

1-1-2000

## Concerning the Application for Surface Water Rights of Kummer Development Corporation, in Eagle County, Colorado

Susan P. Klopman

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



Part of the [Law Commons](#)

---

### Custom Citation

Susan P. Klopman, Water Rights Application, Concerning the Application for Surface Water Rights of Kummer Development Corporation, in Eagle County, Colorado, 3 U. Denv. Water L. Rev. 515 (2000).

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](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

---

Concerning the Application for Surface Water Rights of Kummer Development Corporation, in Eagle County, Colorado

## WATER COURT DIVISION 5

**CONCERNING THE APPLICATION FOR SURFACE WATER RIGHTS OF KUMMER DEVELOPMENT CORPORATION, IN EAGLE COUNTY, COLORADO.** Case No. 99CW242 (Water Division 5, Oct. 29, 1999). Applicant: Kummer Development Corporation (Atty. Holland & Hart LLP).

### *1. Application*

Kummer Development Corporation ("Applicant") applied for five different surface water rights to be drawn from Brush Creek, a tributary of Eagle River, and used in Adam's Rib PUD development in Eagle County. The Applicant formed the intent to appropriate on March 26, 1999, but has put no water to beneficial use at this time. The application seeks water to fill and maintain three to five golf course ponds and supplementally irrigate up to 540 acres of lawn and golf course that have not been historically irrigated. No trial is currently set in this matter and the case is still pending before the Water Referee.

The first water right at issue is for a conditional grant of 6.5 c.f.s. to be diverted from SE1/4 of the NE1/4 of Section 12, T.6 S., R. 84 W. of the 6th P.M., 2500 feet from the North section line and 1000 feet from the East section line. The Matheny Tabor Golf Course Enlargement Ditch will carry this water to five golf course ponds (A, B, E, F, and G). The second water right is also a request for a conditional decree of 6.5 c.f.s. to be diverted from SW1/4 of the NW1/4 of Section 36, T.5 S., R. 84 W. of the 6th P.M., 2100 feet from the North section line and 1050 feet from the West section line. The Schlutter Golf Course Enlargement Ditch will carry this water to four ponds (A, C, D, and G). The third water right will use the Upper Frost Golf Course Enlargement Ditch to carry 6.5 c.f.s. to three ponds (A, C, and G). The point of diversion for this right is in NW1/4 of the NW1/4 of Section 36, T.5 S., R. 84 W. of the 6th P.M., 1000 feet from the North section line and 1250 feet from the West section line.

The remaining two water rights involve smaller amounts. The fourth water right is for a conditional grant of 2.0 c.f.s. to be diverted from NE1/4 of the SW1/4 of Section 25, T.5 S., R. 84 W. of the 6th P.M., 3500 feet from the North section line and 1600 feet from the West section line. The Frost Golf Course Enlargement Ditch will carry this water to pond G only. The fifth water right is for the Frost Creek Golf Course Enlargement Ditch to carry 2.5 c.f.s. to ponds A, B and G. The point of diversion for this right is in NW1/4 of the NE1/4 of Section 35, T.5 S., R. 84 W. of the 6th P.M., 950 feet from the North section line and 1600 feet from the East section line.

### *2. Opposition*

Three different entities oppose this application: Roark Partners, LLLP; the Board of County Commissioners of Eagle County; and the Town of Eagle. Roark Partners has also filed a motion to intervene. Roark Partners objects to this application because it does not sufficiently describe

the nature of relief requested to allow Roark Partners to evaluate the effects of this application on its water rights in the Eagle River system.

As owners of vested water rights in the Neilson South Ditch, the Board of County Commissioners of Eagle County ("Commissioners") also objects to this application. The Commissioners argue that the court require the Applicant to provide strict proof that unappropriated water is available in priority to satisfy the claimed appropriations and that the Applicant's project is not speculative.

The third objector, the Town of Eagle ("Town"), argues that this project is speculative and that the Applicant cannot show that it can and will put water to beneficial use. The Town also argues that the Applicant has not provided sufficient information to meet statutory regulations and put others on notice. As owners of vested water rights, the Town argues that injury may result to its rights and that terms and conditions are necessary to prevent such injury. In addition, the Town states that the corporation does not have the proper easements and other state and county authorization to complete its project. Finally, as with the other objectors, the Town states that the Applicant must be put on strict proof for the required elements of its claimed appropriations and augmentation plan.

*Susan P. Klopman*

## WATER COURT DIVISION 7

**AMENDED APPLICATION FOR CHANGES OF WATER RIGHTS AND FOR MODIFICATION OF A DECREE PLAN FOR AUGMENTATION, CONCERNING THE APPLICATION FOR WATER RIGHTS OF TWILIGHT PEAKS LLC IN THE ANIMAS RIVER WATERSHED, LA PLATA COUNTY, COLORADO.** Case No. 99CW19 (Water Division 7, May 1999). Applicant: Twilight Peaks, LLC (Atty. Wayne B. Schroeder).

### *1. Application*

Twilight Peaks, LLC ("Peaks") seeks approval for changes to a decree granted in 1994 in Case No. 93CW27 ("Decree") to reflect changes from proposed construction to actual construction. The Decree provided for a 0.5 c.f.s. change of the Butler Ditch, C.A. 1751, W.D. 30, Animas River watershed. In addition, the Decree changed the point of diversion from W-1471-76 to a point on the south bank of Elbert Creek in the SE  $\frac{1}{4}$ , NW  $\frac{1}{4}$ , Section 2, T. 38 N., R. 9 W., New Mexico Prime Meridian, where the NE corner of Section 2 bears N 65 degrees 59' E, 3659 feet. Also, the Decree provided for augmentation for two wells, Twilight Wells #1 and #2, and for two ponds, Twilight and Upper Twilight ponds.

Peaks owns the land and water that was the subject of the Decree. Peaks originally planned to build a development of thirty-eight houses, and a pond of 0.84 surface acres upon this land. The Decree provided for a total consumptive use of 2.75 acre-feet, 1.53 acre-feet for the thirty-eight new homes, and 1.22 acre-feet for evaporation from the pond. However,