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## Application from Coors Brewing Company ("Coors") for an Amended Application: (X) For Sexennial Finding of Reasonable Diligence for Conditional Right of Exchange, in Jefferson County, Colorado.

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# **COLORADO WATER RIGHTS APPLICATIONS**

## **WATER COURT DIVISION 1**

**APPLICATION FROM COORS BREWING COMPANY ("COORS") FOR AN AMENDED APPLICATION: (X) FOR SEXENNIAL FINDING OF REASONABLE DILIGENCE FOR CONDITIONAL RIGHT OF EXCHANGE, IN JEFFERSON COUNTY, COLORADO.** Case No. 99CW062 (89CW234) (Water Division 1, June 1999). Applicant: Coors Brewing Company ("Coors") (Attys. Jack F. Ross, Esq. and Joanne Herlihy, Esq., Dufford & Brown, P.C.)

### *1. Application*

Coors Brewing Company ("Coors") seeks a finding of reasonable diligence on a conditional right of exchange. In Water Court Case No. 89CW234, the court decreed the exchange on April 30, 1993. Many objectors filed letters of opposition at that time.

The location of Coors' exchange reach lies between the headgate of the Farmers High Line canal which diverts from Clear Creek on the north bank of Clear Creek in the NW/4 of the SW/4 of Section 27, Township 3 South, Range 70 West, of the 6th P.M. This is only a short distance below the Ford Street Bridge across Clear Creek in the City of Golden, Jefferson County, Colorado. It is approximately 950 feet East and 1,500 feet North of the Southwest corner of said section and Coors' easternmost reservoir of the Jefferson Storage System, being Prospect Park Lake, located in the W1/2 Section 21, Township 3 South, Range 69 West of the 6th P.M.

Clear Creek is the source of the water at issue. Coors can store or divert this water right as it was changed by Decree in Case No. 89CW234. The original appropriation date for this water is December 29, 1989. The amount of water currently at issue is up to 13.2 c.f.s. for an annual volume of up to 1,500 acre-feet. This water may be used for all the purposes for which water may lawfully be used through the structures to which the exchanges are made.

Coors has been engaged in the use, construction, and completion of the diversion facilities and water rights involved. Coors has also been involved in the legal defenses and protection of these water rights. It has continued in the planning, designing, and exploration of the physical and business problems associated with the construction and use of the diversion facilities and water rights involved through the following activities: (1) installation of new pumps; (2) metering; (3) continual operation of water systems; (4) storage and beneficial use of the water; (5) regular inspection of the reservoirs; (6) construction of a lake; (7) installation of aeration systems; (8) maintenance; (9) entering into a gravel lease; (10) completion of a

separate case focused on continuing the development and protection of the water rights; (11) objections in numerous cases to protect the water rights from injury; (12) spending approximately \$2,000,000 during the due diligence period in continuing to develop the system; and (13) completing the transfer of a gravel mining lease.

The Original Application for Diligence did not include specific identification, including a full legal description, of the structures involved in the exchange. Coors then filed this Amended Application which includes detailed legal descriptions of the structures including Farmers High Line, the Wannamaker Ditch, the Agricultural Ditch, numerous Coors' Underground Springs, and Jefferson Storage System reservoirs and lakes.

Coors also filed a Motion for Determination that republication is unnecessary pursuant to Water Court Rule 4(c). This Rule states that the court may determine it unnecessary to republish Applicant's Amended Application for Diligence if it decides that it will cause no injury. Water Court Rule 7 sets forth seven enumerated instances when the republication of an Application or an amendment thereto is required: (1) a change of over 200 feet in structure location; (2) a change casing the well to come within 600 feet of an existing decreed well; (3) a change or moving of a structure to a different quarter section; (4) an increase in amount of use or addition of type of use; (5) a request for an earlier date of appropriation; (6) a change in the source of water; or (7) any other change not specifically described that the court deems material.

Coors argues that amending the Application to include specific identification, including full legal descriptions of the structures involved in the exchange, is not one of the instances that requires republication. First, Coors argues that republication is unnecessary because the Application for Diligence is only to prove that the applicant has been diligent in seeking to place the conditional water right already decreed to beneficial use. Second, Coors argues that the court should not deem this Amended Application a material change because all interested parties have reasonable inquiry notice. Colorado law requires no more than inquiry notice. The Original Application was sufficient to inform or put any interested party on inquiry of the nature, scope, and impact of the proposed application. The Original Application included detailed descriptions of the diligence conducted on various components of the structures involved in the exchange; therefore, an interested party had sufficient notice of the involvement of those structures. The attorneys ask that the court find that Coors has made a showing that no person will be injured as a result of not publishing the Amended Application and asks that the court make a determination that republication of the Amended Application is unnecessary.

On August 16, 1999, a consultation was held with the Office of the State Engineer. At this time, the Division Engineer could not recommend approval of the application. It requested that Coors provide the court with proof that the work claimed for diligence was

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