21/1874 | 3/6/1882 | 17.05 |
| 168 | 1/31/1903 | 6/2/1919 | 343.2 |

*Company's interest in Priority No. 4

**Janitell's right (ditch has 1/2 interest so long as Janitell carries #17 in ditch.)

Storage Rights

| Reservoir | Priority Date | Decree Date | Total Decree (a.f.) |
|--|---------------|-------------|---------------------|
| Fountain Valley No. 2 (a/k/a Big Johnson) | 3/18/1903 | 6/2/1919 | 10,000 |

PLAN FOR AUGMENTATION

3. Names of structures to be augmented: Kiewit Pump, Kiewit Ponds, and Kiewit Pipeline. The Kiewit Pump is located near the west bank of Fountain Creek, in the Northeast Quarter of the Northwest Quarter of Section 20, Township 16 South, Range 66 West, of the 6th P.M., in El Paso County, Colorado, very near the diversion works of the Owen and Hall Ditch. Are there other water rights diverted from this structure(s)?: No. The legal description of this point of diversion is as follows: POINT OF DIVERSION: From the NW corner of Section 20, Township 16 South, Range 65 West, of the 6th P.M., El Paso County, Colorado the Kiewit Pump bears South 72° 44'47" East, 2,624.25 feet. (Basis of bearing: the North line of Section 20, Township 16 South, Range 65 West, 6th P.M. bears South 88° 57'13" East based on found monuments.) The present capacity of the Kiewit Pump is 450 gallons per minute. Kiewit has the contractual right to increase this to 900 gallons per minute and asks the Court to allow up to 900 gallons per minute for this plan. The Kiewit Ponds are located in the Northeast Quarter of the Southeast Quarter of Section 18, Township 16 South, Range 65 West, 6th P.M., in the City of Fountain, County of El Paso, and are three small ponds surrounding a point more particularly described as follows: STORAGE PONDS: From the NW corner of Section 20, Township 16 South, Range 65 West, of the 6th P.M., in the City of Fountain, El Paso County, Colorado the center of the Kiewit Ponds bears North 38° 09'40" West, 1,984.26 feet. (Basis of bearing: the North line of Section 20, Township 16 South, Range

65 West, 6th P.M. bears South 88° 57'13" East based on found monuments.) The capacity of the Kiewit Ponds are: Pond No. 1, 6.5 acre feet; Pond No. 2, 2.72 acre feet; and Pond No. 3, 3.01 acre feet. The ponds are interconnected and the combined capacity of all three ponds is 12.23 acre feet. The Kiewit Pipeline is a 8 inch PVC pipe which follows a route described as follows: NON-POTABLE WATER LINE: A thirty foot (30') wide permanent easement for the construction and maintenance of a non-potable water line lying within Section 20, Township 16 South, Range 65 West of the 6th P.M., in the City of Fountain, El Paso County, Colorado and in El Paso County, Colorado being fifteen feet (15') on each side of the following described centerline: Basis of bearing: The Northerly line of said Section 20 is assumed to bear North 88° 57'13" East as monumented. Commencing at the Northwest corner of said Section 20; thence North 88° 57'13" East, along the Northerly line thereof, 145.20 feet to the point of beginning of this centerline description; thence South 38° 14'08" East, 147.51 feet; thence South 51° 45'40" East, 234.36 feet; thence South 39° 11'53" East, 228.26 feet; thence South 06° 27'26" East, 106.04; thence South 28° 27'21" East, 214.77 feet; thence South 46° 05'30" East, 246.41 feet; thence South 38° 14'08" East, 849.46 feet; thence South 85° 11'31" East, 38.76 feet to point "A"; thence continue South 85° 11'31" East, 65.52 feet; thence North 86° 52'59" East, 50.36 feet to the approximate intersection with the Westerly right-of-way line of existing Interstate Highway 25; thence continue North 86° 52'59" East, 346.78 feet to the approximate intersection with the Easterly right-of-way line of existing Interstate Highway 25; thence continue North 86° 52'59" East, 382.44 feet; thence North 65° 38'55" East, 38.60 feet to the approximate intersection with the Westerly right-of-way line of the Burlington Northern and Santa Fe Railway; thence continue North 65° 38'55" East, 100.00 feet to the approximate intersection with the Easterly right-of-way line of the Burlington Northern and Santa Fe Railway; thence continue North 65° 38'55" East, 86.69 feet; thence North 83° 43'21" East, 81.63 feet to point "B"; thence continue North 83° 43'21" East, 19.68 feet; thence North 28° 22'17" East, 106.47 feet; thence North 03° 33'27" West, 128.13 feet; thence North 19° 13'34" West, 190.10 feet; thence North 22° 15'35" West, 182.05 feet; thence North 20° 51'49" East, 69.46 feet to the end of this centerline description. **Together With:** A thirty foot (30') wide permanent easement lying fifteen feet (15') on each side of the following described centerline: Beginning at point "A" as described above; thence South 04° 48'29" West, 38.66 feet to the end of this centerline description. **And Together With:** A thirty foot (30') wide permanent easement lying fifteen feet (15') on each side of the following described centerline: Beginning at point "B" as described above; thence South 03° 08'19" East, 136.54 feet to the end of this centerline description. A map illustrating the location of the Kiewit Pump, Pipeline and Ponds, is attached to the Application filed with the Clerk of the District Court, Water Division 2, Pueblo, Colorado. **4. Water Rights to be Used for Augmentation.** The water rights to be used for augmentation shall be Project Water, Changed Fountain Mutual Shares, and any fully consumable water owned by the City of Fountain which may be used for augmentation. **A. Project Water.** Fountain has the contractual right to annual delivery of up to 2,000 acre-feet of water developed from the

