

**DISTRICT COURT, WATER DIVISION 6, COLORADO  
TO ALL PERSONS INTERESTED IN WATER APPLICATIONS  
IN WATER DIVISION 6**

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following pages comprise a resume of Applications and Amended Applications filed in the office of Water Division 6, during the month of **April 2022**.

**2022CW3022**, in unnamed tributaries of Deep Creek, tributary to Elk River, tributary to Yampa River in ROUTT COUNTY, COLORADO, **APPLICATION FOR FINDING OF REASONABLE DILIGENCE**

1. **Name, address, telephone number, and email address of Applicant:** Solomon Family Trust, c/o Mary Ann and Raymond Charles Solomon, 4450 Colona Pl., Loveland, CO 80538, carvehumm@msn.com, 970.669.0970. All pleadings and court-related documents are to be sent to Claire E. Sollars, Esq., Colorado Water Matters, PLLC, P.O. Box 881302, Steamboat Springs, CO 80488, Claire@ColoradoWaterMatters.com, 970.875.3370.
2. **Name of Structure:** St. Francis Pond.
3. **Description of Water Rights:**
  - A. **Original Decree:** In Water Division 6 Case No. 2005CW49, the Water Court awarded conditional water rights to Solomon Family Trust for four springs (Holy Cross Spring, Queen of Peace Spring, St. Anthony Spring, and Angel Fire Spring) and two reservoirs (St. Francis Pond and St. Benedict Pond). *See In re Application of Solomon Family Trust, Routt County Combined Courts, Water Div. 6 Case No. 2005CW49, Findings of Fact, Conclusions of Law and Ruling of the Water Referee and Decree of the Water Court* (dated Nov. 29, 2007).
  - B. **Subsequent Diligence Decree:** Solomon Family Trust filed an *Application for Finding of Reasonable Diligence* in Water Division 6 Case No. 2013CW3027. In that case, Solomon Family Trust relinquished its claim for the remaining conditional rights awarded in the initial Case No. 2005CW49, except those concerning St. Francis Pond. The Water Court issued the decree in Case No. 2013CW3027 on March 12, 2016, in which it continued the St. Francis Pond conditional right.
  - C. **Legal Description as Stated in Case No. 2013CW3027:** SW4 NW4 of Section 25, at a point about 2300 ft. South of the North section line and about 770 ft. East of the West section line of said section, in Township 8 North, Range 86 West of the 6th P.M., Routt County, Colorado. UTM coordinates (Zone 13, NAD83) 331712 mE and 4498901 mN.
  - D. **Source of Water:** Unnamed tributaries of Deep Creek, tributary to Elk River, tributary to Yampa River.
  - E. **Appropriation Date:** July 30, 1996.
  - F. **Conditional Amount and Uses:** 5.0 AF, conditional, and one refill in the amount of 5.0 AF; if St. Francis Pond storage is depleted as a result of fire-fighting or fire protection, Solomon Family Trust may refill St. Francis Pond one (1) additional time, for a total refill storage quantity of 10.0 AF. St. Francis Pond may be used for firefighting, wildlife watering, livestock, domestic, aesthetic, irrigation, piscatorial, and recreational purposes. Domestic use is limited to six (6) residential lots. Irrigation is limited to 17 acres located within Sections 25 and 26, Township 8 North, Range 86 West of the 6th Principal Meridian and as depicted on Exhibit 1, *Structure Locations and Irrigation Area*.
  - G. **Surface Area of High Water Line, Vertical Height and Length of Dam:** Surface area will not exceed 0.55 acre, vertical dam height will not exceed 10.0 feet, and dam length will not exceed 150.0 feet.
  - H. **Total Capacity:** Total capacity will not exceed 5.0 acre feet (dead storage). If Solomon installs a low-level outlet, Solomon shall identify the amount of active and dead storage capacity when seeking to make the storage right absolute.
4. **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 past diligence period, Solomon Family Trust consulted with a water engineer and legal counsel to evaluate development of all its conditional water rights, including St. Francis Pond, Holy Cross Spring (conditional right awarded in Division 6 Case No. 2005CW49, portion made absolute and conditional amount continued in Water Division 6 Case No. 2012CW3006 (decree entered Jan. 14, 2016)), and Solomon Spring 1 and Solomon Ponds 1, 3, 4, and 5 (conditional rights awarded in Case No. 2012CW3019 (decree entered May 9, 2016)). Expenditures throughout the past diligence period for the water engineer, 2020 development of Solomon Spring 1, 2020 construction of Solomon Pond 5, and legal counsel exceed \$30,000.00. Because the Water Court previously determined all the Solomon Family Trust water rights are integrated, Solomon Family Trust submits these actions taken and expenses incurred support a finding of reasonable diligence for the St. Francis Pond water right.
5. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Solomon Family Trust owns the land where St. Francis Pond is to be located and upon which the Solomon Trust water rights are used.
6. **Remarks or any pertinent information:** Solomon Family Trust respectfully requests the Water Court enter a decree in which it: (1) finds Solomon Family Trust exercised reasonable diligence towards development of the St. Francis Pond conditional right, and (2) continues the St. Francis Pond water right as described in Case No. 2013CW3027 and this application in full force and effect throughout the next diligence period.

**2022CW3023** Routt County. **Protest to Final Abandonment List.** Applicant-Protestant: Upper Yampa Water Conservancy District (“UYWCD”), c/o Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546. Described Water Right: A. Name of Water Right: **Yamcolo Reservoir, First Enlargement.** Date of Original Decree: 01/29/1981, Case No: 80CW175 Water Div. 6. Decreed Legal Description: The intersection of the centerline axis and the right abutment of the dam forming Yamcolo Reservoir is located at a point whence the E. 1/4 corner of Sec. 16, T. 1 N., R. 86 W., 6th P.M. bears N. 41 degrees 53’ E., a distance of 873 ft. The location is depicted in Figure 1 & 3 on file with the Water Ct. Source: Bear River. Decreed Uses: Water Storage, Irr., Dom., Industrial, and all other beneficial uses. Approp. Date: 09/04/1951. Decreed Amount: 1000 A.F. Amount and use or uses listed as having been abandoned: 410.900 for all decreed uses. Former Dist. Number and Page Number where listed on Abandonment List: The reservoir is located in Water Dist. 48, and the water right is listed on Page 9 of the Abandonment List in Case No. 21CW3048, Dist. Ct., Water Div. 6. Factual and legal basis for protest are described in the protest on file with the court. Remarks: UYWCD requests confirmation that the term “all beneficial uses” decreed to the Yamcolo Reservoir First Enlargement include the ability to include this water right in its aug. plans and for muni. purposes and that 410.9 A.F. included on the abandonment be removed for such uses. UYWCD does not protest the partial abandonment of this water right for the other decreed uses. (5 pages of original protest, Figure 1)

**2022CW3024**, (15CW3030), (08CW41), (95CW02). DISTRICT COURT, WATER DIVISION NO. 6, STATE OF COLORADO 1955 Shield Drive, Unit 200, Steamboat Springs, CO. 80487. CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE YAMPA GHOST RANCH, LLC IN ROUTT COUNTY, COLORADO. **APPLICATION FOR A FINDING OF REASONABLE DILIGENCE.** 1. Name and Address of Applicant. Yampa Ghost Ranch, LLC, 6300 Sprint Parkway, Suite 200, Overland Park, Kansas 66211. All pleadings should be directed to: Glenn E. Porzak, Porzak Law, LLC, 1111 Spruce Street, Suite 303, Boulder, Colorado 80302. 2. Name of Structure: Dennis and Blewitt Ditch, 3<sup>rd</sup> Enlargement. Description of Conditional Water Right: A. Name of Structure: Dennis and Blewitt Ditch, 3<sup>rd</sup> Enlargement. B. Original Decree: Dennis and Blewitt Ditch, 3<sup>rd</sup> Enlargement was originally decreed by the District Court in and for Water Division No. 6, State of Colorado (the “Water Court”) on January 31, 1995 in Case No. 95CW02. Subsequent findings of reasonable diligence occurred in Case Nos. 08CW41 and 15CW3030. C. Legal description of the point of diversion: The point of diversion is located in the NE1/4 NW1/4 of Section 16, T. 6 N., R. 86 W. of the 6<sup>th</sup> P.M. at a point 200 feet from the North section line and 1700 feet from the West section line of said Section 16. A map showing the approximate location of the point of diversion is attached hereto as Exhibit A. D. Source: Yampa River. E. Date of Appropriation: January 9, 1995. F. Amount: 2.0 cfs, conditional. G. Use: Irrigation of 60 acres in the NW1/4 of Section 16 and NE1/4 of Section 17; 6 N., R. 86 W. of the 6<sup>th</sup> P.M. These acres are depicted on the map attached as Exhibit B. 4. Request for Finding of Diligence. During the subject diligence period, the Dennis and Blewitt Ditch, 3<sup>rd</sup> Enlargement was purchased by the Applicant, together with the lands that are to be irrigated by this water right and that are the decreed place of use. In addition, Applicant installed a flume at the headgate capable of accommodating and measuring the flows decreed to the Dennis and Blewitt Ditch and its Enlargements. This flume was inspected by the Water Commissioner. Furthermore, Applicant has annually maintained the headgate and ditch, and improved the ditch and laterals to accommodate the higher decreed flows so as to irrigate the 60 acres described in paragraph 3G above. Applicant has also planned additional improvements to the headgate that will be performed this spring and summer. Land Ownership. The Applicant is the owner of the land on which the Dennis and Blewitt Ditch, 3<sup>rd</sup> Enlargement is located. WHEREFORE, the Applicant seeks a decree that grants a finding of diligence of reasonable diligence for the subject conditional water right and such other relief as the Court may provide.

**22CW3026 ROUTT COUNTY.** APPLICATION FOR FINDING OF REASONABLE DILIGENCE. 1. Applicant: Marabou Owners Association, Inc., Attn: Scott Bell, 41255 Marabou Loop, Steamboat Springs, CO 80487, (970) 879-0507, sbell@marabouranch.com, c/o Kylie J. Crandall, Hayley K. Siltanen, Holland & Hart LLP, 1800 Broadway, Suite 300, Boulder, CO 80201, (303) 473-2700, kjcrandall@hollandhart.com, hksiltanen@hollandhart.com. 2. Name of Structure: Taylor Ditch Marabou Ranch Enlargement, a/k/a Trull Morin Ditch Headgate No. 2 (“Taylor Ditch Enlargement”). 3. Description of Conditional Water Right: Applicant has appropriated various water rights that comprise an integrated water supply plan and system for development of the Marabou Ranch property and adjacent property known as the Zimmerman property (the two properties will be referred to collectively herein as the “Ranch”), near Steamboat Springs, Colorado. The water supply plan for the Ranch was originally decreed in Case Nos. 05CW72 and 05CW73, Water Division 6. A vicinity map generally depicting the Ranch is attached to the Application as Figure 1. a. Original decree: Decree entered on July 31, 2009, in Case No. 05CW72, Water Division 6. b. Subsequent

decree(s) awarding findings of diligence: Decree entered on April 18, 2016, in Case No. 15CW3029, Water Division 6. c. Legal Description of Point of Diversion: Located in the SE1/4NE1/4 of Section 32, Township 7 North, Range 85 West, 6th P.M., at a point 1652.39 feet from the North Section line and 977.40 feet from the East Section line of Section 32. A map depicting the location of the point of division of the subject water is attached to the Application as Figure 2. d. Source: Elk River, tributary of the Yampa River. e. Approp. Date: August 12, 2005. f. Amounts and Uses: 0.75 cubic feet of water per second (“cfs”), absolute, for irrigation. 2.25 cfs, conditional, for irrigation. Irrigation of approximately 30 acres. Water may be pumped from the ditch to irrigate lands located generally in portions of the W1/2SE1/4 and E1/2SW1/4 of Section 33, all within Township 7 North, Range 85 West of the 6th P.M. The actual location of the irrigated area may change as the Ranch is developed. In any subsequent application to make all or any portion of the Taylor Ditch Marabou Ranch Enlargement absolute for irrigation, the irrigated lands will be identified on a map submitted with the application, and the map will be incorporated into the final decree for that application. A map depicting the approximate location of land irrigated by the 0.75 cfs of the subject water right that was previously made absolute is attached to the Application as Figure 3. 4. Integrated System. The Taylor Ditch Enlargement is a component of an integrated water supply system for the Ranch. See ¶ II.7 of Decree in Case No. 05CW72. Consequently, diligence with respect to any one component of the integrated water supply system shall be considered in finding that reasonably diligence has been shown in the development of water rights for all features of Applicant’s integrated water supply system. See C.R.S. § 37-92-301(4)(b). A detailed outline of activities during the diligence period is included in the Application. Names(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: Applicant. (8 pages incl. figures)

**2021CW13 MOFFAT COUNTY** Amended Application for Change of Water Right **Applicant:** Frank and Reneta Kawcak, 110 West 12<sup>th</sup> Street, Craig CO 81625, 970-326-7245/970-326-7328, drwakren@hotmail.com. **Name of Structure:** Adolph Edinger D & PL (5500502). **Legal Description:** Moffat County; NE4 NE4; Sec 19; T11N; R95W; 6<sup>th</sup> PM. **UTM Coordinates:** E239107.03872 N4532756.53954; Zone 13. **Date of Original Decree:** May 27, 1972; **Case No:** CA2269 **Legal Description of the Structure as Described in most Recent Decree:** A pump right on the west bank of the Little Snake River at a point from which the corner No. 2 of Tract 53 in Section 18, T11N, R95W, 6<sup>th</sup> PM Bears S74 18’W a distance of 1445’. **Decreed Source of Water:** Little Snake River. **Date of Appropriation:** May 11, 1912. **Total Amount Claimed in Cubic Feet (cfs) Per Second or Gallons Per Minute (gpm):** Absolute 4.0 cfs. **Decreed Use or Uses:** Irrigation. **Amount of Water that Applicant intends to Change:** Absolute: 4.0 cfs **Detailed Description of Proposed Change:** We are requesting an alternate point of diversion for the Adolph D & PL in order to increase the efficiency of our irrigation. This alternate point is being applied to be able to take water out of the Little Snake River at a point much closer to the area of the historic irrigated fields that are irrigated. The water is currently being pumped into a ditch approximately a distance of ¾ of a mile from the irrigated fields, then pumped into a wheel line. By moving the diversion point we will be able to extend the pipe that is in the field to the diversion point to carry water to the wheel line directly. The new location will be approximately 2200 feet south of the existing diversion and will still be within the boundary of the subject land that is being currently irrigated. **Name of Landowner:** Applicant

**2022CW3025 JACKSON COUNTY. PROTEST OF LUCKY PENNY RANCHES, LLC TO FINAL ABANDONMENT LIST (HARD ROCK DITCH AND AQUA FRIA RESERVOIR). Protestant/Owner:** Lucky Penny Ranches, LLC; Sharon Harvat; 1096 CR 5 Coalmont, CO 80430; Sharvat80430@yahoo.com; 970 723-4290. **Direct all pleadings to:** Douglas M. Sinor; Michael A. Kopp, TROUT RALEY; 1120 Lincoln Street, Suite 1600, Denver, CO 80203. **2. Description of Water Right (first):** A. Name of Structure: Hard Rock Ditch. B. Date of Original Decree: August 10, 1956. Case No: W-904-75. Court: Water Division 6. C. Decreed Legal Description of Structure Location: The headgate is located on the North bank of Newcomb Creek tributary to the North Fork of Little Grizzly Creek. From said headgate the East ¼ Corner of Section 10, known as the 8E Corner of the NE ¼ of Section 10 bears N 79 degrees 30 minutes E a distance of 2000 feet Located in Section 10, Township 7 North, Range 82 West, 6th P.M., Colorado. A map depicting the location of the headgate is attached hereto as Exhibit A. D. Source of water: Newcomb Creek. E. Decreed use or uses: Irrigation and domestic. F. Appropriation Date: August 10, 1956. Decreed Amount: 20 cfs. G. Amount and use or uses listed as having been abandoned: 4.69 cfs, all decreed uses. H. Former District Number and Page Number where listed on Abandonment List: District 47, page 4 of 9. **3. Factual and Legal Basis for this Protest:** A. Abandonment means “the termination of a water right

in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or a part of the water available thereunder.” C.R.S. § 37-92-103(3). A ten-year period of non-use creates a rebuttable presumption of abandonment. C.R.S. § 37-92-402(11). The state and division engineers have authority to order any owner or use of a water right to install and maintain at such owner’s or user’s expense necessary meters, gauges, or other measuring devices “and to report at reasonable times to the appropriate division engineer the readings of such meters, gauges, or other measuring devices.” C.R.S. § 37-92-502(5)(a). B. Lucky Penny has historically used the Hard Rock Ditch water right in accordance with the original decree and related storage decrees to the extent that water is available at the headgate in priority. Lucky Penny has exercised the Hard Rock Ditch water right for the decreed uses with no intention to abandon any portion of the decreed flow rate. The Hard Rock Ditch is physically capable of measuring and diverting the full decreed flow rate of 20 cfs as confirmed by Division of Water Resources staff. Lucky Penny installed a new measuring flume in approximately 2011. The Hard Rock Ditch headgate is in a remote location and difficult to access. The water users on Newcomb Creek typically manage their water rights diversions without resorting to calls administered by the Water Commissioner. During runoff, Lucky Penny typically sets the Hard Rock Ditch headgate taking into consideration the amount of water needed and available in Newcomb Creek and the needs of downstream senior diversions, up to the decreed rate of 20 cfs. Diversion records kept by the Water Commissioner for the Hard Rock Ditch are limited, however, due to difficult access and time constraints of the Water Commissioner. The limited diversion records kept by the Water Commissioner do not necessarily reflect peak diversions for the Hard Rock Ditch. Because the Water Commissioner historically kept diversion records for the Hard Rock Ditch, Lucky Penny did not keep its own diversion records. Prior to 2020, the Water Commissioner had never requested Lucky Penny to submit diversion records for the Hard Rock Ditch, and the Division Engineer’s Office had not adopted general water measurement rules. C. The limited diversion records that were kept by the Water Commissioner should not be used as the basis for abandonment because 1) the records do not reflect the full degree of use that occurred; and 2) prior to 2020, the Water Commissioner never requested or ordered Lucky Penny to record and submit its own diversion records and the Division Engineer’s Office had not promulgated general water measurement rules. Lucky Penny should be allowed a reasonable period of time to establish its own records of diversion. For the foregoing reasons, the Hard Rock Ditch water right should be removed entirely from the 2021 abandonment list. D. The Hard Rock Ditch water right and the lands on which the water right is used are subject to a deed of conservation easement held by Colorado Cattlemen’s Agricultural Land Trust (“CCALT”), recorded December 14, 2009, Jackson County records, 93383, B185, P491. CCALT also intends to protest the abandonment listing of the Hard Rock Ditch water right. Lucky Penny joins and incorporates by this reference all factual allegations and legal arguments made by CCALT in its protest. **4. Description of Water Right (second):** A. Name of Structure: Aqua Fria Reservoir. B. Date of Original Decree: January 10, 1958. Case No: CA 511. Court: Jackson County District Court. C. Decreed Legal Description of Structure Location: The reservoir is located on the SW ¼ SW ¼ Section 29, S ½ SE ¼ Section 30, NE ¼ NE ¼ Section 31 and NW ¼ NW ¼ Section 32, Township 6 North, Range 82 West, 6th P.M., Jackson County, Colorado. A map depicting the location of the reservoir is attached hereto as Exhibit B. D. Source of water: Beaver Creek. E. Decreed use or uses: Irrigation. F. Appropriation Date: October 7, 1943. Decreed Amount: 730.75 acre-feet. G. Amount and use or uses listed as having been abandoned: 180.75 acre-feet, all decreed uses. H. Former District Number and Page Number where listed on Abandonment List: District 47, page 2 of 9. **5. Factual and Legal Basis for this Protest:** A. Abandonment means “the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or a part of the water available thereunder.” C.R.S. § 37-92-103(3). A ten-year period of non-use creates a rebuttable presumption of abandonment. C.R.S. § 37-92-402(11). B. In 1958, the court confirmed an absolute water storage right for Aqua Fria Reservoir in the amount of 730.75 acre-feet. Prior to 2016, Division of Water Resources records indicate that the reservoir stored the full decreed amount. In September 2016, a Division of Water Resources dam inspection report listed the physical capacity as 550 acre-feet; however, no survey of the reservoir was performed at that time. Since acquiring the subject water storage right in 1995, Lucky Penny has used the water right in accordance with the original decree and under the belief that the reservoir is capable of storing, and has stored, the full decreed volume. Lucky Penny is not aware of any diminishment of the reservoir’s physical capacity that occurred during that time. In response to the 2016 dam inspection report, Lucky Penny performed improvements on the Aqua Fria dam and outlet works totaling approximately \$150,000, which work was completed in 2020. Although the 2016 inspection report listed the capacity as 550 acre-feet, Lucky Penny was not aware until the 2020 abandonment listing that the Division of Water Resources considered the inspection report to be determinative of the physical capacity and therefore considered a portion of the decreed capacity to have been unused and abandoned. C. Lucky Penny did not intend to abandon any portion of the subject right, and there is no other evidence that Lucky Penny intended to permanently discontinue the use of any portion of the subject water storage right. The rebuttable presumption of abandonment provided by C.R.S. § 37-92-402(11) should not apply in

this instance because any claim of non-use is based on the discrepancy between the decreed capacity and the actual capacity stated in the 2016 inspection report. Prior to 2016, records indicated that the reservoir stored the full decreed amount. The Aqua Fria Reservoir should not have been listed on the 2020 or 2021 abandonment lists because Lucky Penny has not had a reasonable period of time to investigate the potential discrepancy in volume and address any actual discrepancy that is found to exist. Due to its remote location and high elevation, survey and other work on Aqua Fria Reservoir is difficult to conduct and can be performed only during limited times of the year. For the foregoing reasons, Aqua Fria Reservoir water storage right should be removed entirely from the 2021 abandonment list. D. The Aqua Fria Reservoir water storage right and the lands on which the water storage right is used are subject to a deed of conservation easement held by Colorado Cattlemen's Agricultural Land Trust ("CCALT"), recorded December 14, 2009, Jackson County records, 93383, B185, P491. CCALT also intends to protest the abandonment listing of the Aqua Fria Reservoir water storage right. Lucky Penny joins and incorporates by this reference all factual allegations and legal arguments made by CCALT in its protest. (7 pages)

**The water right claimed by this application may affect in priority any water right 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 you will have until the last day of **June 2022** to file with the Water Court a Verified Statement of Opposition, setting forth facts as to why a certain Application should not be granted or why it should be granted only in part or on certain conditions. A copy of such Statement of Opposition must be served on the Applicant or the Applicant's Attorney, with an affidavit or certificate of such service being filed with the Water Court, as prescribed by Rule 5, C.R.C.P. The filing fee for the Statement of Opposition is \$192.00, and should be sent to the Clerk of the Water Court, Division 6, 1955 Shield Dr. Unit 200, Steamboat Springs, CO 80487.

CARMMA PARKISON  
CLERK OF COURT  
ROUTT COUNTY COMBINED COURT  
WATER DIVISION 6

/s/ Julie A. Edwards  
Deputy Court Clerk