



NOTICE OF THE REGULAR MEETING OF THE GENERAL ASSEMBLY

TOWN OF OPHIR, CO 81426

THURSDAY 7:00 PM, APRIL 25, 2023

OPHIR TOWN HALL 36 PORPHYRY ST.

[Join Zoom Meeting](#)

Meeting ID: 867 0143 8435 Passcode: 373146

AGENDA

1. CALL TO ORDER
2. ADOPTION & SIGNATURE OF FEBRUARY 21, 2023 MEETING MINUTES and MARCH 13 SPECIAL MEETING MINUTES
3. APPROVAL OF AGENDA
4. BUSINESS ITEMS
 - a. Cornwall/Whitaker Update
 - b. Executive session for a conference with the Town Attorney and Special Counsel for the purpose of receiving legal advice on specific legal questions under CRS Section 24-6-402(4)(b), specifically regarding a lawsuit filed by Joseph Waller against the Town.
5. STAFF REPORTS
 - a. Town Manager
 - i. Silver Bell Water Right Decree
 - ii. Waste Management to Bruin Trash/Recycle Changeover (May 1?)
 - iii. Ophir Road Paving/Spring Road Maintenance Update
6. NEW BUSINESS
7. ADJOURN

DISTRICT COURT, WATER DIVISION NO. 4, COLORADO Montrose County Justice Center 1200 North Grand Avenue, Bin. A Montrose, CO 81401-3146	
CONCERNING THE APPLICATION FOR FINDING OF REASONABLE DILIGENCE OF: TOWN OF OPHIR, COLORADO IN THE SAN MIGUEL RIVER IN SAN MIGUEL COUNTY, COLORADO	
	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p style="text-align: center;">Case No. 2022CW3070 (Ref. Case Nos. 2016CW3025, 2009CW152, 2002CW216, 1998CW39 & 1996CW20)</p>
FINDINGS OF FACT, CONCLUSIONS OF LAW AND RULING OF THE REFEREE AND DILIGENCE DECREE OF THE WATER COURT	

The above-referenced Application was filed in this case on October 28, 2022. The Application was referred to the undersigned Water Referee for Water Division No. 4, Colorado, by the Water Judge in accordance with the provisions of Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as the Water Rights Determination and Administration Act of 1969.

The undersigned Water Referee, having made such investigations as are necessary to determine whether or not the statements in the Application are true, and having become fully advised with respect to the subject matter of the Application in fulfillment of the requirements of C.R.S. § 37-92-302(4), does hereby make the

following Ruling as the Referee in this matter pursuant to the provisions of C.R.S. § 37-92-303(1).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Name, address and telephone number of Applicant:
Town of Ophir, CO PO Box 683 Ophir, Colorado 81426 Attn. John Wontrobski, Town Manager, Tel. No. (970) 728-4943. Applicant filed its Notice of Change of Ownership in Case No. 2016CW3025 on or about October 21, 2022 and is the successor-in-interest to Telluride Brand LLC and Richard F. Kearney as to the ownership of the conditional spring rights for Silverbell Spring Nos. 1 and 3.
2. The statements in the Application are true, as set forth herein.
3. Timely and adequate notice of the filing of the Application was given by the Water Clerk for Water Division No. 4 as required by C.R.S. § 37-92-302(3). Applicant notified the owner of land at the points of diversion of the subject water rights on December 19, 2022 and has filed a Certificate of Notice to such landowner in this case, all pursuant to C.R.S. § 37-92-302(2)(b)(II).
4. No Statements of Opposition were timely filed in this case pursuant to C.R.S. § 37-92-302(1)(b). The time for filing Statements of Opposition pursuant to C.R.S. § 37-92-302(1)(b) has expired.
5. The Water Referee has consulted with the Division Engineer for Water Division 4 (“Division Engineer”) concerning the Application in fulfillment of the requirements of C.R.S. § 37-92-302(4).
6. The Division Engineer filed his Consultation Report/Recommendation of the Division Engineer with the Referee in this case on January 9, 2023. Applicant filed its Response to Division Engineer’s Consultation Report/Recommendation on January 16, 2023. The Division Engineer has since recommended approval of the Application by the Water Court via entry

of a Ruling by the Water Referee finding that Applicants have exercised reasonable diligence in completing the appropriation of the subject remaining conditional water rights, provided that certain terms and conditions as set forth hereinbelow are included.

7. In the Application filed in this case, Applicant requested entry of a decree finding that it has exercised reasonable diligence in completing the appropriation of water under Applicant's conditional spring water rights described herein and previously decreed by the Division 4 Water Court in Case Nos. 1996CW20, 1998CW39 and 2002CW216, 2009CW152 and 2016CW3025 on November 19, 1996, March 9, 2001, November 5, 2003, May 14, 2010, and October 31, 2016, respectively, for the diversion of water tributary to Howard's Fork of the South Fork of the San Miguel River at the Silverbell Spring Nos. 1 and 3 at the rate of 1.25 c.f.s. and 0.10 c.f.s., respectively, for the following beneficial uses: domestic, commercial (including use in a commercial water bottling operation), irrigation, firefighting (all structures) and hydropower (as to Silverbell Spring No. 1 only) by direct diversion and hydropower use or by diversion and storage for subsequent hydropower use. The Silverbell Spring No. 2 conditional spring water right was canceled in Case No. 2016CW3025.

8. Applicant's detailed outline of work performed toward diligently completing the appropriation of water for all beneficial uses under the subject conditional water rights, including expenditures:
 - a. Legal expenses. During the preceding six-year diligence period following entry of the previous water rights diligence decree by the Water Court in Case No. 2016CW302, Applicant has retained the Applicant's Attorney and has expended approximately \$1,098.00 for legal fees associated with acquisition of the subject water rights, analysis and advice regarding retention and continuation of the subject conditional water rights, and for obtaining a new a special use permit from the U.S.D.A., Uncompahgre National Forest for development and improvement of the

Silverbell Spring Nos. 1 and 3 diversion structures, not including legal work to prepare its Application.

b. Other diligence activities and costs. On or about September 28, 2022 Applicant applied for a new Special Use Permit from the U.S.D.A., San Miguel National Forest regarding diversion, conveyance and use of the subject conditional water rights. Applicant has obtained an evaluation of the subject water rights by SGM Engineering Inc. including a site visit on or about September 20, 2022 and has spent or obligated approximately \$4,060.88 in conducting SGM's due diligence investigation of the subject water rights and potential future use of the subject water rights by the Applicant.

d. Total diligence expenses. Applicant has expended or obligated a total of \$5,158.88 during the preceding six-year diligence period for the above-described diligence activities towards completing the appropriation of its subject conditional water rights decreed for diversion at the Silverbell Spring Nos. 1 and 3.

9. Name of diversion structure. **Silverbell Spring No. 1.**

a. Decreed point of diversion. Located at a point whence the S¼ [South Quarter Corner] of Section 32, Township 42 North, Range 9 West of the N.M.P.M. bears South 32°24'27" West a distance of 6,766.02 feet, in unincorporated San Miguel County, Colorado. This point of diversion is within an unsurveyed portion of Township 42 North, Range 9 West of the N.M.P.M., which is protracted by the State Engineer's Office as being within the SW¼SW¼ of Section 28, T. 42 N., R. 9 W., N.M.P.M. This point of diversion is also described by the following U.T.M. Zone 13 coordinates: 247,312 meters East; 4,194,970 meters North. See, **Exhibit A**, Silverbell Springs Nos. 1 and 3 location map, attached and incorporated herein.

b. Source. Surface spring tributary to the Howards Fork of the South Fork of the San Miguel River and the San Miguel River.

- c. Appropriation date. June 4, 1994.
 - d. Diversion rate. 1.25 c.f.s., conditional.
 - e. Uses. Domestic, commercial (including use in a commercial water bottling operation), irrigation, hydropower and firefighting purposes by direct diversion and immediate application to these decreed beneficial uses, or by diversion and storage for subsequent beneficial use.
 - f. The name and address of the owner of land upon which the point of diversion is located. United States Department of Agriculture, Forest Service, Uncompahgre National Forest, Norwood Ranger District, P.O. Box 388, Norwood, CO 81423 (according to the San Miguel County parcel ownership records).
10. Name of diversion structure. **Silverbell Spring No. 3.**
- a. Decreed point of diversion. Located at a point whence the S¼ Corner of Section 32, Township 42 North, Range 9 West of the N.M.P.M. bears South 63°42'55" West a distance of 6,567.23 feet. This point of diversion is within an unsurveyed portion of Township 42 North, Range 9 West of the N.M.P.M., which is protracted by the State Engineer's Office as being within the SE¼NE¼ of Section 33, T. 42 N., R. 9 W., N.M.P.M. This point of diversion is also described by the following UTM Zone 13 coordinates: 248,292 meters East; 4,194,130 meters North. See, **Exhibit A.**
 - b. Source. Surface spring tributary to the Howards Fork of the South Fork of the San Miguel River and the San Miguel River.
 - c. Appropriation date. June 4, 1994.

- d. Diversion rate. 0.10 c.f.s., conditional.
 - e. Uses. Domestic, commercial (including use in a commercial water bottling operation), irrigation and firefighting purposes by direct diversion and immediate application to these decreed beneficial uses, or by diversion and storage for subsequent beneficial use.
 - f. The name and address of the owner of land upon which the point of diversion is located. United States Department of Agriculture, Forest Service, Uncompahgre National Forest, Norwood Ranger District, P.O. Box 388, Norwood, CO 81423 (according to the San Miguel County parcel ownership records).
11. The Water Referee found that Applicant has exercised reasonable diligence towards the completion of appropriation of the subject remaining conditional water rights previously decreed for diversion at the Silverbell Spring Nos. 1 and 3, as described hereinabove at Paragraphs 9 and 10.
12. The Water Referee specifically finds that Applicant had met the requirements of C.R.S. § 37-92-305(9)(b) such that water can be diverted, stored, captured, possessed, controlled and beneficially used for the previously decreed purposes, and that the project will be completed by the Applicant with diligence and within a reasonable time.
13. The Water Referee further found that the subject remaining conditional water rights previously decreed for diversion at the Silverbell Spring Nos. 1 and 3, as more fully described hereinabove at Paragraphs 9 and 10, should be continued in full force and effect for an additional six-year diligence period by entry of a final Decree finding that Applicant has exercised reasonable diligence towards completing the appropriations of water decreed as the subject conditional water rights.

RULING OF REFEREE

14. The forgoing Findings of Fact and Conclusions of Law are incorporated into the Ruling of Referee.
15. The Water Referee rules that Applicant has shown reasonable diligence in completing the appropriation water under the subject conditional water rights previously decreed for diversion at the Silverbell Spring Nos. 1 and 3, as described hereinabove at Paragraphs 9 and 10, such that the subject conditional water rights should be continued in full force and effect for an additional six-year diligence period by entry of a final diligence decree by the Water Judge in this case. The subject conditional spring water right or rights as to either spring, however, shall be canceled and terminated if the spring water from Silverbell Spring Nos. 1 or 3, is not diverted and placed into beneficial use before the end of the additional six-year diligence period.

JUDGMENT AND DILIGENCE DECREE

16. The forgoing Findings of Fact, Conclusions of Law and Ruling of Referee are confirmed and incorporated herein and made the final judgment and decree of the Water Court.
17. Applicants' Application for Finding of Reasonable Diligence concerning the subject Silverbell Spring Nos. 1 and 3 is granted.
18. Pursuant to Uniform Local Rules for All State Water Court Divisions, Rule 9, upon the sale or other transfer of the subject conditional water rights, the transferee shall file with the Division 4 Water Court a notice of transfer which, shall state the following:
 - a. The title and case number of this Case No. 2022CW3070;
 - b. The description of the conditional water right(s) transferred;
 - c. The name of the transferor;

- d. The name and mailing address of the transferee; and
- e. A copy of the recorded deed.


19. The owner of said conditional water rights shall also notify the Clerk of the Division 4 Water Court of any change in mailing address. The Clerk shall place any notice of transfer or change of address in the case file of this case.

20. Should Applicant desire to maintain the subject remaining Silverbell Spring Nos. 1 and 3 conditional water rights continued herein, an application of a finding of reasonable diligence shall be filed with the Water Court during **April, 2029**, unless a determination has been made prior to this diligence application deadline that the subject remaining conditional water rights have been made absolute by the Water Court pursuant to Applicant's completing the appropriations of water decreed thereunder.

It is ORDERED that this Judgment and Diligence Decree shall be filed with the Water Clerk and shall become effective upon such filing, subject to judicial review pursuant to C.R.S. § 37-92-304, as amended.

It is further ORDERED that this Judgment and Diligence Decree shall be filed with the Division Engineer for Water Division 4 and State Engineer pursuant to C.R.S. § 37-92-304(8) and the conditional water rights continued hereby shall be incorporated into the State Engineer's tabulation of water rights for Water Division 4.

DONE this 9th day of March, 2023.

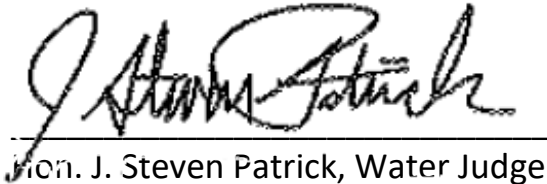


S. Gregg Stanway, Water Referee
Water Division No. 4, Colorado

2022CW3070 RULING AND DECREE

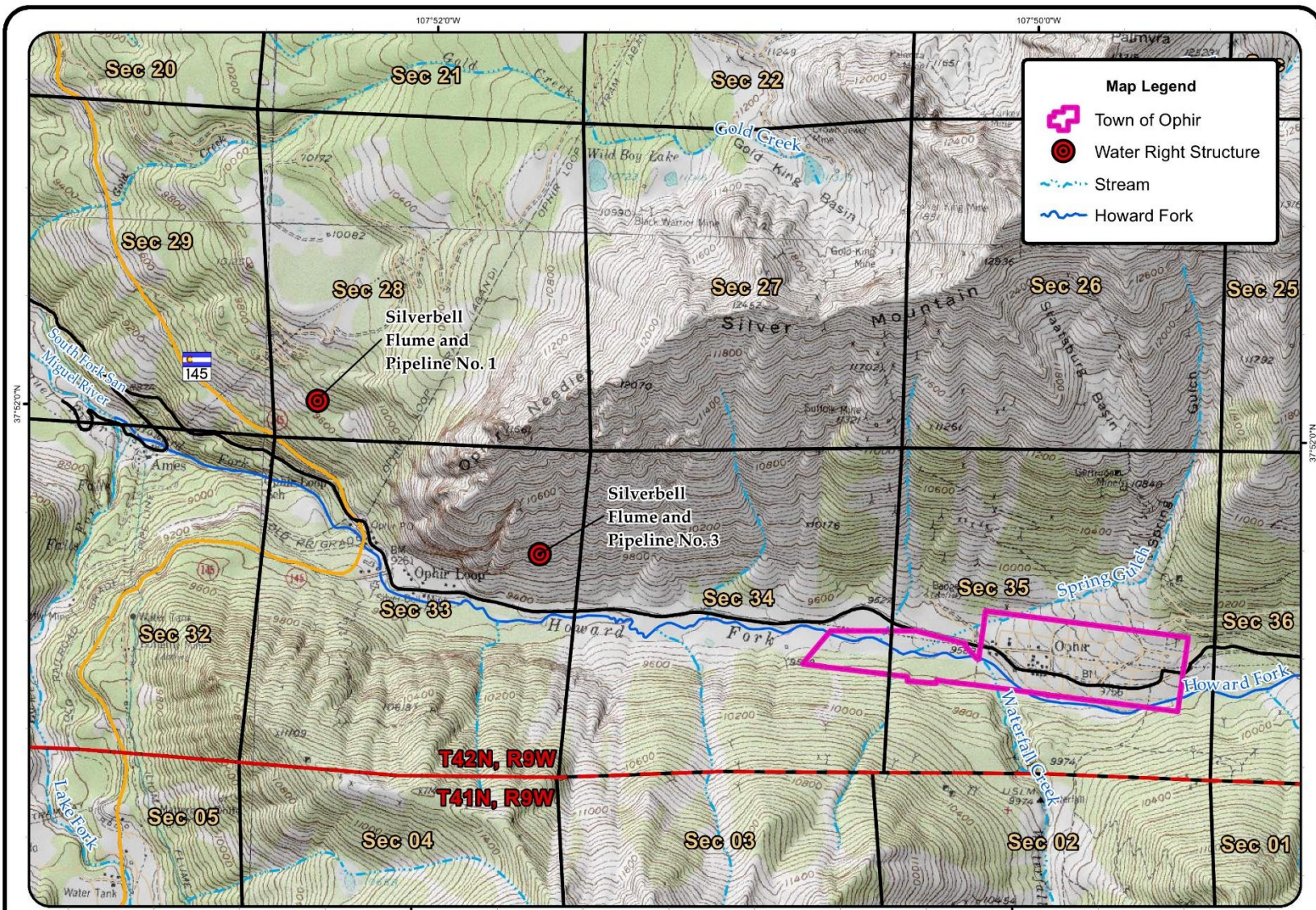
BY THE WATER JUDGE:

DATED April 3, 2023

A handwritten signature in black ink, appearing to read "J. Steven Patrick". The signature is written in a cursive style with a large initial "J".

Hon. J. Steven Patrick, Water Judge
Water Division No. 4, Colorado

Exhibit A
Silverbell Springs Nos. 1 and 3
Location Map (next page)



SGM
 555 RiverGate Ln, Suite B4-82
 Durango, CO 81301
 970.385.2340
 www.sgm-inc.com

Exhibit A.
Silverbell Springs
Nos. 1 and 3
 Town of Ophir

Date: 10/25/2022 Job No. 2021-486.001 Map by: ANW Checked by: DSS Scale: 1:24,000
 Data Sources: San Miguel County GIS, Colorado Department of Wildlife (Streams), USGS Topographic Basemap, DWR CDSS (Structures)
 File: P:\Project Files\2021-486 Town of Ophir\001-Town of Ophir\H-Dwg\GIS\MXDs\Exhibit A_SilverBellSprings.mxd
 The information displayed above is intended for general planning purposes. Refer to legal documentation/data sources for descriptions/locations.

