

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING MARCH 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 March 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:

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

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

PUEBLO COUNTY

Name of Structure: Blunt Ditch No. 2 **Decreed Water Right for which Simple Change is Sought:** An undivided 0.5 cubic feet per second ("cfs") decreed to Blunt Ditch No. 2, Priority No. 33. **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 1.0 cfs of the Blunt Ditch No. 2, including the 0.5 cfs of the Blunt Ditch No. 2 now owned by Applicant was changed by Decree entered in Case No.: 01CW33; Water Division 2. **Legal Description of Point of Diversion for Water Right as Described in Most Recent Decreed that Adjudicated the Location:** A point of diversion located in the NE ¼ NE ¼ Section 6, Township 21 South, Range 63 West of the 6th 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. **Decreed Source of water:** St. Charles River. **Appropriation Date:** January 8, 1867; **Amount of Water for which Change is Sought:** 0.5 cfs of the 1.0 cfs of the Blunt Ditch No. 2 changed in Case No. 01CW33. **Decreed Use:** Irrigation. **Detailed Description of Proposed Change in a Surface Point of Diversion:** 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. 01CW33 locates the diversion point for 1.0 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 0.5 cfs of the Blunt Ditch to a new diversion point at a pump located approximately ¼ mile downstream from the current location. 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. 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 point. Accordingly, the requested change in the location will not result in an increase in beneficial use of the rights, or otherwise

cause injury to any water right. **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. 2019CW3017; STATE ENGINEER AND WATER DIV 2 ENGINEER vs. JOHN HERGERT – Verified Complaint for Injunctive Relief, Penalties, and Costs. This case is being listed in the resume to account for the case number in consecutive order.

CASE NO. 2019CW3018; CGSM, LLC, a Colorado limited liability company, 50100 E. Hwy 96, Boone, CO 81025 (Please address all pleadings and inquiries regarding this matter to Applicants' attorneys: David M. Shohet, #36675, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921, (719) 471-1212).

Application for Plan for Augmentation

PUEBLO COUNTY

II. Background and Summary of Plan for Augmentation. Applicant is the owner of approximately 410 acres located in Section 3, Township 21 South, Range 62 West of the 6th P.M., Pueblo County, Colorado ("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.) The Property's address is 50100 E. Hwy 96, Boone, CO 81025. The Applicant seeks a plan to augment up to two wells on the Property for both indoor and outdoor cultivation and irrigation of crop including cannabis (hemp and marijuana) on the Property, and the associated commercial, industrial, domestic, processing, cooling, drinking and sanitary needs for the grow facility. **III. Application for Approval of Plan for Augmentation. A. Structures to be Augmented.** The structures to be augmented consist of up to three wells, two of which are existing wells. The two existing wells to be augmented are described as follows: **1. Well Permit No. 79493-F** (WDID 1405667)(a/k/a Werme Well No. 5), located in the SW1/4 of the NW1/4 of Section 3, Township 21 South, Range 62 West of the 6th P.M., Pueblo, Colorado. This well is permitted to withdraw 1,000 g.p.m. **2. Well Permit No. 79494-F** (WDID 1405187), located in located in the SE1/4 of the NW1/4 of Section 3, Township 21 South, Range 62 West of the 6th P.M., Pueblo, Colorado. This well is permitted to withdraw 15 g.p.m. All wells, including the third well to be drilled, are or will be located on the Property and their source is the alluvium of the Arkansas River. Actual decreed pumping rates may exceed the amounts the wells are currently permitted to withdraw. **B. Water Rights to be Used for Augmentation.** Applicant is a member of the Arkansas Groundwater Users Association ("AGUA"). The water rights to be used for augmentation consists of the following fully consumable water based on Applicant's status as a member of AGUA: 1. Excelsior Ditch. AGUA's primary source of replacement water is consumptive use credits from AGUA's Excelsior Ditch shares changed in District Court, Water Division 2, Case No. 04CW62, which may be delivered through AGUA's augmentation station or recharge ponds. AGUA owns 1,792 and Stonewall Water, LLC owns 1,541 of the 3,333 shares in the Excelsior Irrigating Company. AGUA may lease

some or all of the 1,541 shares owned by Stonewall Water, LLC. 2. Fully Consumable Water. AGUA also leases fully consumable water from various water providers. Fully consumable water that may be leased includes, without limitation, the following: a. Board of Water Works of Pueblo, Colorado ("Pueblo Water"). Fully consumable water from Pueblo Water decreed or legally available for augmentation use under this plan including such stored water, direct flow water, reusable municipal effluent, reusable irrigation return flows and reusable lawn irrigation return flows delivered to the Arkansas River. Reusable effluent may be released from Pueblo Municipal Wastewater Treatment Plant. This plant currently discharges treated wastewater to the Arkansas River at a point in the Northeast quarter of Section 5, Township 21 South, Range 64 West of the 6th P.M. The approximate latitude of said point is 38°15'22" North and the approximate longitude is 104°34'20" West. Pueblo Water's reusable irrigation return flows accrue to the Arkansas River in the reach from Fountain Creek to John Martin Reservoir following the lease of Pueblo Water's fully consumable water to irrigation ditch companies for irrigation use. Pueblo Water's reusable lawn irrigation return flows accrue to the Arkansas River upstream of the confluence of the Arkansas River and St. Charles River. b. Triview Metropolitan District. Fully consumable water from the Triview Metropolitan District. Triview Metropolitan District water is treated and discharged to Monument Creek from the Upper Monument Creek Regional Wastewater Treatment Facility located in the SW ¼ Section 35, Township 11 South, Range 67 West of the 6th P.M. The return flows are derived from Triview's Denver Basin not nontributary groundwater water rights, which are described in the Decrees in Case Nos. 95CW153, 98CW134 and 88CW23(A). **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, processing, industrial, cooling, domestic, drinking and sanitary needs for a grow facility. b. Diversions. Diversions will occur year-round, with all uses generally increasing during the summer months. The anticipated total maximum well diversions under this plan is up to 50 annual acre feet. c. Depletions. Diversions from Well Permit No. 79493-F will be used for irrigation and the associated commercial, processing, industrial, and cooling process. All water diverted from Well Permit No. 79493-F all will be considered to be one-hundred percent consumptive. Diversions from Well Permit No. 79494-F will be used for indoor office uses and sanitary and drinking water needs. Applicant claims that all water diverted from Well Permit No. 79494-F are considered 10% percent consumptive. d. Return Flows. As all diversions from Well Permit No. 79493-F will be considered one hundred percent consumptive, Applicant is not claiming any return flows from diversions from this well. However, Applicant reserves the right to claim such return flows in the future. Applicant claims that 90% of all diversions from Well Permit No. 79494-F return to the Arkansas River via septic system. 2. Location and Timing of Depletions. Pumping of the Applicant's wells will be entitled to occur on a year-round basis, resulting in year-round lagged depletions to the Arkansas River. Depletions from the Applicant's wells occur to the Arkansas River in the NW1/4 of the SW1/4 of Section 3, Township 21 South, Range 62 West of the 6th P.M. Applicant's water resource engineer has generated a Unit Response Function (URF) for the wells using the Glover Method (Glover, 1954). The lagging analysis shows that over 95 percent of the depletions for Well Permit No. 79493-F are expected to occur within 8 months of pumping and that 95 percent of the depletions for Well Permit No. 79494-F are expected to occur within 9

months of pumping. 3. Replacement Water. AGUA will provide the replacement water described above to augment the Applicant's wells. The replacement water provided by AGUA shall be fully consumable and will be available to replace the Applicant's well depletions at the point of depletion on the Arkansas River. **D. Name and Address of Owners of Land Upon Which Structures are Located.** The wells to be augmented under this plan are all located on land 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. The Applicant will install meters on all wells as required by the State Engineer. Applicant will submit diversion records to the Division Engineer on a monthly basis or as otherwise requested by the Division Engineer. The Applicant will also provide Accountings to the Division Engineer and Water Commissioner to demonstrate compliance under any decreed plan of augmentation. D. Applicant may seek to transfer this plan for augmentation to a well user group in the future. E. Applicant will seek a term and condition in any final decree 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 water pursuant to Section 37-92-305(8), C.R.S. WHEREFORE, the Applicant requests this Application for Plan for Augmentation be granted as requested herein and for such other and further relief as the Court deems appropriate.

CASE NO. 2019CW3019; Previous Case No. 2011CW91 - COLORADO MOUNTAIN COLLEGE, Timberline Campus, 901 South Highway 24, Leadville. CO 80461, (Please send all pleadings and correspondence to Applicant's counsel: c/o Jeff Houpt, Beattie, Houpt & Jarvis, 932 Cooper Ave, Glenwood Springs, CO 81601; (970) 945-8659.)

Application for Finding of Reasonable Diligence

LAKE COUNTY, Arkansas River

Name of structure: CMC Agronomy Center Well: **Original decree:** entered 03/22/13 in 11CW91. **Location:** NE $\frac{1}{4}$ of the NE $\frac{1}{4}$, Sec 3, T 11 S, R 80 W 6th PM, 1,010 ft from N Sec line of Sec 3 and 980 ft from E Sec line of Sec 3. 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.)

Source: Groundwater trib to Box Creek, trib to Arkansas River. **Appropriation date:** 07/01/11. **Amount:** 200 gpm, conditional. **Uses:** Irrigation and commercial. Land irrigated: 2.36 acres within Applicant's property described in Exhibit B to Application, located in NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec 3, T 11 S, R 80 W 6th PM. Depth: 65 ft. **Remarks:** Subject water right is authorized to operate pursuant to plan for augmentation decreed in 11CW91. The application on file with the court includes a list of activities demonstrating diligence. Owner of land: Applicant.

CASE NO. 2019CW3020; ANDREW RODOSEVICH, 71 Royal Ann Drive, Greenwood Village, CO 80111 (Please send all pleadings and correspondence to Applicant's counsel: James J. Petrock, Petrock Fendel Poznanovic, 700 17th Street, #1800, Denver, CO 80202, (303) 534-0702).

Application for Underground Water Rights from Nontributary Sources, in the Nontributary Denver and Laramie-Fox Hills Aquifer

EL PASO COUNTY

Nontributary groundwater **3. Subject Property:** 40 acres being the W1/2E1/2SW1/4 of Section 27, T13S, R61W, and 40 acres being the NW1/4SE1/4 of Section 34, T13S, R61W the 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.) **4. Source of Water Rights Requested:** Nontributary Denver and Laramie-Fox Hills aquifer groundwater as described in Section 37-90-103(10.5), C.R.S. **5. Estimated Annual Amount:** 1.8 acre-feet of Denver and 11.8 acre-feet of Laramie-Fox Hills underlying each parcel. **6. Proposed Use:** Domestic, commercial, irrigation, stockwatering, and augmentation purposes, on and off the Subject Property. **7. Remarks:** A. Applicant claims the right to withdraw more than the average annual amounts estimated in paragraph 5 above pursuant to Rule 8A of the Statewide Rules, 2 C.C.R. 402-7. B. Applicant requests the right to revise the estimate upward or downward, based on better or revised data, without the necessity of amending this application or republishing the same. Further, Applicant prays that this Court grant the application and for such other relief as seems proper in the premises.

CASE NO. 2019CW3021 – ANDREW RODOSEVICH, 71 Royal Ann Drive, Greenwood Village, CO 80111. (Please send all pleadings and correspondence to Applicant's counsel: James J. Petrock, Petrock Fendel Poznanovic, 700 17th Street, #1800, Denver, CO 80202, (303) 534-0702).

Application for Underground Water Rights from Nontributary Sources, in the Nontributary Laramie-Fox Hills Aquifer

EL PASO COUNTY

Nontributary groundwater **3. Subject Property:** 35 acres located in the E1/2 of Section 19, T14S, R60W 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.) **4. Source of Water Rights Requested:** Nontributary Laramie-Fox Hills aquifer groundwater as described in Section 37-90-103(10.5), C.R.S. **5. Estimated Annual Amount:** 9.2 acre-feet. **6. Proposed Use:** Domestic, commercial, irrigation, stockwatering, and augmentation purposes, on and off the Subject Property. **7. Remarks:** A. Applicant claims the right to withdraw more than the average annual amounts estimated in paragraph 5 above pursuant to Rule 8A of the Statewide Rules, 2 C.C.R. 402-7. B. Applicant requests the right to revise the estimate upward or downward, based on better or revised data, without the necessity of amending this application or republishing the same. Further, Applicant prays that this Court grant the application and for such other relief as seems proper in the premises.

CASE NO. 2019CW3022 – PALMER DIVIDE WATER COMPANY, 2760 N. Academy, #314, Colorado Springs, CO, 80917, and KING'S DEER HOA, P.O. Box 3143, Monument, CO, 80132. (Please send all pleadings and correspondence to Applicant's counsel: Brad R. Benning, Eric K. Trout, Petrock Fendel Poznanovic, P.C., 700 17th

Street, Suite 1800, Denver, CO, 80202, (303) 534-0702) and John Cyran Confluence Water Law LLC, 3570 E 12th Ave, Suite 311, Denver, CO, 80206, (720) 532-1767).

Application of Plan for Augmentation

EL PASO COUNTY

2. Groundwater to be Augmented: 24 acre-feet per year of not nontributary Dawson aquifer groundwater to be withdrawn over a 100 year pumping period as decreed in Consolidated Case Nos. 93CW75, Water Division 2, and 93CW147, District Court, Water Division 1. The land which is the subject of the decree is approximately 1802 acres located in Sections 4, 5, 7, 8, 9, and 17, T11S, R66W of the 6th P.M. 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.) **3. Applicant Palmer Divide Water Company** is the owner of the groundwater which is described in Paragraph 2 of this application. **4. 60 acre-feet per year** of not nontributary Dawson aquifer groundwater to be withdrawn over a 100 year pumping period as decreed in Consolidated Case Nos. 94CW49(A) and (B), Water Division 2, and 94CW144(A) and (B), District Court, Water Division 1. The land which is the subject of the decree is same as described above. **5. Water rights to be used for augmentation:** Applicant King's Deer HOA is responsible for the water rights to be used for augmentation and augmentation requirements and other terms and conditions in any final decree in this case. **6. Augmentation sources** include the following: Return flows from the use of not nontributary Dawson aquifer water and return flows and direct discharge of nontributary groundwater as decreed Case No. 85CW230, District Court, Water Division 1, Any other legal water supply obtained by King's Deer HOA, Applicants reserve the right to supplement this Application and any approved decree resulting from this case with additional augmentation supplies without the requirement to republish or file a new water application and case. Prior notice would be provided to the Division Engineer and any parties to this case of any legal water supplies obtained with opportunity for comment prior to allowance of such supplies in this augmentation plan. **7. Statement of plan for augmentation:** The purpose of this augmentation plan is to supplement withdrawals from individual not nontributary Dawson aquifer wells as also previously decreed in the decrees described in paragraphs above. **8. In Consolidated Case Nos. 93CW75, Water Division 2, and 93CW147, District Court, Water Division 1,** an augmentation plan was approved for the use of 119 individual Dawson aquifer wells to withdraw 0.38 acre-feet per year (0.27 for in house use and 0.11 acre-feet for irrigation of 3000 square-feet of irrigated area). By this application an additional withdrawal of 0.37 acre-feet (0.75 acre-feet per well total) will be available through up to 75 of the wells in Consolidated Case Nos. 93CW75, Water Division 2, and 93CW147, District Court, Water Division 1. Homeowners acquiring this additional augmentation water will be allowed additional in house use (0.26 acre-feet) and irrigation of up to 4000 square feet of irrigated area (0.11 acre-feet) in combination with the annual amount and uses currently decreed. **9. In Consolidated Case Nos. 94CW49(A) and (B), Water Division 2, and 94CW144(A) and (B), District Court, Water Division 1,** an augmentation plan was approved for the use of 390 individual Dawson aquifer wells to withdraw 0.419 acre-feet per year (0.27 for in house use and 0.149 acre-feet for irrigation of 3000 square-feet of irrigated area). By this application an additional withdrawal of 0.331 acre-feet (0.75 acre-feet per well total) will be available through 200 of the wells in Consolidated Case Nos. 94CW49(A) and (B),

Water Division 2, and 94CW144(A) and (B), District Court, Water Division 1. Homeowners acquiring this additional augmentation water will be allowed additional in house use (0.21 acre-feet) and irrigation of up to 4000 square feet of irrigated area (0.12 acre-feet) in combination with the annual amount and uses currently decreed. **10. Residential lots** on which this water will be used utilize non-evaporative septic systems and consumptive use associated with inhouse use will be approximately 10% of water used and consumptive use associated with irrigation use will be approximately 90% of water used. Applicant requests that this plan for augmentation be operated in combination with the augmentation plan previously approved and described above. **11. Modeling** shows depletions from pumping do not impact or accrue to the stream systems until 30 years after pumping. Consequently, actual depletions to the affected stream systems will be replaced 30 years after pumping begins pursuant to Section 37-90-137(9)(c.5), C.R.S. Depletions occur to stream systems in Water Divisions 1 and 2, and this application is being filed in both divisions. Depletions to the South Platte River system at 100 years total only approximately 6.03 acre-feet. Return flows from use of the water return to the South Platte River stream systems and such return flows are sufficient to replace the required amount of replacement for the life of the plan. Depletions to the Arkansas River system, specifically the Monument Creek stream system, at 100 years total only approximately 1.9 acre-feet. Any replacement water legally required for replacement of depletions in this plan will be provided in such amounts and locations so as to protect water users from injury. If replacement of depletions to the Monument Creek stream systems is legally required, depletions to Monument Creek will be replaced using water which is legally available for such use, including without limitation direct pumping or release into Monument Creek or its tributaries. Additional amounts of nontributary groundwater as decreed in Case No. 85CW230 or any other water otherwise acquired by Kings Deer HOA may be used for this replacement and will also be reserved to meet any post pumping augmentation requirements if necessary. **12. WHEREFORE**, Applicant prays that this Court enter a decree Granting the application herein and specifically determining that vested or conditionally decreed water rights of others will not be materially injured by the withdrawals of groundwater and the plan for augmentation proposed herein. **13. FURTHER**, Applicant prays that this Court grant 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 May 2019, (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 2nd day of April 2019.



Michele Santistevan

Michele M. Santistevan, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
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(Court seal)
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