

1-1-2001

**Application for a Finding of Reasonable Diligence, in Eagle County, Colorado. Case No. 00CW245 (94CW323) (Water Division 5, Dec. 12, 2000) (Original Decree: Aug. 6, 1976, Case No. W-2883). Applicant: Adam's Rib Recreation Area (Attys. Arthur B. Ferguson, Jr. and Shane J. Harvey, Holland & Hart, L.L.P.).**

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The water stored was beneficially used commencing on or about November 1, 1999, and through the present date for all decreed uses within the service areas of the Eagle River Water & Sanitation District and the Upper Eagle Regional Water Authority, the contract service area of the Colorado River Water Conservation District, and for snowmaking and augmentation purposes (directly and by exchange) at the Vail, Beaver Creek, and Arrowhead ski areas.

## *2. Opposition*

Objecting are Climax Molybdenum Company (“Climax”), City and County of Denver (“Denver”), Brian M. Nazareus, and Mary B. Rastall.

Climax requests that the court require Eagle Park to prove in detail each element of its claims. Including ownership of each water right and structure described in the application. Specifically, Climax objects to Eagle Park’s right to use the East Fork Interceptor Ditch, the East Interceptor Ditch, Supply Canal No. 1, and Supply Canal No. 2. Further, any use of the Chalk Mountain Interceptor Ditch must be consistent with and limited by Eagle Park’s agreements with Climax. Moreover, the East Fork Pumping Plant is not yet constructed and its use must be consistent with and limited by the applicant’s agreements with Climax.

Denver objects because it is the owner and claimant of water appropriations made out of the Colorado River and its tributaries, which are the subject of the Eagle Park Application. Denver’s water rights are decreed for various priorities and amounts, for both direct use and for storage. Therefore, Denver requests Eagle Park provide specific proof that the water right claimed as absolute was put to beneficial use under its own priority and in priority, and that the accounting for the absolute water rights was accurate. Denver argues Eagle Park’s claimed beneficial uses and places of use may not be included in the decrees referenced in the Application, and/or included as part of the storage right.

Also, both parties object to the exclusion of relevant, pertinent facts from the Application, and reserve the right to raise additional objections in the future.

*Tiffany Turner*

**APPLICATION FOR A FINDING OF REASONABLE DILIGENCE, IN EAGLE COUNTY, COLORADO.** Case No. 00CW245 (94CW323) (Water Division 5, Dec. 12, 2000) (Original decree: Aug. 6, 1976, Case No. W-2883). Applicant: Adam’s Rib Recreation Area (Attys. Arthur B. Ferguson, Jr. and Shane J. Harvey, Holland & Hart, L.L.P.).

## *1. Application*

Adam’s Rib Recreation Area (“Adam’s Rib”) seeks a finding of reasonable diligence concerning the beneficial use of Adam’s Rib

Diversion No. 1 ("Diversion 1") and Adam's Rib Diversion No. 2 ("Diversion 2"). Diversion 1 diverts water from East Brush Creek at a point on the right bank where the S1/4 corner of Section 22, Township 6 South, Range 83 West of the 6th P.M. bears south seven degrees and east thirty minutes a distance of 1400 feet. Diversion 2 diverts water from Brush Creek at a point on the right bank where the S1/4 of Section 1, Township 6 South, Range 84 West of the 6th P.M. bears south one degree and east zero minutes a distance of 4775 feet.

On February 29, 1972, the Water Judge for Division No. 5 decreed to Adam's Rib conditional water rights ("Rights") for Diversion 1 in the amount of 20.0 c.f.s. and for Diversion 2 in the amount of 10.0 c.f.s. The judge granted the Rights on the condition that Adam's Rib use the water for construction, operation, maintenance, replacement, and repair of a four season resort, including the following beneficial uses: domestic, recreation, industrial, commercial, school and day care, restrooms, restaurant, café and lounge, health club, sauna, jacuzzi and spa, water fountains, swimming pools and water recreation, open space and parks, emergency service, fire protection, snowmaking, livestock watering, street and driveway cleaning, vehicle washing, dust suppression, construction, irrigation of forty acres, and other beneficial uses.

Diversions 1 and 2 are part of an integrated water supply system serving Adam's Rib Planned Unit Development ("PUD") and Adam's Rib Ranch Planned Unit Development. Adam's Rib has completed the following eight tasks toward the beneficial use of the water. First, Adam's Rib performed analysis and field assessment of Diversions 1 and 2. Second, the Eagle County Board of Commissioners approved the Adam's Rib PUD sketch plan. Third, Adam's Rib submitted to Eagle County an application for a preliminary plan. Fourth, Adam's Rib submitted to Eagle County a sketch plan and preliminary plan for Adam's Rib PUD in accordance with the County's Land Use Regulations. Fifth, Adam's Rib has developed a comprehensive irrigation plan for its residential and golf course developments. Sixth, Adam's Rib monitors water resources and its water needs. Seventh, Adam's Rib spent considerable sums of money analyzing the integration of the water rights into its water system. Finally, Adam's Rib has conducted a comparative analysis of its water rights with the water rights of other developments in the Brush Creek drainage area to develop a potential irrigation plan for the project. Adam's Rib asks that based on its completion of these eight tasks, the Water Court will find it has shown reasonable diligence regarding its conditionally decreed water rights.

## *2. Opposition*

No letters of opposition were filed against the Application.

*Kevin Rohnstock*