

DISTRICT COURT, WATER DIVISION 7, COLORADO

WATER RESUME

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN SAID WATER DIVISION NO. 7

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications filed in the Office of the Water Clerk during the month of February, 2013, for each county affected and Substitute Water Supply Plan Notification List.

13CW3 (05CW31) (W-304), Pagosa Area Water and Sanitation District, P.O. Drawer 4610, Pagosa Springs, CO 81157. Evan D. Ela, Esq., Collins Cockrel & Cole, P.C., 390 Union Blvd., Suite 400, Denver, CO 80228, (303) 986-1551. APPLICATION FOR FINDINGS OF REASONABLE DILIGENCE ON DECREED CONDITIONAL WATER RIGHTS in **ARCHULETA COUNTY**. 2. Name of Structure: Martinez Dam. 3. Description of Subject Conditional Water Right: a. Original Decree: Case No. W-304, District Court in and for Water Division No. 7, State of Colorado, *In the Matter of the Application for Water Rights of Eaton International Corporation in the San Juan River or its Tributaries in Archuleta County*, on April 8, 1971 (later amended on February 4, 1972); (1) Source: Martinez Creek and Four Mile Creek; (2) Means of Diversion: Gravity flow into dam; (3) Date of appropriation: June 30, 1970; (4) Amount: 2,900 acre-feet, Conditional; (5) Location of point of diversion: High water line at a point on dam axis from whence the SE corner of Section 31, Township 36 North, Range 2 West, of the N.M.P.M. bears South 55°28'51" East, a distance of 5,628.8 feet, in the County of Archuleta, State of Colorado; (6) Beneficial uses: Domestic, irrigation and recreation. b. Change/ Augmentation Plan Decree. The Martinez Dam water storage right was changed and incorporated into a municipal water system augmentation plan ("PAWSO Augmentation Plan") by Eaton International Corporation on July 19, 1973 in Case No. W-958-72, Water Court in and for Water Division No. 7, State of Colorado, *In the Matter of the Application for Water Rights of Eaton International Corporation for Water Rights in Archuleta County*. The PAWSO Augmentation Plan was amended on July 21, 1989 in Case No. 87CW61, District Court, Water Division No. 7, State of Colorado, *In the Matter of the Application for Water Rights of Pagosa Area Water and Sanitation District and Fairfield-Pagosa, Inc. in the San Juan River and its Tributaries in Archuleta County*. Significant changes to the Martinez Dam, and other, water rights that were decreed in that action are as follows: (1) Source of water: Total native inflow produced in the Stollsteimer Creek watershed from all sources, including defined surface streamflow and diffused surface water runoff, as determined by the Inflow Formula as well as the originally decreed importation of water Four Mile Creek; (2) Alternate places of storage: The District is entitled to divert or store water under any and all of its water rights through or in any and all of its structures including the reservoirs known as Linn and Clark Reservoir (*aka* Lake Pagosa), G.S. Hatcher Reservoir, Stevens Reservoir, Hersch Reservoir No. 1, Martinez Dam, Lake Forest, Town Center (*aka* Village) Lake and Pinon Lake; (3) Manner of storage and use: Conversion of direct flow water rights (specifically including the J.B. Martinez Ditch, Linn and Clark Ditch, G.S. Hatcher Ditch, Hersch Ditch, Dutton Ditch Enlargement and Extension, and Perkins Ditch) to storage, continuous filling and refilling of PAWSO reservoirs, importation of water from Four Mile Creek through the Dutton Ditch, re-impoundment and reuse of return flows and by the flexible management of waters in all of PAWSO's storage vessels to maximize the retention of runoff for beneficial purposes, all in accordance with the Operating Criteria and Inflow Formula specified by decree for the PAWSO Augmentation Plan in Case No. W-958-72 as amended by decree in Case No. 87CW61; (4) Beneficial uses: Municipal and all other beneficial purposes; (5) Municipal water system: All water rights described in paragraphs 3(b)(2) and (3) above are integrated into one system. c. Diligence Decrees: Findings of continued diligence were decreed by this Court in Case Nos. W-304-73, W-304-77, 81CW122, 85CW105, 90CW07, 97CW38, and most recently, on February 1, 2007, in Case No. 05CW31.

4. Outline of work done and funds expended by Applicant during the relevant diligence period (August 1, 2005 through February 28, 2013) toward completion of the appropriation: a. The District completed the Dutton Ditch Pipeline, a ductile iron pipeline extending from the Dutton Ditch headgate on Fourmile Creek to the Dutton Ditch Extension, an already existing pipeline connecting the Dutton Ditch to Hatcher Reservoir. Costs incurred for legal, engineering, materials, permitting and completion of construction of this facility during the diligence period amounted to approximately \$3,815,100; b. The District performed substantial work on and has completed the enlargement of Stevens Reservoir, one of the District's primary storage reservoirs. Costs incurred by the District for the engineering, design and construction amounted to approximately \$7.02 million, of which \$5,890,764 was expended during the relevant diligence period. Costs incurred by the District for land acquisition associated with the enlargement of Stevens Reservoir totaled \$844,139 during the relevant diligence period; c. The District prosecuted applications in the water court for water rights related to other facilities that are a part of the District's integrated municipal water system and has continued to protect its water rights by participating in water court adjudications of the water rights of others to prevent a negative impact on the water yields of the District's water rights. The legal and engineering costs incurred by the District for these matters totaled approximately \$240,000 during the relevant diligence period; d. The District has continued to update and modify its water planning efforts during the diligence period in accordance with the changing demands for water within the District. Engineering work commissioned and other costs associated with the implementation of water conservation programs, raw water irrigation systems and other master planning efforts amounted to \$373,511 during the relevant diligence period; e. Expenditures by the District for necessary improvements, repairs and operations of raw water supply ditches, pipelines and reservoirs during the diligence period have totaled \$87,864; f. The District expended over \$1,476,634 toward design and installation of upgrades and improvements to the San Juan Water Treatment Plant and related facilities during the relevant diligence period.

5. Name and address of potentially affected landowners: To the best of Applicant's knowledge and belief, the decreed location of Martinez Dam and reservoir is on land owned by the Rendezvous Property Owners Association, 900 Black Powder Place, Pagosa Springs, CO 81147. The proposed reservoir site is adjacent to lands owned by Glenn and Cathy Rutherford, 900 Black Powder Place, Pagosa Springs, CO 81147; Clayton and Margaret Braatz, 1173 San Marino Avenue, San Marino, CA 91108; Black Powder Trust, 900 Black Powder Place, Pagosa Springs, CO 81147; Heather Family Trust, 236 W. Maple Ave., Monrovia, CA 91016; and Archuleta County, 449 San Juan Street, Pagosa Springs, CO 81147.

6. Additional remarks: a. A term and condition of the diligence decree issued by the court in Case No. 05CW31 requires the District to abandon any portion of the subject conditional Martinez Dam water right that has not been perfected as of the date that the Dry Gulch Project facilities have been constructed to a capacity of 35,000 ac-ft of storage, with a water diversion capacity of no less than 180 cfs from the San Juan River, and the water rights associated with such facilities are decreed as absolute by this Court. This term and condition will be continued and included in the final decree issued in this matter; b. The storage right associated with Martinez Dam was incorporated into the District Augmentation Plan (decreed in Case No. W-958-72) now operated by the District for water diversions and storage in the Stollsteimer Creek watershed and with diversions imported from the Four Mile Creek watershed via the Dutton Pipeline. The Applicant's ongoing efforts to increase its storage capacity and water yield within the Stollsteimer Creek watershed by enlargement of Stevens Reservoir is directly related to perfection of the Martinez Dam water storage right by creating additional storage capacity that will allow further exercise of the linked water storage rights. (5 pages)

13CW4 Sheldon Zwicker, 9257 Rd. G, Cortez, CO 81321: **Finley Generator**; Montezuma County; McElmo Creek; Date of original decree, 2/16/07; Case no. 2006CW20; SE1/4SW1/4SW1/4, Section 31, T36N, R18W, NMPM; 262 feet from South section line, 1092 feet from West section line of said Section 31; Northing 4138325.22, Easting 156341.89; McElmo Creek; Appropriation date, 3/7/06; Hydro power; Work towards completion of project outlined in application; 50 cfs. Application for Finding of Reasonable Diligence (6 pages)

THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of April, 2013, to file with the Water Clerk, a verified Statement of Opposition, setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions. A copy of such Statement of Opposition must also be served upon the applicant or the applicant's attorney and an affidavit or certificate of such service shall be filed with the Water Clerk, as prescribed by Rule 5, CRCP.

(Filing fee: \$130.00; Forms are available through the Office of the Water Clerk or on the Judicial site at www.courts.state.co.us; Danene M. Etz, Clerk of the Water Court, 1060 E. 2nd Ave., Room 106, Durango, CO 81301-5157; 970-247-2304, Ext. 6181)



Published: before March 31, 2013

Original Signature on file
Danene M. Etz, Water Clerk

SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST

Section 37-92-308, C.R.S. directs the State Engineer to establish a notification list for each water division to notify interested parties of requests for approval of: substitute water supply plans (§37-92-308), loans for an instream flow (§37-83-105), and interruptible water supply agreements (§37-92-309).

To receive this information, specify whether you prefer to receive the notification via first-class mail or electronic mail and send your name, mailing address, e-mail address, daytime telephone number, and water division(s) to: Substitute Water Supply Plan Notification List (c/o Katie Radke, Program Manager), Colorado Division of Water Resources, 1313 Sherman Street, Room 818, Denver, Colorado 80203, Phone: (303) 866-3581, Fax: (303) 866-3589, or e-mail to: Kathryn.radke@state.co.us.

Additional information regarding Substitute Water Supply Plans is available on the Division of Water Resources' website at <http://water.state.co.us>.