

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING OCTOBER 2015

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 2015, 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. 2015CW17 – KILEY D. and LORRY L. BOLTON, 835 Ponderosa Avenue, Canon City, CO 81212; (719) 369-7789

Application to Make Absolute in Whole or in Part

FREMONT COUNTY

Name of structures: Ponderosa Pond and Ponderosa Springs. **Date of Original Decree:** February 5, 2009; **Case No.:** 2009CW19; **Court:** District Court, Water Division 2, CO. **Legal description:** SW ¼ SW ¼ Section 23, Township 18 South, Range 70 West, 6th P.M., Fremont County, Colorado, 475 feet from the South section line and 990 feet from the West section line of Section 23. Also known as Lot 2, Block 38, Park Center Subdivision. **Source of water:** Ponderosa Springs; **Appropriation Date:** September 20, 2009; **Amount:** Ponderosa Springs: 5 gpm; Ponderosa Pond: 0.48 a.f. **Use:** Stock water, fish and wildlife habitat, fire mitigation, recreational and domestic purposes and irrigation. **Provide a 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:** Removal of all Tamarac trees surrounding Ponderosa Pond (\$250). Planting of grasses, Willow Trees and miscellaneous shrubbery to increase dam structure and erosion control efforts (\$500). Landscaping surrounding Ponderosa Pond, including retaining walls and Spring fire mitigation (\$50). Installation of walking bridge and zip line (\$850). Planting of 250+ catfish (\$100). Water source for domestic animals, including dogs, pigs, goats and cats. Installation of sprinkler system for irrigation purposes (\$700). **If claim to make absolute – Date water applied to beneficial use:** April 13, 2008; **Amount:** Ponderosa Springs: 5 gpm; Ponderosa Pond: 0.48 a.f. **Use:** Livestock, recreation, fish and wildlife habitat, irrigation and fire prevention. Place of use is shown on map attached to 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:** Applicants.

CASE NO. 2015CW18 – GEORGE and VERENE POSAVAD, 3300 Richmond Avenue, Shoreview, MN 55126; (651) 484-7847

Application for Simple Change in Surface Point of Diversion Pursuant to § 37-92-305(3.5), C.R.S.

CUSTER COUNTY

Name of Structure: Southfield Ditch. **Date of original and all relevant subsequent decrees:** 3-12-1896. **Legal description of structure as described in the most recent decree that adjudicated the location:** NW SW 17 T24S R 72W. **Provide a verbatim legal description from the most recent decree that adjudicated the location:** The ditch head is located on the North branch of Grape Creek at a point whence the SW corner Section 17 bears S. 18 degrees W. 130 feet. And in the NW ¼ SW ¼ Sec. 20, T24S., R72W. **Decreed source of water:** N. branch Grape Creek. **Appropriation Date:** 6-15-1882. **Total amount decreed to structure in cfs:** 3.66 cfs Absolute. **Decreed use:** Irrigation. **Amount of water that applicant intends to change:** 3.66 cfs Absolute. **Detailed description of proposed change in a surface point of diversion:** This change will not result in a greater flow rate or source of water and there are no intervening surface diversion points. **Location of the new surface point of diversion:** **Location information in UTM format (Zone 13, NAD83):** Northing 4201440; Easting 0458648. **Legal Description Using the Public Land Survey System:** Custer County, SE ¼ SW ¼ Section 17, Township 24 South, Range 72 West, 6th P.M., 1100 feet from the South line and 1580 feet from the West line. **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:** Applicants.

CASE NO. 2015CW3050 – THE PEOPLE OF COLORADO, ex rel. DICK WOLFE, State Engineer, and STEVEN J. WITTE, Division Engineer for Water Division 2 v. MATTHEW CLOUGH. This case is a Complaint for Injunctive Relief but is being included in the resume to account for the case number in consecutive order.

CASE NO. 2015CW3051 - THE PEOPLE OF COLORADO, ex rel. DICK WOLFE, State Engineer, and STEVEN J. WITTE, Division Engineer for Water Division 2 v. TWO RIVERS WATER AND FARMING COMPANY; HUERFANO-CUCHARAS IRRIGATION COMPANY; and HCIC HOLDINGS, LLC. This case is a Complaint for Injunctive Relief but is being included in the resume to account for the case number in consecutive order.

CASE NO. 2015CW3052 – THE PEOPLE OF COLORADO, ex rel. DICK WOLFE, State Engineer, and STEVEN J. WITTE, Division Engineer for Water Division 2 v. CHRISTOPHER ANDERSON. This case is a Complaint for Injunctive Relief but is being included in the resume to account for the case number in consecutive order.

CASE NO. 2015CW3053 – THE PEOPLE OF COLORADO, ex rel. DICK WOLFE, State Engineer, and STEVEN J. WITTE, Division Engineer for Water Division 2 v. STEVEN R. KING, FOURMILE VALLEY PROPERTIES, LLC, and ROBERT HOWE.

This case is a Complaint for Injunctive Relief but is being included in the resume to account for the case number in consecutive order.

CASE NO. 2015CW3054; Previous Case No. 2006CW117 – SECURITY WATER DISTRICT (“Security”), c/o Roy Heald, Manager, 231 Security Boulevard, Colorado Springs, CO 80911

(Please address all correspondence to Applicant’s attorneys: Steven T. Monson and Ryan W. Farr, Felt, Monson & Culichia, LLC, 319 North Weber Street, Colorado Springs, CO 80903; (719) 471-1212)

Application for Finding of Reasonable Diligence and to Make Absolute in Part
EL PASO COUNTY, COLORADO

II. Summary of Application: Security seeks a finding of reasonable diligence and to make partially absolute for the conditional exchange adjudicated in Case No. 06CW117, District Court, Water Division 2 (“Decree”). **III. Conditional Exchange:** A. Description of Conditional Exchange: The Decree adjudicated a conditional exchange from the exchange from point of the Lock Ditch Headgate located in the SW1/4 of the SE1/4 of Section 6, Township 16 South, Range 65 West of the 6th P.M., a distance of 850 feet from the south line of said section and 1,670 feet from the east line of said section, to the exchange to point of the point of depletion on Fountain Creek generally located in the NE1/4 of Section 25, Township 15 South, Range 66 West of the 6th P.M. of Security’s Widefield Aquifer wells and Windmill Gulch Aquifer wells (“Exchange”). B. Date of Decree: The Decree was entered November 6, 2009 in Case No. 06CW117, District Court, Water Division 2. C. Source: The source of the exchanges is augmentation water approved by the Decree consisting of a twenty-five percent interest in the Lock Ditch and Lock Ditch No. 2 water rights diverting from Fountain Creek, which is tributary to the Arkansas River (“Subject Water Rights”). The source of supply for the Lock Ditch was also claimed by the original applicant to be Sand Creek, believed to be present day Jimmy Camp Creek, tributary to Fountain Creek, tributary to the Arkansas River. D. Appropriation Date and Amounts for the Lock Ditch: The appropriation date and amounts for Lock Ditch and Lock Ditch No. 2 are as follows:

Water Right Name	Adjudication Date	Appropriation Date	Local Priority No.	Full Water Fight (cfs)	Subject Water Rights (cfs)
Lock Ditch	Feb. 15, 1882	Dec. 31, 1863	15	6.30	1.575
Lock Ditch No. 2	Feb. 15, 1882	Dec. 31, 1864	22	8.38	2.095
Lock Ditch No. 2	Feb. 15, 1882	Dec. 31, 1880	45	5.02	1.255 ¹
Totals				19.70	4.925

E. Appropriation Date of Exchange: The appropriation date for the Exchange is December 28, 2006. F. Amount of the Exchange: The annual amount of the Exchange is for a total of 250 acre-feet of water with a maximum exchange rate of 1.58 cfs. G. Uses of Exchange Water: In accordance with the Decree, the water will be used for augmentation and replacement of Security’s depletions as a result of the pumping of the Widefield Aquifer wells and Windmill Gulch Aquifer wells. H. Ownership of

¹ The 1.255 interest in Priority No. 45 of the Subject Water Rights was abandoned by Security in Case No. 06CW117.

Augmentation Source: Security is the owner of the Subject Water Rights. **IV. 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, including expenditures**: In the Decree, Security was awarded a change of water right and a plan for augmentation along with the conditional right of exchange. The conditional right of exchange is a component part of Security's integrated water system, which consists of storage water rights, plans for augmentation, appropriative rights of exchange, surface water rights, as well as both a physical and administrative infrastructure to operate the system. Pursuant to § 37-92-301(4)(B), C.R.S., work on one component of the integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. A. During the diligence period, Security has used the depletion credits from the Subject Water Rights as follows: 1. Traded Lock Ditch water with the Colorado Water Protective Development Association ("CWPDA") for water that CWPDA had stored in Pueblo Reservoir; 2. Exchanged the Subject Water Rights by administrative exchange to the headgate of the Fountain Mutual Irrigation Company ("FMIC") Ditch in order to place the water into storage in FMIC's Big Johnson Reservoir; and 3. From October 5, 2015 through October 15, 2015, the depletion credits from the Subject Water Rights were exchanged to the point of depletion of the Widefield Aquifer wells and Windmill Gulch Aquifer wells on Fountain Creek at a rate of 0.50 cfs for a total volume of 8.12 acre-feet. B. During the diligence period, Security has completed the following work and outlaid the following expenditures related to the integrated water system: 1. Security has pursued to adjudication a plan for augmentation and change of water right in Case No. 12CW99, District Court, Water Division 2 (Clear Springs Wells). 2. Security has filed statements of opposition to many Water Court applications in order to protect Security's water rights, including the exchange that is subject of this case. 3. Security has investigated and purchased additional water rights. 4. From November 2009 through September 2015, Security has outlaid the following expenditures: a. \$85,465.00 in plant repairs and maintenance; b. \$1,311,525.00 in capital well improvements; c. \$35,552.00 for the Chilcott Ditch Carriage Agreement; d. \$20,285,293.00 in total operations and maintenance expenses for the entire water system; and e. \$16,716,165.00 in total for all water system capital expenditures and acquisitions. 5. Security has continually operated the integrated water system in order to provide water services to the residents of the district. **V. Claim to Make Absolute**. Security seeks to make absolute the amount exchanged as set forth in Section IV.A.3 above for a rate of 0.50 cfs and a volume of 8.12 acre-feet.

CASE NO. 2015CW3055 – FIRST HAND, LLC, 700 North Colorado Boulevard, Suite 207, Denver, CO 80206 (Please send all correspondence to Applicant's attorney: Robert E. Schween, Robert E. Schween, P.C., 62489 East Border Rock Road, Tucson, AZ 85739; (303) 995-7870)

Application for Adjudication of Conditional Water Right and Plan for Augmentation Including Substitution and Appropriative Right of Exchange
PUEBLO COUNTY

2. Overview of Application: A. Applicant. (1) Applicant First Hand, LLC, is the owner of property in Pueblo County. Applicant intends to irrigate certain crops in indoor

facilities, a controlled greenhouse environment, and outdoors (in containers) on the land for agricultural purposes. Applicant may also use such water for domestic/household uses and for sanitary purposes. (2) Accordingly, Applicant has initiated a conditional appropriation of water for such beneficial purpose. Applicant has constructed a well into the Dakota aquifer to withdraw such water (Well Permit No. 297772). The source is ground water tributary to Hardscrabble Creek which is tributary to the mainstem of the Arkansas River in Pueblo County. (3) All such withdrawals will be considered to be out-of-priority. Applicant seeks a decree of the Water Court to confirm his conditional appropriation and to approve a plan for augmentation for the replacement of all out-of-priority withdrawals.

B. Location. The First Hand Well ("Well No. 1") is located generally in the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 23, Township 21 South, Range 68 West of the 6th P.M, at a point 1590 feet from the South Section line and 1778 feet from West Section line of said Section 23, in Pueblo County, Colorado. See General Location Map, Exhibit A to the Application; Site Location Map showing the well location, Exhibit B to the Application. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

C. Source. Well No. 1 will withdraw Dakota aquifer groundwater which is tributary to the Arkansas River. See technical letter report, attached to the Application as Exhibit C.

D. Date of Appropriation. May 18, 2015.

E. How Appropriation Initiated. By initiating technical work necessary in preparation for filing a well permit application and this application to the Water Court, Water Division 2.

F. Amount. 15 gpm, up to 9.36 acre-feet per year, CONDITIONAL.

G. Uses. Irrigation, domestic, sanitation uses.

3. Augmentation Claim:

A. Irrigation Use. Applicant will use the ground water withdrawn through Well No. 1 to irrigate commercial crop in both outdoor, greenhouse, and indoor settings. Outdoor irrigation will be seasonal; indoor and greenhouse irrigation will be year around.

B. Domestic and Sanitation Uses. Applicant also intends to use such water as necessary for domestic or various household uses within the facility and for sanitation uses in the facility.

C. Full Replacement of Depletions. For purposes of the claimed plan, Applicant will assume that all withdrawals are out-of-priority and all stream depletions must be replaced to avoid injurious effect upon the water rights of others.

4. Estimated Stream Depletions:

A. Applicant has modeled the amount and timing of stream depletions caused by pumping Well No. 1 based on the projected maximum level of withdrawals under this plan of 9.36 acre-feet per year.

B. The results of this modeling effort demonstrate that the total stream depletion caused by pumping Well No. 1 will be 2.08 acre-feet after one (1) year of pumping.

5. Application for Plan for Augmentation:

A. Structure to be Augmented. Well No. 1 pumps Dakota aquifer ground water that is tributary to Hardscrabble Creek, tributary to the mainstem of the Arkansas River in Pueblo County. The location of the well is described above and shown on the Site Location Map attached to the Application as Exhibit B.

B. Summary of Diversions. (1) Sanitary and Domestic Uses. Sanitary and related uses are estimated to be 1.93 acre-feet per year. (2) Irrigation Use. Based upon estimated irrigation use, monthly and annual withdrawals for irrigation are shown in the following table.

MONTH	IRRIGATION MONTH (AF)	per	TOTALS for EACH PERIOD
January – April	0.048		0.192
May - October	1.19		7.140
November-December	0.048		0.096
TOTAL			7.428

C. Stream Depletions. Stream depletions were modeled and found to be a maximum of 8.78 acre-feet per year. Return flows will be negligible and are not claimed as a replacement source under this plan. **D. Replacement.** (1) Applicant intends to make full replacement of stream depletions on a monthly basis by delivery of replacement water supplied by a Water Supply Lease Contract with the Pueblo Board of Water Works (“Pueblo”). Pueblo will deliver approximately 10.0 acre-feet of fully consumptive use water per year, on a monthly basis, pursuant to the Water Supply Contract. The estimated schedule for such deliveries is as follows:

Month	Deliveries (AF)	Month	Deliveries (AF)
January	0.83	July	0.83
February	0.83	August	0.83
March	0.83	September	0.83
April	0.83	October	0.83
May	0.83	November	0.83
June	0.83	December	0.83
Total			10.0

(2) Such deliveries will be adequate to replace all stream depletions caused by the pumping of Well No. 1 and will prevent injury to the vested and conditionally decreed water rights of others.

