

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED DURING NOVEMBER 2008

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 during November 2008, 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. 08CW84 - DANIEL EDWARD WILLIAMS, 1720 Stonebridge Road, Alexandria, VA 22304 (Direct all correspondence to Amy N. Huff, Amy N. Huff, LLC, 22 Stevens Creek Cir., Durango, CO 81301, 970.764.4372).

Application for Conditional Direct Flow, Ground Water, and Storage Water Rights and for Approval of a Plan of Augmentation

TELLER COUNTY, COLORADO

1. Williams Spring. I. POD: Applicant seeks the following three alternate points of diversion for the Williams Springs water right. (a) A point located in the SW ¼ NW ¼ S29, T14S, R69W, 6th P.M., 1498' from the N Section line and 642' from the W Section line of said S 29. (b) A point located in the SW ¼ NW ¼ S 29, T 14S, R69W, 6th P.M., 1900' from the S Section line and 1028' from the W Section line of said S 29. (c) A point located in the SW ¼ NW ¼ S 29, T 14S, R69W, 6th P.M., 1313' from the S Section line and 844' from the W Section line of said S29.

II. Source: Unnamed springs arising on Applicant's property, tributary to Barnard Creek. **III. Amt:** 0.067 cfs (30 gpm), Conditional. **IV. App. Date:** 2002.

Appropriation was initiated by the installation of a pipe structure to collect and convey the spring water. **V. Use:** Irrigation of 10 acres, stock watering, domestic, wildlife, augmentation, freshening flows, and filling and refilling of ponds for said uses. **VI. Remarks:** The flow of the Williams Spring water right will be captured or concentrated by the installation of a near surface structure that is less than 10' deep or within 50' of the springs' natural drainage point. **2. Williams Well. I. POD:**

A point located in the SW ¼ NW ¼ Section 29, T 14S, R69W, 6th P.M., 1908' from the North Section line and 807' from the West Section line of said Section 29. **II. Source:** Ground water tributary to Barnard Creek, tributary to Four Mile Creek. **III. Amt:** 15 g.p.m., Conditional. **IV. App. Date:** 11-10-2008. **V. Use:** Domestic, irrigation of up to 2 acres of lawn and garden. **VI. Remarks:**

Applicant will augment out-of-priority depletions from the Williams Well ground water right in accordance with the Plan of Augmentation described below. Until the Applicant is capable of providing a replacement water supply, Applicant's out-of-priority diversions from the Williams Well will be used solely for exempt purposes. **3. Williams Pond. I. Location:** Up to 3 storage facilities located in the SW ¼ NW ¼ S 29, T 14S, R69W, 6th P.M., 1900' from S Section line and 1028' from W Section line of S 29. **II. Source:** Springs arising on Applicant's property; Williams Springs water right, as described in above. **III. Amt:** 10 AF Conditional,

with the right to fill and refill while in priority at a rate of 0.067 cfs (30 gpm). **IV. App. Date:** 11-10-2008. **V. Use:** Domestic, wildlife, stock watering, aesthetics, fish propagation, augmentation of the Williams Well, and the right to store water for said uses. **VI. Dam Height:** 10'; **Length:** 60'; **Total Capacity:** 10 AF. **4. Aug Plan. I. Augmented Structure:** Williams Well. Williams Well ground water right also diverts from this structure. **II. Replacement Supply:** Williams Springs water right & Williams Pond. **III.** No historical use. **IV. Desc.:** When replacement water supply is available, Applicant will divert water from Williams Well for the non-exempt uses described above. Applicant will use a nonevaporative septic system that will return approximately 90% of the water diverted to the stream system. Applicant will calculate the out-of-priority depletions and will replace the same in time, amount, and location, either by discharging fully consumable water diverted pursuant to the Williams Spring water right or by releasing fully consumable water from the Williams Pond. **V.** Applicant owns the land on which the all of the structures in this Application will be located

CASE NO. 08CW85 - JEFFREY AND JANET MANCUSO, 1251 Antelope Trail, Cotopaxi, CO 81223; (719) 207-4192

Application for Water Rights (Surface)

FREMONT COUNTY

2. Name of structure: Mancuso Spring #1. **3. Legal description of each point of diversion:** Fremont County, Section 4, Township 49 North, Range 12 East, NMPM. **Street Address:** 1251 Antelope Trail, Cotopaxi, CO 81223. **Optional Additional Description: GPS location information in UTM format. Required settings for GPS units are as follows: Format must be UTM; Zone must be 13; Units must be Meters Datum must be NAD83 and; Units must be set to true north: N 38° 31.947' W 105° 38.651'; elevation 9111'. Were points averaged? No.** **4. Source:** Spring. **5. A. Date of initiation of appropriation:** 11/12/01. **B. How appropriation was initiated:** Purchase of property - Acquisition of cattle lease. **C. Date water applied to beneficial use:** 11/12/01. **6. Amount claimed:** 7 gpm Conditional. **7. Use or proposed use:** Watering stock and wildlife. Spring runs year round. **8. Name(s) and address(es) of owner(s) or reputed owner(s) 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:** _____. **9. Remarks:** We would like to maintain this water right to provide drinking water to our cattle lease and wildlife and in the future either dig out to create pond or install above-ground stock water tank.

CASE NO. 08CW86 – COMPLAINT. This is a complaint and is simply being listed in the resume to account for the case number in consecutive order.

CASE NO. 08CW87(86CW11) - TOWN OF MONUMENT, c/o Catherine Green, Town Manager, P. O. Box 325, Monument, CO 80132 (Robert F. T. Krassa, Krassa & Miller, LLC, Attorneys for Applicant, 2344 Spruce St., Ste. A, Boulder, CO 80302, 303-442-2156)

Application for Finding of Reasonable Diligence

EL PASO COUNTY

2. Name of Structures: The conditional water rights which are the subject of this Application, are the following wells: Monument Wells QAL-3, QAL-4, QAL-5, QAL-6, QAL-7, QAL-8, QAL-3(ALT), QAL-4(ALT), QAL-5(ALT), QAL-6(ALT), QAL-7(ALT), and QAL-8(ALT). **3. Describe conditional water right giving the following from the Referee's Ruling and Judgment and Decree:** **a. Date of Original Decree:** Sept. 2, 1988, Case 86CW11, Water Division No. 2. **b. Location of structures:** The above referenced wells are located in Sections 15, and 16, Township 11 South, Range 67 West of the 6th P.M. in El Paso County, at specific locations described in the said Decree in Case 86CW11, which was recorded January 17, 1989 at Reception Number 01786436, Book 5596, Page 625, records of El Paso County. **c. Source:** groundwater tributary to Monument Creek. **d. Date of Appropriation:** December 11, 1985. **Amount:** 150 gallons per minute for each well, conditional. **4. Provide a 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, Well No. 2 was rehabilitated, Wells No. 4 and 5 were rehabilitated and reequipped, Well No. 3 was rehabilitated, Well No. 7 was rehabilitated and lowered and Well No. 8 was rehabilitated. During the year 2006 a new Water Treatment Plant was constructed for the treatment of the new Well No. 9 and we piped Well No. 3 into this plant for treatment. During the diligence period the Town has spent over \$2,000,000 on these and other water system projects. The Town of Monument has in all respects diligently worked toward placing these conditional water rights to beneficial use.

CASE NO. 08CW88 - CAMERON and CYNTHIA LORENC and THE ELAINE B. VINKEMULDER REVOCABLE TRUST, c/o 12990 Rockbridge Circle, Colorado Springs, CO 80921 (James J. Petrock, Petrock & Fendel, P.C., Attorneys for Applicant, 700 Seventeenth Street, Suite 1800, Denver, CO 80202; (303) 534-0702)

Application for Underground Water Rights from Nontributary and Not Nontributary Sources and for Approval of Plan for Augmentation, In the Nontributary Arapahoe and Laramie-Fox Hills and the Not Nontributary Dawson and Denver Aquifers

EL PASO COUNTY

2. Well Permits: Well permits will be applied for prior to construction of the wells. **3. Legal Description of Wells and Subject Property:** The wells which will withdraw groundwater from the not nontributary Dawson and Denver and nontributary Arapahoe and Laramie-Fox Hills aquifers will be located at any

location on approximately 10.3 acres of land, being Lots 1 and 2, Pine Croft Subdivision, which is generally located in part of the SW1/4SW1/4 of Section 7, T12S, R65W of the 6th P.M., as described and shown on Attachment A to the Application ("Subject Property"). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. Applicant Elaine B. Vinkemulder Revocable Trust is the owner of Lot 1 (5.3 acres) and Applicants Cameron and Cynthia Lorenc are owners of Lot 2 (5 acres). **4. Source of Water Rights:** The source of the groundwater to be withdrawn from the Dawson and Denver aquifers is not nontributary as described in Sections 37-90-103(10.7) and 37-90-137(9)(c), C.R.S. The groundwater to be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers is nontributary groundwater as described in Section 37-90-103(10.5), C.R.S. **5. Estimated Amounts and Rates of Withdrawal:** The wells will withdraw the groundwater at rates of flow necessary to efficiently withdraw the entire decreed amounts. Applicants will withdraw the subject groundwater through wells to be located at any location on the Subject Property, including an existing well completed into the Dawson aquifer as permitted in Well Permit No. 216458 which will be re-permitted to operate pursuant to the augmentation plan requested below, if necessary. Applicants waive any 600 foot spacing rule as described in Section 37-90-137(2), C.R.S. for wells located on the Subject Property. The estimated average annual amounts of withdrawal available from the subject aquifers as indicated below, are based upon the Denver Basin Rules, 2 C.C.R. 402-6. Applicants estimate the following annual amounts are representative of the subject aquifers:

<u>Aquifer</u>	<u>Saturated Thickness</u>	<u>Annual Amount</u>
Dawson	256 feet	5.3 acre-feet
Denver	448 feet	7.8 acre-feet
Arapahoe	247 feet	4.3 acre-feet
Laramie-Fox Hills	189 feet	2.9 acre-feet

6. Well Field: Applicants request that this Court determine that Applicants have the right to withdraw all of the legally available groundwater lying below the Subject Property, through wells which may be located anywhere on the Subject Property, and any additional wells which may be completed in the future as Applicants' well fields. As additional wells are constructed, applications will be filed in accordance with Section 37-90-137(10), C.R.S. **7. Proposed Use:** Applicants will use, reuse, and successively use the water for domestic, commercial, industrial, irrigation, livestock watering, fire protection, and augmentation purposes, both on and off the Subject Property. **8. Jurisdiction:** The Water Court has jurisdiction over the subject matter of this application pursuant to Sections 37-92-302(2), and 37-90-137(6), C.R.S. **9. Description of plan for augmentation:** **A. Groundwater to be augmented:** 0.8 acre-feet per year for 300 years of Dawson aquifer groundwater as requested herein as described in paragraph 5 above. **B. Water rights to be used for augmentation:** Return flows from the use of not nontributary and nontributary groundwater and direct discharge of nontributary ground water. **C. Statement of**

plan for augmentation: Applicants will use the Dawson aquifer water through two individual wells, including the existing well, on the two lots at rates of flow not to exceed 15 gpm. Each well will require 0.4 acre-feet per year for inhouse use (0.3 acre-feet), irrigation/limited to 1500 square-feet of lawn and garden (0.075 acre-feet), and stockwatering of 2 large domestic animals (0.025 acre-feet). Applicants reserve the right to amend these values without amending this application or republishing the same. Sewage treatment for inhouse use will be provided by a non-evaporative septic system. Approximately 90% of the water used for in-house use will be returned to the stream system. During pumping Applicants will replace actual depletions to the affected stream system pursuant to 37-90-137(9)(c), C.R.S. Applicants estimate that depletions may occur to the Monument Creek stream system. Return flows from use of the subject water rights will accrue to the Arkansas River stream system, and those return flows are sufficient to replace actual depletions while the subject groundwater is being pumped. Applicants will reserve an equal amount of nontributary Laramie-Fox Hills aquifer groundwater underlying the Subject Property to meet post pumping augmentation requirements, but reserves the right to substitute the use of other nontributary groundwater, including return flows, either underlying the Subject Property, or from another location which is legally available for such purpose, for replacement of post-pumping depletions at such time that post-pumping depletions may begin. **10. Remarks:** A. Applicants claim the right to withdraw more than the average annual amounts estimated in paragraph 5B above pursuant to Rule 8A of the Statewide Rules, 2 C.C.R. 402-7. B. Applicants will withdraw up to 0.8 acre-feet per year for 300 years of the not nontributary Dawson aquifer groundwater requested herein under the plan of augmentation requested herein pursuant to Section 37-90-137(9)(c), C.R.S. No augmentation plan is requested herein for the withdrawal of the not nontributary Denver aquifer groundwater. Applicants pray the Court enter a decree: 11. Granting the application herein and awarding the water rights claimed herein as final water rights, except as to those issues for which jurisdiction of the Court will be specifically retained; 12. Specifically determining that: A. Applicants have complied with Section 37-90-137(4), C.R.S., and water is legally available for withdrawal by the wells proposed herein, but that jurisdiction will be retained with respect to the average annual amounts of withdrawal specified herein to provide for the adjustment of such amounts to conform to actual local aquifer characteristics from adequate information obtained from wells or test holes drilled on or near Applicants' property, pursuant to Section 37-92-305(11), C.R.S. and Denver Basin Rule 9.A.; B. The groundwater in the Dawson and Denver aquifers is not nontributary and groundwater in the Arapahoe and Laramie-Fox Hills aquifers is nontributary groundwater; C. Vested or conditionally decreed water rights of others will not be materially injured by the withdrawals of groundwater and the plan for augmentation proposed herein; D. No findings of diligence are required to maintain these water rights.

CASE NO. 08CW89 - JOHN WALKER and ROXANN MOORE, VALLIE RANCH, LLC, P. O. Box 27, Coaldale, CO 81222 (Direct all pleadings to:

Kevin J. Kinnear, Porzak Browning & Bushong, LLP, Attorneys for Applicant, 929 Pearl Street, Suite 300, Boulder, CO 80302; (303) 443-6800)

Application for Change of Water Right

FREMONT COUNTY, COLORADO

2. Decreed name of structure for which change is sought: Rogers Ditch No.

1. **3. From previous decrees:** The Rogers Ditch No. 1 was decreed for 2.0 cfs absolute for irrigation of 50 acres from the Arkansas River, with an appropriation date of March 1, 1873, by decree of the District Court in and for Fremont County dated May 14, 1906, with a point of diversion located at a point on the south bank of the Arkansas River whence the northwest corner of Section 20, T. 48 N., R. 11 E. of the N.M.P.M. bears south 77 degrees west 270 feet (see Exhibit A attached to the Application at point labeled "original"). All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the Clerk of this Court. By virtue of the decree entered in Case No. W-3962, District Court in and for Water Division No. 2, 0.0334 cfs of the water right decreed to the Rogers Ditch No. 1 was changed to include an alternate point of diversion at a well that was to be located in the NE¼ of the SE¼ of Section 33, T. 48 N., R. 11 E. of the N.M.P.M.

4. Proposed changes: A. Point of diversion: The subject water right historically irrigated 50 acres located on both sides of the Arkansas River. The water diverted at the headgate was carried through the ditch, and then conveyed across the Arkansas River by a flume, where it irrigated the remaining land. Recently, it has irrigated approximately 37.65 acres of the original 50 acres through an undecreed headgate located on the north bank of the Arkansas River. Applicant seeks to divert the Rogers Ditch No. 1 water right at the undecreed headgate location, located approximately 250 feet east of the west section line and 300 feet north of the south section line of section 17, T. 48 N., R. 11 E. of the N.M.P.M. (see Exhibit A at the point labeled "current"). Applicant also seeks the right to divert the Rogers Ditch No. 1 water right at a new point of diversion on the south bank of the Arkansas River located at a point approximately 1900 feet east of the west section line and 1300 feet south of the north section line of section 20, T. 48 N., R. 11 E. of the N.M.P.M. (see Exhibit A at the point labeled "new").

B. Place of Use. The Rogers Ditch No. 1 originally irrigated 50 acres located both south of and north of the Arkansas River. Recently, it has been used to irrigate a total of 37.65 acres (a portion of the original 50 acres) on the north side of the Arkansas River and depicted on Exhibit A as parcels 1 (12.65 acres) and 2 (25 acres). Applicant seeks to irrigate parcels 3 through 6 (a total of 25 acres) with the Rogers Ditch No. 1 water right. In order to do so without enlarging the subject water right, Applicant will remove parcel 2 from irrigation so that the total amount of irrigated land does not exceed 37.65 acres. Exhibit A depicts the recently irrigated 37.65 acres of land (parcels 1 and 2), and the proposed new places of use (parcels 3 through 6). As a result of this change, Applicant will irrigate parcels 1 and 3 through 6, a total of 37.65 acres. Diversion records for the subject water right from 1911 to 2007 are attached to the

Application as Exhibit B. The subject water right will continue to be used for irrigation purposes as described herein, and both the existing and new place of use are directly adjacent to the Arkansas River. **5. Terms and conditions:** As part of the requested change, the Applicant agrees to the following terms and conditions: (a) The total amount of irrigated land under the Rogers Ditch No. 1 will be limited to 37.65 acres. Applicant will survey the total irrigated acreage to ensure that the amount of acreage is limited to this amount and that there will be no enlargement of use as a result of this change. (b) The maximum cumulative diversion rate at the two points of diversion will be limited to 2.0 cfs. (c) All diversions will be measured and reported to the Water Commissioner at the end of each irrigation season. Appropriate measuring devices will be installed. **6. Ownership:** Names and addresses of the owners or reputed owners of the land upon which a new diversion structure is or will be constructed: Applicant. WHEREFORE, Applicant requests that the Court enter a decree that approves the change of water right described herein.

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 January 2009, (forms available at Clerk's office or at 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 4th day of December, 2008.



Mardell R. DiDomenico, Clerk
District Court Water Div. 2
203 Judicial Bldg., 320 W. 10th Street
Pueblo, CO 81003 Tel. 583-7048

(Court seal)
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