

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING JULY 2022.

(This publication can be viewed in its entirety on the state court website at:

www.courts.state.co.us).

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 July 2022, 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. 2022CW9; Publication in the Resume for this bifurcated protest to the abandonment list was deferred in June pending ruling on the Order to Show Cause why the protest should not be dismissed. This case was dismissed on July 28, 2022.

CASE NO. 2022CW25; THOMAS E. MADDOX and DIANE A. MADDOX vs. FREDERICK V. EICHLER and MICHELE M. EICHLER – Application for Decree for Abandonment of Water Rights. Petitions for Determination of Abandonment are not subject to the resume-notice procedures of C.R.S. § 37-92-302. This case is being listed in the resume to account for the case number in consecutive order.

CASE NO. 2022CW3054; ELK RANCH LTD, 6100 Southwest Blvd., Suite 320, Fort Worth, Texas 76109 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: William D. Wombacher, Esq., Stacy L. Brownhill, Esq., NAZARENUS STACK & WOMBACHER LLC, 5299 DTC Blvd., Suite 610, Greenwood Village, Colorado 80111, (720) 647-5661)

Application for Finding of Reasonable Diligence and to Make Conditional Rights Absolute
PARK COUNTY

2. Original Decree. The original decree was entered by the District Court in and for Water Division No. 2, State of Colorado (“Water Court”) on April 2, 2010 in Case No. 09CW120. An amended decree was entered on April 2, 2012. The first diligence decree was entered on August 2, 2016 in Case No. 16CW3023. 3. Description of the Water Right (“Subject Water Right”). a. Name of Structure. Long Gulch Lake, a/k/a Longs Lake. b. Legal Description and Location. Long Gulch Lake is located in the SW1/4 SE1/4 of Section 11, Township 15 South, Range 75 West, of the 6th P.M., located approximately 2,150 feet from the east line, and 400 feet from the south line of said Section 11. The approximate location of Long Gulch Lake is shown 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.) c. Source. Long Gulch Lake is supplied by native flows in Long Gulch, tributary to Badger Creek, tributary to the Arkansas River, and flows collected and diverted by Long Gulch Spring No. 3. d. Appropriation Date. October 30, 2009. e. Amount. 0.04 acre-feet per year, absolute. 1.96 acre-feet per year, conditional. f. Uses. Stockwater, wildlife, recreational, wetlands, and fire protection purposes. g. Pond Specifications. Long Gulch Lake will have a maximum surface area of 0.5 acres, and a

maximum depth of approximately 6 feet. It is anticipated that the dam will be approximately 150 feet in length, 5 feet high, and 10 feet wide. Long Gulch Lake is located in excess of 7 miles from the nearest live water course, Badger Creek, and its flows generally do not reach the river system to which it is tributary. h. Total Capacity. Long Gulch Lake will have a total capacity of 2.0 acre feet, all of which shall be active capacity and none of which shall be dead storage. 4. Detailed Outline of Work Done to Complete the Project and Apply Water to Beneficial Use. During the diligence period, the Applicant engaged in the following specific activities that demonstrate diligence toward the application of water to the decreed beneficial uses: a. Applicant expanded and deepened Long Gulch Lake to a total surface area of 125 feet by 110 feet with a depth of 4 feet; b. Applicant improved Long Gulch Lake by installing approximately 105 feet of sidewall and 150 feet of sheet pilings buried 12 inches deep; c. Applicant stored water in Long Gulch Lake and placed that water to beneficial use for all decreed purposes; d. Applicant grazed an average of 160 head of cattle each year and entered into cattle purchase contracts to increase the herd to 200 head of cattle by 2023; e. Applicant has all cattle purchased for the ranch undergo a PAP test by a veterinarian to assess their fitness for surviving at high elevation; and f. Applicant employed an onsite caretaker to ensure proper management of grazing lands and care for livestock. The above activities demonstrate the Applicant's diligent efforts to fully develop and place the Long Gulch Lake water right to beneficial use for its full decreed amount. As a result, it is appropriate for the Water Court to continue the portion not made absolute herein in full force and effect. 5. Claim to Make Water Rights Absolute. Applicant expanded and used Long Gulch Lake to store and provide water for stockwater, wildlife, recreational, wetlands, and fire protection purposes. The current surface area is 13,750 square feet and the depth averages 4 feet. The total volume at this time is 1.26 acre feet, and Applicant has used the total storage volume. As a result, the Applicant has placed 1.22 acre feet absolute, in addition to the previously decree 0.04 acre feet absolute, for such beneficial uses. 6. Names and Addresses of Owners of Land Upon 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. Applicant. WHEREFORE, Applicant requests that the Court enter a finding (1) making 1.22 acre feet of the conditional storage right described above decreed to Long Gulch Lake absolute, for a total of 1.26 acre feet absolute, (2) entering findings of reasonable diligence with respect to that portion of the Long Gulch Lake water right not made absolute herein, and (3) granting such other relief as the Court may see fit.

CASE NO. 2022CW3055; The filing made under this case number was filed in the incorrect water division and was rejected; therefore, this case number does not exist in Water Division 2.

CASE NO. 2022CW3056; HEALING HOUSE LAKEWOOD, LLC, a Colorado limited liability company, 10712 W. Alameda Avenue Lakewood, CO 80226 (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: David M. Shohet, #36675, W. James Tilton, #50213, Monson, Cummins, Shohet & Farr, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921 (719) 471-1212)

Application to Amend Plan for Augmentation
PUEBLO COUNTY

II. Background and Summary of Plan for Augmentation. Applicant is the owner of approximately 39.17 acres located in the SE 1/4 Section 34, Township 20 South, Range 67 West of the 6th P.M., Pueblo County, Colorado (“Property”). The Property is shown on the **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.) The Property’s address is 7420 Rex Road, Pueblo Colorado 81005, and is known as Lot 4 of Lakeview Prairie. On January 18, 2018, the Court awarded the Applicant a plan for augmentation in Case No. 16CW3073. The decree entered in Case No. 16CW3073 is attached to this Application as **Exhibit B** (“16CW3073 Decree”). The 16CW3073 Decree allows the Applicant to divert (and deplete) up to 10 annual acre feet. On August 27, 2018, the Court entered a decree in Case No. 18CW3011 granting the Applicant an additional six annual acre feet to be diverted and depleted, for a total of sixteen (16) acre feet of diversions and depletions. The decree entered in Case No. 18CW3011 is attached to this Application as **Exhibit C** (“18CW3011 Decree”). The Applicant files this Application to allow for a total of up to forty annual acre feet of depletions.

III. Application for Amendment of Plan for Augmentation.

A. **Structures to be Augmented.** The structures to be augmented consist of two wells completed in the Dakota Aquifer on Applicant’s Property as decreed in Case No. 16CW3073. Healing House Well No. 1 (WDID# 1405186, Well Permit No. 82943-F), is located in the NE ¼ of the SE ¼ of Section 34, Township 20 South, Range 67 West of the 6th P.M., 1826 feet north from the south Section line and 1255 feet west from the east Section line (UTM E 511272 N4235033). Healing House Well No. 2 (WDID# 1405192, Well Permit No. 82944-F), is located in the NE ¼ of the SE ¼ of Section 34, Township 20 South, Range 67 West of the 6th P.M., 2140 feet north from the south Section line and 530 feet west from the east Section line (UTM E 511485 N4235141)

B. **Water Rights to be Used for Augmentation.** Water rights to be used for augmentation consist of fully consumable water leased from the Board of Water Works of Pueblo, Colorado (“Pueblo Water”). Applicant may seek to transfer this plan for augmentation to a well users group in the future. Applicant may also seek a term and condition requesting the Water Court to retain perpetual jurisdiction over the plan for augmentation for the sole purpose to add new or additional sources of augmentation to this requested plan for augmentation.

1. **Lease with Pueblo Board of Water Works.** Applicant shall enter into a lease for up to forty annual acre-feet of fully consumable water with Pueblo Water. The water rights or sources of water that may be used for augmentation in this augmentation plan include the following: Fully consumable water owned or controlled by the Pueblo Water. All water to be used in this augmentation plan provided by Pueblo Water must be decreed or otherwise legally available for augmentation purposes. The source of such water is unspecified in the lease, but may include Pueblo Water’s water stored in Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, from direct flow transmountain water or from any other reservoir or place from which Pueblo Water may deliver water, the sources of which are at the option of Pueblo Water, as long as they are legally available for augmentation purposes. Water deliveries may include, without limitation, water stored in Twin Lakes Reservoir (located in all or portions of Sec. 14,15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T.11S., R.81W., 6th P.M., in Lake County), Turquoise Reservoir (located on Lake Fork Creek in Sec. 7, 8, 17, 18, 19, and 20, T.9S., R.80W., 6th P.M. and Sec. 10, 11, 12, 13, 14, and 15, T.9S., R.81W., 6th P.M., in Lake County), Clear Creek Reservoir (located in Sec. 7 and 8,

T.12S., R.79W, and Sec. 12, T.12S., R.80W., 6th P.M. in Chaffee County, and reusable return flows. The sources of such water may include, but are not limited to, the water rights decreed in Case Nos. 84CW177, District Court, Water Div. No. 2; 84CW177(B), District Court, Water Div. No. 2; 90CW340, District Court, Water Div. No. 5; W-1901, District Court, Water Div. No. 5; 95CW321, District Court, Water Div. No. 5; 90CW55, District Court, Water Div. No. 2; and 04CW130, District Court, Water Div. No. 2. C. Statement of Plan for Augmentation. 1. Diversions and Depletions. a. Uses. Indoor and outdoor cultivation and irrigation of a crop, including cannabis (hemp and marijuana), and the associated commercial, industrial, domestic, drinking and sanitary needs for the grow facility, including water treatment and storage for such uses. b. Diversions. Applicant's grow facility will operate year-round, with all uses generally increasing during the summer months. The maximum well diversion under this plan shall be 40 annual acre feet. c. Depletions. Water diverted for all uses will be considered to be one-hundred percent consumptive. c. Return Flows. As all uses are being considered one hundred percent consumptive Applicant is not claiming any return flows from diversions from the wells. However, Applicant reserves the right to claim such return flows in the future through amendment of the decree. 2. Location and Timing of Depletions. Well pumping by all wells on Applicant's Property will be entitled to occur on a year-round basis, resulting in year-round lagged depletions to the Arkansas River. As decreed in the 16CW3073 Decree and affirmed in the 18CW3011 Decree, groundwater diversions from the Applicant's wells affect the Arkansas River at the base of the Pueblo Reservoir Dam in Section 36, Township 20 South, Range 66 West of the 6th P.M. All out-of-priority stream depletions caused by the Applicants' will be replaced at or above Pueblo Reservoir. A Unit Response Function (URF) was generated for the Healing House Wells using the Glover Method with IDS' AWAS software (Glover and Balmer, 1954) and decreed in the 16CW3073 Decree. A transmissivity (T) of 1,346 GPD/ft, storage coefficient (S) of 5x10⁻⁵ (dimensionless), distance to the depletion point (X) of 40,780 ft, and the distance from river to the Dakota Outcrop (W) of 88,325 ft, was used in this calculation. The 16CW3073 Decree truncates lagged depletions once cumulative monthly depletions have reached ninety percent (90%) with the remaining ten percent (10%) included in the prior months lagged depletion to achieve one-hundred percent (100%) replacement. The timing and amount of monthly well depletions will be determined in accordance with Table 1 attached to the 16CW3073 Decree. D. Name and Address of Owners of Land Upon Which Structures are Located. All structures, wells, and operations covered by this Application occur on property owned by the Applicant. V. Remarks. A. Upon entry of a decree in this case, the Applicant shall be entitled to apply for and receive well permits and all subsequent replacement or additional wells for use in accordance with any decree entered in this case. B. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater and replacement of lagged depletions under the proposed augmentation plan. C. There are no changed circumstances since the entry of the 16CW3073 Decree or the 18CW3011 Decree. D. Applicant intends to waive the 600 foot well spacing requirement for the wells to be located on the Applicant's Property. E. The wells shall be installed and metered as 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 a monthly basis or as otherwise requested by the Division Engineer. The Applicant shall also provide

Accountings to the Division Engineer and Water Commissioner to demonstrate compliance under this plan of augmentation.

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 September 2022, (forms available at Clerk's office or at 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 4th day of August 2022.



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: