

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING OCTOBER 2014

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 October 2014, 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. 2014CW18 – JOE E. and LORRAINE VARGAS, 664 COUNTY ROAD 575, GARDNER, CO 81040; (719) 746-2240

Application for Absolute Underground Water Right for an Exempt Well Pursuant to § 37-92-602(4), C.R.S.

HUERFANO COUNTY

Name of Well: Vargas Spring Well; **Permit No.:** 280050. **Legal description of well:** PLSS description: Huerfano County, SW ¼ of the NW ¼ Section 9, T27S, R69W, 6th P.M., 2600 feet from the North line and 930 feet from the West line. **Subdivision:** Colorado Land and Grazing, Lot 41, Unit CC-1. **Date of appropriation:** May 20, 1996; **How appropriation was initiated:** Developed spring well, pipeline to three locations. **Date water applied to beneficial use:** June 5, 1996. **Source of water:** Groundwater tributary to Huerfano River; **Depth of well:** 3 feet. **Amount claimed:** 8 gpm Absolute. **Uses:** domestic use in one single family dwelling; domestic animal watering; livestock watering; fire protection; watering of poultry; irrigation of 1 acre lawn and gardens as shown on the map attached to the application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). **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:** Tim and Bonnie Rinker, P. O. Box 264, Gardner, CO 81040. Owner is daughter and son-in-law.

CASE NO. 2014CW3048 - LUCAS ESCH FARMS, INC. AND CLOCK LAND CORPORATION, c/o Patrick Esch, 932 HILL STREET, SPRINGFIELD, CO 81073

(Please address all pleadings and correspondence to: Chris D. Cummins, Felt, Monson & Culichia, LLC, Attorney for Applicant, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Surface Water Rights

LINCOLN COUNTY

A. Esch Pond No. 10. **1. Name of Structure:** Esch Pond No. 10. **2. Legal Description:** In the NE1/4 NE1/4, Section 20, Township 17S South, Range 58 West, 6th P.M. UTM coordinates of the center of the dam/berm – Northing: 42_69079.272 N, Easting: 0594896.547 E, Zone 13, NAD83 (See Exhibit A Map attached to the Application. All exhibits mentioned herein are incorporated by reference and may be

inspected at the office of the clerk of this Court). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** October 21, 2014, coincident with the filing of this Application. **5. Capacity/Amount Claimed:** The storage capacity for Esch Pond No. 10, not including quantities of water attributable to the absolute decreed water right for Lucas Pond No. 2, discussed below, is approximately 6.6 acre feet. Total beneficial uses annually in Esch Pond No. 10 will be 20.8 annual acre feet, as utilized for wetlands maintenance, enhancement and development purposes, including re-fill for replacement of evaporative losses, increased evapotranspiration through wetlands use, and increased bank storage for wetlands use, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants. **7. Remarks:** Esch Pond No. 10 is an overfiling on Lucas Pond No. 2, as decreed absolute in Case No. 08CW91, and as confirmed/amended by decree in Case No. 13CW3040. The quantities described above for appropriation in Esch Pond No. 10 represent the incremental increases in storage and use over those amounts appropriated for use in Lucas Pond No. 2. Esch Pond No. 10 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **B. Esch Pond No. 11.** **1. Name of Structure:** Esch Pond No. 11. **2. Legal Description:** In the NE1/4 NE1/4, Section 20, Township 17S South, Range 58 West, 6th P.M. UTM coordinates of the center of the dam/berm – Northing: 42_68862.980 N, Easting: 0595060.323 E, Zone 13, NAD83 (See Exhibit A Map attached to the Application). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** October 21, 2014, coincident with the filing of this Application. **5. Capacity/Amount Claimed:** The storage capacity for Esch Pond No. 11 is approximately 4.8 acre feet. Total beneficial uses annually in Esch Pond No. 11 will be 16.0 annual acre feet, as utilized for wetlands maintenance, enhancement and development purposes, including re-fill for replacement of evaporative losses, increased evapotranspiration through wetlands use, and increased bank storage for wetlands use, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants. **7. Remarks:** Esch Pond No. 11 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **C. Esch Pond No. 12.** **1. Name of Structure:** Esch Pond No. 12. **2. Legal Description:** In the SE1/4 NE1/4, Section 20, Township 17S South, Range 58 West, 6th P.M. UTM coordinates of the center of the dam/berm – Northing: 42_68749.436 N, Easting: 0595191.774 E, Zone 13, NAD83 (See Exhibit A Map attached to the Application). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** October 21, 2014, coincident with the filing of this Application. **5. Capacity/Amount Claimed:** The storage capacity for Esch Pond No. 12 is

approximately 4.2 acre feet. Total beneficial uses annually in Esch Pond No. 12 will be 14.5 annual acre feet, as utilized for wetlands maintenance, enhancement and development purposes, including re-fill for replacement of evaporative losses, increased evapotranspiration through wetlands use, and increased bank storage for wetlands use, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants. **7. Remarks:** Esch Pond No. 12 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **D. Esch Pond No. 13.** **1. Name of Structure:** Esch Pond No. 13. **2. Legal Description:** In the SW1/4 NW1/4, Section 21, Township 17S South, Range 58 West, 6th P.M. UTM coordinates of the center of the dam/berm – Northing: 42_68582.168 N, Easting: 0595351.422 E, Zone 13, NAD83 (See attached Exhibit A Map attached to the Application). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** October 21, 2014, coincident with the filing of this Application. **5. Capacity/Amount Claimed:** The storage capacity for Esch Pond No. 13 is approximately 7.7 acre feet. Total beneficial uses annually in Esch Pond No. 13 will be 26.0 annual acre feet, as utilized for wetlands maintenance, enhancement and development purposes, including re-fill for replacement of evaporative losses, increased evapotranspiration through wetlands use, and increased bank storage for wetlands use, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants. **7. Remarks:** Esch Pond No. 13 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **E. Esch Pond No. 14.** **1. Name of Structure:** Esch Pond No. 14. **2. Legal Description:** In the SW1/4 NW1/4, Section 21, Township 17S South, Range 58 West, 6th P.M. UTM coordinates of the center of the dam/berm – Northing: 42_68516.251 N, Easting: 0595487.446 E, Zone 13, NAD83 (See Exhibit A Map attached to the Application). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** October 21, 2014, coincident with the filing of this Application. **5. Capacity/Amount Claimed:** The storage capacity for Esch Pond No. 14 is approximately 3.2 acre feet. Total beneficial uses annually in Esch Pond No. 14 will be 11.1 annual acre feet, as utilized for wetlands maintenance, enhancement and development purposes, including re-fill for replacement of evaporative losses, increased evapotranspiration through wetlands use, and increased bank storage for wetlands use, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants. **7. Remarks:** Esch Pond No. 14 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **F. Esch Pond No. 15.** **1. Name of Structure:** Esch Pond No. 15. **2. Legal**

Description: In the NW1/4 SW1/4, Section 21, Township 17S South, Range 58 West, 6th P.M. UTM coordinates of the center of the dam/berm – Northing: 42_68347.3910 N, Easting: 0595639.260 E, Zone 13, NAD83 (See Exhibit A Map attached to the Application). **3. Source:** Runoff, natural seeps and springs tributary to Cramer Creek, and Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **4. Date of Initiation of Appropriation:** October 21, 2014, coincident with the filing of this Application. **5. Capacity/Amount Claimed:** The storage capacity for Esch Pond No. 15 is approximately 2.7 acre feet. Total beneficial uses annually in Esch Pond No. 15 will be 9.3 annual acre feet, as utilized for wetlands maintenance, enhancement and development purposes, including re-fill for replacement of evaporative losses, increased evapotranspiration through wetlands use, and increased bank storage for wetlands use, conditional. **6. Uses:** Stockwater, wildlife, wetlands, recreation, piscatorial, and fire protection, which uses will take place exclusively within the pond and/or on saturated land adjacent to the pond, which will be located on lands of the Applicants; and fire protection, which may take place on or off the lands of the Applicants. **7. Remarks:** Esch Pond No. 15 will be located and the waters therefrom used exclusively upon the lands of the Applicants. **NAME AND ADDRESS OF OWNERS OF LAND ON WHICH STRUCTURES WILL BE LOCATED:** The land, referred to herein as Applicants' Property, on which all structures will be located and upon which the water will be placed to beneficial use is owned by the Applicants. The address of the Applicants is set forth above. **ADDITIONAL TERMS AND CONDITIONS THAT WILL HELP IN THE ADMINISTRATION OF THE SUBJECT WATER RIGHTS INCLUDE THE FOLLOWING:** A. The Applicants shall install and maintain such water measuring devices as deemed essential by the State Engineer or Division Engineer and the same shall be installed and operated in accordance with the instruction of that office. B. Applicants' primary purpose in the construction, use and adjudication of these structures is preservation, enhancement and development of wetlands on Applicants' property, and associated uses of wildlife, stockwater, fire protection, recreation, piscatorial, and augmentation, to the extent applicable now or in the future. C. The conditional water rights requested herein are a portion of a larger "integrated system" of water rights including those previously adjudicated in Case Nos. 08CW91, 11CW47 and 13CW3040. D. The water rights decreed herein are a part of the "Horse Creek Basin" as discussed by the Colorado Supreme Court in State Engineer v. Smith Cattle, Inc., 780 P.2d 546 (Colo. 1989) and as discussed in the "Horse Creek Basin Study" completed by the Office of the State Engineer in 1989. Such findings and studies have determined that limited hydraulic connections may exist between the tributaries of the Horse Creek Basin and downstream water rights on the mainstem of the Arkansas River. "*Horse Creek receives water from these tributaries only in time of flood; there is no significant connection between this basin and the Arkansas River*". Smith Cattle at 548. The SEO Study stated its intent to develop and identify the scope of the Horse Creek Basin "so that it could be administered without having to consider the impact of rights in the basin on the senior water rights of the Arkansas mainstem." Study at 10. Historically, valid calls outside of the Horse Creek Basin upon water rights located therein, have occurred only in times of significant precipitation events, during which times live flows from the Horse Creek Basin have occurred. Therefore, the water rights decreed herein are considered "tributary" to the

Arkansas River, and administration of such water rights shall be pursuant to a valid call based upon actual stream conditions.

CASE NO. 2014CW3049 – FREMONT PAVING & REDI-MIX, INC., P. O. Box 841, Canon City, CO 81215

(Please address all pleadings and correspondence to: Julianne M. Woldridge, MacDougall & Woldridge, P.C., Attorney for Applicant, 1586 S. 21st Street, Suite 200, Colorado Springs, CO 80904; (719) 520-9288)

Application for Change of Water Rights and for Approval of Plan for Augmentation

FREMONT, PUEBLO, CROWLEY, and OTERO COUNTIES

2. Water Rights to Be Changed: The following water rights in the Plum Creek Pipeline the currently decreed point of diversion of which is on the southerly bank of Plum Creek at a point from which the Southwest corner of the Northwest quarter of the Southeast quarter of Section 2, Township 19 South, Range 70 West, 6th P.M. is South 3°00' West 700 feet in the Northeast quarter of the Southwest quarter of Section 2 (collectively referred to herein as the Subject Water Rights): **A. Plum Creek Ditch: 1). originally decreed** in Case No. CA3248, District Court, Fremont County on May 2, 1911, transferred to the Plum Creek Pipeline in Case No. CA4471 by decree dated September 1, 1923; **2) Source:** Plum Creek; **3) Appropriation date:** March 1, 1880; **4) Amount:** total decreed amount was 3.0 c.f.s. of which 1.0 c.f.s. was transferred to the Plum Creek Pipeline and which Applicant intends to change; and **5) Decreed use:** irrigation; **B. Stub Ditch: 1). originally decreed** in Case No. 2465, District Court, Fremont County on November 23, 1903, transferred to the Plum Creek Pipeline in Case No. CA4471 by decree dated September 1, 1923; **2). Source:** Plum Creek; **3). Appropriation date:** April 30, 1884; **4). Amount:** 1.0 c.f.s., all of which was transferred to the Plum Creek Pipeline and which Applicant intends to change; and **5). Decreed use:** irrigation; and **C. Crosswhite Ditch: 1). originally decreed** in Case No. 2294, District Court, Fremont County on April 13, 1903 transferred to the Plum Creek Pipeline in Case No. CA4471 by decree dated September 1, 1923; **2). Source:** Plum Creek; **3). Appropriation date:** April 30, 1884; **4). Amount:** total decreed amount was 1.0 c.f.s. of which 0.33 c.f.s. was transferred to the Plum Creek Pipeline and which Applicant intends to change; and **5). Decreed use:** irrigation. **3. Proposed Change:** Applicant owns the Subject Water Rights. Applicant proposes to change the type of, time of, and place of use of the Subject Water Rights. The Subject Water Rights will be changed to provide augmentation or replacement of out-of-priority depletions by structures in the Arkansas River basin described as follows: **A. MacKenzie Industrial Well**, current permit number 77979-F: a well owned and operated by Applicant and used for commercial and industrial uses, including pond evaporation, concrete production, asphalt production, dust control, and truck equipment washing in a wash bay. The well is located at 839 Mackenzie Avenue, Canon City, CO 81212. The well is located in the SW1/4 of the SE1/4 of Section 2, T.19S., R.70W., 6th P.M., Fremont County. The Subject Water Rights will be used year round to augment or replace depletions from evaporation, commercial, and industrial uses at this location pursuant to the augmentation plan described below. This well has been operated pursuant to a substitute water supply plan requested by Applicant; and **B. Structures for which AGUA provides replacement or augmentation water pursuant to leases or for which AGUA provides replacement of depletions within its approved**

substitute water supply plans, replacement plans, and augmentation plans, on a year round basis. The Subject Water Rights will be applied first to replace out-of-priority depletions from the structures referenced above, and any remaining water will be used by AGUA in its replacement, substitute water supply, and augmentation plans to augment all beneficial uses. Applicant currently has an agreement with AGUA for such uses. Because AGUA may “pool” its resources, including the Subject Water Rights, the Subject Water Rights will not be designated for specific structures. Return flow obligations may be met with the Subject Water Rights or other fully consumable water leased from AGUA pursuant to an agreement with AGUA. AGUA’s places of storage include, without limitation lease of storage space in Pueblo Reservoir, located in the S1/2 of Section 36, Township 20 South, Range 66 West, 6th P.M., Pueblo County. The point of diversion for the Subject Water Rights will not be changed. They will continue to be diverted at the current location of the Plum Creek Pipeline and measured back to Plum Creek for replacement or augmentation purposes.

4. Historical Use: The Subject Water Rights have been used by Applicant or its predecessors for the irrigation of lands located in the NW¹/₄NW¹/₄, SE¹/₄NW¹/₄ and the NW¹/₄SE¹/₄ of section 12, T.19S., R.70W. of the 6th P.M., Fremont County, Colorado, shown on Exhibit A attached to the Application. A summary of the diversion records for the Subject Water Rights is attached to the Application as Exhibit B. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court). Applicant has estimated that the historical consumptive use of the Subject Water Rights including return flow amounts averaged 73.8 acre-feet annually (1.97 acre-feet per acre) over the 1924-2004 study period and ranged from a minimum of 3.6 acre-feet in 1978 to a maximum of 124.7 acre-feet in 1934. These are estimates and the actual historical use amounts may change as the application proceeds.

5. Applicant proposes to impose the following terms and conditions to prevent injury: A. Maximum diversion rates for the Subject Water Rights will be limited to decreed amounts. B. The Subject Water Rights may not be diverted if there is a valid downstream call senior to the water rights that would be adversely affected by the proposed diversions. C. Maximum monthly, annual, and long-term cumulative diversion amounts will be imposed as necessary to prevent injury. D. Accounting forms will be developed to track diversions and use of the Subject Water Rights including all uses in separately approved substitute water supply, replacement, and augmentation plans to ensure that no more water is consumed by the sum of the uses of the changed rights than would have occurred historically. E. All diversion and measurement structures will be built and installed subject to standards established by the Division Engineer. F. Non-irrigation season return flow obligations will be replaced to the Arkansas River above the calling water right according to percentages of actual annual depletions to be established. G. Transit losses against the downstream delivery of the Subject Water Rights’ historical depletion credits will be assessed as appropriate by the Division Engineer.

6. Owners or reputed owners of 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 modification to the existing storage pool: Applicant owns the Plum Creek Pipeline diversion structure and the MacKenzie Industrial Well. Pueblo Reservoir is owned by the United States Department of the Interior, Bureau of Reclamation, Eastern Colorado

Area Office, 11056 W. County Road 18-E, Loveland, CO 80537. **7. Description of augmentation plan for which approval is being requested:** **A. Structure to be augmented:** The MacKenzie Industrial Well located as described above. There is no decreed water right for this structure. **B. Water rights to be used for augmentation:** the Subject Water Rights described above. **C. Statement of plan for augmentation:** Up to 15 acre-feet per year of the Subject Water Rights will be used to augment out-of-priority depletions, including lagged depletions, from evaporation, commercial, and industrial uses of the MacKenzie Industrial Well during the operation of the augmentation plan. The MacKenzie Industrial Well will be used on a year-round basis. The locations of the structures are depicted on Exhibit A attached to the Application. Approximately 0.2 acres of ground water may be exposed at the MacKenzie Industrial Well. The maximum amount of evaporation is estimated to be 0.78 acre-feet per year. A total of 8.21 acre-feet of water per year is projected to be consumed from operational water use during the 2014-15 substitute water supply plan year including 7.73 acre-feet for concrete production, 0 acre-feet for asphalt production, 0.32 acre-feet for dust control, and 0.15 acre-feet for the wash bay. A lagging analysis showed that over 98 percent of the depletions would be expected to occur within six months of pumping, with over 99.5 percent expected to occur within twelve months. Applicant will use the Subject Water Rights to replace lagged depletions from well use during years for which substitute water supply plans are approved, pursuant to those separately requested substitute water supply plans. Applicant, therefore, requests a decree changing the Subject Water Rights as described above and approving the plan for augmentation described above.

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 December 2014, (forms available at Clerk's office or at www.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 5th day of November, 2014.



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)
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