
RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MAY 2023. (This publication can be viewed in its entirety on the state court website at: www.courts.state.co.us).

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during May 2023, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 2023CW3022, ANDREW ALM, 2383 Collegiate Drive, Colorado Springs, CO 80918 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Ryan W. Farr and W. James Tilton of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921 (719) 471-1212) Application for Approval of Plan for Augmentation

EL PASO COUNTY

II. Applicant is a landowner in El Paso County, Colorado. Applicant owns and a parcel of land 12.7 acres in size and is seeking to quantify the Denver Basin Groundwater underlying the property. Applicant notes the El Paso County assessor's website incorrectly identifies the land, Parcel No. 7133007024, as being 10.54 acres in size. Applicant also seeks approval of a plan for augmentation for the use of not-nontributary Denver aguifer wells for water provisions to the Applicant's property. III. Property Description. Applicant's property lies in the NE1/4 of the NE1/4 of Section 33, Township 11 South, Range 67 West of the 6th Prime Meridian, El Paso County, Colorado ("Applicant's Property") as shown on the Exhibit A map attached to the application (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) and as more specifically described and documented on Exhibits B and C attached to the application. Proposed Wells. Applicant proposes constructing up to two wells on Applicant's Property to support the subdivision of the property into two lots, each greater than five (5) acres in size. There are currently no wells on Applicant's Property. Water Source. Not-Nontributary. The groundwater to be withdrawn from the Dawson and Denver aquifers underlying Applicant's property is notnontributary. Pursuant to § 37-90-137(9)(c.5), C.R.S., the augmentation requirements for wells in the Dawson aquifer require the replacement of actual stream depletions. Pursuant to § 37-90-137(9)(c.5), C.R.S., the augmentation requirements for wells in the Denver aguifer require the replacement of actual stream depletions or 4% of water withdrawn annually depending whereupon the wells are located on the Applicant's Property. Nontributary. The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's property is nontributary. Estimated Rates of Withdrawal. Pumping from the wells shall not exceed 200 g.p.m. The actual pumping rates for the wells will vary according to aguifer conditions and well production capabilities. Applicant requested the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of any well to be

constructed within the respective aquifers will be determined by topography and actual aquifer conditions. *Estimated Average Annual Amounts of Groundwater Available*. Applicant requests a vested right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code § 8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to § 37-90-137(4), C.R.S. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

AQUIFER	NET SAND (ft)	Total Appropriation (Acre-Feet)	Annual Avg. Withdrawal 100 Years (Acre-Feet)	Annual Avg. Withdrawal 300 Years (Acre-Feet)
Dawson (NNT)	88	224	2.24	0.74
Denver (NNT)	251	542	5.42	1.8
Arapahoe (NT)	369	796	7.96	2.65
Laramie-Fox Hills (NT)	182	347	3.47	1.15

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to § 37-92-305(11), C.R.S., Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. Requested Uses. Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic within a single-family dwelling and guest house, structure and equipment washing, hot tub, lawn, garden and greenhouse, irrigation, stock water, commercial, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of § 37-90-137(9)(b), C.R.S., that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, that Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson or Denver aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with § 37-90-137(9)(c.5), C.R.S. Well Fields. Applicant requests permission to produce the full legal entitlement from the Denver Basin aguifers underlying Applicant's Property through any combination of wells. Applicant requests that these wells be treated as a well field and waives the 600-foot spacing requirement for wells on the property described herein. Averaging of Withdrawals. Applicant requests that he be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aguifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. Owner of Land Upon Which Wells are to be Located. The land upon which the wells are to be located, as well

as the underlying groundwater, is owned by the Applicant. IV. Structures to be Augmented. The structures to be augmented are the planned Alm Well No. 1 and Alm Well No. 2, which will be placed on the Applicant's Property, and any additional or replacement wells associated therewith ("Alm Wells"). Applicant intends to subdivide the Applicant's Property into two parcels with one well serving each parcel. Alm Well No. 1 will be constructed into the Dawson or Denver aquifer and the Alm Well No. 2 will be constructed into the Denver aguifer. The Alm Well No. 1 will not be completed to more than one of the not-nontributary aguifers. Water Rights to be Used for Augmentation. Applicant intends to use the return flows resulting from the pumping of the notnontributary Denver aquifer wells, or the return flows resulting from the pumping of both the not-nontributary Dawson aguifer and the not-nontributary Denver aguifer wells for augmentation during pumping, with water rights from the nontributary Arapahoe aquifer reserved for any injurious post-pumping depletions. Statement of Plan for Augmentation. Applicant seeks to augment stream depletions attributable to the pumping of the notnontributary Denver aquifer and potential pumping from the not-nontributary Dawson aguifer as well. Uses. Pumping from the Denver aguifer will be a maximum of 1.7 acrefeet of water per year per lot, with each lot pumping a maximum of 0.85 acre-feet per year if both wells are constructed to the Denver aguifer. If one lot is utilizing Denver aguifer water and the other lot is using Dawson aguifer water, then maximum pumping from the Denver aguifer will be 0.85 acre-feet per year and maximum pumping from the Dawson will be 0.74 acre-feet per year. Such uses shall be for domestic, structure and equipment washing, hot tub, lawn, garden and greenhouse, irrigation, stock water, commercial, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. Depletions. Applicant's consultant has determined that maximum annual stream depletions over a 300-year pumping period for the Denver aguifer amounts to approximately 26.12% of pumping and depletions over a 300-year pumping period for the Dawson aguifer amounts to 8.11% of pumping. Maximum annual depletions are therefore 0.444 acre-feet in year 300 if both lots are utilizing the Denver aguifer or 0.222 acre-feet if only one lot is utilizing the Denver aguifer. If the Dawson aguifer is also being utilized, maximum annual depletions are therefore 0.06 acre-feet in year 300. Should pumping be less than 1.7 acre-feet annually if both lots are pumping from the Denver aguifer, or should pumping be less than 0.85 acre-feet from the Denver aquifer and 0.74 acre-feet from the Dawson aquifer if one lot is utilizing the Denver aquifer and the other lot is using the Dawson aguifer, resulting depletions and required replacements will be correspondingly reduced. Augmentation of Depletions During Pumping. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from a non-evaporative septic system. The annual consumptive use for a non-evaporative septic system is 10% per year. Therefore, at an in-house use rate of 0.25 acre-feet per year, replacement amounts to 0.225 acrefeet to the stream system annually. Thus, during pumping, stream depletion replacement requirements will be more than adequately met. Augmentation of Post Pumping Depletions. For the replacement of any injurious post pumping depletions which may be associated with the pumping from the Denver aguifer as set forth herein, Applicant will utilize non-evaporative septic return flows and potentially irrigation return flows from the subsequent usage of the Arapahoe aquifer underlying the Applicant's Property. Additionally, Applicant may utilize water from Laramie-Fox Hills aguifer as a replacement

source if needed. Applicant reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Applicant reserves the right in the future under the Court's retained jurisdiction to prove that post pumping depletions will be noninjurious. Upon entry of a decree in this case, Applicant will be entitled to apply for and receive a new well permit for the uses in accordance with this Application and otherwise in compliance with § 37-90-137, C.R.S. Additional Remarks in this application may be inspected at the office of the clerk of this Court.

CASE NO. 2023CW3023, THOMAS G. SISTARE AND CHERYL K. SISTARE, 31 E. Platte Avenue, Ste. 300, Colorado Springs, CO 80903 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Steven T. Monson and W. James Tilton, Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921 (719) 471-1212)

Application for Underground Water Rights and Adjudication of Denver Basin Groundwater **EL PASO COUNTY**

II. Applicants are seeking an adjudication quantifying the amount of Denver Basin groundwater underlying their property. Property Description. Applicants' property is located in the NE1/4 SE1/4 of Section 19, Township 12 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado, also known as 10830 Black Forest Road, Colorado Springs, CO 80908, containing 5.33 acres, as depicted and described on attached Exhibit A ("Applicants' Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Existing Well: Applicants have a full exempt domestic well permit No. 47686, for the uses allowed by C.R.S. 37-92-602(1)(b), constructed to the Dawson aguifer underlying the Applicants' Property ('Exempt Well Permit"). The Exempt Well Permit is attached as Exhibit B. The well is approximately 330 feet deep. Water Source/Not Nontributary. The groundwater to be withdrawn from the Dawson aguifer underlying the Applicants' Property Pursuant to § 37-90-137(9)(c.5), C.R.S., the augmentation is not nontributary. requirements for wells in the Dawson aguifer require the replacement of actual stream depletions. The groundwater that will be withdrawn from the Denver and Arapahoe aguifers underlying the Applicants' Property is not nontributary 4 percent replacement groundwater. Wells that are completed to an aquifer more than one mile from any point of contact between any natural stream including its alluvium on which water rights would be injuriously affected by any stream depletions, and any such aquifer, must replace 4 percent of the total amount of water withdrawn on an annual basis. C.R.S. § 37-90-137(9)(c.5)(C). Water Source/Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aguifer underlying the Applicants' Property is nontributary. Estimated Rates of Withdrawal. The actual pumping rates for any well constructed on the property will vary according to aquifer conditions and well production capabilities and any limitations imposed pursuant to a subsequently entered augmentation plan, not to exceed 100 g.p.m. The Applicants request the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed will be determined by topography and actual aguifer conditions. Estimated Annual Average Amounts of Groundwater Available. Applicants request an absolute water right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying the Applicants' Property. Said amount may be withdrawn over the 100 year life of the aquifers as set forth in § 37-90-137(4)(b)(I), C.R.S. However, Applicant's property lies in El Paso County, Colorado, and as El Paso County's Land Development Code ("LDC") requires demonstration of a 300-year water supply, the 300-year annual averaging of withdrawals is included. Applicants estimate that the following values and average annual amount is representative of the Denver Basin aquifers

underlying the Applicants' Property:

Aquifer	Average Saturated Thickness (Feet)	Total Water Adjudicated (Acre Feet)	Average Annual Withdrawal (Acre Feet - 100 Year)	Average Annual Withdrawal (Acre Feet – 300 Year)
Dawson (NNT)	189.4	201.9	2.02	0.67
Denver (NNT 4%)	313.6	284.15	2.84	0.95
Arapahoe (NNT 4%)	264.4	239.57	2.40	0.80
Laramie-Fox Hills (NT)	190	151.90	1.52	0.51

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to § 37-92-305(11), C.R.S., the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from the aquifer. The amount of groundwater in the Dawson aquifer will be reduced by the maximum appropriation for the Exempt Well Permit. Requested Uses: The Applicants request confirmation of the right to use the ground water from the Exempt Well for beneficial uses pursuant to § 37-92-602(1)(b), C.R.S., including water for residential use, domestic animals, fire protection, livestock, and irrigation of up to 1 acre. The Applicants request the right to use the other groundwater for beneficial uses upon the Applicants' Property consisting of domestic, commercial, indoor and outdoor irrigation, stock water, industrial, recreation, piscatorial, wildlife, fire protection, and for storage and augmentation associated with such uses. Provided, however, Applicants shall only be entitled to otherwise construct a replacement well or use water from the not nontributary Dawson aguifer for non-exempt purposes pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not nontributary aquifer in accordance with § 37-90-137(9)(c.5), C.R.S. Well Fields: Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants therefore request that these wells be treated as a well field. Averaging of Wells/Water Banking: Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount, so long as the sum of the total withdrawals from all the wells does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicants are entitled to withdraw from the Denver Basin aguifers underlying the Applicants' Property. Name and Address of Owner of Land Upon Which Wells are to Be

<u>Located</u>: The land upon which the current Exempt Well and any future wells may be constructed is owned by the Applicants. Additional Remarks in this application may be inspected at the office of the clerk of this Court.

CASE NO. 2023CW3024, BUENA VISTA RANCH TRUST DATED MARCH 4, 2020, George Grove, Trustee, 2330 Balsam Drive, Boulder, CO 80304 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Zachary A. Grey, Frascona, Joiner, Goodman and Greenstein, P.C., 4750 Table Mesa Drive, Boulder, Colorado 80305, (303) 494-3000; zac@frascona.com)

Application for Simple Change in Surface Point of Diversion for Offutt Ditch

CHAFFEE COUNTY

2. Decreed water right for which change is sought: A. Name of structure: Offutt Ditch (WDID 1101092). 2.B. Original decree: Case No. CA5141 in the District Court for Chafee County, Colorado dated July 9, 1969. 2.C. Original and most recent decreed point of diversion location: "At a point on the Southerly bank of a spring tributary to Arnold Gulch, tributary to the Arkansas River." See topographic map attached to the Application. (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 2.D. Decreed source of water: Arnold Gulch. 2.E. Appropriation date: March 18, 1963. 2.F. Total amount decreed to structure: 0.25 cubic foot of water per second of time 2.G. Decreed use: Irrigation and domestic. 2.H. Amount of water right that Applicant intends to change: 0.25 cubic foot of water per second of time. 3. Proposed change in Offutt Ditch surface point of diversion. 3.A. Description of change: The Offutt Ditch water right referenced herein (the "Subject Water Right") was the subject of an abandonment protest in Case Number 22CW31 (21CW3078). The protest was resolved by court approved Stipulation and Agreement dated April 20, 2023 (the "Stipulation") where the State Engineer and Division Engineer for Water Division 2 (the "Engineers") agreed to remove the Subject Water Right from the December 31, 2021 Final Decennial Abandonment List for Water Division 2 subject to certain terms and conditions therein, including the submission of this application on or before June 1, 2023 to change the decreed point of diversion to the actual point of diversion, being the proposed new point of diversion. The Subject Water Right has already been physically diverted from the proposed new point of diversion and the Engineers are supportive of a court order recognizing the same as evidenced by the Stipulation's condition to submit this application. In this application, the Applicant seeks to change the decreed point of diversion of the Subject Water Right from that location decreed in Case No CA5141 (as quoted in Section 2.B. above) to the actual point of diversion. The involved distance from the original point of diversion to the actual point of diversion is approximately 1,925 feet. The proposed change in the point of diversion is not combined with and does not include any other type of change of water right. There are no other decreed water rights, intervening surface diversion points, inflows, or decreed in-stream flow right intervening between the original decreed location and the actual point of diversion of the Subject Water Right. The Applicant seeks the above requested change in point of diversion or otherwise confirmation from the court that the proposed new point of diversion is the legal point of diversion for the Subject Water Right. 3.B. Location of the new surface point of diversion: 3.B.1. PLSS location: SW/4 SW/4 31-14S-77W. 3.B.2.a UTM coordinates: Easting 408599.00 Northing 4293310.00

Zone 13. 4. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion structure, or modification to any existing diversion structure is or will be constructed: Applicant.

CASE NO. 2023CW3025, THE JENSEN FAMILY TRUST COUNTY, c/o Marilyn Jensen, Trustee, 2352 Alton Street, Denver, Colorado 80238 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Gilbert Y. Marchand, Jr., #19870, Cynthia F. Covell, #10169, Andrea L. Benson, #33176, Alperstein & Covell, P.C., 1391 Speer Boulevard, Suite 730, Denver, CO 80204, phone: (303) 894-8191; fax: (303) 861-0420, email: gym@alpersteincovell.com; alb@alpersteincovell.com; cfc@alpersteincovell.com)

Application For Simple Change In Surface Point Of Diversion Pursuant To § 37-92-305(3.5), C.R.S.

