

DISTRICT COURT, WATER DIVISION 6, STATE OF COLORADO Routt County Justice Center 1955 Shield Drive, Suite 200 Steamboat Springs, CO 80487 (970) 879-5020	DATE FILED: December 29, 2017 9:25 AM FILING ID: 3F849D3E69E70 CASE NUMBER: 2017CW3045
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: TERRACARTA ENERGY RESOURCES, LLC, in the South Fork of the White River, in Rio Blanco County, Colorado.	▲ COURT USE ONLY ▲
<i>Attorneys for Applicant:</i> Jefferson V. Houpt, Atty. No. 17850 Ryan M. Jarvis, Atty. No. 43981 Beattie, Chadwick & Houpt, LLP 932 Cooper Avenue Glenwood Springs, CO 81601 Telephone: (970) 945-8659 Facsimile: (970) 945-8671 Email: jhoupt@bch-law.com ; rjarvis@bch-law.com	Case Number: 17CW _____
<p style="text-align: center;">APPLICATION FOR CHANGE OF WATER RIGHT</p>	

(1) *Name and mailing address of Applicant:*

TerraCarta Energy Resources, LLC
106 E. Liberty Drive
Wheaton, IL 60187

With copies to:
Jefferson V. Houpt
Ryan M. Jarvis
Beattie, Chadwick & Houpt, LLP
932 Cooper Avenue
Glenwood Springs, CO 81601
jhoupt@bch-law.com
rjarvis@bch-law.com
(970) 945-8659

(2) *Decreed water right for which change is sought:*

- A. *Name of structure:* **South Fork Reservoir.**
- B. *Original decree:* Civil Action No. 1269, entered on November 21, 1966, by the Rio Blanco County District Court.
- C. *Subsequent decrees awarded findings of diligence:* Case Nos. 80CW220, 84CW174, 88CW158, 95CW253 and 02CW296, by the District Court in and for Water Division 5; and Case No. 10CW29, by the District Court in and for Water Division 6.
- D. *Legal description as described in the decree entered in Case No. 10CW29:* The reservoir is to be located in Sections 21, 22, 23, 24, 25, 26, 27 and 28, Township 2 South, Range 90 West of the 6th P.M. The initial point of survey of the high water line of the South Fork Reservoir is located at the intersection of the dam axis with the stream channel of the South Fork of the White River, which is described as a point whence the Northeast Corner of Section 28, Township 2 South, Range 90 West of the 6th P.M. bears North 50E31' East a distance of 4,382 feet, which is approximately 2,484 feet north of the South Section line and 3,303 feet west of the East section line of said section. This point is depicted on the location map attached hereto as **Exhibit A.**
- E. *Decreed source of water:* South Fork of the White River, tributary to the White River.
- F. *Appropriation date:* September 14, 1964.
- G. *Total amount decreed to structure:* 85,342.4 acre feet, conditional.
- H. *Decreed uses:* Industrial, domestic, recreational and irrigation.
- I. *Amount of water that Applicant intends to change:* 85,342.4 acre feet, conditional.

(3) *Statement of proposed change:* Applicant seeks to change the location of storage of the entire South Fork Reservoir water right described above to three alternative reservoir sites. All or a majority of the water will be stored in one of two alternative reservoirs: South Fork Reservoir No. 1 is a proposed reservoir located on the channel of Wolf Creek, a tributary of the White River, as described in subparagraph 3.A. below, which would be filled by pumping water from the White River into the reservoir via South Fork Reservoir No. 1 Pump and Pipeline and by capturing the natural inflow from Divide Creek, Wolf Creek, Middle Fork Wolf Creek, East Fork Wolf Creek, and Coal Creek, all tributary to the White River. South Fork Reservoir No. 2 is a proposed reservoir located on the channel of the White River as described in subparagraph 3.B. below. South Fork Reservoir No. 1 and

South Fork Reservoir No. 2 are each capable of storing the entire 85,342.4 acre feet decreed to this water storage right. Applicant does not intend to construct both reservoirs; rather, Applicant intends to use one of these two alternative sites as the location of storage for up to the entire 85,342.4 acre feet currently decreed to the South Fork Reservoir water storage right. (South Fork Reservoir No. 1 and South Fork Reservoir No. 2 are the same as the Wolf Creek Off-Channel Dam and Reservoir and Wolf Creek Mainstem Dam and Reservoir, which are the subject of the application filed by the Rio Blanco Water Conservancy District in Case No. 14CW3043, Water Division 6). Applicant also intends to construct an additional reservoir on the channel of Yellow Creek (known as Bar D Reservoir), as described in subparagraph 3.C. below, that will store up to 6,500 acre feet of the water currently decreed to the South Fork Reservoir. Water to fill Bar D Reservoir No. 1 may be diverted directly from the White River at a point described in subparagraph 3.C. below, or may be initially stored in South Fork Reservoir No. 1 or South Fork Reservoir No. 2 and later delivered via pipeline to Bar D Reservoir.

a. *Description of South Fork Reservoir No. 1:*

(1) *Location:* The left abutment (looking downstream) of the South Fork Reservoir No. 1 Dam is located in the NW¹/₄ of the SW¹/₄ of Section 23, Township 3 North, Range 99 West of the 6th P.M., at a point 1,007 feet east of the west section line of Section 23 and 1,450 feet north of the south section line of Section 23, in Rio Blanco County, Colorado. This point is depicted on the location maps attached hereto as **Exhibits A and B.**

(2) *Sources:* White River, via the South Fork Reservoir No. 1 Pump and Pipeline as described below and natural inflow from Divide Creek, Wolf Creek, Middle Fork Wolf Creek, East Fork Wolf Creek, and Coal Creek, all tributary to the White River.

(3) *Dimensions:*

a. *Surface area of high water line:* 3,106 acres.

b. *Vertical height of dam in feet:* 122 feet.

c. *Length of dam in feet:* 3,300 feet.

d. *Total capacity of reservoir:* 85,342.4 acre feet.

e. *Active capacity:* 85,342.4 acre feet.

f. *Dead storage:* None.

(4) *Structure used to fill reservoir:* South Fork Reservoir No. 1 Pump and Pipeline.

- a. *Location:* The diversion point from the White River for the South Fork Reservoir No. 1 is located in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 27, Township 3 North, Range 99 West of the 6th P.M., at a point 480 feet west of the east section line of Section 27 and 2,620 feet north of the south section line of Section 27, in Rio Blanco County, Colorado. This point is depicted on the location maps attached hereto as **Exhibits A and B**.
 - b. *Capacity:* 400 c.f.s.
 - c. *Maximum rate of diversion:* 400 c.f.s.
- b. *Description of South Fork Reservoir No. 2:*
- (1) *Location:* The left abutment (looking downstream) of the dam of South Fork Reservoir No. 2 is located in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Township 3 North, Range 99 West of the 6th P.M., at a point 390 feet east of the west section line of Section 34 and 3,730 feet north of the south section line of Section 34, in Rio Blanco County, Colorado. This point is depicted on the location map attached hereto as **Exhibits A and B**.
 - (2) *Source:* White River.
 - (3) *Dimensions:*
 - a. *Surface area of high water line:* 4,801 acres.
 - b. *Vertical height of dam in feet:* 126 feet.
 - c. *Length of dam in feet:* 2,500 feet.
 - d. *Total capacity of reservoir:* 85,342.4 acre feet.
 - e. *Active capacity:* 85,342.4 acre feet.
 - f. *Dead storage:* None.
- c. *Description of Bar D Reservoir:*
- (1) *Location:* The left abutment (looking downstream) of the Bar D Reservoir dam is located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 21, Township 1 South, Range 98 West of the 6th P.M., at a point 1,832 feet east of the west section line of Section 21 and 550 feet south of the north section line of Section 21 in Rio Blanco County, Colorado. The location of Bar D Reservoir is depicted on the location maps attached hereto as **Exhibits A and C**.

- (2) *Source:* White River, via Bar D Reservoir Pump and Pipeline.
- (3) *Dimensions:*
 - a. *Surface area of high water line:* Approximately 290 acres.
 - b. *Vertical height of dam in feet:* Approximately 80 feet.
 - c. *Length of dam in feet:* 1,120 feet.
 - d. *Total capacity of reservoir:* 6,500 acre feet.
 - e. *Active capacity:* 6,500 acre feet.
 - f. *Dead storage:* None.
- (4) *Structure used to fill reservoir:* Bar D Reservoir Pump and Pipeline.
 - a. *Location:* The diversion point from the White River for the Bar D Reservoir is located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 2, Township 2 North, Range 98 West of the 6th P.M., at a point 1,355 feet east of the west section line of Section 2 and 1,152 feet south of the north section line of Section 2, in Rio Blanco County, Colorado. The location of Bar D Reservoir Pump and Pipeline is depicted on the location maps attached hereto as **Exhibits A and B**.
 - b. *Capacity:* 70 c.f.s.
 - c. *Maximum rate of diversion:* 70 c.f.s.

(4) *Owners of the land upon which the structures are or will be located:*

Bureau of Land Management
220 Market Street
Meeker, CO 81641

State of Colorado
(Moffat County Assessor's records include no address)

Carroll Davidson Partnership, Ltd.
PO Box 561498
Rockledge, FL 32956-1498

William G. Goosman

783 Road 12
Powell, WY 82435

The Martz Family Trust
c/o Bruce E. and Minerva E. Martz, Trustees
14972 South Austin Road
Manteca, CA 95336

Frank M. Thompson
Oscar Lyman Thompson
13558 Northshire Road NW
Seattle, WA 98177

4M Ranch, LLC
Attn: Ranch Manager
37669 Highway 64
Meeker, CO 81641

4M Ranch, LLC
1860 Summerland Ave.
Winterpark, FL 32789

Rio Blanco Water Conservancy District
2252 E. Main Street
Rangely, CO 81648

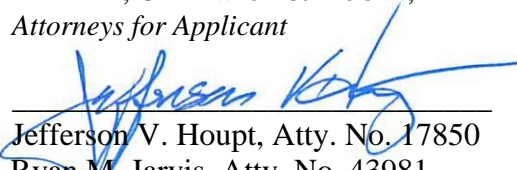
Lenora M. Smuts
3299 Highway 64
Rangely, CO 81648

TC Landco, LLC
106 East Liberty Drive
Wheaton, IL 60187

WHEREFORE, Applicant requests entry of a decree approving the changes to water rights described herein, and awarding such other relief as the court may deem appropriate.

Respectfully submitted this 29th day of December, 2017.

BEATTIE, CHADWICK & HOUP, LLP
Attorneys for Applicant




Jefferson V. Houpt, Atty. No. 17850
Ryan M. Jarvis, Atty. No. 43981

VERIFICATION

I, Charles R. Whiteman, Manager of TerraCarta Energy Resources, LLC, state under oath that I have read this Application for Change of Water Rights and that its contents are true and accurate to the best of my knowledge.

TerraCarta Energy Resources, LLC:

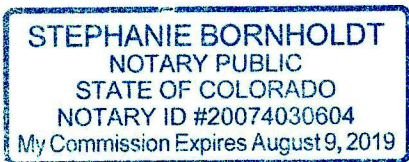
By: 
Charles R. Whiteman

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this 28th day of December 2017, by Charles R. Whiteman, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

WITNESS my hand and official seal.

My Commission Expires: 8-9-19




NOTARY PUBLIC

This document has been electronically filed via Colorado Courts E-Filing. A printable copy is maintained by the filing party in accordance with C.R.C.P. 121 § 1-26.

DISTRICT COURT, WATER DIVISION NO. 6, STATE OF COLORADO 1955 Shield Drive, Unit 200 Steamboat Springs, CO 80487 (970) 879-5020 <i>telephone</i>	DATE FILED: January 23, 2018 12:48 PM FILING ID: E64EAE66B76BF CASE NUMBER: 2017CW3045
CONCERNING THE APPLICATION FOR WATER RIGHTS OF	▲ COURT USE ONLY ▲
TERRACARTA ENERGY RESOURCES, LLC,	Case Number:
In the South Fork of the White River,	17CW3045
In Rio Blanco County, Colorado	Div.: 2B Ctrm.:
<hr/> Attorneys for Opposer, RBWCD: Name: Edward B. Olszewski, #24723 Address: P.O. Box 916 1204 Grand Avenue Glenwood Springs, CO 81602 Phone Number: (970) 928-9100 Fax Number: (970) 928-9600 E-mail: ed@ommpc.com	
STATEMENT OF OPPOSITION OF RIO BLANCO WATER CONSERVANCY DISTRICT	

1. Name, mailing address, email address and telephone number of Opposer:

Rio Blanco Water Conservancy District (“RBWCD”)
 c/o Alden Vanden Brink, District Manager
 2252 E. Main Street
 Rangely, CO 81648

c/o Edward B. Olszewski, Esq.
 Olszewski, Massih & Maurer, P.C.
 P.O. Box 916
 1204 Grand Avenue
 Glenwood Springs, CO 81602
 (970) 928-9100
ed@ommpc.com

Please direct all pleadings and correspondence in this matter to Opposer’s attorneys.

2. Names of Structures: South Fork Reservoir, South Fork Reservoir No. 1, South Fork Reservoir No. 2, Bar D Reservoir

3. State facts as to why the application should not be granted or why it should be granted only in part or on certain conditions:
- A. The Opposer is the owner of vested water rights that may be injured by the granting of this application.
 - B. The Applicant should be put on strict proof as to all elements of the application.
 - C. The Opposer respectfully requests that this Statement of Opposition be continuing and that it apply to any amended application that may be filed by the Applicant in this matter.
 - D. The Opposer respectfully requests the right to amend this Statement of Opposition should additional grounds for opposition be brought to the attention of the Opposer through the discovery process or otherwise.

Respectfully submitted January 23, 2018.

OLSZEWSKI, MASSIH & MAURER, P.C.

By: /s/ Edward B. Olszewski
Edward B. Olszewski, #24723

E-FILED PURSUANT TO C.R.C.P. 121.
Duly signed original on file at the law offices of Olszewski, Massih & Maurer, P.C.

VERIFICATION

I, Alden Vanden Brink, District Manager of Rio Blanco Water Conservancy District, state under oath that I have read the foregoing document and that its contents are true and accurate to the best of my knowledge.



Alden Vanden Brink, District Manager of
Rio Blanco Water Conservancy District

STATE OF COLORADO)
) ss.
COUNTY OF RIO BLANCO)

Subscribed and sworn to before me this 22nd day of January, 2018, by Alden Vanden Brink, District Manager of Rio Blanco Water Conservancy District.

WITNESS my hand and official seal.
My commission expires: 3/6/2021


Notary Public

LADONNA CARLSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20174010082
COMMISSION EXPIRES MAR. 6, 2021

CERTIFICATE OF SERVICE

I certify that on January 23, 2018, I served a copy of the foregoing document to the following
by:

- U.S. Mail, postage prepaid
- Hand Delivery
- Fax
- Electronic Service via CCES

Jefferson V. Houpt, Esq., #17850
Ryan Jarvis, Esq., #43981
Beattie, Chadwick & Houpt, LLP
932 Cooper Avenue
Glenwood Springs, CO 81601
(970) 945-8659 *telephone*
jhoupt@bch-law.com
rjarvis@bch-law.com
*Attorneys for Applicant, TerraCarta Energy
Resources, LLC*

By: /s/ Leann Record
Leann R. Record, Paralegal

*E-FILED PURSUANT TO C.R.C.P. 121.
Duly signed original on file at the law offices of Olszewski, Massih & Maurer, P.C.*

DISTRICT COURT, WATER DIVISION NO. 6,
COLORADO
1955 Shield Dr., Unit 200
Steamboat Springs, CO 80487
Telephone: (970) 879-5020

**CONCERNING THE APPLICATION FOR WATER
RIGHTS OF:**

TERRACARTA ENERGY RESOURCES, LLC,

In the South Fork of the White River,

In Rio Blanco County, Colorado

▲ COURT USE ONLY ▲

**Attorneys for the Colorado Water Conservation
Board:**

CYNTHIA H. COFFMAN, Attorney General

ANDREW B. NICEWICZ

Assistant Attorney General

Attorney Reg. No. 44903*

Natural Resources & Environment Section

Office of the Colorado Attorney General

1300 Broadway, 7th Floor

Denver, CO 80203

Telephone: (720) 508-6259

Email: andy.nicewicz@coag.gov

*Counsel of Record

Case No. 2017CW3045

Water Div. 6

**STATEMENT OF OPPOSITION OF THE COLORADO WATER
CONSERVATION BOARD**

1. Name, mailing address, email address, and telephone number of Opposer:

Colorado Water Conservation Board ("CWCB")

1313 Sherman Street, Room 721

Denver, CO 80203

Telephone: (303) 866-3441

Don.west@state.co.us

2. State facts as to why the application should not be granted or why it should be granted only in part or on certain conditions:

a. The CWCB holds water rights, including the following instream flow water rights, in Water Division 6 in the Yellow Creek and Upper White River Watersheds that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-3652-B (Div. 5)	South Fork White River	confl Swede Creek	confl NF White River	80 (1/1 - 12/31)	11/15/1977
W-3652-C (Div. 5)	White River	confl NF & SF White River	confl Piceance Creek	200 (1/1 - 12/31)	11/15/1977
16CW3040 (Div. 6)	Yellow Creek (upper)	confl Barcus Creek	confl Lambert Springs	0.82 (3/1 - 6/15) 0.4 (6/16 - 2/29)	01/26/2016
16CW3040 (Div. 6)	Yellow Creek (lower)	confl Lambert Springs	confl White River	1.8 (3/1 - 6/15) 1.2 (6/16 - 2/29)	01/26/2016

b. Applicant's proposed South Fork Reservoir No. 2 may inundate a portion of the CWCB's instream flow water right on lower Yellow Creek.

c. The proposed change of water right could cause an expansion of use and could alter the contemplated draft of the conditional water right, which could injure the CWCB's instream flow water rights.

d. Terms and conditions should be included in the decree to address the measurement, recording, accounting, and operations by Applicant in order for proper administration and compliance with all the terms and conditions of any decree entered in this matter.

e. The application does not present sufficient information to fully evaluate the extent to which the CWCB's instream flow water rights may be injured.

f. The CWCB is unable to determine from the application whether additional grounds for opposition exist, and therefore reserves the right to assert other grounds for opposition as they become known.

4. This Statement of Opposition is continuing in nature and shall apply to any and all future amendments to the original application.

Dated this 27th day of February, 2018.

CYNTHIA H. COFFMAN
Attorney General

E-filed pursuant to C.R.C.P. 121.




ANDREW B. NICEWICZ, # 44903*
Assistant Attorney General
Natural Resources and Environment Section
Attorney for the Colorado Water
Conservation Board
*Counsel of Record

VERIFICATION

STATE OF COLORADO)
) ss
CITY AND COUNTY OF DENVER)

I, Don West, Water Resources Engineer, Colorado Water Conservation Board, being duly sworn, hereby state that I have read the foregoing Statement of Opposition, and that the contents are true to the best of my knowledge.

*Signed original on file with the Office of the
Attorney General for the State of Colorado*



Don West, P.E.
Water Resources Engineer
Colorado Water Conservation Board

Subscribed and sworn to before me this 27 day of February, 2018 in the City and County of Denver, State of Colorado.

*Signed original on file with the Office of the
Attorney General for the State of Colorado*

ELIZABETH ANNE SCHMIT NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20174049890 MY COMMISSION EXPIRES DEC. 6, 2021
--



NOTARY PUBLIC

My Commission expires: Dec. 6, 2021

CERTIFICATE OF SERVICE

This is to certify that on this 27th day of February, 2018, I caused a true and correct copy of the foregoing **STATEMENT OF OPPOSITION OF THE COLORADO WATER CONSERVATION BOARD** to be served electronically via ICCES File & Serve to each of the following:

Party Name	Party Type	Attorney Name
4M Ranch LLC	Opposer	Claire E. Sollars (Cantafio Hammond PC)
Division 6 Engineer	Division Engineer	Division 6 Water Engineer (Water Resources Steamboat)
Mountain Water LLC	Opposer	John David Buchanan Paul F. Holleman (Buchanan Sperling and Holleman PC)
Puckett Land Company	Opposer	Megan Gutwein Peter D Nichols (Berg Hill Greenleaf & Ruscitti LLP)
Rio Blanco Water Conservancy District	Opposer	Edward Bryan Olszewski (Olszewski, Massih & Maurer, P.C.)
State Engineer	State Engineer	Colorado Division Of Water Resources (State of Colorado - Division of Water Resources)
Terracarta Energy Resources LLC	Applicant	Jefferson Venable Houpt Ryan M. Jarvis (Beattie Chadwick and Houpt)

E-filed pursuant to C.R.C.P. 121.

/s/ Margaret L. Popick

Margaret L. Popick

**DISTRICT COURT, WATER DIVISION 6,
COLORADO**

DATE FILED: February 27, 2018 3:56 PM
FILING ID: 25F92BB39775F
CASE NUMBER: 2017CW3045

**Court Address:
1955 Shield Drive
PO Box 773117
Steamboat Springs, CO 80477
Phone Number: 970-879-5020**

**CONCERNING THE APPLICATION FOR
WATER RIGHTS OF TERRACARTA ENERGY
RESOURCES, LLC**

IN RIO BLANCO COUNTY, COLORADO

▲ COURT USE ONLY ▲

Case Number: 2017 CW 3045

Water Court

**Attorney:
Kristen C. Guerriero, #32663
Special Assistant U.S. Attorney
Office of the Regional Solicitor
755 Parfet Street, Suite 151
Lakewood, Colorado 80215
Phone:(303) 231-5353, x552
Facsimile:(303) 231-5363
Kristen.Guerriero@sol.doi.gov**

STATEMENT OF OPPOSITION

1. Name, mailing address, telephone number(s) of Opposer:

United States of America – Department of the Interior
Bureau of Land Management, White River Field Office
220 East Market St.
Meeker, CO 81641

Service of all pleadings, etc. should be made on:

Kristen C. Guerriero, #32663
Special Assistant U.S. Attorney
Office of the Regional Solicitor

755 Parfet Street, Suite 151
Lakewood, Colorado 80215

2. Name of Structures: South Fork Reservoir No. 1, South Fork Reservoir No. 1 Pump and Pipeline, South Fork Reservoir No. 2, Bar D Reservoir, Bar D Reservoir Pump and Pipeline

3. Facts pertaining to why the application should not be granted or why it should only be granted in part or on certain conditions:

- a. The United States owns and the Bureau of Land Management (“BLM”) manages public lands where the proposed structures will be located. The Applicant, or the Applicant’s agent, will be required to obtain rights-of-way pursuant to the Federal Land Policy and Management Act to construct, maintain, and operate the proposed structures.
- b. Public lands are not subject to condemnation. Therefore, the water rights in the application cannot legally be diverted or put to beneficial use absent land access authorization from the BLM.
- c. Applicant has not applied for nor received authorization from the United States to build the structures listed in the application.
- d. The proposed structures create multiple natural resource management issues that could affect the technical feasibility and economic viability of the proposed project. The BLM seeks to address these issues jointly with the Applicant before the Applicant decides upon a final project size and configuration for the water court decree.
- e. If the BLM is able to provide land use authorization for the proposed structures, the operation of laws governing the use and occupancy of federal lands may result in terms and conditions that may modify the location and size of the proposed facilities.
- f. The Applicant must be placed on strict proof as to the rate and volume of water rights required to satisfy the proposed uses.
- g. The proposed water rights may injure and/or inundate water rights owned and operated by the BLM.

4. The United States reserves the right to raise additional and more specific grounds of opposition as additional information becomes available through discovery or otherwise.
5. This statement of opposition is continuing, and shall apply to any amended application that might be filed.

Respectfully submitted this 27th day of February, 2018.

ROBERT TROYER
UNITED STATES ATTORNEY



Kristen C. Guerriero, Colorado #32663
Special Assistant U.S. Attorney

ATTORNEYS FOR OPPOSER
UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 27, 2018, a true and correct copy of the foregoing **Statement of Opposition** was electronically served via the Integrated Colorado Courts E-filing System or via U.S. Mail to all parties of record.



**This document was filed electronically pursuant to C.R.C.P. 121 § 1-26. Duly signed original on file at the offices of the Regional Solicitor, Rocky Mountain Region, United States Department of the Interior.*

VERIFICATION

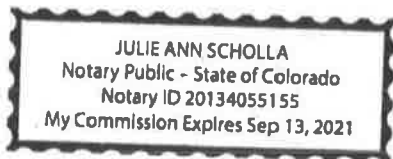
STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)


I, Roy E. Smith, state under oath that I am the Water Rights Coordinator for the Colorado State Office of the BLM, that I have reviewed the foregoing statement of opposition, and that, to the best of my knowledge and belief, the contents thereof are true and accurate.



ROY E. SMITH

SUBSCRIBED AND SWORN TO before me this 30th day of January, 2018.





NOTARY PUBLIC

My commission expires: 9/13/2021

DISTRICT COURT, WATER DIVISION 6, STATE OF COLORADO Routt County Justice Center 1955 Shield Drive, Suite 200 Steamboat Springs, CO 80487 (970) 879-5020	DATE FILED: January 15, 2020 4:53 PM FILING ID: EC5AEDF4337A7 CASE NUMBER: 2017CW3045
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: MAHOGANY ENERGY RESOURCES, LLC, in the South Fork of the White River, in Rio Blanco County, Colorado.	▲ COURT USE ONLY ▲
<i>Attorneys for Applicant:</i> Jefferson V. Houpt, Atty. No. 17850 Ryan M. Jarvis, Atty. No. 43981 Beattie, Houpt & Jarvis, LLP 932 Cooper Avenue Glenwood Springs, CO 81601 Telephone: (970) 945-8659 Facsimile: (970) 945-8671 Email: jeff@bhjlegal.com ; ryan@bhjlegal.com	Case Number: 17CW3045
<p style="text-align: center;">APPLICANT'S STATUS REPORT</p>	

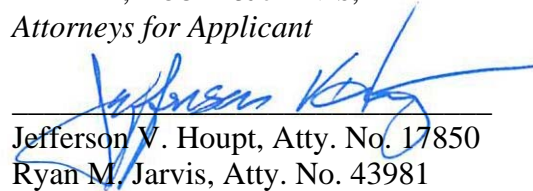
Applicant, Mahogany Energy Resources, LLC (“Mahogany”), by and through its attorneys, Beattie, Houpt & Jarvis, LLP, and pursuant to the Court’s Minute Order dated November 12, 2019, hereby submits this Status Report:

1. The water right sought to be changed in this case was among a number of other water rights and assets acquired by Mahogany from TerraCarta Energy Resources, LLC on September 12, 2019. By Order dated October 24, 2019, Mahogany was substituted as the Applicant herein.
2. The most recent status conference was held on November 12, 2019, at which time the undersigned counsel reported that Mahogany would be evaluating the assets it had recently acquired to determine whether it would continue to pursue the relief requested in the Application, or perhaps adjust it. Applicant suggested that additional discussions among the parties be temporarily postponed until Applicant had completed its evaluation. A Minute Order was issued following the status conference directing the Applicant to file a status report on or before January 15, 2020.

3. This Status Report will confirm that Mahogany intends to continue to pursue the relief requested in the Application, and that Applicant is prepared to resume discussions with the opposers toward resolution of their concerns.
4. The next status conference in this case is scheduled for February 4, 2020 at 11:00 a.m.

Respectfully submitted this 15th of January, 2020.

BEATTIE, HOUPPT & JARVIS, LLP
Attorneys for Applicant



Jefferson V. Houpt, Atty. No. 17850
Ryan M. Jarvis, Atty. No. 43981

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing **Status Report** was sent as follows this 15th day of January, 2020:

E-Service

Name	Type	Attorney	Organization
Colorado Water Conservation Board	Opposer	Andrew Nicewicz	CO Attorney General
Division 6 Engineer	Division Engineer	Division 6 Water Engineer	Water Resources Steamboat
Exxon Mobil Corporation	Opposer	Kristin Howse Moseley	Porzak Browning & Bushong, LLP
Mountain Water LLC	Opposer	John David Buchanan	Buchanan Sperling & Holleman, PC
Mountain Water LLC	Opposer	Paul F. Holleman	Buchanan Sperling & Holleman, PC
Puckett Land Company	Opposer	Megan Gutwein	Berg Hill Greenleaf & Ruscitti, LLP
Puckett Land Company	Opposer	Peter D. Nichols	Berg Hill Greenleaf & Ruscitti, LLP
Rio Blanco Water Conservancy District	Opposer	Edward Bryan Olszewski	Olszewski, Massih & Maurer, PC
State Engineer	State Engineer	CO Div of Water Resources	State of CO - Div of Water Resources
The Oil Shale Corporation	Opposer	Jacques Serge Ruda	Girsh and Rottman, PC
The Oil Shale Corporation	Opposer	Alan E. Curtis	White & Jankowski, LLP
The Oil Shale Corporation	Opposer	Virginia Marie Sciabbarrasi	White & Jankowski, LLP
United States of America	Opposer	Kristen C. Guerriero	US Attorneys Office

US Mail Service

Name	Type	Attorney	Mailing Address
Tim Quinn	Opposer	Self-Represented	13558 Northshire Road NW Seattle, WA 98177
4M Ranch, LLC c/o Deirdre Macnab	Opposer	Self-Represented	37669 Highway 64 Meeker, CO 81641



Monique Hyde Kennedy, Paralegal

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DISTRICT COURT, WATER DIVISION 6, STATE OF COLORADO Routt County Justice Center 1955 Shield Drive, Suite 200 Steamboat Springs, CO 80487 (970) 879-5020	DATE FILED: January 15, 2020 4:53 PM FILING ID: EC5AEDF4337A7 CASE NUMBER: 2017CW3045
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: MAHOGANY ENERGY RESOURCES, LLC, in the South Fork of the White River, in Rio Blanco County, Colorado.	▲ COURT USE ONLY ▲
<i>Attorneys for Applicant:</i> Jefferson V. Houpt, Atty. No. 17850 Ryan M. Jarvis, Atty. No. 43981 Beattie, Houpt & Jarvis, LLP 932 Cooper Avenue Glenwood Springs, CO 81601 Telephone: (970) 945-8659 Facsimile: (970) 945-8671 Email: jeff@bhjlegal.com ; ryan@bhjlegal.com	Case Number: 17CW3045
<p style="text-align: center;">APPLICANT'S STATUS REPORT</p>	

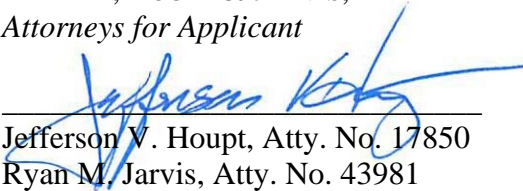
Applicant, Mahogany Energy Resources, LLC (“Mahogany”), by and through its attorneys, Beattie, Houpt & Jarvis, LLP, and pursuant to the Court’s Minute Order dated November 12, 2019, hereby submits this Status Report:

1. The water right sought to be changed in this case was among a number of other water rights and assets acquired by Mahogany from TerraCarta Energy Resources, LLC on September 12, 2019. By Order dated October 24, 2019, Mahogany was substituted as the Applicant herein.
2. The most recent status conference was held on November 12, 2019, at which time the undersigned counsel reported that Mahogany would be evaluating the assets it had recently acquired to determine whether it would continue to pursue the relief requested in the Application, or perhaps adjust it. Applicant suggested that additional discussions among the parties be temporarily postponed until Applicant had completed its evaluation. A Minute Order was issued following the status conference directing the Applicant to file a status report on or before January 15, 2020.

3. This Status Report will confirm that Mahogany intends to continue to pursue the relief requested in the Application, and that Applicant is prepared to resume discussions with the opposers toward resolution of their concerns.
4. The next status conference in this case is scheduled for February 4, 2020 at 11:00 a.m.

Respectfully submitted this 15th of January, 2020.

BEATTIE, HOUPPT & JARVIS, LLP
Attorneys for Applicant



Jefferson V. Houpt, Atty. No. 17850
Ryan M. Jarvis, Atty. No. 43981

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing **Status Report** was sent as follows this 15th day of January, 2020:

E-Service

Name	Type	Attorney	Organization
Colorado Water Conservation Board	Opposer	Andrew Nicewicz	CO Attorney General
Division 6 Engineer	Division Engineer	Division 6 Water Engineer	Water Resources Steamboat
Exxon Mobil Corporation	Opposer	Kristin Howse Moseley	Porzak Browning & Bushong, LLP
Mountain Water LLC	Opposer	John David Buchanan	Buchanan Sperling & Holleman, PC
Mountain Water LLC	Opposer	Paul F. Holleman	Buchanan Sperling & Holleman, PC
Puckett Land Company	Opposer	Megan Gutwein	Berg Hill Greenleaf & Ruscitti, LLP
Puckett Land Company	Opposer	Peter D. Nichols	Berg Hill Greenleaf & Ruscitti, LLP
Rio Blanco Water Conservancy District	Opposer	Edward Bryan Olszewski	Olszewski, Massih & Maurer, PC
State Engineer	State Engineer	CO Div of Water Resources	State of CO - Div of Water Resources
The Oil Shale Corporation	Opposer	Jacques Serge Ruda	Girsh and Rottman, PC
The Oil Shale Corporation	Opposer	Alan E. Curtis	White & Jankowski, LLP
The Oil Shale Corporation	Opposer	Virginia Marie Sciabbarrasi	White & Jankowski, LLP
United States of America	Opposer	Kristen C. Guerriero	US Attorneys Office

US Mail Service

Name	Type	Attorney	Mailing Address
Tim Quinn	Opposer	Self-Represented	13558 Northshire Road NW Seattle, WA 98177
4M Ranch, LLC c/o Deirdre Macnab	Opposer	Self-Represented	37669 Highway 64 Meeker, CO 81641



Monique Hyde Kennedy, Paralegal

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DISTRICT COURT, WATER DIVISION 6, STATE OF COLORADO Routt County Justice Center 1955 Shield Drive, Suite 200 Steamboat Springs, CO 80487 (970) 879-5020	DATE FILED: November 23, 2021 4:43 PM FILING ID: 6FEB6C68DA832 CASE NUMBER: 2017CW3045
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: MAHOGANY ENERGY RESOURCES, LLC, in the South Fork of the White River, in Rio Blanco County, Colorado.	▲ COURT USE ONLY ▲
<i>Attorneys for Applicant:</i> Jefferson V. Houtp, Atty. No. 17850 Ryan M. Jarvis, Atty. No. 43981 Beattie, Houtp & Jarvis, LLP 146 Midland Avenue PO Box 1669 Basalt, CO 81621 (970) 945-8659 jeff@bhjlegal.com ; ryan@bhjlegal.com	Case Number: 17CW3045
APPLICANT’S STATUS REPORT OF NOVEMBER 23, 2021	

Applicant, Mahogany Energy Resources, LLC (“Mahogany”), by and through its attorneys, Beattie, Houtp & Jarvis, LLP, submits this Status Report pursuant to the Court’s Minute Order dated March 23, 2021:

Recent Activities

1. Since the filing of the last status report, Applicant and the Division Engineer have agreed upon language addressing the manner in which the proposed change in location of storage will be administered. This language has been incorporated into a revised proposed ruling that was distributed on November 15, 2021, to all parties for review and comment.
2. Applicant has engaged a new engineering firm which is in the process of conducting an analysis of transit loss along the reach of the South Fork of the White River and the mainstem of the White River between the originally-decreed place of storage and the new places of storage proposed in the Application. The results of that analysis will be used to address the remaining unresolved issue with the Division Engineer.

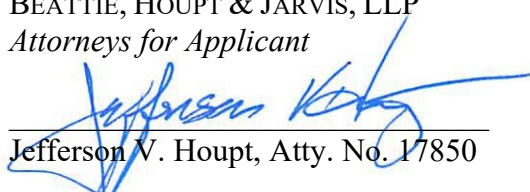
Ongoing Efforts

3. Applicant has been working with Opposer BLM toward completion of a stipulation to resolve BLM's opposition. Those discussions are focused on the process for obtaining permission to impact public lands for which BLM is responsible. Ultimately, Applicant must obtain a right of way or other authorization from BLM, which will involve compliance with federal environmental laws and participation in the ongoing effort to establish a programmatic biological opinion for the White River that recognizes depletions resulting from the exercise of the water right that is the subject of this case. Applicant is also working with Opposer Rio Blanco Water Conservancy District to try to coordinate on such efforts.
4. Applicant is working with the Thompson family on specific language and some additional concepts for a stipulation that preserves access to the Thompson property during and after construction of a reservoir at the Wolf Creek site.
5. Counsel for Applicant and the Rio Blanco Water Conservancy District have continued their discussions toward resolution of the District's opposition.

A telephone status conference among the Referee and all parties has been scheduled for December 14, 2021 at 10:00 a.m. To join the conference, participants should dial in to (970) 870-2360 and use access code 32565#.

Respectfully submitted this 23rd of November, 2021.

BEATTIE, HOUPPT & JARVIS, LLP
Attorneys for Applicant



Jefferson V. Houpt, Atty. No. 17850

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Status Report** was sent as follows this 23rd day of November, 2021:

E-Service

Name	Type	Attorney	Organization
Colorado Water Conservation Board	Opposer	Andrew Nicewicz	CO Attorney General
Division 6 Engineer	Division Engineer	Division 6 Water Engineer	Water Resources Steamboat
Exxon Mobil Corporation	Opposer	Kristin Howse Moseley	Porzak Browning & Bushong, LLP
Mountain Water LLC	Opposer	John David Buchanan	The Law Office of John D. Buchanan
Puckett Land Company	Opposer	Megan Gutwein	Berg Hill Greenleaf & Ruscitti, LLP
Puckett Land Company	Opposer	Peter D. Nichols	Berg Hill Greenleaf & Ruscitti, LLP
Rio Blanco Water Conservancy District	Opposer	Edward Bryan Olszewski	Olszewski, Massih & Maurer, PC
State Engineer	State Engineer	CO Div of Water Resources	State of CO - Div of Water Resources
The Oil Shale Corporation	Opposer	Alan E. Curtis	White & Jankowski, LLP
The Oil Shale Corporation	Opposer	Virginia Marie Sciabbarrasi	White & Jankowski, LLP
United States of America	Opposer	Kristen C. Guerriero	US Attorneys Office

U.S. Mail Service

Name	Type	Attorney	Mailing Address
Tim Quinn	Opposer	Self-Represented	13558 Northshire Road NW Seattle, WA 98177

E-Mail Service [as authorized by Opposer]

Name	Type	Attorney	E-Mail Address
4M Ranch, LLC c/o Deirdre Macnab	Opposer	Self-Represented	deirdremacnab@gmail.com



Monique Hyde Kennedy, Paralegal

This document has been electronically filed via Colorado Courts E-Filing. A printable copy is maintained by the filing party in accordance with C.R.C.P. 121 § 1-26.

DISTRICT COURT, WATER DIVISION NO. 6 COLORADO 1955 Shield Dr., Unit 200 Steamboat Springs, CO 80487 Telephone: (970) 879-5020	DATE FILED: October 25, 2022 11:50 AM FILING ID: 53F7154417C3D CASE NUMBER: 2017CW3045
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: MAHOGANY ENERGY RESOURCES, LLC, In the South Fork of the White River, In Rio Blanco County, Colorado	▲ COURT USE ONLY ▲
Attorneys for the Colorado Water Conservation Board: PHILIP J. WEISER, Attorney General MARC D. SARMIENTO Assistant Attorney General Attorney Reg. No. 46322* Natural Resources & Environment Section Office of the Colorado Attorney General 1300 Broadway, 7th Floor Denver, CO 80203 Telephone: (720) 508-6429 Email: marc.sarmiento@coag.gov *Counsel of Record	Case No. 2017CW3045 Water Div. 6
NOTICE OF SUBSTITUTION OF COUNSEL	

Please be advised that, effective immediately, Andrew B. Nicewicz, Assistant Attorney General, is no longer counsel for the Colorado Water Conservation Board (“CWCB”) and should be removed from the service list. Marc D. Sarmiento, Assistant Attorney General, hereby enters his appearance on behalf of the CWCB.

Effective immediately, the CWCB will be represented by Mr. Sarmiento. All future pleadings and correspondence in this matter should be directed to Mr. Sarmiento at the office address, telephone number, and e-mail address set forth in the caption above.

Dated this 25 day of October, 2022.

PHILIP J. WEISER
Attorney General

E-filed under C.R.C.P. 121.



MARC D. SARMIENTO #46322*
Assistant Attorney General
Natural Resources and Environment Section
Attorney for the Colorado Water Conservation
Board
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that on this 25 day of October 2022, I caused a true and correct copy of the foregoing **NOTICE OF SUBSTITUTION OF COUNSEL** to be served electronically via Colorado Courts E-Filing (CCE) addressed to each of the following:

Party Name	Party Type	Attorney Name
4m Ranch Llc	Opposer	RYAN MATTHEW DONOVAN (Lawrence Custer Grasmick Jones and Donovan LLP)
Caerus Cross Timbers Llc	Opposer	JENNIFER M DILALLA (Moses, Wittemyer, Harrison and Woodruff, P.C.) JOSH BLAKE BOISSEVAIN (Moses, Wittemyer, Harrison and Woodruff, P.C.) LINDSEY ALLISON RATCLIFF (Moses, Wittemyer, Harrison and Woodruff, P.C.)
Colorado Water Conservation Board	Opposer	MARC D SARMIENTO (CO Attorney General)
Division 6 Engineer	Division Engineer	DIVISION 6 WATER ENGINEER (Water Resources Steamboat)
Exxon Mobil Corporation	Opposer	N/A

Party Name	Party Type	Attorney Name
Mahogany Energy Resources Llc	Applicant	APRIL DENISE HENDRICKS (Burns Figa and Will P C) STEPHEN HUNTER LEONHARDT (Burns Figa and Will P C)
Mountain Water Llc	Opposer	JOHN DAVID BUCHANAN (The Law Office of John D Buchanan)
Puckett Land Company	Opposer	MEGAN GUTWEIN (Berg Hill Greenleaf & Ruscitti LLP) PETER D NICHOLS (Berg Hill Greenleaf & Ruscitti LLP)
Rio Blanco Water Conservancy District	Opposer	EDWARD BRYAN OLSZEWSKI (Olszewski, Massih & Maurer, P.C.)
State Engineer	State Engineer	COLORADO DIVISION OF WATER RESOURCES (State of Colorado - Division of Water Resources)
Terracarta Energy Resources Llc	Applicant	JEFFERSON VENABLE HOUPT (Beattie Houpt and Jarvis LLP)

Party Name	Party Type	Attorney Name
		RYAN M JARVIS (Johnston Van Arsdale Martin PLLC)
The Oil Shale Corporation	Opposer	ALAN E CURTIS (White and Jankowski LLC) VIRGINIA MARIE SCIABBARRASI (White and Jankowski LLC)
Tim Quinn	Opposer	N/A
United States of America	Opposer	KRISTEN C GUERRIERO (US Attorneys Office)

E-filed pursuant to C.R.C.P. 121.

/s/Felicia Sampson
 Felicia Sampson



THIRD ADDITIONAL WRITTEN REPORT BASED ON ADDITIONAL SUBMITTALS BY APPLICANT

December 19, 2022

Division 6 Water Court Case No. 17CW3045, TerraCarta Energy Resources, LLC/Mahogany Energy Resources, LLC

On December 29, 2017, the applicant filed an application seeking to move the South Fork Reservoir water right to three alternate locations of storage referred to as South Fork Reservoir No. 1, South Fork Reservoir No. 2 and Bar D Reservoir. On July 13, 2018, a Report of the Division Engineer (RODE) was filed with the Court outlining several concerns. On November 7, 2018, the applicant filed a response to the RODE (Response) along with a Proposed Ruling. On December 11, 2018, the Division Engineer filed an Additional Written Report of the Division Engineer. On April 15, 2019, the applicant filed a response to the Division Engineer's additional written report and on June 13, 2019 the Division Engineer filed a Second Additional Written Report of the Division Engineer to which the applicant filed a response on July 15, 2019. This third additional written report of the Division Engineer is being submitted to the Court in response a second contemplated draft analysis that was provided by the applicant's engineer, Lytle Water Solutions (LWS), dated October 21, 2022.

- The first contemplated draft submitted in this case by SGM did not include an estimate of how much water that was intended to be stored in South Fork Reservoir was contemplated to be used for each of the decreed uses. However, LWS's contemplated draft does attempt to quantify this. Though I appreciate the effort to quantify the original contemplated demands, I do have concerns with it as outlined below.
 - Industrial Use - The applicant claims that at the time of the decree in CA1269, it was reasonably envisioned that a 500,000 bbl/day plant would be developed. Applicant should provide the basis for this statement. What evidence do they have that the claimant in CA1269 had envisioned developing a 500,000 bbl/day plant to be served by the South Fork Reservoir. Furthermore, they claim that a "reasonably conservative estimate of demand for industrial use" was 100 cfs which equates to 72,392 AF/year. The diversion of water at a rate of 100 cfs, 24 hours a day, 365 days a year is farfetched and does not seem realistic. If the applicant is going to claim that the South Fork Reservoir water right was intended to meet this type of demand, they should provide more evidence to support this. When considering their response to these concerns, the applicant must also take into consideration that the South Fork Reservoir water right was not the only water right they own that was awarded in CA1269. South Fork Pipeline, White River Fourteen Mile Creek Pipeline, and Fourteen Mile Reservoir were also awarded water rights in this case; noting that there are other long standing conditional water rights owned by the applicant as well. Lastly, the applicant should provide evidence showing that they now own land where this water was originally intended to be used.
 - Irrigation Use - Per the original statement of claim for the South Fork Reservoir water right, "A portion of the lands to be irrigated from this reservoir exceed 4,800 acres and lie in the Piceance Creek Basin, Flag Creek and on the south side of the White River between Flag Creek and the South Fork of the White River". Provided in



Appendix A of the LWS contemplated draft report, is a map of irrigated land in both Flag Creek, Piceance Creek and the south side of the White River. It is unclear what the applicant is trying to show in these maps since it appears they are showing all of the currently irrigated land in both Flag Creek and Piceance Creek. It is not possible that the applicant or their predecessors ever intended to irrigate all this land or that they intend to irrigate this land in the future since they do not own this land or own an interest in this land. The applicant must explain the purpose of this map and if it is to show the 4,800 acres of land originally intended to be irrigated by the South Fork Reservoir water right, they must show that they had an interest in this land at the time of the decree and that they can and will irrigate this land and that such use is not speculative especially given that, based on Figure D-1 and D-2 provided by the applicant on October 21, 2022, they do not own an interest in this land. It also remains unclear to me how the applicant can claim that they are not going change the place of use for irrigation, when it appears they do not own the land that was originally intended to be irrigated.

- Recreation Use - To reiterate a concern I raised in my Second Additional Written Report, based on testimony in CA1269, both South Fork Reservoir and Fourteen Mile Reservoir volumes were not based on specific demands or timing of varying water needs, but were sized based on-site constraints and were essentially the largest volumes feasible at the identified sites. As such, it is absolutely possible, and actually quite likely, that some of the water intended to be stored was to remain in storage to accomplish the decreed recreation use. Figure 4 of the LWS contemplated draft report shows how the flat water recreation surface area would change in a given year when water demand from the estimated industrial, irrigation and domestic uses are imposed on the reservoir. This graph shows the recreational surface area in any given year going from 500 acres to 0 acres. This does not provide for a realistic recreational opportunity for the reservoir, and again I argue that some water was likely intended to remain in storage for this purpose or the original applicant would not have applied for this use.
- The proposed ruling has been reviewed and redlined, however given some of my outstanding concerns with it and the number of terms and conditions, I am requesting that staff in the Denver office of the State Engineer's review the proposed ruling as well. Once we have further reviewed the proposed ruling, a redline copy will be submitted to the applicant.



Erin C. H. Light, P.E.
Division Engineer, Water Division 6



CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December 2022 a true and correct copy of this report was served through Colorado Courts E-Filing to the below persons:

Mahogany Energy Resources, LLC
C/o Stephen H. Leonhardt, April D. Hendricks and Zachary T. Greder
Burns, Figa & Will, P.C.

Colorado Water Conservation Board
C/o Marc D. Sarmiento
Office of the Colorado Attorney General

Rio Blanco Water Conservancy District
C/o Edward B. Olszeski

United State Bureau of Land Management
C/o Kristen C. Guerriero
Office of the Regional Solicitor

Mountain Water LLC
C/o John D. Buchanan
The Law Office of John D Buchanan

The Oil Shale Corporation
C/o Alan E. Curtis and Virginia Marie Sciabbarrasi
White and Jankowski LLC

Caerus Cross Timbers LLC
C/o Jennifer M. DiLalla and Joshua B. Boissevain and Lindsey A. Ratcliff
Moses, Wittemyer, Harrison and Woodruff, P.C.

Puckett Land Company
C/o Peter D. Nichols and Megan Gutwein
Berg Hill Greenleaf Ruscitti LLP

4M Ranch, LLC
C/o Ryan M. Donovan
Lawrence Custer Grasmick Jones & Donovan LLP

Thompson / Quinn Families
C/o Tim Quinn
13558 Northshire Road NW
Seattle, WA 98177

Kevin G. Rein, State Engineer
Colorado Division of Water Resources

Erin C. H. Light, P.E., Division Engineer



<p>DISTRICT COURT, WATER DIVISION 6, COLORADO 1955 Shield Drive, Unit 200 Steamboat Springs, CO 80487 (970) 879-5020</p>	<p>DATE FILED: May 26, 2023 4:33 PM CASE NUMBER: 2017CW3045</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</p> <p>MAHOGANY ENERGY RESOURCES, LLC,</p> <p>In the South Fork of the White River, In Rio Blanco County, Colorado</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for the State and Division Engineers: PHILIP J. WEISER, Attorney General REBECCA L. CROTTY, Assistant Attorney General, Attorney Reg No. 21809* KUNAL A. PARIKH, Assistant Attorney General, Attorney Reg. No. 53867* Water Resources Unit Natural Resources & Environment Section Office of the Colorado Attorney General 1300 Broadway, 7th Floor Denver, CO 80203 Telephone: (720) 508-6260 (Crotty); (720) 508-6294 (Parikh); Email: rebecca.crotty@coag.gov; kunal.parikh@coag.gov; *Counsel of Record</p>	<p>Case No. 17CW3045</p>
<p align="center">STATEMENT OF OPPOSITION OF THE STATE ENGINEER AND DIVISION ENGINEER FOR WATER DIVISION 6</p>	

1. Name, mailing address, email address, and telephone number of Opposers:

Kevin G. Rein, P.E.
 State Engineer
 1313 Sherman Street, Room 818
 Denver, CO 80203

Erin C. H. Light, P.E.
 Division Engineer
 Water Division No. 6
 Post Office Box 773450

Kevin.Rein@state.co.us
(303) 866-3581

Steamboat Springs, CO 80477
Erin.Light@state.co.us
(970) 879-0272

2. State facts as to why this application should not be granted or why it should be granted only in part or on certain conditions:
- a. The use of the South Fork Reservoir water right should be limited to the place of use contemplated at the time of appropriation, which does not appear to include locations in the Colorado River drainage basin. If a new place of use is sought by Applicant, in addition to the change in the location of storage, Applicant must separately meet the requirements of sections 37-92-302, -305, C.R.S.
 - b. Applicant should provide evidence showing how they can transport water stored at any of the three new reservoirs to the original place of use contemplated at the time of appropriation, which contemplated place of use appears to be upstream from the new reservoirs. Absent such evidence, the requested change of water right raises concerns as to whether Applicant can establish that the intended appropriation can and will reach fruition.
 - c. Applicant should provide evidence showing how the conditional water right is not speculative in nature. For each of the uses contemplated by the conditional water right stated in Civil Action 1269 and remaining after the decree entered in 10CW29, Applicant should establish its current plan for each such use, the capability to place the water right to each such use, and the amount of water needed to accomplish each such use.
 - d. In Civil Action 1269, claimant Fourteen Mile Land Co. was awarded a new conditional water storage right for both Fourteen Mile Reservoir and South Fork Reservoir. While Fourteen Mile Reservoir was not decreed for recreation, South Fork Reservoir was decreed for recreational use. The Engineers question what amount of the South Fork Reservoir water right was intended for recreation, which could thereby limit the amount of water needed for the consumptive uses claimed.

- e. Applicant must provide evidence indicating a substantial probability that the intended appropriation for industrial use can and will reach fruition and that the conditional water right is not speculative. At the time Fourteen Mile Land Co. Inc., the original claimant, applied for the conditional water right for the South Fork Reservoir, this claimant also applied for several other conditional water rights which included a claim for industrial use. It is not clear based on the original claim whether the industrial use was intended for processing of oil shale. The conditional water right decreed to the South Fork Reservoir should be evaluated in conjunction with several water rights originally claimed by Fourteen Mile Land Co. Inc. to determine if such intended industrial use(s) for the South Fork Reservoir will be satisfied by other water rights and/or is still needed.
 - f. Applicant seeks to move the conditional South Fork Reservoir water right from a location on the South Fork of the White River to a combination of new reservoirs located approximately 80 miles downstream from the original decreed location. Any amount of water that can be diverted and stored in a new reservoir(s) shall be limited to water that was available at the original diversion point of diversion less transit losses. Applicant must further explain how water legally and physically available for diversion into the South Fork Reservoir will not be expanded if Applicant's existing conditional storage water right is allowed to be changed to be stored at new reservoirs.
 - g. Applicant must explain the claimed source of water for the new reservoir location on Wolf Creek. Applicant appears to be seeking a new source of water under the South Fork Reservoir water right as Applicant claims that the source of water for the reservoir in its new location will include "natural inflow from Divide Creek, Wolf Creek, Middle Fork Wolf Creek, East Fork Wolf Creek and Coal Creek, a tributary to the White River." This language indicates that Applicant seeks a new source of water that was not contemplated under the original South Fork Reservoir water right.
3. The State and Division Engineers are unable to determine from the resume whether additional grounds for opposition exist and, therefore, reserve the right to assert other grounds for opposition as they become known.

4. This statement of opposition is continuing in nature and shall apply to any and all future amendments to the original application.

DATED: May 26, 2023.

PHILIP J. WEISER

Attorney General

Filed pursuant to C.R.C.P. Rule 121 § 1-26.

/s/ Rebecca L. Crotty

REBECCA L. CROTTY, #21809*

Assistant Attorney General

KUNAL A. PARIKH, #53867*

Assistant Attorney General

Natural Resources & Environment Section

Attorneys for the State and Division Engineers

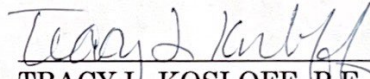
*Counsel of Record

VERIFICATION

STATE OF COLORADO)
) ss
CITY AND COUNTY OF DENVER)

I, Tracy L. Kosloff, Deputy State Engineer for the Colorado Division of Water Resources, declare under penalty of perjury under the law of Colorado that the foregoing ***Statement of Opposition of the State Engineer and Division Engineer for Water Division 6*** is true and correct to the best of my knowledge and belief. I am signing this verification as an opposer on behalf of the State and Division Engineers as duly authorized by the State Engineer.

Dated: May 26 2023.



TRACY L. KOSLOFF, P.E.
Deputy State Engineer
Colorado Division of Water Resources

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2023, I caused the foregoing **STATEMENT OF OPPOSITION OF THE STATE ENGINEER AND DIVISION ENGINEER FOR WATER DIVISION 6** to be served either electronically by CO-Courts E-filing (CCEF) or by first-class U.S. mail to each of the following:

Party Name	Party Type	Attorney Name
4m Ranch LLC	Opposer	RYAN MATTHEW DONOVAN (Lawrence Custer Grasmick Jones and Donovan LLP)
Caerus Cross Timbers LLC	Opposer	JENNIFER M DILALLA (Moses, Wittemyer, Harrison and Woodruff, P.C.) JOSH BLAKE BOISSEVAIN (Moses, Wittemyer, Harrison and Woodruff, P.C.) LINDSEY ALLISON RATCLIFF (Maynes Bradford Shipp & Sheftel, LLP)
Colorado Water Conservation Board	Opposer	JENNIFER LYN MELE (CO Attorney General)
Division 6 Engineer	Division Engineer	DIVISION 6 WATER ENGINEER (Water Resources Steamboat)
Mahogany Energy Resources LLC	Applicant	STEPHEN H. LEONHARDT (Burns Figa and Will PC) APRIL D. HENDRICKS (Burns Figa and Will P C) ZACHARY T. GREDER (Burns Figa and Will P C)
Mountain Water LLC	Opposer	JOHN DAVID BUCHANAN (The Law Office of John D Buchanan)
Puckett Land Company	Opposer	MEGAN CHRISTENSEN (Berg Hill Greenleaf & Ruscitti LLP) PETER D NICHOLS (Berg Hill Greenleaf & Ruscitti LLP)
Rio Blanco Water Conservancy District	Opposer	EDWARD BRYAN OLSZEWSKI (Olszewski, Massih & Maurer, P.C.)

Party Name	Party Type	Attorney Name
State Engineer	State Engineer	COLORADO DIVISION OF WATER RESOURCES (State of Colorado - Division of Water Resources)
The Oil Shale Corporation	Opposer	ALAN E CURTIS (White and Jankowski LLC) VIRGINIA MARIE SCIABBARRASI (White and Jankowski LLC)
Tim Quinn	Opposer	N/A
United States of America	Opposer	KRISTEN C GUERRIERO (US Attorneys Office)

*Filed pursuant to C.R.C.P. Rule 121 § 1-26.
A duly signed original is on file with the Office of the Attorney General for the State of Colorado.*

/s/ Melissa J. Ciener



DATE FILED: June 30, 2023 8:28 AM
 FILING ID: 59A60B9593018
 CASE NUMBER: 2023CW3069

FIELD INSPECTION REPORT

CASE NO.: 23CW3069
APPLICANT: Mahogany Energy Resources, LLC

<u>STRUCTURE</u>	<u>WDID</u>	<u>APPL. CLAIM</u>
Salt Creek Pump Station	7200982	Application for finding of reasonable diligence on all structures
Colorado River Pump Station 1	7200981	
Colorado River Pump Station 2	7200990	
Salt Creek Reservoir	7203965	

The application was filed with the court on June 6, 2023.

GENERAL INFORMATION

Parties Present: Brian Sewell

Site Visit Date: No site visit required due to nature of diligence performed.

General Observations: Mahogany Energy Resources, LLC has numerous points of diversion that are all components of an integrated water system so that work on one structure constitutes diligence on all. All structures in this application are part of that integrated water system. During the diligence period no work has been performed on the ground at any of the structures in this application, but they have spent significant capital in acquiring new assets related to these structures and water system as well as engaging numerous consultants for a variety of evaluations on how best to utilize their resources. They have also filed numerous water court applications related to other structures included in their integrated water system and are claiming those activities as diligence under CRS 37-92-301(4)(b).

Is the proposed application administrable? Yes, as this is a simple diligence application and not an expansion of any water right.

Source of information: Water court application, HDMBC

APPLICATION SPECIFICS

Diligence

Salt Creek Pump Station WDID 7200982-

Structure Description: It does not appear that any structure exists.

Actual Location of Structure in UTM: UTM Zone 13 164161.8 E 4348808.0 N per HDMBC

Decreed amount and uses: Conditionally Decreed for 59 cfs for use as irrigation, industrial, power generation, and other.



Were the claimed diligence activities performed in the last diligence period? *The applicant has performed numerous activities during the last diligence period on their integrated water system. During the diligence period no work has been performed on the ground at any of the structures in this application, but they have spent significant capital in acquiring new assets related to these structures and water system as well as engaging numerous consultants for a variety of evaluations on how best to utilize their resources. They have also filed numerous water court applications related to other structures included in their integrated water system and are claiming those activities as diligence under CRS 37-92-301(4)(b).*

Colorado River Pump Station No. 1 WDID 7200981-

Structure Description: *It does not appear that any structure exists.*

Actual Location of Structure in UTM: *UTM Zone 13 160843.4 E 4347190.3 N per HDBMC*

Decreed amount and uses: *Conditionally decreed for 60 cfs for use as Irrigation, Industrial, Domestic, and Power Generation*

Were the claimed diligence activities performed in the last diligence period? *The applicant has performed numerous activities during the last diligence period on their integrated water system. During the diligence period no work has been performed on the ground at any of the structures in this application, but they have spent significant capital in acquiring new assets related to these structures and water system as well as engaging numerous consultants for a variety of evaluations on how best to utilize their resources. They have also filed numerous water court applications related to other structures included in their integrated water system and are claiming those activities as diligence under CRS 37-92-301(4)(b).*

Colorado River Pump Station No. 2 WDID 7200990-

Structure Description: *It does not appear that any structure exists.*

Actual Location of Structure in UTM: *UTM Zone 13 162029.5 E 4346733.0 N per HDBMC*

Decreed amount and uses: *Conditionally decreed for 60 cfs for use as Irrigation, Industrial, Domestic, and Power Generation, AP to 7200981.*

Were the claimed diligence activities performed in the last diligence period? *The applicant has performed numerous activities during the last diligence period on their integrated water system. During the diligence period no work has been performed on the ground at any of the structures in this application, but they have spent significant capital in acquiring new assets related to these structures and water system as well as engaging numerous consultants for a variety of evaluations on how best to utilize their resources. They have also filed numerous water court applications related to other structures included in their integrated water system and are claiming those activities as diligence under CRS 37-92-301(4)(b).*

Salt Creek Reservoir WDID 7203965-

Structure Description: *It does not appear that any structure exists.*

Actual Location of Structure in UTM: *UTM Zone 13 163828.5 E 4349301.5 N per HDBMC*

Decreed amount and uses: *Conditionally Decreed for 3,000 AF to be used for irrigation, industrial, domestic, and power generation.*

Were the claimed diligence activities performed in the last diligence period? *The applicant has performed numerous activities during the last diligence period on their integrated water system. During the diligence period no work has been performed on the ground at any of the structures in this application, but they have spent significant capital in acquiring new assets related to these structures and water system as well as engaging numerous consultants for a variety of evaluations on how best to utilize their resources. They have also filed numerous water court applications related to other structures included in their integrated water system and are claiming those activities as diligence under CRS 37-92-301(4)(b).*

Date: June 29, 2023

SIGNED: _____

Brian Sewell Digitally signed by Brian Sewell
Date: 2023.06.29 12:43:25 -06'00'

Lead Water Commissioner, Water District 70&72
(970-462-6161) brian.sewell@state.co.us