

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JULY 2019

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 July 2019, 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 Number: 2018CW3072 LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION ("LAWMA") c/o Donald F. Higbee, Manager, 310 South 6th Street, P. O. Box 1161, Lamar, CO 81052 (Please address all pleadings and inquiries regarding this matter to Applicants' attorneys: Richard J. Mehren, Jennifer M. DiLalla, William D. Davidson, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 300, Boulder, CO 80302 (303) 443-8782)

First Amended Application for Plan for Augmentation

BENT COUNTY

2. Purpose of application. LAWMA is a non-profit corporation organized for the purpose of, among other things, providing a means for its members to continue to make ground water diversions from wells and other structures with junior priorities and to continue to make surface water diversions from structures with junior priorities in the Arkansas River water rights regime. The purposes of this Application are to include additional structures in LAWMA's plan for augmentation, which was decreed on March 8, 2007, in Case No. 02CW181 ("Augmentation Plan"); to add the new use of greenhouse irrigation to the Augmentation Plan; and to adjudicate the consumptive use percentage to be applied to greenhouse irrigation use. Under paragraphs 43 and 44 of the 02CW181 Decree, LAWMA may add new augmented structures and new uses to the Augmentation Plan and may adjudicate the consumptive use factor to be applied to a new use, by filing an application with this Court. 3. Purpose of amendment. LAWMA files this First Amended Application to clarify that the Additional LAWMA Structures described in paragraph 4 below operate within LAWMA's Arkansas River Replacement Plan pursuant to Rule 14 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin ("Rule 14 Plan"), as annually approved by the Colorado State Engineer, and will continue to operate under the administratively approved Rule 14 Plan in addition to operating under LAWMA's Augmentation Plan under any decree to be entered in this case. 4. Description of structures to be augmented. The four wells described in **Exhibit A** ("Additional LAWMA Structures") and **Exhibit B** attached to the application for a general location map are generally located north of the Arkansas River in Bent County, between Limestone Creek on the west and the Town of McClave on the east. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Additional LAWMA Structures were owned by Arkansas River Farms, LLC, when LAWMA filed its original Application but are now owned by Natures Alternative Farms, LLC. 5. Water rights and other sources of water to be used for augmentation. Those water rights and other sources

of water identified in paragraph 40 of the decree entered in Case No. 02CW181 (“02CW181 Decree”), or identified in the decrees entered in Case Nos. 05CW52, 10CW85, and 15CW3067; and those water rights and other sources of water that are added to the Augmentation Plan consistent with paragraph 41 of the 02CW181 Decree.

5.1 Use of Fryingpan-Arkansas Project water and return flows as augmentation source. The Additional LAWMA Structures are located within the boundaries of the Southeastern Colorado Water Conservancy District, and water pumped from the Additional LAWMA Structures under the Augmentation Plan will be used within such boundaries. Accordingly, LAWMA will use Fryingpan-Arkansas Project water to replace depletions caused by pumping the Additional LAWMA Structures under the Augmentation Plan.

6. Statement of plan for augmentation. The amount, timing, and location of depletions from pumping of the Additional LAWMA Structures under the Augmentation Plan will be determined in accordance with the methodologies approved in the 02CW181 Decree, and LAWMA shall account for and fully replace all such depletions that are out-of-priority. LAWMA shall replace such out-of-priority depletions under the Augmentation Plan with fully consumable water in accordance with the terms and conditions of the 02CW181 Decree and the decree to be entered in this case, in a manner that protects Colorado senior surface water rights from injury and ensures compliance with the Arkansas River Compact.

6.1 Integration into Case No. 02CW181 accounting and projection. The accounting for operation of the Additional LAWMA Structures under the Augmentation Plan will be incorporated into the accounting and projection required by paragraphs 47.E and 47.I. of the 02CW181 Decree. Such accounting will include, without limitation, monthly diversions, monthly unlagged depletions, and monthly lagged depletions for each Additional LAWMA Structure, as well as the fully consumable water sources available for replacement of such depletions. Additionally, in accounting for operation of the Additional LAWMA Structures, LAWMA shall use the integrated accounting forms approved in the decree entered in Case No. 14CW3004 on August 1, 2017.

7. Addition of new use to Augmentation Plan. One or more of the Additional LAWMA Structures may be pumped, in part, to provide water for greenhouse irrigation. Exhibit R to the 02CW181 Decree does not include greenhouse irrigation as an approved use under the Augmentation Plan and does not assign a consumptive use factor to greenhouse irrigation. Consistent with paragraph 44 of the 02CW181 Decree, LAWMA seeks to add greenhouse irrigation as an approved use under the Augmentation Plan.

8. Adjudication of consumptive use factor for new use. Also consistent with paragraph 44 of the 02CW181 Decree, LAWMA seeks to adjudicate a consumptive use factor of 100% for the new use of greenhouse irrigation.

9. No additional modification of 02CW181 Decree. This First Amended Application does not seek to modify any provision of the 02CW181 Decree except to include the Additional LAWMA Structures and the new use of greenhouse irrigation in the Augmentation Plan, and to adjudicate a consumptive use factor for greenhouse irrigation. This Application also does not seek a change of water right for any of the water rights identified in paragraph 4 above, or any change to decreed terms and conditions applicable to augmented structures previously included in the Augmentation Plan.

10. Operation of Additional LAWMA Structures under LAWMA’s Rule 14 Plan. The Additional LAWMA Structures also operate under LAWMA’s Rule 14 Plan as annually approved by the Colorado State Engineer. Depletions resulting from pumping of the Additional LAWMA Structures under the Rule 14 Plan will be determined and replaced under the terms and

conditions of the Rule 14 Plan as annually approved by the Colorado State Engineer. Depletions resulting from pumping of the Additional LAWMA Structures under the Augmentation Plan will be determined and replaced under the terms and conditions of the 02CW181 Decree and any decree to be entered in this case. Pumping of the Additional LAWMA Structures under the Augmentation Plan will be all pumping of the Additional LAWMA Structures that is not authorized by the Colorado State Engineer under LAWMA's Rule 14 Plan. WHEREFORE, LAWMA respectfully requests that the Court enter a decree (i) approving the inclusion of the Additional Augmented Structures in the Augmentation Plan; (ii) finding and concluding that LAWMA will fully replace, so as to prevent injury to Colorado senior surface water rights and ensure compliance with the Arkansas River Compact, all out-of-priority depletions caused by pumping of the Additional LAWMA Structures under the Augmentation Plan; (iii) approving the addition of greenhouse irrigation use to the Augmentation Plan; and (iv) finding and concluding that a 100% consumptive use factor for greenhouse irrigation under the Augmentation Plan will prevent injury to Colorado senior surface water rights and ensure compliance with the Arkansas River Compact.

CASE NO. 2019CW3028 Previous Case Nos. 10CW19; 02CW128 (W-29); W-29 C/R W-628; W-628 (74); W-628 (78); 80CW89 (W-29); 84CW114 (W-29); 88CW46 (W-29); and 94CW65 (W-29) – Huerfano and Cucharas Irrigation Company, Two Rivers Water & Farming, 3025 South Parker Rd., Ste. 140, Aurora, CO 80014 (Please send all pleadings and correspondence to Applicant's counsel: c/o Jonathan King, Squire Patton Boggs, 1801 California Street, Ste. 4900, Denver Colorado, 80202; (303) 894 6126).

Application for Finding of Reasonable Diligence

HUERFANO COUNTY

Names of structures: Cucharas Valley Reservoir No. 5, Appropriation Priority No. 354C, Reservoir Priority No. 66C. **Date of original decree:** 3 October 1921, Case No. 1414, Court: Huerfano County District Court, State of Colorado. **Legal description:** Decreed location: Huerfano County Cucharas Valley Reservoir No. 5, and the dam across the Cucharas River creating said reservoir, all located on Sections 25, 35, and 36, T. 26 S, R. 65 W, Sections 30 and 31, T. 26 S., R. 64 W, Sections 6 and 7, T. 27 S. R. 64 W., and Sections 1, 2, 10, 11, 12, 14 and 15, T. 27 S., R. 65 W., in the County of Huerfano, State of Colorado. See Exhibit 4 attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Source of water:** Cucharas River **Appropriation Date:** March 14, 1906. **Amount:** 34,404 acre feet. **Use:** Irrigation **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:** Applicant has performed work and spent a considerable sum of money since April 11, 2013 to determine the best way to resolve dam safety issues surrounding Cucharas Dam in order to develop the full extent of its water rights associated with Cucharas dam, including the conditional right that is subject to this application. Applicant incurred costs of roughly \$70,000 between March 30, 2015 and August 21, 2017 with Lytle Water Solutions, LLC on engineering and hydrology services costs related to Cucharas Dam. Two Rivers also hired Wenck Associates, Inc. ("Wenck") and agreed to a professional services agreement

dated June 9, 2016 for a project titled the Two Rivers Consent Decree Compliance Project. The scope of this project contemplated (1) meetings with the State Engineer and Lytle Water to define project objectives and requirements; (2) review of the Decree Compliance Plan with key stakeholders; (3) rigorous research of Cucharas Dam and all its project reports and data; (4) modeling; and (5) a breach channel compliance plan; (6) a compliance plans; and (7) permitting recommendations. The total cost of Wenck's services associated with this effort was roughly \$130,000 between July 1, 2016 and March 16, 2017. With the engineering and hydrology work performed by Wenck for the Two Rivers Consent Decree Compliance Project and the work by Lytle, Applicant has spent a considerable sum of money during the diligence period. In connection with these expenditures, and others, Applicant intends to develop the full capacity of Cucharas Reservoir, which includes the 34,404 acre-feet for the conditional water right subject to this application. **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; Pierce Investment Corporation, P.O. Box 218, Craig, CO 81626-0218; Apishapa Canyon Ranch, LP, 17001 County Rd. 1400, Wolfforth, TX 79381; Driscoll, David & Cindy, 902 Rink Lane, Savannah, TN 38372; Driscoll, David & Cindy, 4430 CO. Rd. 121, Walsenburg, CO 81089; James L. Pace & Brandi McCarthy, 603 Calle de Cabellos Dr., Pueblo West, CO 81007; Gerald Fitzgerald B & Jovonne P, PO Box 18243, Denver, CO 80218; Cucharas Ranch, Ltd., A Texas Limited Partnership C/O Mr. Tom McKenna So-Lo Gas Inc., PO Box 468, Ft. Sumner, NM 88119; Stroh, Marjie J & David M, Randilyn & Neesha S, 3241 Hwy 10, Walsenburg, CO 81089; BLM Colorado State Office, 2850 Youngfield St., Lakewood, CO 80215; Colorado State Land Board, 1127 Sherman St., Denver, CO 80203.

CASE NO 2019CW3; Previous Case Nos. 2013CW21 – Salvador J Peralta and Sally G Peralta, 4650 Grove St., Denver CO 80211; (303)-913-4158

Application to Make Absolute in Whole or in Part

HUERFANO COUNTY

Name of Structure: Galvez Spring. **Describe conditional water right:** **A. Date of Original Decree:** 10/30/96; **Case No:** 95CW165; **Court:** Water Division 2. **B. List all subsequent decrees awarding findings of diligence:** **Date of Decree:** 04/23/07; **Case No:** 02CW125; **Court:** Water Division 2. **C. Legal description:** SW ¼ of the NE ¼ of Section 36, Township 28 South, Range 70 West of the 6th P.M. in Huerfano County, Colorado being approximately 2,775 feet east of the west and 3200 feet north of the south line of said section 36. **Source of water:** Natural spring tributary to Abeyta Creek. **Appropriation Date:** 08/31/94; **Amount:** Galvez spring 8.57gpm. **Use:** Domestic. **Provide a 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:** Applicant has built a residence, building permit 00-144; installed a 1500 gallon cistern with overflow valve at Galvez spring, and installed a water pump, electrical service and water line to residential structure at Galvez Spring. Additionally, there is a water meter measuring water at Galvez Spring. **If claim to make absolute:** **Date water applied to beneficial use:** July 2001 cistern and pump installed; **Amount:** 0-2gpm. **Use:** Domestic.

Description of place of use where water is applied to beneficial use: No irrigation use. Galvez spring and cistern used to supply water residence 5301 CR 442 Huerfano County CO. Residence is located about 300 yards from Galvez spring. Location information in UTM format: **UTM Coordinates:** Easting: 485057 Northing: 4157658, **Street Address:** 5301 County Road 442, Huerfano County CO, **Subdivision:** LaVeta Acres filing 2 **Lot:** 17. **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:** Applicants.

CASE NO. 2019CW3044; The filing made under this case number was rejected; therefore, this case number does not exist in Water Division 2.

CASE NO 2019CW3045; MARIA LAKE GRAZING ASSOCIATION, LLC, C/O Donald E. Siecke, Manager, 7343 S. Alton Way, Ste. 100, Centennial, CO 80122 (Please address all pleadings and inquiries regarding this matter to Applicants' attorneys: David Hallford, Erika Gibson, c/o Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546.

Application for Finding of Reasonable Diligence and to Confirm Absolute, in Part
HUERFANO COUNTY

Decree Information: Maria Lakes Reservoir was originally decreed in Case No. W-190 on 9/30/1971 in District Court, Water Division 2. Subsequent findings of diligence in Case No. W-190-73 on 6/13/1975; in Case No. 79CW86 on 9/12/1980, *nunc pro tunc*, 8/7/1980; in Case No. 83CW52 on 10/18/1993; in Case No. 93CW62 on 2/14/1994; in Case No. 00CW13 on 9/9/2000; in Case No. 06CW69 on 1/19/2007; and in Case No. 13CW14 on 7/11/2013. **Legal Description:** The subject water right is stored in the Maria Stevens Reservoir. The high-water line is at the continuous contour elevation of 5,748 in portions of the E1/2 SE1/4 of Sec. 20; the W1/2 of Sec. 21; the E1/2 NE1/4 of Sec. 29; and the NW1/4 of Sec. 28, all in T. 27 S., R. 65 W., 6th P.M. in Huerfano County, Colorado. See Exhibit A attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Source:** Cucharas River through the Duran Ditch, trib. to the Arkansas River. The Duran Ditch, as described in Case No. 03CW31, diverts from the N. bank of the Cucharas River in the SE1/4 of the SW1/4 of Sec. 29, T. 27 S., R. 65 W., 6th P.M. **Approp. Date:** 3/24/1969. **Amt.:** A total of 1,797.6 AF, of which 231 AF was made absolute in Case No. W-190 and 671.3 AF was made absolute in Case No. W-190(73); 845.3 AF remains cond. **Use:** Irr., stock watering, and fish culture. **Diligence activities** are described in the Application on file with the Court. **Absolute Claim:** Applicant placed the Maria Lakes Reservoir cond. right to incremental beneficial use by additional storage and subsequent use. **Date of Storage for Beneficial Use:** 2006 Storage Season. See Exhibit B for summary of storage accruals for senior storage rights and the Maria Lake Reservoir cond. right (a/k/a "Ackerman Right"). Applicant reserves the right to establish additional and / or specific dates of storage as necessary. **Use:** All decreed uses. **Amt.:** 330.8 AF of the cond. 845.3 AF additional to the absolute 902.3 AF. **Amt. Remaining Cond.:** 514.5 AF. 6

CASE NO. 2019CW3046; Previous Case No. 13CW18 – TOWN OF MONUMENT, 645 Beacon Lite Road, Monument, CO 80132 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Robert F. T. Krassa, Krassa & Miller, LLC, 2300 Canyon Blvd., Suite 2, Boulder, CO 80302, 303-442-2156)

Application for Finding of Reasonable Diligence

EL PASO COUNTY

2. Name of Structure: Monument Well No. 3. **3. Describe conditional water right** giving the following from the Referee's Ruling and Judgment and Decree: **a. Date of Original Decree: May 9, 1975**, Second Amended Decree entered June 13, 1980; Case W-4103, Water Division No. 2. **b. List all subsequent decrees** awarding findings of diligence (all in this Court): 79CW66; 83CW36 entered Sep. 30, 1983; 87CW27 entered Aug. 24, 1987; 93CW54 entered Jan. 25, 1994; 00CW08 entered Nov. 13, 2000; 06CW98 entered Feb. 9, 2007 and 13CW18 entered July 11, 2013. **c. Location:** NE 1/4 SE 1/4 Section 15, Township 11 South, Range 67 West of the 6th P.M. in El Paso County, being 1980 feet north of the south line and 50 feet west of the east line of said Section 15. **d. Source:** Dawson and Denver aquifers. **e. Date of Appropriation:** October 6, 1972. Amount 0.33 cfs (150 gpm), conditional. This well also has an absolute decree for 200 gpm of same priority. **f. Use:** Municipal purposes **g. Depth:** 1050 feet. **4. Detailed outline** of what has been done toward completion or for completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the diligence period which ran from July 2013 to the present. During the diligence period, Monument modified some control valves for Well No. 3 to streamline operations of that well. Monument also engaged in administrative, legal and engineering activities, to determine how best to utilize the subject water right and structure within the context of the current water legal and administrative system. This led to the filing of currently pending applications by the Town in Cases 19CW3009 and 19CW3010 in this Court, which will increase the efficiency of augmentation and use of the subject water right. During the diligence period, Monument has made spent over \$ 100,000 on this and other components of its water system, all of which are necessary to accommodate and utilize the subject conditional right. Further, Monument has defended its water rights in various water court proceedings utilizing attorneys and water resources engineers. Monument has in all respects diligently worked toward placing the subject water right to beneficial use. **5. All structures involved in this matter** are located on lands owned by Applicant Town of Monument.

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 September 2019, (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 7th day of August 2019.



Michele Santistevan

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

(Court seal)
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