Fryingpan-Arkansas Project ("Project Water"), delivered from Pueblo Reservoir through the Fountain Valley Conduit pursuant to an agreement dated July 10, 1979, and related contracts. Fountain is also participating in projects to enlarge and reoperate Pueblo Reservoir, and intends to store up to 13,000 acre-feet of combined Project and non-Project water in Pueblo Reservoir following implementation of the reoperations and enlargement projects. Project water is controlled by the Southeastern Colorado Water Conservancy District ("Southeastern") and is made available to Fountain under the contract dated July 10, 1979, and related contractual relationships concerning the Fryingpan-Arkansas Project, the Fountain Valley Conduit, the Fountain Valley Authority, the Memorandum of Agreement of Southeastern Colorado Water Activity Enterprise and Fountain Valley Authority (Reoperation Storage) dated July 3, 2001 and the Memorandum of Agreement of Southeastern Colorado Water Activity Enterprise and the City of Fountain as Participant dated October 23, 2001. In addition, Fountain is a member of the Fountain Valley Regional Water Infrastructure Authority, which is planning and designing a new delivery system, the Southern Delivery Pipeline system, to deliver water from the Arkansas River and/or Pueblo Reservoir to Fountain and other members of the Fountain Valley Regional Water Infrastructure Authority. Fountain also has the right to acquire from Southeastern, through the Fountain Valley Authority, all rights to reuse and successively use the Project Water after its initial use. Use of the Project Water for augmentation and exchange as herein applied for will be pursuant to and subject to the July 10, 1979 Agreement and related contracts referred to above, as well as the decrees for the Fryingpan-Arkansas Project, and all lawful rules, regulations, policies, and contract obligations of Southeastern. The Fryingpan-Arkansas Project is decreed as follows: West Slope Decrees: The Fryingpan-Arkansas Project diverts water from the headwaters of Hunter Creek and the Fryingpan River and its tributaries in Pitkin County, Colorado. The principal water rights were adjudicated by the decrees in C.A. 4613 (District Court, Garfield County, Colorado) dated June 20, 1958 and August 3, 1959, and were modified by the decree in Case No. W-829-76 (District Court, Water Division 5, Colorado) dated November 27, 1979, and were supplemented by the decree in Case No. 83-CW-352 (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 Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, and applied to beneficial use within the boundaries of Southeastern. Because the water is imported from another river basin, it is fully consumable in Water Division No. 2. East Slope Decrees: The Fryingpan-Arkansas Project also diverts and store surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties. Such water rights are decreed for use, exchange, reuse and successive use to extinction for beneficial uses within Southeastern's boundaries. The principal rights were adjudicated by the following decrees: Civil Action No. 5141 (District Court, Chaffee County, Colorado) dated July 9, 1969, and Civil Action No. B-42135 (District Court,

Pueblo County), dated June 25, 1962. The water rights were modified and supplemented by the judgment and decree in Case No. 80-CW-6 (District Court, Water Division No. 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, with an appropriation date of February 10, 1939. Any decree which may be entered on this Application will not modify Southeastern's decrees for the Project Water rights. Project Water may be used, and has historically been used, for all beneficial uses within Southeastern's boundaries. Kiewit's "Fountain Colony Pit" property is located within Southeastern's boundaries. At present the reserves identified at the "Fountain Colony Pit" are estimated to last 20 years, more or less. Neither this Application nor any decree entered in this case gives Kiewit any rights to use Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or received allocation of Project Water or return flows therefrom; however, this application does not limit any existing right Kiewit may otherwise have. Fountain may use and exchange Project Water to Kiewit only if, when, and to the extent such water is legally available to it. **B. Fountain Mutual Shares.** The Changed Fountain Mutual Shares were or will be decreed for municipal uses and augmentation in plans filed by and owned by Fountain. The Augmentation Plans provide for delivery of water from the Fountain Mutual Shares, in the quantities set forth in the Augmentation Plans, and subject to the operational constraints of FMIC, to the Cruse Gulch augmentation station for return to the Fountain Creek system and alluvium to augment well depletions from wells owned by Fountain on Jimmy Camp Creek and Fountain Creek, as described in the Augmentation Plans. The amount of consumptive use water from the Fountain Mutual Shares available for augmentation purposes each month is a percentage of the water from the Fountain Mutual Shares delivered to Fountain Mutual's Cruse Gulch augmentation station, computed as 0.7 acre-feet per share. **C. Future Possible Changes.** The "Raw Water Agreement" between Kiewit and the City of Fountain dated September 1, 2002, referred to in paragraph 2 above, is limited in that it is subject to cancellation on or after December 31, 2011. In the event that said "Raw Water Agreement" is canceled or otherwise concluded before December 31, 2021 then Kiewit intends to acquire other water rights, not presently identified, to be used for augmentation, and this Plan for Augmentation will then be amended to replace the source of augmentation water. **5. Statement of Plan for Augmentation.** Kiewit intends to provide for augmentation of the Kiewit Pump, Kiewit Pipeline, and Kiewit Ponds using the non-potable augmentation water supplied by Fountain pursuant to the Raw Water Agreement. **A. Water Demands.** Fountain delivers water to its customers through a central water distribution system. All wastewater effluent and return flows except for returns associated with irrigation are treated in Fountain's central wastewater treatment facility. All water delivered by Fountain to Kiewit will be raw water, non-potable, which is either wastewater effluent or return flows, or both. The amount of water to be delivered by Fountain to Kiewit will be at a rate up to, but not exceeding, 2.0 cubic feet per second (898 gallons per minute) and not to exceed 300 acre feet in any 12 month period. **B. Depletion Replacement.** The Kiewit Pump Station will be operated on an out-

of-priority basis by replacing depletions to Fountain Creek at all times through discharge of water to Fountain Creek from Fountain's Fountain Mutual Shares. In addition, replacement of Kiewit Pump Station depletions will be accomplished by use of Project Water return flows. In addition, Project Water return flows may be exchanged to the Kiewit Pump Station. Pursuant to this plan for augmentation, Kiewit seeks to replace out-of-priority depletions from the Kiewit Pump Station through use of available Project Water return flows and/or through discharge of available water to Fountain Creek from Fountain's Fountain Mutual Shares (to the extent the foregoing augmentation supplies are not otherwise utilized for augmentation of other wells or for exchange).

C. Exchange to Pump Station. Project water return flow credits will be exchanged to the Kiewit Pump Station as an alternative to utilizing the Project Water return flow credits for direct depletion replacement. The specific attributes of the exchange are as follows:

(1) Affected Stream Reach: The extent of the natural stream system which is affected by Kiewit's appropriative right of exchange is Fountain Creek from a point located in the Southwest Quarter of Section 24, Township 15 South, Range 66 West, 6th P.M., and downstream therefrom to and including the point of diversion of the Kiewit Pump in the Northeast Quarter of the Northwest Quarter of Section 20, Township 16 South, Range 65 West, 6th P.M.

(2) Maximum Rate of Exchange: The maximum rate of Kiewit's exchange shall be 2 c.f.s., based upon a maximum potential delivery of not to exceed 300 acre feet in any 12 month period of exchangeable effluent to the Fountain Creek. The priority date of the exchange is September 30, 2002 based upon the date of filing this application.

6. Names and addresses of owners on which structures are located: Kiewit Pump: City of Colorado Springs on behalf of its Utilities, Nixon Power Plant, 14020 Ray Nixon Road, Fountain, Colorado 80817. Kiewit Pipeline: City of Colorado Springs on behalf of its Utilities, Nixon Power Plant, 14020 Ray Nixon Road, Fountain, Colorado 80817. Kiewit Ponds: Kiewit Construction Company, c/o Paul White, 1000 Kiewit Plaza, Omaha, NE 68131, (402) 271-2809. There is a "Revocable Easement Agreement" dated November 19, 2001, between the City of Colorado Springs and Kiewit Western Co., providing for the construction, use, operation, maintenance, repair, patrolling and removal of the Kiewit Pump and Kiewit Pipeline.

(Application and attachments, 11 pages)

CASE NO. 02CW133 (Water Division 2) and 02CW208 (Water Division 1) – PATRICK AND BARBIE HENRY, 110 Saddlehorn Trail, Monument, CO 80132; MICHAEL AND DAWN HITCHCOCK, 150 Saddlehorn Trail, Monument, CO 80132; JOHN AND SUZANNE CURRAN, 19010 Deerfield Road, Monument, CO 80132; KEVIN AND TERRY FREYMEYER, 165 Pinewood Loop, Monument, CO 80132; RUSS AND MARCIA WENTWORTH, 18220 Martingale Road, Monument, CO 80132; HARLEY AND JEANNE JERGENSEN, 155 Pontiac Loop, Monument, CO 80132; ROND STRATTON AND DANIEL KANE, 18585 Arrowhead Drive, Monument, CO 80132; JEFFERY AND AVERY WILSON, 425 Stirrup Trail, Monument, CO 80132; CURT AND NORMA BROUGH, 18565 Arrowhead Drive, Monument, CO 80132; and WILLIAM AND KAYLAS SCHNEWEIS, 40 Pinewood Loop, Monument, CO 80132 (Carmen S. Hall, Petrock & Fendel, Attorneys for Applicants, 700 – 17th Street, Suite 1800, Denver, CO 80202)

Application for Underground Water Rights from Nontributary and Not Nontributary Sources and for Approval of Plan for Augmentation
El Paso County

2. Well Permits: Well permits will be applied for when Applicants are prepared to drill the wells. **3. Legal Description of Wells and Subject Property:** The wells which will withdraw groundwater from the subject not nontributary and nontributary aquifers will be located on 9 residential lots which are approximately 2.5 acres each for a total acreage of 25 acres of land, being Tracts 8, 9, and 26, Filing 3; Tracts 15 and 42, Filing 2; and Lots 24, 32, 52, 53, and 54, Arrowwood Subdivision III, which lots are generally located in part of the S ½ of Section 7, and the N ½ of Section 18, T11S, R66W of the 6th P.M., as shown on Attachment A to the application (Subject Property). All attachments mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Applicants are the owners of the water underlying each of their respective lots. **4. Source of Water Rights:** The source of the groundwater to be withdrawn from the Dawson and Denver aquifers underlying the Subject Property is not nontributary as described in 37-90-103(10.7) and 37-90-137(9)(c), C.R.S. The ground water to be withdrawn from the Arapahoe and Laramie-Fox Hills aquifer underlying the Subject Property is nontributary groundwater as described in 37-90-103(10.5), C.R.S. **5. Estimated Amounts and Rates of Withdrawal:** The wells will withdraw the subject amounts of groundwater at rates of flow necessary to efficiently withdraw the entire decreed amounts. Applicants will withdraw the subject groundwater through wells to be located at any location on the Subject Property, including existing wells in the Dawson aquifer which are located on each of the lots and which will be re-permitted to operate under the augmentation plan requested below. Applicants waive the 600 foot spacing rule as described in Section 37-90-137(2), C.R.S. for wells located on the Subject Property. The estimated average annual amounts of withdrawal available from the subject aquifers as indicated below, are based upon the Denver Basin Rules, 2 C.C.R. 402-6. Applicants estimate the following

