

DISTRICT COURT, WATER DIVISION 7, COLORADO

WATER RESUME

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER DIVISION NO. 7

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications filed in the Office of the Water Clerk during the month of April, 2019, for each county affected.

19CW3015 DISTRICT COURT, WATER DIVISION NO. 7, STATE OF COLORADO, 1060 East 2nd Avenue, Durango, Colorado 81301. CONCERNING THE APPLICATION FOR WATER RIGHTS OF ROBERT EDMONDS IN LA PLATA COUNTY, COLORADO. **APPLICATION FOR WATER RIGHTS AND CHANGE OF WATER RIGHTS.** 1. Name and Address of Applicant. Robert Edmonds and Bridget Edmonds (“Applicant”), 1672 Purple Sage Road, Durango, CO 81301. Direct all pleadings to: Steven J. Bushong, Gunnar J. Paulsen, Porzak Browning & Bushong LLP, 2120 13th Street, Boulder, CO 80302, (303) 443-6800. 2. Introduction. Applicant has entered into a Water Rights Option and Purchase Agreement to purchase the entirety of the Anesi Ditch No. 1 and Anesi Ditch No. 2 water rights (collectively referred to herein as “Anesi Ditch Water Rights”), subject to a satisfactory conclusion of this Application. The Anesi Ditch Water Rights have historically irrigated up to 20 acres of land. Applicant proposes to change the location of use of the Anesi Ditch Water Rights for use on Applicant’s property, as described below. Applicant also seeks a junior water right for a small pond to be used in conjunction with the changed Anesi Ditch Water Rights. **I. Change of Water Rights.** 3. Description of water rights being changed. Applicant seeks to change the Anesi Ditch Water Rights described below: A. Anesi Ditch No. 1. i. Original Decree. Anesi Ditch No. 1 was decreed by the District Court in and for La Plata County in Case No. 1751-B on March 21, 1966. ii. Original Decreed Legal Description. The point of diversion is located on the South bank of Gaines Draw, at a point whence the West ¼ corner of Section 21, Township 37 North, Range 8 West, of the N.M.P.M., bears 38°39’ West, 2055.50 feet distant. iii. Decreed Source. Gaines Draw, tributary to the Animas River. iv. Appropriation Date. October 1, 1945. v. Decreed Use. Irrigation of twenty (20) acres of land, domestic, and stock watering. vi. Decreed Amount. Two (2) cubic feet per second (“cfs”), absolute. B. Anesi Ditch No. 2. i. Original Decree. Anesi Ditch No. 2 was decreed by the District Court in and for La Plata County in Case No. 1751-B on March 21, 1966. ii. Original Decreed Legal Description. The point of diversion is located on the south bank of Spud Draw, at a point whence the ¼ corner of Section 21, Township 37 North, Range 8 West, of the N.M.P.M., bears South 82°13’ West, 2762.80 feet distant. iii. Decreed Source. Spud Draw, tributary to the Animas River. iv. Appropriation Date. September 10, 1945. v. Decreed Use. Irrigation of twenty (20) acres, domestic and stock watering. vi. Decreed Amount. One (1) cfs, absolute. C. Remarks. Anesi Ditch No. 1 and Anesi Ditch No. 2 combine and form a single consolidated ditch (“Anesi Ditch”) which delivers all water down to the valley floor to irrigate up to twenty acres of land depicted on **Exhibit A** and originally owned by the Anesi family. The historically irrigated land is currently owned by the Thomas J. Langefels Trust. 4. Location of Anesi Ditch No. 1 and Anesi Ditch No. 2. In Case No. 08CW39, the Water Court for Water Division 7 found after a 2-day hearing that the legal descriptions for the Anesi Ditch No. 1 and Anesi Ditch No. 2 were unclear. The Water Court recognized that the historical location of the ditches on the ground was consistent with the original decree and materially unchanged since before the original decree was adjudicated. The location of Anesi Ditch No. 1, Anesi Ditch No. 2 and the consolidated Anesi Ditch approved by the Water Court in Case No. 08CW39 and approved by settlement agreement in that case is reflected in **Exhibit B**. The description as provided by the Colorado Decision Support System (“CDSS”) is generally consistent with what the Water Court found in Case No. 08CW39 and as depicted on Exhibit B. Any decree resulting from this Application should contain the CDSS descriptions, as follows: A. Anesi Ditch No. 1. NE1/4, NW1/4, Section 21, Township 37 North, Range 8 West, of the N.M.P.M., at a

location 922 feet from the North section line and 1,535 feet from the West section line; or, Northing 4149882, Easting 256110, UTM, Zone 13N, NAD 83. B. Anesi Ditch No. 2. SW1/4, NW1/4, Section 21, Township 37 North, Range 8 West, of the N.M.P.M., at a location 2,644 feet from the North section line and 818 feet from the West section line; or Northing 4149377, Easting 255874, UTM, Zone 13N, NAD 83. 5. Proposed Changes of Anesi Ditch Water Rights. Applicant seeks to change the location of use of the entirety of the Anesi Ditch Water Rights, as follows: A. Place of Use. The Subject Water Rights will be used on Applicant's property located on the Anesi Ditch, which is described as Parcel 15, Redtail Mountain Ranch, Parcel Number 537320400082, located in La Plata County, and shown on the attached Exhibit A ("Applicant's Property") To use water at this new location, Applicant will divert the Anesi Ditch Water Rights from a pond and diversion point constructed within the Anesi Ditch as further described in paragraph 7 below. Irrigation use on Applicant's Property will include a 10-acre orchard, small greenhouse, lawn, and landscaping. 6. Historical Use of the Anesi Ditch Water Rights. The Anesi Ditch Water Rights have been the subject of considerable prior litigation initiated in 1995, 1996, and 2008. This Court held in 08CW39 that aerial photographs and other historical evidence proved "continued irrigation use on approximately 20 acres of historically irrigated meadow on the valley floor consistent with the terms of the Decree." Evidence of the prior owners' use of the Anesi Ditch Water Rights documents irrigation of 20 acres dating back to 1945. The historical irrigation of 20 acres occurred through two irrigation ponds fed by the Anesi Ditch. A. The Court in Case No. 08CW39 recognized that the official diversion records were infrequently kept. Diversion records are attached as **Exhibit C**. Despite infrequent record keeping, the diversion records show continued use for decreed purposes back to 1975 and document considerable variability in the amount of available water. B. Based upon available information, all water available in the Anesi Ditch has historically been applied to beneficial use. The limiting factor for use in any given year is water availability, with the infrequent diversion records showing as little as 0.02 acre-feet available in a year, to as much as 180 acre-feet a year available in a year. C. Available flows for the Anesi Ditch Water Rights, limitations on the change in use of the Anesi Ditch Water Rights, and other appropriate conditions will ensure the Anesi Ditch Water Rights are not enlarged by the proposed change of use. The irrigated area is being reduced by nearly one-half and all return flows will continue to be tributary to the Animas River. **II. New Water Right**. 7. Description of Water Right – Storage: A. Structure. Edmonds Pond. B. Location. The approximate location of the dam will be in the Anesi Ditch, located in the NE1/4, SE1/4, Section 20, Township 37 North, Range 8 West, of the New Mexico P.M., at a location 2,050 feet from the South section line and 467 feet from the East section line. A map depicting the location of Edmonds Pond is attached hereto as **Exhibit A**. C. Sources. The sources for Edmonds Pond are waters contained in the Anesi Ditch, including without limitation, all springs, seeps and other water collected in and/or diverted into the Anesi Ditch, tributary to the Animas River. D. Appropriation Information. i. Date of Appropriation. March 27, 2019. ii. How Appropriation was Initiated. By executing the Water Rights Option and Purchase Agreement. E. Amount. 0.60 acre-foot, conditional, with the continuous right to fill and refill as needed to supply the intended beneficial uses. F. Use. Storage and subsequent use for irrigation, domestic, stock watering, and wildlife purposes. Irrigation and domestic uses will occur by withdrawal of water from storage for use on Applicant's Property. G. Surface Area. 0.10 surface acres. H. Dam Dimensions. i. Vertical Height. Less than 10 feet. ii. Length. Estimated at 50 feet. I. Remarks. The Anesi Ditch Water Rights will be used for irrigation and domestic use through temporary storage in Edmonds Pond. 8. Name and address of the owners of the land upon which any new diversion structure or storage structure, or modification to any existing diversion structure or storage structure, is or will be constructed: Applicant WHEREFORE, Robert Edmonds does hereby submit this Application for Water Right and Change of Water Rights and requests that the Court enter a decree: A. Approving the proposed change of water rights described above in Section I; and B. Approving the claim for a new water right described above in Section II; and C. Granting such other relief as may be appropriate. (9 pages total with exhibits)

19CW3016 CONCERNING THE APPLICATION FOR WATER RIGHTS OF MARILYN K. PAXTON IN THE FLORIDA RIVER OR ITS TRIBUTARIES IN LA PLATA COUNTY. (1)

Applicant: Marilyn K. Paxton, 32281 East U.S. Highway 160 , Durango, CO 81301, by her Agent Kellie Paxton and through her Agent's attorney Jeffrey M. Kane, Southwest Water and Property Law LLC, 10 Town Square Plaza, No. 422, Durango, CO 81301, (970) 426-5480, jkane@swpropertylaw.com. **(2) Introduction:** Applicant is the owner of real property in La Plata County of 21.7 acres in Section 8, Township 34 North, Range 8 West, N.M.P.M., known as 32281 East U.S. Highway 160, Durango, CO 81301 C ("Property"). Applicant has a reserved with the Florida Water Conservancy District ("District") the storage and release from Lemon Reservoir of the annual quantity of water required to replace out-of-priority depletions associated with the Property's three existing exempt wells serving three existing dwellings. **(3) New groundwater rights:** A. Name: North Parcel Well. i. Permit No.: 140332. ii. Legal Description: a point in the SE1/4 of the NE1/4, Section 8, T34N, R8W, N.M.P.M. 1,600 feet from the north section line and 1,100 feet from the east section line. iii. Source: groundwater tributary to the Florida River. iv. Depth: 20 feet. v. Appropriation date: Dec. 31, 1920. vi. Amount: 20 gpm, 0.39 AF annually, Absolute. vii. Use: domestic use inside one dwelling. B. Name: South Parcel Well No. 1. i. Permit No.: 123359. ii. Legal Description: SE1/4 of the NE1/4 of Section 8, T34N, R8W, N.M.P.M. 2,450 feet from the north section line and 500 feet from the east section line. iii. Source: groundwater tributary to the Florida River. iv. Depth: 80 feet. v. Appropriation date: Jan. 1, 1982. vi. Amount: 15 gpm, 0.39 AF annually, Absolute. vii. Use: domestic use inside one dwelling. C. Name: South Parcel Well No. 2. i. Permit No.: 140886. ii. Legal Description: SE1/4 of the NE1/4, Section 8, T34N, R8W, N.M.P.M. 1,800 feet from the north section line and 1,200 feet from the east section line. iii. Source: groundwater tributary to the Florida River. iv. Depth: 61 feet. v. Appropriation date: June 1, 1930. vi. Amount: 15 gpm, 0.39 AF annually, Absolute. vii. Use: domestic use inside one dwelling. **(4) Plan for Augmentation:** A. Structures to be augmented: North Parcel Well and South Parcel Well Nos. 1 and 2. B. Out-of-priority depletions from the augmented structures will be replaced by releases from Lemon Reservoir. C. Augmentation requirements are calculated based on conservative, protective assumptions described as follows and detailed in Tables 1 and 2 filed with the Application: i. Diversion demands for in-house domestic use inside three dwellings are 350 gallons per-day per-dwelling year-round; total cumulative diversion amount 1.18 AF per-year. ii. Septic system return flows are 85% of the amount diverted, a total of 1.0 AF per-year; total depletions 0.18 AF (because in-house water use is constant year-round, a lagging analysis for the delayed impacts from the well to the stream is not necessary). iii. The Plan assumes year-round administration, such that all depletions by the augmented structures are out of priority; actual augmentation requirements will be based on yearly administration. iv. Depletions of augmentation water due to transit losses from Lemon Dam to the Property are assumed to be 0.625% per-mile over 17.47 miles, requiring releases totaling 0.20 AF per-year from Lemon Dam to augment the North Parcel Well and South Parcel Well Nos. 1 and 2 allocated monthly as detailed in the Application. D. Source of Water for Augmentation: Florida River water stored in Lemon Reservoir. i. Applicant will enter into one long-term water service agreement for the release of a total of up to 0.5 AF of water per-year from Lemon Dam to replace Applicant's out-of-priority depletions. ii. The District's Lemon Reservoir water rights were decreed for use in augmentation plans in Case Numbers W 1689 77 through W 1695 77, as amended in 1994 for use of 114 AF of storage water for augmentation. iii. Legal description: The axis of the dam is located in Section 17 and 20, Township 36 North, Range 7 West, N.M.P.M. beginning at a point on the right abutment, from whence the Southwest corner of Section 17, Township 36 North, Range 7 West, N.M.P.M., bears South 84° 34' West, a distance of 1,699.6 feet, thence South 63° 22' East a distance of 1,320 feet to a point on the end of the axis of the dam and rock fill structure. **(5)** Applicant and each of its successors and assigns in ownership of the water rights applied for herein and of its interest in the water service agreement entered into pursuant to a decree entered in this case, shall be responsible for ensuring that the water uses on the Property do not exceed the depletions authorized under the Plan for Augmentation. **(6)** Applicant is the owner of the land upon which all structures applied for herein are constructed. The augmentation source structure, Lemon Reservoir, is operated by the District, whose address is 1523 C.R. 243, Durango, CO 81302, and located on land owned by the Bureau of Reclamation, whose address is 185 Suttle Street, Suite 2, Durango, CO 81301. (10 pages including exhibits)

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 YOU HAVE until the last day of June, 2019, to file with the Water Clerk, a verified Statement of Opposition, setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions. A copy of such Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit or certificate of such service shall be filed with the Water Clerk, as prescribed by Rule 5, CRCP. (Filing fee: \$192.00; Forms are available through the Office of the Water Clerk or on the Judicial web site at www.courts.state.co.us; Danene M. Etz, Water Court Specialist, 1060 E. 2nd Ave., Room 106, Durango, CO 81301; 970-385-6181)



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Danene M. Etz, Water Court Specialist