

DISTRICT COURT, WATER DIVISION 7, COLORADO

WATER RESUME

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 2022, for each county affected.

22CW14 Jacob Cammack & Cody Cammack PO Box 2337, Pagosa Springs, CO 81147: **Ambitious Pipe Dream Diversion**; Archuleta County; In the NW1/4NW1/4, Section 7U, T34N, R3W, NMPM; UTM Coordinates Easting 302641.1, Northing 4120667.7, Zone 13; Stollsteimer Creek; Appropriation date, 8/19/22; Conditional 184.4 gpm, Absolute 40 gpm; Agriculture, irrigated pasture, orchards, fire protection, gardens, lawns; See application for further details; Application for Conditional & Absolute Water Rights (Surface) (8 pages including exhibits)

22CW15 Roman Espinosa, 6971 HWY 151, Pagosa Springs, CO 81147: **Famous Amos**; Archuleta County; In the SW1/4SE1/4, Section 25, T34N, R5W, NMPM; UTM Coordinates Easting 292188.5, Northing 4114801.2, Zone 13; Stollsteimer Creek Tributary to Piedra River; Appropriation date, 4/29/22; Conditional 0.92 cfs; Irrigation, stock, fire protection; See application for further details; Application for Conditional Water Rights (Surface) (38 pages including exhibits)

2022CW3043 LA PLATA COUNTY, WATER DISTRICT NO. 30: **1) Applicant:** Jerry Cargill, 2502 Springwood Lane, Richardson, TX 75082, (214) 725-6800; **2) Attorney:** Adam T. Reeves, Maynes, Bradford, Shipp & Sheftel, LLP, Durango, CO 81301; **3) Application for a Finding of Reasonable Diligence for Water Rights originally decreed in Case No. 05CW29 (April 6, 2009) and further decreed in Case No. 15CW3010 (November 2016):** **a. Cargill Lakewood Well #1; Legal Description:** Located on what is currently an approximately 6.8 acre parcel owned by Applicant on Lakewood Drive, Durango, Colorado, to be replatted as Lots 1B-1 and 1B-2. Well #1 is located on the 3.5+ acres that will be platted as Lot 1B-2, in the NW1/4SE1/4 of Section 14, T38N, R9W, N.M.P.M., approximately 1,370 feet from the East section line and 2,050 feet from the South section line; **Source:** Unknown aquifer; **Appropriation Date:** September 2004; **Amount claimed:** 0.03 cfs (15 gpm), Conditional; **Use:** In-house use only in two single-family residences; **Well Permit No.:** 219067 **b. Clark Well #33; Legal Description:** Lot 33, Lakewood Meadows ("LM") Subdivision, pursuant to the amended plat thereof, recorded at Reception No. 361335 on September 23, 1970, in the records of the La Plata County, in the NE1/4SE1/4 of Section 14, T38N, R9W, N.M.P.M., 2,100 feet from the south section line and 1,180 feet from the east section line on Lakewood Drive; **Source:** Unknown aquifer; **Appropriation Date:** April 2004; **Amount claimed:** 0.03 cfs (15 gpm), Conditional; **Use:** Domestic use in one single-family residence, irrigation of up to one acre of lawns and gardens on Lots 33 and 34, LM Subdivision, and fire protection; **Well Permit No.:** #127561; **Work performed toward completion of appropriation:** **a.** Applicant tested the well to assess its condition before listing property for sale to a buyer capable of placing the well into service and has received several offers to purchase, which he is evaluating. Applicant spent \$350.00 on these efforts; **b.** The wells at issue are part of a joint plan of development augmented with wells owned by Joe Shaw and David Senn, covered by an agreement with Public Service augmented from Electra Lake; Applicant has spent \$1,165.56 on the augmentation lease in order to ensure that the wells can be placed into service when the property is sold. Applicant has expended \$1,515.56 toward completion of appropriation, and Applicant expended nothing in attorneys' fees during this diligence period (5 pages)

22CW3044 (Prior Case No. 13CW3032) **APPLICATION FOR FINDINGS OF REASONABLE DILIGENCE AND TO MAKE PARTIALLY ABSOLUTE.** 1. **Name, Mailing Address, and Telephone Number of Applicant.** Bootjack Ranch, LLC 12500 East Highway 160 Pagosa Springs, CO 81147 (970) 264-7280 Please direct all pleadings and correspondence to Wayne F. Forman, #14082 and Courtney M. Shephard, #47668 of BROWNSTEIN HYATT FARBER SCHRECK, LLP at 410 17th Street, Suite 2200 Denver, CO 80202 Phone: (303) 223-1100 E-mail: wforman@bhfs.com; cshephard@bhfs.com.

2. **Claim for Reasonable Diligence: Phillipps Ditch Irrigation Return Flows.** a. **Date of Original Decree:** November 30, 2016, Case No. 13CW3032. b. **Point of Diversion:** The Phillipps Ditch headgate located in the NE¼SW¼ of Section 29, Township 37 North, Range 1 East, N.M.P.M.; 2,537 feet from the South section line and 2,285 feet from the West section line. UTM 13 North, NAD83; X: 331,914 Y: 4,142,583; Mineral County, Colorado. *See* Figure 1 – Vicinity Map. c. **Source:** West Fork of the San Juan River. d. **Appropriation Date:** November 27, 2013. e. **Amount:** 0.79 c.f.s., conditional. The maximum and current return flows that may be retained are in Columns 8 and 9 of Tables 2a and 2b, respectively, attached to the 13CW3032 Decree. f. **Uses:** Piscatorial, recreation and freshening of Oxbow Lake from April through November. Uses occur in Oxbow Lake. g. The Phillipps Ditch water right was decreed in Case No. CA-165 for irrigation uses. The decree entered in Case No.13CW3032 quantified and changed that right to allow its use in Bootjack Ranch’s plan for augmentation upon the removal of land from irrigation. In the same case, Bootjack Ranch was also decreed the right to divert and use the historical return flows from irrigation under the Phillipps Ditch water right, once irrigation ceased. That right, the Phillipps Ditch Irrigation Return Flows conditional water right, is the subject of this case. Bootjack Ranch has ceased irrigation on and dried up 4.07 acres of the historically irrigated land to construct Oxbow Lake. Table 2b of the 13CW3032 Decree provides the irrigation return flow balance associated with the 4.07 acres of dry up. During the diligence period, Bootjack Ranch diverted and beneficially used the Phillipps Ditch Irrigation Return Flows water right associated with the 4.07 acres of dry up.

3. **Activities During the Diligence Period.** Pursuant to C.R.S. § 37-92-301(4)(b), “[t]he measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.” The above-described right originally decreed in Case No. 13CW3032 is a part of the Bootjack Ranch water system that now provides, and in the future will provide, water for Bootjack Ranch. These rights comprise an integrated system of water rights and structures under C.R.S. § 37-92-301(4)(b). Since November 2016, Bootjack Ranch has diligently prosecuted its water rights, including the activities and expenditures described below.

a. **Construction & Water System Development Activities.** Bootjack Ranch spent more than \$1,000,000 on improvements to its water system including the subject conditional water right; these activities included but were not limited to: i. Upgrading the power supply at Oxbow Lake and installing pumping equipment, flow meters, pipelines, risers, and large capacity sprinkler heads to irrigate the Phillipps Ditch irrigated area and Phillipps Ditch Brown Enlargement irrigated area. ii. Completing repair work on Oxbow Lake and the Oxbow Augmentation Pond, including replacing discharge pipe, installing totalizing flow meter and valves on the outlet pipe from Oxbow Augmentation Pond, installing a pipeline from the San Juan River to the Oxbow Augmentation Pond, and general maintenance work associated with the inlet and outlet of the Oxbow Lake.

b. **Engineering & Water Consulting Activities.** Bootjack Ranch spent more than \$310,000 in engineering and consulting work to defend and perfect the decreed conditional water right that is the subject of this Application as well as other rights in the system, and to appropriate new water rights for its integrated system of water rights. This work included, but was not limited to: i. Multiple site visits to Bootjack Ranch to document flow rates, irrigated area, and beneficial use of the Phillipps Ditch Oxbow Enlargement, Wolf Creek Village Well, Well WS-1, Well WS-5, Front Gate Well, Phillipps Ditch – Brown Enlargement, Dermody Pump, WB Turner Pumpsites Nos. 1 and 2, and the Brown Spring. ii. Technical support and research to correct the point of diversion for the Phillipps Ditch headgate in Case No. 17CW3009. iii. Technical support in protecting Bootjack Ranch’s integrated system of water rights by filing statements of opposition in Case Nos. 17CW3014, 17CW3030, 17CW3041, 21CW3029,

and 21CW3014. iv. Technical support for an application in Case No. 22CW3034 for findings of reasonable diligence and to make conditional water rights absolute for certain water rights within the Bootjack Ranch water system. v. Compiling Bootjack Ranch's well diversion records and annual submittal to the Division 7 Office of the Colorado Division of Water Resources. c. Water Counsel Actions. Bootjack Ranch spent more than \$300,000 in legal fees to defend its decreed water rights and to appropriate new water rights for its integrated system of water rights. This work included, but was not limited to: i. Correcting the point of diversion for the Phillipps Ditch headgate in Case No. 17CW3009. ii. Filing an application in Case No. 22CW3034 for findings of reasonable diligence and to make conditional water rights absolute for certain water rights within the Bootjack Ranch water system. iii. Protecting Bootjack Ranch's integrated system of water rights by filing statements of opposition and participating in Case Nos. 17CW3014, 17CW3030, 17CW3041, 21CW3029, and 21CW3014. **4. Claim to Make Partially Absolute.** a. Date Water Was Applied to Beneficial Use: From July 1, 2019 to July 31, 2019, Bootjack Ranch diverted between 4.34 c.f.s. and 8.14 c.f.s. daily at the Phillipps Ditch headgate. *See* Exhibit A – Phillipps Ditch Accounting Form – Water Year 2019. Bootjack Ranch allocated the first water diverted to the senior Phillipps Ditch irrigation right (decreed amount: 2.35 c.f.s., absolute) and then applied the excess to the junior rights decreed in Case No. 13CW3032: the Phillipps Ditch – Oxbow Enlargement (decreed amount: 4.0 c.f.s., absolute, for delivery into Oxbow Lake and the Oxbow Augmentation Pond); and the Phillipps Ditch Irrigation Return Flows (decreed amount: 0.79 c.f.s., conditional). *See id.* Column 9 of Table 2b attached to the 13CW3032 Decree which provides that the available monthly return flow rate for the Phillipps Ditch Irrigation Return Flows water right associated with the 4.07 acres of dry-up for Oxbow Lake in July is 0.05 c.f.s. Accordingly, Bootjack Ranch placed to beneficial use 0.05 c.f.s. of the the Phillipps Ditch Irrigation Return Flows water right from the July 2019 diversions at the Phillipps Ditch headgate. b. Amount: 0.05 c.f.s. c. Use: Piscatorial, recreation, and freshening of Oxbow Lake from April through November. d. Place of Use: Oxbow Lake. WHEREFORE, Bootjack Ranch requests that the Court enter a decree: A. Pursuant to C.R.S. § 37-92-103(4)(a), making 0.05 c.f.s. of the Phillipps Ditch Irrigation Return Flows water right absolute for the beneficial uses of piscatorial use, recreation, and freshening of Oxbow Lake. To the extent the Court denies this claim to make a portion of the water right absolute, Bootjack Ranch requests that the Court find that Bootjack Ranch has been reasonably diligent in finalizing the entire appropriation and continue it in full force and effect. B. Finding that the Bootjack Ranch has been reasonably diligent in finalizing the appropriation of the Phillipps Ditch Irrigation Return Flows water right with respect to the remaining 0.74 c.f.s. for the beneficial uses of piscatorial use, recreation, and freshening of Oxbow Lake, and continuing the right in full force and effect. C. Granting such other relief as the Court deems just and proper (10 pages including 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 2023, 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; Stephanie Wills, Water Court Specialist, 1060 E. 2nd Ave., Room 106, Durango, CO 81301; 970-247-2304)

Published: before December 31, 2022

/s/Stephanie Wills
Water Court Specialist