annual amounts are representative of the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the Subject Property:

| <u>Aquifer</u> | <u>Saturated Thickness</u> | <u>Estimated Annual Amount</u> |
|-------------------|----------------------------|--------------------------------|
| Dawson | 400 feet | 18 acre-feet |
| Denver | 481 feet | 18 acre-feet |
| Arapahoe | 283 feet | 11 acre-feet |
| Laramie-Fox Hills | 196 feet | 7 acre-feet |

The average annual amounts available for withdrawal from the subject aquifers will depend on the hydrogeology and the legal entitlement of the Applicants and represents a claim to all nontributary and not nontributary groundwater underlying the Subject Property. **6. Well Fields:** Applicants request that this Court determine that Applicants have the right to withdraw all of the legally available groundwater lying below the Subject Property, through the wells requested herein, which may be located anywhere on the Subject Property, and any additional wells which may be completed in the future as Applicants' well fields. As additional wells are constructed, applications will be filed in accordance with 37-90-137(10), C.R.S. **7. Proposed Use:** Applicants will use all water withdrawn from the subject aquifers in a water system to be used, reused, successively used, and after use leased, sold, or otherwise disposed of for the following beneficial purposes: municipal, domestic, industrial, commercial, irrigation, livestock watering, recreational, fish and wildlife, fire protection, and any other beneficial purpose. Said water will be produced for immediate application to said uses, both on and off the property, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for augmentation purposes. **8. Jurisdiction:** The Water Court has jurisdiction over the subject matter of this application pursuant to 37-92-302(2), and 37-90-137(6), C.R.S. **9. Description of plan for augmentation:** **A. Water and structures to be augmented:** Approximately 10 acre-feet per year of Dawson aquifer water requested herein. **B. Water rights to be used for augmentation:** Return flows from the use of not nontributary and nontributary groundwater and direct discharge of nontributary ground water. **C. Statement of plan for augmentation:** The subject Dawson aquifer groundwater may be used for inhouse, irrigation, and stockwatering purposes through the existing wells located on each lot at a rate of flow of 15 gpm to provide water for each lot. Applicants estimate that each of the four lots will require approximately 1 acre-foot annually for inhouse use (0.3 acre-feet), irrigation (0.65 acre-feet limited to 11,500 square-feet of home lawn and garden), and stockwatering of up to 4 large domestic animals (0.05 acre-feet). Applicants reserve the right to revise these values without the need of revising or republishing this application. The lots will utilize a non-evaporative septic system. 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. During pumping Applicants will replace actual depletions to the affected stream system pursuant to 37-90-

