

DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

Case No. 98CW27

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF BLUE VALLEY METROPOLITAN DISTRICT,

in Grand County, Colorado

This matter came before the Court upon the Application of Blue Valley Metropolitan District for ground water rights and amendment to plan for augmentation.

The Water Judge referred the Application to the undersigned as Water Referee for Water Division No. 5, State of Colorado, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as the Water Rights Determination and Administration Act of 1969.

The undersigned Referee has made such investigations as are necessary to determine whether or not the statements in the Application are true, has become fully advised with respect to the subject matter of the Application and has consulted with the Division Engineer for Water Division No. 5. The Referee hereby makes the following determination and ruling as the Referee in this matter.

I. FINDINGS OF FACT

1. Applicant filed an Application for Ground Water Rights and Amendment to Plan for Augmentation on February 26, 1998.

2. The Application was properly published in the resume for Water Division No. 5. All notices required by law have been made, and the Court has jurisdiction over the Application and over all of the parties in this case.

3. None of the water rights or sources thereof involved in this Application are located within a designated ground water basin. The Blue Valley Metropolitan District Supplemental Well Nos. 1 and 2 and source thereof are not located within a designated ground water basin.

4. No Statements of Opposition to the Application were filed. The time for filing such statements has expired.

CLAIM FOR GROUND WATER RIGHTS

5. Name of structure: Blue Valley Metropolitan District 1998 Well Nos. 1 and 2¹
- A. Legal description of each point of diversion:
- i. 1998 Well No. 1: A well located in the NW¼ SW¼ Section 34, Township 1 South, Range 80 West of the 6th PM, a distance of 777 feet from the West line and 2,454 feet from the South line of said Section 34.
 - ii. 1998 Well No. 2: A well located in the NW¼ SW¼ Section 34, Township 1 South, Range 80 West of the 6th PM, a distance of 740 feet from the West line and 2,546 feet from the South line of said Section 34.
- B. Source: Blue River Alluvium. The wells will be developed within 100 feet from the river unless Applicant augments delayed impacts in an amount and upon a schedule acceptable to the Division Engineer.
- C. Depth: Approximately 20 feet
- D. Date of Initiation of Appropriation: November 14, 1997
- E. How appropriation was initiated: Field investigation of well sites, formation of intent to appropriate, prepared engineered specifications for well construction variance request for the Board of Examiners.
- F. Date water applied to beneficial use: N/A
- G. Amount claimed: 250 g.p.m., conditional, for each well. Cumulative diversions under any combination of the Blue Valley Metropolitan District

¹ Applicant had denominated the wells as "Blue Valley Metropolitan District Supplemental Well Nos. 1 and 2" in its application. To avoid any confusion with the statutory definition of "supplemental" well under C.R.S. §37-90-103(17) (which these wells are not), and upon the Division Engineer's request, Applicant has renamed the wells to "Blue Valley Metropolitan District 1998 Well Nos. 1 and 2."

1998 Well Nos. 1 and 2 and the Blue Valley Metropolitan District Pump & Pipeline (see Case No. 96CW286) shall not exceed 250 g.p.m.

H. Proposed use:

i. If irrigation, complete the following:

(1) Number of acres historically irrigated: n/a

(2) Total number of acres proposed to be irrigated: approximately 60 acres of lawn and landscape within the District's boundaries and within the West ½ of Section 27, and W ½ of Section 34, Township 1 South, Range 80 West of the 6th P.M.

ii. If non-irrigation, describe purpose fully: domestic water service for up to 150 residences, fire protection, municipal

6. The said 1998 Wells are not located within 600 feet of any existing wells claimed or owned by third parties.

7. Name and address of owner of land on which Blue Valley Metropolitan District 1998 Well Nos. 1 and 2 are located: Applicant

CLAIM FOR AMENDMENT TO PLAN FOR AUGMENTATION

8. Applicant seeks to amend the plan for augmentation decreed in Case No. 96CW286, Water Division No. 5. Applicant seeks to amend the plan only to add the Blue Valley Metropolitan District 1998 Well Nos. 1 and 2 as augmented water rights. The total diversion requirement for the District (up to a 250 g.p.m. instantaneous diversion) and the contemplated depletions will not change as a result of this amendment.

9. Name of structures to be augmented: Blue Valley Metropolitan District Pump & Pipeline (see Case No. 96CW286), and Blue Valley Metropolitan District 1998 Well Nos. 1 and 2

10. Water right to be used for augmentation: Green Mountain Reservoir

11. Information from previous decree for Green Mountain Reservoir:

- A. Legal description: located approximately 16 miles southeast of the Town of Kremmling in Summit County, Colorado, and more particularly in all or parts of Sections 11, 12, 12, 14, 15, and 24 of Township 2 South, Range 80 West of the 6th P.M. and in Sections 17, 18, 19, 20, 21, 28, 29, and 34, Township 2 South, Range 79 West of the 6th P.M.
- B. Source: Blue River
- C. Date of initiation of appropriation: 08/01/1935
- D. Date of adjudication: 10/12/1955
- E. Decreed amount: 154,645 acre feet
- F. Case Nos.: 2782, 5016, 5017 (consolidated) United States District Court, District of Colorado
- G. Uses: in accordance with paragraph 5(a), (b), and (c) of the section entitled "Manner of Operation of Project Facilities and Auxiliary Facilities" in Senate Document 80

12. Statement of plan for augmentation: Applicant has developed a conservative augmentation plan which can replace year-round depletions associated with in-house domestic use for 150 residences, and irrigation of up to 0.4 acre of lawn and landscape per residence (for a total of approximately 60 acres). The annual diversion requirement for these uses is approximately 223 acre feet, and the annual depletion is approximately 150 acre feet. The augmentation plan is based upon the following assumptions:

- A. In-house domestic diversions are contemplated to be 315 gpd per residence (3.5 persons per residence at 90 gpd per person).
- B. 10% of in-house domestic diversions are consumed.
- C. Irrigation depletions are 85% of diversions.

13. Applicant has obtained a contract with the United States Department of the Interior, Bureau of Reclamation, for releases from Green Mountain Reservoir to replace out-of-priority depletions up to the amount of 150 acre feet annually.

14. Submitted as Exhibit A hereto is a table showing the contemplated water requirements and depletions associated with this augmentation plan.

15. Operation of the subject augmentation plan will protect senior vested and decreed conditional water rights from injury.

II. CONCLUSIONS OF LAW

1. The foregoing findings of fact are fully incorporated herein.
2. Notice of the Application was properly given. The Court has jurisdiction over the Application and over all persons or entities who had standing to appear, even though they did not do so.
3. The Application is complete, covering all applicable matters required pursuant to the Water Right Determination and Administration Act of 1969, C.R.S. §§ 37-92-101 through -602.
4. Applicant has fulfilled all legal requirements for a decree for the Blue Valley Metropolitan District 1998 Well Nos. 1 and 2 including C.R.S. §§ 37-92-302 and 37-92-305.
5. Applicant has fulfilled all legal requirements for a decree for the requested amendment to the plan for augmentation decreed in Case No. 96CW286, including C.R.S. §§ 37-92-302 and 37-92-305.
6. The Court hereby concludes the Applicant has established that water can and will be diverted under the subject conditional water rights in and to the Blue Valley Metropolitan District 1998 Well Nos. 1 and 2 and will be beneficially used, and that this water supply project can and will be completed with diligence and within a reasonable time.
7. If operated in accordance with the terms and conditions of this decree, the plan for augmentation, as described herein, will prevent injury to senior vested or decreed conditional water rights.

8. The subject Application is in accordance with Colorado law. Applicant has fulfilled all legal requirements for entry of a decree in this case.

III. JUDGMENT AND DECREE

1. The foregoing findings of fact and conclusions of law are incorporated herein.
2. The Court hereby awards water rights to the Blue Valley Metropolitan District 1998 Well Nos. 1 and 2 and as more fully described herein at paragraphs I.5, 6 and 7.
3. The Court hereby decrees and approves the plan for augmentation described herein, and hereby amends the plan for augmentation decreed in 96CW286, as more fully described in paragraphs I.8. through I.15. hereinabove.
4. In consideration of the specific findings and conclusions made herein, and in conformance with C.R.S. § 37-92-304(6) (1990), as amended, the plan for augmentation decreed herein shall be subject to reconsideration by the Water Judge on the question of injury to the vested water rights of others for a period of five years after 75% buildout (113 residences/EQR) of the Blue Valley Metropolitan District. If no petition for reconsideration is filed within said five years, retention of jurisdiction for this purpose shall automatically expire.
5. In conformance with Colo. Rev. Stat. § 37-92-305(8) (1990), the State Engineer shall curtail all of out-of-priority diversions from Blue Valley Metropolitan District 1998 Wells Nos. 1 and 2 when the depletions are not replaced so as to prevent injury.
6. Until the conditional ground water rights in and to the Blue Valley Metropolitan District 1998 Well Nos. 1 and 2 awarded herein are made absolute or otherwise disposed of, Applicant shall file an application for a finding of reasonable diligence in every sixth calendar year after the calendar year in which the conditional water rights are herein decreed or in which a finding of reasonable diligence has been decreed. Applicant is ordered to file its first application for a finding of reasonable diligence in the month of AUGUST in the year 2004.
7. The applicant shall install measuring devices, provide monthly accounting, and supply calculations regarding the timing of depletions as required by the Division Engineer for the operation of this plan. The applicant shall file an annual report with the Division Engineer by November 15th of each summarizing diversions, depletions, and replacements made under this plan.

8. Applicant must obtain well permits from the Office of the State Engineer prior to construction and use of the subject wells. Upon Applicant's application to the State Engineer for such permits pursuant to the terms of this decree, the State Engineer shall issue said permits in accordance with C.R.S. § 37-92-305(6).

9. Pursuant to Rule 9 of the Uniform Local Rules for All State Water Court Divisions, upon the sale or other transfer of the conditional Blue Valley Metropolitan District 1998 Wells Nos. 1 and 2 rights, the transferee shall file with the Division 5 Water Court a notice of transfer which shall state:

- A. The title and case number of this Case No. 98CW27
- B. The description of the conditional water right transferred;
- C. The name of the transferor;
- D. The name and mailing address of the transferee;
- E. A copy of the recorded deed.

The owner of the said conditional water rights shall also notify the Clerk of the Division 5 Water Court of any change in mailing address. The Clerk shall place any notice of transfer or change of address in the case file of this Case No. 98CW27 and in the case file (if any) in which the Court first made a finding of reasonable diligence.

It is accordingly ordered that this judgment and decree shall be filed with the Water Clerk and shall become effective upon such filing, subject to judicial review pursuant to C.R.S. § 37-92-304, as amended.

It is further ordered that a copy of the judgment and decree shall be filed with the State Engineer and the Division Engineer for Water Division No. 5.

Done at the City of Glenwood Springs, Colorado, this 15 day of JULY, 1998.

BY THE REFEREE:



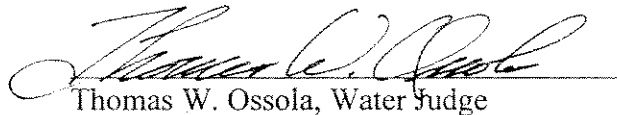
Robert C. Cutter, Water Referee
Water Division No. 5
State of Colorado

Copy of the foregoing mailed to all
Council of record Water
Referee Div. Engineer and
State Engineer Date 7/15/98
Anna L. Satterfield
Deputy Clerk Water Div. No. 5
SATTERFIELD

No protest was filed in this matter. The foregoing Ruling of the Referee is confirmed and approved, and is made the Judgment and Decree of this Court.

Done this 16th day of August, 1998.

BY THE COURT:



Thomas W. Ossola, Water Judge

Copy of the foregoing mailed to all
Council of record Water
Referee Div. Engineer and
State Engineer Date 08-11-98
Anna L. Satterfield
Deputy Clerk Water Div. No. 5
SATTERFIELD

DERIVATION OF MUNICIPAL RETURN FLOW

Basic Data:

Annual Municipal Demand (acre-foot): 229 (Build-out Condition, 150 homes, 0.4 acre lawns)
 Percent In-house Consumption: 10.0
 Percent Deep Percolation of Outside Water Use: 15.0

Month	(1) Municipal Demand (ac-ft)	(2) Indoor Use (ac-ft)	(3) Average Return Flow (ac-ft)	(4) Outside Use (ac-ft)	(5) Lawn Return Flow (ac-ft)	(6) Total Return Flow (ac-ft)	(7) Logged Return Flow (ac-ft)	(8) Percent Total Return Flow (%)	(9) Total Depletions (ac-ft)	(10) Percent Total Depletions (%)
January	4.5	4.5	4.1	0.0	0.0	4.1	5.3	116%	-0.8	-18%
February	4.1	4.1	3.7	0.0	0.0	3.7	4.8	116%	-0.7	-16%
March	4.5	4.5	4.1	0.0	0.0	4.1	4.5	100%	0.0	0%
April	4.4	4.4	3.9	0.0	0.0	3.9	4.3	99%	0.0	1%
May	7.6	4.5	4.1	3.1	0.5	4.5	4.4	56%	3.2	42%
June	25.7	4.4	3.9	21.4	3.2	7.1	5.2	20%	20.5	80%
July	52.3	4.5	4.1	47.8	7.2	11.2	7.1	14%	45.2	86%
August	51.0	4.5	4.1	46.5	7.0	11.0	6.5	17%	42.5	83%
September	36.2	4.4	3.9	33.9	5.1	9.0	6.6	22%	29.6	78%
October	17.6	4.5	4.1	13.1	2.0	6.0	7.9	46%	9.7	55%
November	8.5	4.4	3.9	4.2	0.6	4.5	6.7	79%	1.8	21%
December	4.8	4.5	4.1	0.0	0.0	4.1	5.9	131%	-1.4	-31%
Total	222.9	93.0	47.7	169.9	25.5	73.2	73.2	35%	149.7	67%

Notes:

- Col. 1 = Estimated monthly municipal distribution
- Col. 2 = Average of municipal demand during Dec, Jan, Feb, Mar, and Apr (can not be greater than municipal demand)
- Col. 3 = Sewage return flow assuming above in-house consumption
- Col. 4 = Col. 1 - Col. 2
- Col. 5 = Lawn return flows assuming above percentage of outside water use deep percolation
- Col. 6 = Col. 3 + Col. 5
- Col. 7 = Total return flows at the river, logged using estimated glover factors
- Col. 8 = 100 * (Col. 7 / Col. 1)
- Col. 9 = Col. 1 - Col. 7
- Col. 10 = 100 * (Col. 9 / Col. 1)