

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JUNE 2018

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 2018, 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. 2018CW3039; Previous Case No. 2007CW111 - TOWN OF PONCHA SPRINGS, c/o Brian Berger, Town Administrative Officer, P.O. Box 190, 333 Burnett Avenue, Poncha Springs, CO 81242 (Please address all correspondence

and inquiries regarding this matter to Applicant's attorneys: David M. Shohet, #36675, Brian G. Sheldon, #51063, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921; (719) 471-1212)

Application for Finding of Reasonable Diligence

CHAFFEE AND SAGUACHE COUNTIES

II. Summary of Application. The Town of Poncha Springs ("Applicant") seeks a finding of reasonable diligence as to the conditional appropriative rights of exchange decreed in Case No. 07CW111, District Court, Water Division 2 ("Decree"). **III. Name of Conditional Water Rights.** Town of Poncha Springs' Friend Ranch Exchanges. **IV. Description of Conditional Water Rights. A. Decree Description for Conditional Water Rights.** 1. Date of Original Decree: June 13, 2012. 2. Case No.: 07CW111. 3. Court: District Court, Water Division 2. **B. Exchange from Points.** The confluence of Little Cochetopa Creek with the South Arkansas River in Section 8, Township 49 North, Range 8 East, N.M.P.M., or from the confluence of Green Creek with the South Arkansas River in Section 1, Township 49 North, Range 7 East, N.M.P.M. **C. Exchange to Points.** 1. Boss Lake. From the exchange from points up the South Arkansas River to the confluence with the Middle Fork of the South Arkansas River located near the Town of Garfield, located in the South 1/2 of Section 27, Township 50 North, Range 6 East of the N.M.P.M., and from this point up the Middle Fork of the South Arkansas River to the confluence with the Lake Fork of the South Arkansas River and from this point up to the terminus of the exchange at Boss Lake located in the Northeast 1/4 East 1/2 of Section 29, Township 50 North, Range 6 East, N.M.P.M. 2. North Fork Reservoir. From the exchange from points up the South Arkansas River to the confluence with North Fork of the South Arkansas River located in North 1/2 of Section 3, Township 49 North, Range 7 East of the N.M.P.M., and from this point up the North Fork of the South Arkansas River to the terminus of the exchange at North Fork Reservoir beginning at the Northeasterly point of contact of the dam axis with the existing ground said point being situated whence the Northwest corner of Section 21, T.50N, R.7E, N.M.P.M. 3. O'Haver Reservoir. From the exchange from points down the South Arkansas River to the confluence with Poncha Creek located in Section 10, Township 49 North, Range 8 East of the N.M.P.M., from this point up Poncha Creek to the confluence with Grays' Creek, and from this point up Grays' Creek to the terminus of the exchange at the

O’Haver Filler Ditch for O’Haver Reservoir located in the NW1/4 SW1/4 of said Section 12, Township 48 North, Range 7 East, N.M.P.M. and as described in Case No. 82CW205. **D. Sources of Water. 1. Little Cochetopa Creek Water Rights.** Information from the original adjudication of the Little Cochetopa Creek Water Rights are as follows: a. Name of Structure. The Huntzicker Ditch, the Hensie Ditch No. 1 and the Henry Ditch (collectively referred to as the “Little Cochetopa Creek Water Rights”). b. Decrees. Huntzicker Ditch and the Hensie Ditch No. 1 were decreed on June 19, 1890, in Case No. CA 1127 by the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. The Henry Ditch was decreed on September 13, 1917, in the District Court of Chaffee County, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11, Case No. CA 2559. These rights were further changed in Case No. 07CW111. c. Points of Diversion. i. Huntzicker Ditch: About one-half mile from the junction of Cochetopa Creek with the South Arkansas River in Section 8, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is the NE1/4 SE1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M., at a point 2,500 feet from the south line of said Section 7, and 100 feet from the east line of Section 7. ii. Hensie Ditch No. 1: About 20 rods below the mouth of Pass Creek in Section 7, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is the SW1/4 SE1/4, Section 7, Township 49 North, Range 8 East, N.M.P.M., at a point 90 feet from the south line of said Section 7, and 2,280 feet from the east line of Section 7. iii. Henry Ditch: West bank of Cochetopa Creek, at a point from whence the South Quarter corner of Section 18, in Township 49 North, Range 8 East, N.M.P.M., in Chaffee County, Colorado, bears South 49 degrees and 10’ East, 590 feet. d. Source. Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. e. Appropriation Dates and Amounts. The appropriation dates and decreed amounts for the Little Cochetopa Creek Water Rights are as follows:

Water Right Name	Adjudication Date	Appropriation Date	Local Priority No.	Full Water Right (cfs)	Town’s Water Right Subject to Change (cfs)
Huntzicker Ditch	6/19/1890	12/31/1870	31	0.7	0.5
Hensie Ditch No. 1	6/19/1890	12/31/1870	49	0.3	0.3
Henry Ditch	9/13/1917	5/1/1885	-	1.5	1.5

2. Pass Creek Water Rights. Information from the original adjudication of the Pass Creek Water Rights are as follows: a. Name of Structure. The Boon Ditch No. 2, Hensie Ditch No. 2, the Velotta Ditch No. 1 and the Velotta Ditch No. 2 (collectively referred to as the “Pass Creek Water Rights”). b. Decrees. i. The Boon Ditch No. 2 and Hensie Ditch No. 2 were decreed on June 19, 1890 in Case No. CA1127 in the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11. An additional decree was entered for the Boon Ditch No. 2 on September 13, 1917,

in the District Court of Chaffee County, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11, Case No. CA 2559. These rights were further changed in Case No. 07CW111. ii. Velotta Ditch No. 1 and Velotta Ditch No. 2 were decreed on August 31, 1912 by the District Court of Chaffee County, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water District 11, Case No. CA 2310. A supplemental decree was entered for the Velotta Ditch No.1 on July 9, 1969 by the District Court of Chaffee County, State of Colorado, In the Matter of Adjudication of Priorities of the Rights to the Use of Water for Irrigation and Non-Irrigation Uses in Water District 11, Case No. CA 5141. These rights were further changed in Case No. 07CW111. c. Points of Diversion. i. Boon Ditch No. 2: North Bank of Pass Creek, about 200 feet from the junction of Pass Creek with Cochetopa Creek, Chaffee County, Colorado. A more modern description of the actual location of the headgate is the NW1/4 NE1/4, Section 18, Township 49 North, Range 8 East, N.M.P.M., at a point 200 feet from the north line of said Section 18, and 2,450 feet from the east line of Section 18. ii. Hensie Ditch No. 2: About one-half mile from Pass Creek's junction with Cochetopa, in Section 7, Township 49 North, Range 8 East, N.M.P.M., Chaffee County, Colorado. A more modern description of the actual location of the headgate is the SE1/4 NE1/4, Section 13, Township 49 North, Range 7 East, N.M.P.M., at a point 1,680 feet from the north line of said Section 13, and 90 feet from the east line of Section 13. iii. Velotta Ditch No. 1: At a point on the north bank of Pass Creek, whence the East Quarter Corner of Section 13, Township 49 North, Range 7 East, of the N.M.P.M., bears South 74° 45' East, 1760 feet. iv. Velotta Ditch No. 2: South bank of Pass Creek, at a point whence the West Quarter corner of Section 18 bears South 84° 10' East, 2385 feet. d. Source. Pass Creek, tributary to Little Cochetopa Creek, tributary to the South Arkansas River, tributary to the Arkansas River. e. Appropriation Dates and Amounts. The appropriation dates and decreed amounts for the Pass Creek Water Rights are as follows:

Water Right Name	Adjudication Date	Appropriation Date	Local Priority No.	Full Water Right (cfs)	Town's Water Right Subject to Change (cfs)
Boon Ditch No. 2	June 19, 1890	Nov 30, 1871	33	1.4	All
	Sept 13, 1917	June 1, 1899		1.5	
Hensie Ditch No. 2	June 19, 1890	December 31, 1873	50	0.2	All
Velotta Ditch No. 2	August 31, 1912	July 11, 1911	-	1.5	All
Velotta Ditch No. 1	August 31, 1912	July 8, 1911	-	1.5	All
	July 9, 1969	Dec 31, 1950		1.5	

3. Green Creek Water Right. Information from the original adjudication of the Green Creek Water Right are as follows: a. Name of Structure. The Mundlein Ditch No. 2 ("Mundlein Ditch No. 2 Water Right"). b. Decrees. The Mundlein Ditch No. 2 Water Right was originally adjudicated on June 19, 1890, in Case No. CA 1127, by the District Court in the original adjudication of the Fourth Judicial District of the State of Colorado, Sitting in and for the County of Chaffee, State of Colorado, In the Matter of a Certain Petition for Adjudication of the Priority of Rights to the Use of Water for Irrigation in Water

District 11. An additional decree for the Mundlein Ditch No. 2 was entered on July 9, 1969, by the District Court of Chaffee County, State of Colorado, In the Matter of Adjudication of Priorities of the Rights to the Use of Water for Irrigation and Non-Irrigation Uses in Water District 11, Case No. CA 5141. This right was further changed in Case No. 07CW111. c. Point of Diversion. A point on the East bank of Green Creek, whence the South Quarter Corner of Section 1, Township 49 North, Range 7 East of the N.M.P.M., bears South 67° 46' East, 3784 feet.¹ d. Source. Green Creek, tributary to the South Arkansas River, tributary to the Arkansas River. e. Appropriation Dates and Amounts. The appropriation dates and decreed amounts for the Green Creek Water Right are as follows:

Water Right Name	Adjudication Date	Appropriation Date	Local Priority No.	Full Water Right (cfs)	Town's Water Right Subject to Change (cfs)
Mundlein Ditch No. 2	June 19, 1890	March 1, 1873	44	1.74	0.58
	July 9, 1969	December 13, 1958	A-159	1.75	0.58

E. Appropriation Date. September 24, 2007. **F. Amounts.** 50.0 acre feet, conditional, for all structures and uses adjudicated in Case No. 07CW111, with a maximum exchange rate of 5.0 c.f.s. **G. Uses.** Municipal purposes, including bypass water, and augmentation. **V. Detailed Outline of Diligence.** The Friend Ranch Water Rights are part of Applicant's integrated water supply system, which consist of surface water rights and storage water rights. Pursuant to C.R.S. § 37-92-301(4)(b), work on one component of an integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. During this diligence period, Applicant has performed significant work within its service boundaries and on its municipal water system to develop the decreed Town of Poncha Springs' Friend Ranch Exchanges as part of its integrated municipal supply system. During the subject diligence period, Applicant has outlaid the following expenditures or completed the following work related to the Friend Ranch Water Rights and his integrated water system: A. Engaged in a protracted land use planning process to integrate the Applicant's municipal water system with the Friend Ranch Water Rights, including: 1. Obtaining pre-qualification from the Colorado Department of Public Health and Environment (CDPHE) to participate in the State Revolving Fund (SRF) program, as well as participating in meetings with CDPHE and related state agencies. 2. Obtaining grants for planning and design & engineering; began related loan application process to SRF in 2015. 3. Completing a Preliminary Needs Assessment. 4. Completing an Environmental Assessment. 5. Acquiring a subdivision exemption from Chaffee County. 6. Obtaining the necessary land easements to transport water associated with the Friend Ranch Water Rights. 7. Obtaining FAA approval of storage tank construction. 8. Drilling test wells associated with exchange rights related to the Friend Ranch Water Rights. 9. The total cost of the above listed actions was approximately \$2,250,000.00, including material, labor, and consulting costs. This is in addition to routine maintenance of all water rights associated with the Friend Ranch Water Rights. B. Extended water main across US Highway 50 and extension of water main eastward

¹ The original decree incorrectly stated that the headgate was located in Section 1, Township 49 North, Range 8 East of the N.M.P.M., bears South 67° 46' East, 3784 feet.1 The correct Range is 7 East.

across the visitor's center property in preparation for US Hwy 285 water main loop to CR 128. C. Improved Poncha Well Nos. 3 and 4 and implemented a phosphate process for all wells for corrosion control. D. Applicant has also expended significant funds on a major water infrastructure improvement project which is slated to be begin next year. This new project includes over 5,800 linear feet of new main lines, a new well and a 400,000 gallon elevated storage tank. E. Entered into a contract with Southeastern Colorado Water Conservancy District on December, 1, 2016, to obtain 10 acre-feet of excess capacity water storage rights in Pueblo Reservoir to facilitate the use of the Friend Ranch Water Rights and related augmentation needs. F. Restored the Mundlein and & Velotta Ditches on the Friend Ranch from their head gates all the way to Friend Ranch Reservoir, installed new augmentation stations and measuring devices, and installed a new gauge station on the South Arkansas River. G. The Applicant negotiated a renewal of its December 9, 1982 Agreement with the Upper Arkansas Water Conservancy District allowing the storage of water in O'Haver Reservoir, North Fork Reservoir and Boss Lake. H. Personnel-related expenses (salaries, payroll, etc.) totaling \$297,658 since 2012. I. Supply-related expenses (repair and maintenance, meters, etc.) totaling \$297,658 since 2012. J. Service-related expenses (utilities, postage, storage fees, leases, testing fees, professional fees, training etc.) totaling \$285,718 since 2012. K. Miscellaneous expenses totaling \$259 since 2012. L. Water-related debt payments (USDA water loan and interest) totaling \$203,857 since 2012. M. Capital outlays (infrastructure, engineering, storage costs, professional fees, etc.) totaling \$527,402 since 2012. N. The total cost of the above listed actions was approximately \$1,511,746.00. This is in addition to the \$2,250,000.00 figure associated with the land use process mentioned above. O. The applicant also incurred legal fees associated with drafting and filing of documents pertaining to the Friend Ranch Water Rights, including previous related applications and decrees as well as the present filing, and obtaining legal advice. P. Furthermore, the Applicant has actively cooperated with the Division Engineer to maintain and improve its integrated water system. **VI. Name and address of the owners of land on which structures are located.** The United States Department of Agriculture owns the land on which O'Haver Reservoir, North Fork Reservoir and Extension, and Boss Lake are all located. The address of the United States Forest Service, Salida Ranger District is: 5575 Cleora Road, Salida, CO 81201, Ph: 719-539-3591, Fax: 719-539-3593. **WHEREFORE**, Applicant requests the Court find that Applicant has maintained diligence for the conditional water rights described herein, that the Applicant can and will complete the decreed conditional appropriations, and for such other relief as the Court deems appropriate.

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 2018, (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 9th day of July, 2018.

Mardell R. DiDomenico



Mardell R. DiDomenico, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
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(Court seal)
Published: July ____, 2018