

DISTRICT COURT, WATER DIVISION 7, COLORADO

WATER RESUME

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TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER DIVISION NO. 7

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications filed in the Office of the Water Clerk during the month of November 2021, for each county affected.

**21CW23** Clark Behner, 3929 CR 250, Durango, CO 81301: **Behner Pump**; Animas River; La Plata County; Date of original decree, 11/30/07; Case no., 06CW127; Subsequent decrees, 3/10/16, 13CW3034; Water will be diverted within the Animas Service Area which shall be defined as any point within the Animas River Basin (which includes the Animas River and all of its tributaries) upstream of a point in the Animas River that is located as follows, in the SW1/4SW1/4, Section 29, T35N, R9W, NMPM, 1250 feet from South, 720 feet from West; Animas River; Appropriation date, 2/22/09; Depletion amounts range from 20 to 40 cfs; Year round depletions associated with beneficial uses of water diverted from the Animas River and its tributaries in the Animas Service Area from non-exempt wells and surface diversion for irrigation; supplemental irrigation; wetlands and wetlands irrigation; domestic and municipal use; pond, reservoir water feature and other evaporation; industrial and manufacturing use, power; geothermal; commercial use; gravel and other mining; stock and wildlife watering; fire fighting; recreation; snow and ice making; piscatorial; recharge; augmentation and exchange; Diversion, pump and irrigation system has been installed and put to beneficial use; Date water applied to beneficial use, 6/1/21; Diversion rate: 0.10 cfs; Depletion amounts: April 1-14 0.006175 cfs, April 15-30 0.006175 cfs, May 0.0139825 cfs, Jun 1-14 0.0199525 cfs, June 15-30 0.0199525 cfs, July 1-14 0.019105 cfs, July 15-31 0.019105 cfs, August 0.0146325 cfs, September 0.01176 cfs, Oct 0.00569 cfs; Supplemental irrigation of 2.5 acres of home lawns and gardens on Parcel #'s 5597-342-00-017 and 5597-342-00-015; La Plata County; SW1/4NW1/4, Section 34, T36N, R9W, NMPM; Easting 247928, Northing 4137286; Work towards completion of project outlined in application. Application to Make Absolute in Whole or in Part (8 pages including exhibits)

**21CW24** Dixon Nos 1 2 3, LLC, 6525 US Highway 550, Durango, CO 81301: Animas River; La Plata County; **Dixon Spring No. 1**; NE1/4SW1/4, Section 19, T33N, R9W, NMPM; 2848 feet from West, 2565 feet from South; Easting 245056.0, Northing 4108438.0; Date of appropriation, 9/5/69 (historical use); 0.03 cfs Absolute, 0.27 cfs Conditional; Applicant seeks a 9/12/79 absolute priority right of 0.03 cfs for domestic use, evaporation, filling of small pond; Use of 0.27 cfs, irrigation, wetlands irrigation, domestic, livestock watering, fire protection, filling and refreshing of a small pond and wetland, pond and wetland evaporation, recreational incidental esthetic, incidental wildlife watering and piscatorial purposes; **Dixon Spring No. 2**; NW1/4SW1/4, Section 19, T33N, R9W, NMPM; 1017 feet from West, 2982 feet from South; Easting 244617.0, Northing 4108548.0; Date of appropriation, 9/5/69 (historical use); 0.50 cfs Conditional; Applicant seeks a 9/17/79 conditional priority right of 0.50 cfs for irrigation including wetlands irrigation, fire protection, livestock watering, pond and wetland evaporation, filling and refreshing of a small pond and wetland, filling of water features, recreational, piscatorial incidental esthetic, incidental wildlife watering and aquaculture uses; Source for both structures, springs within a tributary (unofficial name of Craig Draw) draining southwestern Florida Mesa, tributary to the Lower Animas River near Bondad, CO; Remark, Among uses within the properties described, water from Dixon Spring No. 2 also will be put to beneficial use as part of a future fish hatchery at address, 3214 CR 213, Durango, CO 81303; See application for more detailed information. Application (Consolidated) for Absolute and Conditional Surface Water Rights (80 pages including exhibits)

**21CW3043 (13CW3035) – LA PLATA COUNTY – APPLICATION FOR FINDING OF REASONABLE DILIGENCE – 1. Name, Address, Phone, and E-Mail Address of Applicant.** The

Michael and Susan Ellison Family Revocable Trust dated February 1, 1983 c/o Michael R. Ellison, Trustee, 11440 E. Black Rock Road, Scottsdale, Arizona 85255; Phone: (602) 738-0682; E-mail: michael.ellison@trivita.com. Attorneys for Applicant: David F. Bower (#39405), Richard A. Johnson (#16047), Johnson & Repucci LLP, 850 W. South Boulder Road, Suite 100, Louisville, Colorado 80027; Phone: (303) 442-1900; Fax: (303) 442-0191; E-mail: dfbower@j-rlaw.com; rajohnson@j-rlaw.com. **2.**

**Name and Description of Conditional Water Right.** (a) *Name of Structure.* Mooney Draw Pond. (b) *Original and Subsequent Decrees.* The Mooney Draw Pond was originally decreed in Case No. 13CW3035, Water Division 7, dated November 27, 2015. (c) *Legal Description of Structure.* In the NE1/4 SE1/4 of Section 29, Township 33 North, Range 12 West of the N.M.P.M., at a point approximately 2,331 feet from the south section line and 118 feet from the east section line of said Section 29 (Zone 13, NAD83, Easting 218628.5m, Northing 4107816.8m). A map showing the general location of the Mooney Draw Pond is attached hereto as Exhibit A. (d) *Source.* Mooney Draw, tributary to Government Draw, tributary to Long Hollow, tributary to the La Plata River. (e) *Legal Description of Filling Structure.* The Mooney Draw Pond is filled with a pipe from Mooney Draw. The pipe diverts from Mooney Draw in the NE1/4 SE1/4 of Section 29, Township 33 North, Range 12 West of the N.M.P.M., at a point approximately 2,600 feet from the south section line and 10 feet from the east section line of said Section 29 (Zone 13, NAD83, Easting 218660.0m, Northing 4107899.0m). (f) *Rate of Fill.* 1.5 cfs. (g) *Amount and Uses.* 8.03 acre-feet, conditional, for irrigation, piscatorial, and recreation uses; 5.90 acre-feet, conditional, for augmentation and stockwatering uses. (h) *Appropriation Date.* December 3, 2013. (i) *Previous Decrees.* The Mooney Draw Pond was originally decreed in Case No. 03CW62, Water Division 7, for 2.13 acre-feet, absolute, for augmentation and stockwatering uses, with an appropriation date of August 1988. In Case No. 13CW3035, Applicant was decreed conditional uses of irrigation, piscatorial, and recreation to the existing 2.13 acre-feet right and a conditional enlargement of 5.90 acre-feet for augmentation, stockwatering, irrigation, piscatorial, and recreation uses. (j) *Other Remarks.* The UTM location provided for the Mooney Draw Pond Filling Structure in Case No. 13CW3035 was based on Zone 12 coordinates provided by Google Earth. The UTM descriptions in this application are from the Division of Water Resources' CDSS. **3. Claim for Finding of Reasonable Diligence.** Applicant seeks to continue as conditional the water right decreed to the Mooney Draw Pond as described above. During the subject diligence period, the following activities were performed

proving Applicant's intention to put the subject water right to beneficial use and the actions taken by Applicant to do so: (a) *Construction Efforts.* Applicant has been working with S&S Construction out of Durango to enlarge and/or reconstruct the Mooney Draw Pond. On October 28, 2021, Applicant visited the site with S&S and discussed the requirements and initial construction plans for the project. S&S has now provided Applicant a cost estimate for the excavation and construction. Pictures from the site visit and a copy of the job estimate cost are available upon request. (b) *Objection to Abandonment Listing.* The Church Hollow Ditch and Raceways and Mooney Draw Ditch and Raceways ("the "Raceways"), which are approved to be augmented by the subject Mooney Draw Pond water right pursuant to the plan for augmentation approved in Case No. 13CW3035, were included in the 2020 Decennial Abandonment Listing of the Division Engineer. On June 28, 2021, Applicant filed its objection to the listing of the Raceways. On October 25, 2021, the subject structures were removed from the abandonment list. Applicant incurred legal costs in objecting to the abandonment listing and protecting the plan for augmentation and augmentation right decreed to the Mooney Draw Pond. (c) *Other Costs and Expenses.* Applicant has also incurred legal costs and expenses during the subject diligence period for other water rights related work, including monitoring and participating in Case No. 10CW98, Water Division 7, which involved Long Hollow Reservoir. Long Hollow Reservoir is the augmentation supply for the Mooney Draw Pond. Case No. 10CW98 was finally resolved in November of 2018. **4. Name of Landowner upon which any New or Modified Diversion Structure is Located.** The Mooney Draw Pond is on land owned by Applicant. WHEREFORE, Applicant respectfully requests that the Court enter a decree finding that it has been reasonably diligent in its efforts to develop the conditional water right for the Mooney Draw Pond originally decreed in Case No. 13CW3035, Water Division 7. (5 pages including exhibits)

**21CW3045 La Plata County, Animas River.** Application to Make Conditional Water Right Partially Absolute. Patricia A. Loe, Linda Ferrell, Dina Marie O'Brien, and M. Lisa Ganzerla, c/o Beattie, Houpt & Jarvis, PO Box 1669, Basalt, 970-945-8659. Summary of Application: Applicants seek to confirm as absolute part of the Animas Service Area Water Right decreed in 06CW127, Water Div 7. The water is diverted at the Reid Ditch pursuant to a Water Carriage Agreement between Applicants and the Animas Valley Ditch and Water Company and used for irrigation of approx 37 acres on Applicant's property. Applicants have put the subject water rights to beneficial use and submitted the requisite "Notice of Intent to Make Absolute." Name of Structure: Animas Service Area Water Right ("ASA Water Right"): Original decree entered 11/30/07 in 06CW127. Decreed Legal Description: The decree in 06CW127 provides that water will be diverted within the Animas Service Area which shall be defined as any point within the Animas River Basin (which includes the Animas River and all of its tributaries) upstream of a point in the Animas River that is located as follows: SW1/4SW1/4 of Sec 29, T35N, R9W, NMPM, 1,250 ft from S Section Line and 720 ft from W Sec Line of said Sec 29, La Plata County, Colo. Decreed Source: Ground water and surface water in the Animas River and its tributaries upstream of point described above. Appropriation date: 02/22/06. Decreed Amount: Year-round Depletion Flow Rates (conditional) are set forth as follows: January 1-31, 20 cfs; February 1-28 (29), 20 cfs; March 1-31, 20 cfs; April 1-14, 20 cfs; April 15-30, 25 cfs; May 1-31, 30 cfs; June 1-14, 40 cfs; June 15-30, 30 cfs; July 1-14, 25 cfs; July 15-31, 20 cfs; August 1-31, 20 cfs; September 1-30, 20 cfs; October 1-31, 20 cfs; November 1-30, 20 cfs; and December 1-31, 20 cfs. Decreed Uses: Year round depletions associated with beneficial uses of water diverted from the Animas River and its tributaries in the Animas Service Area from non-exempt wells and surface diversion for irrigation; supplemental irrigation; wetlands and wetlands irrigation; domestic and municipal use; pond, reservoir, water feature and other evaporation; industrial and manufacturing use; power; geothermal; commercial use; gravel and other mining; stock and wildlife watering; fire fighting; recreation; snow and ice making; piscatorial; recharge; augmentation; and exchange. Description of Diversion Structure and Work Done to Apply Portion of ASA Water Right Beneficial Use: Name of Structure: Reid Ditch, Four Sisters Enlargement. Legal Description: The decree entered in 05CW95 provides that the Reid Ditch is located at a point on the East Bank of the Animas River at a point on the NE1/4 of Sec 25, T37N, R9W, NMPM, stream mile 42.55. According to DWR CDSS, the UTM Coordinates are NAD 83, Zone 13, Easting 252268.0, Northing 4148458.0. Source: Animas River and water trib to the Animas River intercepted by the Reid Ditch. Appropriation Date: 02/22/06, pursuant to decree in 06CW127. Rate of Diversion: 1 cfs. Notice of Intent. Pursuant to the requirements of the decree entered in 06CW217, Applicant filed a notice of intent ("NOI") to develop an increment of the ASA Water Right with the Southwestern Water Conservation District ("SWCD") and La Plata County. Depletion Flow Rates: The anticipated amount of depletions associated with beneficial use, as described above, are set forth as follows: January 1-31, 0 cfs; February 1-28 (29), 0 cfs; March 1-31, 0 cfs; April 1-14, 0.09139 cfs; April 15-30, 0.09139 cfs; May 1-31, 0.20694 cfs; June 1-14, 0.29530 cfs; June 15-30, 0.29530 cfs; July 1-14, 0.28275 cfs; July 15-31, 0.28275 cfs; August 1-31, 0.21656 cfs; September 1-30, 0.17405 cfs; October 1-31, 0.08421 cfs; November 1-30, 0 cfs; and December 1-31, 0 cfs. Uses: Irrigation. Request to Make Water Rights Absolute: Applicant has diverted 1 cfs under the ASA Water Right using the Reid Ditch and has put this water to beneficial use for irrigation. Applicant seeks to make absolute the Depletion Flow Rate associated with said diversions so that the Reid Ditch and Four Sisters Enlargement may continue to divert 1 cfs under the priority of the ASA Water Right at the Reid Ditch for irrigation purposes. Owners of land: Use of the ASA Water Right will occur on Applicants' property. It is believed that the headgate of the Reid Ditch is located on property owned by James Butts, 330 Animas Springs Road, Durango, CO 81301. (6 pages, 3 exhibits)

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 HEREBY NOTIFIED THAT YOU HAVE until the last day of January 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. A copy of such Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit or certificate of such service shall be filed with the Water Clerk, as prescribed by Rule 5, CRCP. (Filing fee: \$192.00; Forms are available through the Office of the Water Clerk or on the Judicial web site at [www.courts.state.co.us](http://www.courts.state.co.us); Danene M. Etz, Water Court Specialist, 1060 E. 2<sup>nd</sup> Ave., Room 106, Durango, CO 81301; 970-385-6181)



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Danene M. Etz, Water Court Specialist