6. Application for Appropriative Right of Exchange: **A. Exchange Points:** (1) **Downstream Point:** The confluence of Hardscrabble Creek and the Arkansas River, located in the SE ¼ of NW ¼ of Section 17, Township 19 South, Range 68 West, at a point 1837 feet from the North Section Line and 1483 feet from the West Section Line. (2) **Upstream Point:** Hardscrabble Creek in the SW ¼ of NE ¼ of Section 22, Township 21 South, Range 69 West, at a point 1858 feet from the North Section Line and 2500 feet from the East Section Line. **B. Date of Appropriation for Exchange:** May 18, 2015. **C. How Appropriation Was Initiated:** By initiating technical work necessary in preparation for filing a well permit application and this application to the Water Court, Water Division 2. **D. Description of Exchange:** Replacement of stream depletions may be made to Well No. 1 from Arkansas River by exchange. The exchange reach will be from the point of the confluence of Hardscrabble Creek and the Arkansas River (the downstream point of exchange), up Hardscrabble Creek to the point of well pumping depletions on Hardscrabble Creek from Well No. 1 (the upstream point of exchange), as described above. **7. Replacement of Post-Pumping Stream Depletions:** Once pumping of Well No. 1 permanently ceases, stream depletions will continue for a period of 40 years due to the distance and travel time from the point of pumping and the river at which time the depletions are less than 5% of the amount pumped annually. To satisfy post-pumping replacement obligations, Applicant or its successors will continue to use the augmentation supplies contracted through Pueblo. Such supplies are sufficient in quantity, time, and place to replace all injurious stream depletions. **8. Statement of Plan Operation:** **A. Withdrawals of Ground Water.** Well No. 1 withdraws Dakota aquifer groundwater that is tributary to the Arkansas River for irrigation, domestic, and

sanitation purposes on Applicant's land at a rate of flow of approximately 15 gpm. **B. Consumptive Use.** All uses of such water are considered fully consumptive in nature. Any unconsumed portions return to the stream from either direct runoff or deep percolation. Credit is not claimed for such return flows by this plan. **C. Replacement of Depletions.** Out-of-priority stream depletions, as defined above, will be fully replaced with in-basin water by means of the contract with Pueblo. Such replacement sources will adequately replace all modeled stream depletions in time, place, and amount and in such a manner as to prevent injury to all other vested and decreed conditional water rights. **9. Proposed Terms and Conditions:** A. Tributary ground water pumped from Well No. 1 will be limited based on an amount of water calculated to be available from replacement sources. B. Applicant will perform all necessary accounting functions and make reports to the Division Engineer as requested. A sample accounting form is attached to the Application as Exhibit D and will be attached to the proposed ruling and decree. C. The plan requested herein will prevent injurious effect upon other owners or persons entitled to use water under vested or decreed conditional water rights. **10. Name and Address of Owners of Land Upon Which Water Rights Are Located:** Same as Applicant. **11. Jurisdiction:** The Water Court has jurisdiction over the subject matter of this application pursuant to Section 37-92-302, C.R.S. **12. Remarks:** A. **Need for Water.** The water rights requested in this application are needed for irrigation as well as in-facility domestic and sanitation purposes on Applicant's property. Applicant reasonably believes that he has such needs and is committed to developing and operating the augmentation plan requested herein. B. **Completion of Augmentation Plan.** By undertaking this application and the related planning, engineering, legal efforts, and other activities that become necessary and apparent, Applicant can and will complete and operate the augmentation plan applied for hereby. **13. Prayers For Relief:** WHEREFORE, Applicant First Hand, LLC, requests this Court to enter a decree: A. Granting the application herein and awarding the conditional water right, plan for augmentation, and appropriative right of exchange requested herein. B. Confirming the claimed priority date for Well No. 1 and for the claimed exchange of May 18, 2015. C. Finding that the plan as described will prevent injurious effects on the water rights of others. D. Retaining jurisdiction over this matter for a period necessary to assure that the operation of the plan will not cause injury to other vested water rights. FURTHER, Applicant asks the Court grant such other relief as it deems just and proper in this matter.

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 2015, (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, 2015.



Mardell R. DiDomenico

Mardell R. DiDomenico, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
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(Court seal)
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