

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JANUARY 2024. (This publication can be viewed in its entirety on the state court website at: www.courts.state.co.us prior to March 13, 2024 and www.coloradojudicial.gov effective March 13, 2024).

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 2024, 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:

****Per Order, Resume to be published by Water Division 1****

CASE NO. 2024CW3000, Water Division 2 and CASE NO. 2024CW3002, Water Division 1

CASE NO. 2024CW3001; A withdrawal of application was filed under this case number. This case is being listed in the resume to account for the case number in consecutive order.

Case No. 2024CW3002; 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 Eric K. Trout, Hayes Poznanovic Korver LLC, 700 17th Street, Suite 1800, Denver, Colorado 80202 (303) 825-1980)

Application For Simple Change In Surface Point Of Diversion

CUSTER COUNTY, COLORADO

2. Decreed water right for which change is sought: A. Name of structure: F. Dietrich Ditch No. 4 (WDID 1300779). B. Original decree. March 12, 1896, District Court, Fremont County, Colorado. C. Legal description of structure as described in most recent decree that adjudicated location. At a point whence the SW Corner NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14, Township 23 South, Range 73 West, bears N. 17°30' East 350 feet, as depicted on Exhibit A, attached to the application and available for inspection at the Division 2 Water Court or via Colorado Courts E-filing. D. Source. Horn Creek. E. Appropriation date. i. Priority 407: June 10, 1886 (Admin. No. 13310.00000). ii. Priority 457: June 10, 1888 (Admin. No. 14041.00000). F. Amount. i. Priority 407: 0.80 c.f.s., absolute. ii. Priority 457: 0.80 c.f.s., absolute. G. Use. Irrigation. **3. Detailed description of proposed change in a surface point of diversion**: Applicant requests a simple change in point of diversion, pursuant to § 37-92-305(3.5), C.R.S., for both priority nos. 407 and 457 of the F. Dietrich Ditch No. 4, from the original headgate location to a new point of diversion on Horn Creek located at the headgate of the H.H. Tompkins Ditch No. 1, described as follows: At a point on Horn Creek located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, Township 23 South, Range 73 West, 6th P.M., Custer County, Colorado, with UTM coordinates 455517.0mE, 4212390.0mN, Zone 13T, as depicted on Exhibit A map attached to the application. (All exhibits mentioned

herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) This new point of diversion is approximately 2610 feet downstream from the original point of diversion. The F. Dietrich Ditch No. 4 will be used for the same purposes as originally decreed and will utilize the same source as originally decreed. There are no intervening diversions or inflows and the simple change will not result in diversion of a greater flow or amount of water than originally decreed to Priority Nos. 407 and 457. **4. 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 a decree approving the simple change in surface point of diversion as described above.

CASE NO. 2024CW3003; Previous Case: 2017CW3012 – DONALD E. AND CATHIE G. DILL (“Applicants” or “Dills”) 3285 CR 47 Howard, CO 81233 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Sarah Klahn, Ryan Mitchell, Somach Simmons & Dunn, P.C., 1155 Canyon Blvd., Suite 110, Boulder, CO 80302, (303) 449-2834)

First Amended Application To Make Water Right Absolute, Or In The Alternative, For A Finding Of Reasonable Diligence

