

District Court, El Paso County, Colorado 270 South Tejon Street P.O. Box 2980 Colorado Springs, CO 80901 Telephone: (719) 452-5000	DATE FILED: September 1, 2017 1:08 PM FILING ID: 9254F84F3F72D CASE NUMBER: 2017CV32161
CASAS LIMITED PARTNERSHIP #4, a Colorado Limited Partnership, and IQ INVESTORS, LLC, a Colorado Limited Liability Company.  <p style="text-align: center;">Plaintiffs</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">PARK FOREST WATER DISTRICT</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<i>Attorneys for Plaintiff Casa Limited Partnership #4</i> Stephen A. Hess, Esq. (#16899) Allison T. Mikulecky, Esq. (#48831) SHERMAN & HOWARD L.L.C. 90 S. Cascade Ave., Suite 1500 Colorado Springs, CO 80903 Telephone: (719) 475-2440 Fax: (719) 635-4576 e-mail: <a href="mailto:shess@shermanhoward.com">shess@shermanhoward.com</a> <a href="mailto:amikulecky@shermanhoward.com">amikulecky@shermanhoward.com</a>	Case No.  Division:
<b>COMPLAINT AND JURY DEMAND</b>	

Plaintiff Casas Limited Partnership #4, through the undersigned counsel, states the following as its complaint against Defendant Park Forest Water District.

**Parties, Jurisdiction, and Venue**

1. Plaintiff Casas Limited Partnership #4 (“Casas”) is a Colorado Limited Partnership in good standing with a principal office address of 5390 North Academy, Suite 300, Colorado Springs, CO 80918. Plaintiff IQ Investors, LLC (“IQI”) is a Colorado limited liability company in good standing with a principal office address of 5390 North Academy, Suite 300, Colorado Springs, CO 80918.

2. Defendant Park Forest Water District (“PFWD”) is a special district formed under Colorado law with a principal place of business at 7340 McFerran Road, Colorado Springs, Colorado.

3. This Court has jurisdiction over PFWD because PFWD conducts business in Colorado. Venue is proper in this district because the dispute set out below involves a contract to be performed in Colorado.

### **Background Facts**

4. Plaintiffs each purchased real property together with water rights within the geographic boundaries of PFWD on or about February 29, 2012. Each Plaintiff acquired its real property with the intention of subdividing the properties for residential use (among other things) over the course of approximately two decades.

5. Several months after Plaintiffs acquired their properties, Plaintiffs and PFWD engaged in negotiations concerning use of Plaintiffs’ property for the benefit of PFWD. Specifically, PFWD owned excess water pumping and storage rights and needed facilities (three storage ponds) to exploit those rights. PFWD invited Plaintiffs to join their properties to PFWD.

6. Negotiations commenced in approximately October 2012. In June 2013, Black Forest experienced devastating wild fires that consumed several hundred houses and destroyed the foliage on thousands of acres of property. During the fire, government helicopters used Plaintiffs’ ponds as vital source of water to combat the fire. At the time of the fire, the five PFWD ponds were derelict from failed maintenance.

7. Although the fire was stopped north of Burgess Road and did not damage any property within PFWD, PFWD recognized that it had been remiss in providing fire protection to members of PFWD and acknowledged its responsibility to improve fire protection. In addition, PFWD did not even have emergency electric power generating capacity at the time of the fire, and had no capacity to employ electric pumps when Mountain View Electric (the primary power supplier) shut down power to the area during the Black Forest fire.

8. PFWD subsequently procured the capacity to operate two or three fire hydrants at a time, including addition of an emergency generator.

9. Plaintiffs accepted PFWD’s invitation to join PFWD in part to facilitate fire protection measures, and ultimately entered into an “Inclusion Agreement” with PFWD dated September 19, 2013.

10. In exchange for PFWD’s promise to deliver certified, safe domestic water, irrigation water, and maximum possible water for fire protection, Plaintiffs agreed to (a) contribute water rights to the District, (b) to pay District taxes and water rates, and (c) to finance the costs of infrastructure construction relating to the facilities that PFWD needed to exploit its water rights.

11. Fire protection infrastructure (pumps, lines, hydrants, emergency generators, and such) is useless without water, of course. PFWD recognized in 2013 that the only feasible source of storing water for fire protection for PFWD was the storage of water in Plaintiffs' ponds. In order for the ponds to be used for that purpose, the dams and overflow control mechanisms associated with the ponds required repair and maintenance.

12. Plaintiffs have incurred expenses of over \$120,000 for the purposes of repairing and maintaining the dams and overflow mechanisms associated with the ponds, which repairs and maintenance were undertaken for the ultimate benefit of PFWD.

13. Plaintiffs have included their properties within PFWD and paid taxes imposed by PFWD for several years.

14. PFWD has refused to honor its obligations under the Inclusion Agreement or its obligations under the Rules and Regulations of PFWD.

**First Claim for Relief  
Breach of Inclusion Agreement**

15. Plaintiffs incorporate herein the averments set forth above.

16. Plaintiffs and PFWD are parties to an express contract, the Inclusion Agreement.

17. Plaintiffs have fulfilled their obligations under the Inclusion Agreement or have a lawful excuse for not performing those obligations.

18. PFWD has breached the Inclusion Agreement in several respects, including:

- A. Failing to provide (and failing to acknowledge an obligation to provide) water in sufficient quantities to keep the three ponds owned by Plaintiffs filled to the extent PFWD has water rights to do so; and
- B. Failing to pay for damage to Plaintiffs' property caused during construction of PFWD pipelines; and
- C. Failing to provide domestic water service to the Plaintiffs' properties; and
- D. Purporting to "rescind" the Inclusion Agreement; and
- E. Failing to maintain PFWD facilities in accordance with health regulations.

19. As a consequence of the breaches outlined above, Plaintiffs have incurred economic losses.

WHEREFORE Plaintiffs seek the relief set out below.

**Second Claim for Relief**  
**Breach of PFWD Rules and Regulations**

20. Plaintiffs incorporate herein the averments set forth above.
21. Plaintiffs and PFWD are parties to an express contract, the Rules and Regulations of PFWD and related documents.
22. Plaintiffs have fulfilled their obligations under the Rules and Regulations or have a lawful excuse for not performing those obligations.
23. PFWD has breached the Rules and Regulations in several respects, including its failure to provide domestic water service to the Plaintiffs' properties.
24. As a consequence of the breaches outlined above, Plaintiffs have incurred economic losses.

WHEREFORE Plaintiffs seek the relief set out below.

**Demand for Relief**

Wherefore, Casas requests that the Court enter judgment in its favor and against Park Forest Water District for such damages as may be proved at trial, together with attorneys' fees, costs, expenses, and such other and further relief as the Court may deem just.

**Jury Demand**

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated this 1st day of September, 2017.

SHERMAN & HOWARD L.L.C.

*/s/ Stephen A. Hess*

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