

M E M O R A N D U M

January 31, 2024

TO: Michelle Metteer, Town Manager
FROM: Holland & Hart LLP (Susan Ryan)
RE: Analysis of Minturn Well Nos. 3 and 4

The purpose of this memorandum is to provide a summary of the water rights that currently divert at Minturn Well Nos. 3 and 4, which are located along Cross Creek in Minturn Wellfield 1, and an analysis of the possible options for diverting additional water rights at Minturn Well Nos. 3 and 4.

1. Current Diversions from Wells 3 and 4. The Town diverts both senior and junior water rights at Wells 3 and 4.
 - a. Well 3. The following water rights are diverted at Well 3:
 - i. Senior: “1962 Well 1” water right for 80 gpm with 9.0 ac-ft annual consumptive use limit and subject to additional limits when considered along with other of the Town’s water rights.
 - ii. Junior: “2005 Minturn Municipal Diversion - Well 3 Enlargement” water right for 225 gpm.
 - b. Well 4. The following water rights are diverted at Well 4:
 - i. Senior: “1962 Well 2” water right for 80 gpm with 2.31 ac-ft annual consumptive use limit and subject to additional limits when considered along with other of the Town’s water rights.
 - ii. Junior: “2005 Minturn Municipal Diversion - Well 4 Enlargement” water right for 225 gpm.
 - c. Pumping is limited to 225 gpm per well pursuant to Well Permit 83889-F (Well 3) and Well Permit 83890-F (Well 4).
2. Ability to Change Existing Well Rights to New Wells *Within* Minturn Wellfield 1.
 - a. The Minturn Wellfield 1 extends 100 feet on both sides of Cross Creek.

- b. The two senior well rights currently diverted at Wells 3 and 4 (1962 Well 1 and 2 water rights) have decreed alternate points of diversion (APODs) within Minturn Wellfield 1. Accordingly, the two senior well rights could be moved to a new well or wells located within the Minturn Wellfield 1 without any Water Court action. New well permit(s) would be required.
 - c. The Town also has junior well rights (2005 Minturn Municipal Diversion – Well 3 and 4 Enlargements) within Minturn Wellfield 1. Accordingly, the Town could divert junior well rights from well(s) within Minturn Wellfield 1. New well permit(s) would be required.
3. Ability to Change Existing Well Rights to New Wells *Outside of* Minturn Wellfield
- 1. Water Court action would be required to move the senior well rights currently diverted at Wells 3 and 4 (1962 Wells 1 and 2 water rights) to new well(s) located outside of Minturn Wellfield 1.
4. Ability to Change Senior Ditch Right to be Diverted Via Wells.
- a. The Town’s senior ditch right is the “1912 Minturn Water System Ditch” water right for 7 cfs, subject to annual, seasonal, and monthly consumptive use limits for the Town’s senior water rights which apply to the 1912 Minturn Water System Ditch water right and the two senior well rights (1962 Wells 1 and 2 water rights).
 - b. Water Court action would be required to change the 1912 Minturn System Ditch water right to allow it to be diverted from a well or wells. The Town would need to file an application in Water Court to seek new alternate points of diversion [APOD(s)] for the senior ditch right. Potential APODs include: (i) Wells 3 and 4, (ii) well(s) within Minturn Wellfield 1, or (iii) well(s) outside of Minturn Wellfield 1. Importantly, this type of application would not increase the amount of the senior ditch right—it would just allow the Town to also divert the senior ditch water right at one or more wells.
 - c. Potential APODs for the 1912 Minturn Water System Ditch right:
 - i. Wells 3 and/or 4. The Town could seek new APOD(s) for the senior ditch right at Wells 3 and/or 4. The wells are already decreed as APODs for multiple water rights, which complicates seeking an APOD for the senior ditch right at these locations.
 - ii. New Well(s) in Minturn Wellfield 1. The Town could seek new APOD(s) for the senior ditch right within Minturn Wellfield 1. In prior Water Court proceedings, the Court determined that diversions for wells within Minturn Wellfield 1 resulted in instantaneous depletions to the stream—as such, the Town was not required to calculate lagged depletions from wells constructed within the wellfield. This prior determination could help

simplify a future application concerning the senior ditch right. On the other hand, opposers or the Division Engineer may be unwilling to accept the prior determination regarding instantaneous depletions.

- iii. New Well(s) outside of Minturn Wellfield 1. The Town could seek new APOD(s) for the senior ditch right from wells located outside of Minturn Wellfield 1. Depending on their location, the Town would likely be required to calculate lagged depletions resulting from the new well(s) and may be required to provide replacement water for those depletions.
- d. Obtaining water court approval to divert the senior ditch right at the APOD(s) described above benefits the Town by reducing the augmentation requirements on Cross Creek. The senior priority of the ditch right allows it to be diverted more frequently than the Town's junior water rights and without augmentation at times.
 - i. Diverting junior water rights at the wells will likely result in the need for additional sources of augmentation water on Cross Creek and the Eagle River.