

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 June 2022, for each county affected.

21CW3048 AMENDED NOTICE OF FILING OF FINAL DECENNIAL ABANDONMENT LIST FOR WATER DIVISION NO. 7 FOR DOLORES COUNTY The State Engineer and the Division Engineer for Water Division 7, by and through the Attorney General and the Assistant Attorneys General, Paul L. Benington, Rebecca L. Crotty and Bruce C. Walters, Water Resources Unit, Natural Resources & Environment Section Office of the Colorado Attorney General, 1300 Broadway, 7th Floor, Denver, CO 80203 Telephone: (720) 508-6309 (Benington); (720) 508-6260 (Crotty); (720) 508-6255 (Walters), Email: paul.benington@coag.gov; rebecca.crotty@coag.gov; bruce.walters@coag.gov hereby provide notice to persons interested in water rights decreed to structures located in **Dolores County** of the filing with the Water Clerk of the decennial abandonment list for Water Division 7 under section 37-92-401(4)(c), C.R.S. (2021). The decennial abandonment list was e-filed on December 20, 2021 and notice of such filing was included in the Water Court resume, but publication of the notice did not occur for water rights decreed to structures located in Dolores County in the Cortez Journal, which recently became the official newspaper of general circulation in Dolores County under Resolution No. 12-21-02 of the Board of County Commissioners of the County of Dolores, State of Colorado, dated December 6, 2021. Notice is hereby given that, pursuant to section 37-92-401(4) C.R.S. (2021), the Division Engineer, in consultation with the State Engineer, has revised and finalized the decennial abandonment list, which contains those water rights that the Division Engineer has determined to have been abandoned in whole or in part. The decennial abandonment list, when concluded by judgment and decree, shall be conclusive as to the water rights determined to have been abandoned. The initial abandonment list (published in July 2020) and the final revised abandonment list are available online at: <https://dwr.colorado.gov/services/water-administration/water-rights>. The initial and final revised decennial abandonment lists may also be inspected at the offices of the State Engineer, Division Engineer, and Clerk of the Water Court. Contact the respective offices for information on hours and/or appointments. This decennial abandonment proceeding, including any protest proceedings, are subject to Rule 12 of the Uniform Local Rules for All State Water Court Divisions (Water Court Rules), effective as amended on December 13, 2018 and available on the Water Court's website at: <https://www.courts.state.co.us/Courts/Water,asmodifiedbyanorderoftheWaterCourtapprovingthisnoticeforproteststothetheinclusionofanywaterrightsonthefinalrevisedabandonmentlistdecreedtoastructurelocatedinDoloresCounty>. Any person who wishes to protest the inclusion of any water right decreed to a structure located in Dolores County on the final decennial abandonment list shall file a written protest with the Water Clerk and the Division Engineer in accordance with the procedures set forth in section 37-92-401(5), C.R.S (2021) not later than **August 31, 2022**. The fee for filing such a protest with the Water Clerk is forty-five dollars (\$45.00). The protest shall set forth in detail the factual and legal basis therefor. A form for such a protest ([JDF 304W](#)) is available on the Water Court website. Any entry of appearance in a bifurcated protest case for any water right decreed to a structure located in Dolores County shall be filed in the bifurcated protest case not later than **October 31, 2022**, which shall serve as the at-issue date for any bifurcated protest for a water right decreed to a structure located in Dolores County. A form for such an entry of appearance ([JDF 320W](#)) is available on the Water Court website. All water rights decreed to structures located in other counties are not subject to the order of the Water Court approving this notice and the case management dates set forth above. (7 pages including exhibits)

22CW7 Tyson and Natalie Bolinske, 23 Bacus Ave, Durango, CO 81301: **Bolinske Pump**; Animas River; La Plata County; Date of original decree, 11/30/07; Case no., 06CW127; Subsequent decrees, 3/10/16, 13CW3034; Water will be diverted within the Animas Service Area which shall be defined as any point within the Animas River Basin (which includes the Animas River and all of its tributaries) upstream of a point in the Animas River that is located as follows: in the SW1/4 SW1/4 of Section 29, T35N, R9W, NMPM; 1250 feet from South section line, 720 feet from West section line of said section 29; Animas River; Appropriation date 2/22/09; Depletion amounts range from 20 to 40 cfs; Year round depletions associated with beneficial uses of water diverted from the Animas River and its tributaries in the Animas Service Area from non-exempt wells and surface diversion for irrigation, supplemental irrigation, wetlands and wetland irrigation, domestic and municipal use, pond, reservoir water feature and other evaporation, industrial and manufacturing use, power, geothermal, commercial use, gravel and other mining, stock and wildlife watering, firefighting, recreation, snow and ice making, piscatorial, recharge, augmentation, and exchange. Date water applied to beneficial use 6/1/21; 0.033 cfs; Depletion amounts Apr 1-14 – 0.000370 cfs, Apr 15-30 – 0.000370 cfs, May – 0.000839 cfs, Jun 1-14 – 0.001197 cfs, Jun 15-30 – 0.001197 cfs, Jul 1-14 – 0.00146 cfs, Jul 15-31 – 0.001146 cfs, Aug – 0.000878 cfs, Sept – 0.000706 cfs, Oct – 0.000341 cfs; Supplemental irrigation of 0.15 acres of home lawns and gardens on Parcel # 5665-173-05-014; NW1/4SW1/4, Section 17, T35N, R9W, NMPM; Work towards completion of project outlined in application. Application to Make Absolute in Whole or in Part (9 pages including exhibits)

22CW8 Charles Talley, 140 Arroyo Seco Dr CR 509, Bayfield, CO 81121: **Mitchell Waste Water Ditch**; Dry Creek, Pine River, La Plata County; SE1/4NE1/4, Section 17U, T34N, R7W, NMPM; Easting 266865, Northing 4119527; 3361 feet from South section line, 1062 feet from East section line of said Section 17U; Kane Reservoir, Kane Waste Water Ditch, Mitchell Ditch Waste; Appropriation date, 6/3/2022; Appropriation was initiated by meeting with DWR; Date water applied to beneficial use May 1986; Absolute 0.25 cfs; Irrigation for hayfield and garden, livestock; See application for more details. Application for Absolute Water Rights (Surface) (5 pages including exhibits)

22CW9 Debora Jackson-Bliss, 325 CR 253, Durango, CO 81301; **Deb's Spring**; Coon Creek, Animas River, La Plata County; SE1/4SW1/4SW1/4, Section 31, T37N, R8W, NMPM; 384 feet from South section line, 1073 feet from West section line of said Section 31; Appropriation Date, 3/21/07; 0.01 cfs conditional; Irrigation of 4 acres livestock watering parcel nos 5373-313-00-806 and 5373-313-00-807; Installation of pumping station at Deb's Spring that delivers water to the cistern that sit above house. That pumped water is then used for irrigation; Date water applied to beneficial use, 9/20/21; 0.1 cfs; Irrigation, livestock watering, fire mitigation; 252586 Easting, 4145578 Northing; See application for further details; Application to Make Absolute in Whole or in Part (20 pages including exhibits)

22CW10 Steven Bjerke, 15 Lake Vista Dr, Bayfield, CO 81122: Western Construction and Development Co Well; SW1/4, SE1/4, Section 7, T36N, R6W, NMPM, At point 5'14 of Section 7, 505°08' W, 504.0 ft in Pine River Drainage, and Root Creek; Ground Water Root Creek; La Plata County; Date of original decree, 6/22/1971; Case no., W-249; Appropriation date, 5/20/1970; 0.0362 cfs; Domestic use in Lake Vista Estates; Former District Number and Page Number were listed on Abandonment List, Water District 31 page 5 of 5; Amount listed as having been abandoned: All rights and use; Factual and legal basis for protest outlined in detail in Application; Protest to Final Abandonment List (5 pages including exhibits)

2022CW3025 Application for Conditional Water Rights (Surface) Archuleta County. **1.** Applicant: Miriam Horn, 14101C CR 326, Pagosa Springs, CO 81147; c/o Kimberly C. Perdue, Southwest Water and Property Law LLC, 10 Town Plaza, No. 422, Durango, CO 81301, (970) 426-5480, kperdue@swpropertylaw.com. **2.** Structure: Logjam Ditch. i. Loc: SE 1/4 SE 1/4 Section 20 and SW 1/4 SW 1/4 Section 21, Township 35, Range 2 East, N.M.P.M.; UTM 344651.05 m E 4124444.58 m N, Zone 13S. Source of UTM coordinates is Google Earth. ii. Source: Upper Blanco River. iii. Appropriation Date: July 15, 2020. iv. Amt: 0.15 cfs, conditional. v. Use: irrigation, fire suppression, and domestic use. **3.**

Applicant understands that the rights applied for may be out of priority in most seasons. Applicant wishes, however, to secure rights to the applied-for diversion for years in which water is available. **4.** Applicant is the owner of the land upon which all structures applied for herein are located. See 1. (6 pages including exhibits)

22CW3026 La Plata County, Animas River and its tributaries. Application for a Finding of Reasonable Diligence. Applicant, Diane Stern, 5 Henry Court, Suffern, NY 10901. Please direct all correspondence to Amy N. Huff, Colorado Water & Land Law, LLC, 679 E. 2nd Ave, Ste 11B, Durango, CO 81301 (970) 403-1770, amy@waterland-law.com. **Structure:** ASPEN SPRING. **Prior Decrees:** Case No. 06CW132; 16CW3023. **Legal description of POD:** In the NW ¼ NE ¼, of § 29, T37N, R8W, NMPM, 1060' from the N section line and 1676' from the E section line. **Source:** Unnamed spring, tributary to the Animas River. **App Date:** 12/29/2000. **Amt:** 0.056 cfs. **Conditional.** **Uses:** Irrigation, stock watering; fire protection, and filling and refilling of ponds/water features for recreation; aesthetics; piscatorial uses; and the aforementioned uses. **Description of what has been done toward completion of the appropriation:** Applicant has continued to pay assessments to the Redtail Mountain Ranches Property Owners Association. Applicant has incurred costs and fees for maintaining her property where the Aspen Spring water right will be applied to beneficial use. **Landowners:** Applicant **Remarks:** Additional details about Applicant's activities and expenditures during the last diligence period will be provided upon request. See Application for additional information. (3 pages)

22CW3027 La Plata County, Water Division No. 7: **1) Applicant:** Canyon Springs Ranch Association of Owners, 24 Canyon Springs Ranch Road, Durango, CO 81303; **Attorney:** William E. Zimsky, 555 Rivergate Lane, Suite B4-180, Durango, CO 81301; **2) Name of Structure:** Gaston Springs; **3) Date of Decree:** April 15, 1976; Case No. W-1400-75; District Court In and For Water Division No. 7; **4) Decreed Source of Water:** Gaston Springs located in La Plata County, a tributary to the West Fork of Dry Creek and the Florida River. **5) Point of Diversion:** In the W/2 NW/4 of Section 34, T34N, R9W, N.M.P.M., SPRING #1: located 1,550.0 ft. from the North section line & 470 ft. from the West section line. SPRING # 2: located 1,980.0 ft. from the North section line & 320.0 ft. from the West section line. **6) Type of Application:** Application for Determination of Water Rights (Surface); **7) Request for Determination of Water Rights:** Applicant seeks confirmation of the water right decreed to the Gaston Springs in the Ruling of Referee dated March 25, 1976, which was confirmed and approved by the District Court In and For Water Division 7 on April 15, 1976 and made a Judgment and Decree of the Court ("Decree"). The Decree adjudicated an absolute water right, including the amount of water, up to 1.0 c.f.s. Absolute (0.50 c.f.s. from each spring), and authorized the water to be used for irrigation of 10 acres and fish culture. The Decree did not limit the use of water for irrigation to any specific acreage owned by Mr. Gaston at the time he filed the application for adjudication of the Gaston Springs water right, nor did it limit the location of the ponds to any specific acreage. Specifically, the Applicant seeks a determination that it can use the adjudicated amount of water from the Gaston Springs to irrigate up to ten acres of land located anywhere within the Canyon Springs Ranch Subdivision ("the Subdivision"), which lands were owned by Robert L. Gaston at the time he filed the Application for Water Rights on December 16, 1975. (A copy of a map of the Subdivision is attached hereto as Exhibit B.) Applicant also seeks an order from the Court confirming that it can use the water from the Gaston Springs for fish ponds located anywhere in the Subdivision. Finally, Applicant seeks an order from the Court confirming that after the water from the Gaston Springs flows freely from each spring, the Association can utilize a pump in order to transport the adjudicated water to the fish ponds and/or to lands which it is authorized to irrigate under the Decree. (8 pages including exhibits)

22CW3028 APPLICATION FOR FINDING OF REASONABLE DILIGENCE FOR A CONDITIONAL WATER RIGHT AND FOR A FINDING THAT A PORTION OF THE WATER RIGHT HAS BEEN MADE ABSOLUTE IN BASIN CREEK, A TRIBUTARY TO THE ANIMAS RIVER IN LA PLATA COUNTY. 1. **Name, Address, and Telephone Number of Applicant:** Animas-La Plata Operation, Maintenance and Replacement Association, 125 Smelter Place, Durango, Colorado 81303

(970) 385-7140. Attorneys for Applicant: Carolyn F. Burr, James M. Noble, Jens Jensen, WELBORN SULLIVAN MECK & TOOLEY, P.C., 1401 Lawrence Street, Suite 1800, Denver, Colorado 80202, Telephone: (303) 830-2500. 2. Introduction and Name of Structures and Facilities Associated with the Conditional Water Right: This application concerns the Basin Creek Storage Right, which was originally decreed in Case No. 08CW81, Water Division No. 7. The Basin Creek Storage Right is a source of water to be used for filling Ridges Basin Reservoir, a/k/a Lake Nighthorse, a feature of the Animas-La Plata Project (“ALP Project”) and to be used by the ALP Project participants for ALP Project purposes, in addition to the other water rights for the reservoir. A decree was entered in Case No. 15CW3030 on June 9, 2016, finding that Applicant, the Animas-La Plata Operation, Maintenance and Replacement Association (the “Association”) had made 3,563 acre feet of the water right absolute, and that the Association had exercised reasonable diligence with respect to the remaining conditional portion of the water right. 3. Description of Conditional Water Rights: 3.1 Original Decree. The Basin Creek Storage Right was originally decreed on November 5, 2009 by the Division No. 7 Water Court in Case No. 08CW81. 3.2 Legal Description of Location of Dam/Reservoir. The Ridges Basin Reservoir is located in portions of Sections 6 and 7, T34N, R9W, N.M.P.M., and Sections 1, 2, 3, 4, 9, 10, 11, 12, 2U and 3U, T34N, R10W, N.M.P.M., and Section 36, T35N, R10W, N.M.P.M. The South abutment of the dam is located 2,100 feet from the SW corner of Section 7, T34N, R9W, on an angle of 64° E of N. The dam extends 1,600 feet across the streambed bearing 7° 10’ E of N along the dam axis. Location of the center line of the dam further described as being in the SW¼, NE¼, SW¼, Sec. 7, T34N, R9W, N.M.P.M., 1,780 feet from the South section line and 1,725 feet from the West section line of said Section 7. A map showing the location of Ridges Basin Reservoir is attached hereto as Exhibit A. 3.3 Source of Water: Basin Creek and all tributary inflow to Basin Creek upstream of the Ridges Basin Dam (Ridges Basin Reservoir is an on-stream reservoir on Basin Creek), tributary to the Animas River. 3.4 Appropriation Date: April 17, 2008. 3.5 Amount: 6,400 acre feet: 3,563 acre feet ABSOLUTE and 2,837 acre feet CONDITIONAL. The amounts claimed are only for amounts stored in Ridges Basin Reservoir from Basin Creek and all tributary inflow into Basin Creek. The storage amounts claimed are not in addition to the storage amounts already decreed to Ridges Basin Reservoir the ALP Project in Case No. 1751-B, as changed in Case No. 80CW237 (the “ALP Decrees”). The water stored pursuant to the Basin Creek Storage Right will be used in an identical manner to other waters authorized for storage pursuant to the Colorado-Ute Settlement Act Amendments of 2000, Title 3 of Pub. L. 106-554 (“2000 Amendments”). 3.6 Use: Irrigation, domestic, municipal, industrial, recreation, stock, fish and wildlife, flood control and other beneficial uses. 3.7 Total Capacity of Reservoir. Although Ridges Basin Reservoir was decreed for 280,040 acre feet in Case No. 80CW237, the actual constructed capacity of the Reservoir is 123,541 acre feet. 4. Claim to Make Portion of Conditional Water Right Absolute: 3,563 acre feet of the Basin Creek Storage Right were decreed absolute in Case No. 15CW3030. During the 12 month period from April 1, 2018 through March 31, 2019, the Association’s accounting records indicate that a total of 4,614 acre feet of Basin Creek inflow were stored in Ridges Basin Reservoir. During this period, there was no call on Basin Creek or the Animas River. Pursuant to C.R.S. § 37-92-301(4)(e), “[a] decreed conditional water storage right shall be made absolute for all decreed purposes to the extent of the volume of the appropriation that has been captured, possessed, and controlled at the decreed storage structure.” Therefore, the Association claims that an additional 1,051 acre feet of the Basin Creek Storage Right has been made ABSOLUTE, over and above the 3,563 acre feet that was decreed ABSOLUTE in Case No. 15CW3030, for a total absolute amount of 4,614 acre feet. A total of 1,786 acre feet of the Basin Creek Storage Right remains CONDITIONAL. A table summarizing the annual storage amounts of the Basin Creek Storage Right is attached hereto as Exhibit B. 5. Evidence of Reasonable Diligence Towards Completing Appropriation: In addition to storing an additional 1,051 acre feet of Basin Creek inflows in Ridges Basin Reservoir, and storing water every year during the diligence period pursuant to the Basin Creek Storage Right, the following activities demonstrate reasonable diligence towards full development of the Basin Creek Storage Right: 5.1 The Association has coordinated with the U.S. Bureau of Reclamation to complete a weather station and stream flow gage on Basin Creek to better determine Basin Creek inflows into Lake Nighthorse at a cost of \$3,682.00 to the Association, along with providing in-kind assistance in the installation. 5.2 The Association has delivered 1,074.4 acre feet of water from the

reservoir and 7,190 acre feet of water from the river to ALP Project members. 5.3 The Association adjudicated a change of its Teft Water Right in Case No. 17CW3002 to enable it to be used on a direct flow basis and after storage consistent with the original intent of the ALP Project authorization. The Association spent in excess of \$32,000.00 to adjudicate this change of its Teft Water Right. The Basin Creek Storage Right and the Teft Water Right are part of the same project and integrated system operated in conjunction with each other by the Association. 5.4 The Association spent in excess of \$17,800.00 to participate as an opposer in water rights proceedings in order to protect its ALP Water Rights. 5.5 The Association coordinated with the Lake Durango Water Authority and the La Plata West Water Authority to construct an outlet from Lake Nighthorse capable of delivering members' ALP Project water to the La Plata basin. The cost of construction of the delivery system was in excess of \$11,000,000.00. 5.6 The Association worked cooperatively with the City of Durango to bring recreation to Lake Nighthorse. The City of Durango has established numerous recreational amenities, including a swim beach, boat ramp, parking, trails and boat inspection station at Lake Nighthorse. The Association has consulted with Durango, the Bureau of Reclamation, the Colorado Department of Parks and Wildlife, as well as other members of the ALP Project regarding recreation at Lake Nighthorse and has provided in-kind services to facilitate recreational use of the ALP Project. 5.7 In 2021, the Association, in coordination with the San Juan Water Commission and the Division Engineer, performed a test release of water from Lake Nighthorse from March 16-20, 2021. A total of 413.74 acre feet was released and was used beneficially. 5.8 The Association has spent \$8,745,936.00 over the course of the diligence period on operation, maintenance and replacement projects for the ALP Project facilities. The Association also spent an additional \$319,625.00 on pumping costs. 6. Names and Addresses of Owners of the Land Upon Which any New Diversion or Storage Structure, or Modification to any Existing Diversion or Storage Structure is or will be Constructed or upon Which Water is or will be Stored, Including any Modification to the existing Storage Pool. The structures are located or are to be located on land owned by the Bureau of Reclamation. WHEREFORE, the Association requests that the Court enter a decree finding that the statutory standard of steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances has been satisfied, that reasonable diligence was performed during the diligence period in development of the Basin Creek Storage Right; that the Association can and will complete diligence on the remaining conditional portion of the Basin Creek Storage Right within a reasonable time; that an additional 1,051 acre feet of the water right should be made absolute, making a total of 4,614 acre feet of the Basin Creek Storage Right absolute; and that 1,786 acre feet of the water right should remain as conditional. (8 pages including exhibits)

22CW3029 Montezuma County. **Protest to Final Abandonment List.** Protestant-Owner: United States of America, C/O Bureau of Reclamation, Western Colorado Area Office, 185 Suttle St., Suite 2; Durango, CO 81303; (970) 385-6500. Described Water Right: Name of Structure: **Earl Hart Ditch**. Date of Original Decree: February 4, 1986. Case No.: 84CW166. Court: Water Division 7. Location and legal description: Located whence the NW corner of the NE ¼ SW ¼ of Section 16, T36N, R15W, N.M.P.M. bears N 55 degrees 44`W, 1,475.3 ft., Simon Draw, McElmo Creek. See Exhibit A. Source of Water: McElmo Creek, Simon Draw. Decreed use or uses: Irrigation of 60 acres of land in the N ½ SW ¼ of Section 21, T36N, R15W. Appropriation Date: November 24, 1946. Decreed Amount: 2 c.f.s. absolute. Amount listed as having been abandoned: 1 c.f.s. all decreed uses. Former Water District Number and Page Number where listed on Abandonment List: Water Division 7, Page 2 (July 1, 2020 Abandonment List). Factual and legal basis for this protest: Under the well-established principles of Colorado law governing the abandonment of water rights, the "critical element of abandonment is intent." *Haystack Ranch LLC v. Fazzio*, 997 P.2d 548, 552 (Colo. 2000) (citing § 37-92-103(2), 10 C.R.S. (1999)). There has been no intent to abandon this water right. To the contrary, a properly verified application was filed for a change of water right 1/14/2021 to move the point of diversion to the Simon Wetlands (Case No. 21CW3002). Because of changes made by an adjoining landowner the original diversion was rendered ineffective. A new diversion structure has been constructed and a change case filed. (5 pages including exhibits)

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 August 2022, 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: \$192.00; Forms are available through the Office of the Water Clerk or on the Judicial web site at www.courts.state.co.us; Stephanie Dinnocenzo, Water Court Specialist, 1060 E. 2nd Ave., Room 106, Durango, CO 81301; 970-247-2304)

Published: before July 31, 2022

/s/Stephanie Dinnocenzo
Water Court Specialist