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## Application for Approval of Water Storage Rights, Surface Water Right, Plan of Augmentation, and Appropriative Rights of Exchange of Water Rights.

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## WATER COURT DIVISION 2

**APPLICATION FOR APPROVAL OF WATER STORAGE RIGHTS, SURFACE WATER RIGHT, PLAN OF AUGMENTATION, AND APPROPRIATIVE RIGHTS OF EXCHANGE OF WATER RIGHTS.** Case No. 96CW233 (Water Division 2, December 31, 1996) Applicant: City of Cripple Creek (Atty. James G. Felt).

### *1. Application*

The City of Cripple Creek ("Applicant") seeks water storage rights, surface water rights, rights of exchange, and an approval of a plan of augmentation with respect to a new reservoir and pipeline proposed on Oil Creek, tributary to Fourmile Creek, tributary to the Arkansas River. Obtaining these new rights will increase Applicant's available water supplies for all beneficial uses.

Applicant requests a conditional water storage right in the amount of 252 af, an amount that would equal the capacity of a reservoir they intend to construct. This reservoir will be known as "Oil Creek Reservoir," and will be located in the NE 1/4 SE 1/4, Section 28, Township 14 South, Range 69 West of the 6th P.M. The reservoir will have a maximum surface area of 15.5 acres. The dam will have a maximum height of 60 feet, and a crest length of 380 feet. The surface flows of Oil Creek will provide the course to fill the reservoir. Applicant appropriated the flow on June 26, 1996, by a field visit to the site.

Applicant will use the storage right for Applicant's consumptive use stream credits in pending Case No. 96CW190, Division 2, filed October 30, 1996, to be exchanged to Oil Creek Reservoir. In Case No. 96CW190 Applicant claims 99.1 average annual acre feet of consumptive use stream credit from West Fourmile Creek. Applicant will also use the storage right for water from Oil Creek when in priority, and/or water when augmented under an appropriated right of exchange. Applicant calculates evaporation as a reduction from the reservoir on the basis of 1.55 annual acre feet of net evaporation for each surface acre of the reservoir per year.

Applicant further seeks a conditional surface water right in the amount of 4.6 cfs for the Oil Creek Pipeline. The headgate is on the left (south) back of Oil Creek in the NE 1/4 NE 1/4 Section 28, Township 14 South, Range 69 West of the 6th P.M. , 2050 feet from the South line of Section 28, and 100 feet from the East line of Section 28. Applicant claims all beneficial uses including domestic, municipal, irrigation, commercial, industrial, recreational, fish and wildlife, exchange, and augmentation, with an appropriation date of June 26, 1996.

The augmentation plan for the Oil Creek Reservoir and Pipeline will augment out of priority depletions to Fourmile Creek for water di-

verted from Oil Creek to Oil Creek Reservoir and Pipeline. For purposes of augmentation, Applicant will use 99.1 average acre feet of consumptive use credits attributable to historic consumptive use under the Howard, George, and Spring Ditches to be decreed in pending Case No. 96CW190. The out of priority diversions will be replaced by one of two methods: (1) a credit of the consumptive use stream credits directly to West Fourmile Creek; or (2) a release to West Fourmile Creek Reservoir of the consumptive use stream credits placed into storage at the West Fourmile Creek Reservoir under Case No. 96CW190, or exchanged into storage at West Fourmile Creek Reservoir under this application.

Applicant seeks an appropriative right of exchange to Oil Creek Reservoir and/or Pipeline for the consumptive use stream credits to be decreed to West Fourmile Creek and West Fourmile exchange is from the confluence of West Fourmile Creek and Fourmile Creek in the NE1/4 NE1/4 of Section 12, Township 15 South, Range 71 West of the 6<sup>th</sup> P.M., up approximately 20 miles upstream on Fourmile Creek and Oil Creek to the site of the Oil Creek Reservoir and Pipeline on Oil creek. The appropriation date of the exchange is June 26, 1996.

Consumptive use credits exchanged into Oil Creek Reservoir and Pipeline consist of fully consumable water subject to use and reuse by Applicant to extinction. Applicant will use the exchanged consumptive use credits from Oil Creek Reservoir and Pipeline in Cripple Creek's municipal water supply. An estimated 85% of the consumptive use credits will be discharged into Cripple Creek, tributary to Fourmile Creek, tributary to the Arkansas River, as treated effluent return flows.

Applicant seeks an appropriative right of exchange for 85% of the consumptive use stream credits exchanged into Oil Creek Reservoir and Pipeline, used throughout the municipal system, less transportation losses from point of release into Cripple Creek to the confluence with Fourmile Creek. The point of exchange is from the confluence of Cripple Creek with Fourmile Creek in the NW1/4 SE1/4 of Section 9, Township 16 South, Range 70 West of the 6th P.M. up approximately 18 miles on Fourmile Creek in the SW1/4 SW1/4 Section 3, Township 15 South, Range 71 West of the 6th P.M., with a priority date of June 26, 1996. The maximum flow rate is 3.9 cfs.

## *2. Opposition*

Cripple Creek and Victor Gold Mining Company, the Arkansas Valley Ditch Association, on behalf of its various ditch and waterworks members, the State Engineer, the City of Colorado Springs, and Cannon Heights Irrigation and Reservoir Company have filed statements of opposition.

In addition, the Bureau of Land Management ("BLM") filed opposition on three grounds. It objects to the placement of a portion of the reservoir and pipeline on public lands. The BLM has not granted the necessary right of way permits for such placement. The BLM further objects to the proposed domestic use of water from the contem-

plated reservoir. The presence of livestock on the public lands surrounding the reservoir may contaminate the reservoir. The BLM will not guarantee that it will issue a range improvement permit to allow measure to prevent such contamination. Finally, the BLM objects to the appropriation date of June 26, 1996. It maintains that under the *City of Thornton v. Bijou Irrigation Company*, 926 P.2d 1, 34-36 (Colo. 1996), the field trip to the site did not create sufficient inquiry notice to satisfy the "first step" of a conditional appropriation. The BLM maintains that only the filing of the application with the Water Court satisfied the "first step" requirement. The filing date should thus be the date of appropriation.

The Colorado Water Conservation Board, which has appropriated a water right on Fourmile Creek (Case No. 95CW233) to preserve the natural environment, has objected. John T. Halton and Howard Stone, each of whom hold water rights downstream of the proposed Oil Creek Reservoir and upstream of the confluence with West Fourmile Creek, have also filed statements of opposition.

The Southeastern Water Conservancy District and the Applicant filed a stipulation, that Applicant will not store or divert water from Oil Creek at any time a valid senior to 1996 exists to satisfy any presently decreed water right on Fourmile Creek between the confluence with Oil Creek and the confluence with West Fourmile Creek. This stipulation was accepted by the Water Court.

The State Engineer's Office filed a consultation report dated April 30, 1997.

*Darrell Brown*