

The water rights at issue were decreed to the Morgan Drainage District in Case No. CA 1744, the source of these water rights is “water from underground seepage, which seepage is not tributary to nor a part of any natural stream of the State of Colorado” and diversion of these water rights is authorized through use of five decreed seepage diversion ditches.

Approximately five years prior to filing the subject Application, Applicant installed an undecreed point of diversion in a decreed seepage diversion ditch owned by the Morgan Drainage District. Applicant’s undecreed diversion structure is comprised of a check dam and pump. The Application sought to change the point of diversion of his interest in the Morgan Seepage Ditch to the undecreed diversion structure as an alternate point of diversion. Applicant’s undecreed diversion structure is located upstream of Opposers’ decreed point of diversion. Opposers asserted that this undecreed diversion structure causes injury to their water rights.

Approximately 2½ years after filing the Application, the Applicant filed a Motion to Dismiss the Application. Opposers filed a Response seeking dismissal of the Application subject to certain terms and conditions, being: an order requiring Applicant to remove the undecreed diversion structure and the award of the costs to Opposers pursuant to C.R.C.P. 54(d).

The Acting Water Judge entered an “Order Dismissing Application with Prejudice and Setting a Hearing on Whether the Applicant Should Be Required to Remove Diversion Structures.” Following a one-day hearing, the Acting Water Judge entered an “Order Finding Applicant's Use of Undecreed Diversion Structure on the Morgan Seepage Ditch Allowable with Conditions.”

Following entry of this Order, both the Applicant and Opposers filed pleadings requesting correction and clarification of the Order. The acting Water Judge entered an “Order Granting in Part and Denying in Part Parties' Requests to Amend Order Finding Applicant's Use of Undecreed Diversion Structure on the Morgan Seepage Ditch Allowable with Conditions” and an “Amended Order Finding Applicant's Use of Undecreed Diversion Structure on the Morgan Seepage Ditch Allowable with Conditions.”

B. The judgments or orders being appealed and the basis for the Court's jurisdiction:

Opposers are appealing the "Amended Order Finding Applicant's Use of Undecreed Diversion Structure on the Morgan Seepage Ditch Allowable with Conditions" entered on November 12, 2025.

The Supreme Court has jurisdiction over this appeal pursuant to Rule 1(a)(2) and Rule 1(e), C.A.R.

C. Whether the judgment or orders resolved all issues pending before the trial court including attorney fees and costs:

The "Amended Order Finding Applicant's Use of Undecreed Diversion Structure on the Morgan Seepage Ditch Allowable with Conditions" is final and has 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):

The judgment was made final for purposes of appeal pursuant to C.R.C.P. 54(b).

E. The date the judgment or order was entered and the date of mailing to counsel:

The "Amended Order Finding Applicant's Use of Undecreed Diversion Structure on the Morgan Seepage Ditch Allowable with Conditions" was entered on November 12, 2025 and served electronically on said date.

F. Whether there were any extensions granted to file any motion for post trial relief:

No extensions to file motions for post-trial relief were requested.

G. The date any motion for post trial relief was filed:

Opposers filed their “Combined Motion to Correct Findings and Amend Judgment” on September 12, 2025. Applicant also filed his “Response” on September 12, 2025.

H. The date any motion for post trial relief was denied or deemed denied under C.R.C.P. 59(j):

The acting Water Judge entered an “Order Granting in Part and Denying in Part Parties' Requests to Amend Order Finding Applicant's Use of Undecreed Diversion Structure on the Morgan Seepage Ditch Allowable with Conditions” on November 8, 2025 and, on November 12, 2025, the Acting Water Judge entered an “Amended Order Finding Applicant's Use of Undecreed Diversion Structure on the Morgan Seepage Ditch Allowable with Conditions.”

I. Whether there were any extensions granted to file any notices of appeal:

No extension to file the Notice of Appeal was requested.

2. Advisory listing of issues to be raised on appeal:

A. Whether the trial court erred when it authorized the continued use of an undecreed diversion structure located in a decreed ditch not owned by the Applicant.

B. Whether the trial court erred when it allowed Applicant’s continued use of an undecreed diversion structure located in a decreed ditch when the owner of the ditch denied such use and where the owner of the undecreed diversion structure failed to obtain a declaratory judgment authorizing use of the same.

C. Whether the trial court erred when it allowed a change of water right which was not the subject of the application for change of water right before the trial court.

D. Whether the trial court failed to impose terms and conditions sufficient to prevent injury to water rights owned by Opposers and other water right owners when it authorized the continued use of an undecreed diversion structure.

3. Transcript:

A transcript is necessary for this Court to resolve the issues to be raised on appeal. Opposers will file a Designation of Transcript with the Water Court Clerk's office within seven days.

4. Whether the order on review was issued by a magistrate where consent was necessary.

The order on review was not issued by a magistrate where consent was necessary.

5. Names of counsel for the Parties:

Attorney for Appellants/Opposers: Stéphane Walter Atencio, Reg. No. 13129, S. W. Atencio & Associates, PC, 4164 Austin Bluffs Parkway #420, Colorado Springs, CO 80918; (719) 589-6005, steve@atenciolaw.net.

Attorney for Appellee/Applicant Jason D. Coombs: none.

Attorney for Appellee Craig W. Cotten, Division Engineer for Water Division No. 3: Christopher J. Davis, Assistant Attorney General, and Derek L. Turner, First Assistant Attorney General; Natural Resources & Environment Section, Colorado Attorney General's Office, 1300 Broadway, 10th Floor Denver, CO 80203; telephone: (720) 508-6280 (Davis); (720) 508-6926 (Turner); Email: christopher.davis@coag.gov; and, derek.turner@coag.gov.

6. Appendix containing judgment or order being appealed.

An appendix containing a copy of the “Amended Order Finding Applicant's Use of Undecreed Diversion Structure on the Morgan Seepage Ditch Allowable with Conditions” is filed contemporaneously herewith.

Dated this 30th day of December, 2025.

/s/ Stéphane Walter Atencio

Stéphane Walter Atencio, #13129
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December, 2025, a true and accurate copy of this Notice of Appeal was served on all counsel or parties of record via email.

I further certify that an advisory copy of this Notice of Appeal was served on the Clerk of the Water Court, via ICCES in District Court, Water Division No. 3, Case No. 2023CW3002, within the time for its filing in this court.

/s/ Stéphane Walter Atencio

This document was filed with the Court through the ICCES electronic filing procedures pursuant to C.R.C.P. Rule 121 §1-26. A printed or printable copy with original, electronic, or scanned signature(s) is on file in the office of S. W. Atencio & Associates, PC.