FREMONT COUNTY, COLORADO

2. Background. This water right was originally decreed June 8, 2018, as conditional in the name of the Dills and Jerry and Frances Pearce for storage in Dill Pond. On September 1, 2022, the Pearces conveyed their interest in the water right to Dills and a transfer of ownership was filed with the Division 2 Water Court. The Dills continue to rely on this water right as a source of supply for irrigation of the entire place of use, and domestic well incidental recharge. Diligence is due on the conditional portion of this water right in June of 2024, but as Applicants made the full conditional amount absolute during the spring of 2019, they seek an early determination of their claim. On January 22, 2024, Applicants filed the original Application in this matter. On January 29, 2024, the Court requested Applicants to file an amended Application that includes the PLSS for the Dill Pond and the points of discharge. Applicants filed this amended Application on January 29, 2024. **3. Description of Subject Water Right and Associated Structures.** The decree entered in Case No. 17CW3012 authorizes storage of water in Dill Pond (“Dill Pond Water Right”). Dill Pond is situated at the terminus of the Horton Creek Extension and has stored the same sources of spring water that are carried in the Horton Creek Extension. The Dill Pond is located on fee land owned by Applicants. The Dill Pond Water Right is described as follows: 3.1 Prior Decree: The Dill Pond Water Right was originally decreed on June 8, 2018, in Case No. 17CW3012, Water Division 2 (“Original Decree”). 3.2 Name of Reservoir: Dill Pond. 3.3 Legal Description of the Location of the Reservoir: Dill Pond is a lined, off-channel, excavated pond. As such, there is no dam. The centroid of Dill Pond is in the SE1/4 of the SW1/4 of Section 15, Township 48 North, Range 10 East of the N.M.P.M., UTM X/Easting 425918, UTM Y/Northing 4251127, Zone 13. The WDDID for Dill Pond is 1203375. The location of Dill Pond is illustrated on the map attached to the application as **Exhibit 1.** (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 3.4 Source: Dill

Pond is filled by the sources of spring water carried in the Horton Creek Extension. The Horton Creek Extension diverts from Old Horton Creek at the following point: NW1/4 of the NW1/4 of Section 27, Township 48 North, Range 10 East of the N.M.P.M., UTM X/Easting 425316, UTM Y/Northing 4249212, Zone 13. Old Horton Creek is tributary to Stout Creek, and is comprised of the flows of five springs (Upper Spring Nos. 1-5, decreed in Case No. 13CW3041 (“five springs”). The Horton Creek Extension originates at Horton Spring 1, which is tributary to Old Horton Creek. Moore Spring, Horton Spring 2, and Horton Spring 3, which are also tributary to Old Horton Creek, discharge directly into the Horton Creek Extension below the diversion point at Old Horton Creek.

3.4.1. Points of Discharge into the Horton Creek Extension:

3.4.1.1. Moore Spring, WDID 1202822: NW1/4 of the NW1/4 of Section 27, Township 48 North, Range 10 East of the N.M.P.M., UTM X/Easting 425225, UTM Y/Northing 4249291, Zone 13;

3.4.1.2 Horton Spring 1, WDID 1201093: NW1/4 of the NW1/4 of Section 27, Township 48 North, Range 10 East of the N.M.P.M., UTM X/Easting 425258, UTM Y/Northing 4249058, Zone 13;

3.4.1.3 Horton Spring 2, WDID 1202820: SW1/4 of the SW1/4 of Section 22, Township 48 North, Range 10 East of the N.M.P.M., UTM X/Easting 425402, UTM Y/Northing 4249433, Zone 13; and

3.4.1.4. Horton Spring 3, WDID 1202821: SW1/4 of the SW1/4 of Section 22, Township 48 North, Range 10 East of the N.M.P.M., UTM X/Easting 425433, UTM Y/Northing 4249570, Zone 13.

3.4.2 Dill Pond is near the terminus of the Horton Creek Extension and receives water from that structure. The Horton Creek Extension carries 1.0 cubic feet per second (“cfs”) and that is the maximum rate decreed to fill this structure.

3.4.2.1. Legal description of each point of diversion: See paragraph 3.4, above.

3.5. Date of Appropriation: May 29, 2013.

3.6. Amount:

3.6.1. **Rate of Diversion:** 1.00 cfs.

3.6.2. **Storage Amount:** 3.4 acre-feet conditional, which is the pond volume. In addition, Applicants are authorized to fill and re-fill Dill Pond in order to keep Dill Pond full to facilitate irrigation operations out of Dill Pond.

3.7. List of Uses or Proposed Uses: Irrigation, domestic well use through recharge incidental to release of water from storage and irrigation use, piscatorial, recreational, and aesthetic.

3.7.1. **Irrigation:** Applicants will irrigate 16.45 acres located generally in the SE1/4 of the SW1/4 and the W1/2 of the W1/2 of the SW1/4 of the SE1/4 of Section 15, and the NE1/4 of the NE1/4 of the NW1/4 of Section 22, all in Township 48 North, Range 10 East, New Mexico PM out of Dill Pond. The aforementioned 16.45 acres is the same acreage that may be irrigated under the direct flow irrigation water right confirmed by the decree in Case No. 13CW3041. Water diverted pursuant to the irrigation water right confirmed by the decree of this Court in Case No. 13CW3041 may also be bypassed through, but not stored in Dill Pond, in order to irrigate the lands described in that decree.

3.7.2. **Domestic Use:** Applicants’ domestic wells will be incidentally recharged from the release of water from storage and subsequent irrigation use of that water.

3.7.3. **Piscatorial:** Dill Pond will be used to stock fish.

3.7.4. **Recreational:** Dill Pond will be used for fishing and swimming.

3.7.5. **Aesthetic:** Dill Pond will aesthetically enhance the property.

3.8. Surface Area of the High-Water Line: 0.42 acres.

3.8.1. **Dill Pond Depth:** 14 feet.

3.9. Total Capacity of Reservoir in Acre-Feet: 3.4 acre-feet.

3.9.1. **Active Capacity:** 0 acre-feet.

3.9.2. **Dead Storage:** 3.4 acre-feet.

4. Season of Use: Dill Pond may be operated year-round for irrigation purposes. During the growing season, water from Dill Pond will be used for irrigation, domestic well use- through incidental recharge from the release of water from storage and subsequent irrigation use of that water, piscatorial, recreational, and aesthetic uses. During the other

months of the year, water from Dill Pond will be delivered to the irrigated acres in order to build-up and maintain soil moisture. **5. Request to Make Conditional Water Right Absolute:** 5.1. Date Water was Applied to Beneficial Use: May 21, 2019. 5.2. Amount: 3.4 acre-feet. 5.3. Use: Irrigation, domestic well use through recharge incidental to release of water from storage and irrigation use, piscatorial, recreational, and aesthetic. 5.4. Supporting Evidence of Water Diverted In-Priority and Applied to Beneficial Use Claimed: Dill Pond was filled to its maximum capacity of 3.4 acre-feet on May 21, 2019, as shown by the Affidavit of Donald E. Dill, attached as **Exhibit 2**. Such storage satisfies C.R.S. § 37-92-301(4)(e). Further, water was used from Dill Pond for the decreed uses. **6. Request for Finding of Diligence (in the Alternative):** To the extent the Court declines to find that Applicants have satisfied their claim that the 3.4 acre-feet has been made absolute, Applicants have diligently maintained the Dill Pond Water Right, and can and will perfect it for beneficial uses pursuant to the standards set forth in C.R.S. §§ 37-92-301(4) and 37-92-305(9)(b) and associated caselaw. As detailed below, Applicants have spent approximately \$55,000 on planning, design, legal and construction efforts related to water rights protection, maintenance and improvements during the diligence period. Activities and expenditures during the diligence period that demonstrate diligent development of the Dill Pond Water Right include, but are not limited to: 6.1. Dill Pond was lined at a cost of \$20,000. 6.2. Expenditure of legal fees in the amount of approximately \$22,300 to defend the appeal brought by opposer Yamasaki Ring, LLC in *Dill v. Yamasaki Ring, LLC*, 435 P.3d 1067 (Colo. 2019), which directly impacted Applicants' right to use water from Moore Spring and Horton Spring Nos. 1-3, and other portions of Applicants' integrated system. 6.3. The 12-inch flume was reset to level and a 9-inch flume was installed. The 9-inch flume was installed at a cost of \$2,500.00. 6.4. Expenditure of legal fees in the amount of approximately \$10,100 in Case No. 23CW3003, to adjudicate as absolute the remaining conditional portion (0.54 cfs) of Applicants' direct flow water right in the Horton Creek Extension, which makes up a portion of Applicants' integrated system. **7. Name and Address of Owner of the Land Upon Which Structures Are or Will be Located, Upon Which Water Is or Will Be Stored, and Upon Which Water Is or Will be Placed to Beneficial Use.** Applicants. WHEREFORE, Applicants respectfully requests that the Water Court enter a decree finding that: A. Applicants have made the full amount of the Dill Pond Water Right absolute; or in the alternative, B. Applicants have exercised reasonable diligence on the full conditional amount of the Dill Pond Water Right; and C. The full conditional amount of the Dill Pond Water Right shall be continued in full force and effect for the period of time allowed by law.

CASE NO. 2024CW3004; Previous Case: 2018CW3041 – TIMOTHY & TAMI ASHLEY, 430 W Pikes Peak Ave, #103, Colorado Springs, CO 80905 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: James J. Petrock, Eric K. Trout, Hayes Poznanovic Korver LLC, 700 17th Street, Suite 1800, Denver, CO 80202, (303) 825-1980)

Application for Amendment to Plan for Augmentation
EL PASO COUNTY

2. Subject Property: 40 acres located in the NE1/4 of the NE1/4 of Section 26, Township 14 South, Range 68 West of the 6th P.M., also known as 1535 Liahona Point, Yoder, CO,

80864, El Paso County, State of Colorado, as shown on **Exhibit A** map attached to the application (“Subject Property”). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **3. Property Certification**: Applicants are sole owners of the Subject Property and certify that it is free and clear of all liens and encumbrances and no other person or entity has a financial interest in the property. Therefore, no notice is required under C.R.S. § 37-92-302(2)(b). **4. Decree for Which Amendment is Sought**: Case No. 2018CW3041, decreed on February 19, 2019, associated with the Subject Property (“Original Decree”). Applicants are the owners of the all the underlying groundwater pursuant to the Special Warranty Deed dated September 8, 2023, and recorded the same day at Reception No. 223076717 in the records of the El Paso County Clerk and Recorder, attached as **Exhibit B**.

Aquifer	Annual Amount (acre-feet)	Total Amount (acre-feet)
Arapahoe (NT)	1.02	102
Laramie-Fox Hills (NNT)	10.5	1,050

5. Well Permits: There is one existing Laramie-Fox Hills Aquifer commercial well on the Subject Property under well permit number 73047-F. This well will be re-permitted under the plan for augmentation requested in this application. Additional well permits will be applied for prior to construction of additional wells. **6. Jurisdiction**: The Court has jurisdiction over the subject matter of this application pursuant to C.R.S. §§ 37-90-137(6), 37-92-203(1), 37-92-302(2). **7. Summary of Original Plan for Augmentation in Case No. 2018CW3041**: Groundwater to be Augmented: 1 acre-foot per year of not-nontributary Laramie-Fox Hills aquifer groundwater. Water Rights to be Used for Augmentation: Return flows from the use of not-nontributary and nontributary groundwater and direct discharge of nontributary groundwater. Original Plan for Augmentation: The Laramie-Fox Hills Aquifer groundwater was to be used for greenhouse use and irrigation both inside and outside, commercial, industrial, augmentation and for storage. **8. Summary of Proposed New Plan for Augmentation**: Groundwater to be Augmented: 1 acre-foot per year of not-nontributary Laramie-Fox Hills Aquifer groundwater. Water Rights to be Used for Augmentation: Return flows from the use of not-nontributary and nontributary groundwater and direct discharge of nontributary groundwater. Statement of Plan for Augmentation: The Laramie-Fox Hills Aquifer groundwater will be used for domestic purposes, including in-house use (0.3 acre-feet per year), irrigation including use in green houses (0.6 acre-feet per year, up to 12,000 square-feet), livestock watering of up to 8 large domestic animals (0.1 acre-feet per year), fire protection, and storage through one or more wells, on the Subject Property. The actual depletion at 100 years of pumping is 0.24% of the annual amount withdrawn and return flows from in-house use are sufficient to replace the required actual depletion for 100 years. Depletions occur to the Pond Creek stream system and return flows accrue to that stream system. This proposed new plan for augmentation is intended to replace the original plan for augmentation in its entirety. Applicants request the Court approve the above underground amended augmentation plan, find that Applicants have complied with C.R.S. § 37-90-137(4) and water is legally available for withdrawal, find there will be no material injury to the owners of or persons entitled to use water under any vested water right or decreed conditional water right, and grant such other and further relief as is appropriate.

CASE NO. 2024CW3005; Previous Case: 2022CW3007 - CHRISTOPHER AND WENDY JEUB, 16315 Rickenbacker Ave, Monument, CO 80132 (Please address all

pleadings and inquiries regarding this matter to Applicant's attorneys: James J. Petrock, Eric K. Trout, Hayes Poznanovic Korver LLC, 700 17th Street, Suite 1800, Denver, CO 80202, (303) 825-1980)

Application to Amend a Plan for Augmentation

EL PASO COUNTY

2. Subject Property: 6.44 acres generally located in the NW1/4 of NE1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., also known as 16315 Rickenbacker Ave, Monument, El Paso County, State of Colorado, as shown on **Exhibit A** map attached to the application ("Subject Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **3. Property Certification:** Applicants certify that they have provided notice to all mortgage and lien holders as required under C.R.S. § 37-92-302(2)(b). **4. Decree for Which Amendment is Sought:** Case No. 2022CW3007, decreed on August 5, 2022 ("Original Decree"). **5. Summary of Plan for Augmentation in Original Decree ("Original Aug Pan"):** **Groundwater to be Augmented:** 2.1 acre-feet per year for 100 years of not-nontributary Denver Aquifer groundwater. **Water Rights to be Used for Augmentation:** Return flows from the use of not-nontributary and nontributary groundwater and direct discharge of nontributary groundwater. **Original Plan for Augmentation:** The Denver Aquifer groundwater will be used to serve one or more wells. The well(s) will serve up to five (5) single-family residences, or their equivalent (0.3 acre-feet per year each, 1.5 acre-feet per year total), irrigation, including lawn, garden, trees of up to 6,000 square-feet (0.3 acre-feet per year), and commercial sanitary use (0.3 acre-feet per year). **6. Summary of Proposed Amended Plan for Augmentation:** **Groundwater to be Augmented:** 3.3 acre-feet per year for 100 years of not-nontributary Denver Aquifer groundwater. **Water Rights to be Used for Augmentation:** Return flows from the use of not-nontributary and nontributary groundwater and direct discharge of nontributary groundwater. **Original Plan for Augmentation:** The Denver Aquifer groundwater will be used to serve one or more wells. The well(s) will serve up to nine (9) single-family residences, or their equivalent (0.3 acre-feet per year each, 2.7 acre-feet per year total), irrigation, including lawn, garden, trees of up to 6,000 square-feet (0.3 acre-feet per year), and commercial sanitary use (0.3 acre-feet per year). The proposed amended plan for augmentation is intended to replace the Original Aug Plan in its entirety. Applicants request the Court approve the above underground amended augmentation plan, find that Applicants have complied with C.R.S. § 37-90-137(4) and water is legally available for withdrawal, find there will be no material injury to the owners of or persons entitled to use water under any vested water right or decreed conditional water right, and grant such other and further relief as is appropriate.

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 31, 2024, (forms available at Clerk's office or at www.courts.state.co.us, prior to March 13, 2024 and www.coloradojudicial.gov effective March 13, 2024, 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 6th day of February 2024.



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: