

DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO
TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS FILED IN
WATER DIVISION 3.

Pursuant to C.R.S. 37-92-302(3), you are notified that the following is a resume in Water Division 3, containing notice of applications and certain amendments filed in the office of the Water Clerk during the month of May, 2022 for each county affected.

2022CW8: David L. Medina, 1106 North 100 Road, Alamosa, CO 81101, 719-480-0154. Application for Change of Water Right in Alamosa County. Decreed water right for which change is sought: Name of structure: Well No. 1 W-1545. Date of original decree: 12/31/1972. Case no: W-1545. Court: Division 3. Legal description of structure: NW 1/4 SW 1/4 Section 30, Twp. 39 North. Range 9 East. NMPM, Alamosa County. Decreed source of water: Unconfined. Appropriation date: 5/31/1948. Total amount decreed to structure: Absolute 2.67. Decreed use: Irrigation. Amount of water applicant intends to change: Absolute 2.67. Description of change: Well permit no. 18761-F was issued August 26, 1974 as an alternate point of diversion to well no. 14399-R. Well permit no. 14399-R-R was issued on May 11, 2022 and required that an application be filed to adjudicate this change of water right. Well permit no. 18761-F was not previously adjudicated. This application seeks to adjudicate this permit as an alternate point of diversion to well permit no. 14399-R-R. Well permit no. 18761-F was completed to a depth of 81' and produces from the unconfined aquifer. The proposed location of well permit no. 18761-F was the Center of the SW 1/4 of 30-39N-9E NMPM, however, the well was drilled in the NW 1/4 of the SW 1/4 of 30-39N-9E per the well location amendment filed in 2006. The well is located at UTM NAD 83 Zone 13S coordinates Easting 408282, Northing 4161475. We propose that the pumping rate of this well shall not exceed 1,200 GPM. The simultaneous combined pumping rate from this well and well permit no. 14399-R-R shall not exceed 1,200 GPM. We propose that the individual and combined average annual amount of groundwater to be appropriated by this well and well permit no. 14399-R-R shall not exceed 480 acre-feet for irrigation use on the SW 1/4 of 30-39N-9E NMPM. Billings Ditch is used on this land. Location information: PLSS: Alamosa County, NW 1/4 of the SW 1/4, Section 30, Township 39N, Range 9E, NMPM. Points of diversion: UTM Coordinates: Easting 408282 Northing 4161475, Zone 13. Source of UTMs: CDSS Mapviewer. Accuracy of location displayed on GPS device: Yes.

2022CW9: Howard J. Rheingans, 1271 Maxeyville Road, Monte Vista, CO 81144, hrbeep69@outlook.com, 719-580-0253. Application for Change of Water Right in Rio Grande County. Decreed water right for which change is sought: Name of structure: Well No. 1 Case No. 83CW18 (WDID 2008253), Permit No. 103330. Date of original decree: December 31, 1983. Case No. 83CW18. Court: District Court-Water Division 3. Legal description of structure: SW 1/4 NE 1/4, Section 14, Township 39 North, Range 7 East, NMPM, at a point 2500 feet from North Section line and 2500 feet from East Section line, in Rio Grande County, Colorado. Decreed source of water: Unconfined. Appropriation date: October 13, 1978. Total amount decreed to structure: Absolute 15gpm. Decreed uses: Domestic and stock watering. Amount of water that applicant intends to change: Absolute 15 gpm. Description of change: My well permit was issued on Nov. 20, 1978, when the water table was high, pursuant to C.R.S. 37-92-602

(3)(b)(II) and encumbered 40 acres in the SW 1/4 of the NE 1/4 of Sec 14, Twp. 39N, Range 7E, NMPM. This exempt permit was then adjudicated in case no. 83CW18 as Well No. 1. That case decreed the source as the unconfined aquifer. The purpose of this case is to change the source to the confined aquifer because the water table has dropped and to be able to replace or deepen this well in the confined aquifer I would like the option for a decree to allow me to drill the well in either aquifer the same as new exempt well permits can be. The decree in 83CW18 was issued to protect the encumbrance of my well permit as I do not own the entire 40-acre encumbrance. I do not seek to change the encumbrance with this case, however. I would note that my encumbrance would be protected under Senate Bill 20-155 (attached), had I subdivided now. Location in UTM Format: Decreed location: Northing 396296 Easting 4165000 Zone 13. Proposed location: Northing 396296 Easting 4165000 Zone 13.

2022CW10: Mathes Farms, LLC, Garth Mathes. 13890 County Road P, San Acacio, CO, 81151 mandmfarms@hotmail.com, 719-588-3838. Protest to Final Abandonment List in Costilla County. Description of Water Right: Name of structure: W179 Well No 1. Date of original decree: 02/26/1976. Legal description: NE 1/4 SE 1/4, Section 32, Township 3 North, Range 73 West, 6th PM. Source of water: unconfined aquifer. Decreed uses: domestic, irrigation and stock water. Appropriation date: June 30, 1952, Decreed Amount 600. Amount and use listed above as having been abandoned: all. Factual and legal basis for protest: In 2016 we, Mathes Farms LLC is purchasing this land from Clinton Betenbough over a 5-year term. We were sold this land with the understanding that all wells were included with this sell. In 2021, we were notified that this well was on the abandonment list. Mathes Farms, LLC needs this well for agriculture use.

2022CW3013: ALAMOSA COUNTY AND RIO GRANDE COUNTY; Cooley Property Investments, LLC c/o Karl Kuenhold, Esq., Law Office of Karl Kuenhold, LLC, 719-589-3688, karl@kuenholdlaw.com . PROTEST TO FINAL ABANDONMENT LIST in 2021CW3023. The Protestor owns Well No. 2, Case W-1798 which has been used historically to irrigate, as necessary, three small fields in the SW 1/4 of Section 35, Township 40 North, Range 6 East, NMPM and a few acres in Section 2, Township 29 North, Range 6, East N.M.P.M. This well and the fields it irrigates are located directly north of the south channel of the Rio Grande just east of Del Norte, Colorado. There are no surface rights or other wells that can serve the fields Well No 2 in Case 1798 serves. At the time the appropriation was made, the well was drilled, a pump installed, and ditches were constructed providing irrigation water to the three fields. The proximity of these fields to the river has historically meant that the fields have been flooded in high water years and have enjoyed subirrigation in all but a few years until very recently. This circumstance has made it historically unnecessary to irrigate the fields by means of the well in most years. Up until the last few years, the crops in the fields have had all their water needs met by flooding and subirrigation and the use of the well was not only unnecessary but would have constituted wasting water which is illegal. The facts in this protest show that there was no intention to abandon this well. This well was and is a necessary insurance against drought and climate change. When use of a well is not required to meet the water needs of the crops in the fields, pumping

unnecessarily would be a waste of water and the non-use is rational, compelled by Colorado law and fully rebuts any presumption of abandonment.

Any person who may be affected by the subject matter of this protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022. Rule 12, Colorado Water Court Rules.

22CW3014, DISTRICT COURT, WATER DIVISION NO. 3, STATE OF COLORADO, 8955 Independence Way, Alamosa, CO 81101. IN THE MATTER OF THE PROTEST OF RENEWABLE WATER RESOURCES, LLC, IN SAGUACHE COUNTY, COLORADO. Renewable Water Resources, LLC, (“RWR”), 2275 W. Chenango Ave, Ste 100, Littleton, CO. 80120, by and through its undersigned counsel, is the owner of and hereby protests the inclusion of W1189 Well No 1 in the Divisions Engineer’s final 2022 abandonment list. 1. Water Right Description. The water right proposed for abandonment and subject to this protest is groundwater right W1189 Well No. 1, WDID 2505193, Administration Number 43961.00000, the source of which is groundwater, for 4.46 cfs, with an appropriation date of May 12, 1970, and an adjudication date of July 31, 1975, for irrigation and stockwater. The subject water right is included within the Subdistrict 4 Plan of Water Management / ARP. 2. Applicable Legal Standards. Abandonment of valuable property rights are not favored under Colorado water law. *Williams v. Midway Ranches Property Owners Association, Inc.*, 938 P.2d 515, 527 (Colo. 1997). “[A] finding of abandonment requires the concurrence of two elements: a sustained period of non-use and an intent to abandon.” *E. Twin Lakes Ditches & Water Works, Inc. v. Bd. Of Cnty. Comm’rs of Lake Cnty.*, 76 P.3d 918, 921 (Colo. 2003). “[T]he element of intent remains the touchstone of the abandonment analysis.” *Id*; see also *City & County of Denver v. Snake River Water Dist.*, 788 P.2d 77, 776 (Colo. 1990) (“Intent is the critical element in determining abandonment”). Failure to apply water to beneficial use for a period of ten years, however, creates a rebuttable presumption of abandonment, which shifts the burden onto the owner of the water right to rebut the presumption of abandonment. C.R.S. § 37-92-402(11); *Haystack Ranch, LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000). A presumption of abandonment is rebutted when the owner “establish[es] some fact of condition that excuses the nonuse or shows the owner’s intent not to abandon the water right.” *Haystack Ranch*, 997 P.2d at 552. “[A] successful rebuttal requires objective and credible evidence, not merely subjective statements of intent by the water rights owner”. *E. Twin Lakes*, 76 P.3d at 921-22. “Abandonment is a question of fact depending on the particular circumstances of each case.” *Haystack Ranch*, 997 P.2d at 552. In determining whether an owner intended to abandon a water right, Colorado Courts have looked to a wide range of factors, such as: (1) repair and maintenance of diversion structures; (2) attempts to put the water to beneficial use; (3) active diversion records; (4) diligent efforts to sell the water right; (5) filing documents to protect, change, or preserve the right; (6) leasing the water right; and (7) economic or legal obstacles to exercising the water right. *E. Twin Lakes*, 76 P.3d at 922 (Colo. 2003). The above factors are not exclusive. For example, in *E. Twin Lakes*, after citing the above factors, the Court found a water right was not abandoned after more than 30 years of nonuse after recognizing a multitude of other mitigating factors. *Id.* at 922-925. 3. Factual Grounds for Objection. The following facts refute any assertion that W1189 Well No. 1 has not been used for ten or more years, and these facts demonstrate a clear lack of intent to abandon this water right: (a) The subject water right was purchased in 2018 and

RWR filed a change of ownership form with the Division of Water Resources on August 23, 2018. The Well was purchased with an 9,800 acre ranch and is used in connection with that property for irrigation and stockwater. (b) Prior to RWR's acquisition in 2018, the previous owner was suffering from terminal cancer which prevented his use of the Well for irrigation and stockwatering. This individual subsequently passed away and excuses any period of nonuse. (c) Subsequent to its acquisition, RWR repaired the well infrastructure, installed a new pump, and included the Well in the Subdistrict 4 replacement plan. RWR spent in excess of \$80,000 on the repairs and the new pump. (d) RWR spent another \$100,000 in improvements on other water facilities associated with the Ranch such as flumes, headgates and stock tanks that are integrated with W1189 Well No. 1, and plans to add additional piping to W1189 Well No. 1 to increase irrigation efficiency and reduce water issues. (e) Since these repairs, water from W1189 Well No.1 has been diverted and used to irrigate approximately 400 acres of land and water approximately 900 stock. The foregoing facts demonstrate that the subject Well has been used in the last ten years, and that there has been no intent to abandon this water right. WHEREFORE, RWR respectfully requests that the Court remove the 4.46 cfs of the W1189 Well No. 1 water right owned by RWR from the abandonment list.

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 notified that you have until the last day of July 2022, to file with the Water Clerk 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 or a protest to the requested correction. A copy of such a statement of opposition or protest must also be served upon the Applicant or the Applicant's attorney and an affidavit or certificate of such service must be filed with the Water Clerk. The filing fee for the Statement of Opposition is \$192.00. Forms may be obtained from the Water Clerk's Office or our website at www.courts.state.co.us. Jennifer Pacheco, Water Clerk, Water Division 3, 8955 Independence Way, Alamosa, CO 81101.