

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MAY 2024.

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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 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. 2024CW2; Previous Case Nos. 2004CW101, 2012CW45, 2018CW3057 – DONALD E. WESTALL & WENDY L. WESTALL, PO BOX 124, Beulah, CO 81023, (719) 294-7155, (719) 431-2920

Application to Make Absolute in Whole or in Part

PUEBLO COUNTY

2. Name of Structure: Castro Ponds 1 & 2 Type: Reservoir. **3. Describe conditional water right:** **A. Date of Original Decree:** May 25, 2006 Case No: 04CW101 Court: District Court, Water Div 2. **B. List all subsequent decrees:** Date of Decree: Oct 12, 2012; Case No. 2012CW45; Court: CO Pueblo County District Court 10th JD, **C. Legal description:** Castro Pond 1 is an off-channel pond located in the SW ¼ of Section 30, Township 23 South, Range 68 West of the 6th Principal Meridian, the center of the pond being within 200 feet of a point located approximately 1,318 feet north of the south section line and 1,674 feet east of the west section line of Section 30. Castro Pond 2 is an off-channel pond located in the SW ¼ of Section 30, Township 23 South, Range 68 West of the 6th Principal Meridian, the center of the pond being within 200 feet of a point located approximately 2,285 feet north of the south section line and 1,075 feet east of the west. **See Attachment** to the Application (All attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **D. Source of water:** Castro Pond 1: Castro Spring, Castro Diversion and the Castro well. Castro Pond 2: Castro well and the Castro Diversion. **E. Appropriation Date:** May 22, 2004. Amount: Castro Pond 1: 0.47 acre-feet; Castro Pond 2: 0.50 acre-feet. **F. Use:** The uses for both Castro Ponds 1 & 2 are for fire protection, fish and wildlife habitat, aesthetic, watering of domestic animals and livestock. In addition, Castro Pond 2 may be used for augmentation of out-of-priority diversions, including evaporative losses of Castro Pond 1 in accordance with the decree entered in Case No. 04CW101. **G. Depth:** N/A. **4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed:** As stated above, the storage amounts for Castro Pond 1 and Castro Pond 2 are 0.47 acre-feet and 0.50 acre feet respectively. Because 1 acre-foot of exchange was granted as an Absolute Water Right in Case 12CW0045 and 1 acre-foot exceeds the capacity of both ponds collectively, the ponds were filled legally by exchange. Administrative practice now allows for augmentation and exchange to be used to make Water Rights Absolute. For this reason, the total volume of both ponds should be granted Absolute Status. **5. Claim to**

make absolute in whole or in part: N/A. 6. If actual location of the structure is different from the location in paragraph 3.C. above, provide actual description: N/A 7. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion 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: N/A 8. Remarks: N/A.

CASE NO. 2024CW3; Previous Case No. 2017CW10 – RODNEY & SHERI HINSHAW, 605 CR 131, Westcliffe, CO 81252, (575) 214-0233

Application to Make Absolute in Whole or in Part

CUSTER COUNTY

2. Name of Structure: Jackson Savage. **Type:** Ditch. **3. Describe conditional water right:** **A. Date of Original Decree:** 07-03-2017. **Case No:** 2017CW10. **Court:** Pueblo Division 2. **B. List all subsequent decrees:** N/A. **C. Legal description:** Custer County SE 1/4 NW ¼, Section 34, Township 24S, Range 72W PM 6th. **UTM coordinates:** Easting 462032, Northing 4197034 **D. Source of water:** Cottonwood Creek. **E. Appropriation Date:** July 3, 2017. **Amount:** 1.2 cfs. **F. Use:** Irrigation of pasture land for livestock grazing. **G. Depth:** N/A. **4. Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed:** Flume and headgate installed. Permission granted by the District 13 Water Commissioner to divert water to approximately 14 acres of said property. The diversion ditches have been repaired and cleaned for the last two years. No water has been diverted since the first diversion because the Senior Water right users needed the water. **5. Claim to make absolute in whole or in part. A. Date water applied to beneficial use:** August 2017. **Amount:** ~1.2 cfs. **Use:** flood irrigation to 14 acres for pasture. **B. The application shall include supporting evidence that applicant diverted water in-priority and applied such water to the beneficial uses claimed in the amounts claimed:** The Water Commissioner has a record of the diversion. **C. Description of place of use where water is applied to beneficial use:** See attachment B 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.) **6. If actual location of the structure is different from the location in paragraph 3.C. above, provide actual description:** N/A **7. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion 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:** Applicant. **8. Remarks:** I am applying for this water right to replace a previous right which will be abandoned. The J Riggs ditch #369, priority # 463 appropriated 04-15-1889. The prior owner moved the diversion structure without approval of the Water Court.

CASE NO. 2024CW3018; Previous Case Nos. 03CW38, 11CW21, & 17CW3067 MAYTAG MOUNTAIN RANCH ASSOCIATION, 118 Settlers Loop, Cotopaxi, CO 81223 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Scott A. Grosscup & Andrea J. Hall, Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546)

Application for Finding of Reasonable Diligence and to Make Conditional Water Right Absolute

FREMONT COUNTY

Summary of Application: Maytag Mountain Ranch Association (“Applicant”) seeks a finding of reasonable diligence in the development of the conditional water right decreed to MMR Pond No. 3 and to find that MMR Pond No. 3 has been made absolute in the amt. of 4.52 AF for piscatorial, wildlife habitat, rec., and aesthetic uses. **First Claim for Finding of Reasonable Diligence.** Structure: MMR Pond No. 3 (WDID 1305404). Original Decree: 03CW38, entered 03/07/2005, Dist. Ct., Water Div. 2. Subsequent Diligence Decrees: 11CW21 entered 12/01/2011 and 17CW3067 entered 05/22/2018. Legal Description: NE1/4 NE1/4, Sec. 28, T. 47 N., R. 12 E. N.M.P.M., 498 ft. from the E. line and 1,279 ft. from the N. line of said Sec. 28. UTM NAD 83 Zone 13: Easting 444001.2, Northing 4239198.8. **Exhibit A** depicts the general location of the pond. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Source: Groundwater tributary to Lake Creek. The MMR Pond No. 3 will not be supplemented with surface water right diversions from Lake Creek or from other wells located on the Applicant’s property. Approp. Date: 11/20/2002. Amt.: 5 AF, conditional. Uses: Piscatorial, wildlife habitat, rec., and aesthetic uses. Remarks: MMR Pond No. 3 is permitted as a groundwater well under Permit No. 60867-F, attached as Exhibit B. MMR Pond No. 3 operates pursuant to the plan for aug. decreed in 03CW38. A list of diligence activities performed in the six years preceding the filing of this Application is on file with this Ct. **Second Claim to Make Absolute** Summary of Claim: Applicant requests a finding that the conditional water right decreed to MMR Pond No. 3 be made absolute by diversion and application to beneficial use as follows. Structure: MMR Pond No. 3 (WDID 1305404), as claimed above. Date of Beneficial Use: 07/01/2004. Applicant captured, possessed, and controlled water at the decreed storage structure for the decreed uses. Amt. Claimed as Absolute: 4.52 AF for piscatorial, wildlife habitat, rec., and aesthetic uses. WHEREFORE, Applicant respectfully requests the Ct. enter a Decree (1) finding the Applicant has exercised reasonable diligence in the development of the conditional water right for MMR Pond No. 3; (2) finding that the MMR Pond No. 3 has been made absolute in the amt. of 4.52 AF for piscatorial, wildlife habitat, recreation, and aesthetic uses; (3) continuing as conditional any portion of said 5 AF not confirmed absolute herein; and (4) for such other relief the Ct. deems appropriate.

CASE NO. 2024CW3019; (17CW3060) (09CW73) – DONALA WATER AND SANITATION DISTRICT, 15850 Holbein Drive, Colorado Springs, CO 80921 (Please

address all pleadings and inquiries regarding this matter to Applicant’s attorneys: c/o Matthew S. Poznanovic, Esq., John D. Buchanan, Esq. Hayes Poznanovic Korver, LLC 700 17th Street, Suite 1800, Denver, CO 80202 (303) 825-1980)

Amended Application For Finding Of Reasonable Diligence

LAKE AND CHAFFEE COUNTIES

2. The application in this case was timely filed on May 30, 2024. Pursuant to the Water Referee’s Minute Order Re: Amended Application dated June 6, 2024, Applicant files this Amended Application to add the PLSS locations in Sections 3.2.1.1, 3.2.1.2, 3.2.2.1, and 3.2.2.2 below for purposes of resume notice. **3. Description of Conditional Rights of Exchange (“Subject Water Rights”)**: 3.1 Original and Subsequent Decrees: The

Subject Water Rights were originally adjudicated in Case No. 09CW73 entered by the District Court, Water Division 2 on November 15, 2011 (“09CW73 Decree”). Findings of diligence were made, and the Subject Water Rights continued for an additional six-year diligence period, in the decree entered in Case No. 17CW3060 on May 22, 2018. 3.2 Points of Diversion: 3.2.1 From the confluence of Rock Creek and Lake Fork Creek to Turquoise Reservoir, in Lake County (the “Turquoise Reservoir Exchange”). Turquoise Reservoir, WDID number 1103500, is located at UTM 381548E, 4345718N. 3.2.1.1 The approximate location of the confluence of Rock Creek and Lake Fork Creek is in the NE1/4 of Section 6, Township 10 South, Range 80 West of the 6th P.M. 3.2.1.2 As set forth in the 09CW73 Decree, Turquoise Reservoir is located in all or portions of Sections 7, 8, 17, 18, 19, and 20, Township 9 South, Range 80 West, and Sections 10, 11, 12, 13, 14 and 15, Township 9 South Range 81 West of the 6th P.M. The Turquoise Reservoir Dam axis and the centerline of Lake Fork Creek of the Arkansas River intersect at a point whence the NW corner of Section 16, Township 9 South, Range 80 West of the 6th P.M. bears N 44°46’18” E a distance of 10,344.35 feet, all as more particularly described in the decree in Civil Action 5141, District Court, Chaffee County, Colorado. 3.2.2 From the confluence of the Arkansas River and Clear Creek to Clear Creek Reservoir, in Chaffee County (the “Clear Creek Exchange”). Clear Creek Reservoir, WDID number 1103504, is located at UTM 392180E, 4319897E. 3.2.2.1 The approximate location of the confluence of the Arkansas River and Clear Creek is in the NE1/4 of Section 8, Township 12 South, Range 79 West of the 6th P.M. 3.2.2.2 As set forth in the 09CW73 Decree, Clear Creek Reservoir is located in all or part of Sections 7 and 8, Township 12 South, Range 79 West of the 6th P.M. The Clear Creek Reservoir Dam axis and the centerline of Clear Creek intersect at a point whence the S. Corner of Section 8, Township 12 South, Range 79 West of the 6th P.M. bears S 27°W a distance of 2,255 feet. 3.3 Priority date: May 26, 2009. 3.4 Amount for all exchanges: 3.66 cfs, conditional, less transit loss from the points of measurement on the Willow Creek Ranch, the location of which is described in the 09CW73 Decree, to the point from which water is exchanged, for the Turquoise Reservoir Exchange and the Clear Creek Reservoir Exchange. The exchange rates for individual water rights shall be limited as shown below, less transit loss assessed from the Willow Creek Ranch to the point of exchange.

Maximum Exchange Rates (cfs)

Ditch	May	June	July	August
Abbott Placer Ditch	0.82	0.96	0.75	0.71
Abott Placer Ditch 1 st Enlargement	0.43	0.50	0.43	0.38
Willow Creek Ditch	0.60	0.81	0.71	0.41
Mitchell Ditch Nos. 1-4	0.52	0.65	0.56	0.50
Sites Ditch No. 1	0.29	0.31	0.24	0.18
Sites Ditch No. 2	0.49	0.43	0.27	0.15
Total	3.15	3.66	2.96	2.33

3.5 Uses: All municipal uses, including domestic, irrigation, commercial, industrial, mechanical, fire protection, maintenance and replacement of storage losses, and disposition of return flows. The sources of substitute supply, described below, may be fully consumed and may be used, reused, successively used or disposed of to extinction, after satisfaction of return flow obligations. 3.6 Source of substitute supply: the water rights formerly used on the Willow Creek Ranch, originally decreed in CA 1127, Chaffee

County District Court on June 19, 1890, changed to municipal use in the 09CW73 Decree (amounts, changed uses, and terms and conditions described in more detail in the 09CW73 Decree) (the “WCR Rights”), and summarized as follows:

<u>Ditch</u>	<u>Priority</u>	<u>Source</u>
Abbott Placer Ditch (WDID 1100745)	3/10/1881	Willow Creek
Abbott Placer 1 st Enlargement	11/30/1881	Willow Creek
Willow Creek Ditch (WDID 1100746)	4/15/1881	Willow Creek
Mitchell Ditches Nos. 1-4 (WDID 1100749)	5/31/1881	Willow Creek
Sites Ditch No. 1 (WDID 1100747)	4/30/1881	Little Willow Creek
Sites Ditch No. 2 (WDID 1100809)	4/30/1882	Little Willow Creek.

CLAIM FOR FINDING OF REASONABLE DILIGENCE 4. This Application for Finding of Reasonable Diligence is filed pursuant to the Water Right Determination and Administration Act of 1969, C.R.S. § 37-92-302. **5.** During the diligence period, in continuing the development of the conditional water rights, Applicant has been engaged in the legal defense and protection of said water rights and has been diligent in the continued use and development of the water rights involved. These activities include, but are not limited to, the following efforts related to the Subject Water Rights and the WCR Rights: 5.1 Donala has used the WCR Rights every year since the 09CW73 Decree was entered for diversion, storage, and delivery and has worked on all ongoing aspects of securing the long-term ability to deliver and continue to use the Subject Water Rights; 5.2 Donala had discussions in 2024 with the City of Aurora, Colorado Springs Utilities, The Board of Waterworks of Pueblo (“Pueblo Water”), and water administration officials with the Division of Water Resources regarding operation of the Subject Water Rights in May and June 2024 and a subsequent contract exchange of the water stored in Turquoise and Clear Creek Reservoirs under the Subject Water Rights to Pueblo Reservoir. Donala worked with its legal and engineering consultants and water administration officials to obtain approval to divert and operate the Subject Water Rights in May and June 2024. Based on these discussions, Donala anticipates diverting and operating the Subject Water Rights in June 2024, and filing an amended application claiming that all or a portion of the Subject Water Rights have been made absolute; 5.3 Donala entered into several agreements, including with the Arkansas Groundwater Users Association, Martin Marietta Materials, Inc., Warden M. Williams, and the Silver Ponds Property Owner’s Association, regarding lease of water from Donala, including water made available through operation of the Subject Water Rights; 5.4 Applicant entered into long-term contracts with Colorado Springs Utilities in 2023 and the U.S. Bureau of Reclamation in 2019 and obtained approval of a 1041 permit from the Pueblo Board of County Commissioners as set forth in Resolution No. P&D 19-029 adopted July 30, 2019, to allow construction of water diversion and conveyance facilities as part of Applicant’s integrated water system, including water available under the Subject Water Rights; 5.5 Applicant commissioned an Indirect Potable Reuse (IPR) study to investigate the potential to capture wastewater return flows, including return flows that would be made available through use of the Subject Water Rights, from Fountain Creek for reuse through the proposed Loop system at a cost of \$18,913; 4.6 Applicant commissioned a study to analyze potential Aquifer Storage and Recovery (ASR) options to store water made available through the Subject Water Rights so that such water would be available during times of peak demand at a cost of \$190,482; 5.7 Applicant spent \$92,399 on water rights accounting for its integrated

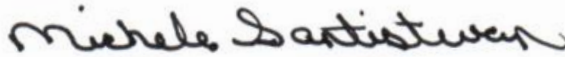
water system, including revising the accounting system to better manage and utilize the Willow Creek and Little Willow Creek water rights and associated Subject Water Rights; 5.8 Applicant commissioned a study to investigate the potential to treat effluent to drinking water standards to provide more options for reuse, including direct reuse and use after storage in surface reservoirs and in aquifer storage, at a cost of \$13,132; 5.9 Applicant spent approximately \$250,000 on funding for the Loop Water System for the purpose of capturing wastewater return flows from Fountain Creek, including return flows that would be made available through use of the Subject Water Rights, and reusing them through the proposed Loop system. Applicant actively engaged in the formation of and has representation on the Board of Directors of the Loop Water Authority formed to develop and operate the proposed Loop Water System; 5.10 Applicant performed annual maintenance on the Willow Creek Ranch to preserve and protect the watershed and water rights associated with the Subject Water Rights, including fire mitigation, repairing fences, and enhancing the streams and environment around the gaging stations to ensure the clear flow and measurement of Willow Creek; 5.11 Applicant has continued to review the Division 2 water court resume to monitor for applications that could cause injury to the Subject Water Rights; 5.12 Donala annually renewed and operated its water lease agreement with Pueblo Water regarding Donala's obligation to replace non-irrigation season return flows in the Upper Arkansas River Basin, including replacement obligations under the 09CW73 Decree; and 5.13 The work and expenditures listed above are illustrative and not exhaustive. Additional work and additional or revised expenditures may be claimed in support of this application. **6. Names and addresses of owners of land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored:** 6.1 Turquoise Reservoir: United States Forest Service, San Isabel National Forest, 2840 Kachina Drive, Pueblo, CO 81008; the U.S. Bureau of Reclamation, Eastern Colorado Area Office, 11056 West County Road 18E, Loveland, CO 80537-9711; and the U.S. Bureau of Land Management, 3170 East Main Street, Canon City, Co, 81212. 6.2 Clear Creek Reservoir: Pueblo Reservoir: Board of Water Works of Pueblo, c/o Seth Clayton, P.O. Box 400, Pueblo, CO 81002-0400. 6.3 Pueblo Reservoir: United States of America, Department of Interior, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County 18-E, Loveland, CO 80537. WHEREFORE, Donala requests that this Court enter a decree finding that Applicant has exercised reasonable diligence in the development of the Subject Water Rights and continuing the Subject Water Rights for an additional diligence period, and for such other and further relief as this Court deems just and proper in the premises.

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 2024, (forms available at Clerk's office or at 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 14th day of June 2024.





Michele M. Santistevan, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8832

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