DATE FILED: September 21, 2016

| | |
|---|---|
| SUPREME COURT, STATE OF COLORADO<br>2 East 14th Avenue<br>Denver, CO 80203<br><br>Appeal from District Court, Water Division 1<br>Honorable James F. Hartmann<br>Case No. **03CW99** | |
| CONCERNING THE APPLICATION FOR WATER RIGHTS OF WELL AUGMENTATION SUBDISTRICT OF THE CENTRAL COLORADO WATER CONSERVANCY DISTRICT AND SOUTH PLATTE WELL USERS ASSOCIATION | ▲ COURT USE ONLY ▲ |
| **Opposer-Appellant:** CENTENNIAL WATER AND SANITATION DISTRICT<br><br>**v.**<br><br>**Applicants-Appellees:** WELL AUGMENTATION SUBDISTRICT OF THE CENTRAL WATER CONSERVANCY DISTRICT AND SOUTH PLATTE WELL USERS ASSOCIATION<br><br>and<br><br>**Opposers-Appellees:** BIJOU IRRIGATION COMPANY; BIJOU IRRIGATION DISTRICT; CACHE LA POUDRE WATER USERS ASSOCIATION; CITY OF AURORA; CITY OF BLACK HAWK; CITY OF BOULDER; CITY AND COUNTY OF DENVER ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS; | CASE NO. 16SA _____ |

| | |
|---|---|
| CITY OF ENGLEWOOD; CITY OF GREELEY ACTING BY AND THROUGH ITS WATER & SEWER BOARD; CITY OF STERLING; CITY OF THORNTON; CITY OF WESTMINSTER; DUCOMMUN BUSINESS TRUST; EAST CHERRY CREEK VALLEY WATER AND SANITATION DISTRICT; FARMERS RESERVOIR AND IRRIGATION COMPANY; FORT MORGAN RESERVOIR & IRRIGATION COMPANY; HARMONY DITCH COMPANY; THE HENRYLYN IRRIGATION DISTRICT; IRRIGATIONISTS ASSOCIATION WATER DISTRICT 1; JACKSON LAKE RESERVOIR AND IRRIGATION COMPANY; LOWER LATHAM RESERVOIR COMPANY; LUPTON BOTTOM DITCH COMPANY; LUPTON MEADOWS DITCH COMPANY; THE NEW CACHE LA POUDRE IRRIGATING COMPANY; THE CACHE LA POUDRE RESERVOIR COMPANY; NORTH POUDRE IRRIGATION COMPANY; PAWNEE WELL USERS, INC.; PUBLIC SERVICE COMPANY OF COLORADO; RIVERSIDE IRRIGATION DISTRICT; RIVERSIDE RESERVOIR AND LAND COMPANY; SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT; STATE ENGINEER AND DIVISION ENGINEER; UNITED WATER AND SANITATION DISTRICT; WESTFARM, LLC.<br><br>**Appellee Pursuant to C.A.R. 1(e):**<br>DAVID NETTLES, DIVISION ENGINEER, WATER DIVISION NO. 1 | |

Attorneys for Opposer-Appellant Centennial Water and Sanitation District:
Veronica A. Sperling, #14310
Paul F. Holleman, #21888
BUCHANAN SPERLING & HOLLEMAN PC
7703 Ralston Road
Arvada, CO 80002
303-431-9141
vsperling@tbvs.net; fholleman@tbvs.net

**NOTICE OF APPEAL**

Centennial Water and Sanitation District ("Centennial"), by and through its attorneys, Buchanan Sperling & Holleman PC, and pursuant to Rule 3(d) of the Colorado Appellate Rules, submits the following Amended Notice of Appeal.

**1. Description of the nature of the case.**

**a. General statement of the nature of the controversy.**

On July 23, 2015, the Well Augmentation Subdistrict of the Central Colorado Water Conservancy District (WAS) filed a Notice of Use of Water Rights for Augmentation (Notice of Use) stating its intent to add additional water supplies as replacement sources under paragraph 13.1 of the plan for augmentation decreed in the Findings of Fact, Conclusions of Law and Decree of the Water Court entered in Case No. 03CW99 on May 14, 2008 (Decree). Paragraph 13.1 requires, among other things, that WAS identify the amount of water available from any proposed new replacement supplies and the location at which water will be delivered to the stream.

The replacement supplies WAS sought to add to the plan for augmentation included, in part, unquantified future recharge accretions to the South Platte River from future diversions to recharge facilities under a decreed recharge plan. Centennial opposes the addition of the future recharge accretions to the plan for augmentation because the amounts and the locations where they might reach the stream were not provided with the Notice of Use. Centennial cannot protect its water rights from injury without access to this required information.

**b. Judgment, order or parts being appealed and basis for appellate jurisdiction.** The Water Court considered Centennial's challenge to the Notice of Use under its retained jurisdiction and held a hearing on August 1 and 2, 2016. The Court issued verbal findings of fact and conclusions of law on August 2, 2016. On August 22, 2016, the Court signed the transcript of its earlier verbal order and entered that signed transcript as its Written Judgment under C.R.C.P. 58(a), dismissing Centennial's challenge to the addition of the replacement supplies at issue in the retained jurisdiction action (Judgment).

Appellate jurisdiction is provided under Rule 1(a)(2) of the Colorado Appellate Rules, which provides that an appeal may be taken from "[a] judgment or decree, or

any portion thereof, in a proceeding concerning water rights; and an order refusing, granting, modifying, cancelling, affirming or continuing in whole or in part a conditional water right." Supreme Court jurisdiction is appropriate under C.R.S. §13-4-102(1)(d), which excludes from the Court of Appeal's jurisdiction appeals from final judgments of district courts in "water cases involving priorities or adjudications."

**c. Whether judgment or order resolved all issues pending before the trial court including attorney's fees and costs.** The Judgment resolved all issues pending before the Water Court.

**d. Whether the judgment was made final for purposes of appeal pursuant to C.R.C.P. 54(b).** Not applicable.

**e. Date the judgment or order was entered and the date of mailing to counsel.** The Judgment was entered by the Water Court and electronically served on all parties via ICCES on August 22, 2016.

**f. Whether there were any extensions granted to file any motion(s) for post-trial relief.** No extensions to file motions for post-trial relief were sought or granted.

**g. Date any motion for post-trial relief was filed.** Not applicable.

**h. Date any motion for post-trial relief was denied or deemed denied under C.R.C.P. 59(j).** Not applicable.

**i. Whether there were any extensions granted to file any notice(s) of appeal.** No extensions to file notices of appeal were sought or granted.

**2. Advisory listing of the issues to be raised on appeal.**

a. Whether the Water Court erred in allowing the addition of replacement supplies to the plan for augmentation in the Decree when it was undisputed that the information required by the Decree for the addition of replacement supplies was not provided.

b. Whether the Water Court erred in not requiring WAS to comply with the terms of the Decree for the addition of replacement supplies to the plan for augmentation because the Court concluded compliance was too burdensome.

c. Whether the Water Court erred in not requiring WAS to comply with the terms of the Decree for the addition of replacement supplies to the plan for augmentation because the Court concluded other terms of the Decree could prevent injury.

d. Whether the Water Court erred in dismissing Centennial's retained jurisdiction action on Defendants' Rule 41 motion where Centennial demonstrated at the hearing that the facts alleged in its retained jurisdiction motion regarding WAS' failure to supply the information required by the Decree were undisputed, which should have shifted the burden to WAS to demonstrate there would be no injury to Centennial from the addition of the replacement supplies at issue.

**3. Whether the transcript of any evidence taken before the trial court is necessary to resolve the issues raised on appeal.** The transcripts of testimony presented to the Water Court during the two days of trial on August 1 and 2, 2016, and all exhibits presented at trial are necessary to resolve the issues on appeal. The testimony for both days of the hearing was preserved by audio recording and subsequently transcribed. The length of the trial transcripts totals approximately 315 pages.

**4. Whether the order on review was issued by a magistrate where consent was necessary.** Not applicable.

**5. The names of counsel for the parties, their addresses, telephone numbers, e-mail addresses, and registration numbers.**

Bijou Irrigation Company *and* Bijou Irrigation District:
Stuart B. Corbridge, #33355
Vranesh and Raisch, LLP
1720 14th Street, Suite 200
Boulder, CO 80302
sbc@vrlaw.com
303-443-6151

Cache la Poudre Water Users Association; Lower Latham Reservoir Company; The New Cache La Poudre Irrigating Company *and* The Cache La Poudre Reservoir Company:
Daniel K. Brown, #30799
Fischer, Brown, Bartlett & Gunn, P.C.
1319 East Prospect Road
Fort Collins, CO 80525
danbrown@fbgpc.com
970-407-9000

Centennial Water and Sanitation District:
Veronica A. Sperling, #14310
Paul F. Holleman, #21888
Buchanan Sperling & Holleman PC
7703 Ralston Road
Arvada, CO 80002
vsperling@tbvs.net
fholleman@tbvs.net
303-431-9141

City of Aurora:
Adam T. Devoe, #32059
Lewis Roca Rothgerber Christie, LLP
1200 17th Street, Suite 3000
Denver, CO 80202
adevoe@lrrc.com
303-623-9000

John M. Dingess, #12239
Hamre Rodriguez Ostrander and Dingess PC
3600 South Yosemite Street, Suite 500
Denver, CO 80237-1829
jdingess@hrod.com
303-779-0200

John A. Helfrich, #34539
Steven O. Sims, #9961
Brownstein Hyatt Farber Schreck, P.C.
410 17th Street, Suite 2200
Denver, CO 80202
jhelfrich@bhfs.com;
ssims@bhfs.com
303-223-1100

City of Black Hawk:
David L. Kueter, #26136
Harvey W. Curtis &Associates
8310 South Valley Highway, #230
Englewood, CO 8112
firm@curtis-law.com
303-292-1144

City of Boulder
Carolyn F. Burr, #25978
James M. Noble, #36716
Welborn Sullivan Meck & Tooley, P.C.
1125 17th Street, Suite 2200
Denver, CO 80202
cburr@wsmtlaw.com;
jnoble@wsmtlaw.com
303-830-2500

Jessica L. Pault-Atiase, #36739
Assistant City Attorney
Water & Utilities
City of Boulder
1777 Broadway
P.O. Box 791
Boulder, CO 80306-0791
Pault-AtiaseJ@bouldercolorado.gov
303-441-3020

City and County of Denver, acting by and through its Board of Water Commissioners:
Casey S. Funk, #11638
Daniel John Arnold, #35458
Denver Water
1600 West 12th Avenue
Denver, CO 80204-3412
daniel.arnold@denverwater.org
303-628-6460

City of Englewood:
Leah K. Martinsson, #33170
Peter D. Nichols, #33167
Berg Hill Greenleaf & Ruscitti LLP
1712 Pearl Street
Boulder, CO 80302
pdn@bhgrlaw.com;
lkm@bhgrlaw.com
303-402-1600

City of Greeley, acting by and through its Water & Sewer Board:
James S. Witwer, #19482
Temkin Hardt & Longenecker LLP
1900 Wazee Street, Suite 303
Denver, CO 80202
Witwer@twhlaw.com
303-292-4922

Douglas M. Sinor, #31148
Trout Raley Montaño Freeman Sinor Thompson PC
1120 Lincoln Street, Suite 1600
Denver, CO 80203
dsinor@troutlaw.com
303-861-1963

City of Sterling:
Matthew Lake Merrill, #37918
White & Jankowski, LLP
511 Sixteenth Street, Suite 500
Denver, CO 80202
matthewm@white-jankowski.com
303-595-9441

City of Thornton:
Joanne Herlihy, #17838
City of Thornton
9500 Civic Center Drive
Thornton, CO 809229-4326
Joanne.Herlihy@cityofthornton.net
303-538-7210

City of Westminster:
Lee H. Johnson, #18852
Carlson, Hammond & Paddock, L.L.C.
1700 Lincoln Street, Suite 3900
Denver, CO 80203-4539
ljohnson@chp-law.com
303-861-9000

Ducommun Business Trust:
Dennis L. Ducommun, Trustee
P.O. Box 848
Fraser, CO 80442

East Cherry Creek Valley Water and Sanitation District:
Brian M. Nazarenus, #16984
Sheela S. Stack, #32768
Susan M. Ryan, #36695
Ryley Carlock & Applewhite
1700 Lincoln Street, Suite 3500
Denver, CO 80203
bnazarenus@rcalaw.com;
sstack@rcalaw.com;
sryan@rcalaw.com
303-863-7500

Farmers Reservoir and Irrigation Company (FRICO):
Joseph B. Dischinger, #12240
Fairfield and Woods, P.C.
1801 California Street, Suite 2600
Denver, CO 80202
jdischinger@fwlaw.com
303-830-2400

Fort Morgan Reservoir & Irrigation Company *and* Jackson Lake Reservoir and Irrigation Company:
Andrea L. Benson, #33176
Cynthia F. Covell, #10169
Alperstein & Covell, P.C.
1600 Broadway, Suite 900
Denver, CO 80202
cfc@AlpersteinCovell.com
alb@AlpersteinCovell.com
303-894-8191

Harmony Ditch Company:
Timothy R. Buchanan, #12185
Buchanan Sperling & Holleman PC
7703 Ralston Road
Arvada, CO 80002
trb@tbvs.net
303-431-9141

The Henrylyn Irrigation District:
Alyson Meyer Gould, #42672
Kent Hugh Holsinger, #33907
Holsinger Law LLC
1800 Glenarm Place, Suite 500
Denver, CO 80202
kholsinger@holsingerlaw.com;
agould@holsingerlaw.com
303-722-2828

Irrigationists' Association, Water District 1:
Karl D. Ohlsen, #32497
Mason H. Brown, #44831
Carlson, Hammond & Paddock, L.L.C.
1900 Grant Street, Suite 1200
Denver, CO 80203
kohlsen@chp-law.com;
mbrown@chp-law.com
303-861-9000

Lupton Bottom Ditch Company *and* Lupton Meadows Ditch Company:
Brice Steele, #26265
Law Offices of Brice Steele, P.C.
25 South 4th Avenue
Brighton, CO 80601-2029
brice@steelepc.com
303-659-3171

North Poudre Irrigation Company:
Alden V. Hill, #2021
Hill and Hill LLC
160 West Mountain Avenue
P.O. Box 421
Fort Collins, CO 80522
aldenhill@webaccess.net
970-482-3683

Public Service Company of Colorado:
Carolyn F. Burr, #25978
James M. Noble, #36716
Welborn Sullivan Meck & Tooley, P.C.
1125 17th Street, Suite 2200
Denver, CO 80202
cburr@wsmtlaw.com;
jnoble@wsmtlaw.com
303-830-2500

Riverside Irrigation District *and*
Riverside Reservoir & Land Company:
Peter J. Ampe, #23452
Hill & Robbins, P.C.
1660 Lincoln Street, Suite 2720
Denver, CO 80264
peterampe@hillandrobbins.com
303-296-8100

South Adams County Water and
Sanitation District:
Richard John Mehren, #32231
Moses, Wittemyer, Harrison and
Woodruff, P.C.
2595 Canyon Boulevard, Suite 300
Boulder, CO 80302
rmehren@mwhw.com
303-443-8782

South Platte Well Users Association:
Bradley Charles Grasmick #35055
David Phillip Jones, #34029
Lawrence Jones Custer Grasmick LLP
5245 Ronald Reagan Blvd., Suite 1
Johnstown, CO 80534
brad@ljcglaw.com;
david@ljcglaw.com
970-622-8181

State & Division Engineers:
Paul Louis Benington, #33079
First Assistant Attorney General
Water Resources Unit
Natural Resources and Environment Section
Office of the Colorado Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway Avenue, 7th Floor
Denver, CO 80203
Paul.Benington@state.co.us
720-508-6309

United Water and Sanitation District:
Tod Jay Smith, #15417
The Law Office of Tod J. Smith
2919 Valmont Road, Suite 205
Boulder, CO 80301
tod@tjs-law.com
303-444-4203

Well Augmentation Subdistrict, CCWCD:
David Phillip Jones, #34029
Wesley Sage Knoll, #48747
Lawrence Jones Custer Grasmick LLP
5245 Ronald Reagan Blvd., Suite 1
Johnstown, CO 80534
david@ljcglaw.com;
wes@ljcglaw.com
970-622-8181

Westfarm LLC:
Gilbert Y. Marchand, Jr., #19870
Gilbert Y Marchand, Jr., P.C.
2737 Mapleton Avenue, Suite 202
Boulder, CO 80304
gym@gymlaw.com
303-444-4256

**6. Appendices containing copies of judgment and order being appealed.**

Appendix A – Written Judgment, dated August 22, 2016.

Respectfully submitted this 20th day of September, 2016.

BUCHANAN SPERLING & HOLLEMAN PC

By_____
Veronica A. Sperling, #14310
Paul F. Holleman, #21888

ATTORNEYS FOR OPPOSER-APPELLANT, CENTENNIAL WATER AND SANITATION DISTRICT

*E-FILED PURSUANT TO C.A.R. 30*
*Duly signed original on file at the law offices of Buchanan Sperling & Holleman PC*

**CERTIFICATE OF SERVICE**
**(2016SA____)**

I hereby certify that the foregoing **NOTICE OF APPEAL** was served through ICCES this 20th day of September 2016 on the following:

Honorable James F. Hartmann
District Court, Water Division 1
901 9th Avenue
Greeley, CO 80631

Stuart B. Corbridge
Vranesh and Raisch, LLP
1720 14th Street, Suite 200
Boulder, CO 80302

Daniel K. Brown
Fischer, Brown, Bartlett & Gunn, P.C.
1319 East Prospect Road
Fort Collins, CO 80525

Adam T. Devoe
Lewis Roca Rothgerber Christie, LLP
1200 17th Street, Suite 3000
Denver, CO 80202

John M. Dingess
Hamre Rodriguez Ostrander and
Dingess PC
3600 South Yosemite Street, Suite 500
Denver, CO 80237-1829

John A. Helfrich
Steven O. Sims
Brownstein Hyatt Farber Schreck, P.C.
410 17th Street, Suite 2200
Denver, CO 80202

David L. Kueter
Harvey W. Curtis &Associates
8310 South Valley Highway, #230
Englewood, CO 8112

Carolyn F. Burr
James M. Noble
Welborn Sullivan Meck & Tooley, P.C.
1125 17th Street, Suite 2200
Denver, CO 80202

Jessica L. Pault-Atiase
Assistant City Attorney
Water & Utilities
City of Boulder
1777 Broadway
P.O. Box 791
Boulder, CO 80306-0791

Casey S. Funk
Daniel John Arnold
Denver Water
1600 West 12th Avenue
Denver, CO 80204-3412

Leah K. Martinsson
Peter D. Nichols
Berg Hill Greenleaf & Ruscitti LLP
1712 Pearl Street
Boulder, CO 80302

James S. Witwer
Temkin Hardt & Longenecker LLP
1900 Wazee Street, Suite 303
Denver, CO 80202

Douglas M. Sinor
Trout Raley Montaño Freeman Sinor Thompson PC
1120 Lincoln Street, Suite 1600
Denver, CO 80203

Matthew Lake Merrill
White & Jankowski, LLP
511 Sixteenth Street, Suite 500
Denver, CO 80202

Joanne Herlihy
City of Thornton
9500 Civic Center Drive
Thornton, CO 809229-4326

Lee H. Johnson
Carlson, Hammond & Paddock, L.L.C.
1700 Lincoln Street, Suite 3900
Denver, CO 80203-4539

Dennis L. Ducommun, Trustee
Ducommun Business Trust
P.O. Box 848
Fraser, CO 80442

Brian M. Nazarenus
Sheela S. Stack
Susan M. Ryan
Ryley Carlock & Applewhite
1700 Lincoln Street, Suite 3500
Denver, CO 80203

Joseph B. Dischinger
Fairfield and Woods, P.C.
1801 California Street, Suite 2600
Denver, CO 80202

Andrea L. Benson
Cynthia F. Covell,
Alperstein & Covell, P.C.
1600 Broadway, Suite 900
Denver, CO 80202

Timothy R. Buchanan
Buchanan Sperling & Holleman PC
7703 Ralston Road
Arvada, CO 80002

Alyson Meyer Gould
Kent Hugh Holsinger
Holsinger Law LLC
1800 Glenarm Place, Suite 500
Denver, CO 80202

Karl D. Ohlsen
Mason H. Brown
Carlson, Hammond & Paddock, L.L.C.
1900 Grant Street, Suite 1200
Denver, CO 80203

Brice Steele
Law Offices of Brice Steele, P.C.
25 South 4th Avenue
Brighton, CO 80601-2029

Alden V. Hill
Hill and Hill LLC
160 West Mountain Avenue
P.O. Box 421
Fort Collins, CO 80522

Veronica A. Sperling
Buchanan Sperling & Holleman PC
7703 Ralston Road
Arvada, CO 80002

Peter J. Ampe
Hill & Robbins, P.C.
1660 Lincoln Street, Suite 2720
Denver, CO 80264

Richard John Mehren
Moses, Wittemyer, Harrison and Woodruff, P.C.
1002 Walnut Street, Suite 300
P.O. Box 1440
Boulder, CO 80306-1440

Bradley Charles Grasmick
David Phillip Jones
Lawrence Jones Custer Grasmick LLP
5245 Ronald Reagan Blvd., Suite 1
Johnstown, CO 80534

Paul Louis Benington
First Assistant Attorney General
Water Resources Unit
Natural Resources and Environment Section
Office of the Colorado Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway Avenue, 7th Floor
Denver, CO 80203

Tod Jay Smith
The Law Office of Tod J. Smith
2919 Valmont Road, Suite 205
Boulder, CO 80301

David Phillip Jones
Wesley Sage Knoll
Lawrence Jones Custer Grasmick LLP
5245 Ronald Reagan Blvd., Suite 1
Johnstown, CO 80534

Gilbert Y. Marchand, Jr.
Gilbert Y Marchand, Jr., P.C.
2737 Mapleton Avenue, Suite 202
Boulder, CO 80304

Milissa A. Andrews

| | |
|---|---|
| DISTRICT COURT, WATER DIVISION 1,<br>WELD COUNTY, COLORADO<br><br>9th Street & 9th Avenue<br>P.O. Box 2038<br>Greeley, CO 80632 | DATE FILED: August 22, 2016 2:37 PM<br>CASE NUMBER: 2003CW99 |
| CONCERNING THE APPLICATION FOR WATER RIGHTS OF:<br><br>**WELL AUGMENTATION SUBDISTRICT OF THE CENTRAL COLORADO WATER CONSERVANCY DISTRICT AND SOUTH PLATTE WELL USERS ASSOCIATION,**<br><br>IN WELD, MORGAN, AND ADAMS COUNTIES. | ▲COURT USE ONLY▲ |
| | **Case No. 03CW99**<br><br>(Consolidated 03CW99 and 03CW177) |

**WRITTEN JUDGMENT OF THE VERBAL ORDER AND JUDGMENT ISSUED BY THE WATER COURT ON AUGUST 2, 2016**

On August 2, 2016, this court entered verbal findings of fact and conclusions of law granting the Applicants' motion for entry of judgment pursuant to C.R.C.P. 41(b). A transcript of those findings has been prepared and tendered to the court. The court hereby affixes this signature to the transcript as the judgment of the court, pursuant to C.R.C.P. 58(a).

Dated this 22nd day of August, 2016.

BY THE COURT

James Hartmann

James F. Hartmann
Water Judge
Water Division No. 1

| | |
|---|---|
| **DISTRICT COURT**<br>**WELD COUNTY, COLORADO**<br><br>915 10th Street<br>Greeley, Colorado 80631 | |
| In the Interest of:<br><br>**SOUTH PLATTE WELL USERS ASSOCIATION, et al.** | ▲COURT USE ONLY ▲<br><br>Case Number:<br><br>**2003 CW 99**<br><br>Division **1** |
| For the Applicants:<br><br>David Jones, Esq.<br>Wesley Knoll, Esq.<br>Lawrence Jones Custer Grasmick LLP<br>5245 Ronald Reagan Boulevard, Suite 1<br>Johnstown, CO 80534<br>Telephone: 970-622-8181<br><br>For Objectors, Centennial Water and Sanitation District:<br><br>Paul F. Holleman, Esq.<br>Veronica Sperling, Esq.<br>Buchanan Sperling & Holleman PC<br>7703 Ralston Road<br>Arvada, CO 80002<br>Telephone: 303-431-9141<br><br>For State and Division Engineers:<br><br>Paul Benington, Esq.<br>Office of the Colorado Attorney General<br>1300 Broadway, 7th Floor<br>Denver, CO 80203<br>Telephone: 720-508-6309 | |
| The matter came on for hearing on August 2, 2016 before the HONORABLE JAMES HARTMANN, JR., CHIEF JUDGE of the District Court, and the following FTR proceedings were had. | |

**Hearing - Day Two**

**August 2, 2016**

THE COURT: Good morning ladies and gentlemen. The Court at this time calls case 2003 CW 99, In the Matter of the Application for Water Rights concerning laws in the South Platte Well Users Association.

Mr. Jones and Mr. Knoll appear on behalf of the Applicants.

Mr. Holleman and Ms. Sperling appear on behalf of Centennial Water.

Mr. Benington appears on behalf of the State and Division Engineers.

The matter comes before the Court for the second day of the trial. When we concluded yesterday afternoon with Centennial's case, Mr. Jones, you indicated that the Applicants would be presenting a motion under 41 of the Rules of Civil Procedure?

MR. JONES: Yes, Your Honor.

THE COURT: Is that still your intent?

MR. JONES: Yes, Your Honor.

THE COURT: You may proceed.

MR. JONES: Thank you. Good morning.

THE COURT: Good morning.

MR. JONES: As indicated, the Applicants are moving

THE COURT: Thank you, Mr. Holleman.

MR. HOLLEMAN: Thank you, Your Honor.

THE COURT: You're welcome. I'll address first --

UNIDFENTIFIED SPEAKER: (Indiscernible).

No, thank you.

I'll address first the question that was raised by Mr. Holleman, and that is whether Rule 41 of the Rules of Civil Procedure apply to this type of a proceeding. Rule 41(b)(1) allows the Defendant in an action, after the Plaintiff has finished presenting its case to the Court without a jury, may move to have the case dismissed on the ground that upon the facts and the law, the moving party has shown no right to relief.

Under the retained jurisdiction clause found in paragraph 45 of the decree, the moving party to invoke retained jurisdiction must set forth with particularity the factual basis and the alleged injury upon which the requested reconsideration is premised, together with proposed decree

language modifications offered by the moving party to remedy the alleged injury.

At the hearing, the moving party, i.e., the one who is alleging injury, has the initial burden to establish a prima facie case that injury exists based upon facts presented, and then burden would then shift to the Defendant, in this case the Applicant, to ultimately prove that no injury exists.

This is slightly different than the shifting burdens that we have in water cases where the Applicant has the initial burden of providing a prima facie case, and opposing party then has an opportunity to present any factual information showing the existence of injury, and if that has been established, then the burden shifts back to the Applicant to prove the non-existence of injury. So Rule 41 does apply to this type of a procedure, because the Court must look at the facts and the law to determine whether or not Centennial is in entitled to relief as a matter of law.

Based upon the facts that have been presented, the Court concludes that Centennial is not entitled to relief as a matter of law.

We have talked a great deal about certain parts of this decree. We have focused on paragraph 13.1, we have also focused on paragraph 45.2, part of which I just referred to under the retained jurisdiction clause, and we have also

talked about paragraph 20, which is the projection procedures of the decree.

The Court is mindful that this case involved litigation several years ago. Centennial was an opposing party, as were several other entities. Concerns were raised with Court whether or not injury would occur through the operation of this augmentation plan. The Court considered the evidence, issued very detailed findings of fact, which were ultimately incorporated into the decree, which is quite comprehensive.

Although we have focused in this hearing on, but a few of the provisions of the decree, this Court must look at the entirety of the decree to determine whether or not Centennial has shown injury will occur if these sources of replacement water are added to the augmentation plan.

The Court was mindful when issuing the decree, issued by Judge Klein, that the Applicant would be adding additional sources of replacement water. There were identified several sources of replacement water for which the Applicant already had a legal right to use. There were other sources of replacement water that the Applicant had an interest in, but were not yet decreed, and there was also the understanding that in the future, as this augmentation plan would operate and develop over time, that additional sources would be identified by the Applicant, and added to the

augmentation plan.

Pursuant to Section 37-92-308, subsection (8) of the Colorado Revised Statutes, the Court has included in this decree -- I'm sorry, 305, subsection (8), I said 308, my apologies. 37-92-305, subsection (8), the Court has included procedures for adding sources of augmentation, water. And that can include water that is leased by the Applicant on a yearly basis, or on a less frequent basis. The procedures are found within the decree. The first of which is found at 13.1. The 13.1 lists five prerequisites for the addition of augmentation water.

First, the Applicant must identify the water right by name and decree, if any. Two, the applicant shall describe the annual and monthly amount of water available to the Applicant from that water right. Three, the location or locations at which the water will be delivered to the stream. Four, evidence that the claimed amount of water will not be used by another person. And five, the manner in which the applicant will account for use of the augmentation credits. And no water may be used unless the Division -- Division Engineer approves of its use.

The parties have touched upon an order that was issued by this Court previously regarding the manner in which 13.1 operates. 13.1 is at its genesis, a notification, it sets a notification procedure, where the Applicant will notify

all Opposers involved in this case, and the Division Engineer of those five different categories of information. The Engineer is then entrusted with applying the provisions of the entire decree to determine whether this source of water can be added to the augmentation plan without resulting in injury.

The Opposing parties have a 30-day window to provide comments to the Engineer, both factual and under the decree, to ensure that the addition of this source of water will not cause injury. The Engineer will then make decision whether this source of water can be used in the augmentation plan. If the Engineer says no, it cannot be added for whatever reason under the decree, then the inquiry and, at least from the Court's perspective, there could still be administrative avenues pursued by the Applicant, because the Applicant would be the -- the party that would be affected directly by the denial of the addition of that source.

If however, the Applicant satisfies the Engineer that the water source can be added, the opposing parties have the right to invoke retained jurisdiction. I agree with Mr. Holleman that this would not be a remedy pursued under the APA, but instead under the retained jurisdiction of the Court. I believe that is what paragraph 45.2 refers to when you read that paragraph, along with the rest of the decree, which is what happened in this case, with Centennial moving for the

Court to invoke retained jurisdiction to determine if injury exists.

When considering the objections that were raised, the provisions of the decree, and the source of the water, the Engineer provided six requirements to the Applicant for use of this water. The Court will focus first on the projection of the recharge credits, and that is contained in paragraph 20 of the decree.

Paragraph 20 of the decree -- 20.3.4. sets forth the procedures that must be followed when the Applicant projects deliveries to junior recharge and junior storage rights. The projected deliveries for these two sources of augmentation water shall be the amount actually placed into storage or recharge as of the date of the projection. So although Centennial is asking that the six criteria established by Mr. Nettles and his staff be incorporated into the decree, the Court finds that they already are. All Mr. Nettles is doing is referring back to the decree and specifying to the Applicant that you must follow these provisions of the decree to utilize this water source.

As Mr. Benington aptly stated, that we're talking about wet water, we're talking about water that is actually delivered before it can be included in the projection. Expanding the -- the analysis to the remainder of the decree, WAS has very specific accounting requirements under this

decree. There are daily accounting requirements. There are monthly accounting requirements. It is incumbent upon WAS to ensure that it is receiving the Weldon Valley accounting because they can't use this in their projection, this amount of water, until they find out from Weldon Valley how much was actually delivered to the recharge. That protection is already in place, contrary to Centennial's argument. And Mr. Nettles has accounted for that in his review.

With regard to whether the Applicant has met their burden under 13.1 and 20.3.5 of the decree, starting first with 13.1. The Applicant is required to provide the annual and monthly amount of the water available. As was discussed yesterday by the Court with Mr. Clements, with this type of recharge water, what has been categorized as category two, those amounts are subject to change over time. And it's very difficult to fix a number. The Applicant can estimate based upon past deliveries by Weldon Valley to its shareholders, but that doesn't guarantee the amount that will be available in any given month or annually.

Recharge credits, recharge accretions, are such a vital part of this operation, and was part of the identified sources in the trial and the decree that to -- for this Court now to require the Applicant to comply, or excuse me, to -- comply is not the word I wanted to use -- to require the Applicant each month to provide 30 days' notice under 13.1 to

Centennial and all other Opposers, and the Division Engineer, is overly burdensome, and I don't believe it's required by 13.1. Certainly, if the Applicant knows what the amount is, and there are sources of water where the Applicant will know how much water's available annually.

For example, in a recharge pond, the category one that we've talked about, the Applicant can provide that information, but for the recharge accretions, the estimates will suffice. Where the protection lies for Centennial and the opposing parties is the amount can't be projected until it's actually delivered. That's the protection that exists in this case. And therefore, Centennial has not proven that the Applicants will not be able to meet their obligation under 37-92-305, subsection (8)(a), to deliver in quantity and time, augmentation that is necessary to prevent injury to Centennial or any other water user, for that matter, looking at the entirety of decree.

Subsection -- excuse me, paragraph 20.3.5 talks about lease supplies during all years of projection. The decree speaks in terms of WAS' having a fixed and definite right to delivery for the term of such delivery as of April 1st. The fixed and definite right delivery is the lease itself, not the quantity of water. The quantity of water, and the timing of those deliveries are addressed in other portions of the decree. What Centennial is asking for is to modify the

decree, in this Court's opinion, to provide added levels of procedural hoops for the Applicant to jump through, that are not necessary to prevent injury.

The Court finds that Centennial has not established that any injury will occur if these sources of water are added under the supervision of the Division Engineer, by administering this decree, which is the Division Engineer's responsibility under Colorado law, and the Court finds that is exactly what Mr. Nettles and his staff have done with the review, and with their criteria, which simply track the decree in this Court's opinion.

The objection filed by Centennial is dismissed, and the Applicant may use this source of water.

Mr. Jones, any questions?

MR. JONES: I don't believe so. Thank you, Your Honor.

THE COURT: Thank you. Mr. Benington?

MR. BENINGTON: I don't. Thank you, Your Honor.

THE COURT: Thank you. Mr. Holleman?

MR. HOLLEMAN: May I have a moment, Your Honor?

THE COURT: Yes, of course.

MR. HOLLEMAN: Nothing further, Your Honor. Thank you.

THE COURT: Thank you.

The Court's (indiscernible) order will serve as the

order of the Court. If anyone would like to have a transcript prepared, and have the Court sign the transcript as the order of the Court, I'm happy to do so.

MR. BENINGTON: Thank you, Your Honor. We may do so.

THE COURT: Thank you.

MR. HOLLEMAN: Thank you, Your Honor.

THE COURT: Your welcome. Have a nice day everyone.

(Proceeding concluded at 9:06 a.m.)

**CERTIFICATE**

I, Julie Christman, certify that I transcribed this record from the digital recording of the above-entitled matter, which was heard on August 2, 2016, before THE HONORABLE JAMES HARTMANN, JR., in Division 1 of the Weld County District Court.

I further certify that the aforementioned transcript is a complete and accurate transcript of the proceedings based upon the audio facilities of these CDs and my ability to understand them. Indiscernibles are due to microphones not working properly, excessive noises or muffled voices.

Signed this 10th day of August, 2016, in Longmont, Colorado.

Julie Christman
Aapex Legal Services, LLC
10521 Booth Drive
Longmont, CO 80504
Tel: 303-532-7856
Fax: 303-539-5298