

DISTRICT COURT, HUERFANO COUNTY, CO Court Address: 401 Main St., Walsenburg, CO 81089 Ph: (719) 738-1040	DATE FILED: March 14, 2022 12:01 PM FILING ID: 7356B7102F674 CASE NUMBER: 1971CV4288
WATER RIGHTS OF: HUERFANO COUNTY WATER CONSERVANCY DISTRICT IN HUERFANO COUNTY	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
Attorneys for Applicant: Steven T. Monson, #11329 Ryan W. Farr, #39394 Monson, Cummins, Shohet & Farr, LLC 13511 Northgate Estates Drive, Suite 250 Colorado Springs, Colorado 80921 Phone Number: (719) 471-1212 Fax Number: (719) 471-1234 E-mail: rwf@cowaterlaw.com ; stm@cowaterlaw.com	Case No.: 1971CV4288
SUBMITTAL OF FOURTH ANNUAL REPORT OF HUERFANO COUNTY WATER CONSERVANCY DISTRICT	

COMES NOW, the Huerfano County Water Conservancy District (“HCWCD”), by and through its attorneys, Monson, Cummins, Shohet & Farr, LLC, and hereby submits to the Court the following Fourth Annual Report of HCWCD that is attached hereto as Exhibit A.

Respectfully submitted this 14th day of March, 2022.

MONSON, CUMMINS, SHOHEIT & FARR, LLC
*(E-filed pursuant to C.R.C.P. 121 §1-26 via Colorado Courts E-Filing Service
 A printed or printable copy of this document bearing the original, electronic,
 or scanned signature is on file at the offices of Monson, Cummins & Shohet,
 LLC)*

/s/ Ryan W. Farr

Steven T. Monson, #11329
 Ryan W. Farr, #39394
 Attorneys for Huerfano County Water
 Conservancy District

EXHIBIT A

HUERFANO COUNTY WATER CONSERVANCY DISTRICT

ANNUAL REPORT

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The District's 2021 Annual Report to the District Court follows:

Organization and Governance

There has been no significant change in the District's organization and governance.

1. Current District personnel. The makeup of the District's board has not changed since the last report. The expiration dates of board members' terms are as follows: Scott King, president, Kent Mace (vice-president), Lewis "Beaver" Edmundson, 9/30/2024; Lonnie Brown and Michael "Sandy" White, 9/30/2023. The District's contract staff remains the same. Applegate Group (Denver) was engaged in March 2021 to serve as the District's water engineering consultant. Applegate replaces Lamp Rynearson, which closed its Colorado-based water engineering branch.

Meetings, Outreach and Planning

2. District Meetings. The District board regularly meets monthly on the fourth Monday of each month at 6:00 pm, as well as for occasional special meetings as required. The District is subject to the Open Meetings Law, so meetings are appropriately noticed and open to the public. Meeting agendas and a 2022 meeting schedule are publicly posted, including on the District website. Board meetings are currently being held in person at the Walsenburg Housing Authority activity room, 220 Russell Street.
3. District Website. The District continues to operate and update its own website, <https://www.hcwcdd.net/>. It is intended to make District activities more transparent to taxpayers and constituents.
4. Water Day. The District celebrated its 50-year anniversary on September 27, 2021. In conjunction with that celebration, the District sponsored its second Water Day on Saturday, September 25. The event, held at the Gardner Community Center, included a ribbon cutting ceremony and tour of the newly completed Sheep Mountain Augmentation Facility, a luncheon, plus speakers providing updates on District projects and partner activities. About 50 people attended the event, including District constituents and representatives for Congresswoman Lauren Boebert, Huerfano County Commissioners, Division of Water Resources, Applegate Group Engineers, City of Walsenburg, Town of La Veta, Cucharas Sanitation & Water District, and Monson, Cummins, Shohet, and Farr, LLC, as the District's water rights counsel.

5. Arkansas Basin Roundtable. The District remains active in the Arkansas Basin Roundtable, with board members Scott King and Sandy White serving on the roundtable. The Roundtable is a governmental entity formed under C.R.S. § 37-75-101 *et seq.*, and one of the gatekeepers for water project planning and funding in the Arkansas Basin. <https://www.arkansasbasin.com/>
6. Goals and Strategic Plan. The District is working from its written "Goals and Strategic Plan," which was updated during a workshop with partners and cooperating agencies in February 2020. The goals are:
 - To become financially self-sufficient (action steps from one to ten years)
 - To develop and foster good relationships with all the district's partners (one year)
 - To educate the public's understanding of water development (ongoing)
 - Continue to completion of seven HCWCD projects (action steps from one to five years)
 - Develop strategies that reflect the Board's actions to shape the future of the District (action steps from one to five years)
 - Develop strategies to recruit future Board members and staff (action steps from two to ten years)

Specifics are available on the District's website.

District Finances

7. Current Budget, Audit. In 2021 the District operated with a budget of \$970,509, adopted a 2022 budget of \$1,455,610 and received a clean audit for 2020. The budget and financial documents may be found on the District's website.
8. Mill Levy. At the moment, the District sees no need to increase its current mill levy (2.128), which is anticipated to generate approximately \$306,000 in property tax revenue during 2022. An increase in the mill levy will be necessary in the future to support the District's future projects.

Huerfano River Basin Augmentation Program

This was the District's first significant project. Begun in 2009 to protect vital, but previously unadjudicated and unlawful well withdrawals by small communities and schools, the program has expanded to include new commercial, industrial, and recreational users essential to economic development.

9. Program status. During 2021, the District continued construction on facilities at Sheep Mountain Ranch, two miles northwest of Gardner, that will enable pumping water from the Huerfano River into storage and then returning it

scheduled times to replace depletions. The 45.42 acre-feet (a.f.) Sheep Mountain Reservoir was completed in the Fall of 2019. The diversion structure (a substantial concrete dam), fish ladder, wet well, and pumphouse slab were completed in 2020. The structure provides the ability to pump up to the reservoir and return water by gravity to the river. In 2021, the pumphouse was constructed. The pump, power and remote-activated controls were installed and tested in September 2021. That same month, utilizing critically-timed exchanges, the reservoir was filled, including leased water that was traded with Pueblo Board of Water Works.

10. Colorado Water Conservation Board (CWCB) Loan. The augmentation program required a senior water right, which was acquired through the purchase of the William Craig/Camp Ranch. Grants and loans provided most of the funding to acquire the ranch and its water rights, as well as to construct the augmentation facilities at Sheep Mountain Ranch. The CWCB loan total is \$2,640,000 for 30 years at 2.25%. The date of substantial completion was reported to CWCB as 12/31/2021. Repayment of remaining accrued interest during construction (IDC) in the amount of \$56,374.35 begins February, 2022. The first principal payment of \$123,186.00 will be due on February 1, 2023. Eventual full subscription of augmentation certificates will generate additional funds (\$2,000,000 plus), allowing most, if not all, of the remaining loan balance to be paid off. That will eliminate future interest expenses, free up a portion of the District's tax revenue for other purposes and restore the District's borrowing capacity – all important for the District's future plans.
11. Sale of Wm. Craig/Camp Ranch. The Wm. Craig/Camp Ranch was sold by the District in October 2020. The CWCB loan contract required that the net sale proceeds be used first to pay the accrued IDC as of 12/1/2020 (\$304,213), with the balance paid toward the loan principal (\$632,766).
12. Augmentation Plan Participants.
 - a. The District has sold 12 a.f. of replacement water under the Regional Augmentation Plan for the Huerfano River basin and has entered annual leases for 5 more acre feet to the Gardner Public Improvement District and for 3 acre feet to Huerfano County.
 - b. A Plan Participant has a contractual right to receive replacement water to replace out-of-priority depletions, which is represented by an Augmentation Certificate issued by the District. The District's Rules and Regulations and its Rates and Fees Resolution allow for the purchase of Augmentation Certificates by Plan Participants on a lease to purchase basis, where the purchase price of the Augmentation

Certificate is amortized over 5 annual payments. The District also assesses an Annual Administration Fee upon Plan Participants, in accordance with the District's Rules and Regulations, which is designed to cover the District's engineering, legal and clerical costs in the administration of the Regional Augmentation Plan.

- c. All the Plan Participants who have purchased Augmentation Certificates on the lease-to-purchase basis have made their annual payments; all Plan Participants are in good-standing with their annual administration fees.

Infrastructure Improvement Program

To more carefully manage the County's limited water resources, this cooperative project was jointly initiated by the District and the Colorado Division of Water Resources (DWR, the administrator of water rights in Colorado). Its purpose is to upgrade and increase water right administration facilities in the county – stream flow gages and alluvial monitoring wells – and to support the Division Engineer in the development of a "futile call" model for the Cucharas River and Huerfano River to the mainstem of the Arkansas River.

13. Total project cost is \$312,400 primarily funded by the CWCB and DWR. The project is a cooperative effort among the District (main sponsor), DWR, Water Division 2 (DWR-2), and the Interstate and Federal Section of the CWCB (DSS), with additional support from local funding sources, including the Huerfano County Board of County Commissioners, Cucharas Sanitation & Water District, Huerfano County Federal Mineral Lease District, Town of La Veta, City of Walsenburg, and the District.
14. Most of the existing river gages in the county were decrepit or inoperable and have now been rehabilitated. Additionally, three new gages were constructed and are operating: one on the Huerfano River near its crossing of I-25, one on the lower Huerfano near Undercliff and on the Cucharas River near its crossing of U.S. Highway 10.
15. Monitoring wells were to be placed in each of the two rivers' alluvia at strategic locations to measure groundwater levels. Two wells have been installed and are operating on the upper and lower Huerfano River. The well on the Cucharas River, to be located near the breached dam of Cucharas No. 5 reservoir, has been awaiting landowner permission for several years.
16. Finally, using data from the gages and monitoring wells, a model is being developed by the Division Engineer to assist in making futile call decisions under C.R.S. § 37-92-502(2)(a). Those are important because it would be pointless to curtail diversions by junior water rights on the Huerfano and

Cucharas rivers in order to meet the call of downstream seniors on the Arkansas mainstem if the water that bypassed the upstream juniors never reached and is futile to the seniors. If the model demonstrates that the senior call is futile, Huerfano County junior water rights will be allowed to continue their diversions.

Cucharas Storage Collaborative.

In 2015 the District initiated the Cucharas Basin Storage Collaborative (Collaborative) to address an acute shortage of water storage capacity in the basin. Roughly 70% of that capacity was lost through lack of maintenance and abandonment after World War II, providing little insurance against drought.

17. The membership of the Collaborative has included: Cucharas Sanitation and Water District, Town of La Veta, City of Walsenburg, Maria Lakes Grazing Association, the District, and Huerfano County, all of which have provided local matches, as have the La Veta Fire Protection District and the Huerfano County Federal Mineral Lease District. The Colorado Division of Water Resources has provided invaluable in kind assistance. Sporadically participating in the thirteen meetings of the Collaborative have been representatives of the United States Forest Service, the United States Natural Resources Conservation Service, the Colorado Department of Parks and Wildlife, and the Colorado State Forest Service
18. The first step the Collaborative undertook was a storage needs analysis. This identified five preferred storage sites to be developed, with cost and yield estimates. Geotechnical studies on all five led to the selection of three sites for which a 30% design was completed. For the Bruce Canyon site, a 50% design was completed in December 2021. A 50% design on Maria Stevens Reservoir Enlargement is expected to be complete in June 2022. Total costs on Collaborative Storage projects to date are \$588,345. Over 20% of the work of the Collaborative has been supported by local matches.
19. In addition to the 50% design on Maria Stevens Reservoir, in September 2021 the District was approved for a CWCB grant to study the feasibility of dredging the reservoir to achieve 642 af of additional capacity, rather than increasing the height of the dam. The grant amount is \$14,795, with a total project cost of \$19,727 including match. The completion date for the study is September 2022.
20. Walsenburg and Collaborative exchange litigation.
 - a. Collaborative storage and exchange decree. As part of the Collaborative, the District filed Division 2 Water Court Case No. 2017CW3075 in December 2017 for adjudication of conditional junior

storage rights in the five preferred reservoir sites and rights of exchange among them. Co-applicants in the case were the Town of La Veta and Cucharas Sanitation & Water District. The Applicants were able to reach a stipulation with all seven opposers who entered the case and a pre-stipulation with the Colorado Water Conservation Board. A final decree was issued in the case on July 13, 2020. The District spent approximately \$197,500 on legal and engineering fees associated with this litigation.

- b. Intergovernmental agreement. The Intergovernmental Agreement between the Applicants and the City of Walsenburg, which was executed on June 12, 2020 (“IGA”), is still in effect. Walsenburg joined the Collaborative in order to maximize water resources in the Cucharas River Basin.
- i. The IGA incorporates the decreed rights from Case No. 17CW3075 and the decreed rights in Walsenburg’s Case No. 17CW3063, for storage and exchange rights along the Cucharas River as well.
 - ii. The overall goal of Case No. 17CW3075 and the IGA is to integrate the operations of the large water users in the Cucharas Basin to maximize the water resources of the basin.
 - iii. To date the district has spent approximately \$25,000 on legal fees associated with resolution of the Walsenburg application and the agreement.

Spring Creek Fire

After the 2018 Spring Creek Fire in the headwaters of the Cucharas and Huerfano River basins, runoff from hydrophobic soils on the burn scar has continued to plague property owners in the watershed with serious flooding and debris flows.

21. Warning gages. The flood warning gages installed in 2019 to monitor the streams draining the burn scar above La Veta and Walsenburg continue to operate as designed. At a cost of about \$179,000, they were financed through the District by CWCB and CDHSEM grants, with substantial in kind assistance and expertise from DWR. As flooding changes the stream channels, two of the gages, Middle Creek and Pass Creek, have had to be relocated. Work continues on reinforcing the Middle Creek gage, with funding provided by CWCB as described below in 20(c). The District is considering adding two more years to the satellite communication monitoring.

22. Burn scar work.

- a. The 2019 grant from the CWCB in the amount of \$470,000 funded flood mitigation work within the burn scar. All three phases of the project have been completed.
 - i. Reports of phases 1 and 2 can be found on the District's website: www.hcwcd.net
 - ii. In phase 3, digital elevation and hydraulic models were developed to identify potential projects within the Indian and Middle Creek watersheds. Links to the deliverables for the Indian and Middle Creek Geomorphic Analysis and associated prioritization summary are located at: <https://enginuity.egnyte.com/fl/4pPv2z4hva>

Included are the technical reports:

1. Prioritization Summary
2. Hydrology
3. Hydraulics
4. Fluvial Hazard Zones

An ArcGIS live webmap of the associated data can be found at:

<https://www.arcgis.com/apps/View/index.html?appid=afcb4afd904449c796eb64fc9087b52c>

The technical evaluations were used to prioritize projects identified by the Arkansas River Watershed Collaborative throughout both basins based on existing hazards and risk.

- b. In 2021, the District, in conjunction with the County, began work under a second CWCB grant, in the amount of \$500,000. A stakeholder group has been established to determine rehabilitation projects to implement within the burn scar based on the modeling in Phase 3. Implementation of projects began in 2021 and will continue through 2022.
- c. Because of damaging floods and debris flows, keeping the finished projects in place has been a challenge. This prompted the District to dialogue with CWCB about studying treatment alternatives on the burn scar to determine which projects stand the best chance of success. To that end, the District received a \$100,000 grant at the end of 2021 to conduct a strategic analysis during the first half of 2022 and determine the most prudent actions and projects to protect and enhance the

watershed, water quality, stream assets, and habitat. Work will also be done to fortify the Middle Creek flood warning gage. A consultant has been hired to undertake the study. Partners who will together contribute \$35,000 in match toward the strategic assessment are Huerfano County, Town of La Veta and City of Walsenburg.

- d. The CWCB grants described in (a) and (b) above require a 1:1 match from private or Federal sources. For the grants above, the District used Federal funding from the County's Emergency Watershed Protection projects through NRCS, which has been exhausted. We are looking for other private or Federal sources.
- e. In cooperation with its consultant, Arkansas River Watershed Collaborative (ARWC), the District has obtained funding from the Colorado Department of Public Health and Environment (CDPHE) and Power Authority/EPA Section 319 Nonpoint Source Pollution Control Program. Matching funds have not been required.
 - i. In 2019, the District received an \$85,000 emergency fire-response grant from CDPHE for work within the burn scar, including directing and capturing flows and sediment to protect a critical escape route post-fire above the Town of La Veta.
 - ii. In 2020-2021, the District received an EPA Section 319 nonpoint source water quality grant in the amount of \$185,916. The purpose was to implement best management practices on the burn scar in order to decrease erosion and decrease sediment and contaminant loading into water bodies. Work was completed by the end of 2020. The report of that work can be found on the District's website.

Future Plans

With the accelerating activity of the District, certain changes would be beneficial. Some can be accomplished by the District itself; others will require action by this Court.

23. Those future actions which fall to the District include:

- a. Acquire water rights and establish a regional augmentation program in the Cucharas basin similar to that on the Huerfano. This will require money which the District presently does not have. Full subscription of

augmentation certificates, along with sale of the Wm. Craig/Camp Ranch in 2020 (without its senior water right), is expected to free up the District's borrowing capacity – necessary for the several million dollars necessary for this program.

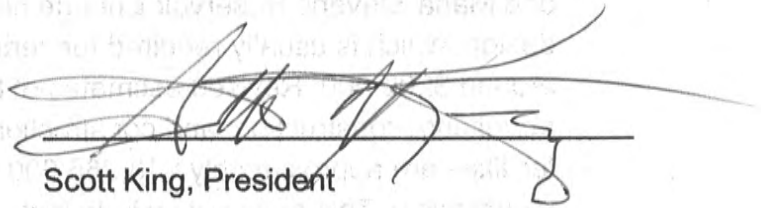
- b. Develop storage in the Cucharas basin. By mid-2022, the District will have finished 50% design of two reservoirs: Bruce Canyon (1,233 af) and Maria Stevens Reservoir Enlargement (642 af). To get to 90% design, which is usually required for serious Federal funding, will cost around \$200,000. Revised estimates of the cost of final design, permitting, construction, and construction engineering of those two facilities are approximately \$18,265,000 and \$19,265,300, respectively. This does not include land acquisition or leases.
- c. Augment "Wildcat" Ponds. The District has begun processing applications for augmentation water for pond evaporation in impoundments which either are not filled with adequate water storage rights or are not exempt under State law (erosion control dams and stock tanks). In 2021 the Division 2 Engineer began to regulate these "wildcat" ponds. Initial investigation showed the eventual potential need for as much as 8,900 a.f. of total augmentation water in the Huerfano and Cucharas River basins. Water commissioners are now working on field investigations. Even if they determine even one-third of that amount is necessary, the need far exceeds our capacity to provide augmentation water. Consequently, there is an urgent need for the acquisition of senior water rights and storage capacity as described above on the Cucharas. On the Huerfano our existing augmentation program has a remaining yield of only a fraction of anticipated demand. Consequently, in both basins, we will be keeping a careful eye on the demand for augmentation water and our ability to meet it.
- d. Oppose export of water from Huerfano County. The District is aware of pending plans by others to export water out of the county. The District is prohibited from participating in any such scheme and is alert to the need to oppose attempts by others to export water.

Since the District is a creation of and is supervised by this Court, the board welcomes any questions the Court may have. The Court's primary contact with the board should be its chair, Scott King, 719-742-3124 or 719-680-0784.

Respectfully submitted,

Dated this 2nd day of March, 2022.

**HUERFANO COUNTY WATER
CONSERVANCY DISTRICT**

A handwritten signature in black ink, appearing to read 'Scott King', is written over a horizontal line. The signature is stylized and cursive.

Scott King, President