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## Application for Change of Water Rights and for Approval of Plan for Augmentation, Including Exchange

Jason Turner

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Due to applicant's assertion of diligence, Telluride and Mountain Village request a decree finding a their conditional rights are absolute in the Alternate Reservoirs and the Elk Pond Well in the amount of eleven acre feet and 2.91 acre feet respectively.

## *2. Opposition*

No statements of opposition have been filed.

*Kiowa K. Engwis*

## WATER COURT DIVISION 5

**APPLICATION FOR CHANGE OF WATER RIGHTS AND FOR APPROVAL OF PLAN FOR AUGMENTATION, INCLUDING EXCHANGE.** Case No. 02CW077 (Water Division 5, Mar. 2002). Applicant: Basalt Water Conservancy District (Atty. Lori J.M. Satterfield, Balcomb & Green P.C.).

### *1. Application*

The Basalt Water Conservancy District ("BWCD") seeks a change in water rights to allow contractees to operate court authorized alternate points of diversion on the BWCD's Basalt Conduit and the Landis Canal water rights. These alternate points of diversion will be wells, surface rights, and storage reservoirs utilized for evaporation replacement only, within Area A and areas which would be designated Area A by definition. Area A is generally described as those mainstem areas of the Frying Pan and Roaring Fork Rivers, where there are no intervening calling water rights present between the point of diversion and the mainstem, making it possible for those points of diversion to be augmented year-round by the BWCD's augmentation rights.

The BWCD proposes the following terms and conditions for the requested change to prevent injury to the water rights of others: (1) the state engineer or court will approve the alternate points of diversion, in accordance with implementation procedures; (2) alternate points of diversion will be located in Area A, or those areas that would qualify for diversion under this augmentation plan; (3) those alternate points of diversion, located in the Roaring Fork River drainage upstream of the confluence of the Frying Pan and Roaring Fork Rivers, will be operated and administered under the BWCD's right of exchange for the Basalt Conduit; (4) alternate points of diversion at wells will require a permit from the State Engineer pursuant to Colorado Revised Statutes section 37-90-137(2); and (5) each well user will be required to install a totalizing flow meter as a condition of diverting at the well.

Furthermore, the BWCD requests approval of a plan whereby augmentation and exchange would supplement these out-of-priority depletions. The BWCD proposes to utilize its water rights in and to

Robinson Ditch, Troy and Edith Ditch, Favre Domestic Pipeline, Ruedi Reservoir, and Green Mountain Reservoir as well as future court approved BWCD water rights for this purpose. This plan will take effect when the Basalt Conduit and Landis Canal are out-of-priority. Studies conducted previously by the BWCD projected that the Basalt Conduit and Landis Canal water rights would be out-of-priority from mid June through October, and anticipated that a call could also be in effect in April. The BWCD does not anticipate any calls on the Basalt Conduit and Landis Canal water rights, including the proposed alternate points of diversion, during the remainder of the year.

The BWCD will calculate the depletions associated with the alternate points of diversion using engineering assumptions consistent with the BWCD's prior augmentation plans. The BWCD will account for the delayed depletions of any wells according to the categories established by decree in Case No. 87CW155. The delayed depletions are expected to vary in relation to the wells proximity to the Frying Pan and Roaring Fork Rivers. The BWCD will ensure that the total out-of-priority depletions under the proposed augmentation plan and prior decreed augmentation plans would not exceed the replacement water available to the BWCD. Moreover, any substituted water will be of the quality and quantity required by senior appropriators.

The right of exchange will be utilized to the extent that it is necessary to augment water replacements introduced to the river downstream of the authorized points of diversion under the plan. The maximum extent of the exchange reach is from the confluence of the Roaring Fork and Colorado Rivers (downstream terminus) up to the authorized alternate points of diversion (upstream terminus), except for the exchange on the Roaring Fork River upstream of the confluence of the Frying Pan and Roaring Fork Rivers, which will be operated and administered under the priority and right of exchange claimed in pending Case No. 01CW305. The BWCD requests a November 9, 1998 priority date for the exchange that is outside the 01CW305 exchange reach. The November 9 priority date reflects the BWCD's contract with the United States Bureau of Reclamation for Green Mountain Reservoir releases. There is nothing intended to restrict or limit the operation of the Basalt Conduit and Landis Canal under its original priority adjudication.

The BWCD and its users will be limited to the amount of water available in priority at the original points of diversion. The BWCD and its users may call on additional sources of supply only as against water rights that are junior to the date of the subject exchange.

BWCD suggests the applicant for augmentation water under the plan will submit to the BWCD an application form that will identify this proposed plan as the source of replacement water. Upon receipt of the application, the BWCD will collect fees and submit the application to the state and division engineers. The BWCD will provide notice of the application in the newspaper of the county where the point of diversion is located. Any affected person will then be able to file an objection or other comment with the state engineer. Any

person not satisfied by the state engineer's decision could request a *de novo* hearing with the water court to determine whether the plan for augmentation has been met with respect to the request for an authorized diversion. Diversions authorized by either an uncontested approval by the state engineer or an order of the court will become part of the decree for the augmentation plan.

## 2. *Opposition*

Objecting are Twin Lakes Reservoir and Canal Company ("Twin Lakes"), Colorado Water Conservation Board ("CWCB"), and Southeastern Colorado Water Conservancy District ("Southeastern").

Twin Lakes seeks assurance that the proposed augmentation plan will provide augmentation water, in the amounts and at the times needed so as not to injure its vested and conditional water rights.

CWCB objects because it has instream flow rights on the Roaring Fork River, Frying Pan River, Crystal River, and Cattle Creek and feels that it may be adversely affected by the granting of the application. The proposed change in water rights without adequate augmentation could jeopardize the CWCB's instream flows.

Southeastern claims that BWCD has not proposed adequate assurances that its change of water rights and augmentation plans will not cause injury. Additionally, they assert that BWCD has failed to propose adequate conditions and administrative procedures and have not provided adequate measurement devices and accounting to assure proper administration of the change of water right and augmentation plan. Southwestern also claims the BWCD may be in violation of Colorado Revised Statutes section 32-92-302, because their procedure to implement the augmentation plan may be contrary to statutory notification. The application fails to give sufficient detail of the rights claimed and the proposed uses and operations. Therefore, it lacks the specificity required by statute.

All three objectors contend the application does not contain sufficient information for the objecting parties to state all potential grounds for objection. All three objectors reserve the right to advance other grounds of objection when more facts are known.

*Jason Turner*

