

DIVISION 5 WATER COURT- MAY 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 MAY 2019. *The water right claimed by this application may affect in priority any water right 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.*

19CW3062 GARFIELD COUNTY. BABBISH GULCH, TRIB. TO FOURMILE CREEK, TRIB. TO ROARING FORK RIVER, TRIB. TO COLORADO RIVER. Application for Simple Change in Surface Point of Diversion Pursuant to C.R.S. § 37-92-305(3.5). Applicant: Sunlight, Inc., c/o Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546. Structure: **Babbish Gulch Reservoir Pond No. 1 Feeder Ditch.** Orig. Decree: Case No. 93CW196, entered on 6/27/1994, in District Court, Water Div. 5. Legal Description: a headgate located in the NE1/4 SW1/4, Sec. 32, T. 7 S., R. 89 W., 6th P.M., beginning at a pt. whence the NW corner of said Sec. 32 bears N. 39 deg., 00 min. and 00 sec. W. a distance of 3,410 ft.; also described in Case No. 11CW111 as being 3,120 ft. from the E. Sec. line and 2,590 ft. from the S. Sec. line of said Sec. 32. Amount: 5.0 c.f.s., cond. Use: to fill the Babbish Gulch Pond No. 1 for subsequent use. Approp. Date: 6/29/1981. Applicant requests that the Court change the location for the feeder ditch to the as-built location, which is 291 ft. from the decreed location. There are no intervening surface diversion points or minimum instream flows. As-Built Location: A headgate located in the NE1/4 SW1/4, Sec. 32, T. 7 S., R. 89 W., 6th P.M. UTM Zone 13 NAD 83, Easting 297179 meters, Northing 4363890 meters. 3 pgs; 1 exhibit.

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19CW3063 M&M Industries Inc., 33205 Highway 9, Silverthorne, CO 80498, 970-389-2220; P. Andrew Jones, #29076, Lawrence Jones Custer Grasmick LLP, 5245 Ronald Reagan Blvd., Suite 1, Johnstown, Co 80534. Application For Simple Change In Surface Point Of Diversion Pursuant To § 37-92-305(3.5), C.R.S. 2. Decreed water right for which change is sought: 2.1. Name of structure: Roberts Irrigating Ditch, Ditch No. 78, Priority No. 78. 2.1.1. Date of original and all relevant subsequent decrees: C.A. 1710, District Court, **Summit County**, decreed on October 25, 1937. Consumptive use quantified and partial change of use decreed in Case No. 96CW370, District Court, Water Division 5, decreed December 10, 1998. 2.1.2. Legal description of structure as described in most recent decree that adjudicated the location: The decreed point of diversion is at the headgate located on the North Bank of Boulder Creek, at a point whence the NE corner of Section 5, Township 4 South, Range 78 West, 6th P.M. bears North 3°38' East, 863 feet. 2.1.3. Decreed source of water: **Boulder Creek, tributary to Blue River** 2.1.4. Appropriation Date: December 31, 1905. 2.1.5. Total amount decreed to structure in gallons per minute (gpm) or cubic feet per second (cfs): 1.4 c.f.s., absolute. Applicant owns 1.302 c.f.s., absolute. 2.1.6. Decreed use or uses: Domestic 2.1.7 Amount of water that applicant intends to change: Absolute 1.182 c.f.s. Note: .12 c.f.s. of Applicant's 1.302 c.f.s. was dedicated to augmentation plan and abandoned to the stream in 96CW370. 2.2 Name of structure: Roberts Irrigating Ditch, Ditch No. 210, Priority No. 219. 2.2.1. Date of original and all relevant subsequent decrees: C.A. 1709, District Court, Summit County, decreed on October 26, 1937. Consumptive use quantified and partial change of use decreed in Case No. 96CW370, District Court, Water Division 5, decreed December 10, 1998. 2.2.2. Legal description of structure as described in most recent decree that adjudicated the location: The decreed point of diversion is at the headgate located on the North Bank of Boulder Creek, at a point whence the NE corner of Section 5, Township 4 South, Range 78 West, 6th P.M. bears North 3°38' East, 863 feet. 2.2.3. Decreed source of water: Boulder Creek, tributary to Blue River. 2.2.4. Appropriation Date: April 1, 1895. 2.2.5. Total amount decreed to structure in gallons per minute (gpm) or cubic feet per second (cfs): 9 c.f.s., absolute. Applicant owns 6.458 c.f.s., absolute. 2.2.6. Decreed use or uses: Irrigation. 2.2.7. Amount of water that applicant intends to change: Absolute 5.858 c.f.s. Note: .6 c.f.s. of Applicant's 6.458 c.f.s. was dedicated to augmentation plan and abandoned to the stream in 96CW370. 3. Detailed description of proposed change in a surface point of diversion: The Roberts Irrigating Ditch has been affected by construction in the vicinity of the ditch, increasing seepage and making water delivery difficult. Applicant proposes to move the point of diversion for Applicant's interest in the the Roberts Irrigating Ditch priorities 78 and 219 upstream approximately 700 feet on Boulder Creek to the existing diversion structure known as the Benson Ditch. There are no intervening rights or sources of inflow. Changing the point of diversion will not result in a diversion of a greater flow rate or amount of water than is decreed to the right or than is available at the existing decreed point of diversion, or injuriously affect the owners of or persons entitled to use water under a vested water right or decreed conditional water right. A map of the old and proposed new points of diversion is attached hereto as Exhibit "A." 4. Location of the new surface point of diversion: 4.1. PLSS Format: (from previous decrees) Northerly on the bank of Boulder Creek in the NE1/4 of the NE1/4, Section 5, Township 4 South, Range 78 West, 6th P.M. at a point which bears South 43°16'13" West 1061.5 feet from the NE corner of said Section 5. 4.2. UTM Format: Easting 402086, Northing 4399293, Zone 13. Location established by DWR mapping. 5. Name(s) and address(es)

of owner(s) or reputed owners of the land upon which any new diversion structure, or modification to any existing diversion structure is or will be constructed. The applicant must notify these persons that the applicant is applying for this water right, and certify to the Court that the applicant has done so. United States Forrest Service, 680 Blue River Parkway, Silverthorne CO 80498. This resume consists of four (4) pages.

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19CW3064 (13CW3029). GRAND COUNTY. MUDDY PASS COMPOUND, LLC, 2817 S. Harlan Way, Denver, Colorado 80227, c/o Thomas W. Korver, No. 36924, Petros & White, LLC, 1999 Broadway, Suite 3200, Denver, CO 80202, Phone: (303) 825-1980. APPLICATION FOR FINDING OF REASONABLE DILIGENCE AND TO MAKE APPROPRIATIVE RIGHT OF EXCHANGE ABSOLUTE. Name of structures: LaMaWaCaJa Spring No. 1 Exchange (the "Exchange"). Description of conditional water rights: A. Date of original decree: The Exchange was decreed by the District Court in and for Water Division No. 5 on February 26, 2017 in Case No. 13CW3029. There has been no subsequent diligence decree. B. Source: Pursuant to the Plan for Augmentation decreed in Case No. 13CW3029, augmentation water is delivered for LaMaWaCaJa Spring No. 1 by exchange from Wolford Mountain Reservoir pursuant to Applicant's water supply contract with the Colorado Water Conservation District, or alternatively by separate application to Middle Park Water Conservancy District to utilize a portion of its interest in Wolford Mountain Reservoir. C. Exchange Reach: The upstream and downstream terminus for the Exchange is described as follows: (1) Upstream Terminus: The point of diversion for LaMaWaCaJa Spring No. 1, described as the SW1/4SW1/4 of Section 24, Township 5 North, Range 82 West of the 6th P.M., a distance of 96 feet from the West line of said Section 24 and a distance of 43 feet from the South line of said Section 24. The UTM coordinates for LaMaWaCaJa Spring No. 1 are Northing 4470705, Easting 367546. (2) Downstream Terminus: Muddy Creek to a point where releases from Wolford Mountain Reservoir meet Muddy Creek. Releases from Wolford Mountain Reservoir meet Muddy Creek in the SW 1/4 NE 1/4 of Section 25, Township 2 North, Range 81 West of the 6th P.M., at a point approximately 2,145 feet from the East line of said Section 25 and 2,480 feet from the North line of said Section 25. D. Exchange Rate: The maximum exchange rate to cover the consumptive use of LaMaWaCaJa Spring No. 1 is 0.011 cfs, conditional, up to a total of 0.1 acre-feet per year. E. Date of Appropriation: July 29, 2013, by filing of Application in Case No. 13CW3029. Detailed outline of work done to apply water to beneficial use. The application contains a list of activities that the Applicant has engaged in during the diligence period that demonstrate diligence toward the application of water to the decreed beneficial use. This list is available for inspection at the office of the Division 5 Water Court or via Colorado Courts E-filing. The work performed and actions taken by Applicant during the diligence period demonstrates that Applicant fully intends to develop and utilize the Exchange as decreed, has done so, and that Applicant has demonstrated that the Exchange can and will be diverted, stored, or otherwise captured, possessed, and controlled, and will be beneficially used, and that the project can and will be completed with diligence in a reasonable time. Application of Water to Beneficial Use. Applicant has utilized the exchange at various times since entry of the decree in Case No. 13CW3029. Applicant specifically documented the use of the Exchange from August 22, 2017 to September 6, 2017. Accordingly, Applicant requests that the Exchange be made absolute in the decreed amounts. 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: The following is based upon information maintained by the Grand County Assessor. The LaMaWaCaJa Spring No. 1 is located on land owned by Diamond Peak Ranch, Inc., whose address is Ordnance House, 31 Pier Rd, St Helier, Jersey, Channel Islands JE4 8PW, United Kingdom. A pipeline from LaMaWaCaJa Spring No. 1 to Applicant's property is located on lots owned by Chad E. and Katie M. Campbell, whose address is 3597 Bianca Ct, Loveland, CO 80537-8241, and Rodney Dean and Claudia Harrison, whose address is 27928 N Elbert Rd, Kiowa, CO 80117-8901. WHEREFORE, the Applicant respectfully requests that this Court enter findings of fact, conclusions of law, and a judgment and decree (1) making absolute the conditional exchange described in paragraph 3(A)-(E) above; (2) alternatively, finding that the Applicant has been reasonably diligent in the development and use of the conditional exchange described in paragraph 3(A)-(E) above and continuing said exchange in full force and effect as adjudicated in Case No. 13CW3029; and (3) granting such other and further relief as this Court deems just and proper.

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17CW3247 EAGLE COUNTY. MILLER GULCH CREEK, TRIB. TO GYPSUM CREEK. Second Amended Application for Simple Change in Surface Pt. of Diversion Pursuant to C.R.S. § 37-92-305(3.5). Applicants: The James A. Fitzsimmons Trust, dated 11/12/1993, and the Carol V. Fitzsimmons Trust, dated 11/12/1993, c/o Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546. Decreed water right for which change is sought: Name of structure: Erickson No. 2 Ditch. Orig. and relevant subsequent decrees: Erickson No. 2 Ditch was decreed in the District Court for Eagle County in C.A. 446 under Priority No. 237 for 1.00 cfs for irr. purposes with an adjud. date of 6/4/1907 and an approp. date of 10/30/1901. A separate priority was decreed for the Erickson No. 2 Ditch in C.A. 294 under Priority No. 237EX for 1.416 cfs for irr. purposes with an adjud. date of 6/7/1915, and an approp. date of 12/31/1914. The source of water for the Erickson No. 2 Ditch is Miller Gulch Creek, a trib. of Gypsum Creek. Amts: Applicants own 66% of the two decreed priorities by the water rights agreement recorded in the Eagle County records at Reception No. 200723457, being 0.66 cfs of Priority No. 237 and 0.9345 cfs of Priority No. 237EX, for a total of 1.5945 cfs. Source: Miller Gulch Creek, trib. to Gypsum Creek. Legal description of structure as described in most recent decree that adjudicated the location: That the headgate of said ditch is situated on the left bank of the Miller Gulch Creek, from which stream said ditch derives and diverts its supply of water at a pt. whence the corner of Sec. 14-15-22 and 23 in T. 6 S., R. 85 W., 6th P.M. bears S 40° 36' E. 4332.6 ft. that from the headgate said ditch runs in a general Southeasterly direction, that the length of said ditch is 3500 ft., its width 2 ½ ft., its depth is one foot, its grade is ½ inch to the rod, its carrying capacity is five cubic ft. of water per second of time (5 c.f.s.); that the number of acres of land lying under and capable of being irrigated by water from said ditch is 50. Comments: The decreed pt. of diversion does not accurately describe the location of the historical pt. of diversion of the Applicants' water rights. Applicants' investigations indicate that a resurvey of the area in 1906 altered legal descriptions in the area, generally. The historical pt. of diversion on Miller Gulch Creek from which the simple change is requested to a changed pt. is described below. Detailed description of simple change of surface pt. of diversion: Applicants request a simple change in the surface pt. of diversion of the Erickson No. 2 Ditch pursuant to C.R.S. § 37-92-305(3.5) from the historical pt. of diversion on Miller Gulch Creek to an upstream changed pt. of diversion on Miller Gulch Creek, as described below. Applicants are diverters as the owners of the decreed water rights in C.A. 446, which describes the decreed pt. of diversion for the Erickson No. 2 Ditch. Applicants have at all times diverted water pursuant to their decreed water rights in C.A. 446. Applicants' request for a change is limited to Applicants' 66% share of the adjudicated water rights in the Erickson No. 2 Ditch as described by the water rights agreement signed on July 13, 2007 and recorded in the Eagle County records at Reception No. 200723457. The legal description of the historical pt. of diversion in UTM format: UTM coordinates: Easting 336507; Northing 4376139; Zone 13. Legal Description Using the Public Land Survey System (PLSS): SE1/4 of the NW1/4, Sec. 23, T. 6 S. R. 85 W., 6th P.M., 1898 ft. from the N. Sec. line and 2658 ft. from the E. sec. line, Eagle County, Colorado. The legal description of the changed pt. of diversion in UTM format: UTM coordinates; Easting 336590; Northing 4376277; Zone 13. Legal Description Using the Public Land Survey System (PLSS): SW1/4 of the NE1/4, Sec. 23, T. 6 S., R. 85 W., 6th P.M., 1439 ft from the N. sec. line and 2394 ft. from the E. Sec. line, Eagle County, Colorado. The locations of the historical pt. of diversion and changed pt. of diversion requested herein are shown on the map attached as Figure 1 (Water Rights Location Map by Colorado River Engineering) to application. 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: The changed pt. of diversion headgate (above) is located on land owned by: United States Forest Service; White River National Forest, 901 Grand Avenue, Glenwood Springs, CO 81601. 6 pgs.

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19CW6 (CA 13368) MESA COUNTY- COLLIER CREEK TRIBUTARY TO PLATEAU CREEK TRIBUTARY TO THE COLORADO RIVER. Susan Nichols; 60452 Hwy. 330; Collbran, CO 81624. (970)487-3207. Gunderson Ditch-Application for Change of Water Right. Appropriation date: May 10, 1944. Decreed Point of Diversion: N¼ Corner of Sec. 6, T.9S, R.93W. of the 6th P.M. bears N30°10'E at a distance of 3,828 ft – (UTM Coordinates: Easting 257086.9 Northing 4354221.4 Zone 13). Requested

Alternate Point of Diversion: Alfalfa Ditch Lateral, located at UTM coordinates Easting 255364.7 Northing 4351440.3 Zone 13. Amount: 4.5 c.f.s. total decreed to the Gunderson Ditch. Of the total decreed amount, applicant owns and seeks to change 2.25 c.f.s. Use: irrigation. The applicant is requesting the use of Alfalfa Ditch Lateral as an alternate point for the Gunderson Ditch to irrigate the same lands or a portion of the same lands. Because of the soil type, the Gunderson ditch is prone to washing out.

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