

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING OCTOBER 2019

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 2019, 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:

**Below Resume was erroneously included in the September Resume.**

**CASE NO. 2019CW2; J. MICHAEL CARTER, 32911 Daniel Road, Pueblo CO 81006, (719) 250-4110**

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

**PUEBLO COUNTY**

**Decreed Water Right for which Simple Change is Sought:** A. Name of Water Right:

An undivided 0.5 cubic feet per second ("cfs") decreed to Blunt ditch No. 2, Priority No. 33.

B. Original and All Subsequent Decrees: The Blunt Ditch No. 2 was adjudicated on June 26, 1893 in Case No. 2756. The point of diversion and place of use for 0.5 cfs of the Blunt Ditch No. 2, including 0.25 cfs of the Blunt ditch No. 2 now owned by Applicant, was changed by Decree entered in Case No. 01CW47, Water Division 2. Furthermore, the point of diversion and place of use for 1.0 cfs of the Blunt Ditch No. 2, including 0.25 cfs of the Blunt Ditch No. 2 now owned by applicant, was changed by Decree entered in Case No. 01CW33, Water Division 2. C. Legal description of Point of Diversion for Water Rights as described in most recent decrees that Adjudicated the Locations:

A point of diversion located in the Section 6, Townships 21 South, Range 63 West of the 6<sup>th</sup> P.M. at a point 1790 feet west of the east line and 4380 feet north of the south line of said Section 6, in Pueblo County, Colorado, approximately 4,165 feet north of the South section line and 175 feet west of the East section line of said Section 6. Referred to as Blunt Chambers on Division of Water Resources, map attached as Exhibit A and a point of diversion located in the NE ¼ of the NE ¼ of Section 6, Township 21 South, Range 63 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado, approximately 4,165 feet north of the South section line and 175 feet west of the East section line of said Section 6. Referred to as Blunt Chambers on Division of Water Resources See Exhibit A attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

D. Decreed Source of water: St. Charles River.

E. Appropriation Date: January 8, 1867. F. Amount of Water for which Change is Sought: 0.25 cfs of the 1.5 cfs of the Blunt Ditch No. 2 changed in Case No. 01CW47 and 0.25 cfs of the 3.0 cfs of the Blunt Ditch No 2 changed in Case No. 01CW33.

G. Decreed Use: Irrigation. **Detailed Description of Proposed Change in a Surface Point of Diversion:**

A. Complete Statement of Proposed Change, including a

Description of how the Change Meets the Definition of a Simple Change in a Surface Point of Diversion: Case No. 01CW47 locates the diversion point for 1.5 cfs of the Blunt Ditch No. 2 to the current diversion point for that water right. In order to simplify his operations, Applicant seeks to move the diversion point for his undivided 0.25 cfs of the Blunt Ditch to a new diversion point at a pump located approximately 650 ft downstream of the diversion point described in Case No. 01CW47 and 1000 ft upstream from the diversion point described in Case No. 01CW33. There is no more water physically and legally available at proposed as compared to the decreed diversion point. Further, Applicant will comply with all flow restrictions upon the Blunt No. 2 Ditch Right imposed by the Decree in Case No. 01CW47 and 01CW33. Accordingly, this change in the location of the diversion point of Applicant's portion of the Blunt Ditch No. 2 right will not result in diversion of a greater flow rate or amount of water than has been decreed to the water right or is physically and legally available at the diversion point from which the change is being made. There are no intervening water rights, including any Colorado Water Conservation Instream Flow Rights, located between the decreed and proposed diversion points. Accordingly, the requested change in the location of the Charles Jarvis Ditch Water Rights will not result in an increase in beneficial use of the rights, or otherwise cause injury to any water right. B. Legal Description of the New Point of Diversion: **UTM Coordinates Northing:** 4234043.7976 **Easting:** 545317.0751, **Street Address:** 32911 Daniel Road Pueblo, CO 81006, **Subdivision:** Par B lot line rearrangement no 2001-003 Formerly #13-060-14-004 + #13-060-18-001, **Source of UTM:** Division 2 Engineer's office maps. Applicant is the owner of the land on which the new diversion structure will be located.

-----  
**CASE NO. 2019CW3064; COLORADO WATER CONSERVATION BOARD ("CWCB"), 1313 Sherman Street, Suite 718, Denver, CO 80203.** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Ema I. G. Schultz, Senior Assistant Attorney General, Natural Resources & Environment Section, Office of the Colorado Attorney General, 1300 Broadway, 7<sup>th</sup> Floor, Denver, CO 80203. Telephone: (720) 508-6307.)

Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree

**HUERFANO COUNTY**

**2. Name of water right:** Bonnett Creek Instream Flow Water Right. **3. Legal Description:** The Bonnett Creek Instream Flow Water Right is located in the natural stream channel of Bonnett Creek from its headwaters to the confluence with the Cucharas River, a distance of approximately 4.05 miles. See Exhibit 1 attached to the application for a general location map of Bonnett Creek Instream Flow Water Right reach. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). **A. Upstream Terminus:** Bonnett Creek headwaters in the vicinity of: 1. UTM: Northing: 4138962.59; Easting: 486695.74; (NAD 1983 Zone 13 North) 2. Lat/Long: latitude 37° 23' 50.42" N; and longitude 105° 09' 1.12" W; **B. Downstream Terminus:** Confluence with the Cucharas River at approximately: 1. UTM: Northing: 4137528.63; Easting: 491728.78; (NAD 1983 Zone 13 North) 2. Lat/Long: latitude 37° 23'

4.10" N; and longitude 105° 05' 36.36" W; **C.** The Universal Transverse Mercator (UTM) of the upstream and downstream termini will be used as the legal description for the decree in this matter. The Lat/Long coordinates are provided as cross-reference locations only. The UTM and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD). **4. Source:** Bonnett Creek, tributary to the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River. **A. Date of initiation of appropriation:** January 29, 2019. **B. How appropriation was initiated:** Appropriation and beneficial use occurred on January 29, 2019, by the action of the CWCB pursuant to sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2019). **C. Date applied to beneficial use:** January 29, 2019. **5. Amount of water claimed:** Instream flow of 0.4 c.f.s. (09/01-03/31); 1.0 c.f.s. (04/01-06/30); and 0.55 c.f.s. (07/01-08/31), absolute. **6. Proposed Uses:** Instream flow to preserve the natural environment to a reasonable degree. **7. Names and addresses of owners or reputed owners of the land upon which any new or existing diversion structure will be located:** The notice required by section 37-92-302(2)(b), C.R.S. (2019), to the owners or reputed owners of the land upon which any new or existing diversion or storage structure is or will be constructed is not applicable in this case. This Application is for instream flow water rights, exclusive to the CWCB under the provisions of section 37-92-102(3), C.R.S. (2019). As an instream flow water right, the CWCB's appropriation does not require diversion structures or storage. See *Colo. River Water Conservation Dist. v. Colo. Water Conservation Bd.*, 594 P.2d 570, 574 (Colo. 1979); § 37-92-103(4)(c), C.R.S. (2019). As a surface water right, the CWCB's appropriation of instream flow water rights does not involve construction of a well. **8 Remarks:** This appropriation by the CWCB, on behalf of the people of the State of Colorado, is made pursuant to sections 37-92-102(3) & (4) and 37-92-103(3), (4) & (10), C.R.S. (2019). The purpose of the CWCB's appropriation is to preserve the natural environment to a reasonable degree. At its regular meeting on May 15, 2019, the CWCB determined, pursuant to section 37-92-102(3)(c), C.R.S. (2019), that the natural environment of Bonnett Creek will be preserved to a reasonable degree by the water available for the appropriations to be made; that there is a natural environment that can be preserved to a reasonable degree with the CWCB's water rights herein, if granted; and that such environment can exist without material injury to water rights.

---

**\*\*Per Order, resume to be published by Water Division 1\*\***

**CASE NO. 2019CW3065; VICTORIA AND DARCY HANSEN, 18015 Saddlewood Road, Monument, CO 80132** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Chris D. Cummins, #35154, Emilie B. Polley, #51296, MONSON, CUMMINS & SHOHET, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation.

**EL PASO COUNTY**

**II. Summary of Application:** The Applicant seeks to construct up to one non-exempt well to the not-nontributary Dawson aquifer to provide water service to the Applicant's 4.5 acre

lot. The Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and approval of a plan for augmentation for the use thereof. **III. Application for Underground Water Rights:**

**A. Legal Description of Wells:**

1. Property Description: The well will be located on Applicant's approximately 4.53 acre property ("Applicant's Property"). See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.), and more particularly described as follows: Tract 105, CANTERBURY EAST, County of El Paso, State of Colorado, also known as 18015 Saddlewood Road, Monument, CO 80132.

2. Proposed Wells: Applicant proposes that one well ("Hansen Well No. 1") will be located on the Applicant's Property to be constructed to the Dawson aquifer. The proposed well, the Hansen Well No. 1, currently permitted as Division of Water Resources Permit No. 314578 (see attached **Exhibit B**), will be re-permitted upon entry of decree in accordance with this Plan for Augmentation.

3. Existing Wells: There is an existing well on the Applicant's property, with Division of Water Resources Permit No. 191857 (see attached **Exhibit B**), drilled to a total depth of 1,080 feet in the Denver aquifer, which has failed to function. The UTM Coordinates, based off of CDSS records containing the pump installation report, locates the well in Zone 13, NAD83, Easting: 518736, Northing 4327166. This well will be plugged and abandoned as a requirement for completing construction of the Hansen Well No. 1, currently permitted as Division of Water Resources Permit No. 314579. The Hansen Well No. 1 is located in Zone 13, NAD83, Easting: 518729, Northing: 4327169, in accordance with the existing well permit.

**B. Water Source:**

1. Not-Nontributary: The ground water to be withdrawn from the Dawson and Denver aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions.

2. Nontributary: The groundwater that will be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property is nontributary.

**C. Estimated Rates of Withdrawal and Ground Water Available:**

1. Estimated Rates of Withdrawal: Pumping from the well will not exceed 100 g.p.m. The actual pumping rate will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of the well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions.

2. Estimated Average Annual Amounts of Ground Water Available: Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 100-year aquifer life requirement pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

AQUIFER	NET SAND (Feet)	Avg. Specific Yield	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)
Dawson (NNT)	433.7	20%	392.93	3.93
Denver (NNT)	560.0	17%	431.26	4.31
Arapahoe (NT)	255.6	17%	196.84	1.97
Laramie Fox Hills (NT)	201.0	15%	136.58	1.37

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **D. Requested Uses:** The Applicant requests the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, irrigation, stock water, recreation, wildlife, wetlands, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. The Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, the Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c.5). **E. Well Fields:** The Applicant requests that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. The Applicant requests that these wells be treated as a well field. **F. Averaging of Withdrawals:** The Applicant requests that they be entitled to withdrawn amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant's Property. **G. Owner of Land Upon Which Wells are to Be Located:** The land and groundwater upon which the wells are and will be located is owned by the Applicant. **IV. APPLICATION FOR PLAN FOR AUGMENTATION: A. Structures to be Augmented:** The structure to be augmented is the Hansen Well No. 1, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicant's Property as requested and described herein. **B. Water Rights to be Used for Augmentation:** The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from the Hansen Well No. 1, together with water rights from the nontributary

Laramie-Fox Hills aquifer for any injurious post pumping depletions. **C. Statement of Plan for Augmentation:** Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by one proposed herein for one lot. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1. **Uses.** i. **Household Use Only:** 0.25 acre feet annually within a single family dwelling, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for the lot will therefore be 0.025 acre feet, with return flows of 0.225 acre feet for the lot. ii. **Landscape Irrigation:** 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre feet. iii. **Horses (or equivalent livestock):** 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. 2. The well will pump a maximum of 1.3 acre feet of water per year for a maximum total of 1.3 acre feet being withdrawn from the Dawson aquifer per year. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.25 acre feet of water per year with the additional 1.05 acre feet per year available for irrigation of lawn and garden and the watering of up to twelve horses or equivalent livestock on the residential lot. 3. **Depletions:** Applicant's consultant has determined that maximum stream depletions over the 100 year pumping period for the Dawson aquifer amounts to approximately 8.34% of pumping. Maximum annual depletions for total residential pumping from the well is therefore 0.108 acre feet in year 100. Should Applicant's pumping be less than the 1.3 total per year described herein, resulting depletions and required replacements will be correspondingly reduced. 4. **Augmentation of Depletions During Pumping:** Pursuant to C.R.S. §37-90-137(9)(c.5), the Applicant is required to replace actual stream depletions attributable to pumping of the Hansen Well No. 1. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year. At a household use rate of 0.25 acre feet per year, 0.225 acre feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be more than adequately augmented. 5. **Augmentation for Post Pumping Depletions:** For the replacement of any injurious post-pumping depletions which may be associated with the use of the Hansen Well No. 1, Applicant will reserve up to the entirety of the nontributary Laramie Fox Hills aquifer, being 136.58 acre feet, accounting for actual stream depletions replaced during the plan pumping period, or such greater amounts as necessary to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the Hansen Well No. 1 for the uses in

accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. **V. Remarks:** **A.** This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the South Platte River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with pending Division 1 application in Water Division 1 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements are sufficient. **B.** Applicant requests a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). **C.** The term of this augmentation plan is for 100 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. **D.** The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. **E.** The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. **F.** The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. **G.** The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. **H.** All record owners of the Subject Property not listed as Applicants herein, and every person who has a lien or mortgage on, or deed of trust to the Applicant's Property will be notified of the filing of this Application by certified or registered mail, return receipt requested, no later than 14 days after the filing of this Application. The Applicant will complete and file with the Court a Certificate of Notice as evidence that the required notices were given, in accordance with the notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I).

-----  
**CASE NO. 2019CW3066; LUCAS ESCH FARMS, INC and CLOCK LAND CORPORATION C/O: PATRICK ESCH, 717 Colorado, Springfield, CO 81073** (Please

address all pleadings and inquiries regarding this matter to Applicants' attorneys: Chris D. Cummins, #35154, Emilie B. Polley, #51296, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, (719) 523-4286  
Application for Finding of Reasonable Diligence

**LINCOLN COUNTY**

**II. Summary of Application:** Lucas Esch Farms and Clock Land Corporation (collectively "Applicant") seek a finding of reasonable diligence regarding the conditional water rights decreed in Case No. 11CW47, District Court, Water Division 2. **III. Surface**

**Water Rights: A. Name of Structure:** Esch Pond No. 4. **1. Legal Description:** The center of the dam is located in the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 17, Township 17 South, Range 58 West of the 6<sup>th</sup> P.M. UTM coordinates being Northing: 42.70179, and Easting: 13.0593742, Zone 13, NAD83. See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). **2. Source of Water:** Runoff, and natural seeps and springs tributary to Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **3. Conditional Appropriation Date:** December 30, 2011. **4. Amount:** 8.47 acre feet, conditional. **5. Surface Area:** The maximum surface area is approximately 3.34 acres. **6. Uses:** Stockwater, wildlife, wetlands, recreation, and piscatorial, 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. Date and Case No. of Original Decree:** 11CW47, October 29, 2013. **8. Court:** District Court, Water Division 2. **B. Name of Structure:** Esch Pond No. 5. **1. Legal Description:** The center of the dam is located in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 17, Township 17 South, Range 58 West of the 6<sup>th</sup> P.M. UTM coordinates being Northing: 42.69750, and Easting: 13.0594075, Zone 13, NAD83, as depicted on attached **Exhibit A**. **2. Source of Water:** Runoff, and natural seeps and springs tributary to Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **3. Conditional Appropriation Date:** December 30, 2011. **4. Amount:** 3.83 acre feet, conditional. **5. Surface Area:** The maximum surface area is approximately 2.2 acres. **6. Uses:** Stockwater, wildlife, wetlands, recreation, and piscatorial, 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. Date and Case No. of Original Decree:** 11CW47, October 29, 2013. **8. Court:** District Court, Water Division 2. **C. Name of Structure:** Esch Pond No. 6. **1. Legal Description:** The center of the dam is located in the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 17, Township 17 South, Range 58 West of the 6<sup>th</sup> P.M. UTM coordinates being Northing: 42.69576, and Easting: 13.0594293, Zone 13, NAD83, as depicted on attached **Exhibit A**. **2. Source of Water:** Runoff, and natural seeps and springs tributary to Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **3. Conditional Appropriation Date:** December 30, 2011. **4. Amount:** 2.38 acre feet, conditional. **5. Surface Area:** The maximum surface area is approximately 1.88 acres. **6. Uses:** Stockwater, wildlife, wetlands, recreation, and piscatorial, 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. Date and Case No. of Original Decree:** 11CW47, October 29, 2013. **8. Court:** District Court, Water Division 2. **D. Name of Structure:** Esch Pond No. 7. **1. Legal Description:** The center of the dam is located in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 17, Township 17 South, Range 58 West of the 6<sup>th</sup> P.M. UTM coordinates being Northing: 42.69451, and Easting: 13.0594467, Zone 13, NAD83, as depicted on attached **Exhibit A**. **2. Source of Water:** Runoff, and natural seeps and springs tributary to Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **3. Conditional Appropriation Date:** December 30, 2011. **4. Amount:** 3.20 acre feet, conditional. **5. Surface Area:** The maximum surface area is approximately 2.4 acres.



**6. Uses:** Stockwater, wildlife, wetlands, recreation, and piscatorial, 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. Date and Case No. of Original Decree:** 11CW47, October 29, 2013. **8. Court:** District Court, Water Division 2. **E. Name of Structure:** Esch Pond No. 8. **1. Legal Description:** The center of the dam is located in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 17, Township 17 South, Range 58 West of the 6<sup>th</sup> P.M. UTM coordinates being Northing: 42.69360, and Easting: 13.0594587, Zone 13, NAD83, as depicted on attached **Exhibit A. 2. Source of Water:** Runoff, and natural seeps and springs tributary to Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **3. Conditional Appropriation Date:** December 30, 2011. **4. Amount:** 2.28 acre feet, conditional. **5. Surface Area:** The maximum surface area is approximately 1.23 acres. **6. Uses:** Stockwater, wildlife, wetlands, recreation, and piscatorial, 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. Date and Case No. of Original Decree:** 11CW47, October 29, 2013. **8. Court:** District Court, Water Division 2. **F. Name of Structure:** Esch Pond No. 9. **1. Legal Description:** The center of the dam is located in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 17, Township 17 South, Range 58 West of the 6<sup>th</sup> P.M. UTM coordinates being Northing: 42.69663, and Easting: 13.0594175, Zone 13, NAD83, as depicted on attached **Exhibit A. 2. Source of Water:** Runoff, and natural seeps and springs tributary to Cramer Creek, tributary to Breckenridge Creek, tributary to Horse Creek, tributary to the Arkansas River. **3. Conditional Appropriation Date:** December 30, 2011. **4. Amount:** 1.66 acre feet, conditional. **5. Surface Area:** The maximum surface area is approximately 1.3 acres. **6. Uses:** Stockwater, wildlife, wetlands, recreation, and piscatorial, 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. Date and Case No. of Original Decree:** 11CW47, October 29, 2013. **8. Court:** District Court, Water Division 2. **IV. Detailed Outline of Diligence:** Per the decree entered in 11CW47, the above described Esch's Ponds Nos. 4-9 are conditional water rights awarded to the Applicant for various purposes outlined above. Pursuant to C.R.S. § 37-92-301(4)(b), work on one component of an integrated system shall be considered in finding that reasonable diligence has been shown for all components of the integrated system. The conditional water rights described in Case No. 11CW47 are part of such an integrated system, along with absolute and conditional water rights decreed in Case Nos. 08CW91 (diligence granted in 17CW3028), 13CW3040, and 14CW3048. During the subject diligence period, Applicant has outlaid the following expenditures or completed the following work related to the Esch's Ponds Nos. 4-9: **A. Expenditures for design, engineering, construction plans, and legal expenses of Esch Ponds Nos. 4-9, including work for development of the Cramer Creek Mitigation Bank total a minimum of \$20,702.50. V. Name and address of the owners of land on which structures are located:** Applicant owns the land where the Esch Ponds Nos. 4-9 are located and the beneficial use of the water from this source will be upon the Applicant's land. **WHEREFORE,** Applicant requests the Court find that (1) Applicant has performed reasonable diligence for the conditional water rights described herein; (2) that the Applicant can and will complete the decreed conditional appropriations; (3) that the

conditional surface storage rights set forth in Case No. 11CW47, described herein, continue in full force and effect for an additional diligence period; (4) that the Esch Ponds Nos. 4-9 remain a part of Applicant's integrated water rights system as described herein; and, (5) for such other relief as the Court deems appropriate.

-----  
**CASE NO. 2019CW3067; Previous Case Nos. 13CW3013, 02CW108, W-42 - THE STATE OF COLORADO, acting by and through THE COLORADO STATE BOARD OF LAND COMMISSIONERS, ATTN: GREG OCHIS, 1127 Sherman Street, Suite 300, Denver CO 80203,** (Please address all pleadings and inquiries regarding this matter to Applicant's attorney: Eva La, (720) 508-6303, W. Cory Haller, (720) 508-6304, Assistant Attorneys General, Office of the Attorney General, 1300 Broadway, 7<sup>th</sup> Floor, Denver, CO 80203.)

First Amended Application for Finding of Reasonable Diligence

**EL PASO COUNTY**

**2. Conditional Water Right Information: A. Name of Wells:** Appelt Well Nos. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 (and its four alternate points of diversion designated as Appelt 20-1, 20-2, 20-3, and 20-4 and decreed in Case No. W-4329), Appelt Well Nos. 21, 22, and 23, Quarter Corner Well, Camp Well, and Holmes Well, (collectively the "Ranch Well Water Rights"). **B. Date of original Decree and case number:** April 28, 1972; Consolidated Case Nos. 53483, Pueblo District Court and Water Division 2 Case No. W-42. **C. Subsequent decrees awarding finding of diligence:** June 17, 1977, Case No. W-4405; October 6, 1980, nunc pro tunc September 4, 1980, Case No. 80CW47; January 25, 1985, Case No. 84CW58; December 20, 1898, Case No. 88CW48; July 23, 1996, Case No. 02CW108; May 16, 2007, Case No. 02CW108; November 1, 2013, Case No. 13CW3013, District Court, Water Division 2. **D. Legal descriptions from most recent decree:** Appelt Well No. 6: 50' E, 2500' S of NW corner of Sec. 22, T17S, R63W, 6th P.M., El Paso County, Colorado; Appelt Well No. 7: 3000' E, 2500' S of NW corner of Sec. 22, T17S, R63W, 6th P.M., El Paso County, Colorado; Appelt Well No. 8: 5200' E, 2500' S of NW corner of Sec. 22, T17S, R63W, 6th P.M., El Paso County, Colorado; Appelt Well No. 9: 2800' E, 2500' S of NW corner of Sec. 23, T17S, R63W, 6th P.M., El Paso County, Colorado; Appelt Well No. 10: 3000' E, 50' S of NW corner of Sec. 19, T17S, R62W, 6th P.M., El Paso County, Colorado; Appelt Well No. 11: 50' E, 50' S of NW corner of Sec. 20, T17S, R62W, 6th P.M., El Paso County, Colorado; Appelt Well No. 12: 2800' E, 50' S of NW corner of Sec. 20, T17S, R62W, 6th P.M., El Paso County, Colorado; Appelt Well No. 13: 5200' E, 50' S of NW corner of Sec. 20, T17S, R62W, 6th P.M., El Paso County, Colorado; Appelt Well No. 14: 2500' E, 5200' S of NW corner of Sec. 24, T17S, R63W, 6th P.M., El Paso County, Colorado; Appelt Well No. 15: 50' E, 5200' S of NW corner of Sec. 30, T17S, R62W, 6th P.M., El Paso County, Colorado; Appelt Well No. 16: 3000' E, 5200' S of the NW corner of Sec. 30, T17S, R62W, 6th P.M., El Paso County, Colorado; Appelt Well No. 17: 5200' E, 5200' S of NW corner of Sec. 30, T17S, R62W, 6th P.M., El Paso County, Colorado; Appelt Well No. 18: 1400' E, 5200' S of NW corner of Sec. 29, T17S, R62W, 6th P.M., El Paso County, Colorado; Appelt Well No. 19: 3900' E, 1500' S of NW corner of Sec. 29, T17S, R62W, 6th P.M., El Paso County, Colorado; Appelt Well No. 20: 2500' E, 3000' S of NW corner of Sec. 3, T18S, R63W, 6th P.M., Pueblo County, Colorado; Appelt Well No. 20-1: SW 1/4 SW 1/4 Sec. 3, T18S, R63W, 6th P.M., Pueblo County, Colorado; 1200' N and 650'

E of the SW corner of Sec. 3; Appelt Well No. 20-2: NE 1/4 SE 1/4 Sec. 4, T18S, R63W, 6th P.M., Pueblo County, Colorado; 1700' N and 900' W of the SE corner of Sec. 4; Appelt Well No. 20-3: SW 1/4 NW 1/4 Sec. 10, T18S, R63W, 6th P.M., Pueblo County, Colorado; 2380' S, 500' E of NW corner of Sec. 10; Appelt Well No. 20-4: NE 1/4 SW 1/4 Sec. 10, T18S, R63W, 6th P.M., 2400' N and 2200' E of the SW corner of Sec. 10; Appelt Well No. 21: 1000' E, 3000' S of NW corner of Sec. 29, T18S, R62W, 6th P.M., Pueblo County, Colorado; Appelt Well No. 22: 5200' E, 3000' S of NW corner of Sec. 29, T18S, R62W, 6th P.M., Pueblo County, Colorado; Appelt Well No. 23: 3000' E, 3000' S of NW corner of Sec. 28, T18S, R62W, 6th P.M., Pueblo County, Colorado; Quarter Corner Well: 2640' S of the NW corner of Sec. 18, T18S, R61W, 6th P.M., Pueblo County, Colorado; Camp Well: 5000' S, 150' E of NW corner of Sec. 4, T18S, R62W, 6th P.M., Pueblo County, Colorado; Holmes Well: 4000' S, 4250' E of NW corner of Sec. 22, T17S, R63W, 6th P.M., Pueblo County, Colorado. See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **In Case Number 13CW3013**, Appelt Well No. 18 was erroneously decreed as located in Section 30. Appelt well No. 18 is actually located in Section 29, as identified in the original decree. This application seeks to clarify that Appelt Well 18 is located in Section 29, as more particularly described above. In Case Numbers 95CW238, 02CW108, and 13CW3013, Appelt Well No. 20-2 was erroneously decreed as located in the NW 1/4 of the SE 1/4. Appelt Well No 20-2 is actually located in the NE 1/4 of the SE 1/4, as identified in the original decree. This application seeks to clarify that Appelt Well No. 20-2 is located in the NE 1/4 of the SE 1/4, as more particularly described above. **E. Source for all rights:** Black Squirrel Creek. **F. Appropriation dates and Amounts:**

Well Name	Appropriation date	Amount
Appelt Well No. 6	September 21, 1964	0.02 cfs Absolute; 3.98 cfs Conditional
Appelt Well No. 7	September 21, 1964	4.0 cfs Conditional
Appelt Well No. 8	September 21, 1964	4.0 cfs Conditional
Appelt Well No. 9	September 21, 1964	0.02 cfs Absolute; 3.98 cfs Conditional
Appelt Well No. 10	September 21, 1964	4.0 cfs Conditional
Appelt Well No. 11	September 21, 1964	4.0 cfs Conditional
Appelt Well No. 12	September 21, 1964	4.0 cfs Conditional
Appelt Well No. 13	September 21, 1964	4.0 cfs Conditional
Appelt Well No. 14	September 21, 1964	0.02 cfs Absolute; 3.98 cfs Conditional
Appelt Well No. 15	August 30, 1966	4.0 cfs Conditional
Appelt Well No. 16	September 21, 1964	4.0 cfs Conditional
Appelt Well No. 17	September 21, 1964	4.0 cfs Conditional
Appelt Well No. 18	April 21, 1967	2.45 cfs Absolute; 1.65 cfs Conditional
Appelt Well No. 19	September 21, 1964	1.55 cfs Absolute; 2.45 cfs Conditional
Appelt Well No. 20	September 21, 1964	0.02 cfs Absolute;

		3.98 cfs Absolute
Appelt Well No. 20-1	September 21, 1964	0.02 cfs Absolute; 1.58 cfs Conditional
Appelt Well No. 20-2	September 21, 1964	1.1 Conditional
Appelt Well No. 20-3	September 21, 1964	0.7 Conditional
Appelt Well No. 20-4	September 21, 1964	0.6 Conditional
Appelt Well No. 21	September 21, 1964	0.9 cfs Absolute; 3.1 cfs Conditional
Appelt Well No. 22	September 21, 1964	4.0 cfs Conditional
Appelt Well No. 23	September 21, 1964	4.0 cfs Conditional
Quarter Corner Well	September 21, 1964	.01 cfs Conditional
Camp Well	December 31, 1920	0.13 cfs Absolute; 0.04 cfs Conditional
Holmes Well	December 31, 1942	0.02 cfs Absolute; 2.00 cfs Conditional

**G. Use for all rights:** Irrigation, domestic and mechanical. **3. Provide a detailed outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:** The Colorado State Board of Land Commissioners (“Land Board”) owns and manages the Chico Basin Ranch (the “Ranch”) in El Paso and Pueblo Counties. The Ranch is a 90,000-acre family-run, working cattle ranch 30 miles southeast of Colorado Springs, Colorado, which contains ranges of shortgrass and sandsage prairie, habitat for diverse populations of birds, pronghorn, antelope, mule deer, fish, prairie dogs, coyote, badgers, and other wildlife. The Ranch is operated and managed by the Land Board’s lessee, Box T Partners. Box T Partners and its employees manage the Chico Basin Ranch on behalf of the Land Board. Box T Partners operates and manages the well water and spring water rights used on the Ranch. Box T Partners operates the Ranch to provide education, farming, recreation, sporting, arts, and hospitality programs to ranch guests and visitors, as well as managing the Ranch as important surface and stewardship lands for the Land Board’s School Trust and Stewardship Trust. The Ranch Well Water Rights are part of an integrated water supply for the Ranch and are integral to the Land Board’s role and duty to generate revenue from the Ranch for K-12 schools. The Land Board requests that the Court enter a finding of diligence and continue the Ranch Well Water Rights for irrigation, domestic and mechanical uses on the Ranch. During the applicable diligence period, the Land Board and Box T Partners have continued to actively maintain, manage and operate the Ranch for educational, recreational, agricultural and stewardship purposes, including the following steps to diligently develop the above referenced conditional water rights. The water rights which are the subject of this diligence action are part of an integrated water supply system designed to provide a sufficient and reliable water supply at the Ranch, as previously decreed by this Court. During this diligence period the Applicant and Box T Partners have continued to work towards the perfection of these water rights. Total expenditures by the Land Board and Box T Partners toward construction, management, repair, and operation and use of the integrated water supply on the Ranch during the diligence period are in excess of \$150,000. These expenditures include, but are not limited to, installing and replacing flow meters, monitoring costs which include the services of a hydrologist, membership dues, and augmentation costs. Applicant and Box

T Partners have leveled fields on the Ranch, replaced submersible pumps and added gated pipe to better utilize the water, reduce seepage loss, reduce evaporation, and improve infiltration and the use of irrigation water overall on the Ranch. Applicant and Box T Partners have removed Russian Olive and Tamarisk from the riparian areas to facilitate additional water flow from the springs on Chico Creek. Additionally, the Applicant and Box T Partners removed and continue to prevent and control the growth of noxious weeds on the Ranch to ensure that water sources from the Ranch do not lead to weed infestations for downstream users. Applicant, through Box T Partners, met with the Water Commissioner and Deputy Water Commissioner from District 10 regarding a list of structures related to the Ranch, including seven Appelt wells. Monitoring methods, spring development and evapotranspiration loss was discussed with the Water Commissioner. The Land Board has performed monthly reviews of the water court resume to determine whether the filing of Statements of Opposition are necessary to protect its water rights in Water Division No. 2, including the above-referenced conditional water rights. Land Board staff has met internally to discuss how to develop and maintain the conditional water rights which are the subject of this application. This list is not intended to be exclusive and may be supplemented by additional evidence. The above activities on the part of the Applicant, the State Board of Land Commissioners, show a pattern of diligence and continuous work toward the development and implementation of these water rights. **4. Name and address of owners of the land on which structures are or will be located, upon which water is or will be stored, or upon which water is or will be placed to beneficial use:** All structures listed above are located on land owned by the Applicant. WHEREFORE, Applicant prays that this Court enter a decree finding that Applicant has exercised reasonable diligence in the development of the conditional water rights and that these conditional amounts be decreed absolute.

-----  
**CASE NO. 2019CW3068; DEAN AND KRISTI COUTURE, 3365 Needles Drive, Colorado Springs, CO 80908** (Please address all pleadings and inquiries regarding this matter to Applicants' attorneys: Eric K. Trout, Petrock Fendel Poznanovic, 700 17<sup>th</sup> Street, #1800, Denver, CO 80202, (303) 531-0702).

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

**EL PASO COUNTY**

**Subject Property:** 10.7 acres generally located in the W1/2NE1/4 of Section 35, T11S, R67W of the 6th P.M., El Paso County, see **Attachment A** attached to the application for a general location map. (All exhibits/attachments mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Applicant is the owner of the Subject Property and notice pursuant Section 37-92-302(2) is not required. Copy of vesting deed attached on Attachment A. **Source of Water Rights:** The Denver aquifer is not nontributary as described in Sections 37-90-103(10.7), C.R.S., and the Laramie-Fox Hills aquifer is nontributary as described in Section 37-90-103(10.5), C.R.S. **Estimated Amounts:** Denver: 7.7 acre-feet, Laramie-Fox Hills: 3 acre-feet. **Proposed Use:** Domestic, commercial, irrigation, livestock watering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property. **Groundwater to be augmented:** 1 acre-foot per year for 300 years of the Denver aquifer

groundwater requested herein. Water Rights for Augmentation: Return flows from the use of not nontributary and nontributary groundwater and direct discharge of nontributary ground water. Statement of Plan for Augmentation: The Denver aquifer groundwater will be used on the Subject Property through an individual well for in-house, commercial, light industrial, and fire protection purposes. Applicants reserve the right to revise the annual amount to be withdrawn and the proposed uses without having to amend the application or republish the same. Return flow from in-house/commercial use and irrigation use will be approximately 90% and 15% of that use, respectively. During pumping Applicants will replace actual depletions to the affected stream system pursuant to Section 37-90-137(9)(c.5), C.R.S. Depletions occur to the Arkansas River Creek stream systems. Return flows accrue to the Arkansas River stream system via Monument Creek 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 groundwater underlying the Subject Property to meet post pumping augmentation requirements. Further, Applicants pray that this Court grant the application and for such other relief as seems proper in the premises.

-----  
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 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 \$192.00). 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 13<sup>th</sup> day of November 2019.

*Michele Santistevan*

Michele M. Santistevan, Clerk  
District Court, Water Div. 2  
Pueblo Judicial Building  
501 N. Elizabeth Street, Suite 116  
Pueblo, CO 81003; (719) 404-8749



(Court seal)  
Published: