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## Left Hand Ditch Co. v. Hill, 933 P.2d 1 (Colo. 1997)

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do so since the water court previously granted the decree under that name. The application stated that Dallas Creek was the actual user of the water right. The court found the law recognizes that "water rights are decreed to structures and points of diversion," and that "the owners and users of such rights may change from time to time." Because the agent would have listed Dallas Creek as the applicant had he known he could do so, because Dallas Creek was the actual user of the water right and owner of the point of diversion (the Long Hill Pumping Plant), and because courts expect that owners and users may change, the court found Dallas Creek could be substituted for the original applicant.

Second, the court found that the motion for substitution of applicants "neither misled nor substantially prejudiced" the objectors. The applicant gave proper public notice, and that notice contained clarification that Dallas Creek was the actual user of the water. In addition, Dallas Creek's lawyer appeared on its behalf, and worked on the case for over two years. The court noted that, when justice so requires, courts have allowed applicants for water rights to amend applications.

Finally, the court found that, under Colorado Rule of Civil Procedure 15, "a substituted party benefits from the filing date of the original pleading" if adversely affected parties had sufficient notice to avoid any prejudice. The objectors were aware that Dallas Creek was the user of the water right, and that Dallas Creek's attorney represented them in the diligence proceedings. The supreme court determined, therefore, that Dallas Creek's substitution was effective as of the date the agent filed the original diligence application.

The court remanded the case to the water court for determination of whether Dallas Creek met the requirements for a finding of reasonable diligence and granting of a conditional decree.

*Debbie Eiland*

**Left Hand Ditch Co. v. Hill, 933 P.2d 1 (Colo. 1997)** (holding that shareholders in a mutual ditch company have a common law right to inspect the company's shareholder list).

The Hills held shares in the Left Hand Ditch Company, a non-profit corporation that provides water to its shareholders in the Niwot region of Boulder County. In 1993, the Hills requested a copy of the mutual ditch company's shareholder list. The Hills explained that they wanted to inspect the shareholder list in order to sell or rent their shares, to better understand Left Hand's future, and to better communicate with other shareholders.

Left Hand denied the Hills' request. Left Hand explained that it wished to keep the list confidential and that it had alternate methods available for assisting the Hills in renting or selling their shares.

The Hills filed suit in the Boulder County District Court seeking an

order to compel the release of Left Hand's shareholder list. The court dismissed the action finding that Colorado Revised Statutes section 7-5-117 of the Colorado Corporation Code, which grants a right of inspection to corporate shareholders of the shareholder list, does not apply to mutual ditch companies as they are not "for profit" enterprises. Further, the court held that any common law right of inspection was superseded by the Corporation Code. The court of appeals reversed the trial court's decision and held that section 7-5-117 does apply to mutual ditch companies.

The Colorado Supreme Court addressed the issue of whether mutual ditch company shareholders have either a statutory or common law right to inspect the company's shareholder list. The court found that although the Corporation Code does not apply to mutual ditch companies, shareholders in ditch companies do have a common law right to inspect such companies' shareholder lists.

The court cited its previous case law which indicated that because the "stock" owned by mutual ditch company shareholders is water, which they may apply to a beneficial use, such "stock" is real property. However, traditional corporate stock is considered personal property. Thus, mutual ditch companies are not "true" corporations in a legal sense. The court concluded, therefore, that mutual ditch companies are special purpose corporations which are not governed by the Colorado Corporation Code.

Further, the court determined that no other statutes confer upon mutual ditch company shareholders the right to inspect the company's shareholder list. However, the court cited its previous holdings that indicated shareholders have a "fundamental" common law right to inspect nonprofit water corporation shareholder lists. Relying on the court's ruling in *Dines v. Harris*, the court found this right should be "zealously guarded."

The court did not attempt to determine the level of propriety necessary for inspection under the common law right. It did conclude, however, that the Hills' reasons for inspection did meet the "proper purpose" standard for inspection of a shareholder list as delineated in section 7-5-117(2).

*David A. Laird*

**Shirola v. Turkey Cañon Ranch Ltd. Liab. Co., 937 P.2d 739 (Colo. 1997)** (holding that owners of unadjudicated statutorily exempt wells have vested water rights and have standing to assert injury to those rights upon the filing of an application for adjudication of those rights with the water court).

Turkey Cañon Ranch planned to develop a subdivision on 323 acres of land in El Paso County, Colorado. Turkey Cañon sought to provide water to the subdivision by drilling two wells into the fractured