

IN THE DISTRICT COURT IN AND FOR WATER DIVISION NO. 4
STATE OF COLORADO

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER
DIVISION NO. 4

Pursuant to C.R.S. 37-92-302, as amended, you are notified that the following is a resume of all applications filed in the Water Court during the month of August 2023.

The names, address of applicant, source of water, description of water right or conditional water right involved, and description of the ruling sought are as follows:

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.

CASE NO. 2023CW25. Applicant: David S Davis, 39695 Davis Rd., Crawford, CO 81415. Application for Absolute Surface Water Rights: Davis Pond – SW1/4SE1/4 of Section 13, T15S, R92W, 6th PM., Easting 272194, Northing 4291745, Zone 13. Source: Gunnison River. Appropriation Date: 8/25/2023. Amount Claimed: 100 gpm absolute for storage, wildlife, stockwater, and fire protection. **DELTA COUNTY.**

CASE NO. 2023CW26 (Ref: 17CW3022, 10CW049). Applicant: Massey Ranch LLC, 12505 Hwy 141, Whitewater, CO 81527. Application for Finding of Reasonable Diligence: Lurvey Diversion No. 3 - NE1/4SW1/4 of Section 1, T14S, R100W, 6th P.M., Easting 715059.411, Northing 4304546.131, Zone 12, located 1,870 feet north of the South section line and 1,850 feet east of the West section line. Source: East Creek, Gunnison River. Appropriation Date: 12/1/2009. Amount Claimed: 1.56 c.f.s. conditional for stockwatering and irrigation of up to 81 acres of land. The land to be irrigated will be portions of the SW1/4 and the SE1/4 NW1/4 of Section 1, T14S, R100W, 6th P.M. The location of the land to be irrigated is illustrated on Exhibit A. This land will consist of the land labeled on Exhibit A as the "Historic Irrigated Area 26 Acres ± Lurvey Ditch #2" and the "Additional Irrigated Area 55 Acres ±." The lands to be irrigated by the Lurvey Diversion No. 3 shall not include any lands administered by the BLM. The application on file with the Water Court contains an outline of the work performed during the diligence period. **MESA COUNTY.**

CASE NO. 2023CW3050. (Ref. Case Nos. 95CW207, 03CW178, 10CW107, 17CW3000). Name, address, and telephone number of Applicant: Peter D. Caloger, P.O. Box 343, Almont, CO, 81210, 970-641-6443. Please direct all correspondence to: LAW OF THE ROCKIES, Kendall K. Burgemeister, Atty. Reg. #41593, 525 North Main Street, Gunnison, CO, 81230, (970) 641-1903, kburgemeister@lawoftherockies.com. APPLICATION FOR FINDING OF REASONABLE DILIGENCE. Name and type of structure: Hanni Homestead Reservoir. Original Decree: 95CW207, entered on July 8, 1977, 03CW178, entered on January 16, 2004, 10CW7, entered on January 4, 2011, 17CW3000 entered on August 21, 2017, all in District Court, Water Division No. 4. Location: The reservoir spillway is located within the SW/4 NW/4 SW/4 of Section 30, Township 48 North, Range 4 East, N.M.P.M., at a point 1511 from the south section line and 297 feet from the west section line (Zone 13, NAD83, Easting 0362086m, Northing

4250133m). Source: Barrett Creek, tributary to Tomichi Creek and the Gunnison River and Black Spring Pipeline and Ditch. Appropriation Date: May 31, 1993. Amount: 2.7 acre-feet (conditional). Uses: Domestic, stockwater, and irrigation use. Relief Requested: Applicant seeks a finding of reasonable diligence with respect to the conditional water rights totaling 2.7 acre-feet. The following actions have been undertaken toward completion of the application of water to a beneficial use: An impoundment with a discharge pipe and spillway was constructed. The Division Engineer's summary of consultation in Case No. 17CW3000 noted that the reservoir was constructed but was not holding water. Subsequent to entry of the Decree in 17CW3000, Applicant performed additional work on the reservoir to allow it to hold water. Applicant extended the filling pipeline into the lower level of the structure to attempt to fill the reservoir. Attempts to seal the lower level of the impoundment have been unsuccessful. Applicant has researched methods such as bentonite, liners, and other man-made materials in attempting to fill the reservoir and continues to do so. The structure is on land owned by Applicant. **SAGUACHE COUNTY.**

CASE NO. 2023CW3051, Delta County, Gunnison River. Wild River Land Company, LLC, c/o Ryan Jarvis, Erika Gibson and Laurel Quinto, Johnson Van Arsdale Martin PLLC, 305 Gold Rivers Court, Ste 200, Basalt, CO 81621, 970 922-2122. Application for Findings for Reasonable Diligence and to Make Absolute. All structures: Original decree entered on 03/17/2004 in 01CW220; subsequent decrees entered 03/10/2011 in 10CW40 and 08/14/2017 in 17CW3012. First Claim: Richardson Pump and Pipeline No. 1. Location: In the NE¹/₄ NE¹/₄ of Sec 32, T 15 S, R 91 W, 6th PM, at latitude 38°42.5140' N & longitude 107°34.7920' W, which is approx 968 ft S of N sec line & 960 ft W of E sec line of said Sec 32. Source: Smith Fork Creek, trib. to Gunnison River. Appropriation date: 10/22/2001. Amount: 0.5 cfs, conditional. Uses: Stockwatering, wildlife watering, & to fill Lone Rock Pond. Date water applied to beneficial use: 6/27/2023. Amount of water applied to beneficial use: 0.5 cfs. Uses applied to beneficial use: stockwatering, wildlife watering, and to fill Lone Rock Pond. Second Claim: Richardson Pump and Pipeline No. 2. Location: In the NE¹/₄ NW¹/₄ of Sec 32, T 15 S, R 91 W, 6th PM, at latitude 38°42.6049' N & longitude 107°34.5809' W, which is approx 730 ft S of N sec line & 250 ft W of E section line of said Sec 32. Source: Smith Fork Creek, trib. to Gunnison River. Appropriation date: 10/22/2001. Amount: 0.5 cfs, conditional. Uses: Stockwatering, wildlife watering, to fill Slick Rock Pond. Date water applied to beneficial use: 6/24/2023. Amount of water applied to beneficial use: 0.5 cfs. Uses applied to beneficial use: stockwatering, wildlife watering, and to fill Slick Rock Pond. Third Claim: Slick Rock Pond. Location: High point of dam located in the NE¹/₄ NE¹/₄, Sec 32, T 15 S, R 91 W of the 6th PM, at latitude 38°42.5100' N and longitude 107°34.7890' W, which is approximately 600 ft S of the N section line and 750 ft W of the E section line of said Sec 32. Source: water tributary to Smith Fork Creek, tributary to Gunnison River. Appropriation date: November 15, 2000. Amounts and uses: 12.4 acre feet total; 8.0 acre feet, absolute, for recreation, piscatorial, wildlife watering, and stockwatering; 4.4 acre feet, conditional, for recreation, piscatorial, wildlife watering, and stockwatering. Applicant requests abandonment of the remaining conditional portion of Slick Rock Pond. Application on file with the court includes a list of activities demonstrating diligence. Landowner: Applicant. (6 pages, 1 exhibit) **DELTA COUNTY.**

CASE NO. 2023CW3052; Delta County - Gunnison River; MGMGJ Properties, LLC; c/o John R. Pierce, DUFFORD WALDECK, 744 Horizon Court, Suite 300, Grand Junction, CO 81506, (970) 248-5865; **AMENDED APPLICATION TO AMEND PLAN FOR AUGMENTATION;** Name and mailing address of Applicant: MGMGJ Properties, LLC; c/o Mark Gardner; P.O. Box 1769; Grand Junction, CO 81502; Introduction: In Case No. 2017CW3021, the Court approved an augmentation plan for the Graff Gravel Pit Well. That plan contemplated that the pit would only be mined during the months of November through March and that the pits would be wet mined. As a result, that plan provided for both operational depletions and evaporative depletions during the winter (November-March) and only evaporative depletions during the remainder of the year. Under Applicant's new plan for operation, the Graff Gravel Pit Well will be dewatered and mined year-round. Because the Pit will be dewatered, the new plan will significantly reduce the annual depletions compared to the original, but will change the monthly distribution of those depletions, including operational depletions during the summer months. By this amendment, Applicant seeks to update the plan for augmentation to reflect the current mining plan; Name of structure to be augmented: Graff Gravel Pit Well ("Pit"); Case number of original decree: 2017CW3021; Legal description: The centroid of the Pit is located in the SW1/4SE1/4, Section 4, Township 15 South, Range 95 West, 6th P.M., approximately 2,425 feet west of the east section line and 981 feet north of the south section line. UTM coordinates for the proposed location are Zone 13 South, Easting 0237869m, Northing 4295864m; Appropriation date: January 31, 2011; Amount: 0.25 c.f.s., 89.46 a.f. annually; Use: Industrial associated with a gravel pit operation, conditional; Source: Groundwater tributary to the Gunnison River; Water right to be used for augmentation: The plan for augmentation approved in Case No. 2017CW3021 relied on historical consumptive use credits related to 0.702 c.f.s. represented by 5.4 shares of the Bona Fide Ditch Company, as well as water delivered pursuant to a water supply contract for Blue Mesa Reservoir. Those sources of augmentation water will not be changed by this Application; Bona Fide Ditch: (no changes are requested to this water right); From previous decree: Date entered: February 25, 1903; Case No. CA374; Decreed point of diversion: The decree in Case No. 99CW128 found that the location of the point of diversion was in the SE/4 NW/4 SE/4 of Section 1, T15S, R95W, 6th P.M., at a point approximately 3,500 feet from the west section line and 1,700 feet from the south section line; Source: Gunnison River; Appropriation Date: November 30, 1881; Amount: 0.702 c.f.s. changed in Case No. 2017CW3021; Uses: Augmentation (as changed in Case No. 2017CW3021); Blue Mesa Reservoir: Augmentation needs will be met by water released from Blue Mesa Reservoir under a water service contract to be obtained by Applicant. Blue Mesa Reservoir (Wayne N. Aspinall unit of the Colorado River Storage Project) was decreed 939,204 acre-feet in C.A. Nos. 5590 and 6981, Gunnison County District Court, with a November 11, 1957, appropriation date. An additional 124,253 acre-feet, with the same appropriation date, was transferred to the reservoir in C.A. No. 10045, making the total amount decreed to Blue Mesa Reservoir 1,063,457 acre-feet; Does Applicant need to change a water right to provide a source of augmentation: No; Statement of amendment to plan for augmentation: The original plan for augmentation approved in Case No. 2017CW3021 contemplated wet mining of the Pit during the winter period of November through March. The amended plan in this case is based on year-

round mining of a continuously dewatered pit. As a result, the annual depletions will be greatly reduced during the active mining period due to the reduction of evaporative losses. Operational losses, however, will increase slightly on an annual basis because they will occur year-round, rather than during five months of the year; Revised mining plan: As in the original plan for augmentation, mining phase depletions under the revised mining plan will include groundwater consumed through evaporation, dust suppression, and retained as moisture in the mined product. However, evaporative depletions will be significantly reduced under the revised plan because the exposed groundwater will be limited to 0.1 acre in dewatering trenches and sumps. Material losses will remain the same on an annual basis and will result from removal of 150,000 tons of product below the water table. Depletions from dust suppression will occur on an average of 22 days per month from April 1 through October 31 and 11 days between November 1 and November 15. Upon completion of mining, the Pit will be allowed to refill with water either by ceasing dewatering and allowing groundwater to accumulate in the pit or by pumping water from the Gunnison River into the Pit. Such refilling will occur either (1) when there are no active calls on the river and no calls are anticipated or (2) when sufficient excess replacement water or historical irrigation credits are available to offset potential out-of-priority depletions. Post-mining depletions will remain the same as decreed in Case No. 2017CW3021 and will be limited to evaporation from the 28-acre Pit remaining after completion of mining; Timing of depletions to Gunnison River: The timing of post-mining phase depletions was decreed in Case No. 2017CW3021 and is not modified by this Application. However, because this Application will modify the distribution of active mining phase depletions, Applicant has calculated the timing of depletions during active mining; Call period: As recognized in the decree in Case No. 2017CW3021, the primary senior downstream calling right on the Gunnison River is the Redlands Power Canal (“RPC”). The existing augmentation plan assumed that calls by the RPC could potentially occur year-round. Applicant seeks to update that assumption based on periods during which calls could have been placed by RPC in response to the extreme drought conditions experienced in calendar years 2002 and 2003. An analysis of streamflow data from the USGS gaging station on the Gunnison River at Whitewater was conducted and the periods of potential RPC calls during 2002 and 2003 were calculated; Replacement obligation: Under the amended plan for augmentation, potential out-of-priority depletions during the mining phase will be offset with the dry-up of historically irrigated land as mining progresses and a water supply contract for releases from Blue Mesa Reservoir. (5 pages)

DELTA COUNTY.

CASE NO. 2023CW3053 in San Miguel County, Colorado. **APPLICATION FOR FINDING OF REASONABLE DILIGENCE.** Name and address of Applicant: Howard M. Hughes, P.O. Box 249, Norwood, CO 81423. Please direct all correspondence, motions, and pleadings to Jeffrey J. Conklin or Danielle T. Skinner, KARP NEU HANLON, P.C., 201 14th Street, Suite 200, P.O. Drawer 2030, Glenwood Springs, CO 81602, (970) 945-2261. **FIRST CLAIM: APPLICATION FOR FINDING OF REASONABLE DILIGENCE.** Name of structure: *Hughes Pond No. 4*. Date of original decree: June 2, 1997, in Case No. 94CW252, Water Division 4. Subsequent decrees awarding findings of diligence: August 29, 2017, in Case No. 2016CW3045, Water Division 4. Legal description: A point 500 feet north of the South section line and 2,350 feet west of the East section line in the

SW1/4 of the SE1/4 of Section 23, Township 43 North, Range 12 West, N.M. P.M. This location can also be described with the following UTM Zone 12 coordinates, NAD 1983 Datum, N4206034, E749757. Source: Irrigation waste water from the J & M Hughes Ditch Headgate No. 14 and surface runoff tributary to Turner Creek, tributary to Beaver Creek, tributary to the San Miguel River. The decreed point of diversion of the J & M Hughes Ditch Headgate No. 14 as adjudicated in Case No. CA5882, Montrose County District Court, is located on the west bank of Saltado Creek at a point whence the NW corner of Section 36, Township 43 North, Range 11 West of the N.M. P.M. bears North 27°0' West 9,636 feet. Appropriation date: December 29, 1994. Amount: 15.00 acre feet, conditional. Uses: Stock water and irrigation. Description of irrigated land: Portions of all of Sections 23 and 26, and the W 1/2 of Sections 24 and 25, Township 43 North, Range 12 West of the N.M. P.M., which land is owned by Beaver Mesa Livestock, LLLP. Applicant is a partner in Beaver Mesa Livestock, LLLP. Surface area of high water line: 2.0 acres. Total capacity: 15.00 acre feet. Claim for diligence: Applicant requests a finding of diligence for 15.00 acre feet, conditional, for the Hughes Pond No. 4 for stock water and irrigation uses. Names and addresses of owners of land upon which structures are located: Beaver Mesa Livestock, LLLP, 8325 County Road M44, PO Box 249, Norwood, Colorado 81423. Applicant is a partner in Beaver Mesa Livestock, LLLP. The following exhibits are on file with the Water Court: Map depicting the location of the structures (Exhibit A), and a detailed outline of what has been done toward completion of the appropriation and application of the conditional water right to beneficial use as decreed, including expenditures (Exhibit B) (pp. 6 with exhibits). **SAN MIGUEL COUNTY.**

CASE NO. 2023CW3054 (17CW3009, 09CW181). **APPLICANT:** John S. Hendricks 8484 Georgia Ave., Suite 700, Silver Spring, MD 20910. Direct all pleadings and correspondence to Applicant's counsel: Mark E. Hamilton and William H. Caile, Holland & Hart LLP, 600 East Main Street, Suite 104, Aspen, CO 81611-1991; Phone Number:(970) 925-3476; mehamilton@hollandhart.com; whcaile@hollandhart.com. Application for Finding of Reasonable Diligence. 2. Name of structure: Office Well No. 3, Well Permit No. 67849-F (January 14, 2009). 3. Description from previous decrees: a. Date of original decree: February 28, 2011, in Case No. 09CW181, Water Division 4. b. Subsequent decree finding reasonable diligence: August 14, 2017 in Case No. 17CW3009, Water Division 4. c. Legal description: NE ¼ SE¼ SE¼ of Section 16, Township 51 North, Range 19 West, N.M.P.M., at a point 703 feet north of the south section line and 360 feet west of the east section line. See location map attached hereto as Figure 1. d. Source: Dolores River alluvium. e. Depth: 80 feet. f. Appropriation date: March 13, 2008. g. Amount/Uses: i. 0.222 c.f.s. (100 g.p.m.), absolute for irrigation of 11.5 acres, domestic, commercial, and pond filling uses within the Gateway Canyons development; and ii. 1.011 c.f.s. (455 g.p.m.), conditional for irrigation of 20 acres, domestic, commercial, pond filling, piscatorial, industrial, and recreation uses within the Gateway Canyons development. (1) Lands to be irrigated: up to 20 acres within Sections 14, 15, 16, 21 and 22, T. 51 N., R. 19W., N.M.P.M., Mesa County. See Figure 1 on file with Water Court. h. Remarks: Pursuant to the decree in Case No. 10CW207, Water Division 4, Office Well No. 3 is a component of Applicant's integrated water supply system, such that work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of the water rights

for all features of the entire project or system. C.R.S. § 37-92-301(4)(b). 4. Detailed outline of what has been done toward completion of the appropriation and application of water to beneficial use as conditionally decreed: The Application on file with the Water Court contains a detailed outline of Applicant's activities and expenditures in furtherance of the development of the conditional portion of this water right and application of water to beneficial uses as decreed. 5. Name and address of owners or reputed owners of land upon which any new diversion structure 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: No new diversion or storage structures; the Office Well No. 3 is located on Applicant's property. 6. Additional remarks: a. Applicant has a legally vested interest in the lands and facilities to be served by the subject conditional water right. Applicant continues to have a specific plan and intent to divert, store, or otherwise capture and possess a specific quantity of water for specific beneficial uses. b. Applicant can and will divert, store, capture, and/or possess and control water under the subject conditional water right and will place such water to beneficial uses. Applicant can and will complete the project with diligence and within a reasonable time. Applicant respectfully requests that the Court enter a judgment and decree: Finding that Applicant has demonstrated reasonable diligence and continuing all conditional portions of the water right for the Office Well No. 3 in full force and effect; and for such other relief as the Court deems just and proper. **MESA COUNTY.**

CASE NO. 2023CW3055. Land Jack LLC, 6004 Liebig Ave., Bronx, NY 10471 (646) 643-6423, by Clay, Dodson & Skarka, PLLC, 415 Palmer St., Delta CO 81416, 970-874-9777. APPLICATION FOR FINDING OF REASONABLE DILIGENCE. 2. Name of Structure: **Abril Meadows Well No. 4**. 3. Legal description of points of diversion: SW1/4SE1/4, Sec 13, T50N, R1W, NMPM, 870 feet from south section line; 2040 feet from East section line. 4. Source: Gunnison River. 5. Date of Appropriation: September 28, 1998. 6. Amount: 0.031 c.f.s. (14 gpm) 7. Use: domestic use within one single-family dwelling or duplex, irrigation of 0.75 acres, and fire protection. 8. Date of Original Decree: July 16, 2004, Division 4 03CW68. 9. Statement of what has been done toward completion of the water right: Applicant acquired the underlying property where the Abril Meadows Well No. 4 is located. Applicant acquired the underlying property from a prior owner who acquired the underlying property in a non-judicial foreclosure sale (treasurer's deed). To clear up title to the underlying property, applicant prosecuted a civil action to quit title and obtained a decree in quiet title to the underlying property. A copy of the quiet title decree is labeled Exhibit A and attached to the Application. 10. Names of Owners of the land upon which a new diversion or modification of existing diversion is sought: Applicant. **GUNNISON COUNTY.**

YOU ARE FURTHER NOTIFIED THAT you have until the last day of October 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 a Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit of certificate of such service shall be filed with the Water Clerk, as prescribed by C.R.C.P. Rule 5. (Filing fee: \$192.00; Forms may be obtained from the Water Clerk's Office or on our website at

<https://coloradojudicial.gov>). (This publication can be viewed in its entirety on the state court website at: <https://coloradojudicial.gov>). FRED CASTLE, Water Clerk, Water Division 4, 1200 N. Grand Ave., Bin A, Montrose, CO 81401