

**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 **March 2023**.

2023CW3004; ROUTT COUNTY, COLORADO, Bushy Creek, tributary to Morrison Creek and the Yampa River, APPLICATION FOR FINDING OF REASONABLE DILIGENCE AND TO CONFIRM WATER RIGHTS AS ABSOLUTE. 1. Applicant: James G. Heckbert and Ann M. Heckbert Living Trust, 31125 Fallen Falcon Trail, Oak Creek, Colorado 80467, jgheckbert@gmail.com, (970) 736-2226. Please direct communications to Matthew L. Merrill, MERRILL LAW LLC, (303) 947-4453 (telephone), matthew@merrillwaterlaw.com (email). 2. Names of Structures and Water Rights: a. Heckbert Ditch (surface diversion) and Heckbert Irrigation Pond (a reservoir). b. Collectively, the water rights for Heckbert Ditch and Heckbert Irrigation Pond are the "Subject Water Rights." **3. Description of Heckbert Ditch from Previous Decree:** a. Original Decree: March 15, 2007, Case No. 07CW114, Water Division 6. There are no subsequent decrees for this water right. b. Legal Description: The Heckbert Ditch point of diversion is located in the SW1/4 NW1/4 of Section 21, Township 3 North, Range 84 West, 6th P.M., Routt County, CO, at a point 2,087 feet from the North Section Line and 1,022 feet from the West Section Line. See **Exhibit A** to the application (general location map; copies of exhibits are available from the water court or Applicant's counsel; all exhibits are incorporated into and a part of the application). c. Source: Bushy Creek, tributary to Morrison Creek, tributary to the Yampa River. d. Appropriation date: November 22, 2002. e. Amount: 2.0 cfs, conditional. f. Uses: Irrigation of approximately 8.5 acres on Applicant's land located on Lots 7, 13, 14, 15 & Tract 37 in Section 21, Township 3 North, Range 84 West, 6th P.M., Routt County, CO (hereinafter referred to as the "Property" **Note: this description is from the Original Decree. An up-to-date description would be "8.5 acres on Applicant's land located on Lot 1, Indian Summer Ranch Subdivision, in Section 21, Township 3 North, Range 84 West, 6th P.M., Routt County, Colorado."* This location is entirely within the originally decreed location of use and is not a change of water right). See **Exhibit A**. The water will be used to provide freshening flows for the Heckbert Irrigation Pond, described in Section 4, below, for stock watering, wildlife watering, and will be stored in-priority in the Heckbert Irrigation Pond for subsequent irrigation. **4. Description of Heckbert Irrigation Pond from Previous Decree:** a. Original and Subsequent Decrees: See paragraph 3.a above. b. Legal Description of Location of Dam: Heckbert Irrigation Pond is located in the SW1/4 NW1/4 of Section 21, Township 3 North, Range 84 West, 6th P.M., Routt County, CO, at a point 2,163 feet from the North Section Line and 831 feet from the West Section Line. The Original Decree provides an optional additional GPS description in UTM format: Northing 4453557, Easting 344904, Zone 13. See **Exhibit A**. c. Source: Bushy Creek, tributary to Morrison Creek, tributary to the Yampa River through the Heckbert Ditch at a rate of 2.0 cfs as described in Section 3. d. Appropriation date: November 22, 2002. e. Amount: 0.8 acre-feet, conditional, with the right to fill and to refill in the amount of 0.8 acre-feet. f. Uses: To fill and refill to provide freshening flows for wildlife watering, stock watering, and to offset evaporation loss for storage in Heckbert Irrigation Pond for those same end uses on Applicant's Property. The water stored in the Heckbert Irrigation Pond will also be used to irrigate approximately 8.5 acres on the Property. g. Surface

area of high water line: .21 acres. h. Maximum height of dam: 6 feet. i. Length of dam: 150 feet. j. Total capacity of reservoir: 0.8 acre feet, of which 0.67 acre-feet is active storage and 0.13 acre-feet is dead storage. **5. Summary of what has been done toward completion of the appropriation and application of water to beneficial use, including expenditures, during the previous diligence period:** a. The original appropriator, James Heckbert, previously constructed the Heckbert Ditch, Heckert Irrigation Pond and associated infrastructure. He has used the water rights for all of their decreed uses. The initial construction and adjudication involved \$25,849 in irrigation equipment and installation, \$1,257 in survey fees, \$30,783 in legal costs, and \$11,249 in engineering costs. Since the time of original construction, Mr. Heckbert and his successors (see 5.d below) operated the water rights in priority for the decreed uses, with the exception of a period from 2015-2017 to resolve groundwater infiltration concerns of the Division Engineer. b. After the initial construction was complete, Mr. Heckbert worked with the Division Engineer's office to install a bentonite groundwater curtain barrier upgradient from the pond and ensure no groundwater infiltration into the pond. These efforts cost \$2,685. c. Mr. Heckbert also incurred \$359 in costs for headgate repair. d. Mr. Heckbert conveyed the Subject Water Rights to Ann M. Heckbert and himself. Subsequently, they conveyed the Subject Water Rights to the James G. Heckbert and Ann M. Heckbert Living Trust. Notice of transfer was filed on December 4, 2020. (Filing ID DB84E2306344E). e. Starting in 2020, Mr. Heckbert engaged legal and engineering consultants to assist with measuring diversions and confirming the water rights as absolute. However, hydrologic conditions have not allowed diversion in priority at the full decreed rate since 2020. The legal and engineering expenses since the original decree are more than \$7,946. f. This Application includes a summary of key diligence activities and costs. Applicant may present additional evidence and detail regarding the activities summarized above or other diligence activities and costs for the Subject Water Rights. **6. Amounts Claimed as Absolute:** a. Heckbert Ditch: i. Dates of diversion: October 29, 2007, May 17, 2008, August 23, 2008. There was no call below the Heckbert Ditch on these dates as shown in the Division 6 river call records attached as **Exhibit B**. ii. Amount: 2.0 cfs. iii. Dates water was applied to beneficial use: October 29-30, 2007; May 17, 2008, August 23, 2008. iv. Uses: Storage in Heckbert Irrigation Pond for decreed uses and subsequent use for irrigation on lands shown in Exhibit A. v. Photos and documentation of the May 17, 2008 diversion are included in **Exhibit C**. Records of water use from construction of the Heckbert Ditch through 2020 are included in **Exhibit D**. b. Heckbert Irrigation Pond: i. Dates of diversion: October 29, 2007; July 7-8, 2018. There was no call below the Heckbert Ditch on these dates as shown in the Division 6 river call records attached as **Exhibit B**. ii. Amount of diversion: .8 AF. iii. Date water was applied to beneficial use: October 29-30, 2007; July 8, 2018. iv. Uses: Storage in Heckbert Irrigation Pond for decreed uses. *See* C.R.S. § 37-92-301(4)(e). v. Records of water use through 2020 are included in **Exhibit D**. c. Additional Amounts and Additional Dates of Diversion. Applicant diverted and used the Subject Water Rights continuously from October 29, 2007 until 2015 and from 2018 to present when in priority, and may provide records and testimony regarding diversion and use in priority on additional days not included in paragraph 6.a and 6.b above in any hearing in this matter. Mr. Heckbert also provides notice that he may claim any portion or the entirety of the Subject Water Rights as absolute based on diversion and beneficial use up to the time of any hearing in this case, without providing further notice or publication of this application. Specifically, Mr. Heckbert notes that snowpack in the Yampa Basin is currently above average and that he intends to divert and measure the full amounts of the conditional water rights in priority during 2023 and place them to beneficial use. **7. Remarks:** a. Mr. Heckbert and the James G. Heckbert and Ann M. Heckbert Living Trust have a specific plan

and intent to complete the conditional appropriation of the Subject Water Rights and can and will complete them in a reasonable time and divert water in priority for the decreed beneficial uses. b. The Subject Water Rights are an integrated system pursuant to C.R.S. § 37-92-301(4)(b). c. The Subject Water Rights will be operated pursuant to the terms in the Original Decree. This case does not seek to change the Subject Water Rights or any terms and conditions in the Original Decree. **8. 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. **9. Prayer for Relief:** Applicant respectfully requests that the Court confirm the Subject Water Rights are absolute in the amounts claimed above and as may be perfected before a hearing, find that Applicant and its predecessor exercised reasonable diligence with respect to the conditional Subject Water Rights, continue all conditional portions of the Subject Water Rights in full force and effect for the period allowed by law, and award such other relief as the Court deems just and proper. (Application includes 6 pages plus 4 exhibits).

2021CW15 MOFFAT COUNTY Application for Absolute Water Rights (Surface) **Applicant:** Randall L. and Deena S. Armstrong, 1065 Washington Street, Craig CO 81625, 970-589-7107, muleskinner5728@yahoo.com. **Name of Structures:** Double RD Spring. **Legal Description:** Moffat County; SW4 SW4; Sec: 13; T7N; R91W; 6th PM; **UTM Coordinates:** E283435.6 N4492914.4 Zone 13; **Street Address:** 1786 County Road 105, Craig CO 81625 **Subdivision:** Kline Minor; **Source of UTM:** Garmin Handheld; **Accuracy of Location:** 6 feet; **Source of Water:** Ground Spring Fortification. **Date of Appropriation:** 10/15/2022. **How Appropriation was Initiated:** Dug a Spring. **Date Water Applied to Beneficial Use:** 10/15/2022. **Amount Claimed in Cubic Feet per Second (cfs):** .000348 Conditional, .000348 Absolute. **List All Uses or Proposed Uses:** Livestock, Wildlife, Waterfowl, Irrigation for Hay Crop. **Acreage proposed to be Irrigated:** 27. **If Non-Irrigation:** Livestock water and Domestic water. **Name of Landowner:** Applicant

23CW3003 Moffat County. **Application for Surface Water Rights.** Applicants: D. Frank Kawcak and Reneta Kawcak, c/o Balcomb & Green, P.C., PO Drawer 790, Glenwood Springs, CO 81602; 970-945-6546. Applicants are requesting conditional and absolute surface water rights for Kawcak Pump West and conditional surface water rights for Kawcak Pump East. First Claim for Conditional & Absolute Surface Water Right. Structure: Kawcak Pump West. Legal Description: located in the NW1/4 SW1/4 Sec. 17, T. 11 N., R. 95 W. of the 6th P.M. Also described as UTM Zone 13, NAD83, Easting 23,9410.7 meters and Northing 4,533,595.7 meters, as shown in Figure 1 on file with the Water Ct. Source: Little Snake River, tributary to the Yampa River. Date of Approp.: How Initiated: Diversion and application to beneficial use. Date of Beneficial Use: 07/20/2022. Amt: Absolute: 2.0 c.f.s. Conditional: 1.0 c.f.s. Use: Irr. of 70 acres, of which 2.0 c.f.s. is absolute for 40 acres and 1.0 c.f.s. remains conditional for 30 acres. The proposed acres are shown in Figure 1 on file with the Water Ct. Second Claim for Conditional Surface Water Right. Structure: Kawcak Pump East. Legal Description: located in the NE1/4 NE1/4 Sec. 19, T. 11 N., R. 95 W. of the 6th P.M. Also described as UTM Zone 13, NAD83, Easting 239,107.0 meters and Northing 453,2756.5 meters, as shown in Figure 1 on file with the Water Ct. Source: Little Snake River, tributary to the Yampa River. Date of Approp.: How Initiated: Filing of this Application. Amt.: 1.5 c.f.s., conditional. Use: Irr. for 47 acres. The

proposed acres are shown in Figure 1 on file with the Water Ct. Integrated System: “When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.” C.R.S. § 37-92-301(4)(b). Names and addresses of owners 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: Applicants. Wherefore, Applicants request that the Ct.: (1) grant the claims for surface water rights claimed for Kawcak Pump West for irr. in the amts. 2.0 c.f.s. absolute and 1.0 c.f.s. conditional; (2) grant the claims for conditional surface water rights for Kawcak Pump East; and (3) for such other relief as the Ct. may deem appropriate. (5 pages of original application, Figures 1)

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 **May 2023** 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/ Tess M. Bedell
Deputy Court Clerk