

## Boulder Creek Commons Water Augmentation Issue

BCC, LLC will comply with Colorado law and all requirements of the Colorado State Engineer in regard to its creation of wetlands to mitigate the wetland impacts of the project. To that end, BCC, LLC has retained water counsel for this project and is in the process of retaining a water resource engineer for the technical aspects of the plan. We have, in the meantime, made a preliminary assessment, with water counsel, of the wetlands project and the approaches available to comply with Colorado law.

### Project Wetland Impacts, Impact-Creation Ratio and Mitigation Requirement

|       | Impact<br>(acres) | Enhancement<br>(acres) | Ratio | Mitigation Requirement<br>(acres) |
|-------|-------------------|------------------------|-------|-----------------------------------|
| Corps | 0.263             |                        | 1:1   | 0.263                             |
| City  | 0.962             |                        | 1:2   | 1.923                             |
| City  |                   | 0.771                  | 1:1   | 0.771                             |

### Wetland Mitigation Plan

Wetland Creation Plan – 2.694 acres on-site creation; satisfies both Corps and City

Total Wetland Impact and Enhancement, Corps and City = 1.996

Acreage in excess of 1:1 (2.694 – 1.996) = 0.698 acres

2.514 acres of the 2.694 acres of Wetland Creation and Enhancement i.e. all but 0.18 acres would be irrigated. The remaining 0.18 acres of wetland area does not need to be irrigated.

BCC, LLC or its affiliates own three shares in Dry Creek No. 2 Ditch diverting out of South Boulder Creek, which is a senior water right with the 9<sup>th</sup> priority on South Boulder Creek. The three shares irrigated fields on the Boulder Creek Commons property. Since BCC, LLC owns senior water rights that historically irrigated over twenty acres of fields on the project site, we have been advised that there may be two options for the wetland creation on this site: (1) irrigation of the wetland mitigation areas with the Dry Creek No. 2 Ditch shares, in compliance with the State Engineer's *Policies Concerning Wetland Vegetation*, which may not require the filing of an augmentation plan; and/or (2) filing an augmentation plan in water court to augment the depletions required by the wetland mitigation. Which of these options will be available to and/or optimal to the BCC, LLC to pursue are dependent on many factors that BCC, LLC is in the process of analyzing with its consultants. Under any of the worst-case scenarios that we might encounter under any of the above options, however, we have been advised that the historic consumptive use of the Applicant's three shares of Dry Creek No. 2 on the project property will likely be far more than sufficient to permit successful execution of a wetland mitigation plan in compliance with Colorado law.