CUSTER COUNTY

2. Decreed water right for which change is sought: 2.A. Name of structure: Priestly and Robins Ditch. 2.B. Decree information: The decree for the Priestly and Robins Ditch was entered on March 12, 1896, by the Fremont County District Court in the proceeding entitled "In the Matter of the Priorities of Water Rights, and the Adjudication thereof, in Water District Number 13." 2.C. Legal description of structure: The decree describes the headgate as being located on the South Bank of South Taylor Creek [sic] at a point whence the east quarter corner of Section 19, Township 22 South, Range 73 West, bears North 59 degrees East 2,500 feet (Var. 14 degrees E.). This location is depicted on Exhibit A attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 2.D. Decreed source of water: Middle Branch of Taylor Creek. The March 12, 1896 decree describes the source as South Taylor Creek; however, the amended decree entered in Case No. 21CW3071 on February 16, 2023, nunc pro tunc February 3, 2023, corrected and confirmed the true source as the Middle Branch of Taylor Creek. 2.E. Appropriation date: June 10, 1883, Ditch No. 297-A, Priority No. 359-A. 2.F. Amount: 2.33 cubic feet per second ("cfs"), absolute. 2.G. Decreed use: irrigation of 40 acres of land lying in Township 22 South, Range 73 West, namely 15 acres in the southeast quarter of the southwest quarter of section 20 and 25 acres in the northwest quarter of the northeast quarter, the east half of the northwest quarter, and the northeast quarter of the southwest guarter of Section 29. 2.H. Amount of water that Applicant intends to change: all 2.33 cfs, absolute. 3. Detailed description of proposed change in a surface point of diversion: 3.A. Complete statement of change, including a description of how the change meets the definition of a simple change in a surface point of diversion. The change of surface point of diversion described herein has already been physically accomplished. There is no intervening surface diversion point or inflow between the new point of diversion and the diversion point from which the change is being made. The proposed change does not include a change of point of diversion from below or within a stream reach for which there is an intervening surface diversion point or inflow or decreed in-stream flow right to an upstream location within or above that reach. The proposed change and the application herein is not combined with and does not include any other type of change of water right. Based on the foregoing, the proposed change meets the definition of a simple change in a surface point of diversion. C.R.S. §

37-92-305(3.5)(a)(II). Water is physically and legally available at the diversion point from which the change is being made. C.R.S. § 37-92-305(3.5)(c)(I). The proposed change will not result in diversion of a greater flow rate or amount of water than has been decreed to the water right. C.R.S. § 37-92-305(3.5)(c)(I). The proposed change will not injuriously affect the owner of or persons entitled to use water under a vested water right or decreed conditional water right. C.R.S. § 37-92-305(3.5)(c)(II). 3.B. Location of the new surface point of diversion: At or within 200 feet of a point whose UTM coordinates (per the information in Colorado's Decision Support Systems) are Northing 4219441.0 meters, Easting 448401.0 meters (Datum: NAD83; UTM Zone 13). According to DWR's Map Viewer, this location is in in the southeast quarter of the southwest quarter of Section 19, Range 73 West, Township 22 South, of the 6th P.M. This location is depicted on Exhibit A. 4. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion structure, or modification to any existing diversion structure is or will be constructed: There are no new diversion structures or proposed modifications to existing structures. According to the county assessor's database, the existing structure whose location is sought to be confirmed may be located on land owned by the U.S. Forest Service, whose address is: c/o San Carlos Ranger District, 3028 East Main Street Canon City, CO 81212 The structure is very close to the forest boundary and, to Applicant's knowledge, no survey has been performed to confirm the ownership of the land on which the structure is located. 5. Remarks: Applicant is the owner of a 62 percent interest in the subject Priestly and Robins Ditch water right. Applicant has an agreement with the owner of the remaining 38 percent interest in the water right whereby Applicant is authorized to file this application on behalf of both Applicant and the 38 percent owner. The points of diversion that are the subject of this application are depicted in Exhibit A.

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 any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of July 2023, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 9th day of June 2023.



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Michele M. Santistevan, Clerk District Court, Water Div. 2 Pueblo Judicial Building 501 N. Elizabeth Street, Suite 116 Pueblo, CO 81003; (719) 404-8749

(Court seal) Published: