DISTRICT COURT, WATER DIVISION 7, COLORADO

WATER RESUME

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER DIVISION NO. 7

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications filed in the Office of the Water Clerk during the month of February 2009, for each county affected.

09CW12 Jim Denier, PO Box 1872, Durango, CO 81302: **Honking Eagle Irrigation Well**; La Plata County; Permit #67800-F; NW1/4NE1/4, Section 11, T36N, R9W, NMPM; 307 feet from North, 2470 feet from East; Northing 250220, Easting 4143824; Animas River Alluvium; Depth, 40 ft.; Date of appropriation, 12/15/08; Appropriation was initiated by construction of well under permit no. 169143 9/2/94; Date applied to beneficial use, 9/6/94; Number of acres historically irrigated, 5.0; Total number of acres proposed to be irrigated, 5.0; Legal description of the land irrigated, Lots C-2 and C-1 Honking Eagle Subdivision; Area of lawns and gardens irrigated, 1.0; 50 gpm Absolute. Application for Underground Water Right (4 pages)

09CW13 LA PLATA COUNTY, LA PLATA WATER DISTRICT NO. 33
Applicant: Name, Address, Telephone Number Robert P. Johnson, P. O. Box 206, Hesperus, CO. 81326, (970) 749-0093. 2. Attorney: James C. Anesi, 2023 Main Avenue, Durango, Colorado 81301; (970) 247-8720. 3. Structure or Plan: 160 Pump Station. 4. Type of Application: Waste water. 5. Drainage Basin: Animas River, Coal Gulch tributary of Lightner Creek, La Plata County, Colorado. 6. Location: SE1/4 of the NE1/4 of Section 29, Township 35N, Range 10W, NMPM, 2000 feet from the North and 125 feed from the East section lines. 7. Type of Use: Utilize effluent for domestic, commercial and storage during irrigation time periods from October through April of each year for storage of effluent water in Lake Durango for use in domestic treatment system by Lake Durango. 8. Type of Structure: 160 Pump Station. 9. Quantity: 0.4444 cfs (200 gpm) conditional. 10. Additional Information: The Applicant has since the issuance of the last Decree for a Finding of Due Diligence employed various engineers to complete engineering studies for the delivery of water from Lightner Creek to the Lake Durango Water Service System, including engineering studies for cost of building a water line from Lightner Creek via the Wild Cat Canyon route or U. S. Highway 160 route, including installation and design of a pump station and line, surveying of the said line a safe yield, analysis of the water rights, designs of pump stations, project designs and completions of the transfer of 5.0 cfs from Lightner Creek to Lake Durango Water System. In addition, the Applicant has entered into negotiations, both through the Public Utilities Commissions, and have reached an agreement with a Lake Durango Water Authority for the sale and transfer of the assets of Lake Durango Water Company and the lease of water rights individually owned and leased to Lake Durango by Robert P. Johnson. It is anticipated that the completion and transfer of water rights from Lake Durango Water Company, Inc. into the Lake Durango Water Authority will be completed prior to the close of June 2009. The Applicant has spent in excess of $60,000.00 for various engineers and attorneys, including the Applicant's attorney, James C. Anesi, PC, Southwest Hydro-Logic, Breliam Engineering, Craig Surveying and Mapping, and Akamai Engineering, all to further the completion of the Lightner Creek Extension to be able to utilize the 5.0 cfs subject to this application for use within the Lake Durango Water service area. (3 pages)

09CW14 LA PLATA COUNTY, COTTONWOOD DRAW AND TRIBUTARY OF COTTONWOOD DRAW, FLORIDA RIVER, ANIMAS RIVER DRAINAGE. High Plains Properties, LLC, c/o Harold Elam, P. O. Box 1728, Grand Junction, CO 81502, (970) 242-5370, with copies of pleadings to: Kirsten

M. Kurath, Williams, Turner & Holmes, P.C., P. O. Box 338, Grand Junction, CO 81502-0338. APPLICATION TO MAKE ABSOLUTE AND FOR FINDING OF REASONABLE DILIGENCE. Structure: Gosney Pump. Location: Gosney Pump is located in La Plata County in the NE 1/4 of the SW 1/4 of Section 35, T34N, R9W, N.M.P.M., at a point 2620 ft from the South boundary and 2900 ft from the East boundary. See map attached as Exhibit A. Source: Cottonwood Draw, Florida River, Animas River Drainage. Appropriation Date: Sept. 30, 2001. Amount: 1.0 c.f.s., conditional. Use: Industrial purposes, washing gravel. Structure: Gosney Pond. Location: Gosney Pond is located in the NW1/4 SW1/4, of Section 35, T34N, R9W, N.M.P.M., being approximately 2500' North and 1230' East of the SW corner of said Section 35. See map attached as Exhibit A. Source: Tributary of Cottonwood Draw, Florida River, Animas River Drainage. Appropriation Date: Sept. 30, 2001. Amount: 2.0 acre feet, conditional. Use: Industrial associated with washing gravel. Dam and Reservoir Information: Surface area: 0.40 acres. Height: 11 ft. Length of dam: 150 ft. Dead Storage: 2.0 (to be pumped). Remarks: Each of the structures named above constitutes a feature of an integrated water supply system for the mining of sand and gravel on Applicant's real property shown on Exhibit A. All work performed with respect to the development of each of the water rights referenced above constitutes diligence toward each and both of the conditional decrees. The Gosney Pump and Gosney Pond water rights were originally decreed in Cases No. 02 CW 36 and 02 CW 37, respectively, in the Dist. Court for Water Div. No. 7 and the original decrees as amended required that the next diligence application be filed in Feb. 2009. Claim to make absolute: Gosney Pump: Date water applied to beneficial use: Since early 2005. Amount: 0.67 c.f.s. Use: Industrial uses for sand and gravel mining. The water has been beneficially used for dust suppression on roads, stockpiles, mining areas and with the crushing associated with the sand and gravel operations on Applicant's property. The use of both water rights is described more fully below. Description of place of use where water is applied to beneficial use: See map attached as Exhibit A. The water has been used for dust suppression on the road from the Gosney Pump point of diversion to the gravel pit, as well as on the secondary roads shown on Exhibit A. The water has been used in the crushing process associated at the pit and for dust suppression on stockpiles and during mining and crushing operations. The area of use is generally shown on Exhibit A as the disturbed areas on Applicant's property. Gosney Pond: Date water applied to beneficial use: Since early 2005. Amount: 2.0 acre feet Use: Industrial uses for sand and gravel mining. The water has been beneficially used for dust suppression on roads, stockpiles, mining areas and with the crushing associated with the sand and gravel operations on Applicant's property. The use of both water rights is described more fully below. Description of place of use where water is applied to beneficial use: See map attached as Exhibit A. The water has been used for dust suppression on the road from the Gosney Pump point of diversion to the gravel pit, as well as on the secondary roads shown on Exhibit A. The water has been used in the crushing process associated at the pit and for dust suppression on stockpiles and during mining and crushing operations. The area of use is generally shown on Exhibit A as the disturbed areas on Applicant's property. Remarks: On Dec. 1, 2004, Elam Construction, Inc. ("Elam") entered into a Sand and Gravel Mining and Asphalt Plant Lease with Agri-DLD, LLC, the then owner of the water rights. Elam began its operations in early 2005 and began using the water rights at that time. Elam pumps water from the Gosney Pump with a pump with a listed capacity of 300 gpm. The water is put into a water truck and used as described above. Since Elam began its operations, the Gosney Pond has been filled to capacity. The Gosney Pond fills during frequent storms and by catching storm runoff. When it is difficult to divert at Gosney Pump because of low flow, Elam pumps water from the pond and the water is used as described above. See Affidavit of Joseph A. Wancura, Elam's Hot Plant Operator, submitted herewith as Exhibit B in support of the request to make 0.67 c.f.s. of the Gosney Pump and 2.0 acre feet of the Gosney Pond absolute. On Mar. 30, 2007, Applicant purchased the water rights and the real property shown on Exhibit A from Agri-DLD, LLC. Elam has continued its sand and gravel mining and asphalt plant operations on Applicant's real property and using the water rights as described above pursuant to its lease agreement with Applicant since Apr. 1, 2007. The Application contains 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, including expenditures or for completion of the appropriations and application of water to beneficial use. In the event the Court

determines that Applicant has not shown that the water rights have been put to beneficial use in the amount described above, Applicant requests a finding of reasonable diligence. Names and addresses of owners of the land upon which 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: The Gosney Pump is located on land owned by Harold Baxtrom, 3557 CR 307, Durango, CO 81301. The Gosney Pond is located on land owned by Applicant. Applicant requests that the Court adjudge and decree that the Gosney Pump and Gosney Pond water rights have been made absolute in the amount of 0.67 c.f.s. and 2.0 acre feet, respectively, and that the Applicant has been reasonably diligent in the development of all portions of the water rights that are not made absolute herein, and that the water rights be continued in full force and effect in the amount not found to have been put to beneficial use. (10 pages)

09CW15 (93CW82, 01CW22) MOUNTAIN VIEW DEVELOPMENT CORP., c/o J.R. Ford, P.O. Box 4490, Pagosa Springs, Colorado 81157, Telephone: 970-264-5000. ATTORNEY: Douglas M. Sinor, Ema I. Garcia, Trout, Raley, Montaño, Witwer & Freeman, P.C., 1120 Lincoln Street, Suite 1600, Denver, Colorado 80203. **Application to Make Absolute or in the Alternative for Finding of Reasonable Diligence, in ARCHULETA COUNTY.** 2. Name of structure: Mountain View Dam and Reservoir. 3. Description of conditional water right: A. Date of Original Decree: Entered April 19, 1995, Case No. 93CW82, Water Division 7. B. Legal Description: i. Mountain View Dam and Reservoir is located in Section 34, Township 36 North, Range 2 West, New Mexico P.M. in Archuleta County, the axis of which is more particularly described as follows: Beginning at the proposed westerly dam axis point from whence the Southeast 1/16 corner of Section 34, Township 36 North, Range 2 West, New Mexico P.M. bears South 13 degrees, 31 minutes, 47 seconds East a distance of 3,574.7 feet, thence along the proposed axis North 74 degrees, 53 minutes, 46 seconds East a distance of 600 feet, more or less, to the proposed easterly dam axis point. ii. Alternate Mountain View Dam and Reservoir is proposed to be located in Section 34, Township 36 North, Range 2 West, New Mexico P.M. in Archuleta County, the axis of which is more particularly described as follows: Beginning at the proposed southerly dam axis point from whence the Southeast 1/16 corner of Section 34, Township 36 North, Range 2 West, New Mexico P.M. bears South 5 degrees, 52 minutes, 35 seconds East a distance of 2,878 feet, thence along the proposed axis North 22 degrees, 57 minutes, 53 seconds East a distance of 500 feet, more or less, to the proposed northerly dam axis point. C. Source: Waters of Hidden Valley Creek and waters of Four Mile Creek from Applicant's 1902 Four Mile Ditch Rights in accordance with the decree entered in Case No. 93CW83, Water Division 7, and any subsequent decree, tributaries of the San Juan River. D. Appropriation Date: December 15, 1993. E. Amounts: i. Mountain View Dam and Reservoir: 1,025 acre-feet, conditional, with the right to fill and refill. ii. Alternate Mountain View Dam and Reservoir: 925 acre-feet, conditional, with the right to fill and refill. F. Uses: Domestic, residential, environment, irrigation, stock watering, cattle ranching, commercial, fish culture, firefighting, dust suppression, recreational, piscatorial, exchange and augmentation for Applicant's land and recreational development. 4. 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: Since the entry of the previous finding of diligence in Case No. 01CW22 in 2003, Applicant has expended $481,392.58 on installation of a water line system for the entire development. Applicant has installed a water treatment and distribution system that includes two (2) pump houses, a 60,000 gallon storage tank, and a 25,000 gallon storage tank at a cost of $385,863.09. Water distribution lines have been run to each of the 35 parcels in the development. Fire hydrants have been installed on each lot in the development. The water system currently serves 10 homes that have been built in the development. Applicant has also expended $6,093,678.05 to develop the dam, reservoir, and eighteen (18) acres of wetlands on Applicant's property surrounding and upstream of the Mountain View Dam and Reservoir in compliance with mitigation required by Applicant's Corps of Engineers permit. Applicant has installed a sprinkler system to irrigate hay fields and common areas in the development at a cost of approximately $100,000. Applicant has installed stock ponds and runs approximately 100-150 pairs of cows and calves on Applicant's property each year. The reservoir

includes cold water and warm water fisheries. Water is also used for dust suppression on the gravel roads within the development. 5. Claim to make absolute: A. Date water applied to beneficial use: The Mountain View Dam and Reservoir was completed at the alternate site, and first filled on approximately June 1, 2001. Amount: 925 acre-feet. Use: As explained above, water has been put to beneficial use for the decreed uses of domestic, residential, environment, irrigation, stock watering, cattle ranching, commercial, fish culture, firefighting, dust suppression, recreational, piscatorial, exchange and augmentation for Applicant's land and recreational development. B. Description of place of use where water is applied to beneficial use: Within Mountain View Dam and Reservoir and on Applicant's development surrounding the dam. 6. Name of landowner: Applicant. WHEREFORE, the Applicant requests that Court enter a decree confirming that the Mountain View Dam and Reservoir conditional water right has been made fully absolute, or in the alternative a decree confirming that the Applicant has exercised reasonable diligence toward completion of the appropriation. (5 pages)

09CW16; ARCHULETA COUNTY, WATER DISTRICT NO. 7: **1) Applicants:** Keyah Grande, Alan Sackman, Barbara Sackman, 13211 West Highway 160, Pagosa Springs, CO 81147; **2) Attorney:** Janice C. Sheftel, Maynes, Bradford, Shipps & Sheftel, LLP, P.O. Box 2717, Durango, CO 81302; **3) New groundwater rights and Limited Amendment to Plan for Augmentation decreed in Case 02CW46 ("PLAN")**; **4) Structure:** Barb's Well, a replacement well for Keyah Grande Well decreed in Case 02CW46; **5) Drainage Basin:** Devil Creek, tributary to the Piedra and San Juan Rivers; **6) Point of Diversion:** NW/4NW/4, Sec. 8, T34N, R3W, NMPM, 200' from North and 1200' from West from Section lines; **7) Use:** In-structure use for home, commercial usage at lodge, indoor swimming pool and hot tubs, livestock watering, lawn and garden irrigation, use inside barns and shops, firefighting; **8) Quantity:** 0.11 cfs (50 gpm) absolute; **9)** Well Permit #277802; **10) Limited Amendment to PLAN** - Barb's Well will be augmented under the PLAN instead of the Keyah Grande Well, which has been abandoned. This amendment requires substituting Barb's Well for Keyah Grande Well in the following paragraphs of the PLAN: Paragraphs 4; 4(a); 4(e); 6(d); 11; and 14, regarding the well's location, depletions to the stream, out-of-priority depletions to be replaced and use of well without augmentation. Other terms and conditions of the PLAN shall remain in full force and effect. (5 pages)

09CW17. PAGOSA AREA WATER AND SANITATION DISTRICT AND SAN JUAN WATER CONSERVANCY DISTRICT, c/o Evan D. Ela, Collins Cockrel & Cole, 390 Union Boulevard, Suite 400, Denver, Colorado 80228-1556, (303) 986-1551, APPLICATION FOR FINDINGS OF REASONABLE DILIGENCE, **ARCHULETA COUNTY**, 1. Name of Structure: Second Enlargement of the Dutton Ditch. 2. Describe conditional water rights as to each structure, giving the following from the Findings of Fact, Conclusions of Law and Decree: a. Decreed Water Rights: Second Enlargement of the Dutton Ditch (i) Date of Original Decree: December 19, 1968, Case No. 73-308D, District Court Within and For the County of Archuleta, In the Matter of the Supplemental Adjudication of Priorities of Water Rights for the Use of Water for Irrigation and Other Beneficial Uses in Water District No. 29 of the State of Colorado (San Juan River and Tributaries). (ii) Date of Most Recent Decree Granting Continued Diligence: February 23, 2003, Case No. 01CW29, District Court, Water Division No. 7, Findings of Fact, Ruling of the Referee, Judgment and Decree. (iii) Location of Point of Diversion: The headgate of the Second Enlargement of the Dutton Ditch is located on the West Bank of Four Mile Creek, a tributary of the San Juan River, at a point whence the northwest corner of Section 3, Township 36 North, Range 2 West, N.M.P.M. bears South 77º32' West, a distance of 2,610 feet. (iv) Source: Four Mile Creek and its tributaries. (v) Appropriation Date: July 6, 1967. (vi) Amount: 40 cfs, CONDITIONAL. (vii) Uses: Irrigation, industrial, municipal and domestic uses. 3. Outline of work done and funds expended by the Pagosa Area Water and Sanitation District during the diligence period toward completion of the appropriation: The following work was done, in part, toward perfection of the Second Enlargement of the Dutton Ditch water rights. a. The District performed substantial work on and completed the Dutton Ditch Pipeline, a ductile iron pipeline extending from the Dutton Ditch headgate to the Dutton Ditch Extension, an already existing pipeline connecting the Dutton Ditch to Hatcher

Reservoir, one of the District's primary storage reservoirs. In addition to the costs incurred for engineering, materials, permitting and installation of this facility, the District incurred significant legal and engineering costs by participating in negotiations with Thomas and Margie Smith concerning the Pipeline Participation Agreement, recorded at Reception No. 20502505, on March 21, 2005, in the Archuleta County Public Records. All costs incurred by the District for this facility during the diligence period amounted to more than $3.93 million. b. The District performed substantial work on and has nearly completed (installation of the wetlands mitigation area remains) the enlargement of Stevens Reservoir, another of the District's primary storage reservoirs that can receive and store water diverted through the Dutton Ditch Pipeline by virtue of the subject conditional water rights. Costs incurred by the District for the engineering, design and construction amounted to approximately $3.2 million. Costs incurred by the District for land acquisition associated with the enlargement of Stevens Reservoir totaled approximately $833,685 during the diligence period. c. The District adjudicated, in Case No. 05CW31, a diligence decree for its water rights to Martinez Reservoir, a proposed storage reservoir located on Martinez Creek, that could receive and store water diverted through the Dutton Ditch Pipeline by virtue of the subject conditional water rights. In addition, the District prosecuted applications in the water court for water rights related to other facilities that are a part of the District's integrated municipal water system and has continued to protect its water rights by participating in water court adjudications of the water rights of others to prevent a negative impact on the water yields of the District's water rights. The legal and engineering costs incurred by the District for these matters totaled approximately $168,168 during the diligence period. d. The District has continued to update and modify its water planning efforts during the diligence period in accordance with the changing demands for water within the District. Engineering work commissioned and other costs incurred for this continuing effort amounted to $360,615. e. Expenditures by the District for necessary improvements, repairs and operations of the Dutton Ditch, the Dutton Ditch Pipeline and other raw water supply ditches during the diligence period have totaled approximately $34,714. f. During the diligence period, the District prosecuted its joint water rights application for the Dry Gulch Project, conducted preliminary investigations into environmental, cultural, land acquisition and design matters, and has engaged consultants to work toward further development of the project. Expenditures for these legal, engineering, consulting and related costs have totaled approximately $322,540. g. During the diligence period, the District provided funding for planning and acquisition of land related to the Dry Gulch Project. Expenditures for this acquisition totaled over $8.53 million. 4. Outline of work done and funds expended by the San Juan Water Conservancy District during the diligence period toward completion of the appropriation: The following work was done, in part, toward perfection of the Second Enlargement of the Dutton Ditch water rights. a. The Conservancy District participated and partially funded the work toward the enlargement of Stevens Reservoir (described above), which can receive and store water diverted through the Dutton Ditch Pipeline by virtue of the subject conditional water rights. Costs incurred by the Conservancy District for participating in this project amounted to approximately $40,000. b. The Conservancy District has continued to update and modify its water planning efforts during the diligence period in accordance with the changing demands for water and potential water development projects. Engineering work commissioned during this period and other costs incurred for this continuing effort amounted to approximately $125,550. c. The Conservancy District prosecuted applications in the water court for water rights related to other facilities necessary for the Conservancy District to develop water supplies and water works within Archuleta County and has continued to protect its water rights by participating in water court adjudications of the water rights of others that could have a negative impact on the water yields of the District's water rights. District expenditures for legal costs for this purpose have totaled approximately $36,220. d. During the diligence period, the Conservancy District prosecuted its joint water rights application for the Dry Gulch Project, conducted preliminary investigations into environmental, cultural, land acquisition and design matters, and has engaged consultants to work toward further development of the project. Expenditures for these legal, engineering, consulting and related costs have totaled approximately $300,860. e. During the diligence period, the Conservancy District provided funding for planning and acquisition of land related to the Dry Gulch Project. Expenditures for this acquisition

totaled over $1.0 million. 5. Additional remarks: The Co-applicants each own 20 cfs of the total 40 cfs subject water rights conditionally decreed. This joint application seeks to obtain findings of reasonable diligence and continuation of the entire 40 cfs decreed to the Second Enlargement of the Dutton Ditch.
WHEREFORE, the Co-applicants respectfully request the judgment and decree of this Court: 1. Finding that Co-applicants have diligently pursued the perfection of the Dutton Ditch Second Enlargement water rights originally decreed in Case No. 73-308D, and granting continued diligence for the subject conditional water rights for another statutory diligence period. 2. Such other relief as the Court deems proper. (7 pages)

09CW18. **APPLICATION FOR CONDITIONAL SURFACE WATER RIGHT**, in Archuleta County. **Applicant:** RealTime Investment, LLC, P.O. Box 100, Chromo, Colorado 81128 c/o Jennifer Russell, Russell & Pieterse, LLC, P.O. Box 2673, Telluride, Colorado 81435, (970) 728-5006. **Name of structure:** Eaklor Ditch. **Legal description of point of diversion:** SW1/4NE1/4SE1/4, Sec. 3, T32N, R2E, N.M.P.M. **Source:** Navajo River. **Appropriation date:** June 30, 2008, by installation of hydropower equipment. **Amount claimed**: 1.8 c.f.s., conditional. **Proposed beneficial uses:** Hydropower and fire protection. **Name of owner of land upon which the diversion is located:** The owner of the land upon which the diversion structure is located is Continental Divide Ranch, LLC, 736 Main Avenue, Durango, Colorado 81301. (4 pages)

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of April, 2009, to file with the Water Clerk, a verified Statement of Opposition, setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions. A copy of such Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit or certificate of such service shall be filed with the Water Clerk, as prescribed by Rule 5, CRCP.
(Filing fee: $158.00; Forms are available through the Office of the Water Clerk or on the Judicial site at www.courts.state.co.us; Danene M. Etz, Clerk of the Water Court, 1060 E. 2nd Ave., Room 106, Durango, CO 81301-5157; 970-247-2304, Ext. 6181)

Published: before March 31, 2009

Original Signature on file
Danene M. Etz, Water Clerk