

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JUNE 2017

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 June 2017, 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. 2017CW7; Previous Case Nos. 2004CW53 and 2010CW84 – MARY B. SAVAGE TIBBETS, 3000 S. Jasmine Street, Denver, CO 80222; (303) 757-3117

Application for Finding of Reasonable Diligence

PARK COUNTY

Name of structure: Hope Spring. **Describe Conditional Water Right:** **Date of Original Decree:** 12/20/2004; **Case No.:** 2004CW53; **Court:** District Court Water Division 2. **Subsequent decrees awarding findings of diligence:** **Date of Decree:** June 3, 2011; **Case No.:** 2010CW84; **Court:** Water Division 2. **Legal description:** Park County, NE ¼ SE ¼ Section 29, T14S, R72W, 6th P.M., 2,470 feet from South line and 200 feet from East line. **Street Address:** Old Kathleen Trail; **Subdivision:** Old Kathleen Ranch; **Lot:** 60. **Source of Water:** Natural spring. **Appropriation Date:** July 16, 2004; **Amount:** 8 gpm. **Use:** Livestock, wildlife, fire protection and storage purposes as absolute uses; domestic purposes inside one home and one guest house, garden irrigation and recreation as conditional uses. **Outline of work done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed:** Removed an old metal tubular frame structure (40' x 60') that was built around a very old large metal agricultural water tank that rusted and leaked (the spring was hooked up to that). The tank was removed; new pipes installed and buried leading to the pond. Fencing constructed around the outlet pipe to keep cattle from damaging it. Additional fencing constructed to protect land/water close to overflow pipe in pond (small area); landscaped an area below overflow pipe with 1 pine tree and 5 aspens. These were fenced to protect from cattle and wildlife (20' x 20'). **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. 2017CW8 – JOE D. and CECELIA J. RUTHERFORD, 510 Maple Street, Walsenburg, CO 81089

Application for Absolute Water Right (Surface)

HUERFANO COUNTY

The Water Judge did not order publication of this application, but it is listed in the resume to account for the case number.

CASE NO. 2017CW9 – CARMEN VIGIL, 2820 Denver Blvd., Pueblo, CO 81003; (719) 334-2532

Application for Absolute Underground Water Right

HUERFANO COUNTY

Name of well and permit number: Carmen Vigil Well; Permit 219346. **Legal description of well: UTM Coordinates (Meters, Zone 13, NAD83):** Easting 506712; Northing 4159954. **PLSS Description:** Huerfano County, NE ¼ SE ¼ Section 30, T28S, R67W, 6th P.M., 1417 feet from North line and 495 feet from West line. **Source of PLSS information:** Permit 219346. **Source of water:** groundwater tributary to the Huerfano River. **Depth of well:** 300'. **Date of appropriation:** 7/27/2001; **How appropriation was initiated:** Permit number 219346. **Date water applied to beneficial use:** 7/27/2001. **Does the well withdraw tributary groundwater?** Yes. **Amount claimed:** 15 gpm Absolute. **Uses:** Inside uses for 3 single family dwellings (to include 1299 CR 510, Walsenburg, CO), lawn and garden up to 1 acre, domestic animals, poultry and livestock. **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:** Tom Vigil, 528 San Cado Terrace, Fall Brooks, CA 92028. **Remarks:** The well is located on the parcel owned by Tom Vigil. Quitclaim Deed leaves ownership of the well to Carmen Vigil – 1299 CR 510, Walsenburg, CO. Pipeline to 1299 CR 510, Walsenburg from the well existing. Access needed.

CASE NO. 2017CW3031 – MICHAEL TURNER, 13750 Holmes Road, Colorado Springs, CO 80908

(Please direct all correspondence and inquiries regarding this matter to Applicant's attorney: Henry D. Worley, Worley Law Firm, LLC, 611 North Weber, Suite 104, Colorado Springs, CO 80903; (719) 634-8330)

Application for Adjudication of Denver Basin Ground Water and for Approval of Plan for Augmentation.

EL PASO COUNTY

I. APPLICATION FOR DENVER BASIN WATER RIGHTS. 1. Name, address, telephone number of applicants: Michael Turner, 13750 Holmes Road, Colorado Springs, CO 80908; phone: 719.434.0199; email: michael@homesbyturner.com. is the owner of the property beneath which the Denver Basin water is sought to be adjudicated herein. **2. The property which is the subject of this application consists of 53.15 acres situate in the SW1/4 Section 22, T. 12 S., R. 65 W., 6th P.M. ("Property"). A survey map of the Property is shown in Figure 1; Exhibit A contains a metes and bounds description of the Property. (Figure 1 and Exhibit A are on file with the Application and may be examined at the office of the Clerk of this court). Applicant seeks the adjudication of the water in the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the Property and approval of a plan for augmentation which will allow up to 21 wells in the Dawson aquifer. The Property is located in the Sand Creek drainage, tributary to Fountain Creek and the Arkansas River. **3. Names of wells and permit, registration, or denial numbers:** There is one well, permit no. 9857, on the Property. **4. Legal description of wells:** new wells may be constructed at any**

location on the Property. Applicants hereby waive the 600 foot spacing rule in regard to all Dawson aquifer wells constructed on the Property. **5. Source:** Not nontributary Dawson aquifer; not nontributary Denver aquifer; nontributary Arapahoe aquifer, and nontributary Laramie-Fox Hills aquifer. **6.A. Date of appropriation:** Not applicable. **6.B. How appropriation was initiated:** Not applicable. **6.C. Date water applied to beneficial use:** Not applicable. **7. Amount claimed:** Not nontributary Dawson aquifer, 15 g.p.m. for each of up to 21 wells, 2923 acre feet total, 29.3 acre feet annually, absolute; not nontributary Denver aquifer, 100 g.p.m., 2,530 acre feet, 25.3 acre feet annually, absolute; nontributary Arapahoe aquifer, 150 g.p.m., 2,259 acre feet total, 22.6 acre feet annually, absolute; nontributary Laramie-Fox Hills aquifer, 100 gpm, 1,515 acre feet total, 15.1 acre feet annually, absolute. The Water Court will be asked to retain jurisdiction over such decree to enter a final determination of the amount of water available for appropriation from each aquifer based on geophysical logs for wells in such aquifers. **8. Proposed use:** all beneficial uses except municipal. **9. Names and addresses of owners of land on which well is located:** Same as Applicant's as set forth in paragraph 1. **10. Remarks:** There are no liens which encumber the Property. **II. APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION. 11. Name of structures to be augmented:** Up to 21 Dawson aquifer wells, including permit no. 9857. No other water rights are or will be diverted from these wells. **12. Previous decrees for water rights to be used for augmentation:** None. **13. Historic use:** Not applicable. **14. Statement of plan for augmentation: A. Water Demand.** Applicant will subdivide the Property into up to 21 lots for single family residences which may include some commercial uses, such as a home-based business. Uses of water on such lots are expected to be, but shall not be limited to, some or all of the following uses: for indoor uses for drinking and sanitary purposes in the principal houses and in stand-alone home offices or guest cottages, for livestock watering, dust suppression, landscape and garden irrigation, hot tubs, swimming pools, and decorative uses such as decorative ponds and fountains, and augmentation through septic system return flows. Applicants for well permits will designate the uses to which they intend to put the water on their well permit applications. Annual Dawson aquifer pumping will be limited as follows based on the number of lots approved: 21 wells, 0.464 AF/well; 20 wells, 0.487 AF/well; 19 wells, 0.513 AF/well; 18 or fewer wells, 0.525 AF/well. **B. Water Consumption and Return Flows.** Indoor water usage for each house is expected to equal no less than 0.2 acre foot per house on a long term average. It is generally accepted that no more than ten percent of water used indoors in residences using non-evaporative septic systems and leach fields for wastewater disposal is consumed, with 90 percent (0.18 acre foot per lot, annually, based on average annual indoor use of 0.2 acre foot) returning to the stream system. **C. Replacement of Stream Depletions During Pumping.** Although there will be some return flows from other uses, Applicant will rely only on return flows from septic systems and leach fields for replacement of depletions during pumping. Based on computer modeling, stream depletions will occur to tributaries of the Arkansas River. Applicant proposes to aggregate and replace all stream depletions to Sand Creek, a tributary of the Arkansas River. Computer modeling indicates that during pumping stream depletions will gradually increase to a maximum of 34.295 percent of annual pumping in the 300th year, or 3.34 acre feet based on annual pumping of 9.74 acre feet. Applicants

propose to replace those depletions with septic system return flows, which will equal 3.78 acre feet annually for 21 lots, based on assumed average annual indoor use of at least 0.2 acre foot and septic system return flows of at least 0.18 acre foot per dwelling. Based on the pumping amounts in ¶ 14.A above, return flows from septic systems will always exceed stream depletions during the 300 year pumping period if at least 18 wells and septic systems are constructed. If fewer than 18 wells and septic systems are constructed, allowable annual Dawson aquifer pumping will be reduced to 0.5255 acre foot multiplied by the total number of wells and septic systems. **D. Replacement of Stream Depletions After Cessation of Pumping.** Applicant will reserve 2,471 acre feet of water from the Arapahoe and Laramie-Fox Hills aquifers underlying the Property for the replacement of post-pumping depletions, unless and until such time as the obligation to replace post-pumping depletions is terminated, or unless Applicant obtains judicial approval of another source of replacement water for post-pumping depletions. Applicants shall make post-pumping replacements annually as required to replace modeled stream depletions. **E. Miscellaneous. (1)** Applicant will establish restrictive covenants on the Property which: (a) limit annual pumping from the proposed Dawson aquifer wells to no more than 9.74 acre feet; (b) require the use of non-evaporative septic systems for wastewater treatment; (c) reserve adequate nontributary water for replacement of post-pumping depletions, which reservation may be voided if the need for such reservation is lawfully terminated; (d) inform the future homeowners that utilization of water for indoor residential purposes is required in order to generate the necessary return flows for augmentation; and (e) indicate that the owners will be required to construct a well or wells into the Arapahoe and Laramie-Fox Hills aquifers underlying the Property for replacement of post-pumping depletions if the source of augmentation water is unchanged. **(2)** Restrictive covenants limiting the area to be irrigated or the number of head of livestock which are allowed on the Property are unnecessary because the annual pumping limitations, and the requirement that non-evaporative septic systems be used, ensures that septic system return flows alone will equal or exceed depletions throughout the 300 year pumping period. **(3)** Certain elements of this application may change in the ruling and decree to be consistent with the Consultation Report and the Determinations of Facts, including the possibility of a change upward in the amount of water which may be pumped on an annual basis. **(4)** Permit no. 9857 will either be redrilled or repermited consistent with the terms of the augmentation plan to be decreed.

CASE NO. 2017CW3032 – PEOPLE OF THE STATE OF COLORADO, ex rel. Dick Wolfe, State Engineer and Steven J. Witte, Division Engineer for Water Division 2 v. VICTORIA ANNE LIVINGSTON, in her individual capacity, and ANTELOPE VALLEY RANCH CORPORATION, a Colorado corporation. This case is a Verified Complaint for Injunctive Relief, Penalties and Costs and is listed in the resume to account for the case number in consecutive order.

CASE NO. 2017CW3033 – THOMAS and JOSEPH KLUN, JR. v. MICHAEL KLUN. This case is a Verified Complaint for Declaratory Judgment and Injunctive Relief and is listed in the resume to account for the case number in consecutive order.

CASE NO. 2017CW3034; Previous Case Nos. 2000CW149 and 2011CW8 – TOWN OF LA VETA, P. O. Box 174, La Veta, CO 81055 (Please direct all correspondence

and inquiries regarding this matter to Applicant's attorney: Henry D. Worley, Worley Law Firm, LLC, 611 North Weber, Suite 104, Colorado Springs, CO 80903; (719) 634-8330)

Application for Finding of Diligence

HUERFANO COUNTY

1. Name, address, telephone number of Applicant: Town of La Veta, P.O. Box 174, La Veta, Colorado. Phone: 719-742-3631. **2. Name of Reservoir:** La Veta Town Reservoir Enlargement. **3. A.** The La Veta Town Reservoir Enlargement was decreed in Case No. 00CW149 by the Water Court for Water Division 2 on March 28, 2005. **B.** This is the second application for a finding of diligence since the La Veta Town Reservoir Enlargement was first decreed, the first finding of diligence having been decreed in Case No. 11CW8. **C.** The location of the La Veta Town Reservoir is in Section 28, T. 29 S., R. 68 W., 6th P.M. The legal description was corrected to reflect its actual location in Case No. 00CW149 (the original decree indicated it is located in Section 8). The point of diversion for this off-channel reservoir is as follows: Town of La Veta Pipeline, 2.98 cfs from the Cucharas River, point of diversion is "on the right bank of the Cucharas River bearing South 71'23" West 2862 feet from the East Quarter corner Section 5, Township 30 South of Range 68 West of the 6th P.M., Huerfano County, Colorado. A new structure named the Town of La Veta Pipeline No. 2 will be located at the same general location, and will have a flow rate of 5.0 cfs, conditional. **D.** The **source** is the Cucharas River. **E. Date of appropriation:** December 19, 2000. **F. Amount:** 150 acre feet. **4. Detailed outline of work, including expenditures.** The Town of La Veta has an integrated water system, such that work on one aspect of the system constitutes diligence on other aspects. During the past six years, the Town has completed infrastructure on the Mexican Ditch, rehabilitated the North Dam for the La Veta Town Reservoir, and leased water to replace lagged accretions to the Cucharas River that were necessary in order to implement the change of water rights and appropriative right of exchange decreed in Case No. 00CW130. In addition, La Veta has participated in several water rights cases as an opposer in order to preserve its own water rights; such cases include the completed Case Nos. 97CW108(A) (Pinon Hills), 97CW108(C) (Huajatolla Valley Estates), 11CW56 (City of Walsenburg), 02CW116 (Corsentino Dairy), and in pending cases 14CW3041 (J.D. Partners), 15CW3048 (Blouin), 16CW3022 (Cucharas Sanitation and Water District), and 16CW3048(Ojo Springs). All of these actions constitute diligence for the La Veta Town Reservoir Expansion. Expenditures were as follows: Augmentation station and related work for Mexican Ditch - \$160,000; Rehabilitation of staff gauge at the La Veta Town Reservoir Dam - \$968; Rehabilitation of La Veta Town Reservoir North Dam and outlet - \$500,000; Engineering fees - \$34,198; Legal fees - \$58,217; Water lease expenditure for 2017 - \$5,000. **6. Names and addresses of owners or reputed owners of the land upon which any new diversion or storage structure will be located.** The La Veta Town Reservoir including this enlargement is located on land owned by the Town of La Veta. The point of diversion for the La Veta Pipeline is located on land owned by

Ewing Homestead, L.L.C., which is being mailed a copy of this application by certified mail.

CASE NO. 2017CW3035 – LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION (“LAWMA”), 310 South 6th Street, P. O. Box 1161, Lamar, CO 81052

(Please direct all correspondence and inquiries regarding this matter to Applicant’s attorneys: Richard J. Mehren, Jennifer M. DiLalla, and William D. Davidson, Moses, Wittemyer, Harrison and Woodruff, P.C., 2595 Canyon Blvd., Suite 300, Boulder, Colorado 80302; (303) 443-8782)

Application for Plan for Augmentation

PROWERS 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 purpose of this application is to include additional structures in LAWMA’s plan for augmentation (“Augmentation Plan”), which was decreed on March 8, 2007 in Case No. 02CW181, Water Division No. 2 (“02CW181 Decree”). Pursuant to paragraph 43 of the 02CW181 Decree, LAWMA may add wells or other structures to the Augmentation Plan by filing a new application with the Water Court. **3. Description of structures to be augmented (“Additional**

LAWMA Structures”): **Seaboard Foods, LLC, SEO ID: 6706881; Permit No.: 81004-F, Legal Description:** NE ¼ NE ¼ Sec. 27, T24S, R47W, 6th P.M., Prowers County, 136 feet from North line and 132 feet from East line; **Source:** Dakota Bedrock Aquifer; **UTM Coordinates (Meters, Zone 13, NAD83):** X = 704942; Y = 4201654; **Elevation** 3925 feet. **Seaboard Foods, LLC, SEO ID: 6706882; Permit No. 81003-F, Legal Description:** NW ¼ NE ¼ Sec. 27, T24S, R47W, 6th P.M., Prowers County, 85 feet from North line and 1743 feet from East line; **Source:** Dakota Bedrock Aquifer; **UTM Coordinates (Meters, Zone 13, NAD83):** X = 704449; Y = 4201655; **Elevation** 3937 feet. **Seaboard Foods, LLC, SEO ID: 6706883; Permit No.: 81002-F, Legal Description:** SE ¼ SE ¼ Sec. 22, T24S, R47W, 6th P.M., Prowers County, 343 feet from South line and 136 feet from East line; **Source:** Dakota Bedrock Aquifer; **UTM Coordinates (Meters, Zone 13, NAD83):** X = 704934; Y = 4201804; **Elevation** 3919 feet. **Granada Feeders, LLC. Legal Description:** SW ¼ SW ¼ Sec. 22, T23S, R44W, 6th P.M., Prowers County, 1165 feet from South line and 1110 feet from West line; **Source:** Cheyenne Bedrock Aquifer; **UTM Coordinates (Meters, Zone 13, NAD83):** X = 732344; Y = 4212532; **Elevation** 3556 feet. **Robert B. Bamber. Permit No.: 149791-A. Legal Description:** NE ¼ SW ¼ Sec. 26, T26S, R46W, 6th P.M., Prowers County, 1885 feet from South line and 1433 feet from West line; **Source:** Morrison Bedrock Aquifer; **UTM Coordinates (Meters, Zone 13, NAD83):** X = 714897; Y = 4180956; **Elevation** 4313 feet. Maps showing the location of the Additional LAWMA Structures are attached to the Application as Exhibits B-1, B-2, and B-3. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) A total of five additional structures will be included in LAWMA’s Augmentation Plan through this application: one well owned by Robert Bamber; three wells owned by Seaboard Foods, LLC; and one well owned by Granada Feeders, LLC.

4. 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 02CW181 Decree and in the decrees entered in Case Nos. 05CW52 and 10CW85, and those water rights and other sources of water that are added as sources of augmentation water to the 02CW181 Decree pursuant to the terms and conditions of paragraph 41 of the 02CW181 Decree. **4.1 Use of Fryingpan-Arkansas Project water and return flows as augmentation source:** The Additional LAWMA Structures are located outside of the boundaries of the Southeastern Colorado Water Conservancy District. Accordingly, the Additional LAWMA Structures are not eligible to receive Fryingpan-Arkansas Project water, including return flows, as an augmentation source. LAWMA will not use Fryingpan-Arkansas Project water to replace depletions caused by the Additional LAWMA Structures. **5. Statement of plan for augmentation:** The amount, timing and location of depletions from the Additional LAWMA Structures will be determined in accordance with the methodologies approved in the 02CW181 Decree. Under the LAWMA Augmentation Plan, LAWMA shall account for and fully replace all out-of-priority depletions caused by the Additional LAWMA Structures. LAWMA shall replace such depletions 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. **5.1 Integration into Case No. 02CW181 accounting and projection:** The accounting for operation of the Additional LAWMA Structures 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. Additionally, in accounting for operation of the Additional LAWMA Structures, LAWMA shall use the accounting forms pending approval in Case No. 14CW3004 (the “Integrated Accounting Forms”) after those Integrated Accounting Forms have been approved and a decree has been entered in Case No. 14CW3004. **5.2 No modification of 02CW181 Decree:** This application does not seek to change any provision of the 02CW181 Decree other than the inclusion of the Additional LAWMA Structures, does not seek a change of water right for any of the water rights identified in paragraph 40 of the 02CW181 Decree, and does not seek any change to those augmented structures or replacement water sources previously decreed to be included in LAWMA’s Augmentation Plan. Instead, this application seeks (i) the Court’s approval of LAWMA’s inclusion of the structures described above in the Augmentation Plan in accordance with the terms and conditions of the 02CW181 Decree; and (ii) accordingly, the Court’s confirmation that LAWMA will fully replace under LAWMA’s Augmentation Plan, 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 the Additional LAWMA Structures. WHEREFORE, LAWMA respectfully requests that this Court enter a decree approving this plan for augmentation and determining that such plan for augmentation will not cause injury to the vested or decreed conditional water rights of others and will not violate the Arkansas River Compact.

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 August 2017, (forms available at Clerk's office or at www.courts.state.co.us, 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 6th day of July, 2017.



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)
Published: July _____, 2017