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## Application for Underground Water Rights From Nontributary Sources and for Approval of a Plan for Augmentation for Replacement of Evaporation of Impounded Surface Water, El Paso County, Colorado.

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toward the completion of this water right and occurred in this diligence period. No action has been taken on either the motion or the consultation disapproval.

### *2. Opposition*

No letters of opposition were filed against the Amended Application.

*Melinda B. Barton*

## WATER COURT DIVISION 2

**APPLICATION FOR UNDERGROUND WATER RIGHTS FROM NONTRIBUTARY SOURCES AND FOR APPROVAL OF A PLAN FOR AUGMENTATION FOR REPLACEMENT OF EVAPORATION OF IMPOUNDED SURFACE WATER, EL PASO COUNTY, COLORADO.** Case No. 99CW109 (Water Division 2, Sept. 1999). Applicant: Gene and Diane Melssen (Atty. Robert E. Schween).

### *1. Application*

Gene and Diane Melssen ("Applicant") seek to adjudicate, quantify, and vest the groundwater rights in Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying their property and to adjudicate a plan for augmentation for replacement of evaporative losses for the pond on their property.

The location of wells is unknown and depends upon build-out configurations not yet determined. The location of the wells, which will withdraw groundwater from the nontributary Denver, Arapahoe, and Laramie-Fox Hills aquifers, is part of the Applicant's overlying property. The overlying land area consists of 10.2 acres, more or less, located in the SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ , Section 9, T.11 S., R.67 W of the 6<sup>th</sup> P.M., El Paso County, Colorado. The location of the pond is the central part of the Melssens' property. The pond is approximately 12 feet deep at its deepest point. The groundwater in the Denver, Arapahoe, and Laramie-Fox Hills aquifers is nontributary groundwater as defined in Colorado Revised Statute section 37-90-103(10.5). The water impounded in the pond is a combination of groundwater and tailwater from irrigation and surface run-off water. The Melssens' nontributary groundwater may also fill the pond. The Melssens will withdraw the subject groundwater through wells located anywhere on their property. They seek confirmation of the absolute right to withdraw all of the legally available groundwater in the claimed aquifers lying below their property.

The Melssens' propose to use all water withdrawn from the aquifers in a water system and after use lease, sell, or otherwise dispose of the water for the following beneficial purposes: domestic, industrial, commercial, irrigation, livestock watering, recreational, fish and wildlife, and fire protection. They will use the water for immediate application, both on and off the property, for storage and subsequent

application, exchange purposes, replacement of depletions resulting from the use of the water from other sources, and augmentation purposes.

The Melssens seek approval of a plan for augmentation for the replacement of evaporative losses of groundwater, tailwater, and other surface run-off exposed to the atmosphere while impounded in their pond. The exposed surface area of the pond is approximately ½ acre. The evaporation factor at this location and altitude is 2.0 acre-feet per acre of exposed water. Therefore, the total evaporative losses augmented calculate out to one acre-foot per year. The Melssens plan to use the nontributary Denver aquifer groundwater as their primary in-facility supply source. They estimate that the return flows from the use of Denver aquifer groundwater are sufficient to replace actual evaporative losses incurred by the impoundment of water in the pond. The Melssens plan to replace the remaining amount of evaporative losses by direct discharge of nontributary groundwater into the pond.

The Melssens claim that the water is legally available for withdrawal by the wells proposed. Also, they state that the withdrawal of the Denver, Arapahoe, Laramie-Fox Hills aquifer and plan for augmentation still protect vested or conditionally decreed water rights of others. Finally, the plan for augmentation of evaporative losses from the pond using return flows or discharges of nontributary Denver aquifer groundwater is adequate to prevent injury to other vested and decreed conditional water rights. Therefore, the Melssens request their water right be a final water right.

## *2. Opposition*

Objecting are: the Town of Palmer Lake, City of Colorado Springs, Harold D. Simpson, and Steven J. Witte.

Objectors claim the proposed change in use and plan for augmentation may adversely affect the vested and conditionally decreed rights of water users in Colorado Springs and Palmer Lake. They seek to hold the Melssens to a standard of strict proof to show ownership or entitlement to use the water rights claimed in the application.

Objectors claim all groundwater in the Denver, Arapahoe, and Laramie-Fox Hills Aquifers underlying the property named in the application has been decreed to Palmer Lake; therefore, there is no water available to the Melssens. Objectors request that if there is any groundwater available, the Melssens must be held to a showing of strict proof with respect to each element of their claim to the groundwater. Objectors also request the Melssens be held to a showing of strict proof with respect to each element of their claim for approval of their plans for augmentation.

Additional objections stem from the lack of specificity in the Melssens' application. The opposition asks that if the Melssens are claiming to use the aquifers and groundwater for augmentation, appropriate terms and conditions to address administration,

accounting, and identification of the water rights must be included in the application to prevent injury to the water users of Colorado Springs.

*Sheela Parameswar*

### WATER COURT DIVISION 3

**APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION, IN COSTILLA COUNTY, COLORADO.** Case No. 99CW8 (Water Division 3, March 15, 1999) Applicant: Evan L. Melby, Inc. (Atty. Erich Schwiesow, Esq., Lester, Sigmond & Rooney).

#### *1. Application*

Evan L. Melby, Inc. ("Melby") seeks augmentation of Melby Ranch Well No. 2. Melby seeks to use the 125 shares it owns or controls in the Sanchez Ditch and Reservoir Company for augmentation. These rights produce an average historic yield of roughly eight inches, or two-thirds of an acre-foot per share.

Melby owns approximately 10,000 acres of land on Wild Horse Mesa. This plan will allow Melby to utilize a well to be located in the NE/4 of the NW/4 of Section 35, Township 2 North, Range 72 West, 6th P.M. to supply up to 750 new homes on Wild Horse Mesa with domestic water. In the alternative, individual homeowners on more than thirty-five acres may construct individual wells, which are presumed exempt under Colorado Revised Statute section 37-92-602. Melby expects consumptive uses to equal 39.3 acre-feet per year and the total diversions to the development to be 158.18 acre-feet per year.

The water source is an unconfined aquifer below Wild Horse Mesa. In the case of individual wells, each landowner would have the responsibility to construct the well and the augmentation plan would augment the rights of senior vested rights if these wells were located in a designated groundwater basin. Dedicating the 125 shares to recharge would compensate any depletions to this aquifer and alleviate any injury to senior vested water rights.

#### *2. Opposition*

The Sanchez Ditch & Reservoir Company ("Company") and Harold D. Simpson have filed statements of opposition to the application.

The Company claims that its Bylaws prohibit water delivery from the Sanchez Reservoir from October 1 through the next irrigation season. Even if not disallowed by the Bylaws, the Company claims that it cannot provide a continuous water supply during non-irrigation season because another user has first priority. In addition, the Company's Articles of Incorporation provide that all the waters the Company diverts and stores must be used for land irrigation and domestic use. As of March 3, 1999, a Bylaw amendment provides that the water may only be used for irrigation and associated agricultural