137(9)(c), C.R.S. Because depletions may occur in both Water Divisions 1 and 2, this application is being filed in both divisions. Return flows from the development through nonevaporative septic systems and irrigation use accrue to the Monument Creek stream system and those return flows are sufficient to replace actual depletions to that system while those wells are being pumped. Before any other type of sewage treatment is proposed in the future, including incorporation of the lots into a central sewage collection and treatment system, Applicants, or successors and assigns, will amend this decree prior to such change and thereby provide notice of the proposed change to other water users by publication procedures required by then existing law. Depletions which may occur to the South Platte River stream system may not be replaced by return flows from use of the water; if that is the case, said depletions will be replaced by direct discharges from the nontributary groundwater decreed herein, or from direct discharges or return flows from other legally available sources. Applicants may also request that the total amount of depletion to both stream systems be returned to one system and for a finding that those replacements are sufficient. After pumping ceases, Applicants will demonstrate that any depletions which may occur to the stream systems are non-injurious and need not be replaced. However, if the Court finds that such depletions need to be replaced, Applicants will reserve an adequate amount of nontributary groundwater underlying the Subject Property for replacement of post-pumping depletions. **10. Remarks:** A. Applicants claim the right to withdraw more than the average annual amounts estimated in paragraph 5B above pursuant to Rule 8A of the Statewide Rules, 2 C.C.R. 402-7. B. Although Applicants have estimated the amounts of water available for withdrawal from the subject aquifers based on estimates of relative values for specific yield and saturated thickness, Applicants request the right to revise the estimates upward or downward, based on better or revised data, without the necessity of amending this application or republishing the same. C. Applicants will withdraw part of the not nontributary Dawson aquifer water requested herein under the plan of augmentation requested herein pursuant to 37-90-137(9)(c), C.R.S. WHEREFORE, Applicants pray that this Court enter a decree: **11.** Granting the application herein and awarding the water rights claimed herein as final water rights, except as to those issues for which jurisdiction of the Court will be specifically retained; **12.** Specifically determining that: A. Applicants have complied with 37-90-137(4), C.R.S., and water is legally available for withdrawal by the wells proposed herein, but that jurisdiction will be retained with respect to the average annual amounts of withdrawal specified herein to provide for the adjustment of such amounts to conform to actual local aquifer characteristics from adequate information obtained from wells or test holes drilled on or near Applicants' property, pursuant to 37-92-305(11), C.R.S. and Denver Basin Rule 9.A; B. The groundwater in the Dawson and Denver aquifers is not nontributary and groundwater in the Arapahoe and Laramie-Fox Hills aquifers is nontributary groundwater; C. Vested or conditionally decreed water rights of others will not be materially injured by the withdrawals of groundwater and the plan for augmentation proposed herein; D. The post-pumping depletions caused by pumping of the not nontributary Dawson

aquifer wells is noninjurious. FURTHER, Applicants pray that this Court grant such other relief as seems proper in the premises.
(Application and attachments, 7 pages)

CASE NO. 02CW134 – ANTE PEROS and VIRGINIA S. PEROS, 137 W. Dream Home Drive, Leadville, CO 80461 (Billie G. Burchfield, Attorney for Applicants, P. O. Box 475, Parachute, CO 81635)

Application for Groundwater Rights and Approval of Plan for Augmentation Including Exchange

Lake County, Colorado

2. Applicant requests that the following water rights be awarded.

CLAIM NOS. 1 AND 2 – UNDERGROUND WATER RIGHTS

3. Name of structures: Peros Well A and Peros Well B. **4. Legal description of point of diversion:** Peros Well A will be located in a tract of land being in the Southeaterly quarter of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, Township 8 South, Range 80 West of the 6th P.M., Lake County, Colorado. Peros Well B will be located in a tract of land being in the Southwesterly quarter of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, Township 8 South, Range 80 West of the 6th P.M., Lake County, Colorado. The exact location of said wells within the area described above will be determined later and well permits will be applied for and must be approved before the wells are constructed. **5. Source:** The source of the water for both wells is alluvium of west Tennessee Creek. The wells are tributary to Tennessee Creek tributary to the Arkansas River. **6. Date of initiation of appropriation for both wells:** August 12, 2002. **How appropriation was initiated for both wells:** By selection of well location area and formation of intent to appropriate ground water. **Date water applied to beneficial use:** N/A. **7. Amount claimed:** 0.033 c.f.s. (15 g.p.m.) and 0.071 AF annually for each well, conditional. **8. Use:** Each well will be used for domestic water supply in one single family dwelling and irrigation of 0.015 acres (approximately 653 sq. ft.) of shrubbery and trees. **9. Name and address of owner of land on which point of diversion and place of use are located:** Applicant.

CLAIM NO. 3 – PLAN FOR AUGMENTATION

10. Structures to be Augmented: Peros Well A and Peros Well B. Said wells will be located as follows: Peros Well A will be located in a tract of land being in the Southeasterly quarter of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, Township 8 South, Range 80 West of the 6th P.M., Lake County, Colorado; and Peros Well B will be located in a tract of land being in the Southwesterly quarter of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, Township 8 South, Range 80 West of the 6th P.M., Lake County, Colorado. Each well will be located on a lot of approximately 4 acres. The exact location of said wells within the area described above will be determined later and well permits will be applied for and must be approved before the wells are constructed. Each of the wells will be located within 1.5 miles of the Arkansas River. The water from the wells will be tributary to the Arkansas River. The withdrawal of ground water from each individual well will not exceed 0.033 c.f.s. at any given time. **11. Uses to be Augmented:** Applicants request the wells be augmented for the following uses: The wells are augmented for depletions

created by domestic in-house use in 2 single family dwellings and irrigation of 0.015 acres per lot for a total of 0.03 acres. Domestic consumptive use is based on each single family dwelling having an average occupancy of 3.5 persons using 100 gallons of water per day. A ten percent (10%) consumptive use factor is used due to the utilization of septic tanks and leach fields used on each of two 4-acre lots. Annual indoor depletions from the 2 single family dwellings will be 0.078 acre feet per year. Depletions are augmented by 1 share of capital stock in the Twin Lakes Reservoir and Canal Co. Each share has been determined to provide a firm yield of 0.75 acre-feet per year. The amount of potential consumptive use for pasture grass in the Leadville area was estimated using the lysimeter installations ("Evaluation of Consumptive Use on Hight Mountain Meadows near Leadville, Colorado", G. Skogerboe and W. Walker, 1975). Using their estimated value on 1.5 feet per year is conservation, since pasture grass would require more irrigation water than shrubbery or trees associated with landscaping. An application loss of 30 percent was used to determine the amount of ground water that would be withdrawn to meet the crop needs. Because the lots are within a forested area, it is conservation to assume that water the 30 percent of applied water not used directly by the planted shrubs and trees would be consumed "incidentally" prior to reaching the river. Therefore, it is estimated that depletions due to outdoor water use would be 0.064 acre-feet per year for the two lots combined. (1.5 feet / 0.7 loss factor * 0.015 acres/lot * 2 lots). The maximum annual combined depletions from in-house use in 2 single family dwellings (0.078 AF) and outdoor use for landscaping of 0.015 acres for two lots (0.064), is expected to be 0.142 acre-feet per year (0.078 + 0.064). **12. Source of Augmentation Water:** The applicants have (1) share of capital stock of the Twin Lakes Reservoir and Canal Company to provide an augmentation source. The Division of Water Resources has determined that one share will provide an annual firm yield of 0.75 AF per year. The annual total needed in this plan is 0.142 AF. Applicants' one (1) share in Twin Lakes and Reservoir and Canal Company will provide sufficient augmentation for the 0.142 AF per year. That amount of water attributable to the Applicants' (1) share of Twin Lakes Reservoir and Canal Company Stock on an annual basis will be made available for the purposes of this augmentation plan.

CLAIM NO. 4 – APPROPRIATIVE RIGHT OF EXCHANGE

13. The applicants request an appropriative right of exchange for (1) share in the Twin Lakes Reservoir and Canal Company. The amount of the Exchange is 0.001 cfs (0.75 AF/year) for in-house and irrigation of shrubbery and trees. The reach of the exchange is from a point 1100 feet west of the SW corner of Section 21, Township 9 South, Range 80 West of the 6th P.M., to the discharge point of Twin Lakes water into the Arkansas River. **14.** In accordance with the Bylaws of the Twin Lakes Reservoir and Canal Company, the following conditions shall govern the use of Twin Lakes shares in this plan: A. No later than 30 days after entry of a decree, the stock certificate for the share of stock of the Twin Lakes Reservoir and Canal Company involved in this augmentation plan shall be delivered to the Secretary of the Company to be legended as required by the Bylaws of the Twin Lakes Reservoir and Canal Company. B. No share of stock

of the Twin Lakes Reservoir and Canal Company that is included in this augmentation plan shall be sold or transferred, except to a designated successor to applicants herein that certifies to the Twin Lakes Reservoir and Canal Company that the stock, after transfer, shall continue to be held and used in accordance with the terms and conditions of this augmentation plan, without prior approval of the Court. C. The Twin Lakes Reservoir and Canal Company is not required to make any delivery of water upon the shares of Twin Lakes Reservoir and Canal Company stock included in this augmentation plan except in accordance with the provisions of its Articles of Incorporation and Bylaws, and such delivery shall be subject to all of the restrictions incorporated within those Articles and Bylaws. D. Jurisdiction shall be retained in this Court to approve any proposed sale or transfer of the share of the Twin Lakes Reservoir and Canal Company stock included in this augmentation plan to any party other than a designated successor of the Applicant herein that certifies that the stock shall continue to be held and used in accordance with the terms and conditions of this augmentation plan; such jurisdiction shall be invoked by motion of the Applicant with notice to all parties and to the Twin Lakes Reservoir and Canal Company. The Twin Lakes Reservoir and Canal Company will be notified that this one (1) share stock will be dedicated to this augmentation plan and the stock certificate will be legended by the Twin Lakes Reservoir and Canal Company with the name and court case number of this augmentation plan. 15. In order to assure that no injury to vested water rights or decreed conditional water rights will result from groundwater withdrawals to provide a reliable supply of water for said uses, and in order to assure that such groundwater withdrawals will not be curtailed in times of shortage, Applicants will comply with the following terms and conditions: A. At all times, at the direction of the Division Engineer for Water Division No. 2, or his representative, augment the flow of the Arkansas River to the extent of Applicants' depletions thereof by releasing from Twin Lakes Reservoir pursuant to their ownership of 1 share of Twin Lake stock. Waters stored in Twin Lakes Reservoir consist primarily of waters imported into the Arkansas River drainage from trans-mountain sources outside of Water Division No. 2, so that releases from Twin Lakes Reservoir will have the effect of actually augmenting the flow of the Arkansas River. B. Applicants will be responsible for enforcing the conditions of the plan for augmentation, including exchange, proposed herein. C. Applicants shall monitor and report at a least biannually such information to the Division Engineer and/or water commissioner as may be determined necessary to administer the plan on forms acceptable to the Division Engineer. WHEREFORE, the Applicants respectfully request that the above described groundwater rights and plan for augmentation, including exchange, be approved by the Court.

(Application, 6 pages)

CASE NO. 02CW135(W-665) – CITY OF COLORADO SPRINGS, Attn: Kevin Lusk, P.E., Sr. Project Engineer, Colorado Springs Utilities, Resource Supply Department, P. O. Box 1103, MC 1328, 215 Nichols Blvd., Colorado Springs, CO 80947-1328 (Copies of all pleadings should be served upon:

William Kelly Dude, Anderson, Dude & Lebel, P.C., Attorneys for Applicant, 111 South Tejon, Suite 400, P. O. Box 240, Colorado Springs, CO 80903)

Application of the City of Colorado Springs for Finding of Reasonable Diligence
El Paso County

2. Name of Ditch or Structure: Chancellor Wells 1 and 2. **3. Conditional Water Rights:** (a) Priority number: No number assigned. (b) Priority Date: Well No. 1, June 22, 1964; Well No. 2, August 11, 1964. (c) Decree. (Court Case No. and Date of Decree): District Court, Water Division No. 2, Case No. W-665(76), September 30, 1977, and Case No. 81CW134(W-665), February 3, 1982; 89CW46(W-665), January 11, 1990; and 96CW13(W-665), September 10, 1996. **4. Source of water:** Aquifer of the Fountain River in El Paso County, Colorado. **5. Use:** Municipal, industrial, irrigation, commercial and domestic. **6.** Since 1996, Colorado Springs has continued to pursue with reasonable diligence the development of these wells as part of its overall water system and in particular, for its use on Clear Springs Ranch, formerly known as Hanna Ranch, for non-potable water for irrigation at various locations and as a potential potable water supply. Since 1996, Colorado Springs has spent \$243,716,468 on improvements and construction of its integrated water system, including \$1,491,917 on ground water development. The work performed and actions taken by Colorado Springs during the diligence period demonstrate the City's intent to develop these conditional water rights, coupled with concrete actions amounting to diligent efforts to develop and place to beneficial use the conditional rights described herein within a reasonable period of time. WHEREFORE, Applicant respectfully requests the Court to enter a Finding and Decree of Reasonable Diligence for the Chancellor Wells 1 and 2 owned by the City of Colorado Springs and continue to keep the conditional decree in full force and effect.

(Application, 3 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 November 2002, (forms available at Clerk's office, must be submitted in quadruplicate, after serving

parties and attaching a certificate of mailing, filing fee \$45.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 4th day of October, 2002.

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

(Court seal)
Published: October _____, 2002