

9-1-1999

Application for Approval of Plan for Augmentation, in Costilla County, Colorado

Shana Smilovits

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



Part of the [Law Commons](#)

Custom Citation

Shana Smilovits, Water Rights Application, Application for Approval of Plan for Augmentation, in Costilla County, Colorado, 3 U. Denv. Water L. Rev. 220 (1999).

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, dig-commons@du.edu.

Application for Approval of Plan for Augmentation, in Costilla County, Colorado

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

purposes. The water associated with Melby's certificate also authorizes irrigation of different land. Melby must initiate a change in the place of use of this water by first making a request to the Board of Directors.

Even if the Company approved the change in use of the shares and the Company's Articles of Incorporation and Bylaws do not prohibit Melby's plan, the Company states that along with any terms or conditions the Company imposes, the court must impose several other requirements on Melby. According to the Company, Melby must pay all assessments levied on its Company shares and the court must hold him to strict proof of actual legal and physical availability of the water needed for augmentation. Melby must also show that it has the legal and physical ability to guarantee availability of the augmentation water with adequate time, place, quality, and quantity. Melby must also meet the requirements normally put on senior appropriations for quality, quantity, and continuity.

The Company believes that the proposed development will injure the quality of water available to it. Melby must also be placed on strict proof for out-of-priority diversions and depletions caused by its exercise of water rights. Melby must also ensure that it makes depletions, diversions, and return flows in the historical season, volume, and place. The court must put provisions in place to protect other users' vested and decreed conditional water rights. The Company also asserts that the application lacks sufficient information.

Harold D. Simpson's ("Simpson") opposition asserts that Melby's application does not contain sufficient information to understand the full ramifications of the proposal. It does not adequately address the timing of depletions in order to protect vested water rights. Simpson urges that the court hold Melby to strict proof of both the details and patterns of historical consumptive use and the method of recharge to the Sanchez Ditch. Melby must also prove that the augmentation plan sufficiently covers all proposed uses and replace depletions in time, place, and amount.

Shana Smilovits

WATER COURT DIVISION 5

APPLICATION FOR ABSOLUTE WATER RIGHTS AND FOR APPROVAL OF PLAN OF AUGMENTATION IN EAGLE COUNTY, COLORADO. Case No. 99CW90 (Water Division 5, June 1999). Applicant: Vail Associates, Inc. (Atty. Glenn E. Porzak).

1. Application

Vail Associates, Inc. ("Vail") seeks an absolute decree of 6.7 cubic feet per second from Beaver Creek, which feeds into the Eagle River. Vail seeks the water for the beneficial uses of snowmaking, recreation, domestic, commercial, and irrigation. Vail initiated its water right on November 1, 1992, by diverting from an existing structure called the Beaver Creek Diversion. Vail located the diversion at Arrowhead and