

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 320 West 10th Street, #203 Pueblo, CO 81003	EFILED Document Filed in District Court 10th JD CO Pueblo Colorado Filing Date: MAR 01 2006 Filing ID: 10695581 Review Clerk: Mansell Didomenico
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: ARKANSAS VALLEY COMPANY, LLC, a Colorado limited liability company, IN LAKE COUNTY.	FILED IN THE OFFICE OF THE CLERK, DISTRICT COURT WATER DIV. NO. 2 STATE OF COLORADO FEB 28 2006 CLERK
	COURT USE ONLY Case Number: 04CW110
JUDGMENT AND DECREE	

THE COURT FINDS that no protest has been filed to the Ruling of the Water Referee within the time provided by law, and that said Ruling should be confirmed, approved and adopted.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Ruling of Referee entered on February 3, 2006, be and is incorporated herein by reference and is confirmed, approved and adopted as the judgment of this Court.

Dated: 2-28, 2006.

BY THE COURT:


 DENNIS MAES, WATER JUDGE

C: State / Duncan Engineers
felt
Hammond / Huff
3-1-06
WJ

<p>DISTRICT COURT, WATER DIVISION 2, COLORADO</p> <p>Court Address: 320 W. 10th Street Pueblo, CO 81003 Phone Number: 719-583-7048</p>	<p>FILED Document CO Pueblo County District Court 10th JD Filing Date: Feb 3 2006 11:58AM MST Filing ID: 10494555 Review Clerk: Mardell Didomenico FILED IN THE OFFICE OF THE CLERK, DISTRICT COURT WATER DIV. NO. 2 STATE OF COLORADO</p> <p>FEB 03 2006</p> <p>CLERK ▲ COURT USE ONLY ▲</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</p> <p>ARKANSAS VALLEY COMPANY, LLC, a Colorado limited liability company,</p> <p>IN LAKE COUNTY.</p>	<p>Case No: 04CW110</p>
<p>RULING OF REFEREE</p>	

Pursuant to the Order of Referral entered in this case on December 23, 2004, the undersigned Water Referee being fully advised in the premises makes the following Ruling of Referee:

GENERAL FINDINGS OF FACT

1. The name and address of the Applicant is:

Arkansas Valley Company, LLC.
c/o Bill Klauber
P.O. Box 909
Leadville, Colorado 80461
(719) 486-5780
2. Applicant's Application for Plan for Augmentation (the "Application") was filed on December 23, 2004.

3. The Water Court caused publication as provided by statute and publication costs have been paid. The time for filing statements of opposition has expired and one

Statement of Opposition was filed by the Twin Lakes Reservoir and Canal Company ("Twin Lakes"). A Stipulation between Applicant and Twin Lakes dated December 30, 2005 was filed with the Court consenting to the entry of this Ruling by having approved a form Ruling no less restrictive than, nor inconsistent, with the terms and conditions set forth herein.

4. Timely and adequate notice of the Application has been given in the manner required by law. The Water Court has jurisdiction over the subject matter of these proceedings and over all who have standing to appear as parties, whether they have appeared or not. The plan for augmentation sought in this case are not within the boundaries of a designated groundwater basin.

5. A Consultation Report and Recommendation of the Division Engineer dated August 15, 2005 was filed with the Court pursuant to C.R.S. §37-92-302(4). All of the issues raised by the Division Engineer in the Consultation Report have been considered by the Referee and adequately addressed in this Ruling.

6. Applicant is the owner of the parcel of real property located in Section 21, Township 9 South, Range 80 West of the 6th P.M. in Lake County, Colorado known as the Elk Trail subdivision(hereinafter the "Subject Property") more particularly described in the attached Exhibit A.

PLAN FOR AUGMENTATION

7. The structures to be augmented are 15 wells to be drilled into the alluvium of the Arkansas River for the supply of water for in-house uses on 15 lots within 15 single family dwellings. All uses of the water will occur on the Subject Property which is immediately adjacent to the Arkansas River.

8. Augmentation for out-of-priority depletions resulting from in-house domestic water uses on the Subject Property will be provided by one (1) Twin Lakes Reservoir and Canal Company Share owned by Applicant, which has been purchased and will be dedicated to the plan for augmentation, to be administered by the Division Engineer, Water Division 2 pursuant to this decree. This stock ownership represents a pro rata interest in native Arkansas River diversions and the Independence Pass transmountain diversion system which diverts water from the headwaters of the Roaring Fork River and its tributaries in Pitkin County for storage in the Twin Lakes Reservoirs in Southern Lake County, Colorado. Twin Lakes shares consist of direct flow and storage rights for water diverted from another river basin which is available for 100 percent consumptive use and reuse and is available for augmentation. The water rights producing the pro rata interest of the Applicant are described as follows:

A. Colorado River Water Rights

- (1) Decree:
 - a. Case No. 3082, District Court, Garfield County, August 25, 1936.
 - b. Case No. W-1901, District Court, Water Division 5, May 12, 1976.
- (2) Priority: August 23, 1930, No. 431
- (3) Source: Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Division 5, as more fully set forth in the above referenced Decrees.
- (4) Use: Direct flow and storage purposes, for irrigation, domestic, commercial, industrial, municipal and all beneficial uses.
- (5) Amount: Direct flow amount for diversions through transmountain tunnels of 625 cfs with an annual limit of 68,000 acre feet, a running ten year limit of 570,000 acre feet, and other limitations set forth in the decrees.

B. Arkansas River Water Rights

- (1) Decree:
 - a. Original Decree, Case No. 2346, District Court, Chaffee County, July 14, 1913.
 - b. Modified, Case No. W-3965, District Court, Water Division 2, April 19, 1974.
- (2) Priorities: December 15, 1896, No. 3, and March 25, 1897, No. 4.
- (3) Source: Lake Creek and its tributaries tributary to the Arkansas River.
- (4) Use: Storage for irrigation, domestic, commercial, industrial and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir which are capable of being served water by diversion from said Arkansas

River.

- (5) Amount: 54,452 acre feet (20,645.3 acre feet -Priority No. 3; 33,806.7 acre feet - Priority No. 4).

Under no circumstances may Applicant at any point in time generate more consumptive use at the development site than its purchased and dedicated share of stock allows under this Plan. For purposes of calculating the available replacement water, it shall be assumed that each share of Twin Lakes stock will result in an average consumptive use credit of 0.78 acre-feet from transmountain water diverted by the Twin Lakes Reservoir and Canal Company under its decrees. In addition, in no event shall the Twin Lakes Reservoir and Canal Company be required to deliver to the Applicant or to the Division Engineer for use as replacement water or augmentation supply an amount of water greater than the amount of water represented by the dedicated share's prorata interest in the water diverted by the Company.

9. Statement of Plan for Augmentation. Applicant's plan for augmentation, as herein awarded, will replace depletions caused by the pumping of 15 wells for in-house use in 15 single family dwellings in the Elk Trail Subdivision. Each lot will be served by one (1) individual well.

A. Water Requirements. In-house use from each of the 15 individual wells will be year-round, resulting in year-round depletions. Applicant's engineer has calculated that based upon three persons per single family residence and an average daily demand of 80 gallons per day per person, each single family dwelling will require 240 gallons per day, or 0.27 acre feet annually. The total annual requirements for all 15 wells subject to this plan for augmentation, combined, will therefore be 4.05 acre feet. Each single family dwelling will be served by an individual non-evaporative septic leach field. On this basis, consumptive use for in-house use is calculated at ten percent (10%) of annual diversions, or 0.027 acre-feet of depletions per single family residence per year. As such, the total combined depletions for the 15 wells subject to this plan for augmentation will be 0.405 acre feet annually.

B. Augmentation Plan Operation. At current administrative levels, the one Twin Lakes Share will fully augment, and in fact provide replacement water well in excess of, the total consumptive use demand from the uses in the Elk Trail Subdivision. Total consumptive use by Applicant's 15 wells will be 0.405 acre feet, while the average consumptive use yield from each Twin Lakes share is 0.78 annual acre feet. Should the Twin Lakes Reservoir and Canal Company and/or the Division Engineer determine that the consumptive use credit is less than the consumptive use from the development, additional shares of Twin Lakes Reservoir and Canal Company stock may be purchased or leased by Applicant to be added to the plan without the necessity of an amendment being filed or decreed by this Court. If the source of any additional augmentation water is other than additional shares of Twin Lakes Reservoir and Canal Company stock, then formal

amendment of the plan must be made by the Applicant. Applicant may seek to amend this decree to add development units for utilization of the excess consumptive use represented by the Twin Lakes Reservoir and Canal Company share dedicated to this plan. Annual accounting forms, in a format agreed to by the Division Engineer, will be provided to the Division Engineer setting forth each consumptive use component and the number of units utilizing water for each component.

10. The Applicant's plan for augmentation, if operated in accordance with the terms and conditions of this Ruling will fully augment and replace all out-of-priority depletions caused by the in-house uses as decreed herein, so long as the total amount of annual consumptive use from all uses does not exceed the replacement credit allowed by the one share of Twin Lakes Reservoir and Canal Company stock which is dedicated to this plan.

11. To ensure that the rates of consumptive use set forth in this plan for augmentation are not exceeded, it is necessary to insure that all return flows from indoor water uses on the Subject Property return to the Arkansas River. Therefore, all sewage disposal for all existing and future uses within the Subject Property shall be through non-evaporative septic leach fields located within the Subject Property. The Court finds that because all sewage disposal for indoor uses will be through non-evaporative septic leach field systems, that the consumptive use rate associated with all domestic indoor uses on the Subject Property is ten percent (10%). The Court also finds that due to the close proximity of the Subject Property to the Arkansas River, no provision for delayed return flows is necessary in this case and the return flows shall be deemed to be instantaneous.

12. Subject to the terms and conditions of this Ruling and so long as the plan for augmentation is operated pursuant to this Ruling, under the supervision and administration of the Division Engineer, it will have the effect of replacing water in the Arkansas River at the time, place, and in the amounts of depletion caused by the Applicant's use of water. As a result, the underground water to be diverted by Applicant at its well sites which might otherwise be considered as appropriated and unavailable for use will be available for appropriation without adversely affecting vested water rights or conditionally decreed water rights in the Arkansas River and its tributaries.

CONCLUSIONS OF LAW

13. Applicant's request for approval of a plan for augmentation is contemplated and authorized by law. If administered in accordance with this Ruling, this plan of augmentation will permit the uninterrupted diversions for the augmented structures as described in paragraph 9 of this Ruling without adversely affecting any other vested water rights in the Arkansas River or its tributaries. C.R.S. §37-92-305(3), (5), and (8).

DECREE

14. The Application for Plan of Augmentation which has been proposed by Applicant is approved.

15. All the foregoing Findings of Fact and Conclusions of Law are incorporated by reference herein, and are to be considered a part of the decretal portion hereof as though set out in full.

16. In accordance with the Bylaws of the Twin Lakes Reservoir and Canal Company, the following conditions shall govern the use of the Twin Lakes share in this plan:

A. The entry of this Decree by the Water Judge shall effectuate the dedication of the one Twin Lakes Share. The one Twin Lakes share shall be dedicated to the plan for augmentation, to be administered by the State and Division Engineer's Office.

B. No later than 30 days after entry of this Decree by the Water Judge effectuating the dedication of the stock share, the stock certificate shall be delivered to the Secretary of the Company to be legended as required by the Bylaws of the Twin Lakes Reservoir and Canal Company.

C. The share of stock of the Twin Lakes Reservoir and Canal Company that is included in this augmentation plan shall not be sold or transferred, except to a designated successor to Applicant herein that certifies to the Twin Lakes Reservoir and Canal Company that the stock, after transfer, shall continue to be held and used in accordance with the terms and conditions of this augmentation plan, without prior approval of this Court.

D. The Twin Lakes Reservoir and Canal Company is not required to make any delivery of water upon the share of Twin Lakes Reservoir and Canal Company stock included in this augmentation plan except in accordance with the provisions of its Article of Incorporation and Bylaws, and such delivery shall be subject to all of the restrictions incorporated within those Articles and Bylaws.

E. Jurisdiction shall be retained in this Court to approve any proposed sale or transfer of the share of the Twin Lakes Reservoir and Canal Company stock included in this augmentation plan to any party other than a designated successor of the Applicant that certifies that the stock shall continue to be held and used in accordance with the terms and conditions of this augmentation plan; such jurisdiction shall be invoked by motion of Applicant with notice to all parties and to the Twin Lakes Reservoir and Canal Company

F. Only that amount of water that is actually available and is directly

attributable to the Applicant's share of Twin Lakes Reservoir and Canal Company stock on an annual basis that is dedicated now or in the future to this case will be made available for the purposes of this plan for augmentation. Applicant will curtail their diversions or limit their occupancy or provide additional augmentation water to the extent determined necessary by the Division Engineer or the Division Engineer's representative if the available water directly attributable to Applicant's share of Twin Lakes Reservoir and Canal Company stock is not sufficient to augment fully the depletions attributable to the water uses decreed herein.

17. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not, at the request of appropriators, or on their own initiative, curtail the diversion and use of wells as may be permitted as described herein and pursuant to this plan for augmentation, so long as the out-of-priority depletions associated with such wells are replaced to the stream system pursuant to the conditions contained herein. To the extent that Applicant or one of its successors or assigns is ever unable to provide the replacement water required, then the wells described in this Ruling shall not be entitled to operate under the protection of this plan, and shall be subject to administration and curtailment in accordance with the laws, rules, and regulations of the State of Colorado. Pursuant to C.R.S. §37-92-305(8), the State Engineer shall curtail all out-of-priority diversions the depletions of which are not so replaced as to prevent injury to vested water rights.

18. The Applicant shall install and maintain such staff gages and water measuring devices as deemed essential by the State Engineer or the Division Engineer, and the same shall be installed and operated in accordance with the instructions of that office. In addition, Applicant shall be required to provide acceptable accounting forms to the Division Engineer and Water Commissioner annually or as otherwise reasonably requested by the Division Engineer to allow for proper administration of this plan.

19. Pursuant to the provisions of C.R.S. §37-92-304(6), the plan for augmentation decreed herein shall be subject to the reconsideration of this Court, for the purpose of evaluating injury to vested water rights, for a period of five years from the date of the decree to be entered herein. Any person, within the five year period, may petition the Court to invoke its retained jurisdiction. Any such request shall state with particularity the factual basis for requesting that the Court evaluate injury to vested water rights associated with the operation of this Ruling and Decree, together with proposed decretal language to comply with the petition. Unless otherwise stated herein, the party filing the petition shall have the burden of going forward to establish the prima facie facts alleged in the petition. If the Court finds those facts to be established, Applicant shall thereupon have the burden of proof to show: (a) that any modification sought by Applicant will avoid injury to other appropriators, or (b) that any modification sought is not required to avoid injury to appropriators, or (c) that any term or condition proposed by Applicant in response to the petition does avoid injury to other appropriators. If no such petition is filed within the five year period and the retained jurisdiction period is not extended by the Court in accordance with the provisions of the statute, this matter shall become final under its own terms.

20. This Ruling of Referee shall be recorded in Lake County, Colorado. Copies of this Ruling, when entered by the Court, shall be mailed to the parties as required by statute.

Entered this 3rd day of February, 2006.

Mardell R. DiDomenico
Mardell R. DiDomenico
Water Referee
Water Division 2

LEGAL DESCRIPTION

A TRACT OF LAND, BEING A PORTION OF THE LAURA AND DAISY PLACER, U.S. MINERAL ENTRY NO.949 AND THE ALBERT A. BLOW PLACER, U.S. MINERAL ENTRY NO.361 LYING NORTHERLY OF LAKE COUNTY ROAD NO.4 (PREVIOUSLY KNOWN AS LAKE COUNTY ROAD NO.19) SITUATE IN THE NE $\frac{1}{4}$ SW $\frac{1}{4}$ AND THE E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 9 SOUTH, RANGE 80 WEST OF THE 6th P.M., COUNTY OF LAKE AND STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER $\frac{1}{4}$ CORNER OF AFORESAID SECTION 21, A BRASS CAP IN PLACE;

THENCE SOUTH 02°27'41" EAST ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 21, 970.73 FEET TO A POINT OF INTERSECTION WITH THE NORTHERLY RIGHT-OF-WAY LINE OF AFORESAID LAKE COUNTY ROAD NO.4, AN ALUMINUM CAP IN PLACE;

THENCE SOUTH 71°15'14" WEST ALONG SAID RIGHT-OF-WAY 630.80 FEET TO A POINT OF CURVE, AN ALUMINUM CAP IN PLACE;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY ON A CURVED LINE TO THE RIGHT, HAVING A DELTA ANGLE OF 12°54'07", A RADIUS OF 1489.67 FEET, AN ARC LENGTH OF 335.45 FEET, AND A LONG CHORD OF 334.74 FEET WHICH BEARS SOUTH 77°42'17.5" WEST TO A POINT OF TANGENT, AN ALUMINUM CAP IN PLACE;

THENCE SOUTH 84°09'21" WEST CONTINUING ALONG SAID RIGHT-OF-WAY 461.84 FEET TO A POINT OF CURVE, AN ALUMINUM CAP IN PLACE;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY ON A CURVED LINE TO THE RIGHT, HAVING A DELTA ANGLE OF 31°02'49", A RADIUS OF 806.86 FEET, AN ARC LENGTH OF 437.21 FEET, AND A LONG CHORD OF 431.89 FEET WHICH BEARS NORTH 80°19'14.6" WEST TO A POINT OF REVERSE CURVE, AN ALUMINUM CAP IN PLACE;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY ON A CURVED LINE TO THE LEFT, HAVING A DELTA ANGLE OF 4°12'34", A RADIUS OF 1809.86 FEET, AN ARC LENGTH OF 132.97 FEET, AND A LONG CHORD OF 132.94 FEET WHICH BEARS NORTH 66°54'06.8" WEST TO A POINT OF INTERSECTION WITH THE WEST LINE OF AFORESAID E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ OF SECTION 21;

THENCE NORTH 00°34'17" WEST ALONG SAID WEST LINE, 1185.81 FEET TO THE C-W-W $\frac{1}{64}$ CORNER OF SAID SECTION 21, A BRASS CAP IN PLACE;

THENCE SOUTH 89°24'28" EAST ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 21, 634.03 FEET TO THE C-W $\frac{1}{6}$ CORNER OF SAID SECTION 21, AND 1902.086 FEET TO THE POINT OF BEGINNING.

Bearings are referred to Astronomic North.