

9-1-2002

## Application for Finding of Reasonable Diligence to Make Water Rights Absolute (in Part)

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Kiowa K. Engwis, Water Rights Application, Application for Finding of Reasonable Diligence to Make Water Rights Absolute (in Part), 6 U. Denv. Water L. Rev. 263 (2002).

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**Application for Finding of Reasonable Diligence to Make Water Rights Absolute  
(in Part)**

Resource Planning process (“IRP”) aimed at long-range planning. Due to information obtained through the IRP, Denver expended \$500,000 to model its raw water collection system, and adopted a conservation strategy in order to meet its 2003 forecasted water service requirements.

Furthermore, in response to a United States Forest Service (“USFS”) study proposing to include a portion of the South Platte River in the National Wild and Scenic River System, Denver and other South Platte users submitted a river management plan to the USFS. This plan provided a management alternative to the USFS’s Wild and Scenic South Platte inclusion, which has the potential to adversely affect operations at the Strontia Springs Diversion Facility. Additionally, Denver spent \$160,000 to comply with the Endangered Species Act. In order to comply with the Act, Denver carried out re-vegetation of property near the Reservoir for the Preble’s meadow jumping mouse. Finally, Denver engaged in planning, construction and litigation to further other Denver water system components. For the above reasons, Denver asserts the diversion will be placed to beneficial use and requests a finding of diligence.

## *2. Opposition*

No statements of opposition have been filed.

*Heather Chamberlain*

## **WATER COURT DIVISION 4**

**APPLICATION FOR FINDING OF REASONABLE DILIGENCE TO MAKE WATER RIGHTS ABSOLUTE (IN PART).** Case No. 02CW153 (Water Division 4, Aug. 30, 2002). Applicant: Telluride Ski & Golf Company, LLLP and Mountain Village Metropolitan District (Atty. Lori J.M. Satterfield, Balcomb & Green, P.C.).

### *1. Application*

Telluride Ski & Golf Company, LLLP (“Telluride”) and Mountain Village Metropolitan District (“Mountain Village”), collectively as applicants, request an absolute decree for Upper Prospect Creek Reservoir Nos. 1 and 2 (“Alternate Reservoirs”) and Elk Pond Well. Conditional water rights were originally decreed on August 7, 1996.

Water Division 4 decreed the changed alternate points of storage in a previous case for the Alternate Reservoirs and Prospect Creek Reservoir in any combination of the following: (1) Prospect Creek Reservoir Alternate No. 1, storage capacity thirty acre feet; (2) Prospect Creek Reservoir Alternate No. 2, storage capacity ten acre feet; (3) Prospect Creek Reservoir Alternate No. 3, storage capacity twenty-five acre feet; and (4) Prospect Creek, which includes Telco Well Nos. 6, 8, 9,10, and 11 appropriated on December 30, 1991 in the

amount of twenty acre feet.

Granted conditional to the Alternate Reservoirs, the Prospect Creek decree can be used in the same capacity as the Alternate Reservoirs—to fill and refill continually when in priority for snowmaking, aesthetic, augmentation, municipal, industrial, and domestic purposes. Elk Pond Well, appropriated on July 1, 1988 from Prospect Creek for 2.91 acre-feet, can be used for recreation, aesthetic, and fish propagation.

The applicants assert the above water rights are part of their integrated water supply system, and to show diligence on the entire system, they cite Colorado Revised Statutes section 37-92-301(4)(b), which provides “[w]hen a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.”

Telluride and Mountain Village claim they have diligently pursued development of their conditional water rights, evidenced by the following: (1) construction of thirty-six acre feet of storage at the Alternate Reservoirs location, having filled and refilled structures and placed water to beneficial use for snowmaking, aesthetic, augmentation, irrigation, municipal, commercial, fire protection, recreation, and domestic purposes; (2) construction of Prospect Creek Hole No. 2/17, used for golf course irrigation by Telluride; (3) obtainment of a special use permit from the United States Forest Service to expand Telluride ski area trails, using the subject storage rights, in part, for snowmaking; (4) completion of capital improvements to the Telluride ski area, resort, and snowmaking system at a cost of \$67 million; (5) installment, maintenance, and construction of infrastructure to provide Mountain Village with municipal, commercial, and domestic water supplies throughout its service area at a cost of \$3 million; (6) regular measurement of the San Miguel River flow levels as required under their stipulation with the Colorado Water Conservation Board; (7) regular monitoring of and opposition to certain filings of other water users in cases presenting potential injury to their water rights; (8) payment of substantial fees to protect their water rights through utilizing legal and engineering services; (9) application for additional water rights and augmentation plans and making changes to existing water rights; (10) illustration of no intention to abandon the subject water rights through continued build-out of Mountain Village, which requires the subject rights as part of their integrated water supply plan; and (11) placement of the subject water rights to beneficial use.

Due to applicant's assertion of diligence, Telluride and Mountain Village request a decree finding a their conditional rights are absolute in the Alternate Reservoirs and the Elk Pond Well in the amount of eleven acre feet and 2.91 acre feet respectively.

## *2. Opposition*

No statements of opposition have been filed.

*Kiowa K. Engwis*

## WATER COURT DIVISION 5

**APPLICATION FOR CHANGE OF WATER RIGHTS AND FOR APPROVAL OF PLAN FOR AUGMENTATION, INCLUDING EXCHANGE.** Case No. 02CW077 (Water Division 5, Mar. 2002). Applicant: Basalt Water Conservancy District (Atty. Lori J.M. Satterfield, Balcomb & Green P.C.).

### *1. Application*

The Basalt Water Conservancy District ("BWCD") seeks a change in water rights to allow contractees to operate court authorized alternate points of diversion on the BWCD's Basalt Conduit and the Landis Canal water rights. These alternate points of diversion will be wells, surface rights, and storage reservoirs utilized for evaporation replacement only, within Area A and areas which would be designated Area A by definition. Area A is generally described as those mainstem areas of the Frying Pan and Roaring Fork Rivers, where there are no intervening calling water rights present between the point of diversion and the mainstem, making it possible for those points of diversion to be augmented year-round by the BWCD's augmentation rights.

The BWCD proposes the following terms and conditions for the requested change to prevent injury to the water rights of others: (1) the state engineer or court will approve the alternate points of diversion, in accordance with implementation procedures; (2) alternate points of diversion will be located in Area A, or those areas that would qualify for diversion under this augmentation plan; (3) those alternate points of diversion, located in the Roaring Fork River drainage upstream of the confluence of the Frying Pan and Roaring Fork Rivers, will be operated and administered under the BWCD's right of exchange for the Basalt Conduit; (4) alternate points of diversion at wells will require a permit from the State Engineer pursuant to Colorado Revised Statutes section 37-90-137(2); and (5) each well user will be required to install a totalizing flow meter as a condition of diverting at the well.

Furthermore, the BWCD requests approval of a plan whereby augmentation and exchange would supplement these out-of-priority depletions. The BWCD proposes to utilize its water rights in and to