

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JANUARY 2025. (This publication can be viewed in its entirety on the state court website at: www.coloradojudicial.gov)

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 January 2025, 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. 2024CW3029; Previous Case Nos. 18CW3012, 09CW150 – HUMBOLDT PEAK PARTNERS, LLC c/o Buck Blessing, 260 Josephine St., Suite 600, Denver, CO 80206 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David S. Hayes, John D. Buchanan, Hayes Poznanovic Korver, LLC, 700 17th Street, Suite 1800, Denver, CO 80202, Phone: (303) 825-1980)

Amended Application for Finding of Reasonable Diligence and to Make Absolute
CUSTER COUNTY

2. Original Application. An Application for Finding of Reasonable Diligence was originally filed on August 26, 2024. This Amended Application adds a claim, set forth in Paragraph 6, below, to make the subject water right absolute, based on the comments in the Division Engineer's December 27, 2024 Summary of Consultation. **3. Name of conditional water right:** Humboldt Peak Pond (the "Pond"). **4. Description of the conditional water right:** A. Date of original decree: The original decree for the Pond was issued on February 8, 2012 in Case No. 09CW150, District Court, Water Division No. 2. B. Subsequent diligence decree: A subsequent decree was entered on August 6, 2018 in Case No. 18CW3012, District Court, Water Division No. 2. C. Legal description: The Pond is located in the SW1/4 SW1/4 NE1/4 and the NW1/4 NW1/4 SE1/4 of Section 13, T. 23 S., R. 73 W., of the 6th P.M. in Custer County, Colorado, and is depicted on **Exhibit A**, 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.) A point on the centerline of the dam at the location of the outlet is approximately 2,785 feet from the North line and 1,980 feet from the East line of said Section 13. WDID 1303322. UTM: 456465 E, 4211682 N. D. Source: Macey Creek, tributary to Grape Creek, which is tributary to the Arkansas River; and precipitation and runoff in the watershed tributary to the Pond, which is tributary to Stanton Creek, tributary to Grape Creek, tributary to the Arkansas River. E. Appropriation Date: August 28, 2009. F. Rate of Diversion: 1.09 c.f.s, conditional. G. Amount: 10.5 acre-feet, conditional. H. Use: Aesthetic, piscatorial, recreation, wildlife habitat, and fire suppression. **5. Evidence of Reasonable Diligence:** The Pond is part of an integrated system for supplying the water demands of the Humboldt Peak Ranch. The application contains a summary of specific projects and work undertaken during the diligence period (from August 2018 to present) and is available for inspection at the office of the Division 2 Water Clerk or via CCE. The list is not intended to be all inclusive and may be supplemented by additional evidence at any hearing in this

matter. **6. Claim to Make Absolute:** On November 3, 2021, Applicant, through the Upper Arkansas Water Conservancy District, received approval to exchange 11 acre-feet into the Humboldt Peak Pond. Water was subsequently stored in the Pond for beneficial use by exchange in the amount of 10.5 acre-feet and at the rate of 1.09 cfs. **7. Names, and addresses of owners or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant. WHEREFORE, Applicant respectfully requests that this Court enter Findings of Fact, Conclusions of Law, and a Judgment and Decree: (1) finding that Humboldt Peak Partners, LLC has been reasonably diligent in the development of the conditional water right originally decreed to the Humboldt Peak Pond in Case No. 09CW150, as described in the preceding paragraphs; (2) making the water right for the Pond fully absolute or alternately continuing said conditional water right in full force and effect; and (3) granting such other relief as may be appropriate.

CASE NO. 2025CW3000; JOSEPH AND CHERYL KROPF, 490 Hoover Road, Deer Grove, IL 61243 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David M. Shohet and W. James Tilton of Monson, Cummins, Shohet & Farr, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921 (719) 471-1212)

Amended Application for Change of Water Right

CUSTER COUNTY

III. Hartbauer Ditch No. 5 (WDID = 1300539). **IV.** The Hartbauer Ditch No. 5 was decreed in the final Decree dated March 12, 1896, In the Matter of the Priorities of the Water Rights and Adjudication thereof, in Water District No. 13, by the District Court, Fremont County. The Hartbauer Ditch No. 5 was decreed 0.2 c.f.s., with an appropriation date of June 7, 1874 (Priority No. 92), for the irrigation of 12 acres located in the NE¼ of the SE¼ of Section 29, Township 23 South, Range 72 West of the 6th P.M. The decreed source of water for the Hartbauer Ditch No. 5 is the Middle North Branch of Colony Creek (a/k/a the North Branch of Middle Colony Creek), with its headgate located on the northwest side of Middle North Branch of Colony Creek at a point in the NE¼ of the SE ¼ of Section 29, Township 23 South, Range 72 West of the 6th P.M. The decree for the Hartbauer Ditch No. 5 is attached to the application as **Exhibit A.** (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **VI.** The Hartbauer Ditch No. 5 has been diverted from the southeast side of the Middle North Branch of Colony Creek approximately 480 feet upstream from its decreed location for at least 80 years by the Coleman Family irrigating 12 acres of land within the Hartbauer Ditch No. 5's decreed acreage on the southeast side of said creek. The current headgate of the Hartbauer Ditch No. 5 is located in the NW¼ of the SE¼ of Section 29, Township 23 South, Range 72 West of the 6th P.M., at UTM coordinates Zone 13, 459802 E and 4208100 N. Applicant seeks a decree confirming the historical point of diversion in the NW¼ of the SE¼ of Section 29, Township 23 South, Range 72 West of the 6th P.M., at UTM coordinates Zone 13, 459802 E and 4208100 N, and place of use of the Hartbauer Ditch No. 5 within its decreed acreage on the southeast side of the Middle North Branch of Colony Creek. A map showing the decreed point of diversion and the new point of

diversion is attached in **Exhibit B**. This proposed change will apply to the entire 0.2 c.f.s. decreed for the Hartbauer Ditch No. 5. No other changes are requested. **VII.** The Hartbauer Ditch No. 5 headgate is located on lands owned by S&C Outfit, LLC, whose address, based on the Custer County Assessor's website, is PO Box 1195, Westcliffe, CO 81252-1195. **VIII.** Applicant will install all measurement devices required by the Division Engineer. Diversions of the Hartbauer Ditch No. 5 shall be limited to its decreed amount. Irrigation of the Hartbauer Ditch No. 5 shall be limited to 12 acres of land within the Hartbauer Ditch No. 5's decreed acreage on the southeast side of said creek. No intervening water rights exist between the decreed and new diversion points.

CASE NO. 2025CW3001; Previous Case Nos. 80CW92, 86CW35, 92CW71, 99CW56, 05CW86, 12CW28, 18CW3040 – CITY OF FLORENCE, 600 WEST 3RD STREET, FLORENCE, CO 81226; TOWN OF COAL CREEK, 311 MAIN STREET, COAL CREEK, CO 81221; TOWN OF WILLIAMSBURG, 1 JOHN STREET, WILLIAMSBURG, CO 81226 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Robert F.T. Krassa, Krassa & Miller, LLC, 2300 canyon Blvd., Ste. 2 Boulder CO 80302, 303-442-2156)

Application for Finding of Reasonable Diligence

FREMONT COUNTY

2. Name of structure: Florence-Coal Creek-Williamsburg Reservoir. **3. Describe conditional water right** giving the following from the Referee's Ruling and Judgment and Decree: **a. Date of Original Decree:** May 26, 1982, Case No. 80CW92, District Court, Water Division 2. **b. Subsequent decrees** awarding findings of diligence: Case 86CW35 decree entered September 24, 1986, 92CW71 decree entered March 16, 1993, 99CW56 decree entered November 4, 1999, 05CW86 decree entered March 7, 2006, 12CW28 decree entered July 10, 2012 and 18CW3040 decree entered January 2, 2019, all in this Court. **c. Location:** The reservoir is located in the W ½ Sec. 17 and E ½ Sec. 18, Township 19 South, Range 69 West of the 6th P.M., in Fremont County. The north abutment of the dam will be located at a point 2200 feet south of the north section line and 2600 feet east of the west section line of said Section 17. The south abutment of the dam will be located at a point 1900 feet north of the south section line and 2200 feet east of the west section line of said Section 17. **d. Source:** Arkansas River and Oak Creek. **e. Date of Appropriation:** August 26, 1980. **f. Amount:** 2250 acre feet, conditional. **g. Use:** Irrigation, domestic, municipal and all other beneficial uses. **4. Provide a detailed outline** of what has been done toward completion or for completion of appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: During the current diligence period, discussions with the Regional Water Board have continued. Those discussions have been expanded to include Canon City and Pueblo West Metropolitan Districts, both of which are municipal water providers which are considering participating in the Oak Creek Reservoir project with their own water rights, which would increase the economy of scale of the project. The complete Corps of Engineers report "Geotechnical Baseline Report (GBR) Existing Conditions" dated July 2006 has been shared with those entities. That report is filed with the present Application as requested by Division Engineer Consultation Report filed November 13, 2018 in preceding diligence case 18CW3040. A request for proposals for further evaluation of site conditions was provided and a proposal was received but has not yet been acted on.

Landownership information has been updated. Applicants have spent over \$13,000 on this project during this diligence period. The Oak Creek Reservoir will be a feature or component of Applicants' integrated water system. During the current diligence period, Applicants have spent approximately \$3.1 million on capital improvements to their water system, all of which are necessary to efficiently utilize the storage capability of the Oak Creek Reservoir project. Applicants have in all respects diligently worked toward completion of the subject reservoir and placing the conditional water rights to the decreed beneficial uses. **5. If claim to make absolute:** not applicable. **6. Names and addresses of owners** or reputed owners of the land upon which storage structure or modification to any existing diversion or storage structures is or will be constructed or upon which water is or will be stored: Gleason Family Trust, 926 E Boulder St, Colorado Springs, CO 80903-3108; NJR Family Trust, 201 Elm Ave. W., Florence, CO 81226-9448; Mike Langston, P O Box 279, Florence, CO 81226-0279; Daniel Anthony Adamic, 1108 Short St, Canon City, CO 81212-4261; High Meadows Homeowners Assoc Inc, 100 High Meadows Dr, Florence, CO 81226-9452; Preferred Materials Inc.; 2273 River Road, Grand Junction, CO 81515-7179; Atchison Topeka & Santa Fe R/r Co, Property Tax Dept, P O Box 961089, Fort Worth, TX 76161-0089; Fremont County Department of Transportation, 1170 Red Canyon Road, Cañon City, CO 81212; Union Pacific Railroad Company, 1400 Douglas St, Stop 1640, Omaha, NE 68179-1640

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 March 2025, (forms available at Clerk's office or at www.coloradojudicial.gov, 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 12th day of February 2025.

Michele Santistevan

Michele M. Santistevan, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8832



(Court seal)
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