

Consent Agenda Item 1.c

March 20-21, 2019 Board Meeting

Case No. 18CW3211 (Water Division 1); The Evans Ranch Preservation Association and Mountain Mutual Reservoir Company

Summary of Water Court Application

This is an Application for water rights and a plan for augmentation.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 2019 to protect CWCB's instream flow water rights.

CWCB Instream Flow Water Rights

The CWCB holds instream flow water rights, including the following water rights in Water Division 1 in the Upper South Platte Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
94CW0258	Bear Creek	confl Truesdell Creek	inlet Evergreen Lake	10 (4/15 - 10/15) 5 (10/16 - 4/14)	09/13/1994
94CW0262	Corral Creek	confl Vance Creek	confl Bear Creek	2 (7/16 - 3/31) 5 (4/1 - 7/15)	09/13/1994
94CW0248	Vance Creek	headwaters in vicinity	confl Corral Creek	1.5 (7/16 - 3/31) 3 (4/1 - 7/15)	09/13/1994

Potential for Injury

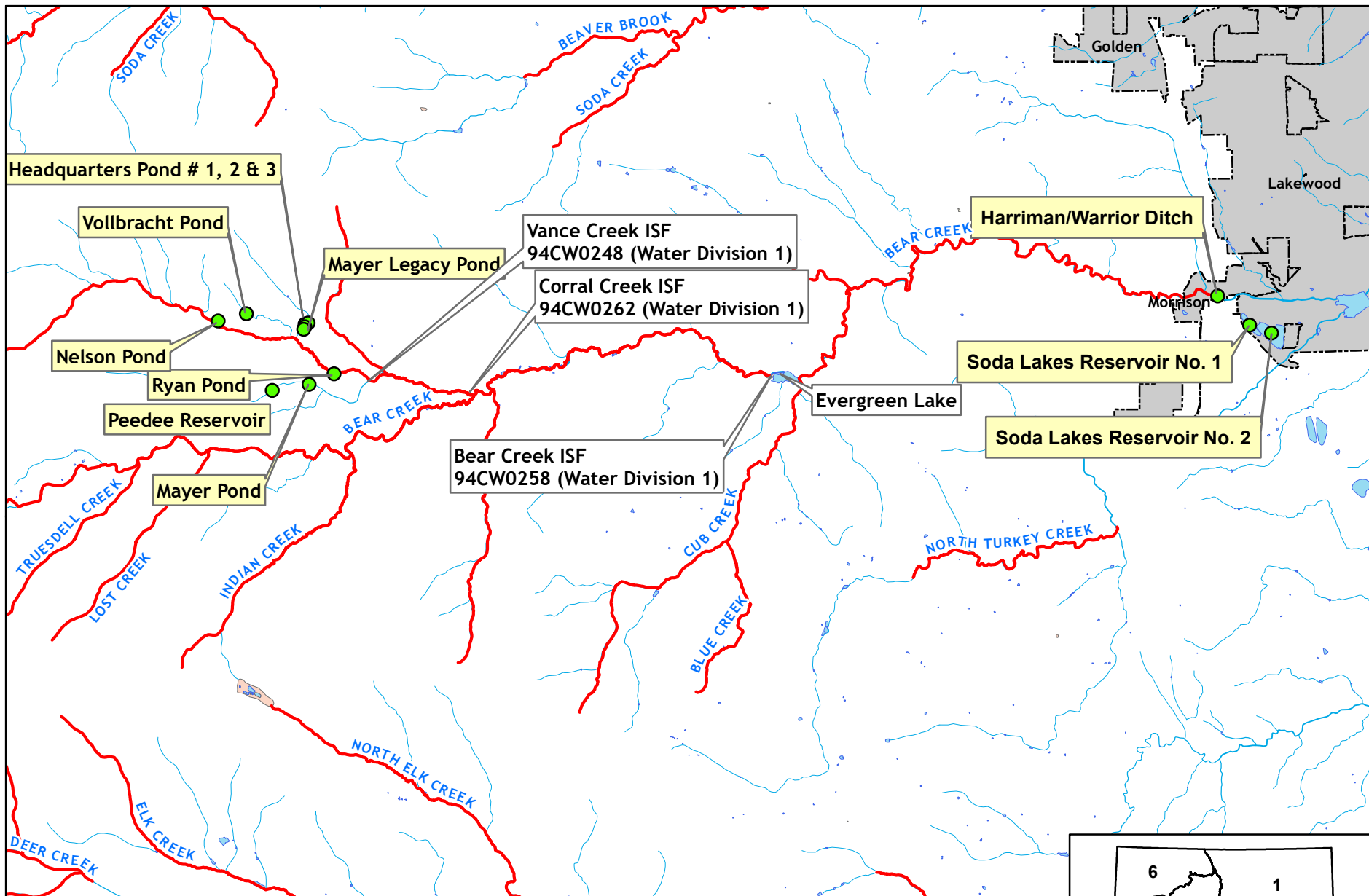
- The administrative exchange under Applicant's proposed augmentation plan should be defined clearly with a reference to intervening instream flow water rights.
- The possible flow through water right operations could injure the CWCB's instream flow water rights because it is fully depletive to a segment of the intervening instream flow.
- The proposed plan for augmentation with exchange may not replace depletions in the proper time, place and amount, which could injure the CWCB's instream flow water rights.

Other Objectors

Statements of Opposition were also filed by Brent Redstone and Anne Vanderwerken, Evergreen Metropolitan District, Foothills Park and Recreation District, Forest Hills Metropolitan District, Margaret E. Davis Trust, and Town of Morrison.

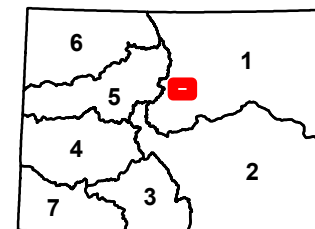
Attorney Representing CWCB

Christopher R. Stork, Assistant Attorney General, is assigned to this case and can be contacted at christopher.stork@coag.gov, or 720-508-6311.



March 20-21, 2019 CWCB Board Meeting
 Consent Agenda Item 1.c: Statement of Opposition
 Case No. 18CW3211 (Water Division 1)
 The Evans Ranch Preservation Association and
 Mountain Mutual Reservoir Company

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**DISTRICT COURT, WATER DIVISION 1, COLORADO
DECEMBER 2018 WATER RESUME PUBLICATION**

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN WATER DIV. 1

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications and certain amendments filed in the Office of the Water Clerk during the month of **DECEMBER 2018** for each County affected.

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18CW3211, Evans Ranch Preservation Association, 8001 S. Interport Blvd., #250, Englewood, CO 80112, and Mountain Mutual Reservoir Company, 6949 Hwy. 73, #15, Evergreen, CO 80439 (Frederick A. Fendel, III, and Matthew S. Poznanovic, Petrock Fendel Poznanovic, P.C., 700 17th Street, #1800, Denver, CO 80202), **APPLICATION FOR WATER RIGHTS AND PLAN FOR AUGMENTATION, JEFFERSON AND CLEAR CREEK COUNTIES**. 2. Summary of applications: Evans Ranch Preservation Association ("ERPA") is a Colorado nonprofit corporation, and is the homeowners' association for the Evans Ranch, in Clear Creek County. ERPA and its members own one decreed and eight undecreed ponds on Peedee Creek, Dry Creek, Metz Creek, and Vance Creek, all tributaries to Bear Creek. This application seeks confirmation of storage rights for the undecreed ponds and approval of a plan for augmentation for all the ponds. The source of augmentation water is 159.2 shares of stock in the Mountain Mutual Reservoir Company, representing 5 acre feet per year from MMRC's interest in the water rights of the Soda Lakes Reservoir and Mineral Water Company, Harriman Ditch Company, and Warrior Ditch previously changed in Case No. 01CW293. **APPLICATION FOR WATER RIGHTS**. The nine ERPA Ponds, described individually below, are long-existing onstream and off-stream ponds on the Evans Ranch. Locations are relative to the 6th P.M., in Clear Creek County, Colorado. Legal description quarter quarters obtained from GIS data published by the U.S. Department of Interior, Bureau of Land Management (BLM), titled BLM National Public Land Survey System Polygons - National Geospatial Data Asset. 3. Ryan Pond, WDID 0903326. 3.1. Location: SE1/4NW1/4, section 8, T5S, R72W, at the approximate UTM coordinates sourced from ArcGIS, Easting: 459437.5 meters, Northing: 4387069.2 meters (NAD83 UTM Zone 13N). 3.1.1. Point of diversion: Ryan Pond is an off-stream pond. Its point of diversion from Vance Creek is located in the SE1/4NW1/4, section 8, T5S, R72W, at the approximate UTM coordinates sourced from a hand-held Garmin GPS, Easting: 459383.1 meters, Northing: 4387083.7 meters (NAD83 UTM Zone 13N). 3.2. Amount: 4.2 acre feet,

with the right to fill and refill to maintain a full pond. 3.3. Use: fire prevention, stock and wildlife watering, piscatorial, recreation, maintenance and preservation of wildlife and aesthetic values, augmentation and replacement of evaporation, lake level maintenance. 3.4. Priority date: December 19, 2018. 3.5: Source: Vance Creek. 4. Mayer Pond, WDID 0903323. 4.1. Location: NW1/4SW1/4, section 8, T5S, R72W, at the approximate UTM coordinates sourced from ArcGIS, Easting: 458869.4 meters, Northing: 4386735.0 meters (NAD83 UTM Zone 13N). 4.1.1. Point of diversion: Mayer Pond is an off-stream pond. Its point of diversion from Peedee Creek is located in the NW1/4SW1/4, section 8, T5S, R72W, at the approximate UTM coordinates sourced from a hand-held Garmin GPS, Easting: 458756.2 meters, Northing: 4386767.9 meters (NAD83 UTM Zone 13N). 4.2. Amount: 2.1 acre feet, with the right to fill and refill to maintain a full pond. 4.3. Use: fire prevention, stock and wildlife watering, piscatorial, recreation, maintenance and preservation of wildlife and aesthetic values, augmentation and replacement of evaporation, lake level maintenance. 4.4. Priority date: December 19, 2018. 4.5: Source: Peedee Creek. 5. Headquarters Pond 2, WDID 0903321. 5.1. Location: NE1/4SE1/4, section 6, T5S, R72W, at the approximate UTM coordinates sourced from ArcGIS, Easting: 458668.7 meters, Northing: 4388416.9 meters (NAD83 UTM Zone 13N). 5.1.1. Point of diversion: Headquarters Pond 2 is an off-stream pond. Its point of diversion from Metz Creek is located in the NE1/4SE1/4, section 6, T5S, R72W, at the approximate UTM coordinates sourced from a hand-held Garmin GPS, Easting: 458672.4 meters, Northing: 4388433.4 meters (NAD83 UTM Zone 13N). 5.2. Amount: 0.1 acre feet, with the right to fill and refill to maintain a full pond. 5.3. Use: fire prevention, stock and wildlife watering, piscatorial, recreation, maintenance and preservation of wildlife and aesthetic values, augmentation and replacement of evaporation, lake level maintenance. 5.4. Priority date: December 19, 2018. 5.5: Source: Metz Creek. 6. Headquarters Pond 1, WDID 0903320. 6.1. Location: SE1/4NE1/4, section 6, T5S, R72W, at the approximate UTM coordinates sourced from ArcGIS, Easting: 458726.5 meters, Northing: 4388468.7 meters (NAD83 UTM Zone 13N). 6.2. Amount: 1.1 acre feet, with the right to fill and refill to maintain a full pond. 6.3. Use: fire prevention, stock and wildlife watering, piscatorial, recreation, maintenance and preservation of wildlife and aesthetic values, augmentation and replacement of evaporation, lake level maintenance. 6.4. Priority date: December 19, 2018. 6.5: Source: Metz Creek. 7. Headquarters Pond 3, WDID 0903322. 7.1. Location: NE1/4SE1/4, section 6, T5S, R72W, at the approximate UTM coordinates sourced from ArcGIS, Easting: 458635.7 meters, Northing: 4388358.8 meters (NAD83 UTM Zone 13N). 7.2. Amount: 0.1 acre feet, with the right to fill and refill to maintain a full pond. 7.3. Use: fire prevention, stock and wildlife watering, piscatorial, recreation, maintenance and preservation of wildlife and aesthetic values, augmentation and replacement of evaporation, lake level maintenance. 7.4. Priority date: December 19, 2018. 7.5: Source: Metz Creek. 8. Vollbracht Pond, WDID 0903327. 8.1. Location: SE1/4NE1/4, section 1, T5S, R73W, at the approximate UTM coordinates sourced from ArcGIS, Easting: 457015.5 meters, Northing: 4388718.3 meters (NAD83 UTM Zone 13N). 8.1.1. Alternate point of diversion: in addition to the pond itself, the Vollbracht Pond diverts from Dry Creek and groundwater tributary to Dry Creek via a gallery in the bed of the creek, located about one-quarter mile upstream of the pond in the NE1/4NE1/4, section 1, T5S, R73W, at the approximate UTM coordinates sourced from a hand-held Garmin GPS, Easting: 456766.4 meters, Northing: 4389061.4 meters (NAD83 UTM Zone 13N). Water is conveyed from the gallery to the Vollbracht Pond via pipeline. 8.2. Amount: 1.2 acre feet, with the right to fill and refill to maintain a full pond. 8.3. Use: fire prevention, stock and wildlife watering, piscatorial, recreation, maintenance and preservation of wildlife and aesthetic values, augmentation and replacement of evaporation, lake level maintenance. 8.4. Priority date: December 19, 2018. 8.5: Source: Dry Creek. 9. Mayer Legacy Pond, WDID 0903324. 9.1. Location: NE1/4SE1/4, section 6, T5S, R72W, at the approximate UTM coordinates sourced from ArcGIS, Easting: 458616.2 meters, Northing: 4388309.1 meters (NAD83 UTM Zone 13N). 9.2 Amount: 0.3 acre feet, with the right to fill and refill to maintain a full pond. 9.3 Use: fire prevention, stock and wildlife watering, piscatorial, recreation, maintenance and preservation of wildlife and aesthetic values, augmentation and replacement of evaporation, lake level maintenance. 9.4 Priority date: December 19, 2018. 9.5: Source: Metz Creek. 10. Nelson Pond, WDID 0903325. 10.1 Location: NE1/4SW1/4, section

1, T5S, R73W, at the approximate UTM coordinates sourced from ArcGIS, Easting: 456225.1 meters, Northing: 4388518.1 meters (NAD83 UTM Zone 13N). 10.2 Amount: 0.8 acre feet, with the right to fill and refill to maintain a full pond. 10.3 Use: fire prevention, stock and wildlife watering, piscatorial, recreation, maintenance and preservation of wildlife and aesthetic values, augmentation and replacement of evaporation, lake level maintenance. 10.4 Priority date: December 19, 2018. 10.5: Source: Vance Creek 11. Peedee Reservoir, WDID 0903748. Decreed in Case No. W-0392, made absolute in Case Nos. W-392 and W-3046 for 15 acre feet for stock watering and fire prevention with a priority date of August 30, 1968. This application seeks a new water right for additional uses. 11.1 Location: SW1/4NE1/4, section 7, T5S, R72W. 11.1.1 Point of diversion: Peedee Reservoir is an off-stream pond. Its point of diversion from Peedee Creek is not specified in its decrees, but is located in the NE1/4 of the SW1/4, Section 7, T5S, R72W, at the approximate UTM coordinates sourced from a hand-held Garmin GPS, Easting: 457753.7 meters, Northing: 4386602.0 meters (NAD83 UTM Zone 13N). 11.2 Amount: 7.6 acre feet, with the right to fill and refill to maintain a full pond. 11.3 Use: wildlife watering, piscatorial, recreation, maintenance and preservation of wildlife and aesthetic values, augmentation and replacement of evaporation, lake level maintenance. 11.4 Priority date: December 19, 2018. 11.5 Source: Peedee Creek and Captain's Rock Gulch. **APPLICATION FOR PLAN FOR AUGMENTATION.** 12. Augmented structures: the nine ERPA ponds identified above. 13. Source of augmentation: ERPA owns 159.2 shares of stock in the Mountain Mutual Reservoir Company, representing a pro rata interest in the following water rights: 13.1. Harriman Ditch. 7.71 shares of the 400 shares of capital stock (1.93%), issued and outstanding in the Harriman Ditch Company. The Harriman Ditch Company owns the following direct flow water rights decreed in Civil Action No. 6832, on February 4, 1884: TABLE IS IN ORIGINAL APPLICATION. The Bear Creek headgate of the Harriman Ditch is located on the South bank of Bear Creek in the NE1/4 NE1/4, Section 2, Township 5 South, Range 70 West, 6th P.M., Jefferson County, Colorado. The Turkey Creek headgate of the Harriman Ditch is located on the South bank of Turkey Creek near the Southwest corner of Section 6, Township 5 South, Range 69 West, 6th P.M., Jefferson County. The ditch was originally decreed for irrigation, domestic and municipal purposes. 13.2. Warrior Ditch. 2.0 shares of the 160 shares of capital stock (1.25%), issued and outstanding in the Warrior Ditch Company. The Warrior Ditch Company owns the following direct flow water rights decreed in Civil Action No. 6832 on February 4, 1884: TABLE IS IN ORIGINAL APPLICATION. The headgates of the Warrior Ditch are the same as those of the Harriman Ditch. The Ditch was originally decreed for irrigation purposes. 13.3. Soda Lakes Reservoir Nos. 1 and 2. 8.71 shares of the 400 shares of capital stock (2.18%), issued and outstanding in the Soda Lakes Reservoir and Mineral Water Company. The Soda Lakes Reservoir and Mineral Water Company owns the following storage water rights decreed in Civil Action No. 91471 on September 24, 1935, to the Soda Lake Reservoir Nos. 1 and 2: 1,794 acre feet for irrigation purposes, and 598 acre feet for storage for supplying the City of Denver with water for municipal purposes, including the watering of lawns and gardens. Date of appropriation: February 11, 1893, and a refill right decreed in Case No. 00CW228, District Court, Water Division 1. The Soda Lakes Reservoirs are located in Section 1, Township 5 South, Range 70 West, 6th P.M., Jefferson County. The reservoirs are filled through the Harriman Ditch. 14. Statement of plan for augmentation: the plan is intended to keep the ERPA ponds full at all times, or to the maximum extent allowed by the water rights and augmentation plan. Out of priority gross evaporation from the off-stream ponds and net evaporation from the onstream ponds will be calculated and replaced by releases of the Mountain Mutual water when conditions allow. Evaporation from the nine ERPA ponds has been estimated using the National Oceanic and Atmospheric Administration (NOAA) Technical Report NWS 33 Evaporation Atlas for the Contiguous 48 United States, to be less than 5 AF annually, with the typical period of ice cover being from December 1st through March 15th. 14.1 When the call is from a water right located below the ponds but upstream of the Harriman Ditch, or if there is no remaining Mountain Mutual replacement water, releases to offset evaporation may be made from one or more of the ERPA ponds to replace evaporation from any or all of the ERPA ponds, and/or, inflows will be curtailed to prevent out-of-priority diversions. 15. To the extent replacement of upstream evaporation includes operation of an exchange or exchanges,

ERPA claims an exchange of 2.5 cfs with a priority date of December 19, 2018, from the headgate of the Harriman Ditch, from the Soda Lakes, and from the confluence of Bear Creek and Turkey Creek upstream to each of the ERPA ponds to replace evaporation and to replace any storage releases. The source of substitute supply is the Mountain Mutual water. 16. Owners of land on which structures are located: 16.1 The ERPA ponds are located on land owned by ERPA and the following members of ERPA: Latitude 39-38 Ltd, 2380 Evans Ranch Road, Evergreen, CO 80439 Summit Ranch LLC, 3132 Evans Ranch Road, Evergreen, CO 80439. Good Hearted Parents LLLP, 2051 Evans Ranch Road, Evergreen, CO 80439 Mayers Legacy LLC, 1970 Evans Ranch Road, Evergreen, CO 80439 Elk Meadows Ranch at Mount Evans LLC, 2067 Evans Ranch Road, Evergreen, CO 80439 Vanderwerken Anne & Brent Redstone, 3999 Evans Ranch Road, Evergreen, CO 80439 16.2 The Harriman Ditch is located on land owned by: Harriman Ditch Company c/o Jerry Foster 1600 W. 12th avenue Denver, CO 80204. 16.3 The Soda Lakes Reservoirs 1 and 2 are on land owned by: Soda Lakes Reservoir and Mineral Water Co. c/o Jerry Foster 1600 W. 12th Avenue Denver, CO 80204. 17. Maps of the ERPA ponds and exchanges are filed with this application as Exhibit A and Exhibit B, respectively. WHEREFORE, the Evans Ranch Preservation Association prays that its water rights be confirmed, its plan for augmentation be approved, and for such other and further relief as is justified by the evidence. Further, Applicants pray that this Court grant the application and for such other relief as seems proper in the premises.(10 pages).