

DISTRICT COURT, WATER DIVISION NO. 5 COLORADO Court Address: 109 8 th Street, Suite 104 Glenwood Springs, Colorado 81601	DATE FILED: November 29, 2023 6:32 PM
CONCERNING THE APPLICATION FOR WATER RIGHTS OF MIDDLE PARK WATER CONSERVANCY DISTRICT IN GRAND COUNTY, COLORADO	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorneys for Applicant: THE WHITMER LAW FIRM, LLC Kent Whitmer (#21427) Kaitlin Randall (#47596) P.O. Box 38 Hot Sulphur Springs, CO 80451 Phone Number: 970-725-3460 E-mail: kent@whitmerlawfirm.com katie@whitmerlawfirm.com	Case Number: 23CW _____ (C.A. 946, W-789-76, 80CW94, 84CW70, 88CW85, 95CW250, 03CW004, 10CW159, 17CW3136) Division: 5 Courtroom:
APPLICATION FOR FINDING OF REASONABLE DILIGENCE	

1. Name and mailing address of Applicant:

Middle Park Water Conservancy District (“MPWCD”)
P.O. Box 145
Granby, CO 80446

The Applicant is represented by:

The Whitmer Law Firm, LLC
P.O. Box 38
Hot Sulphur Springs, CO 80451
(970)725-3460
kent@whitmerlawfirm.com
katie@whitmerlawfirm.com

Please direct all inquiries, correspondence and pleadings regarding this matter to counsel for Applicant identified above.

2. Prior Decrees:

A. Original Decree:

Date: September 5, 1964 as modified on October 5, 1970
Case No.: C.A. 946
Court: Grand County District Court

B. Subsequent Decrees Awarding Findings of Diligence:

Date: December 8, 1982
Case No.: W-789-76 (80SA12)
Court: Water Division No. 5

Date: March 8, 1982
Case No.: 80CW94
Court: Water Division No. 5

Date: January 27, 1987
Case No.: 84CW70
Court: Water Division No. 5

Date: November 28, 1989
Case No.: 88CW85
Court: Water Division No. 5

Date: January 7, 1997
Case No.: 95CW250
Court: Water Division No. 5

Date: June 21, 2004
Case No.: 03CW04
Court: Water Division No. 5

Date: June 23, 2011
Case No.: 10CW159
Court: Water Division No. 5

Date: November 19, 2017
Case No.: 17CW3136
Court: Water Division No. 5

3. Claim for Finding of Reasonable Diligence – The Troublesome Project: Description of conditional rights (as to each structure) giving the following from the Referee’s Ruling and Judgment and Decree:

A. Name of Structures: The Troublesome Project

- i. Haypark Reservoir
- ii. Haypark Canal Headgate No. 1
- iii. Haypark Canal Headgate No. 2
- iv. Kirtz No. 2 Enlargement
- v. Kremmling Canal

B. Legal Descriptions: The components of the Troublesome Project are shown in the map attached hereto as *Exhibit A*.

- i. **Haypark Reservoir:** Sections 22, 27, 28, 33 and 34, Township 3 North, Range 79 West, 6th P.M., whence Northwest corner of Section 4, Township 2 North, Range 79 West, 6th P.M. bears South 26°13' West 2,417.5 feet.

While not changing the decreed location, the location can be further described as: in the NW1/4 of the SW1/4, Section 33, Township 3 North, Range 79 West, 6th P.M., parts of Sections 22, 27, 28, 33 and 34 in Township 3 North, Range 79 West.

- ii. **Haypark Canal Headgate No. 1:** Right bank of the East Fork of Troublesome Creek, whence Northwest corner of Section 4, Township 2 North, Range 79 West, 6th P.M. bears South 42°57' East 1,344.4 feet.

While not changing the decreed location, the location can be further described as: SE1/4 of the SE1/4, Section 32, Township 3 North, Range 79 West of the 6th P.M. 950 feet from South Section line, 454 feet from East Section line.

- iii. **Haypark Canal Headgate No. 2:** Right bank of the Monument Creek, whence Northwest corner of Section 4, Township 2 North, Range 79 West, 6th P.M. bears South 77°34' East 3,549.2 feet.

While not changing the decreed location, the location can be further described as: SE1/4 of the SW1/4, Section 32, Township 3 North, Range 79 West of the 6th P.M., 496 feet from South Section line, 1,646 feet from West Section line.

- iv. **Kirtz No. 2 Enlargement:** Whence North 1/4 corner of Section 26, Township 3 North, Range 80 West, 6th P.M. bears North 58°15' West 2,350.8 feet.

While not changing the decreed location, the location can be further described as: NE1/4 of the NE1/4, Section 26, Township 3 North, Range 80 West of the 6th P.M. 1,206 feet from North Section line, and 763 feet from East Section line.

- v. **Kremmling Canal:** The original decreed location is right bank of Troublesome Creek, whence Northwest corner of Section 18, Township 2 North, Range 79 West, 6th P.M. bears North 64°37' East 1,621.5 feet. The decree in Case No. 16CW3157 changed the location to the NE1/4 NW1/4 of Section 18, Township 2 North, Range 79 West of the 6th P.M., 665 feet from North Section line, 1,572 feet from the West Section line.

Also described as: On the right bank of Troublesome Creek whence the NW corner Section 18, T2N, R79W, 6th P.M. bears N. 64°37' W. 1,621.5 feet.

C. Sources:

- i. **Haypark Reservoir:** East Fork Troublesome Creek, tributary to Troublesome Creek, tributary to Colorado River.
- ii. **Haypark Canal Headgate No. 1:** East Fork Troublesome Creek, tributary to Colorado River.
- iii. **Haypark Canal Headgate No. 2:** Monument Creek, tributary to East Fork Troublesome Creek, tributary to Troublesome Creek, tributary to Colorado River.
- iv. **Kirtz No. 2 Enlargement:** Troublesome Creek, tributary to Colorado River.
- v. **Kremmling Canal:** Troublesome Creek, tributary to Colorado River.

D. Appropriation Date for All Structures: August 5, 1959

E. Amounts:

- i. **Haypark Reservoir:** 20,115.9 acre-feet, conditional.
- ii. **Haypark Canal Headgate No. 1:** 70 cubic feet per second (“c.f.s”), conditional for irrigation. 145 c.f.s. conditional for all other uses.
 - a. Case No. 946 decreed this structure for 145 c.f.s., conditional.
 - b. Case No. 946 decreed this structure and Haypark Canal Headgate No. 2 as alternate points of diversion, stating that the 145 c.f.s. could be diverted at either or both structures.
 - c. Case No. W-3542 decreed the East Fork Ditch Headgate as an alternate point of diversion for this structure and for Haypark Canal Headgate No. 2.
 - d. Case No. 81CW269 made absolute 45 c.f.s. for irrigation only. All other uses remained conditional.
 - e. Case No. 83CW83 made absolute 30 c.f.s. for irrigation only. All other uses remained conditional.
- iii. **Haypark Canal Headgate No. 2:** 70 c.f.s., conditional for irrigation. 145 c.f.s., conditional for all other uses. See discussion above, Paragraph 3.E.ii.a-e.
- iv. **Kirtz No. 2 Enlargement:** 82.55 c.f.s., conditional.

v. **Kremmling Canal:** 35 c.f.s., conditional.

F. Uses: All structures decreed for irrigation, stock, domestic, municipal, industrial, piscatorial and recreation.

4. Provide a detailed outline of what has been done toward completion or for completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures:
 - A. During the diligence period, substantial tracts of land in the vicinity of the Troublesome Project were purchased by a private party. In recent years, that party has expressed an interest in exploring potential partnerships with MPWCD to construct Haypark Reservoir and put the various other components of the Troublesome Project right to beneficial use. Discussions with MPWCD and nearby irrigators that would potentially benefit from development of the Troublesome Project are ongoing, and parties are conducting their respective due diligence before entering into a formal deal. As set forth in more detail below, MPWCD has incurred significant legal and engineering/hydrology expenses in connection with the analysis, research, and discussions pertaining to this proposed partnership.
 - B. Since the last decree was issued for the Troublesome Project, MPWCD has spent approximately \$890,000 in legal fees related to the protection, operation and furtherance of MPWCD's water rights. Of this total amount, approximately \$18,000 was incurred in legal expenses directly related to the Troublesome Project rights discussions and research described in Paragraph 4.A. above.
 - C. MPWCD has spent over \$465,000 on engineering, hydrology and water rights consulting during the diligence period, a portion of which directly involves the Troublesome Project right. BBA Water, Inc. has revised the technical analysis for the Troublesome Project, including yield predictions and forecasts of future needs in the area, at an estimated cost of \$30,000. Additionally, these consulting fees include the development and implementation of detailed daily accounting of depletions and replacement supplies in coordination with the Division 5 Engineer's Office.
 - D. MPWCD has also incurred legal and technical consulting costs related to monitoring, evaluating and participating in water rights cases in Division 5 to protect the subject water rights from injury.
5. 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:

Bench Bar Ranch
800 Hawkstone Dr. Unit 21
Eaton, CO 80615-9036

Circle C Ranch Kremmling, LLC
P.O. Box 388
Sedalia, CO 80135-0388

Dan Minnick, Edward Paul Lariviere & Paula Lariviere
801 N. Faver Dr.
Castle Rock, CO 80109-4700

United States of America
USDA Forest Service - Arapaho
2150 Centre Ave. Bldg. E
Ft. Collins, CO 80526-8119

W Diamond Ranch LLC
1077 County Road 225
Kremmling, CO 80459-9700

6. Remarks or any other pertinent information: None.

WHEREFORE, Applicant respectfully requests that the Court: 1) find that the Applicant has exercised reasonable diligence in the development of the water rights that are the subject of this Application; 2) rule that the conditional water rights be continued in full force and effect; and 3) set a date for a subsequent application for a finding of reasonable diligence.

Dated: November 29, 2023

/s/ Kaitlin Randall

Kent Whitmer (#21427)
Kaitlin Randall (#47596)
P.O. Box 38
Hot Sulphur Springs, CO 80451
Phone: 970-725-3460

