

Consent Agenda Item 1.d

March 10-11, 2021 Board Meeting

Case No. 20CW3087 (Water Division 2); Chris and Dale Van Aelstyn

Summary of Water Court Application

Application for absolute storage right, absolute underground water right, approval of augmentation plan, including appropriative right of exchange.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 2021 to protect CWCB's instream flow water rights.

CWCB Instream Flow Water Rights

The CWCB holds water rights, including the following instream flow water right in Water Division 2 in the Purgatoire River Watershed, that could be injured by this application:

| Case Number | Stream | Upper Terminus | Lower Terminus | CFS Rate (Dates) | Approp. Date |
|----------------------|------------------|---------------------------------|--------------------|--|--------------|
| 09CW0090 (Div. 2) | Purgatoire River | confl M/N Fork Purgatoire River | confl Lopez Canyon | 21 (5/15 - 8/15) 15 (8/16 - 9/15) 8.4 (9/16 - 11/30) 7 (12/1 - 4/14) 8.4 (4/15 - 5/14) | 01/27/2009 |

Potential for Injury

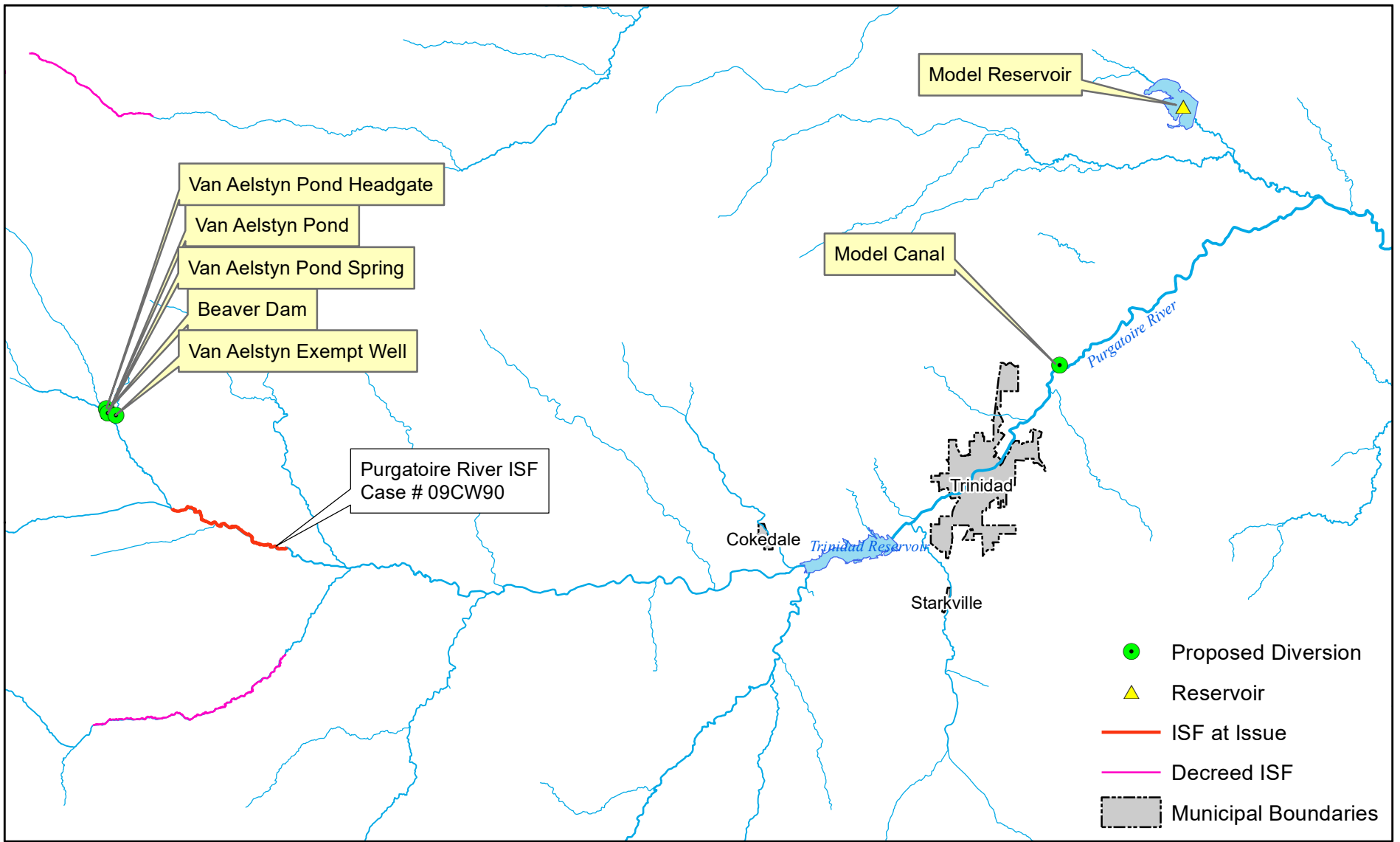
- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- The storage and underground water rights described in the application are claimed with appropriation dates senior to the appropriation date of the CWCB's instream flow water right. The CWCB's instream flow water right might be subject to the claimed water rights under section 37-92-102(3)(b), C.R.S., if the claimed pre-existing uses are sufficiently demonstrated.

Other Objectors

Statements of Opposition (as of February 24, 2021) were also filed by the City of Trinidad, and the State and Division Engineers.

Attorney Representing CWCB

Andrew B. Nicewicz, Assistant Attorney General, is assigned to this case and can be contacted at andy.nicewicz@coag.gov, or 720-508-6259.

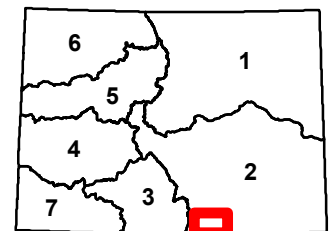


COLORADO
Colorado Water Conservation Board

Department of Natural Resources

March 10-11, 2021 CWCB Board Meeting
 Consent Agenda Item 1.d. Statement of Opposition
 Case No. 20CW3087 (Division 2)
 Chris and Dale Van Aelstyn

0 2.75 5.5 11 Miles



DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING DECEMBER 2020 and Invitation to Join State Engineer’s Substitute Water Supply Plan Notification List and/or The State Engineer’s Produced Nontributary Ground Water Notification List. (This publication can be viewed in its entirety on the state court website at: www.courts.state.co.us).

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during December 2020, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 2020CW3087: CHRIS AND DALE VAN AELSTYN, 14200 County Road 21.6, Weston, CO 81091-9504 (Please address all pleadings and inquiries regarding this matter to Applicant’s attorney: Marjorie L. Sant, PANORAMA LAW PRACTICE, LLC, P.O. Box 4986, Boulder, Colorado, 80306, (303) 323-1931)

Application for Absolute Storage Right, Absolute Underground Water Right, and Approval of Augmentation Plan including Appropriative Right of Exchange

LAS ANIMAS COUNTY

ABSOLUTE STORAGE RIGHT 1. Name of Reservoir: Van Aelstyn Pond 2. Legal Description of Location of Dam Centerline: UTM Coordinates: 502248 Easting, 4116890 Northing (Zone 13, NAD83) PLSS: In the NE¼SE¼ Section 3, T. 33 S., R. 68 W. of the 6th P.M. at a point 2,210 feet from the south line and 220 feet from the east line 3. Source: North fork of the Purgatoire River, tributary to the Purgatoire River, tributary to the Arkansas River. 4. Points of Diversion: A. Van Aelstyn Pond Headgate, approximately 750’ upstream from centerline of dam UTM Coordinates: 502129 Easting, 4117081 Northing (Zone 13, NAD83) PLSS: In the SE¼NE¼ Section 3, T. 33 S., R. 68 W. of the 6th P.M. at a point 2,850 feet from the south line and 580 feet from the east line B. Beaver Dam, approximately 440’ upstream from centerline of dam UTM Coordinates: 502235 Easting, 4116997 Northing (Zone 13, NAD83) PLSS: In the SE¼NE¼ Section 3, T. 33 S., R. 68 W. of the 6th P.M. at a point 2,860 feet from the south line and 260 feet from the east line C. Van Aelstyn Pond Spring (intermittent spring) UTM Coordinates: 502186 Easting, 4116858 Northing (Zone 13, NAD83) PLSS: In the NE¼SE¼ Section 3, T. 33 S., R. 68 W. of the 6th P.M. at a point 410 feet from the south line and 2,110 feet from the east line 5. Appropriation Date: January 1, 1947 A. How appropriation was initiated: diversion and storage of water B. Date applied to beneficial use: January 1, 1947 6. Amount: A. Total Capacity: 1.7 acre-feet, with the right to fill and refill i. Current Active Capacity: 0.0 acre-feet (The Applicants intend to install a new outlet to restore the historical 1.7 acre-feet

**Attachment
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active capacity of the pond.) ii. Dead Storage: 1.7 acre-feet B. Filling Rate: 2.0 cfs i. 1.0 cfs Van Aelstyn Pond Headgate ii. 1.0 cfs Beaver Dam iii. 0.004 cfs (2 gpm) Van Aelstyn Pond Spring 7. Surface Area of High Water Line: A. Height of Dam: 8-10' B. Length of Dam: 150' 8. Uses: Storage for irrigation, recreation, wildlife, and aesthetic uses

ABSOLUTE UNDERGROUND WATER RIGHT Van Aelstyn Exempt Well A. Permit No.: 222184 B. Depth: 300' C. Location: UTM Coordinates (field verified): 502580 Easting, 4116758 Northing (Zone 13, NAD83) PLSS (permitted location): In the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2, T. 33 S., R. 68 W. of the 6th P.M. at a point 1,625 feet from the south line and 875 feet from the west line. D. Source: Groundwater tributary to the North Fork of the Purgatoire River, tributary to the Purgatoire River, tributary to the Arkansas River E. Appropriation Date: October 20, 1999 i. How appropriation was initiated: By filing well permit application ii. Date water first applied to beneficial use: January 26, 2000 F. Amount: 15 gpm G. Uses: Domestic, in-house uses in up to three residences; watering domestic animals, livestock, and poultry; irrigation of up to 1 acre; and fire protection.

PLAN FOR AUGMENTATION 1. Structure to be Augmented: Van Aelstyn Pond, described above 2. Water Rights to be Used for Augmentation: John Flood Ditch and Model Canal and Model Reservoir water rights as changed by the City of Trinidad in Cases 1988CW61, 2006CW78, 2008CW101, and as pending for change in Case 2017CW3073. A. Original Decrees: Original Adjudication, August 10, 1903; and C.A. 6118 B. Location: i. The decreed location of the headgate of the John Flood Ditch is on the north bank of the Las Animas River, also known as the Purgatoire River, at a point which is South 63° West 967 feet from the northwest corner of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 27, T. 32 S., R. 63 W. of the 6th P.M. The actual point of diversion is at the headgate of the Model Canal. ii. The change decrees listed in above changed or will change the point of diversion to Trinidad Reservoir. C. Source: Purgatoire River, also known as the Las Animas River D. Appropriation Dates: i. March 20, 1862 (Leitensdorfer Irrigating Ditch, Priority No. 5) ii. January 1, 1863 (Hoehn Ditch, Priority No. 9) iii. January 1, 1864 (Lewelling-McCormick Ditch, Priority No. 13) iv. April 10, 1864 (Salas North Ditch, Priority No. 15) v. October 7, 1865 (Hoehne Ditch, Priority No. 20) vi. May 31, 1866 (Salas North Ditch, Priority No. 27) vii. October 20, 1902 (Johns Flood Ditch, Priority No. 145) viii. January 22, 1908 (Model Canal and Reservoir, Priority No. 168) E. Amount: 2.0 acre-feet annually F. Uses: Irrigation, municipal, industrial, recreation, fish propagation, augmentation, and replacement G. Remarks: As a result of various changes of water rights, the John Flood Ditch diverts water rights decreed to the Hoehne Ditch, the Lewelling-McCormick Ditch, and the Salas North Ditch, in addition to water rights originally decreed for diversion through the John Flood Ditch and the Model Canal. 3. Statement of Plan for Augmentation: The Applicants will replace out-of-priority evaporative depletions resulting from "in pond" uses associated with the Van Aelstyn Pond, i.e., recreation, wildlife, and aesthetic uses. Irrigation uses from the Van Aelstyn Pond will only be used in priority. The Applicants will account for in-priority diversions to the Van Aelstyn Pond and will limit irrigation uses to in-priority amounts of storage. The Van Aelstyn Pond currently has a surface area of approximately 0.64 acre, which results in 1.98 acre-feet of evaporative losses annually. Applicants will seek releases of 2.0 acre-feet of water leased from the City of Trinidad on a monthly basis to replace out-of-priority evaporative depletions from the Pond.

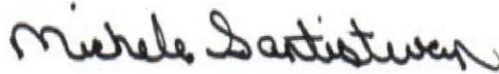
APPROPRIATIVE RIGHT OF EXCHANGE 1. Name: Van Aelstyn Pond Exchange 2. Location: A. Downstream terminus/exchange from location: Trinidad Reservoir UTM Coordinates: 539920 Easting, 4110690 Northing (Zone 13, NAD83) PLSS: In the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section

27, T. 33 S., R. 64 W. of the 6th P.M. at a point 2,470 feet from the south line and 2,500 feet from the west line. B. Upstream terminus/exchange to location: Van Aelstyn Pond 3. Appropriation date: December 31, 2020 4. Amount: A. Exchange Rate: 0.18 cfs B. Volume: 2.0 acre-feet

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 any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of February 2021, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 13th day of January 2021.





Michele M. Santistevan, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8749

(Court seal)
Published: