

9-1-2001

Application for a Finding of Reasonable Diligence and to Make Water Right Absolute (In Part), In Eagle County, Colorado.

Lucia Padilla

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

Custom Citation

Lucia Padilla, Water Rights Application, Application for a Finding of Reasonable Diligence and to Make Water Right Absolute (In Part), In Eagle County, Colorado., 5 U. Denv. Water L. Rev. 304 (2001).

This Colorado Water Rights Application is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, digitalcommons@du.edu.

Application for a Finding of Reasonable Diligence and to Make Water Right Absolute (In Part), In Eagle County, Colorado.

the exact location of the wells, the lots are located within the S1/2 SW1/4 of Section 25 and the NW1/4 of Section 36, T.4 S., R. 71 W., 6th P.M., Jefferson County, Colorado ("Kerr Gulch Highlands"). The Reservoir is located on Cold Springs Gulch upstream of the proposed Kerr Gulch Highlands development in the SW1/4 SW1/4 of Section 14, T.4 S., R. 71 W., 6th P.M., Jefferson County, Colorado.

Wilson's plan for augmentation was dependent on the Spring Ranch Augmentation Plan decreed on July 19, 1977 ("Decree"). The Decree states that 11.76 acre-feet of annual consumptive use credits may be stored in the Reservoir or used by direct exchange to replace consumptive depletions from proposed wells serving up to seventy-four residences in the Spring Ranch Subdivision. The Decree specifically allowed for the sale of water not required for augmentation of the Spring Ranch Subdivision. Pursuant to the Decree, Wilson will acquire a pro rata interest and the right to use a portion of the 11.76 acre-feet of annual consumptive use credits determined associated with eight shares in the Hodgson Ditch Operating Association.

Wilson seeks judicial confirmation that 0.2512 acre-feet of the annual consumptive use credits, available by direct exchange or stored in the Reservoir, can be utilized for replacement and augmentation purposes to replace consumptive depletions of the eight wells as described herein. Wilson also requested that the water court approve his plan for augmentation, specifically determining that the source and location for delivery of augmentation water are sufficient to prevent material injury to vested water rights, and that the eight wells can be operated without curtailment so long as out-of-priority stream depletions are replaced.

2. Opposition

No statements of opposition have been filed.

Kiowa K. Engwis

WATER COURT DIVISION 5

APPLICATION FOR A FINDING OF REASONABLE DILIGENCE AND TO MAKE WATER RIGHT ABSOLUTE (IN PART), IN EAGLE COUNTY, COLORADO. Case No. 01CW142 (Water Division 5, May 30, 2001) (Original decree: May 30, 1995, Case No. 94CW288). Applicants: Bear Gulch Homeowners Association, Inc., Richard E. Delia and Melinda Delia, and Vail Associates, Inc. (Attys. Lori J.M. Satterfield, Balcomb & Green, P.C. and Glenn E. Porzak, Porzak Browning & Bushong, L.L.P.)

1. Application

The Applicants are the successors in interest of George Jouflas, the claimant in Case No. 94CW288. Bear Gulch Homeowners Association,

Inc. ("Bear Gulch") owns an undivided 29.3 percent interest in Spring No. 39 and Vail Associates, Inc. ("Vail Associates") owns an undivided 65.7 percent interest in the spring. Bear Gulch and Richard and Melinda Delia are co-owners of the remaining 5 percent interest. A tributary to the Eagle River and Colorado River forms spring No. 39. The spring is located in SW1/4 NE1/4, Section 27, Township 4 South, Range 83 West, 6th P.M. at a point 3,100 feet from the South Section line, and 4,200 feet from the East Section line. The applicants seek a finding of reasonable diligence regarding the beneficial use of Spring No. 39.

A decree was issued on May 30, 1995 granting Applicants a conditional water right for Spring No. 39 in the amount of 3.0 c.f.s. The rights were granted on the condition that the Applicants use the spring to fill the Jan Jouflas Pond ("Pond") for domestic, irrigation, fire protection, commercial, recreation, piscatorial and storage purposes. Irrigation was for 100 acres located in Section 22, Township 4 South, Range 83 West, 6th P.M.

Spring No. 39 is part of an integrated water supply for the Applicants' respective projects. Pursuant to Colo. Rev. Stat. § 37-92-301(4)(b), "[w]hen a project or integrated system is comprised of several features, work on one feature of the project 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." Since Spring No. 39 includes several features, work on any one of these features may be taken into account to determine the existence of reasonable diligence for the entire project.

Applicants assert that they have diligently pursued development of the conditional water rights. In support of this assertion, Bear Gulch stated that they own the portion of the Pond right that was decreed to augment Bear Gulch Subdivision's ("Subdivision") wells in Case No. 94CW83, Water Division No. 5, and is obligated to administer the augmentation plan and account for the diversions and depletions made under the plan, as required by the Office of the Division Engineer. In addition, Bear Gulch improved and maintained the Pond, which is filled by Spring No. 39, and was granted an easement for the Pond and the associated access easement. In further support of a finding of reasonable diligence, Bear Gulch asserted it contracted to construct and install roads, utilities and other infrastructure in the Subdivision. Also, the developers of the Subdivision marketed the lots, and, with the exception of two lots owned by Heidi Palmer Jouflas, sold all of the lots to third parties. Furthermore, Heidi Palmer Jouflas constructed a residence on Lot 1 (Filing 1), drilled Bear Gulch Well No. 1., which is augmented by the Pond, and placed the well to beneficial use for the decreed purposes. Bear Gulch further submitted that a diligence decree for the Pond was entered in Case No. 98CW29 and that Palmer Well Nos. 1 through 4 had been drilled. Additionally, Bear Gulch regularly monitored the filings of other water users to protect its water rights as evidenced by Bear Gulch's recent opposition to the application of Bellyache Ridge Metropolitan District, Case No.

00CW306. Lastly, Bear Gulch argued that it continues to rely on the water right and has no intention of abandoning it.

In support of a finding of reasonable diligence, Vail Associates emphasized that in Case No. 97CW298, the court decreed to it a comprehensive water supply plan for a development project, which will be served by the Pond and Spring No. 39. In addition, Vail Associates obtained the necessary approval from Eagle County to develop a residential and golf course project, for which the water supply plan was adjudicated in Case No. 97CW298. Furthermore, Vail Associates spent in excess of \$17,000,000 in the planning and developing of the residential and golf course project. Additionally, Vail Associates has monitored the filings of other water users and filed statements of opposition in numerous cases in order to protect its water rights. Finally, Vail Associates asserted that it continues to rely on the water right and has no intention of abandoning it.

The Applicants request that the Water Court determine they have each exercised reasonable diligence concerning the beneficial use of the water supply.

2. Opposition

No statements of opposition have been filed.

Lucia Padilla

APPLICATION FROM THE TOWN OF EAGLE, COLORADO, FOR FINDING OF REASONABLE DILIGENCE FOR CONDITIONAL WATER RIGHTS, IN EAGLE COUNTY, COLORADO. Case No. 01CW165 (95CW017) (Water Division 5, June 2001) (Original decree: October 27, 1980). Applicant: Town of Eagle, Colorado (Atty. Sherry A. Caloia, Esq., Caloia & Houpt, P.C.).

1. Application

The Town of Eagle ("Town") seeks a finding of reasonable diligence in the development of conditional water rights ("Water Rights"). On October 27, 1980, Water Court Division 5 decreed conditional water rights for an undivided one-half interest in 720 acre-feet of Confluence Reservoir and an undivided one-half interest in 10 c.f.s. of East Brush Creek Confluence Ditch ("Confluence Ditch"). The Water Rights were appropriated on December 1, 1977 and became an integral part of the Town's water supply system ("Water Supply System").

Confluence Reservoir receives its water from West Brush Creek and East Brush Creek traveling through Confluence Ditch. Confluence Ditch is a tributary to both Brush Creek and the Eagle River. The right abutment of the dam for Confluence Reservoir is located in the SW1/4, NW1/4 of Section 18, T.6 S., R. 83 W. of the 6th P.M., where the Northeast Corner of Section 18 bears North 72°30' East 6100 feet.

East Brush Creek, a tributary to both Brush Creek and the Eagle