

DIVISION 5 WATER COURT- FEBRUARY 2019 RESUME

1. PURSUANT TO C.R.S., §37-92-302, AS AMENDED, YOU ARE NOTIFIED THAT THE FOLLOWING PAGES COMPRISE A RESUME OF THE APPLICATIONS AND AMENDED APPLICATIONS FILED WITH THE WATER CLERK FOR WATER DIVISION 5 DURING THE MONTH OF FEBRUARY 2019. *The water right claimed by this application 19CW5 (CA259, CA304, CA657 & 92CW230) GRAND COUNTY- CORRAL CREEK TRIBUTARY TO THE COLORADO RIVER.* James & Tracy Frazier; 209 C.R. 21; P.O. Box 321; Parshall, CO 80468 (303)601-7443. Rock Creek Ditch and Rock Creek Ditch First Enlargement-Application for Simple Change in Surface Point of Diversion Pursuant to §37-92-305(3.5)C.R.S. Decreed Location: On the West Bank of Corral Creek, whence the NE corner of Sec. 35, T.2N., R.79W. of the 6th P.M. bears S65°31'E 2,004 ft. UTM: E398805.1 N4439979.1 Z13. Changed Point of Diversion: SE¼SW¼ of Sec. 2, T.1N., R.79W. of the 6th P.M. 30 ft. from the south sec. line and 2,350 ft. from the west sec. line. UTM: E396856.6 N4436484.9 Z13. Appropriation: June 26, 1911. Decreed Amount: 8.5 c.f.s., conditional. Amount of applicant intends to change: 1.0 c.f.s. Use: Irrigation. Names and address of landowners on which point of diversion is located: Karen & Dan Wischnak; P.O. Box 16; Hot Sulphur Springs, CO 80451.

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19CW3022 DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO, 109 - 8th Street, Suite 104, Glenwood Springs, CO 81601. CONCERNING THE APPLICATION FOR WATER RIGHTS OF IRON ROSE LAND & CATTLE II, LLC AND COLD MOUNTAIN RANCH LLLP. In the Roaring Fork River and its tributaries, IN **GARFIELD COUNTY, COLORADO. APPLICATION FOR CHANGE OF WATER RIGHT.** 1. Name and address of Applicants: Iron Rose Land & Cattle II, LLC, c/o Thomas Bailey, 1000 Blue Heron Lane, Carbondale, CO 81623. Cold Mountain Ranch LLLP, c/o William Fales, 4239 Highway 133, Carbondale, CO 81623. Direct all pleadings to: Kevin J. Kinneer, Porzak Browning & Bushong LLP, 2120 13th Street, Boulder, CO 80302, (303) 443-6800. 2. Decreed water right for which change is sought: A. Name of Structure: Lowline Ditch, B. Date of original decrees and case nos.: Case No. CA1007, decree entered on December 12, 1902 (Priority No. 208C); Case No. CA3082, decree entered on August 25, 1936 (Priority No. 417). C. Legal description of point of diversion: The Lowline Ditch headgate is located in the SE ¼ SW ¼ of Section 27, Township 8 South, Range 88 West of the 6th P.M. in Pitkin County, Colorado, at a point 1,070 feet north of the south section line and 2,285 feet east of the west section line. D. Source: **Crystal River, tributary of the Roaring Fork River, tributary of the Colorado River.** E. Appropriation date: September 25, 1890 (Priority No. 208C); October 10, 1923 (Priority No. 417). F. Total amount decreed to structure: 40.5 cfs, absolute. G. Decreed uses: Irrigation. H. Amount of water that applicants intend to change: 2.7 cfs (0.6 cfs of Priority No. 208C and 2.1 cfs of Priority No. 417) 3. Detailed description of proposed change: Applicants seek to change a total of 2.7 cfs, including 0.6 cfs of Priority No. 208C and 2.1 cfs of Priority No. 417, that was historically used to irrigate 33.3 acres of land located in the NW ¼ of Section 10 and the SW ¼ of Section 3, T.8 S., R. 88 W. of the 6th P.M. (see **Exhibit A**, Area 1). The 33.3 acres of land are now a part of River Valley Ranch, which under the name Crystal River Limited Partnership ("CRLP") acquired the property from Perry Sopris Ranch Partnership, Ltd. ("PSRP"). By virtue of an agreement between PSRP and CRLP, PSRP retained the right to the credit for the dry-up of the subject 33.3 acres, together with 2.7 cfs of water that had been used to irrigate those acres. Applicants are successors to the interests of PSRP, with Iron Rose entitled to 91% of such interest, and Cold Mountain entitled to 9% of such interest. Applicants intend to use their pro rata portions of the water rights and dry-up credits to irrigate a total of 33.3 acres on their subject properties (see **Exhibit A**, Areas 2 and 3). Iron Rose will use a total of 2.45 cfs (0.55 cfs of Priority No. 208C and 1.9 cfs of Priority No. 417) to irrigate up to 30.3 acres located within Area 2 on Exhibit A. Cold Mountain will use a total of 0.25 cfs (0.05 cfs of Priority No. 208C and 0.2 cfs of Priority No. 417) to irrigate up to 3 acres located within Area 3 on **Exhibit A**. Because the Applicants will be using the same amount of water (2.7 cfs) to irrigate the same amount of land (33.3 acres) located in the same general vicinity, there will be no expansion of use and no injury to the owner of any water right. Because this does not involve a change in the type of use, the amount of use, or the point of diversion, no historical consumptive use analysis is required. 4. Names and addresses of owners of land on which new or modified structure is located: There will be no new or modified structures constructed in connection with this application. WHEREFORE, Applicant respectfully requests that a decree be entered for the subject water right described above and grant such other relief as the Court deems appropriate and necessary. (5 pages total including exhibit)

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19CW3024 GRAND COUNTY. Nicholas Meyer and Kristen L. Meyer, PO Box 1632, Winter Park, CO 80482, 970-531-2334, c/o Kent Whitmer and Sean Lemieux, The Whitmer Law Firm, LLC, PO Box 38, Hot Sulphur Springs, CO 80451, (970) 725-3460. APPLICATION FOR ABSOLUTE UNDERGROUND WATER RIGHT AND ABSOLUTE WATER RIGHT FOR AUGMENTATION PLAN INCLUDING EXCHANGE OR FOR A FINDING OF REASONABLE DILIGENCE. Name of Structure: NKM Well No. 1. Source: Ground water tributary Ranch Creek, tributary to the Fraser River, tributary to the Colorado River. Source of Exchange Water: Wolford Mountain Reservoir and Granby Reservoir. Exchange Reach: The upstream terminus is a point on Ranch Creek where depletions resulting from the pumping of NKM Well No. 1 impact Ranch Creek as described in the application. The downstream terminus is a point where releases from Wolford Mountain Reservoir meet the Colorado River as described in the application. Well Location: Applicants are the owners of real property described as Lot 19, Filing 5, Sunset Ridge Estates Subdivision Exemption, Grand County, Colorado. NKM Well No. 1 is located on Applicants' property in the NW1/4SE1/4 of Section 8, T1S, R75W of the 6th P.M., a distance of 1,650 feet from the South line of said Section 8 and a distance of 2,100 feet from the East line of said Section 8. Depth: 300 feet. Use: In-house use and livestock watering. Type of Structure: Well. Quantity: 15 gpm, total diversions limited to 0.424 acre feet annually, exchange rate of 0.000108 cfs up to 0.1 af/yr. Appropriation Date: July 23, 2012. Decree: February 4, 2013, Case No. 12CW119, Water Court Division No. 5. Additional Information: The original application was for underground water right and augmentation including exchange to well involving Wolford Mountain Reservoir and Granby Reservoir under a contract with Middle Park Water Conservancy District. Applicants seek an absolute decree for 10 GPM for well and 0.1 af/yr. for exchange. The application and attached exhibits contain a detailed outline of the work performed during the diligence period. (22 pages)

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19CW3025 BCP-ARR Water, LLC, 1555 Blake Street, Suite 210, Denver, Colorado 80202. Please send all pleadings and correspondence to Applicant's counsel: Dulcinea Z. Hanuschak, Brownstein Hyatt Farber Schreck, LLP, 410 17th Street, Suite 2200, Denver, Colorado 80202; Phone Number: (303) 223-1100; Fax Number: (303) 223-1111; Email: dhanuschak@bhfs.com. APPLICATION FOR FINDING OF REASONABLE DILIGENCE IN EAGLE COUNTY, COLORADO. 2. Name of structure: Golf Course Reservoir No. 3 (the "Subject Water Right"). 3. Description of conditional water rights. 3.1 Date of original decree: May 31, 1983 in Case No. 82CW426 (filed by Kummer Development Corp., predecessor-in-interest to BCP-ARR Water LLC). 3.2 Subsequent decrees: 05CW14, 97CW94, 91CW53, 87CW92 (filed by Kummer Development Corp., predecessor-in-interest to BCP-ARR Water LLC). 3.3 Legal description: The dam and reservoir will be located in the N1/2 NW1/4 of Section 25 and S1/2 SW1/4 of Section 24, Township 5S, Range 84W of the 6th P.M. in Eagle County. The centerline of the dam at the stream channel is at a point whence the SE corner of Section 24, Township 5S Range 84 W of the 6th P.M. bears S.89°00' E a distance of 5,500 feet. A supplemental legal description for the dam is: The centerline of the dam is located at a point in the NW1/4 of the NW1/4, Section 25, Township 5 South, Range 84 West of the 6th Principal Meridian, 30 feet from the North section line and 5500 feet from the East section line. The dam is alternatively described with the following GPS location data in UTM format: NAD83, Zone 13, Northing 348674 meters, Easting 4384290 meters. The location of the Subject Water Right is shown on the map attached as Exhibit A. 3.4 Source: **Brush Creek, tributary to the Eagle River, tributary to the Colorado River.** 3.5 Date of appropriation: October 13, 1982. 3.6 Amount: 420 acre-feet, conditional. 3.7 Uses: Municipal (limited to this use if annexed into or conveyed to a municipality), recreation, irrigation, commercial, and piscatorial. 4. Detailed outline of activity during the diligence period. During the diligence period, Applicant has expended more than \$1 million dollars towards developing the Frost Creek PUD, a residential development that includes lands on which Applicant will use the Subject Water Right, and for which the Subject Water Right is part of the overall future water system for development. This following summary of Applicant's diligence activities is not exclusive and may be supplemented with additional evidence of these or of other diligence activities. 4.1 Applicant acquired the conditional water right in 2015. 4.2 The Subject Water Right is part of the overall future water system for the development of lands within the Frost Creek PUD. During the diligence period, Applicant spent more than \$1 million on consultants, engineers, and lawyers to further develop the property, including by: 4.2.1 Pursuing and obtaining an amendment to

the Frost Creek and Salt Creek PUD a residential development that includes lands on which Applicant will use the subject water right; 4.2.2 Amending the water service agreements through which the Town of Eagle provides extraterritorial water service to the amended Frost Creek and Salt Creek PUD; 4.2.3 Constructing, improving, repairing, or maintaining new residences, improved and new golf course and other recreational amenities, and water infrastructure associated with the property. 4.2.4 Participating as an Opposer in Water Court cases in order to protect its water rights in the Brush Creek drainage, which are used on the PUD, from injury. 5. The land on which the subject structures are located, on which the water will be stored, or on which water will be placed to beneficial use is owned by: Applicant. WHEREFORE, Applicant requests: 1. A finding of reasonable diligence as to all of the subject water rights; and 2. Such other relief as the Court deems just and proper.

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18CW11 Homeplace Holdings, LLC, 4377 Espirit Drive, Fort Collins, CO 80524, Telephone: (970) 724-3500, P. Andrew Jones, #29076, Lawrence Jones Custer Grasmick LLP, 5245 Ronald Reagan Blvd., Suite 1, Johnstown, CO 80534. Application for Correction To An Established But Erroneously Described Point Of Diversion Pursuant To §37-92-305(3.6), C.R.S. IN the Blue River or its Tributaries in **Summit County**. 2. Decreed water right for which correction is sought: 2.1. Name of Structure: Cataract Creek No. 2 Ditch. 2.2 Date of original and all relevant subsequent decrees: CA1277, entered March 2, 1910, 5th Judicial District, Summit County. 2.3 Legal Description of structure as described in most recent decree that adjudicated the location: East side or right bank of Cataract Creek on the SW ¼ SW ¼, Section 19, Township 2 South, Range 79 West, 6th Principal Meridian. 2.4. Decreed source of water: Cataract Creek, a tributary of the Blue River, tributary to the Colorado River. 2.5. Date of Appropriation: June 1, 1889. 2.6. Total amount decreed to structure: 2 cfs, absolute. 2.7. Decreed use: Irrigation. 2.8. Amount of water that applicant intends to change: 2 cfs. 3. Detailed description of proposed correction to an established but erroneously described point of diversion: Applicant seeks recognition of the Cataract Creek No. 2 Ditch point of diversion at the existing headgate of the Westlake Ditch (structure ID No. 868) pursuant to §37-86-111, C.R.S. and §37-92-305(3.6), C.R.S. The decreed points of diversion for the Cataract Creek No. 2 Ditch and the Westlake Ditch are within 310 feet of one another on Cataract Creek. The Westlake Ditch diversion structure is upstream of the Cataract Creek No. 2 Ditch diversion structure. There are no intervening diversions or inflows between the two decreed points of diversion. See map attached hereto as Exhibit "A." The Westlake Ditch and Cataract Creek No. 2 Ditches roughly parallel one another, the Westlake Ditch up-gradient of the Cataract Creek No. 2 Ditch. At a point where the ditches are close to one another, there is a lateral connecting the Westlake Ditch to the Cataract Creek No. 2 Ditch, permitting water to be diverted at the Westlake Ditch Diversion, carried a short distance in the Westlake Ditch, and then delivered to the Cataract Creek No. 2 Ditch upstream of the Cataract Creek No. 2 Ditch irrigated lands. Historically, the ditches, the water rights and the lands they irrigate were owned and operated by a single owner, Karl Knorr. The decreed point of diversion for Cataract Creek No. 2 Ditch was historically problematic to use and maintain due to washouts at the headgate and in the initial section of the Ditch, which is located on a steep slope prone to excessive seepage and landslide. As a result, Karl Knorr began diverting the Cataract Creek No. 2 Ditch Right upstream at the Westlake Ditch diversion structure no later than the late 1960s, based upon the earliest memory of his daughter Helen Keim. As described above, the Cataract Creek No. 2 Ditch right was diverted at the Westlake Ditch, carried for a short distance and delivered from the Westlake Ditch to the Cataract Creek No. 2 Ditch, bypassing the problematic section of the Cataract Creek No. 2 Ditch. The irrigated lands of Cataract Creek No. 2 Ditch remained the same. Water Commissioners were aware of and approved the diversion of the Cataract Creek No. 2 Ditch water right 310 feet upstream at the Westlake Ditch headgate since at least the late 1960s. Presumably, this approval was pursuant to §37-86-111, C.R.S. Based upon the short distance involved, and the fact that there were no intervening rights, the Commissioners must have concluded that the relocation was necessary and that it did not "physically interfere with the complete use or enjoyment of and absolute or decreed conditional water right." §37-86-111(1), C.R.S. The Westlake Ditch became the *de facto* point of diversion for the Cataract Creek No. 2 Ditch right. A Colorado Water Conservation Board ("CWCB") instream flow right was adjudicated for the affected section of Cataract Creek in 80CW038. The relocation of the point of diversion for the Cataract Creek No. 2 Ditch Right to the Westlake Ditch occurred prior to the adjudication of the CWCB instream flow right. The CWCB right is therefore subject to the relocation. See §37-92-102(3)(b), C.R.S. In June of 2013, the Knorr family rebuilt the diversion structure and initial section of the Cataract Creek No. 2 Ditch and attempted to divert the 2 cfs at its originally decreed point of diversion. Over the subsequent five years, and despite continued monitoring and almost daily labor and repairs, the Knorrs struggled to curb the ever increasing sub-irrigation of the hillside above CR 30. As a result, Applicant has determined that continued efforts to divert at the initially decreed point of diversion are impractical. Concern over the integrity of

the ditch and the likelihood of another slope failure have prompted this request for water court recognition of the relocated point of diversion at the Westlake Ditch, previously approved by the Water Commissioner pursuant to §37-86-111, C.R.S. Applicant proposes to install a measurement flume (size to be determined) in the lateral connecting the Westlake Ditch to the Cataract Creek No. 2 Ditch. Westlake Ditch water right diversions are to be computed as the Westlake headgate measured flows less the Cataract Creek No. 2 measured flows in the lateral. 3.1. The legal description of the corrected point of diversion: 3.1.1. Name of structure: Westlake Ditch (structure ID no. 3600868) 3.1.2. Location a. UTM: i. Coordinates: Easting 389916. Northing 4412763. Zone 13. ii. Source: Water Commissioner hand held GPS. Accuracy 8 feet +/- b. PLSS: i. Description: SW1/4 SW1/14 Section 19, Township 2 South, Range 79 West of the 6th P.M., 701 feet from the South and 613 feet from the West section lines. ii. Source: HBDMC and Aquamap. iii. Street Address: 5234 CR 30, Silverthorne CO 80498. 4. Names of owners of land: Knorr Homestead, LLC, 5203 CR 30, Silverthorne, CO 80498. This Amended Application consists of five (5) pages

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19CW2 (11CW43) MESA COUNTY- EAST SALT CREEK TRIBUTARY TO SALT CREEK TRIBUTARY TO THE COLORADO RIVER. Nathan J. Stanton; 836 E. Pabor Ave.; Fruita, CO 81521 (970)250-3646. Boren Pond #2, Boren Diversion #2, Boren Diversion #3, Boren Diversion #4, Boren Diversion #5 and Boren Diversion #6- Application to Make Conditional Rights Absolute and For Finding of Reasonable Diligence and To Change Point of Diversion. **Locations:** Boren Pond #2- NE¹/₄NE¹/₄ of Sec. 15, T.9S., R.103W. of the 6th P.M. 160 ft. from the north sec. line and 770 ft. from the east sec. line. Boren Diversion #2- SE¹/₄SE¹/₄ of Sec.10, T.9S., R.103W. of the 6th P.M. 10 ft. from the south sec. line and 880 ft. from the east sec. line. Boren Diversion #3- NE¹/₄NE¹/₄ of Sec. 15, T.9S., R.103W. of the 6th P.M. 80 ft. from the north sec. line and 980 ft. from the east sec. line. Boren Diversion #4 – SW¹/₄SW¹/₄ of Sec. 11, T.9S., R.103W. of the 6th P.M. 30 ft. from the west sec. line and 1,280 ft. from the south sec. line. Boren Diversion #6- NE¹/₄NE¹/₄ of Sec. 15, T.9S., R.103W. of the 6th P.M. 80 ft. from the north sec. line and 225 ft. from the east sec. line. **Appropriation dates:** Boren Pond No. 2, Boren Diversion #2 and Boren Diversion #3-November 15, 2003; Boren Diversion #4 – July 15, 2004; Boren Diversion #5 and Boren Diversion #6- July 16, 2009. **Amounts and Uses:** Boren Pond #2 – 2.5 a.f., absolute for irrigation, wildlife uses adjacent to and consistent with the construction of a pond, aesthetics, fish habitat and propagation. Boren Diversion #2- 0.67 c.f.s., absolute and 0.08 c.f.s., conditional, for irrigation, pond filling, wildlife uses adjacent to and consistent with the construction of a pond, aesthetics and fish habitat by filling Boren Pond Nos. 1 & 2. Boren Diversion #3- 0.67 c.f.s., absolute and 0.08 c.f.s., conditional, for irrigation, pond filling, wildlife uses adjacent to and consistent with the construction of a pond, aesthetics and fish habitat by filling Boren Pond Nos. 1 & 2. Boren Diversion #4- 0.5 c.f.s., conditional, for irrigation, pond filling, wildlife uses adjacent to and consistent with the construction of a pond, aesthetics and fish habitat by filling Boren Pond Nos. 1 & 2. Boren Diversion #5-0.75 c.f.s., conditional, for irrigation and filling and refilling of filling Boren Pond Nos. 1 & 2. Boren Diversion #6-0.33 c.f.s., absolute and 0.42 c.f.s., conditional, for irrigation, pond filling, wildlife uses adjacent to and consistent with the construction of a pond, aesthetics and fish habitat by filling Boren Pond Nos. 1 & 2. **Requested Change in Point of Diversion:** Boren Diversion #6- NE¹/₄NE¹/₄ of Sec. 15, T.9S., R.103W. of the 6th P.M. 66 ft. from the north sec. line and 815 ft. from the east sec. line. An outline of work completed and expenditures made during the diligence period is included in the application. **Names and addresses of owners of land upon which any structure is located:** David Quigley; 982 S Rd.; Mack, CO 81525; Joanne M. Leischuck; 1910 10 Rd.; Mack, CO 81525 and Maurice Lyle Dechant; 1940 10 Rd.; Mack, CO 81525.

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