

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MARCH 2024.
(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 March 2024, 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. 2023CW3026; Previous Case Nos. 16CW3069, 08CW84 – DANIEL WILLIAMS, P.O. Box 1886, Woodland Park, CO 80867 (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Amy N. Huff, Colorado Water & Land Law, LLC, 679 E. 2nd Ave, Ste11B, Durango, CO 81301, 970-4103-1770, amy@waterland-law.com)

Amended Application to Make Absolute and for a Finding of Reasonable Diligence, with a Request for a Simple Change in Surface Points of Diversion Pursuant to § 37-92-305(3.5), C.R.S.

TELLER COUNTY

(2) Background: The initial filing in this case seeks a determination that a portion of the water rights conditionally decreed in Case No. 08CW84 and continued in effect in Case No. 16CW3069 have been made absolute and a finding that Applicant has been reasonably diligent in the development of the conditional water rights that have not yet been placed to beneficial use. In the Consultation Report, the Division Engineer indicated that there is an error in the PLSS legal descriptions. The GPS locations (i.e., UTM), as identified in Case No. 16CW3069, are correct. The water rights are located in an irregular section which appears to have caused this error. This Amended Application seeks to correct the PLSS locations for the points of diversion through the statutory process for a Simple Change in Surface Point of Diversion, in addition to the relief requested in the initial filing. The change requested herein corrects a clerical error and does not physically relocate the points of diversion. There are no intervening surface diversions or inflows between the new (i.e., corrected) points of diversion and the locations of the points of diversion originally decreed in Case No. 08CW84 and continued in effect in Case No. 16CW3069. The change will not result in the diversion of a greater flow rate or amount of water than physically and legally available at the originally decreed diversion points and will not injuriously affect the owners of or persons entitled to use water under a vested water right or a decreed conditional water right. **(3) Simple Change in Surface Point of Diversion (2.1) Structures: Williams Springs** (i.e., Alt Pts A, B & C) **Decreed PODs: Alt A** - SW ¼ NW ¼ S29, T14S, R69W, 6th P.M., ±1498' from the N Section line and 642' from the W Section line of S29. **Alt B** - SW ¼ NW ¼ S29, T14S, R69W, 6th P.M., ± 1900' from the S Section line and 1028' from the W Section line of S29. **Alt C** - SW ¼ NW ¼ S29, T14S, R69W, 6th P.M., ± 1313' from the S Section line and 844' from the W Section line of S29. **Changed PODs: Alt A** - NW ¼SW ¼ S29, T14S, R69W, 6th P.M., ±1,524' from

the N Section line and 691' from the W Section line of S 29. Alt B - NW ¼ SW ¼ S29, T14S, R69W, 6th P.M., ±1,937' from the S Section line and 1,033' from the W Section line of S29. Alt C- NW ¼ SW ¼ S29, T14S, R69W, 6th P.M., ± 1,334' from the S Section line and 859' from the W Section line of S29. **Williams Pond.** Decreed POD: Up to three (3) storage facilities in the SW ¼ NW ¼ S29, T14S, R69W, 6th P.M., ±1900' from the S Section line and 1028' from the W Section line of S29. Changed POD: Up to three (3) storage facilities in the NW ¼ SW ¼ S29, T14S, R69W, 6th P.M., ±1,033' from the W Section line and 1,937' from the S Section line of S29. **(4) To Make Absolute and/or For a Finding of Reasonable Diligence** (3.1)Structures: Williams Springs Original Decree: 12/27/2010, Case No. 08CW84, WD 2. Subsequent Decree: 5/31/2017, Case No. 16CW3069, WD 2. POD: See above. Source: Unnamed springs arising on Applicant's property, tributary to Barnard Creek. App. Date: 12/31/2002. Amt: 0.045 c.f.s. (20 gpm) Conditional to Absolute. The Williams Springs is decreed for a total of 0.067 c.f.s. (30 gpm). In Case No. 16CW3069, 0.022 c.f.s. (10 gpm) was decreed Absolute. Uses: Irrigation of up to 10 acres, stock watering, domestic use in up to three (3) homes, wildlife, augmentation, freshening flows, and filling and refilling of ponds for said uses. **Williams Pond.** Original Decree: 12/27/2010, Case No. 08CW84, WD2. Subsequent Decree: 5/31/2017, Case No. 16CW3069, WD2. POD: See above. Source: Unnamed springs arising on Applicant's property, tributary to Barnard Creek. App Date: 11/10/2008 Amt: 10 AF, Conditional. Uses: Domestic, wildlife, stock watering, aesthetics, fish propagation, and the right to store water for said uses. **(5) Detailed Outline of What Has Been Done Toward Completion or for Completion of the Appropriations:** During this diligence period, Williams applied water available to the Williams Springs to beneficial use. Williams used the Williams Springs for irrigation and stockwater. He has reported his uses to the Water Commissioner. The water conditionally decreed to the Williams Springs has been lawfully applied to beneficial use for stockwater, wildlife, and domestic uses. The Williams Spring and the Williams Pond are part of an integrated system and therefore activities associated with one feature of the system shall be considered in finding that reasonable diligence has been shown in the development of water rights for the entire system. Williams intends to construct the Williams Pond, but has not yet completed that portion of his water system. A showing of diligence is supported by continuous project-specific effort aimed at developing a conditional right. **(6) Affected Landowners.** Williams owns the land on which the structures herein are located. **(7) Remarks: See Amended Application.**

CASE NO. 2024CW3013; Previous Case Nos. 17CW3056, 11CW28, 00CW124 – FLYING ROCKIN' R, LLC, P.O. Box 70, Gardner, CO 81040 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David M. Shohet, Sedona E. Chavez of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, CO 80921, (719) 471-1212)

Application for Finding of Reasonable Diligence

HUERFANO COUNTY

Applicant is seeking and finding of reasonable diligence for the **Reservoir Ditch Enlargement** and the **Aragon Ditch Enlargement**. Reservoir Ditch Enlargement. Date and Case No. of Original Decree: April 26, 2005, Case No. 00CW124, Water Division 2. Dates and Case Nos. of Decrees Awarding Diligence: September 20, 2011, Case No.

11CW28, District Court, Water Division 2; March 12, 2018, Case No. 17CW3056, District Court, Water Division 2. Point of Diversion: At the existing point of diversion of the Reservoir Ditch on the south bank of the Huerfano River in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, Township 27 South, Range 71 West of the 6th P.M., Huerfano County, Colorado at a point 2750 feet from the east section line and 2350 feet from the north section line. Source: Huerfano River. Appropriation Date: October 30, 2001. Amount: 10.0 c.f.s., conditional. Use: Stockwatering and storage for irrigation of 185 acres in the E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, of Section 12 and 45 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 1, all in Township 27 South, Range 71 West of the 6th P.M., Huerfano County, Colorado. Aragon Ditch Enlargement. Date and Case No. of Original Decree: April 26, 2005, Case No. 00CW124, Water Division 2. Dates and Case Nos. of Decrees Awarding Diligence: September 20, 2011, Case No. 11CW28, District Court, Water Division 2; March 12, 2018, Case No. 17CW3056, District Court, Water Division 2. Point of Diversion: Martin Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, Township 27 South, Range 71 West of the 6th P.M., Huerfano County, Colorado at a point 420 feet from the west section line and 430 feet from the south section line. This point of diversion is the same point of diversion for Fuchs Pond 3 and is the decreed point of diversion of the Aragon Ditch. Source: Martin Creek. Appropriation Date: November 28, 2001. Amount: 9.0 c.f.s., conditional. Use: Storage in Pond Nos. 3 and 4 for irrigation of 80 acres in the SW $\frac{1}{4}$ of Section 12, Township 27 South, Range 71 West of the 6th P.M., Huerfano County, Colorado. **Detailed Outline of Work Done Towards Completion of Appropriation.** Applicant's predecessor in Case No. 00CW124 adjudicated several water rights as part of an integrated water system. The Water Court entered a partial decree on April 26, 2005, for a portion of the water rights subject of the application filed in Case No. 00CW124 (the "Partial Ruling"). The Water Court decreed the remaining water rights subject of Case No. 00CW124 on July 26, 2007. The Partial Ruling adjudicated four conditional water rights for stockwatering and storage for irrigation of the Applicants' property. Applicant's predecessor made one of those four conditional water rights absolute and was awarded a finding of reasonable diligence for the remaining conditional water right in Case No. 11CW24. In Case No. 17CW3056, the Court awarded Applicant a finding of reasonable diligence for the same conditional water rights. This Application is for a finding of reasonable diligence for the following conditional water rights decreed in the Partial Decree: Reservoir Ditch Enlargement and Aragon Ditch Enlargement, the approximate locations of which are depicted in **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.) Applicant does not seek diligence on the Fuchs Pond No. 6 Enlargement water decreed as a conditional water right in the Partial Ruling and maintained in Case No. 17CW3056. During the subject diligence period, Applicant has outlaid the following expenditures or completed the following work related to the subject conditional water rights: Applicant has performed significant willow cleaning and management on Martin Creek for the benefit of the Aragon Ditch Enlargement. Applicant performs annual maintenance for the Reservoir Ditch, including weed management. Reservoir Ditch now has the capacity for the enlargement water right, described above. Applicant is waiting for conditions in the Huerfano River to improve to divert this conditional water right. Applicant expended approximately \$80,000 building a new livestock watering system with 10,000 gallon storage capacity and two new stock water tanks and cells. Applicant expended approximately \$200,000 (which would have

cost \$450,000 before Applicant's participation in USDA's EQIP cost-share program) installing 0.5 miles of buried 18-inch pipeline with six riser valves for irrigation to manage erosion and improve beneficial use. Finally, Applicant has planted 150 acres of cover crops requiring irrigation, totaling \$10,000 in costs. During the pendency of this matter, Applicant may provide additional evidence of diligence in support of the claims made in this Application. Based on the expenditures and efforts described herein, the Applicant has established that it can and will complete the development of the adjudicated conditional water rights and place them to beneficial use within a reasonable period of time. **Claim to make absolute.** The Applicant does not make any claims to make any portion of the conditional water rights absolute. **Name and address of the owners of land on which structures are located.** Aragon Ditch Enlargement is located on the property of Lawrence M. Archuleta and Evelyn E. Archuleta, 532 CR 574, Gardner, Colorado 81040, and the Reservoir Ditch Enlargement is located on the property of Don and Kathi Gomez, 1888 CR 580, Gardner, Colorado 81040.

****Per Order, Resume to be published by Water Division 1 and Consolidated to Water Division 1 after publication****

CASE NO. 2024CW3014, Water Division 2 and CASE NO. 2024CW3038, Water Division 1 – JOHN M. BERKHEIMER, 6485 Connaught Drive, Colorado Springs, CO 80908 (Attorney: Ryan W. Farr and Paul J. Raymond of Monson, Cummins, Shoheit & Farr, LLC, 13511 Northgate Estates Drive, Ste. 250, Colorado Springs, CO 80921, (719) 471-1212)

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 May 2024, (forms available at Clerk's office or at www.coloradojudicial.gov, 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 11th day of April 2024.

Michele Santistevan

Michele M. Santistevan, Clerk
District Court, Water Div. 2



Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8832

(Court seal)
Published: