

DISTRICT COURT, WATER DIVISION No. 7, COLORADO Court Address: 1060 East Second Avenue, Durango, CO 81301. Telephone No.: (970) 247-2304	▲COURT USE ONLY▲
IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF GORTON FAMILY PARTNERSHIP, LLLP, AND EDGEMONT RANCH METROPOLITAN DISTRICT IN THE FLORIDA RIVER WATERSHED IN LA PLATA COUNTY	
	Case No.: 09CW34 Div.: Ctrm.:
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE COURT	

FINDINGS OF FACT

1. The Applicants, Gorton Family Partnership, LLLP, c/o Tom Gorton, 1201 Main Ave., Suite 202, Durango, CO 8130, and Edgemont Ranch Metropolitan District, c/o Richard Cortese, 5972 CR 234, Durango, CO 81301, by their attorney Geoffrey M. Craig of The Craig Law Firm P.C., filed an Application for a Change of Water Right on May 22, 2009 (the "Application").
2. The water clerk caused notice of the Application to be published in accordance with C.R.S. § 37-92-302(3). The Application was published both in the resume for Water Division No. 7 and in the Durango Herald newspaper, which has general circulation in La Plata County. Applicants filed proof of publication with the court on August 19, 2009.
3. Pursuant to C.R.S. 37-92-302, a Statement of Opposition was timely filed by the Southern Ute Indian Tribe ("the Tribe"), through its attorney, M. Catherine Condon of McElroy, Meyer, Walker & Condon, P.C. No other statements of opposition were filed and the time for filing them has expired.
4. The Court has duly considered any comments from the Division Engineer in entering this ruling.
5. Change of Water Right:
 - A. Name of structure: Spring Valley Lake Reservoir ("SVL Reservoir")

i. Prior Decrees: Case No. 83CW19, District Court, Water Division No. 7, entered on August 4, 1983 (original decree); Case No. 02CW44, District Court, Water Division No. 7, entered on September 17, 2003 (diligence decree); Case No. 08CW08, District Court, Water Division 7 entered on December 10, 2008 (diligence decree).

ii. Legal Description of Dam Location: Center line of dam is located beginning at a point of the centerline of Spring Valley Lake Reservoir Dam whence the West ¼ corner of Section 17, T35N,R8W, NMPM, bears N. 75 17'33" W., 1,855.81 feet; thence S. 1 16'23" E., 450.11 feet along the centerline of said dam to a point whence the said West ¼ corner bears N. 62 57'47" W., 2,026.47 feet.

iii. Sources:

a. Flood runoff from the drainage upstream of the dam, which is tributary to the Florida River; and

b. Water pumped through the Spring Valley Pipeline, originally adjudicated in Case No. 83CW114, Water Division No. 7, under the priority awarded in said case and under the Ogden-Shirmer Ditch water right, as changed by a decree entered in Case No. 83CW19, Water Division No. 7, on September 7, 1983.

iv. Appropriation date: August 10, 1981

v. Amount: 124.6 acre-feet, Conditional

vi. Uses: Municipal, commercial and augmentation, as decreed in Case Nos. 83CW114 and 83CW19.

vii. Surface area at high water line: 12 acres

viii. Total capacity of reservoir in acre-feet: 124.6 acre-feet, all of which is active capacity.

ix. Spillway crest elevation: 7,426.61 feet above mean sea level

B. Proposed Change:

i. Applicants propose to change the location of up to fifty (50) acre-feet of the SVL Reservoir water right to an alternative reservoir location, described as follows:

The center point of the reservoir is located in Section 18, Township 35 North, Range 8 West, N.M.P.M. in the County of La Plata, State of Colorado, more particularly described as follows: Centered about a point whence the Northeast corner of

said Section 18 bears N 29°23'12" E, a distance of 1810.41 feet. Said point is 897.29 feet West of the East section line and 1570.46 feet South of the North section line of said Section 18. This proposed location is approximate. The actual constructed site will be within four hundred feet of this proposed location.

The existing decreed reservoir location and the alternate reservoir location are approximately shown on Exhibit A. Any amount of the 50 acre-feet that is not changed to the alternate location will remain at the existing decreed location.

ii. The alternate SVL Reservoir will continue to be filled by the adjudicated sources of the existing SVL Reservoir water right, including the Spring Valley Pipeline and Ogden Shirmer Ditch water rights, decreed in Case Nos. 83CW114 and 83CW19 as sources for filling the reservoir. The decreed point of diversion of these source water rights, as approximately shown on Exhibit A as "ERMD Diversion," will not change. Once diverted from the Florida River, these source water rights will be conveyed to the new reservoir location through a pipeline, the approximately proposed location of which is shown on Exhibit A. Proposed pipeline locations for returning water from the alternate SVL Reservoir to the Florida River by gravity flow are shown on Exhibit A. These pipeline locations may change to conform to as built locations. The uses from the alternate SVL Reservoir will continue to be municipal, commercial, and augmentation, as currently decreed under Case Nos. 83CW114 and 83CW19.

iii. In the event the alternate SVL Reservoir intercepts groundwater, the reservoir will be lined so that it does not intercept groundwater, or in the alternative, Applicants will obtain a well permit and an approved plan for augmentation necessary to intercept such groundwater.

CONCLUSIONS OF LAW

6. The foregoing paragraphs are incorporated herein to the extent that said paragraphs contain conclusions of law.

7. The Application having been published as required by law, the Court has jurisdiction over these proceedings and over all persons and water rights affected thereby, whether they have appeared or not.

8. Full and adequate notice of these proceedings and the matters adjudicated herein has been given in the manner required by law.

9. The Division Engineer is lawfully required to administer diversions under the water rights that are the subject of this decree.

10. Applicants have met all burdens of proof and complied with all standards and burdens of proof applicable to changes of water rights.

11. Applicants change of water right is contemplated and authorized by law, and if implemented and administered in accordance with the terms and conditions of this decree, will not injuriously affect the owners of or persons entitled to use water under a vested water right or a decreed conditional water right.

IT IS THEREFORE, ADJUDGED AND DECREED that:

12. The provisions of paragraphs 1-11 above are incorporated herein.

13. The change of water right described in Section 5 is approved, and shall be administered according to the terms of that section.

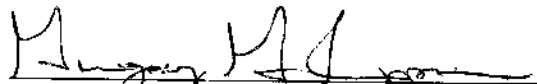
14. Applicants shall comply with the orders of the State or Division Engineer to install necessary measuring devices and shall keep records and make reports to the State or Division Engineer as reasonably required.

15. The alternate SVL Reservoir water right shall have a 1983 priority, pursuant to the original decree in Case No. 83CW19. This water right shall be administered according to said priority date, and shall be junior to all water rights filed prior to 1983 and senior to all water rights filed after 1983. As between rights filed in 1983, priorities shall be determined by historic dates of appropriation.

16. Pursuant to C.R.S. §37-92-304(6), the Court shall retain jurisdiction over the change of water right decreed herein for a period of five (5) years from the development of six hundred (600) units within the Edgemont Metropolitan District, to reconsider the question of injury to the vested water rights of others. Applicants shall notify Objectors and the Division Engineer in writing when the development of 600 units has occurred, and the five year retained jurisdiction period shall begin upon receipt by DWR and Objectors of such written notice.

17. Any notices required hereunder shall be deemed received (a) if delivered personally, upon delivery, (b) if delivered by mail, three days after mailing, (c) if given by overnight courier, the next business day following the date sent, (d) if given through an electronic filing service authorized for use by the Court, or (e) if given by email or fax, upon verification of transmission. Notices shall be sent to the parties at their addresses and contact numbers set forth herein, or such other addresses as the parties supply to each other in writing.

Dated this 27th day of January, 2010.


Gregory G. Lyman, Water Judge

APPROVED AS TO FORM:

THE CRAIG LAW FIRM P.C.

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The Craig Law Firm P.C.
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Date: 1/14/10

MCELROY, MEYER, WALKER & CONDON, P.C.

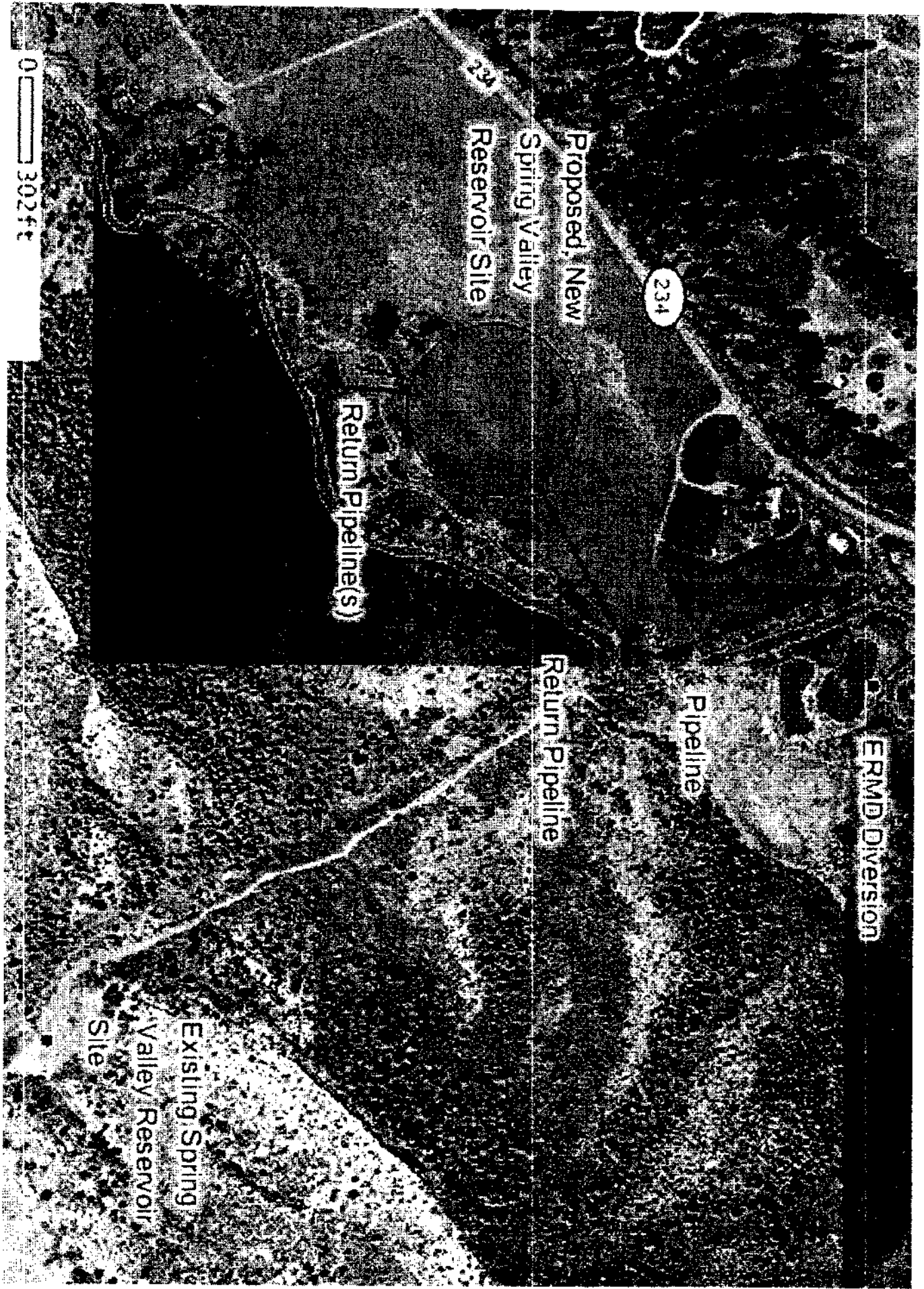
By: M. Catherine Condon
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Attorney for Opposer Southern Ute Indian Tribe

Date: 1-8-2010

CHECKED FOR FORM AND ADMINISTRABILITY:

Rege Leach
Rege Leach, Division Engineer
Colorado Water Resources, Division No. 7
160 Rock Point Dr., Suite E
Durango, Colorado 81301
(970) 247-1845

Date: 1-11-2010



ERMD Diversion

Pipeline

Return Pipeline

Proposed, New

Spring Valley

Reservoir Site

Return Pipeline(s)

Existing, Spring

Valley Reservoir

Site

0 302 ft

Exhibit A