

<p>DISTRICT COURT, WATER DIVISION NO. 1 COLORADO</p> <p>Weld County Courthouse 901 9th Avenue P. O. Box 2038 Greeley, Colorado 80632 (970) 351-7300</p>		<p style="color: red;">EFILED Document - District Court DATE FILED: August 20, 2008 3:23 PM 2008cw175 CASE NUMBER: 2008CW175 CO Weld County District Court 19th JD Filing Date: Aug 20 2008 3:23PM MDT Filing ID: 21158398</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</p> <p>THE CITY OF EVANS IN LARIMER AND WELD COUNTIES</p>		<p>▲ COURT USE ONLY ▲</p>
<p>Dennis M. Montgomery, #6424 Jennifer H. Hunt, #29964 Hill &amp; Robbins, P.C. 1441 18th Street, Suite 100 Denver, CO 80202-1256 Phone: (303) 296-8100 Fax: (303) 296-2388 E-mail: dennismontgomery@hillandrobbins.com jhunt@hillandrobbins.com</p>		<p>Case Number: _____</p> <p>Ctrm/Div: _____</p>
<p><b>APPLICATION FOR CHANGE OF WATER RIGHTS AND APPROVAL OF PLAN FOR AUGMENTATION</b></p>		

**Name, address, and telephone number of the Applicant**

City of Evans (“Evans”)  
1100 37th Street  
Evans, CO 80620  
Telephone: 970-339-5344

**I. CHANGE OF WATER RIGHTS**

1.1. Decreed name of structures for which changes are sought from previous decree: The water rights for which changes are sought in this application are represented by Evans' ownership of 23 shares in the Godfrey Ditch Company. The Godfrey Ditch Company is

a mutual ditch company that owns the water rights decreed to Section No. 3 Ditch (commonly referred to as the Godfrey Ditch).

A. Decree Information: The Godfrey Ditch was originally decreed in Case No. CA6009 with an original priority dated of March 10, 1870 for 26.88 cfs and an enlargement in the amount of 30.83 cfs with a priority date of March 15, 1873. The combined decreed diversion capacity is 57.71 cfs. The following table summarizes the Godfrey Ditch priorities.

Water Right Name	TS	RNG	SEC	Q160	ADJ. DATE	APRO. DATE	CASE NO	USE TYPE	RATE (cfs)
Section No. 3 Ditch	4N	66W	3	SE	4/28/1883	3/10/1870	CA6009	IRR	26.88 cfs
Section No. 3 Ditch	4N	66W	3	SE	4/28/1883	3/15/1873	CA6009	IRR	30.83 cfs

B. Decreed point of diversion: Section 3, Township 4 North, Range 66 West of the 6th P.M., Weld County, Colorado.

C. Source: The South Platte River.

D. Use: Irrigation. A map showing the approximate location of the historical use of the shares is included as Exhibit A to this application, and a summary of diversion records is attached as Exhibit B to this application.

## 1.2. Proposed Changes

The shares included in this application were historically used to irrigate 193 acres of land under the Godfrey Ditch. Evans will not change the points of diversion at which water is diverted under the Godfrey Ditch rights; however, Evans seeks approval to change the place of use of the water rights represented by its 23 Godfrey Ditch Company shares so that it may utilize the consumptive use credit from the shares for storage, replacement, and augmentation uses. Evans proposes to secure the removal of 193 acres from irrigation. It is anticipated the subject 23 Godfrey Ditch Company shares will provide approximately 292 acre-feet of consumptive use credit on an annual basis. Pursuant to the augmentation plan described in section II below, Evans proposes to store this consumptive use credit in Nissen Reservoir, or alternate storage within the Central Colorado Water Conservancy District (CCWCD), to augment of depletions from pumping Well No. 1-1335 and a newly developed well owned by EnviroTech. In addition, the consumptive use credit may be used to satisfy return flow obligations associated with the change of shares in the Greeley and Loveland Irrigation Company, the Seven Lakes Reservoir Company and contract rights in the Loveland and Greeley Reservoir in Evans' Case Nos. 96CW958 and 03CW314, and for lease and/or exchange to third parties, including EnviroTech and CCWCD for use as replacement supplies.

1.3. Names and addresses of owners of land on which structures are located:

The Godfrey Ditch diversion structure is owned by the Godfrey Ditch Company, PO Box 607, 18269 WCR 394, La Salle, CO 80645. Nissen Reservoir is owned by Central Colorado Water Conservancy District, 3209 West 28th Street, Greeley, CO 80634. Well No. 1-1335 is located on lands owned by the City of Evans and the proposed EnviroTech well will be located on lands owned by EnviroTech 910 54<sup>th</sup> Ave, Suite 230, Greeley, CO 80634.

## **II. PLAN FOR AUGMENTATION**

- 2.1. Name of Structure to be augmented: Evans non-potable Well No. 1-1335 and proposed EnviroTech well.
- 2.2. Other water rights diverted from the structure?: No.
- 2.3. Previous decrees for water rights to be used for augmentation:

Godfrey Ditch: See paragraph 1.1 above.

Windy Gap Water Rights: Pursuant to allotment contracts with the Municipal Subdistrict of the Northern Colorado Water Conservancy District, the City of Evans is entitled to a portion of the yield from the Windy Gap transmountain water diversion project (“Windy Gap Water Rights”). The Windy Gap Water Rights, which are more particularly described in the decrees entered by the District Court, Water Division No. 5, on October 27, 1980, in Civil Action No. 1768 and in Case Nos. W-4001 and 80CW108, and/or on July 19, 1990, in Case No. 89CW298, are as follows:

A. Decree Information:

1. Windy Gap Pump, Pipeline, and Canal
  - a. Date of Original Decree: October 27, 1980
  - b. Case No: District Court, Water Division No. 5, Civil Action No. 1768
  - c. Appropriation Date: June 22, 1967
  - d. Amount: 300 cfs, conditional
2. Jasper Pump and Pipeline
  - a. Date of Original Decree: October 27, 1980
  - b. Case No: District Court, Water Division No. 5, Civil Action No. 1768

- c. Appropriation Date: June 22, 1967
  - d. Amount: 300 cfs, conditional
- 3. Windy Gap Reservoir
  - a. Date of Original Decree: October 27, 1980
  - b. Case No: District Court, Water Division No. 5, Civil Action No. 1768
  - c. Appropriation Date: June 22, 1967
  - d. Amount: 1,546.14 acre-feet, conditional
- 4. Jasper Reservoir
  - a. Date of Original Decree: October 27, 1980
  - b. Case No: District Court, Water Division No. 5, Civil Action No. 1768
  - c. Appropriation Date: June 22, 1967
  - d. Amount: 11,291.58 acre-feet, conditional
- 5. Windy Gap Pump, Pipeline, and Canal - First Enlargement
  - a. Date of Original Decree: October 27, 1980
  - b. Case No: District Court, Water Division No. 5, Case No. W-4001
  - c. Appropriation Date: July 9, 1976
  - d. Amount: 100 cfs, conditional
- 6. Windy Gap Pump, Pipeline, and Canal - Second Enlargement
  - a. Date of Original Decree: October 27, 1980
  - b. Case No: District Court, Water Division No. 5, Case No. 80CW108
  - c. Appropriation Date: April 30, 1980
  - d. Amount: 200 cfs, conditional

The conditional decrees for the Windy Gap Pump, Pipeline and Canal and the Windy Gap Pump, Pipeline and Canal - First and Second Enlargements were made absolute in District Court, Water Division 5 Case No. 89CW298, on July 19, 1990.

B. Decreed Locations or Points of Diversion:

1. Windy Gap Pump, Pipeline and Canal and Windy Gap Pump, Pipeline and Canal - First and Second Enlargements: A point on the north bank of the Colorado River whence the northwest corner of Section 25, Township 2 North, Range 77 West of the 6th P.M. bears north  $17^{\circ}30'$  west a distance of 2,380 feet.
2. Jasper Pump and Pipeline: A point on the North Bank of Willow Creek whence the southeast corner of Section 16, Township 2 North, Range 76 West of the 6th P.M. bears south  $62^{\circ}30'$  east a distance of 2,730 feet.
3. Windy Gap Reservoir: The Windy Gap reservoir is an onstream reservoir located in Sections 25 and 26, Township 2 North, Range 77 West of the 6th P.M.
4. Jasper Reservoir: Jasper Reservoir is an onstream reservoir located in portions of Sections 8, 16, 17, and 21, Township 2 North, Range 76 West of the 6th P.M.

C. Source:

1. Windy Gap Pump, Pipeline and Canal and Windy Gap Pump, Pipeline and Canal - First and Second Enlargements: The Colorado River.
2. Jasper Pump and Pipeline: Willow Creek, a tributary of the Colorado River, through Jasper Reservoir.
3. Windy Gap Reservoir: The Colorado River.
4. Jasper Reservoir: The Colorado River and Willow Creek, a tributary of the Colorado River.

D. Uses (for all structures): Municipal, irrigation, industrial, and recreational.

2.4. Statement of Plan for Augmentation:

The subject Well No. 1-1335 was formerly operated pursuant to substitute water supply plans by the Groundwater Appropriators of the South Platte (GASP) and has been inactive since 2002. The EnviroTech well will be drilled under a newly issued well permit. The following table summarizes the location and decree information for Well No. 1-1335 and the proposed location for the EnviroTech well.

Well Name	Permit	Location				Case No.	Approp. Date	Decreed Amount
		Sect	Q40	Q16 0	T-R			
Well No. 1-1335	1335-R	29	NW	NE	T5N-R65W	W-2258	1/19/1960	1.11 cfs
EnviroTech Well	n/a	2		SW	T4N-R66W	n/a	n/a	n/a

Evans proposes to include Well No. 1-1335 in a non-potable irrigation system serving the newly developed Riverside Meadows subdivision. The annual non-potable demand is estimated to be 51 acre-feet based upon the permitted irrigated area of 17 acres and an estimated gross annual demand of 3 acre-feet per acre. Net stream depletion is estimated at 42.3 acre-feet annually, assuming an irrigation efficiency of 83 percent. The non-potable irrigation system utilizes sprinkler application methods. Therefore, it is estimated that 15 percent of the total well pumping will return to the river by deep percolation and 2 percent will return by surface runoff. Depletions from the well will impact the South Platte River about 0.4 miles above the 37th Street bridge. The location of the stream depletions is approximately 1.6 miles above the Patterson Ditch river headgate and 4.0 miles above the Plumb Ditch river headgate. Evans will limit the amount of pumping from its non-potable irrigation well to 51 acre-feet of pumping annually.

The ultimate pumping demand for the newly developed EnviroTech well is estimated at 45 acre-feet annually. The uses of the pumped water will include primarily the production of road base stabilization and de-icing products, which will result in 100 percent of the water being delivered off-site within the finished product. A small percentage of the groundwater diversion may be used for irrigation at the plant site. Diversions for commercial production will be 100 percent consumptive. Diversions for non-potable irrigation are estimated to be 83 percent consumptive. The irrigation system is expected to utilize sprinkler application methods. Because the well and irrigation are located a significant distance from the river, it is estimated that 17 percent of the total well pumping will return to the river by deep percolation and 0 percent will return by surface runoff.

Replacement of injurious out-of-priority depletions will be achieved by the permanent dry-up of 193 acres of land historically irrigated by Evans' shares of the Godfrey Ditch water right and by use of wholly consumable municipal return flow from Evans' use of Windy Gap Project water supplies. It is anticipated the subject 23 Godfrey Ditch Company shares will provide approximately 292 acre-feet of consumptive use credit on an annual basis. Evans intends to divert its interest in the Godfrey Ditch water rights through the Godfrey Ditch river headgate, at the original point of diversion. After diversion through the headgate, Evans will release the deliveries to the South Platte River through the existing augmentation station owned by CCWCD pursuant to an agreement to use the station. A portion of the consumptive use credit will be delivered into Nissen Reservoir pursuant to agreement with CCWCD for storage and later release to the South Platte River for replacement.

All replacement deliveries to the river will be reduced for conveyance losses calculated as one-half percent per mile from the point of delivery to the point of stream depletion caused by the well pumping. The distance from the Hill 'N Park wastewater treatment facility (the

uppermost wastewater treatment facility) to the point of furthest downstream stream depletion is 3.88 miles. The distance from the point of Godfrey Ditch water delivery to the point furthest downstream stream depletion is approximately 2 miles. Therefore, a conveyance loss of 2 percent is included for all Windy Gap water rights replacement deliveries and a conveyance loss of 1 percent is included for all Godfrey Ditch replacement deliveries. For replacement supplies delivered into Nissen Reservoir, an additional 2 percent conveyance loss will be included for the conveyance along 4 miles of river.

Pursuant to an Intergovernmental Agreement (IGA) between the Applicant and CCWCD, CCWCD will be entitled to use up to 11 Shares out of the 23 shares of the Godfrey Ditch Company during the period of 2009 through 2023. In exchange, the Applicant will receive up to 70 acre-feet of storage space within Nissen Reservoir, or an alternate storage location within the CCWCD. Pursuant to the IGA, CCWCD is responsible for obtaining approval for the use of the 11 Shares and maintaining the historical return flows associated with those Shares.

Applicant shall install and maintain such measuring devices and implement such accounting and reporting procedures as may be reasonably required by the Division Engineer for adequate administration of the water rights and plan for augmentation described in this application

Dated: August 20, 2008.

Respectfully submitted,

*signed original on file at Hill & Robbins, P.C.*

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Jennifer H. Hunt

## **VERIFICATION**

STATE OF COLORADO )  
 ) ss.  
COUNTY OF WELD )

I, Earl H. Smith, P.E., Director of Public Works for the City of Evans, have read the foregoing Application for Change of Water Rights and Approval of Plan for Augmentation and verify its content to the best of my knowledge. *Earl H. Smith*

Witness my hand and seal.

My commission expires: 11/05/09

its and Approval of Plan for Aug  
Earl Smit



Dicki Y. Hamilton  
Notary Public