

DISTRICT COURT, WATER DIVISION 7, COLORADO

WATER RESUME

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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 July, 2019, for each county affected.

**18CW3018** Archuleta County - Piedra River; Marcus Elliott, Denise L. Elliott, and William R. Whitney; c/o Bruce C. Walters and John R. Pierce, Dufford, Waldeck, Milburn & Krohn, LLP, 744 Horizon Court, Suite 300, Grand Junction, CO 81506, (970) 248-5865; **AMENDED APPLICATION FOR SIMPLE CHANGE IN SURFACE POINTS OF DIVERSION**; Name and address of applicants: Marcus Elliott, Denise L. Elliott, and William R. Whitney; 25825 Highway 160; Durango, CO 81301; Background information: Applicants filed their initial application requesting a surface water right in the Burns Spring Pipeline on June 29, 2018. However, after filing that application, Applicants conferred with the water commissioner and learned the water being diverted at the Burns Spring Pipeline historically had been diverted at various downstream points of diversion for irrigation of the same acreage. Applicants retained Wright Water Engineering to verify the locations of the decreed points of diversion on Applicants' property, to provide descriptions of the current status of the diversion structures and to generate a detailed written report. Wright Water conducted a site visit on April 26, 2019, and prepared a summary of each structure. Applicants now seek to use the J R Scott Ditch as the new point of diversion for four water rights located on their property pursuant to C.R.S. § 37-92-305(3.5). However, Applicants intend to make use of an irrigation pipeline installed on Applicants' property in 2007 by the NRCS to utilize these water rights at the J R Scott point of diversion. Accordingly, Applicants request a change in the points of diversion for the following water rights, which will ultimately provide for their continued application towards beneficial use. Decreed water right for which change is sought: Name of structure: C H Freeman Ditch; Original and subsequent decrees: Decreed January 20, 1902, Case No. CA0073. Legal description: According to Case No. CA0073, the point of diversion for the C H Freeman Ditch was decreed on the north bank of Yellow Jacket Creek at a point near the center of the northwest quarter of Section 3, Township 34, N.R. 6, West; that said ditch extends thence in a general southeasterly direction; Alternate points of diversion: In Case No. 82CW99, an alternate point of diversion for the C H Freeman Ditch was decreed at the headgate of the Burns Ditch which is located at a point on the SW bank of Yellow Jacket Creek, whence the NW corner of Section 3, T34N, R5W, N.M.P.M. bears N26°49' W, 2,548.3 ft. A second alternate point was decreed at the headgate of the Abeyta Ditch, which is located at a point on the NE bank of Yellow Jacket Creek whence the SE corner of Section 3, T34N, R5W, N.M.P.M. bears S63°16' E, 3,4724.7 ft. (T34N – north of the Ute line); Decreed source of water: Yellow Jacket Creek, tributary to the Piedra River; Appropriation date: April 10, 1879; Amount: 1.75 c.f.s. absolute; Decreed use: Irrigation of lands lying along Yellow Jacket Creek; Proposed change in surface point of diversion: Description of proposed change: Change the point of diversion for the C H Freeman Ditch. Applicants' water right in the C H Freeman Ditch was decreed for 1.75 c.f.s. for irrigation use in Case No. CA0073. Applicants' predecessors historically used that right to irrigate acreage lying along Yellow Jacket Creek, the same acreage that Applicants' own and irrigate today. However, as the structure supporting this right fell into disrepair Applicants installed an irrigation pipeline spanning their entire property, which is filled directly from the J R Scott Ditch, and is capable of carrying quantities of water beyond what is decreed to the J R Scott. While inspecting their property, Applicants observed that no diversion structure presently exists for the C H Freeman Ditch. In order to make beneficial use of water decreed to the C H Freeman Ditch, Applicants seek to change the point of diversion for the C H Freeman Ditch to the current point of diversion for the J R Scott Ditch. Changing the point of diversion for the C H

Freeman Ditch will not result in an enlargement of the Ditch's historic use at its original point of diversion because the irrigation pipeline is only capable of carrying 2.5 c.f.s. of water at any given time. Further, the only intervening surface points of diversion belong to Applicants, and there are no decreed instream flow rights within this reach. Finally, Applicants are not seeking to irrigate lands not contemplated by the original decree; Applicants will utilize water from the C H Freeman Ditch on the same lands historically irrigated by the Ditch. Because the alternate points of diversion are located at structures Applicants also seek to change by this Application, Applicants will concede the abandonment of each of its alternate points of diversion for the C H Freeman Ditch; Location of new surface point of diversion: J R Scott Ditch; In Case No. CA0073, the headgate of the J R Scott Ditch is generally described as being located on the north bank of Yellow Jacket Creek, at a point near the center of the northeast quarter of Section 4, Township 34 R 5. The legal point of diversion for the J R Scott Ditch and the location where the proposed change will be utilized is located at a point in the NE1/4, NE1/4 of Section 4, T34N, R5WA, N.M.P.M., 8 feet from the north section line and 835 feet from the east section line. (X: 285431, Y: 4125612 UTM NAD 83 Zone 13). The point of diversion for the J R Scott Ditch has been at the same physical location since the water right in the J R Scott Ditch was confirmed in Case No. CA0073. The legal point of diversion is not located at the location generally described in the original decree. Applicants have diverted water in the J R Scott Ditch at its legal point of diversion with the intent to divert pursuant to the terms of Case No. CA0073. Decreed water right for which change is sought: Name of structure: Abeyta Ditch; Date of original decree: Decreed on December 19, 1968, Case No. D-308; Legal description: According to Case No. D-308, the headgate of the Abeyta Ditch is located at a point on the Northeast bank of Yellow Jacket Creek, whence the Southeast corner of Section 3, Township 34 North, (North of the Ute Line) Range 5 West, N.M.P.M., bears South 63°16' East, 3,724.7 feet; Decreed source of water: Surface flows from Yellow Jacket Creek, tributary to the Piedra River; Appropriation date: December 31, 1927; Amount: 1.5 c.f.s. absolute; Decreed use: Domestic and irrigation of 24 acres of land; Proposed change in surface point of diversion: Description of proposed change: Change the point of diversion for the Abeyta Ditch. Applicants' water right in the Abeyta Ditch was decreed for 1.5 c.f.s. for irrigation and domestic use in Case No. D-308. Applicants' predecessors historically used that right to irrigate 24 acres of land lying along Yellow Jacket Creek, acreage which is now owned and irrigated by Applicants. In the past several decades, however, the structure supporting this right fell into disrepair. Recently, Applicants installed an irrigation pipeline spanning their entire property, which is filled directly from the J R Scott Ditch, and is capable of carrying quantities of water beyond what is decreed to the J R Scott. While inspecting their property, Applicants observed the Abeyta Ditch to be in disrepair and not presently capable of diverting water. In order to make beneficial use of water decreed to the Abeyta Ditch, Applicants seek to change the point of diversion for the Abeyta Ditch to the current point of diversion for the J R Scott Ditch. Changing the point of diversion for the Abeyta Ditch will not result in an enlargement of the Ditch's historic use at its original point of diversion because the irrigation pipeline is only capable of carrying 2.5 c.f.s. of water at any given time. Further, the only intervening surface points of diversion belong to Applicants, and there are no decreed instream flow rights within this reach. Finally, Applicants are not seeking to irrigate lands not contemplated by the original decree; Applicants will utilize water from the Abeyta Ditch on the same lands historically irrigated by the Ditch. Location of new surface point of diversion: J R Scott Ditch ; In Case No. CA0073, the headgate of the J R Scott Ditch is generally described as being located on the north bank of Yellow Jacket Creek, at a point near the center of the northeast quarter of Section 4, Township 34 R 5. The legal point of diversion for the J R Scott Ditch and the location where the proposed change will be utilized is located at a point in the NE1/4, NE1/4 of Section 4, T34N, R5WA, N.M.P.M., 8 feet from the north section line and 835 feet from the east section line. (X: 285431, Y: 4125612 UTM NAD 83 Zone 13). The point of diversion for the J R Scott Ditch has been at the same physical location since the water right in the J R Scott Ditch was confirmed in Case No. CA0073. The legal point of diversion is not located at the location generally described in the original decree. Applicants have diverted water in the J R Scott Ditch at its legal point of diversion with the intent to divert pursuant to the terms of Case No. CA0073. Decreed water right for which change is sought: Name of structure: Burns Ditch; Date of original decree: Decreed

on December 19, 1968, Case No. D-308; Legal description: According to Case No. D-308, the headgate of the Burns Ditch is located at a point on the Southwest bank of Yellow Jacket Creek, whence the Northwest corner of Section 3, Township 34 North (North of the Ute Line) Range 5 West, N.M.P.M. bears North 26°49' West 2,548.3 feet; Decreed source of water: Surface flows from Yellow Jacket Creek, tributary to the Piedra River; Appropriation date: December 31, 1927; Amount: 1.5 c.f.s. absolute; Decreed use: Domestic and for irrigation of 16 acres of land; Proposed change in surface point of diversion: Description of proposed change: Change the point of diversion for the Burns Ditch. Applicants' water right in the Burns Ditch was decreed for 1.5 c.f.s. for irrigation and domestic use in Case No. D-308. Applicants' predecessors historically used that right to irrigate 16 acres of land lying along Yellow Jacket Creek, acreage which is now owned and irrigated by the Applicants. In the past several decades, however, the structure supporting this right fell into disrepair. Recently, Applicants installed an irrigation pipeline spanning their entire property, which is filled directly from the J R Scott Ditch, and is capable of carrying quantities of water beyond what is decreed to the J R Scott. While inspecting their property, Applicants observed that Burns Ditch is not presently able to divert water and would need erosion mitigation repairs to become operable. In order to make beneficial use of water decreed to the Burns Ditch, Applicants seek to change the point of diversion for the Burns Ditch to the current point of diversion for the J R Scott Ditch. Changing the point of diversion for the Burns Ditch will not result in an enlargement of the Ditch's historic use at its original point of diversion because the irrigation pipeline is only capable of carrying 2.5 c.f.s. of water at any given time. Further, the only intervening surface points of diversion belong to Applicants, and there are no decreed instream flow rights to within this reach. Finally, Applicants are not seeking to irrigate lands not contemplated by the original decree; Applicants will utilize water from the Burns Ditch on the same lands historically irrigated by the Ditch. Location of new surface point of diversion: J R Scott Ditch; In Case No. CA0073, the headgate of the J R Scott Ditch is generally described as being located on the north bank of Yellow Jacket Creek, at a point near the center of the northeast quarter of Section 4, Township 34 R 5. The legal point of diversion for the J R Scott Ditch and the location where the proposed change will be utilized is located at a point in the NE1/4, NE1/4 of Section 4, T34N, R5WA, N.M.P.M., 8 feet from the north section line and 835 feet from the east section line. (X: 285431, Y: 4125612 UTM NAD 83 Zone 13). The point of diversion for the J R Scott Ditch has been at the same physical location since the water right in the J R Scott Ditch was confirmed in Case No. CA0073. The legal point of diversion is not located at the location generally described in the original decree. Applicants have diverted water in the J R Scott Ditch at its legal point of diversion with the intent to divert pursuant to the terms of Case No. CA0073. Decreed water right for which change is sought: Name of structure: Wildwater Ditch; Date of original decree: Decreed on December 19, 1968, Case No. D-308; Legal description: According to Case No. D-308, the headgate of the Wildwater Ditch is located at a point on the Northwest bank of Wildwater Creek, whence the Southeast corner of Section 3, Township 34 North (North of Ute Line), Range 5 West, N.M.P.M., bears South 55°40' East 3,021.4 feet; Decreed source of water: Surface flows from Yellow Jacket Creek, tributary to the Piedra River; Appropriation date: December 31, 1927; Amount: 1.0 c.f.s., absolute; Decreed use: For domestic purposes and for irrigation of 7 acres of land; Proposed change in surface point of diversion: Description of proposed change: Change the point of diversion for the Wildwater Ditch. Applicants' water right in the Wildwater Ditch was decreed for 1.0 c.f.s. for irrigation and domestic use in Case No. D-308. Applicants' predecessors historically used that right to irrigate 7 acres of land lying along Yellow Jacket Creek, acreage which is now owned and irrigated by the Applicants. In the past several decades, however, the structure supporting this right fell into disrepair. Recently, Applicants installed an irrigation pipeline spanning their entire property, which is filled directly from the J R Scott Ditch, and is capable of carrying quantities of water beyond what is decreed to the J R Scott. While inspecting their property, Applicants observed that Wildwater Ditch is not presently diverting water and the flume serving the Ditch is defunct and not able to accurately produce flow measurements. In order to make beneficial use of water decreed to the Wildwater Ditch, Applicants seek to change the point of diversion for the Wildwater Ditch to the current point of diversion for the J R Scott Ditch. Changing the point of diversion for the Wildwater Ditch will not result in an enlargement of the Ditch's

historic use at its original point of diversion because the irrigation pipeline is only capable of carrying 2.5 c.f.s. of water at any given time. Further, the only intervening surface points of diversion belong to Applicants, and there are no decreed instream flow rights within the stream reach. Finally, Applicants are not seeking to irrigate lands not contemplated by the original decree; Applicants will utilize water from the Wildwater Ditch on the same lands historically irrigated by the Ditch; Location of new surface point of diversion: J R Scott Ditch; In Case No. CA0073, the headgate of the J R Scott Ditch is generally described as being located on the north bank of Yellow Jacket Creek, at a point near the center of the northeast quarter of Section 4, Township 34 R 5. The legal point of diversion for the J R Scott Ditch and the location where the proposed change will be utilized is located at a point in the NE1/4, NE1/4 of Section 4, T34N, R5WA, N.M.P.M., 8 feet from the north section line and 835 feet from the east section line. (X: 285431, Y: 4125612 UTM NAD 83 Zone 13). The point of diversion for the J R Scott Ditch has been at the same physical location since the water right in the J R Scott Ditch was confirmed in Case No. CA0073. The legal point of diversion is not located at the location generally described in the original decree. Applicants have diverted water in the J R Scott Ditch at its legal point of diversion with the intent to divert pursuant to the terms of Case No. CA0073. (31 pages including exhibits)

**19CW12** Gary Ellson & Tova Spector, 14017 Rd 33, Mancos, CO 81328: **Camp Ditch Pipeline inlet box and overflow**; McElmo Creek; Montezuma County; Easting N 37.41550, Northing W 108.44739; SE1/4SE1/4, Section 36, T37N, R15W, NMPM; 13 to 18 feet from South, 964 feet from East; Unnamed tributary to unnamed tributary to Stinking Springs Canyon, tributary to McElmo Creek, consisting of all natural flows and water emanating from waste from the Camp Ditch, and Camp Ditch pipeline and Camp Ditch pond; Conditional 1.0 cfs; Irrigation of agricultural crops, pasture and wetlands, filling of livestock pond for livestock watering; Number of acres historically irrigated, 12; Proposed to be irrigated, 32.5; Application for Conditional Water Rights (Surface) (7 pages)

**19CW3020** La Plata County, Animas River, Water District No. 7; AMENDED APPLICATION FOR CODITIONAL AND ABSOLUTE WATER STORAGE RIGHT; Name, address, and telephone number of applicant: Lake Durango Water Authority, Charles Smith, General Manager, PO Box 657, Durango, CO 81302, (970) 799-2468; Attorney: Floyd L. Smith, 48 CR 250, Suite 5, Durango, CO 81301; 2. Name of structure: Johnson Lake No. 2; 3. Legal description: In the NE1/4 SE1/4, Section 32, Township 32 North, Range 10 West, N.M.P.M. La Plata County, Colorado, being approximately 1940 feet North and 400 feet East of the SE corner of said Section 32.; 4. Source: Unnamed tributary of Wildcat Canyon, Lightner Creek, Animas River Drainage; 5. Date of initiation of appropriation: March 1982; 6. Amount claimed: 39 acre feet absolute, 349 conditional; 7. Use: Municipal, piscatorial and storage for those uses; 8. Remarks: The Applicant has an absolute right for 15 acre feet storage in Johnson Reservoir No.2, decreed in District Court, water Division 7, Case No. 03CW79. Since that decree Applicant has completed \$60,000 of repairs and improvements on Johnson Reservoir No. 2 spillway and dam slope. The Applicant has installed a raw water pipeline from Lake Nighthorse to Lake Durango Reservoir. The project included the installation of valves and a port so that water from Johnson Reservoir No. 2 can be pumped to Lake Durango Reservoir using the new pipeline. (9 pages)

**19CW3023** **APPLICATION FOR SIMPLE CHANGE IN SURFACE POINT OF DIVERSION, Montezuma County.** Applicants: Juhl Properties, 1393 E. 3<sup>rd</sup> Avenue, Durango, CO 81301, (970) 769 0147, and Joseph Silence, 4054 E. Round Hill Drive, Phoenix, AZ 85028, (602) 243 9900. Direct all correspondence to Amy N. Huff, Colorado Water & Land Law, LLC, 679 E. 2<sup>nd</sup> Ave, Unit 11B, Durango, CO 81301 (970) 403-1770, [amy@waterland-law.com](mailto:amy@waterland-law.com). (1) **Structure**: ROUBIDOUX DITCH; A. **Original Decree**: District Court, Montezuma County, Civil Action No. 967, entered on December 18, 1933. B. **POD**: The headgate is located on the Northerly bank of the Dolores River, thence the SW corner of Section 7, T38N, R12W, NMPM, bears S35° 58'W, a distance of 8,166.0 ft., Dolores River Water-shed (*source: Judgment and Decree, Case No. 83CW142, Water Division No. 7, entered on August 1, 1984*). C. **Source**: East Fork, Dolores River. D. **Appropriation Date**: August 15, 1899. E. **Amount**:

Total amount decreed – 3.5 cfs Absolute; at issue 1.75 cfs Absolute. F. Use: Irrigation. (2). **Description of Proposed Change**: Applicants seek to change the point of diversion of 1.75 cfs decreed to the Roubidoux Ditch from the originally decreed point to a point approximately 3,000 feet downstream so that the water at issue herein can be diverted from the East Fork, Dolores River, to the Applicants' shared property boundary. There are no intervening structures or sources between the originally decreed point of diversion and the point of diversion sought in this Application. The Roubidoux Ditch was decreed a 3.5 cfs water right for the irrigation of 75 acres. This reflects a duty of water of 1.0 cfs for 21.43 acres. Applicants do not propose to change the use and they will limit their irrigation to no more than 20 acres on the two parcels of real property. The proposed change will not result in the diversion of a greater flow rate or amount of water that has been decreed to the water right and that is physically available at the decreed point of diversion and the limitation on the acreage irrigated by the changed water right will ensure that no other owners of or persons entitled to use water under a vested water right or a decreed conditional water right will be injured. (3) **Location of New Surface point of Diversion: UTM coordinates**, Easting 215586.9 Northing 4163705.4 **Zone 13, NAD 83** - 27078 Highway 145, Dolores, Colorado, 81323 (Silence 2 Lot Minor Subdivision). PLSS – SW ¼ SE ¼ Section 6, T38N, R12W, NMPM. (4) **Affected Landowners**: Applicants own on land on which the proposed point of diversion is located. (5) **Remarks**: See Application. (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 September, 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](http://www.courts.state.co.us); Danene M. Etz, Water Court Specialist, 1060 E. 2<sup>nd</sup> Ave., Room 106, Durango, CO 81301; 970-385-6181)



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Danene M. Etz, Water Court Specialist