

SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, Colorado 80203

Appeal from the District Court, Water Division
No. 1, State of Colorado
Case No. 18CW3063
Honorable James F. Hartmann, Presiding

Plaintiff - Appellant:

The Luskin Daughters 1996 Trust for the benefit
of Lyndell Joy Luskin Ackerman, Matthew Riley,
Trustee

v.

Defendants-Appellees:

Steve Young (aka Stephen W. Young) and
Heather Young (aka Heather A. Young)

Appellees:

State and Division Engineer for Water Division
No. 1

Attorney for Plaintiff - Appellant:
Gilbert Y. Marchand, Jr., #19870
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▲ COURT USE ONLY ▲

Supreme Court Case
Number: 2018SA_____

NOTICE OF APPEAL

Plaintiff-Appellant, The Luskin Daughters 1996 Trust for the benefit of Lyndell Joy Luskin Ackerman, Matthew Riley, Trustee (“Trust”), through its undersigned attorneys, pursuant to C.A.R. 1(a)(2), 3(d), and 4(a), hereby submits the following notice of appeal:

I. BRIEF DESCRIPTION OF NATURE OF CASE.

A. General Statement of Nature of Controversy.

The Trust filed a complaint in water court seeking declaratory and injunctive relief, as well as damages, with respect to certain vested but undecreed water rights and associated ditch easements. As alleged in the complaint, the water rights arose from the Trust’s and its predecessors’ historical use of water from springs on land now owned by the Youngs. The water was carried in ditches to land now owned by the Trust, where the water was placed to beneficial use. The complaint alleged that, in the course of constructing a home in the summer of 2017, the Youngs interfered with the Trust’s water rights and ditch easements. The complaint also alleged that, since the right to use water was involved, the water court had jurisdiction over the matter, including ancillary jurisdiction over the ditch easement and damage claims. The complaint sought: a declaration with respect to the Trust’s right - as against defendants - to use water from the springs and ditch easements on the Youngs’ land; restoration of the ditches and flow from the

springs; and damages.

The Youngs filed a motion to dismiss the complaint under C.R.C.P. 12(b)(1) (lack of subject matter jurisdiction), 12(b)(2) (lack of personal jurisdiction), and 12(b)(5) (failure to state a claim upon which relief can be granted). The Water Judge granted the motion to dismiss in its entirety. The Water Judge also denied the Trust's C.R.C.P. 59 motion for reconsideration.

B. Judgment, Order or Parts Being Appealed and Statement Indicating the Basis for the Appellate Court's Jurisdiction.

The Trust appeals the Water Judge's Order Granting Defendants' Motion To Dismiss Complaint and Order Denying Plaintiff's Motion To Reconsider The Court's Order Dismissing This Action. The Colorado Supreme Court has jurisdiction pursuant to C.R.S. § 13-4-102(1)(d) and C.A.R. 1(a)(2).

C. Whether the Judgment or Order Resolved All Issues Pending Before the Trial Court Including Attorneys' Fees and Costs.

The two orders 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).

No C.R.C.P. 54(b) certification is involved. The Order Denying Plaintiff's Motion To Reconsider The Court's Order Dismissing This Action is a final judgment.

E. Date the Judgment or Order Was Entered and Date of Mailing to Counsel.

The Order Granting Defendants' Motion To Dismiss Complaint was entered on July 9, 2018 by being electronically filed and served on counsel via the Colorado Courts E-Filing System ("CCE"). The Order Denying Plaintiff's Motion To Reconsider The Court's Order Dismissing This Action was entered on August 22, 2018 by being electronically filed and served on counsel via CCE.

F. Whether There Were Any Extensions Granted to File Any Motion(s) for Post-trial Relief.

No extensions were requested or granted to file any motion(s) for post-trial relief.

G. The Date Any Motion for Post-trial Relief Was Filed.

A motion for reconsideration of the Order Granting Defendants' Motion To Dismiss Complaint was filed on July 23, 2018, pursuant to C.R.C.P. 59(a)(4).

H. The Date Any Motion for Post-trial Relief Was Denied or Deemed Denied Under C.R.C.P. 59(j).

The motion for reconsideration pursuant to C.R.C.P. 59(a)(4) was denied on August 22, 2018.

I. Whether There Were Any Extensions Granted To File Any Notice(s) of Appeal.

No extensions were requested or granted to file any notice(s) of appeal.

J. Description of Water Right.

Pursuant to C.A.R. 1(e), the water rights that are the subject of the appeal are the vested but undecreed water rights that arose from plaintiff's and its predecessors' historical use of the water that arose on defendants' land, as further described in the complaint.

II. ADVISORY LISTING OF ISSUES TO BE RAISED ON APPEAL.

- A. Whether the Water Judge erred as a matter of law in finding that the water court did not have subject matter jurisdiction over the water matters described in the complaint and ancillary jurisdiction over the ditch easement and damage claims?
- B. Whether the Water Judge erred as a matter of law in finding that, since an undecreed water right was involved, the complaint failed to state a claim upon which relief can be granted and that, in order to seek its declaratory and injunctive relief and damages, plaintiff must first file and publish notice of a water court application pursuant to C.R.S. Section 37-92-302?
- C. Whether the Water Judge erred as a matter of law in failing to recognize the common law cause of action that allows an owner of a vested but unadjudicated Colorado water right to seek declaratory,

injunctive, and other relief from another's tortious interference with the water right?

- D. Whether the Water Judge erred as a matter of law in implicitly ruling that the 1969 Water Right Determination and Administration Act abrogated the common law right to seek relief from tortious interference with a vested but unadjudicated water right?
- E. Whether the Water Judge erred as a matter of law in interpreting *Shirola v. Turkey Canon Ranch Ltd. Liab. Co.*, 937 P.2d 739 (Colo. 1997) ("*Shirola*") in such a manner as to deny an owner of a vested but unadjudicated water right the right to seek relief from another's tortious interference with the water right?
- F. Whether the Water Judge erred as a matter of law in granting defendants' motion to dismiss and denying plaintiff's motion for reconsideration?
- G. Whether the Water Judge erred as a matter of law to the extent that he found that plaintiff may not seek declaratory relief with respect to its property rights as against defendants but, instead, must file a quiet title action?

III. WHETHER THE TRANSCRIPT OF ANY EVIDENCE TAKEN BEFORE THE TRIAL COURT IS NECESSARY TO RESOLVE THE ISSUES RAISED ON APPEAL.

No. No evidence was taken and no transcript exists.

IV. WHETHER THE ORDER ON REVIEW WAS ISSUED BY A MAGISTRATE WHERE CONSENT WAS NECESSARY. IF THE ORDER ON REVIEW WAS ISSUED BY A MAGISTRATE WHERE CONSENT WAS NOT NECESSARY, WHETHER A PETITION FOR REVIEW OF THE ORDER WAS FILED IN THE TRIAL COURT AND RULED ON BY A TRIAL COURT JUDGE PURSUANT TO THE COLORADO RULES FOR MAGISTRATES.

Not applicable.

V. THE NAMES OF COUNSEL FOR THE PARTIES, THEIR ADDRESSES, TELEPHONE NUMBERS, E-MAIL ADDRESSES, AND REGISTRATION NUMBERS.

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VI. APPENDIX CONTAINING A COPY OF THE JUDGMENT OR ORDER BEING APPEALED AND THE FINDINGS OF THE COURT.

Attached as Appendix A is a copy of the July 9, 2018 Order Granting Defendants' Motion To Dismiss Complaint. Attached as Appendix B is a copy of the August 22, 2018 Order Denying Plaintiff's Motion To Reconsider The Court's Order Dismissing This Action.

Respectfully submitted this 27th day of August, 2018.

ALPERSTEIN & COVELL, P.C.

By: 

Gilbert Y. Marchand, Jr., #19870

**ATTORNEYS FOR APPLICANT -
APPELLANT THE LUSKIN
DAUGHTERS 1996 TRUST FOR THE
BENEFIT OF LYNDELL JOY LUSKIN
ACKERMAN, MATTHEW RILEY,
TRUSTEE**

E-filed pursuant to C.A.R. 30. Duly signed original on file at the office of Alperstein & Covell, P.C.

CERTIFICATE OF SERVICE
(2018SA_____)

I hereby certify that on the 28th day of August, 2018, a true and correct copy of the **NOTICE OF APPEAL** was served on the following via United States mail, postage prepaid, addressed to the following:

Kevin J. Kinner, Esq.
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State Engineer
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E-filed pursuant to C.A.R. 30. Duly signed original on file at the office of Alperstein & Covell, P.C.

DISTRICT COURT, WATER DIVISION NO. ONE, STATE OF COLORADO 901 9 th Avenue Greeley, CO 80631-1113	DATE FILED: 08/28/18 12:41 PM DISTRICT JUDGE CASE NUMBER: 2018CW3063
Plaintiff: THE LUSKIN DAUGHTERS 1996 TRUST FOR THE BENEFIT OF LYNDELL JOY LUSKIN ACKERMAN, MATTHEW RILEY, TRUSTEE V. Defendants: STEVE YOUNG (AKA STEPHEN W. YOUNG) AND HEATHER YOUNG (AKA HEATHER A. YOUNG).	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case No.: 2018 CW 3063 Div. No. 1
ORDER GRANTING DEFENDANTS' MOTION TO DISMISS COMPLAINT	

This matter comes before the water court on Defendants Steve Young and Heather Young's (Defendants) motion to dismiss, which asks this court to find that it does not have jurisdiction over the claims for relief filed in this case. The Luskin Daughters 1996 Trust for the Benefit of Lyndell Joy Luskin Ackerman (Plaintiff) argues that although Plaintiff has no adjudicated right or decree establishing its right to use the subject water within the priority system, the water court may nevertheless issue an order declaring that Plaintiff has the right to use the subject water and enjoin Defendants from interfering with the delivery of the water.

Applying basic tenets of Colorado water law, as described more fully below, the water court does not have jurisdiction in this instance to declare that Plaintiff has the right to use the water at issue that is superior to Defendants' use of the water, which is an essential element of Plaintiff's claims in the water court, because neither Plaintiff nor Defendant have adjudicated their water rights under the provisions of the Water Right Determination and Administration Act of 1969 ("1969 Act"). Plaintiff must follow the statutory requirements for seeking a determination of a water right—which includes filing an application with the water court, followed by resume publication—before the water court has jurisdiction over Plaintiff's claims. Because the water court cannot declare that Plaintiff has priority to use this water over Defendants absent adjudication of that right, the water court cannot exercise ancillary jurisdiction over Plaintiff's claims

for injunctive relief and damages. For those reasons, Plaintiff's claims must be dismissed by the water court.

I. BACKGROUND

Plaintiff is a trust held for the benefit of Lyndell Joy Luskin Ackerman. The trust owns property in Arvada, Colorado, on which the beneficiary resides. Defendants own an adjacent parcel of land.

The water at issue flows from springs arising on Defendants' property. Plaintiff asserts that the trust and its predecessors in interest have historically diverted the spring water and delivered it to the Plaintiff's property through a series of ditches, where it was used for irrigation, animal watering, wildlife, and recreational purposes.

In its Complaint, Plaintiff describes several deeds containing language that Plaintiff alleges conveyed to it the right to use the spring water. Plaintiff's property and Defendants' property were at one time part of one 12.5-acre parcel that was conveyed to Lucille E. Hite in 1950, along with "all water rights . . . and especially the right to use water from the springs on said land." Complaint at ¶9(A). The Court hereafter will refer to referenced portions of the Complaint simply by paragraph number and letter.

A civil action filed in Jefferson County in 1965, Case No. 20980, resulted in a court order dividing the property between Lucille Hite, who received 5 acres, and Robert H. Hite, who received 7.5 acres. ¶¶9(B)-9(D). Lucille Hite's 5-acre parcel is essentially the property now owned by Defendants, and Plaintiff owns 5 acres of what was once part of Robert Hite's 7.5-acre parcel. ¶9(C). The 1965 court order included a provision that "a proportionate share of the water and water rights appurtenant thereto" was to be apportioned between Lucille Hite and Robert Hite. *Id.* Pursuant to the Jefferson County order, Lucille Hite prepared a warranty deed conveying the 7.5-acre parcel to Robert Hite, "together with a proportionate share of the water and water rights appurtenant thereto." ¶9(F).

In 1967, Robert Hite conveyed the 7.5-acre parcel to William and Janet McClelland, along with "a proportionate share of the water and water rights appurtenant thereto." ¶9(G). The McClellands transferred, through a quit claim deed, 5 acres of the 7.5-acre parcel to the McClelland Revocable Trust in 1995. ¶9(H).

The McClellands, as trustees of the revocable trust, transferred the 5-acre parcel through warranty deed to Donald and Primela Schenfeld in 1999. ¶9(I). In 2006, Janet McClelland, in her individual capacity and as trustee of the McClelland Revocable Trust, conveyed to the Schenfelds "all the water rights conveyed from Robert H. Hite to

William F. McClelland and Janet L. McClelland ... [described as] a proportionate share of the water and water rights appurtenant to the 7.5 acres" ¶9(J).

The Schenfels conveyed the 5-acre parcel and the water rights to Plaintiff in 2014. ¶¶9(K),(L).

Plaintiff alleges that Defendants, while building a residence on their property in 2017, destroyed one or more of the ditches that have historically delivered the spring water to Plaintiff's land.

In its first two claims for relief, Plaintiff seeks a declaration that it has water rights in the springs that arise on Defendants' land and that it has the right to ditch easements on Defendants' land. Plaintiff's third claim seeks injunctive relief to prohibit Defendants' interference with the ditches on their property and would require Defendants to restore said ditches. Plaintiff, in the fourth claim for relief, seeks an injunction requiring Defendants to restore the ditches at their own cost, to allow Plaintiff to "inspect, operate, maintain, repair and replace, as necessary its ditch easements and water structures," and to prohibit any modifications without consent from Plaintiffs. In the fifth claim for relief, Plaintiff seeks monetary damages if injunctive relief proves an insufficient remedy.

II. LEGAL STANDARDS

Defendants assert that Plaintiff's complaint must be dismissed under C.R.C.P. 12(b)(5) because Plaintiff has failed to state claims for which relief can be granted, as well as an alternative ground that the water court lacks jurisdiction over the claims under C.R.C.P. 12(b)(1).

The purpose of a motion to dismiss for failure to state a claim upon which relief can be granted is to test the formal sufficiency of the complaint. *Dunlap v. Colo. Springs Cablevision, Inc.*, 829 P.2d 1286, 1290 (Colo. 1992). Motions to dismiss for failure to state a claim under C.R.C.P. 12(b)(5) are viewed with disfavor and are rarely granted. *Id.* at 1291 (quoting *Davidson v. Dill*, 503 P.2d 157, 162 (Colo. 1972)). The trial court properly grants a C.R.C.P. 12(b)(5) motion when, accepting all allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, the factual allegations cannot, as a matter of law, support a claim for relief. *Bly v. Story*, 241 P.3d 529, 533 (Colo. 2010).

When considering a motion to dismiss for failure to state a claim upon which relief can be granted, the court may only consider the facts alleged in the pleadings,

documents attached as exhibits or incorporated by reference, and matters proper for judicial notice. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011). Material allegations are deemed admitted, and the motion to dismiss should only be granted if it appears beyond doubt that the plaintiff cannot prove facts in support of a claim that would entitle it to relief. *W. Innovations, Inc. v. Sonitrol Corp.*, 187 P.3d 1155, 1157-58 (Colo.App. 2008); *Glover v. Southard*, 894 P.2d 21, 23 (Colo.App. 1994). A complaint may be dismissed if the substantive law does not support the claims asserted. *W. Innovations, Inc.*, 187 P.3d at 1158.

A party may challenge the trial court's jurisdiction over a matter under C.R.C.P. 12(b)(1), and if such a motion is filed, the plaintiff carries the burden of proving that the court has jurisdiction. *Capra v. Tucker*, 857 P.2d 1346, 1348 (Colo.App. 1993). Rule 12(b)(1) allows the court to make factual findings relating to its subject matter jurisdiction, and when necessary the court may conduct an evidentiary hearing to resolve disputed facts upon which jurisdiction turns. *Medina v. State*, 35 P.3d 443, 452 (Colo. 2001). None of the parties have requested a hearing on the present motion, and the court does not believe a hearing is necessary to resolve the jurisdictional question. Unlike a motion to dismiss for failure to state a claim upon which relief can be granted filed under C.R.C.P. 12(b)(5), the court need not take the allegations alleged in the complaint as true and draw all inferences in favor of the non-moving party when determining a motion to dismiss filed under C.R.C.P. 12(b)(1). *Id.*

III. ANALYSIS

Plaintiff asserts that the water court has jurisdiction over its claims against Defendants because Plaintiff has appropriated the water, i.e. diverted otherwise unappropriated water and placed the water to beneficial use, and that an adjudication (water court decree) of that water right is not necessary to confer jurisdiction over Plaintiff's claims. The court disagrees in this instance.

The General Assembly established seven water divisions as part of the 1969 Act, with each division assigned to preside over certain designated waters of the state of Colorado. C.R.S. § 37-92-201. A water court has exclusive jurisdiction over all water matters arising in that water court division. C.R.S. § 37-92-203(1). A "water matter" is limited to those matters set forth in Title 37, article 92, C.R.S. and any other matters over which the jurisdiction of the water court is specified under Colorado law. The determination of a water right or a conditional water right, which includes the amount of water that may be appropriated and the priority of water under that right relative to other water users, is within the exclusive province of the water court. C.R.S. §§ 37-92-

203(1), -302(1); see *Bijou Irrigation Dist. v. Empire Club*, 804 P.2d 175, 180 (Colo. 1991) (“an action for determination of a water right or a change of water right, each of which concerns the right to use water, is a water matter within the exclusive jurisdiction of the water judge.” (citing *Humphrey v. Southwestern Dev. Co.*, 734 P.2d 637, 640-41, (Colo. 1987))). “Water courts retain exclusive jurisdiction over all water matters.” *In re Tonko*, 154 P.3d 397, 404 (Colo. 2007) (citing C.R.S. § 37-92-203(1), C.R.S. (2006)). “Water matters involve determinations regarding the right to use water, the quantification of a water right, or a change in a previously decreed water right.” *Id.*

Not all legal disputes involving water, however, are considered “water matters” that fall within the exclusive jurisdiction of the water court. For example, “an action to determine ownership of a water right falls within the general jurisdiction of the district courts of this state.” *Bijou Irrigation District*, 804 P.2d at 180 (citing *Humphrey*, 734 P.2d 641); *In re Tonko*, 154 P.3d at 404 (“Actions to determine legal ownership of a water right fall within the general jurisdiction of district courts.”). Moreover, as stated by the Colorado Supreme Court in *Humphrey*, the “resolution of what constitutes a water matter turns on the distinction between the legal right to *use* water (acquired by appropriation) and the *ownership* of a water right.” 734 P.2d at 640 (emphasis in original).

Plaintiff concedes that its diversion of spring water has not been adjudicated pursuant to the 1969 Act, nor is Plaintiff seeking in this action to adjudicate the right to use that water within the parameters of Colorado’s priority system. Plaintiff instead asks this Court to operate outside the 1969 Act that imposes specific procedural requirements and declare, based on information passed down through the years in conveyance deeds, the enforceability of a water right that has been used over time through an un-adjudicated appropriation. The water court simply does not have the authority to make such a determination.

The facts of this case and relief sought by Plaintiff bring to the forefront important legal differences between an unadjudicated *vested* water right and an *enforceable* adjudicated water right, and how these differences bear upon the water court’s jurisdiction under the 1969 Act over Plaintiff’s claims. Although Plaintiff may have a vested right in the water emanating from the springs, Plaintiff does not hold a water right that can be enforced in the water court under the priority system against Defendants, or any other water user for that matter, because there has been no water court adjudication of that right.

Colorado's prior appropriation doctrine provides for "a property rights-based allocation and administration system that promotes multiple use of a finite resource for beneficial purposes." *Empire Lodge Homeowners' Ass'n v. Moyer*, 39 P.3d 1139, 1146 (Colo. 2001), as modified on denial of reh'g (Feb. 11, 2002). "The objective of the water law system is to guarantee security, assure reliability, and cultivate flexibility in the public and private use of this scarce and valuable resource." *Id.* at 1147. "Security resides in the system's ability to identify and obtain protection for the right of water use." *Id.* "Reliability springs from the system's assurance that the right of water use will continue to be recognized and enforced over time." *Id.*

One obtains the right to use waters of the state by "placing the unappropriated water to beneficial use." *Id.* However, "[a] decree for an absolute water right *confirms* that an appropriative right has vested and identifies the right's priority and amount." *Id.* at 1148 (emphasis added). It is the adjudication and decree process in the water court that provides a water user with an enforceable right against other water users, and "[a]bsent an adjudication under the [1969] Act, water rights are generally incapable of being enforced." *Shirola v. Turkey Canon Ranch Ltd. Liab. Co.*, 937 P.2d 739, 749 (Colo. 1997). "As a general proposition, then, although a water right vests upon appropriation, it is not legally enforceable until it is adjudicated." *Id.* As recognized by the Colorado Supreme Court in *Archuleta v. Gomez*, "the primary value of a water right resides in its priority relative to other water rights and the right to use the resource, not the continuous tangible possession of the resource." 200 P.3d 333, 343 (Colo. 2009) (citation omitted).

Under the 1969 Act, one who seeks a determination of an absolute or conditional water right, and the priority thereof, must file with the water division's clerk a verified application setting forth the facts supporting a ruling by the water court. C.R.S. § 37-92-302(1)(a). Once filed, the application is forwarded by the water clerk to the state engineer and the division engineer. *Id.* The water clerk prepares a resume containing the name and address of the applicant, a description of the water right and the ruling being sought. C.R.S. § 37-92-302(3)(a). The water clerk arranges for publication in a newspaper of general circulation in each county affected by the application, with the costs of publication borne by the applicant. C.R.S. § 37-92-302(3)(b). Not later than the second month after notice of the application is published, anyone, including the state and division engineer, may file a verified statement of opposition setting forth the basis for opposing the application. C.R.S. § 37-92-302(1)(b), (c). For applications referred to the water referee by the water judge, the water referee is tasked with investigating the claims as necessary to determine whether the statements in the application are true, and

as part of this process the referee must consult with the division engineer and/or the state engineer. C.R.S. § 37-92-302(4). If the application is rereferred to the water judge prior to the referee's consultation with the engineer, a report containing recommendations must be prepared by the engineer and delivered to the water judge for consideration. *Id.*

The essential element of Plaintiff's claims is its assertion that it has the legal right to use this water. This will require Plaintiff to first prove that it has met all necessary requirements for a lawful appropriation—i.e. that there was unappropriated water available that was diverted and placed to beneficial use. If Plaintiff meets this first evidentiary hurdle, the focus will then shift to where in the order of priority Plaintiff's right to lay claim to use this water falls within the entire system, and not just as compared to Defendant's right to use the water. Because Plaintiff is seeking a determination of a water right under C.R.S. § 37-92-302(1)(a), it is required to file an application and must publish notice in the water court resume, prior to the water court having jurisdiction over these claims. By circumventing these necessary procedural steps, Plaintiff is preventing other water users the opportunity to review the claims and raise challenges, if warranted, to Plaintiff's assertion that it has a legal right to use this water through appropriation.

The court is not persuaded by Plaintiff's argument that the water court's ancillary jurisdiction obviates the need to file an application with resume publication. The water court can only exercise ancillary jurisdiction over other claims after it has jurisdiction over the case, which has not yet occurred. If an application for determination of a water right is properly filed, then the water court likely will have ancillary jurisdiction over Plaintiff's other claims. *See Archuleta* 200 P.3d at 340 (ditch right-of-way questions pertaining to an adjudicated water right is within the water court's ancillary jurisdiction); *FWS Land & Cattle Co. v. Div. of Wildlife*, 795 P.2d 837, 841 (Colo. 1990) ("water judge may exercise jurisdiction over claims that are ancillary to water matters pending in the water court." (citation omitted)).


IV. ORDER OF THE COURT

Based on the allegations presented in the Complaint and applicable law, Plaintiff must file an application for the determination of a water right before its claims may proceed before the water court. Because that has not occurred, the water court lacks jurisdiction over the matter and Plaintiff's Complaint must be dismissed.

Accordingly, the court hereby GRANTS Defendants' Motion to Dismiss Plaintiff's Complaint in its entirety.

Dated: July 9, 2018.

BY THE COURT



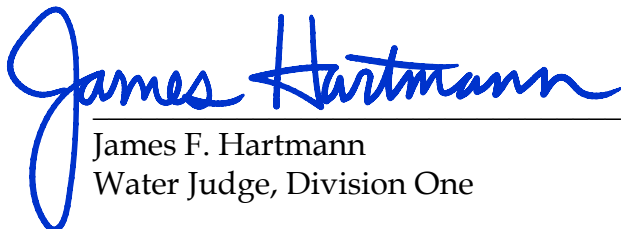
James F. Hartmann
Water Judge, Division One

<p>DISTRICT COURT, WATER DIVISION NO. ONE,</p> <p>STATE OF COLORADO</p> <p>901 9th Avenue</p> <p>Greeley, CO 80631-1113</p>	<p>DATE FILED August 22, 2018 2:06 PM CASE NUMBER: 2018CW3063</p>
<p>Plaintiff:</p> <p>THE LUSKIN DAUGHTERS 1996 TRUST FOR THE BENEFIT OF LYNDELL JOY LUSKIN ACKERMAN, MATTHEW RILEY, TRUSTEE</p> <p>V.</p> <p>Defendants:</p> <p>STEVE YOUNG (AKA STEPHEN W. YOUNG) AND HEATHER YOUNG (AKA HEATHER A. YOUNG).</p>	<p>▲ COURT USE ONLY ▲</p> <p>Case No.: 2018 CW 3063</p> <p>Div. No. 1</p>
<p>ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER THE COURT'S ORDER DISMISSING THIS ACTION</p>	

This matter comes before the court Plaintiff's motion requesting reconsideration of the order dismissing the complaint, issued by the court on July 9, 2018. The court has considered the motion for reconsideration, the response filed by Defendant's, and reply filed by Plaintiffs. The court stands by the analysis and conclusions contained in the order dismissing the complaint, and denies the motion for reconsideration.

Dated: August 22, 2018.

BY THE COURT



James F. Hartmann
Water Judge, Division One