

DISTRICT COURT, WATER DIVISION NO. 5, COLORADO Garfield County, Colorado 109 Eighth Street, Suite 104 Glenwood Springs, Colorado 81601 Telephone: 970-928-3062	DATE FILED: November 30, 2023 2:58 PM FILING ID: F7F0EF9617ABB CASE NUMBER: 2023CW3183
CONCERNING THE APPLICATION FOR WATER RIGHTS OF PUCKETT LAND COMPANY ON THOMPSON CREEK, TRIBUTARY TO THE CRYSTAL RIVER, TRIBUTARY TO THE ROARING FORK RIVER, TRIBUTARY TO THE COLORADO RIVER IN PITKIN COUNTY	▲ COURT USE ONLY ▲
Attorneys for Applicant: <i>Puckett Land Company</i> Peter D. Nichols, #33167 Megan Christensen, #50344 BERG HILL GREENLEAF RUSCITTI LLP 1712 Pearl Street Boulder, Colorado 80302 Phone Number: (303) 402-1600 Fax Number: (303) 402-1601 E-Mail: pdn@bhgrlaw.com; megan.christensen@bhgrlaw.com	Case Number: 23CW__ (CA5884, W-862, W-862-76, 80CW223, 84CW135, 88CW191, 95CW298, 02CW161, 10CW40, 17CW3107)
APPLICATION FOR FINDING OF REASONABLE DILIGENCE	

1. Name, address and telephone number of Applicant:

Puckett Land Company (“Puckett”)
 Attention: Eric R. Stearns
 5460 South Quebec Street, Suite 250
 Greenwood Village, CO 80111
 (303) 763-1000

Direct pleadings and correspondence to:
 Peter D. Nichols
 Megan Christensen
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2. **Name of structure:** Thompson Creek Reservoir.

3. **Description of conditional water right:** Thompson Creek Reservoir.

- 3.1. **Date of Original Decree:** November 5, 1971, Case No. CA5884, District Court, Garfield County.
- 3.2. **Subsequent decrees awarding findings of diligence (Case No. and date of decree):** W-862, March 15, 1973; W-862-76, March 7, 1977; 80CW223, January 30, 1981; 84CW135, October 29, 1984; 88CW191, December 4, 1989; 95CW298, June 25, 1996; 02CW161, February 18, 2004 (municipal use cancelled); 10CW40, April 4, 2011; 17CW3107, November 19, 2017; all in Water Division No. 5.
- 3.3. **Legal description of original point of diversion:** The initial point of survey for said reservoir is located on the left abutment of the dam at a point whence the SE corner of Section 21, Township 8 South, Range 88 West of the 6th P.M., bears North 55° 57' East, a distance of 6,119 feet.
- 3.4. **Alternate Legal Description:** The decreed location for the reservoir is set forth above. For purposes of this application only, an estimated alternate legal description is provided, as shown on **Exhibit 1**. The decreed location of the initial point of survey for the reservoir is estimated to be in the NW 1/4 of the SW 1/4 of Section 28, Township 8 South, Range 88 West, 6th P.M., Pitkin County, Colorado, at a point 252 feet from the West line and 1,774 feet from the South line of said Section 28.
- 3.5. **Source of water:** Thompson Creek, tributary to the Crystal River, tributary to the Roaring Fork River, tributary to the Colorado River.
- 3.6. **Appropriation date:** December 17, 1966.
- 3.7. **Amount:** 23,893 acre-feet, conditional.
- 3.8. **Use:** Industrial, domestic, recreational, irrigation, power, mining, and all other purposes and uses necessary and related to the production of shale oil and its by-products, including all domestic purposes incident to the maintenance of a general camp and community and the inhabitants of such general camp and community. The decree entered in Case No. 2002CW161 cancelled municipal use for the Thompson Creek Reservoir conditional water right.

3.9. Land ownership information: U.S. Bureau of Land Management, Colorado River Valley Field Office, 2300 River Frontage Road, Silt, CO 81652.

4. Application for Finding of Reasonable Diligence.

- 4.1. Background: Puckett is a Colorado corporation that currently holds interests in approximately 17,500 acres of land in Garfield and Rio Blanco Counties, Colorado. The conditional water right that is the subject of this Application was appropriated and is needed for the commercial development of Puckett's oil, gas, coalbed methane, and/or oil shale minerals associated with these lands, including industrial, domestic, recreational, and other beneficial uses associated with such developments.
- 4.2. Puckett's Integrated System: The subject water rights are part of a decreed integrated system for the benefit of Puckett's lands in Garfield and Rio Blanco Counties. Pursuant to the decrees in Case Nos. 95CW298, 02CW16, 02CW161, 02CW162, 07CW239, 07CW244, 07CW245, 07CW246, 09CW16, 10CW39 and 10CW40, Water Division 5, the other parts of the integrated system include but are not limited to the Starkey Gulch Reservoir, South Starkey Gulch Reservoir, TOSCO Pumping Plant and Pipeline, the Sinclair Oil and Gas Company Pumping Plant & Pipeline, the Dow Pumping Plant and Pipeline, and the Eaton Pipeline No.1. Each structure and water right of the system has a direct bearing on, and is necessary for the functioning of, the entire system. Accordingly, diligence with respect to any part of the system constitutes diligence with respect to the entire system. C.R.S. § 37-92-301(4)(b).
- 4.3. Economic Conditions: The commercial development of oil shale is one prerequisite to beneficial use of water under the subject conditional water rights. Current economic conditions are adverse to oil shale production. Pursuant to section 37-92-301(4)(c), C.R.S., current economic conditions beyond the control of applicant that adversely affect the feasibility of perfecting a conditional right shall not be considered sufficient to deny a diligence application so long as other facts and circumstances that show diligence are present.
- 4.4. Diligence Activity: During this diligence period, in continuing the development of the conditional water rights, Puckett has been engaged in the legal defense and protection of the subject water rights and has been diligent in the continued development of the water rights involved, including expenditures for legal, consulting, and engineering work. The foregoing activities are described in more detail as follows.
- 4.4.1. The Division 5 Water Court approved a Puckett application to add an alternate point of diversion for the Eaton Pipeline No. 1 water right in Case No.

20CW3110. Applicant filed the Application in Case No. 20CW3110 to increase the flexibility of its integrated system.

- 4.4.2. Attended various meetings and engaged in correspondence to understand state and local water programs and the Colorado Water Plan developed by the Colorado Water Conservation Board, Interbasin Compact Committee and Yampa River Basin Roundtable.
- 4.4.3. At this time, Applicant's properties are primarily used for cattle grazing, hay production, and operation of existing oil and gas wells. Applicant has also worked on plugging one well and reclaiming the surface, including stormwater controls, seeding, and revegetation. At the same time, infrastructure is being installed in furtherance of new mineral development activities on Applicant's property that is anticipated to require additional water use in the coming years.
- 4.4.4. Applicant has expended significant resources including nearly \$100,000 on maintaining, repairing, and upgrading its irrigation infrastructure and overall water system on its properties in the Colorado River Basin.
- 4.4.5. Applicant has expended significant resources including over \$80,000 on operational activities related to maintaining, repairing, and upgrading infrastructure and its properties in general in order to make beneficial use of the subject water rights and integrated water system. Such activities include, but are not limited to, seeding, road maintenance, erosion control, hauling gravel, and electricity charges for water pumps, buildings, and other uses on the property.
- 4.4.6. Applicant has further expended over \$16,000 on professional services related to operating and maintaining its properties in the Colorado River Basin, including but not limited to survey work and title work.
- 4.4.7. Applicant reviewed the water resume of applications as published by the Water Court for Water Division 5 for protection of the subject conditional rights. As a result, Puckett has filed Statements of Opposition to applications in the Colorado River basin and participated in these cases to prevent injury to the subject conditional water right. Puckett expended over \$80,000 on legal services during the diligence period to protect and develop its water rights.

WHEREFORE, Applicant seeks entry of a decree confirming that the Applicant has exercised reasonable diligence toward completion of the appropriation for the decreed uses, and continuing the subject conditional water right in full force and effect for another six-year diligence period.

Respectfully submitted this 30th day of November, 2023.

BERG HILL GREENLEAF RUSCITTI LLP

By: /s/ Megan Christensen
Peter D. Nichols, #33167
Megan Christensen, #50344

Attorneys for Applicant, Puckett Land Company

VERIFICATION

I, Eric R. Stearns, the President of the Puckett Land Company, declare under penalty of perjury under the law of Colorado that I have read the foregoing Application for Finding of Reasonable Diligence, and verify its contents are true to the best of my knowledge, information and belief.


ERIC R. STEARNS