

Colorado Supreme Court  
2 East 14th Avenue  
Denver, Colorado 80203

Appeal from: DISTRICT COURT,  
WATER DIVISION 1  
Case No. 2019CW3220

**Opposers-Appellants:**

FRANKTOWN CITIZENS COALITION  
II, INC. and WEST ELBERT COUNTY  
WELL USERS ASSOCIATION

v.

**Applicant-Appellee:**

INDEPENDENCE WATER and  
SANITATION DISTRICT and  
CORDILLERA CORPORATION

**and**

**Appellee Pursuant to C.A.R. 1(e):**

DIVISION 1 ENGINEER.

**Attorney for Appellee Pursuant to  
C.A.R. 1(e) Corey Deangelis, Division  
Engineer for Water Division 1:**

Philip J. Weiser, Attorney General  
Derek L. Turner,  
First Assistant Attorney General  
William V. Allen,\*

Senior Assistant Attorney General Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10th Floor Denver, CO 80203 Telephone: 720-508-6926 E-mail: derek.turner@coag.gov Attorney Registration Numbers: 44091 (Turner), 26386 (Allen) *Counsel of Record	Supreme Court Case No.: 2023SA154
<b>MOTION FOR ENLARGEMENT OF TIME TO FILE A          PETITION FOR RE-HEARING</b>	

Appellee Pursuant to C.A.R. (1)(e), Corey Deangelis, Division Engineer for Water Division 1 (the “Division Engineer”), hereby moves this honorable Court, pursuant to C.A.R. 26(c), for an enlargement of time of twenty-eight days in which to submit a petition for rehearing pursuant to C.A.R. 40. A petition for hearing is currently due February 24, 2025. The Division Engineer respectfully requests an additional twenty-eight days within which to submit a petition for rehearing, to and including March 24, 2025. Good cause exists for this request, as detailed below:

1. The Division Engineer is an automatic appellee in this case

pursuant to C.A.R. 1(e).<sup>1</sup>

2. Counsel for the Division Engineer conferred with attorneys for both Appellants and Appellees regarding the relief sought by this Motion. Appellants do not oppose the extension requested by the Division Engineer. Appellees advised that due to the limited opportunity to evaluate the motion prior to its filing, Appellees take no position on the motion.

3. The issues in this case, as presented in the Notice of Appeal and briefed before this Court, generally involved a relatively narrow question: whether a water court can “apply the anti-speculation doctrine in a proceeding to amend a plan for augmentation that would augment depletions caused by the withdrawal of not nontributary groundwater rights.” Joint Notice of Appeal at 4, Case No. 2023SA154 (June 19, 2023).

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<sup>1</sup> As this Court recognized in *Wadsworth v. Kuiper*, 562 P.2d 1114, 1117 (Colo. 1977), “[t]he provisions of subsection 1(e) of the Colorado Appellate Rules were adopted in furtherance of the 1969 [Water Right Determination and Administration] Act.” Under the 1969 Act, the State Engineer, through the offices of the Division Engineer in each water division, “is responsible for the administration and distribution of the waters of the state . . . as specified in article 92 of the Colorado Revised Statutes.” *Bar 70 Enterprises, Inc. v. Tosco Corp.*, 703 P.2d 1297, 1304 (Colo. 1985). “This responsibility carries with it a clear obligation to represent the public interest in proceedings involving water rights.” *Id.* (citing *Wadsworth*, 562 P.2d 1114).

4. A decision on that narrow issue would have applied only to a unique and relatively uncommon subset of water court proceedings in Colorado: amendments to plans for augmentation decreed for non-tributary groundwater. Such groundwater is “unique to the Denver Basin,” and is administered “separately from tributary water” in recognition of its distinct character and location in the aquifers of the Denver Basin. *Parker Water & Sanitation Dist. v. Rein*, 2024 CO 71M, ¶12 n.6. Because the issue was so narrow and the potential impacts so limited, the Division Engineer did not participate in the underlying briefing and counsel did not enter an appearance.

5. Yet, in just the past few weeks, the breadth of the issue and the potential impacts of a decision have expanded beyond that narrow question. The Court’s February 10, 2025 Opinion announced a new standard that could apply statewide to every water court application seeking a plan for augmentation to augment out of priority diversions of tributary water—numbering in the hundreds each year across the state—not just those handful of yearly applications involving non-tributary groundwater in the Denver Basin aquifers. Importantly,

this Court's ruling could apply to applications involving tributary water rights for which the Colorado Constitution, statutes, and this Court's extensive caselaw, proscribe legal principles designed to protect Colorado's prior appropriation system that governs rights to divert and use Colorado's public water resources. In doing so, the decision could impact each of the seven Division Engineers and their administration of water rights in their respective divisions. Because of the complicated nature of the interplay of law described above, and the relatively short timeframe in which the Engineers learned of their potential impacts, the Division Engineer desires additional time to review and consider the ruling and reasoning of this Court's Opinion to determine if a petition for rehearing may be warranted.

6. Additional time is also needed for undersigned counsel to adequately understand the Court's decision and the arguments briefed by the parties, so that they may advise the Division Engineer on the best course of action. The undersigned counsel has just finished one trial and is slated to be out of town on a long-planned trip until March 6<sup>th</sup>, meaning it will be impossible for counsel to provide this matter with

meaningful attention prior to the current pleading due date.

7. To be clear, the Division Engineer's interest in filing this Motion, and in any petition for rehearing that may be filed, to review of the impacts and scope of the Court's reasoning as applied to statewide plans for augmentation. The Division Engineer would not intend

8. Accordingly, in light of the unanticipated change in the scope of the issue decided and the potential for a decision to reach beyond Water Division 1 and the adjudication of water rights in non-tributary Denver Basin groundwater, as well as the other reasons stated herein, the Division Engineer respectfully requests an extension of twenty-eight days, to and including March 24, 2025, to file a Petition for Re-Hearing.

9. No party will be prejudiced by the requested extension, and the extension is both warranted and in the public interest, meaning there is good cause under C.A.R. 26(c) for the requested enlargement.

WHEREFORE, the Division Engineer respectfully requests an enlargement of time of twenty-eight days, up to and including March 24, 2025, to file a Petition for Re-Hearing.

Dated this 24th day of February, 2025.

PHILIP J. WEISER  
Attorney General

*/s/ Derek Turner*

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Natural Resources and Environment  
Section  
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## CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> day of February, 2025, I served the foregoing **MOTION FOR ENLARGEMENT OF TIME TO FILE A PETITION FOR RE-HEARING** via Colorado Courts E-Filing upon all parties of record.

Party Name	Party Type	Attorney/Paraprofessional Name
Christopher Dale Cummins	Attorney	N/A
Cordillera Corporation	Opposer-Appellee	N/A
Division 1 Engineer	Appellee Pursuant to C.A.R. 1(e)	Division 1 Water Engineer (State of Colorado DWR Division 1)
Franktown Citizens Coalition II, Inc.	Opposer-Appellant	David Michael Shoheit (Monson Cummins Shoheit and Farr LLC)
Independence Water And Sanitation District	Applicant-Appellee	David S Hayes (Hayes Poznanovic Korver LLC) Eric Krisberg Trout (McGeady Becher Cortese Williams PC) Matthew Steven Poznanovic (Hayes Poznanovic Korver LLC)
State Engineer	Appellee Pursuant to C.A.R. 1(e)	Division 1 Water Engineer (State of Colorado DWR Division 1)
West Elbert County Well Users Association	Opposer-Appellant	David Michael Shoheit (Monson Cummins Shoheit and Farr LLC)

*/s/Melissa J. Ciener*



*Pursuant to C.A.R. 30 printed or printable copies of this document bearing the original, electronic, or scanned signature are on file in the offices of Colorado Department of Law.*