

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING NOVEMBER 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 November 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. 2018CW10; Previous Case Nos. 1998CW82 and 2012CW57 – RP ON TC, LLC, a Texas Limited Liability Co., Neil Hartman, Manager, 505 Woodglen, Benbrook, TX 76126; (817) 249-5663**

Application for Finding of Reasonable Diligence

**FREMONT COUNTY**

**Names of structures:** COTS Ranch Pond #1; COTS Ranch Pond #1 Flow Through Right. **Date of original decree:** July 13, 2006; Case No. 98CW82; Water Division 2. **List all subsequent decrees awarding finding of diligence: Date of Decree:** October 24, 2012; Case No. 12CW57; Court: Water Division 2. **Legal description:** COTS Ranch Pond #1: SW ¼ SW ¼ Section 12, Township 47 North, Range 12 East, Fremont County, Colorado, a distance of approximately 1187.50 feet from the South section line and approximately 750 feet from the West section line. COTS Ranch #1 Flow Through Right: NW ¼ NW ¼ Section 13, Township 47 North, Range 12 East, Fremont County, Colorado, a distance of approximately 100 feet from the West section line and approximately 1400 feet from the North section line. **Source of water:** Texas Creek. **Appropriation Date:** COTS Ranch Pond #1: January 1, 2000; COTS Ranch Pond #1 Flow Through Right: February 10, 2005. **Amount:** COTS Ranch Pond #1: 30 af, fill and refill; COTS Ranch Pond #1 Flow through Right: 0.5 cfs. **Use:** COTS Ranch Pond #1: Recreational, piscatorial, fire protection; COTS Ranch Pond #1 Flow Through Right: Water for diversion through the Pond from April 1 through September 30 annually. Water diverted to the Pond under the Flow Through Right will be immediately released from the Pond and will not be stored in the Pond. Evaporation from the Pond resulting from diversion of water to the Pond will be determined and replaced under the terms and conditions of the Plan for Augmentation decreed in Case No. 98CW82. **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 filed a Change of Water Rights (Case No. 2018CW2) to the existing decree Case No. 98CW82 that will abandon the COTS Ranch Pond #1 and Flow Through Rights. The Applicant requires that the conditional water rights of the existing decree be maintained until the Change of Water Rights is approved in the next year. **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. 2018CW11 – GOLD BASIN MINE, LLC.** The Water Judge ordered that this Application not be published until an amended application is filed.  
-----

**CASE NO. 2018CW3066; Previous Case Nos. 1996CW229, 2005CW77 and 2012CW47 - ROCKY RIDGE WEST, LLC, 5481 Pennock Point Road, Jupiter, Florida 33458** (All correspondence and pleadings should be sent to counsel for the Applicant: Lee H. Johnson and Katrina B. Fiscella of Carlson, Hammond & Paddock, LLC, 1900 Grant Street, Suite 1200, Denver, CO 80203, (303) 861-9000).

Application for Finding of Reasonable Diligence

**HUERFANO COUNTY, COLORADO**

**2. Name of Structure:** A. Sheep Mountain Well No. 1. **3. Description of conditional water right:** A. Date of Original Decree: October 25, 1999. Case No. 96CW229, Water Court, Division 2, State of Colorado. B. Subsequent Decree Finding Diligence: May 9, 2006, Case No. 05CW77, Water Court, Division 2, State of Colorado. November 26, 2012, Case No. 12CW47, Water Court, Division 2, State of Colorado. C. Location of Structure: In the SE1/4NE1/4 Section 18, Township 28 South, Range 69 West, 6<sup>th</sup> P.M., at a point 800 feet west of the east line and 2160 feet south of the north line of said Section 18. D. Source: Groundwater tributary to Yellowstone Creek, tributary to South Oak Creek, tributary to Huerfano River. E. Appropriation Date and Amount: October 7, 1996, for 15 g.p.m., conditional. F. Use: Ordinary household purposes, fire protection, the watering of poultry, domestic animals and livestock on farms and ranches, and for the irrigation of not over one acre of home gardens and lawns, but not to be used for more than three single-family dwellings. **4. Detailed outline of what has been done toward completion of the appropriation and application to a beneficial use.** A. Sheep Mountain Well No. 1 is located on and appurtenant to the Moonshine Ranch. Applicant owns and operates the Moonshine Ranch and the water rights associated with Sheep Mountain Well No. 1. Applicant purchased the Moonshine Ranch in 2012 and conducted significant due diligence investigations related to the land and water rights associated with this purchase, including Sheep Mountain Well No. 1. B. During the diligence period, Applicant has filed for a well permit to complete the drilling of the well associated with Sheep Mountain Well No. 1. That application is pending. Costs were incurred during the diligence period. C. During the diligence period, the Moonshine Ranch was the subject of a very significant fire event in connection with what was known as the “Spring Creek Fire.” This was a very large fire event in both Costilla and Huerfano Counties and effectively delayed Applicant’s ability to divert and apply water to beneficial uses and thereby complete the appropriation prior to the end of the current diligence period. As a result, Applicant files the present diligence-only application. **5. Water applied to beneficial use:** N.A. **6. 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:** N.A. As noted above, the Applicant is the owner of the Moonshine Ranch and the water rights associated with Sheep Mountain Well No. 1. **WHEREFORE**, Applicant requests the Court to enter a decree finding reasonable diligence for Sheep Mountain Well No. 1, and providing that a

subsequent showing of diligence for the conditional water right be made six years from the date of entry of a decree of diligence.

-----  
**CASE NO. 2018CW3067.** The filing made under this case number was rejected, and, therefore, this case number does not exist in Water Division 2.  
-----

**CASE NO. 2018CW3068; Previous Case Nos. 2012CW74, 2005CW93, and 1997CW156) - HIGH MOUNTAIN INSTITUTE, Daniel O'Brien, Head of School, 531 County Road 5A, Leadville, CO 80461.** (Please address all pleadings and correspondence regarding this matter to Applicant's Attorneys: Peggy E. Montano and April D. Hendricks, TROUT RALEY, 1120 Lincoln Street, Suite 1600, Denver, Colorado 80203; E-Mail: pmontano@troutlaw.com, ahendricks@troutlaw.com)

Application to Make Conditional Water Right Absolute and for Findings of Reasonable Diligence  
LAKE COUNTY, COLORADO

**LAKE COUNTY, COLORADO**

**1. Name, address, e-mail address and telephone number of Applicant:** See above  
**2. Name of Structures:** A. High Mountain Institute Well No. 2. B. High Mountain Institute Well No. 3 (Well Permit No. 79062-F). C. High Mountain Institute Well No. 4. **3. Description of Conditional Water Rights:** A. Original Decree for Conditional Water Rights: Date of Original Decree: December 13, 1999, Case No. 97CW156, Court: Water Division No. 2. B. Subsequent Decrees Awarding Findings of Diligence: Date of Decree: June 26, 2006, Case No.: 05CW93, Court: Water Division No. 2; Date of Decree: November 2, 2012, Case No.: 12CW74, Court: Water Division No. 2. C. Legal Description: i. High Mountain Institute Well No. 2 is located in the NW¼ SE¼ NE¼ of Section 30, Township 9 South, Range 80 West. Well No. 2 is located 1,095 feet west of the east section line, 1,825 feet south of the north section line. Well No. 2 can serve as an alternate point of diversion for Well Nos. 1, 3, and 4. The amount adjudicated was fifteen (15) gpm conditional for domestic, commercial, industrial, and irrigation uses, with a November 28, 1997, appropriation date. ii. High Mountain Institute Well No. 3 is located in the NE¼ SE¼ NE¼ of Section 30, Township 9 South, Range 80 West. Well No. 3 is to be located 330 feet west of the east section line, 1,530 feet south of the north section line. Well No. 3 is an alternate point of diversion for Well Nos. 1, 2, and 4. The amount adjudicated was fifteen (15) gpm conditional for domestic, commercial, industrial, and irrigation uses with a November 28, 1997, appropriation date. iii. High Mountain Institute Well No. 4 is located in the SW¼ SE¼ NE¼ of Section 30, Township 9 South, Range 80 West. Well No. 4 is to be located 725 feet west of the east section line, 2,130 feet south of the north section line. Well No. 4 can serve as an alternate point of diversion for Well Nos. 1, 2, and 3. The amount adjudicated was fifteen (15) gpm conditional for domestic, commercial, industrial, and irrigation uses at the Institute with a November 28, 1997, appropriation date. D. Source: Lake Fork Creek, which is a tributary of the Arkansas River. E. Appropriation Date: November 28, 1997. Amount: 0.93 acre-feet for Well Nos. 1, 2, 3, and 4 combined. F. Uses: Domestic, Commercial, Industrial, Irrigation. G. Depth: Well No. 1 at 50 feet; Well No. 3 at 52 feet; Wells 2 and 4 to be developed. **4. Detailed outline of the work that has been done toward completion of the appropriation, including expenditures, during the previous diligence period.** By this application, the High Mountain Institute seeks a finding of reasonable diligence for Well Nos. 2 and 4, and

any portion of Well No. 3 not made absolute by virtue of these proceedings. The activities and expenditures described below demonstrate steady application of effort towards completion of the subject appropriations and support High Mountain Institute's claim for findings of reasonable diligence and continuation of the subject water rights for Well Nos. 2 and 4 in full force and effect for another six-year diligence period. This list is not intended to be exclusive and may be supplemented by additional evidence.

A. High Mountain Institute has been in continuous operation as a not-for-profit educational institution since the fall of 1998 and has experienced significant growth during the diligence period beginning in November 2012. Since that time, the Institute's primary program of study for high-school students, the HMI Semester Program, has grown 15%, with enrollment near 100% of its full capacity in recent years. The Institute's Apprentice Program for recent college graduates has also grown 25% since 2012. Additionally, the Institute has expanded its summer offerings to include a five-week long program similar to its Semester Program, with emphasis on wilderness expeditions and education. High Mountain Institute has added a GAP semester program for high school graduates as well; current enrollment in the GAP program is approximately 30 students, and the Institute expects this enrollment in this program to increase to 50 or 60 participants within the next diligence period. Finally, the Institute has expanded its course offerings to include programs designed for middle-school students, and also continues to offer coursework in avalanche education and wilderness medicine for adults.

B. During the diligence period, the Institute invested significantly in campus improvements, maintaining its septic and solar thermal systems, and ensuring the continued growth and health of its trees and landscaping, all of which will use the water adjudicated as the Institute continues to expand. High Mountain Institute maintains water usage data, which is updated monthly and which indicates that its water usage has been increasing since November 2012.

C. Since 2012, the Institute has invested \$5,000,000 to construct an expanded dining hall, two additional dormitories, a bus garage and maintenance shop, four two-bedroom employee residences, and the Head of School's on-campus residence. Additionally, during this time, the Institute has also received \$3,000,000 dollars in pledges for the planning, designing, and construction of three on-campus 3-bedroom employee homes and an academic building, the construction of which will be complete by 2021.

D. The Institute continues to maintain its fire suppression system installed in the West Building which relies upon an 800 gallon water storage tank, which is refillable as needed. In addition, the Institute has installed three 5,000 gallon fire-suppression cisterns, which will also need to be refilled any time water in the cisterns is expended.

E. During the diligence period, the Institute designed and installed two new septic systems to serve the campus at a cost of \$115,000 dollars, to accommodate expanding enrollment and the new construction on campus.

F. The Institute has planted hundreds of trees on its campus and has expended approximately \$25,000 dollars in tree health and forest maintenance activities since 2012, including maintenance of its sprinkler systems.

G. The Institute has recently transitioned to using solar energy for 100% of its energy needs, and since 2012, has expended over \$10,000 to maintain its solar thermal system. The Institute regularly adds water to the 200 gallon water tank used to operate this system.

H. Planned uses and depletions associated with Well Nos. 2, 3, and 4 have not changed from the entry of the original conditional decree and augmentation plan adjudication in Case No. 97CW156. High Mountain Institute maintains the same long-term growth plans. **5. Claim to Make Conditional**

**Water Right Absolute.** A. Water Right: High Mountain Institute Well No. 3, which was assigned Well Permit No. 79062-F. B. Date Applied to Beneficial Use: Well No. 3 was first pumped and used to supply water to the Head of School’s on-campus residence on approximately November 1, 2016. The use of this well to supply water to the Head of School’s residence is an integral component to HMI’s day-to-day operations. Since June 2018, this well has also supplied water to the irrigation system and has been used to irrigate on-campus landscaping. C. Amount: 15 gpm. D. Use: Domestic, Commercial, Industrial, Irrigation. E. Supporting Evidence. Water from Well No. 3 has been pumped and delivered to the Head of School’s on-campus residence for domestic household use since approximately November 1, 2016, and has been used for irrigation purposes since approximately June 1, 2018. HMI maintains complete well usage data for High Mountain Institute Well No. 3. F. Description of Place of Use: Water pumped from Well No. 3 has been delivered to the Head of School’s on-campus residence and for the irrigation of landscaping on campus. **6. Names and addresses of owners or reputed owners of the land upon which any new diversion 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.** All structures are located upon lands owned by the High Mountain Institute. WHEREFORE, the High Mountain Institute requests that the Court enter a decree: 1) Confirming that the conditional water right for 15 gpm decreed to High Mountain Institute Well No. 3 has been made absolute for all decreed purposes (or, in the alternative, continuing such conditional water right in full force and effect for an additional six year diligence period); 2) Finding that, based on the activities described herein, the High Mountain Institute has met the burden established by C.R.S. § 37-92-301(4) to exercise reasonable diligence toward completion of the appropriation for the conditional water rights described herein; 3) Continuing the conditional water rights for High Mountain Institute Well Nos. 2 and 4 as to all amounts and uses for an additional six-year diligence period; and 4) Such other and further relief as the Court deems proper.

-----  
**CASE NO. 2018CW3069; Previous Case Nos. 2002CW112 and 2012CW61 – COMANCHE RESOURCES, LLC, Gary Smith, Manager, PO Box 25068, Colorado Springs, CO 80936** (Please address all correspondence and pleadings regarding this matter to Applicant’s attorneys: Jeff Kahn, Kara Godbehere, Lyons Gaddis, PO Box 978, Longmont, CO 80502-0978, 303-776-9900)

Application for a Finding of Reasonable Diligence

**EL PASO COUNTY**

**2. Summary of the Application:** On November 15, 2000, Comanche received a decree for an underground water right, change of water right, and a plan for augmentation in Case No. 99CW146, District Court for Water Division 2 (“Original Augmentation Plan”). That case granted a decree for Midway Ranches Well No. 1 (fka “POA Well No. 1”) as part of a central water system for Comanche to supply water to its service area generally located in Sections 7-9, 17-22, and 26-35, Township 17 South, Range 65 West, 6th P.M. in El Paso County (the “Service Area”), for domestic, livestock, commercial, industrial, fire protection, irrigation, use, reuse, and successive use to extinction. On August 29, 2001, Comanche received a decree for an underground water right, change of water right, and a plan for augmentation in Case No. 00CW152, District Court for Water Division 2 (“First Supplemental Augmentation Plan”). The First Supplemental Augmentation Plan

supplemented the Original Augmentation Plan by adding C.R. Well No. 1 as an additional water supply; and by committing as an additional augmentation supply under the same general standards, terms, and conditions as the Original Augmentation Plan. In Case No. 02CW112, decreed on June 6, 2006, Comanche received a second supplemental plan for augmentation for its Service Area as well as two additional conditional groundwater rights for the Midway Ranches Well No. 1 and CR Well No. 1 water rights (“Second Supplemental Augmentation Plan.”) This case also decreed the wells as alternate points of diversion (APODs) for one another. In Case No. 12CW61, decreed on November 2, 2012, Comanche received a decree for reasonable diligence for the Midway Ranches Well No. 1 and CR Well No. 1 water rights conditionally decreed in the Second Supplemental Augmentation Plan. The Application filed in this case also had a diligence claim for the Midway Ranches Well No. 1 and CR Well No. 1 water rights decreed in the Second Supplemental Augmentation Plan. Though the wells are currently ready and able to divert, they were not in priority during this diligence period, and therefore no part of the conditional water rights for Midway Ranches Well. No. 1 or CR Well No. 1 is claimed to be made absolute at this time. **3. Previous decrees:** The District Court, Water Division No. 2 has previously entered the following decrees related to these water rights: Case No. 12CW61 entered on November 2, 2012; and Case No. 02CW112 entered on June 6, 2006. **4. Descriptions of Conditional Water Rights:** 4.1 **Midway Ranches Well No. 1:** 4.1.1 **Legal Description:** This well is located in the NW ¼, SE ¼, Section 9, Township 17 South, Range 65 West of the 6<sup>th</sup> P.M., at approximately 2,000 feet from the south line of said Section 9 and approximately 2,000 feet from the east line of said Section 9. 4.1.2 **Source:** The source of this well is the alluvium of Fountain Creek, which is tributary to the Arkansas River. 4.1.3 **Depth:** 30 feet. 4.1.4 **Appropriation date:** The additional appropriation date for this structure is April 5, 2002. 4.1.5 **Amounts Claimed:** 101.5 annual acre-feet of diversions, at a pumping rate of 150 g.p.m., conditional. These amounts are in addition to the 47 acre-feet of annual pumping allowed under Well Permit No. 52578F and decreed in Case No. 95CW3, the 292.1 acre-feet of annual pumping allowed (in combination with APOD CR Well No. 1, described below) under Permit No. 64948-F (issued after cancellation of previous Permit No. 56724-F) and as decreed in Case Nos. 99CW146 and 00CW152. 4.1.6 **Uses:** The use of the water from this well will be to provide a water supply to the Service Area in addition to the CR Well No. 1, which uses will include domestic, livestock, commercial, industrial, irrigation, and fire protection; and for use, reuse, and successive use to extinction. 4.2 **CR Well No. 1:** 4.2.1 **Legal Description:** This well is to be located in the SW ¼, NW ¼ of Section 26, Township 17 South, Range 65 West of the 6<sup>th</sup> P.M., at approximately 2,513 feet from the north line of said Section 26, and approximately 1,192 feet from the west line of said Section 26. 4.2.2 **Source:** The source of this well is the alluvium of Fountain Creek, a tributary to the Arkansas River. 4.2.3 **Depth:** Approximately 30 to 50 feet. 4.2.4 **Appropriation date:** The additional appropriation date for this structure is April 5, 2002. 4.2.5 **Amount Claimed:** 101.5 annual acre-feet of diversions at a pumping rate of 100 g.p.m., conditional. This amount is in addition to the 292.1 acre-feet of annual pumping allowed (in combination with APOD Midway Ranches Well No. 1, described above) under Permit No. 64950-F and as decreed in Case Nos. 99CW146 and 00CW152. 4.2.6 **Uses:** The use of the water from this well will be in addition to Midway Ranches Well No. 1 described above: to provide a water supply to the Service Area for domestic, livestock, commercial, industrial, irrigation, and

fire protection; and for use, reuse, and successive use to extinction. **5. Detailed outline of what has been done toward completion of the appropriations, including expenditures:** When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system. C.R.S. 37-92-301(4)(b). During this diligence period, Applicant has devoted substantial efforts toward the development of the Service Area, the present and further application of groundwater from Midway Ranches Well No. 1 and CR Well No. 1 to beneficial use, and the integrated water supply system of which the subject wells are a part. In connection therewith, Applicant has expended \$726,826.00 during this diligence period, as described below. 5.1 In 2013, Applicant rebuilt Midway Ranches Well No. 1 at a cost of \$36,025.00. 5.2 In 2016, Applicant completed Phases I-III of a water main extension to Indian Village, at a cost of \$311,625.00. 5.3 Also, in 2016, Applicant completed Phase IV of a water main extension to Sand Creek, at a cost of \$137,676.00. 5.4 In 2017/2018, Applicant completed Phase II of construction of Water Treatment Plan No. 2, at a cost of \$194,000.00. 5.5 In 2018, Applicant completed Phase V of two chlorine analyzer stations for water treatment purposes at a cost of \$40,000.00. 5.6 Also, in 2018, Applicant completed repairs to Water Tank No. 2 at a cost of \$7,500.00. **6. Owner of land upon which the structures are located:** 6.1 Midway Ranches Well No. 1 is located on land owned by 750 South, LLC. CR Well No. 1 is located upon land owned by Applicant. WHEREFORE, Applicant requests the Court enter a decree finding that Applicant has exercised diligence in respect to the conditional water rights identified above and as a result to continue the conditional water rights for another diligence period.

-----  
**CASE NO. 2018CW3070; Previous Case No. 2009CW114 – EVERGREEN NATURAL RESOURCES, LLC, 1801 Broadway, Suite 350, Denver, CO 80202** (Please address

all pleadings and correspondence regarding this matter to Applicant's counsel: Christopher L. Thorne and William H. Caile, Holland & Hart LLP, 555 17th Street, Suite 3200, P.O. Box 8749 Denver, CO 80201-8749, (303) 295-8000)

Application for Finding of Reasonable Diligence

**LAS ANIMAS COUNTY**

**2. Name of Structures:** A. Lorencito 14-16 Pond B. Warren McDonald Pond C. Margery Pond D. Stage Coach Pond **3. Prior Decree:** Case No. 09CW114, Water Division 2, decree dated November 25, 2012. **4. Description of Conditional Water Rights:** **A. Lorencito 14-16 Pond** i. Legal Description: An off-channel pond located in the NW 1/4 of the SW 1/4 of Section 16, Township 34 South, Range 66 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 2,075 feet from the South Section Line and 500 feet from the West Section Line (This location is outside of the sections surveyed by the USGS, so interpreted sections have been used). See location map on file with the Water Court as Exhibit A-1. ii. Source: Lorencito Canyon, tributary to the Purgatoire River. a. Name of Diversion: Lorencito Diversion with a capacity of 1.0 c.f.s. iii. Point of Diversion: The planned point of diversion is located in the NW 1/4 of the SW 1/4 of Section 16, Township 34 South, Range 66 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 1,965 feet from the South Section Line and 380 feet from the West Section Line (This location is outside of the sections surveyed by the USGS, so interpreted sections have been used). See

location map on file with the Water Court as Exhibit A-1. iv. Appropriation Date: August 1, 2011. v. Amount: a. 20.7 acre-feet (conditional), with the right to fill and refill the pond when in priority, up to three complete fills annually. b. Rate of diversion for filling Reservoir: 1.0 c.f.s. (conditional) vi. Uses: Commercial, mining, manufacturing, construction, augmentation pursuant to the augmentation plan decreed in Case No. 10CW02, Water Division No. 2, or subsequent augmentation plans approved by the Water Court, livestock watering, wildlife, fire protection, road construction and maintenance, dust suppression, and industrial uses, directly or by exchange. No appropriative right of exchange is being decreed herein, and any exchange in which the water may be used must be separately decreed or administratively approved. vii. Surface area of high-water line: approximately 1.5 acres a. Vertical height of dam: approximately 15-20 feet b. Length of dam: approximately 400 feet viii. Total Capacity of Reservoir in acre feet: 20.7 acre-feet (conditional) a. Active capacity: 20.7 acre-feet b. Dead storage: None ix. Place of Use: The place of use for water stored under this water right is the Colorado portion of the area known as the Central Raton Basin. See area map on file with the Water Court as Exhibit B. The place of use for augmentation purposes shall be limited to those areas specifically described in the decree in Case No. 10CW02, Water Division No. 2 or subsequent augmentation plans approved by the Court and obtained by the same applicants, and for the same areas and types of uses, as identified in Case No. 10CW02. x. Remarks: The Lorencito Diversion is adjudicated only as a source of supply for the Lorencito 14-16 Pond, and shall not be entitled to make diversions for direct flow uses. Rather, all diversions to the Lorencito Diversion shall be diverted to storage in Lorencito 14-16 Pond, with uses therefrom, as adjudicated herein. No out of priority diversion of water to storage in Lorencito 14-16 Pond shall be made other than subject to the plan for augmentation decreed in Case No. 10CW02, Water Division No. 2, or subsequent augmentation plans which may be approved by the water court. **B. Warren McDonald Pond** i. Legal Description: An off-channel pond located in the NW 1/4 of the SE 1/4 of Section 36, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 2,120 feet from the South Section Line and 2,178 feet from the East Section Line. See location map on file with the Water Court as Exhibit A-2. ii. Source: Sarcillo Canyon, tributary to the Purgatoire River. a. Name of Diversion: Warren McDonald Diversion with a capacity of 1.0 c.f.s. iii. Point of Diversion: The planned point of diversion is located in the SW 1/4 of the NE 1/4 of Section 36, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 2,480 feet from the North Section Line and 1,850 feet from the East Section Line. See location map on file with Court. iv. Appropriation Date: September 30, 2009 v. Amount: a. 25.0 acre-feet (conditional), with the right to fill and refill the pond when in priority, up to three complete fills annually. b. Rate of diversion for filling Reservoir: 1.0 c.f.s. (conditional) vi. Uses: See above paragraph 4.A.vi, above. vii. Surface area of high-water line: approximately 3.2 acres a. Vertical height of dam: approximately 10-15 feet b. Length of dam: approximately 700 feet viii. Total Capacity of Reservoir in acre feet: 25.0 acre-feet (conditional) a. Active capacity: 25.0 acre-feet b. Dead storage: None ix. Place of Use: Same as paragraph 4.A.ix, above. x. Remarks: The Warren McDonald Diversion is adjudicated only as a source of supply for the Warren McDonald Pond, and shall not be entitled to make diversions for direct flow uses. Rather, all diversions to the Warren McDonald Diversion



shall be diverted to storage in Warren McDonald Pond, with uses therefrom, as adjudicated herein. No out of priority diversion of water to storage in Warren McDonald Pond shall be made other than subject to the plan for augmentation decreed in Case No. 10CW02, Water Division No. 2, or subsequent augmentation plans which may be approved by the water court. **C. Margery Pond** i. Legal Description: An off-channel pond located in the SW 1/4 of the SE 1/4 of Section 14, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 190 feet from the South Section Line and 1,840 feet from the East Section Line. See location map on file with the Water Court as Exhibit A-3. ii. Source: Sarcillo Canyon, tributary to the Purgatoire River, diverted through the pipeline described below. a. Name of Pipeline: Margery Pipeline with a capacity of 1.0 c.f.s. iii. Point of Diversion: The planned point of diversion for Margery Pipeline is located in the SW 1/4 of the SE 1/4 of Section 14, Township 32 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 850 feet from the South Section Line and 1,851 feet from the East Section Line. See location map on file with the Water Court as Exhibit A-3. iv. Appropriation Date: September 30, 2009 v. Amount: a. 14.5 acre-feet (conditional), with the right to fill and refill the pond when in priority, up to three complete fills annually. b. Rate of diversion for filling Reservoir: 1.0 c.f.s. (conditional) vi. Uses: See above paragraph 4.A.vi, above. vii. Surface area of high-water line: approximately 1.6 acres a. Vertical height of dam: approximately 15 feet b. Length of dam: approximately 550 feet. viii. Total Capacity of Reservoir in acre feet: 14.5 acre-feet (conditional) a. Active capacity: 14.5 acre-feet b. Dead storage: None. ix. Place of Use: Same as paragraph 4.A.ix, above. x. Remarks: The Margery Pipeline is adjudicated only as a source of supply for the Margery Pond, and shall not be entitled to make diversions for direct flow uses. Rather, all diversions to the Margery Pipeline shall be diverted to storage in Margery Pond, with uses therefrom, as adjudicated herein. No out of priority diversion of water to storage in Margery Pond shall be made other than subject to the plan for augmentation decreed in Case No. 10CW02, Water Division No. 2, or subsequent augmentation plans which may be approved by the water court. **D. Stage Coach Pond.** i. Legal Description: An off-channel pond located in the SE 1/4 of the NE 1/4 of Section 26, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The midpoint of the dam axis will be approximately 2,350 feet from the North Section Line and 530 feet from the East Section Line. See location map on file with the Water Court as Exhibit A-4. ii. Source: Purgatoire River or Wet Canyon, tributary to the Purgatoire River. a. Name of Pipeline: Stage Coach Pipeline with a capacity of 1.0 c.f.s. iii. Point of Diversion: The point of diversion is located in the SE 1/4 of the NW 1/4 of Section 26, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 2,040 feet from the North Section Line and 1,930 feet from the West Section Line. See location map on file with the Water Court as Exhibit A-4. a. Alternate Point of Diversion: An alternate point of diversion is located in the NE 1/4 of the NW 1/4 of Section 36, Township 33 South, Range 67 West of the 6th P.M. in Las Animas County. The point of diversion will be approximately 1000 feet from the North Section Line and 2,550 feet from the West Section Line. See location map on file with the Water Court as Exhibit A-4. iv. Appropriation Date: September 30, 2009 v. Amount: a. 47.5 acre-feet (conditional), with the right to fill and refill the pond when in priority, up to three complete fills annually. b. Rate of diversion for filling Reservoir: 1.0 c.f.s. (conditional) vi.

Uses: See above paragraph 4.A.vi, above. vii. Surface area of high-water line: approximately 4.77 acres a. Vertical height of dam: approximately 10-15 feet b. Length of dam: approximately 600 feet viii. Total Capacity of Reservoir in acre feet: 47.5 acre-feet (conditional) a. Active capacity: 47.5 acre-feet b. Dead storage: None. ix. Place of Use: Same as paragraph 4.A.ix, above. x. Remarks: The Stage Coach Pipeline is adjudicated only as a source of supply for the Stage Coach Pond and shall not be entitled to make diversions for direct flow uses. Rather, all diversions to the Stage Coach Pipeline shall be diverted to storage in Stage Coach Pond, with uses therefrom, as adjudicated herein. No out of priority diversion of water to storage in Stage Coach Pond shall be made other than subject to the plan for augmentation decreed in Case No. 10CW02, Water Division No. 2, or subsequent augmentation plans which may be approved by the water court. **5. Integrated System:** In Case No. 09CW114 this Court concluded that the conditional water storage rights decreed therein are individual components of Applicant's integrated water supply system as described in more detail in the Application for Approval of Plan for Augmentation, Including Exchanges, filed jointly by Applicant and other parties in Case No. 10CW02, Water Division 2. Consequently, in subsequent diligence proceedings, work on any one feature of Applicant's supply system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of Applicant's water supply system. See C.R.S. § 37-92-301(4)(b). **6. Detailed outline of the work and expenditures done toward or for the completion of the appropriations and application of water to beneficial use:** A. Applicant purchased the subject conditional water rights from Pioneer Natural Resources USA, Inc. ("Pioneer"), effective July 1, 2018. B. Applicant operates coal bed methane ("CBM") gas wells in the Central Raton Basin, which includes the drainages of the Purgatoire River and its tributaries, generally above Trinidad Reservoir, and portions of the Apishapa River. As part of the CBM extraction process, CBM wells typically produce groundwater (sometimes referred to as "produced water") from groundwater aquifers. C. During the relevant diligence period, Applicant and/or its predecessor, Pioneer, undertook the following activities in support of the development of the subject conditional water rights and completion of the appropriations: i. Prosecuted an Application for Approval of Plan for Augmentation, Including Exchanges, in Case No. 10CW02, Water Division 2, to obtain approval of a basin-wide augmentation plan to augment out-of-priority depletions from CBM wells that withdraw tributary produced water in the Central Raton Basin. The Water Court entered a final decree in Case No. 10CW02 on January 30, 2017. The subject conditional water rights are included in the final decree as water rights to be used for augmentation in that plan. ii. Obtained annual Substitute Water Supply Plan approvals pursuant to C.R.S. § 37-92-308(4) during the pendency of proceedings in Case No. 10CW02. iii. Developed and implemented plans for compliance with the Arkansas River Basin Well Measurement Rules. Met with staff of the State Engineer's Office and Division Engineer's Office on numerous occasions to develop and implement plans for accounting, measurement, reporting and administration of the produced water withdrawals and plan for augmentation decreed in Case No. 10CW02. iv. Conducted numerous technical analyses, investigations and evaluations in support of the above-described activities, including without limitation the ongoing refinement and operation of a calibrated, multi-layered numerical model of groundwater flow systems in the Central Raton Basin using the MODFLOW computer code developed by the United States Geological Survey. v.

Negotiated and entered into a Water Supply Agreement dated April 21, 2017 with the Town of Aguilar, for the long-term provision of augmentation water supplies. vi. Negotiated and entered into a Water Supply Agreement dated June 9, 2017 with the City of Trinidad, for the long-term provision of augmentation water supplies. vii. Participated in proceedings for judicial review of the State Engineer's Produced Nontributary Ground Water Rules, 2 CCR 402-17, in both the Water Court and the Colorado Supreme Court. See Pawnee Well Users, Inc. v. Wolfe, 320 P.3d 320 (Colo. 2013). viii. Participated in proceedings before the Colorado Water Quality Control Commission and the Water Quality Control Division regarding permitting of produced water discharges. ix. Reviewed water court resumes and applications for water rights in the Purgatoire River basin and filed statements of opposition where necessary to protect the subject conditional water rights. x. Engaged the services of attorneys, engineers, technical consultants and contractors to assist with the above-described activities. D. The list of activities above is not intended to be exhaustive, and Applicant reserves the right to present additional evidence of reasonable diligence as appropriate. Total expenditures in connection with the above-referenced activities during the diligence period are difficult to calculate but are conservatively estimated to be in excess of \$500,000. **7. Names and addresses of owners of land upon which any new diversion and storage structures will be located or upon which water will be stored:** A. Applicant; B. Others: i. Hill Ranch, a Texas General Partnership, 3794C Hwy 67 West, Glen Rose, TX 76043; ii. Charlene Spencer et al., 1216 Brilliant Street, Raton, NM 87740 iii. Ten Bar Ranch LLLP, c/o Warren McDonald, 15403 County Rd 41.7, Weston, CO 81091.

-----  
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 2019, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), after serving parties and attaching a certificate of mailing, filing fee \$158.00 for statements of opposition filed before January 1, 2019; \$192.00 filing fee for statements of opposition filed after January 1, 2019). 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 December 2018.

*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: December \_\_\_\_, 2018