

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING AUGUST
2014

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 ordered published during August 2014, 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. 2014CW15 – KERT MARRS, 11126 Campbell Road, Westfork, AR
72774; (479) 839-8258**

Application for Water Rights (Surface)

CUSTER COUNTY

Name of Structure: Cabin Spring and Pond. **Legal Description of each point of diversion:** NE ¼ SW ¼ Section 5, Township 23 South, Range 71 West, 6th P.M., Custer County, Colorado, 1520 feet from the south line and 1520 feet from the west line. **Source:** Natural spring. **Date of initiation of appropriation:** 7-15-2012; **How appropriation was initiated:** 4x4 tractor to make a small hole; **Date water applied to beneficial use:** 7-15-12 for cattle to drink. **Amount claimed:** .033 cfs Absolute. **Use:** Livestock, fire protection, wildlife. **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.

CASE NO 2014CW16 – APPLICATION OF SCOTT VIRDEN. This application was filed during August 2014, but the Water Judge has ordered an amended application be filed prior to publication.

CASE NO. 2014CW17 – YUNIKER, et al. v. SURBER, et al.

**CASE NO. 2014CW3036; Previous Case No. 1987CW74 - TRIVIEW
METROPOLITAN DISTRICT, 16055 Old Forest Point, Ste. 300, Monument, CO
80132**

(Please address all pleadings and correspondence to: Chris D. Cummins and Ryan W. Farr, Felt, Monson & Culichia, LLC, Attorneys for Applicant, 319 N. Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Findings of Reasonable Diligence

EL PASO COUNTY, COLORADO

Name of structures: Applicant was approved for several conditional appropriative rights of exchange in Case No. 87CW74. To wit, Applicant was approved for the Monument Creek Exchange and the Jackson Creek Exchange, with a lower terminus of Applicant's wastewater treatment facility, and upper termini of certain alluvial wells adjudicated for Applicant's use in the alluvium of Monument Creek, Teachout Creek and

Jackson Creek, as more specifically described below. Applicant seeks a finding of reasonable diligence for all conditional water rights adjudicated in Case No. 87CW74 as more particularly described as follows: **A. Date of original decree:** August 7, 2008, Case No. 87CW74, District Court, Water Division 2. **B. Conditional Surface Water Rights.** Applicant seeks a finding of reasonable diligence for all of the following conditional water rights: **1. Monument Creek Exchange.** **a. Outfall Structure/Lower Terminus:** The Waste Water Treatment Facility (“WWTF”) shared by Applicant, the Donala Water and Sanitation District, and the Forest Lakes Metropolitan District is located in the SE1/4 SE 1/4 of Section 35, Township 11 South, Range 67 West of the 6th P.M., at a point approximately 500 feet west of the east section line and on the South section line of said Section 35, in El Paso County, Colorado. **b. Intake Structures/Upper Termini:** Triview will withdraw water from four wells located in the alluvium of Monument Creek and Teachout Creek, and all such wells are anticipated to be approximately 50 feet in depth, more particularly described as follows:

<u>Well No.</u>	<u>Capacity</u>	<u>Location (T11S, R67W)</u>
M-1	200 gpm	On the east bank of Monument Creek in the NW1/4 SW1/4 of Section 26, at a point 2,500 feet from the South section line and 50 feet from the West section of said Section 26.
M-2	200 gpm	On Teachout Creek at its confluence with Monument Creek in the NW1/4 SW1/4 of Section 26, at a point 2,200 feet from the South section line and 1,000 feet from the West section line of said Section 26.
M-3	200 gpm	On an unnamed tributary of Monument Creek at the confluence of said tributary with Monument Creek in the NW1/4 SW1/4 of Section 26, at a point 1,800 feet from the South section line and 1,300 feet from the West section line of said Section 26.
M-4	200 gpm	On the East bank of Monument Creek in the SE1/4 SW1/4 of Section 26, at a point 300 feet from the South section line and 1,500 feet from the West section line of said Section 26.

c. Exchange Reach. The maximum reach of Monument Creek affected by the Monument Creek Exchange is that reach between the WWTF and Well No. M-1, described above, being a maximum distance of approximately 2.5 miles. **d. Source of Substitute Water.** The source of substitute supply decreed to Triview’s use in 87CW74 is domestic wastewater returns directly discharged from the WWTF. At buildout, it is anticipated that Triview’s allocation of treated effluent from the WWTF will be approximately 3.0 cubic feet per second, being a pro-rata allocation between Triview, Donala, and Forest Lakes of water treated at the WWTF. The specific source of water decreed to Triview’s use by exchange in Case No. 87CW74 is nontributary and nontributary groundwater of the Denver Basin, as quantified and decreed in Case Nos. 81CW173, 82CW22, 85CW13 and 87CW40. Effluent attributable to pumping from nontributary aquifers is only available to the extent such pumping is authorized through

a plan for augmentation approved by this Court. **e. Initiation of Appropriation.** i. Appropriation Date: December 31, 1987. ii. How Initiated: By application filed on the above date with the Water Court, Water Division 2, for the Monument Creek Exchange. **f. Amounts of Water Exchanged:** 800 gpm (in combination from Well Nos. M-1, M-2, M-3 and M-4), being 1.78 cfs, conditional. **2. Jackson Creek Exchange.** **a. Outfall Structure/Lower Terminus:** The WWTF shared by Applicant, the Donala Water and Sanitation District, and the Forest Lakes Metropolitan District and more particularly described in Paragraph II.B.1.a., above, in El Paso County, Colorado. **b. Intake Structures/Upper Termini:** Triview will withdraw water from one well located in the alluvium of Jackson Creek, tributary to Monument Creek, tributary to Fountain Creek, tributary to the Arkansas River. Such well will be approximately 50 feet in depth, more particularly described as follows:

<u>Well No.</u>	<u>Capacity</u>	<u>Location (T11S, R67W)</u>
J-1	100 gpm	On Jackson Creek in the SW1/4 SW1/4 of Section 25 at a point 1,000 feet from the West section line and 100 feet from the South section line of said Section 25.

c. Exchange Reach. The maximum reach of Monument and Jackson Creeks affected by the Jackson Creek Exchange is that reach between the WWTF and Well No. J-1, described above, being a maximum distance of approximately 1 mile. **d. Source of Substitute Water.** The source of substitute supply decreed to Triview's use in the Jackson Creek exchange is the same as that described above. **e. Initiation of Appropriation.** i. Appropriation Date: December 31, 1987. ii. How Initiated: By application filed on the above date with the Water Court, Water Division 2, for the Jackson Creek Exchange. **f. Amounts of Water Exchanged:** 100 gpm, being 0.22 cfs, conditional. **C. Uses of Exchanged Water.** Water diverted by Triview from both Monument and Jackson Creeks pursuant to the above described exchanges will be treated as necessary and placed to beneficial use, either directly or through storage, within Triview's municipal water supply system and subsequently used and reused, successively to extinction pursuant to Triview's decrees for underground water in the Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers (Case Nos. 81CW173, 82CW22, 85CW13, 87CW40) and augmentation plan decrees (88CW23(A), 95CW153 and 98CW134). **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, including expenditures:** **A. Description of Water Rights:** The Applicant seeks a finding of reasonable diligence for all of the above described conditional appropriative rights of exchange and water rights structures adjudicated in Case No. 87CW74. **B. Statement of Diligence:** The conditional water rights for which diligence is sought herein, together with other absolute water rights, and plans for augmentation of the District, are all part of an integrated plan of the Applicant's to provide water resources and supply to residents and water users of the District. Triview has expended extensive time and resources since the decree in 87CW74 in the acquisition and adjudication of Denver Basin groundwater and augmentation plans for the use thereof Case Nos. 88CW23(B), 95CW153 and 98CW134, as well as pending Case No. 88CW23(B), as cited above. Triview will be filing, shortly after this Application

a further request for approval of a plan for augmentation, and adjudication of additional Denver Basin groundwater supplies for the same purposes. All such Denver Basin groundwater supplies represent potential replacement/substitute water for use in the instant conditional appropriative rights of exchange. Part of Applicant's diligence in pursuing and maintaining these conditional appropriative rights of exchange during the diligence period, therefore, includes these acquisition and adjudication activities, as well as expenditures on infrastructure necessary to place such water to beneficial use. Applicant, following a prolonged negotiation and litigation process, expended in excess of \$2,000,000 in the acquisition of a portion of the nontributary and not-nontributary groundwater adjudicated in the cases described above from successors to the original developer within the District. Triview further spent in excess of \$25,000 on legal and engineering consulting fees for the completion of the adjudication of the plan for augmentation recently decreed in Case No. 88CW23(A), and an additional \$25,000 in the adjudication of Case No. 88CW23(B), currently set for trial before the Division 2 Water Court, but likewise concerning the alluvial well structures described herein. Applicant has expended an additional approximately \$100,000 on legal and engineering related to the use and development of Applicant's integrated water system during this diligence period, since 2008, and hundreds of thousands of dollars on related infrastructure since such time. Applicant has therefore expended in excess of \$2,500,000 in securing water resources to be utilized in the subject conditional appropriative rights of exchange, and in securing other related water rights for utilization within Triview's integrated municipal water supply system. Triview has further initiated negotiations with the current owner of the overlying land upon which the alluvial wells described herein are located, in anticipation of acquisition of easements and land interests sufficient for the construction and operation of the same pursuant to the 87CW74 decree and any decree which may enter in Case No. 88CW23(B). Based on the expenditures described herein, and ongoing litigation and negotiations related to the use of the subject exchanges and water structures, and the improvement and maintenance of other water rights integrated into the use of the subject conditional appropriative rights of exchange, 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. **Names of the owners of land on which structure is or will be located upon which water is or will be stored or upon which water is or will be placed to beneficial use:** All lands within the service area of the Triview Metropolitan District, as concerns the place of beneficial use. As concerns alluvial well structures, such lands are currently owned by HCB Willow Springs, LLC, a Missouri limited liability company.

CASE NO. 2014CW3037 – THE PEOPLE OF COLORADO, ex rel DICK WOLFE, State Engineer, and STEVEN J. WITTE, Division Engineer for Water Division 2 v. THOMAS W. MORROW and JOSEPH PROCTOR

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 October 2014, (forms available at Clerk's office or at www.courts.state.co.us, must be submitted in quadruplicate, after serving parties and attaching a certificate of mailing, filing fee \$158.00). 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 5th day of September, 2014.



Mardell R. DiDomenico

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

(Court seal)
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