

DISTRICT COURT, WATER DIVISION 2, STATE OF COLORADO

501 N. Elizabeth, Room 116  
Pueblo, Colorado 81003

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CASE NUMBER: 2017CW3038

**Plaintiffs:** THE PEOPLE OF THE STATE OF COLORADO, ex rel. KEVIN G. REIN, State Engineer, and STEVEN J. WITTE, Division Engineer for Water Division 2

v.

**Defendants:** STEVEN J. JACOBS JR., in his individual capacity, CASAS LIMITED PARTNERSHIP #4, a Colorado limited partnership, and IQ INVESTORS, LLC, a Colorado limited liability company

▲ COURT USE ONLY ▲

**Third Party Plaintiff:** STEVEN J. JACOBS JR., in his individual capacity, CASAS LIMITED PARTNERSHIP #4, a Colorado limited partnership, and IQ INVESTORS, LLC, a Colorado limited liability company

v.

**Third Party Defendant:** Park Forest Water District.

*Attorneys Defendants*

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Case No. 2017CW3038

**DEFENDANTS' SECOND AMENDED ANSWER TO VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF, PENALTIES, AND COSTS AND THIRD-PARTY COMPLAINT**

Defendants, through the undersigned counsel, state the following as their Second Amended Answer to the Verified Complaint for Injunctive Relief, Penalties, and Costs:

1. Defendants admit the averments of Paragraph 1 of the Complaint.
2. Defendants admit the averments of Paragraph 2 of the Complaint.
3. Defendants admit the averments of Paragraph 3 of the Complaint.
4. Defendants admit the averments of Paragraph 4 of the Complaint.
5. Defendants admit the averments of Paragraph 5 of the Complaint.
6. Defendants deny the averments of Paragraph 6 of the Complaint.
7. Defendants admit the averments of Paragraph 7 of the Complaint.
8. Defendants admit the averments of Paragraph 8 of the Complaint.
9. Defendants deny the averments of Paragraph 9 of the Complaint.
10. Defendants admit the averments of Paragraph 10 of the Complaint.
11. Defendants admit the averments of Paragraph 11 of the Complaint.
12. Defendants admit the averments of Paragraph 12 of the Complaint.
13. Defendants admit the averments of Paragraph 13 of the Complaint except that Ashley Wiechmann is a male and therefore “Mr. Wiechmann.”
14. Defendants admit the averments of Paragraph 14 of the Complaint except that Ashley Wiechmann is a male and therefore “Mr. Wiechmann.”
15. Defendants admit the averments of Paragraph 15 of the Complaint.
16. Defendants admit the averments of Paragraph 16 of the Complaint except to the extent that the ponds are characterized as “on-channel undecreed” ponds, which Defendant deny.

#### **JURISDICTION AND VENUE**

17. Defendants admit the averments of Paragraph 17 of the Complaint generally as characterizing this action, but specifically deny that the order is a lawful order.

18. Defendants admit the averments of Paragraph 18 of the Complaint.

19. Defendants admit the averments of Paragraph 19 of the Complaint to the extent it asserts that venue is proper herein, and deny the remaining averments of Paragraph 19 of the Complaint.

20. Defendants admit the averments of Paragraph 20 of the Complaint.

21. Defendants admit the averments of Paragraph 21 of the Complaint.

22. Defendants admit the averments of Paragraph 22 of the Complaint.

23. Defendants admit the averments of Paragraph 23 of the Complaint.

24. Defendants admit the averments of Paragraph 24 of the Complaint.

25. Defendants admit the averments of Paragraph 25 of the Complaint.

26. Defendants admit the averments of Paragraph 26 of the Complaint.

27. Defendants admit the averments of Paragraph 27 of the Complaint.

### **Defendants' Ponds**

28. Defendants admit the averments of the first sentence of Paragraph 28 of the Complaint and are without knowledge or information sufficient to form a belief as to the truth of the averments of the second sentence and therefore deny the same.

29. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 29 of the Complaint and therefore deny the same.

30. Defendants deny the averments of Paragraph 30 of the Complaint.

31. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 31 of the Complaint and therefore deny the same.

32. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 32 of the Complaint and therefore deny the same.

33. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 33 of the Complaint and therefore deny the same.”

34. Defendants deny the averments of Paragraph 34 of the Complaint.

35. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 29 of the Complaint and therefore deny the same.

36. Defendants admit that the letter speaks for itself as alleged in Paragraph 36 of the Complaint and deny that the date is accurate.

37. Defendants admit that the averments of Paragraph 37 of the Complaint accurately characterize a portion of the referenced letter.

38. Defendants admit that the averments of Paragraph 38 of the Complaint accurately characterize a portion of the referenced letter.

39. Defendants deny the averments of Paragraph 39 of the Complaint.

40. Defendants admit that the averments of Paragraph 38 of the Complaint accurately characterize a portion of the referenced letter.

41. Defendants admit that the averments of Paragraph 38 of the Complaint accurately characterize a portion of the referenced letter.

42. Defendants admit that the averments of Paragraph 38 of the Complaint accurately characterize PFWD's position, and deny the viability of that position by PFWD.

43. Defendants admit that the averments of Paragraph 43 of the Complaint accurately characterize a portion of the referenced letter.

44. Defendants deny the averments of Paragraph 44 of the Complaint.

#### **The Division Engineer's Order**

45. Defendants admit that the averments of Paragraph 45 of the Complaint accurately characterize a portion of the referenced letter.

46. Defendant admit the averments of Paragraph 46 of the Complaint.

47. Defendants admit that the averments of Paragraph 47 of the Complaint accurately characterize a portion of the referenced letter.

48. Defendants admit that the averments of Paragraph 48 of the Complaint accurately characterize a portion of the referenced document.

49. Defendant deny the averments of Paragraph 49 of the Complaint.

50. Defendants admit the averments of Paragraph 50 of the Complaint.

51. Defendants deny the averments of Paragraph 51 of the Complaint.

52. Defendants deny the averments of Paragraph 52 of the Complaint.

53. Defendants deny the averments of Paragraph 53 of the Complaint.

54. Defendants deny the averments of Paragraph 54 of the Complaint.

55. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 55 of the Complaint and therefore deny the same.

56. Defendants deny the averments of Paragraph 56 of the Complaint.

57. Defendants deny the averments of Paragraph 57 of the Complaint.

**FIRST CLAIM FOR RELIEF  
(Injunctive Relief)**

58. Defendants incorporate herein their responses to the individually numbered Paragraphs set out above.

59. Defendants deny the averments of Paragraph 59 of the Complaint with respect to the State Engineer's entitlement to relief.

60. Defendants admit the averments of Paragraph 60 of the Complaint and deny that it is applicable to this action.

61. Defendants admit the averments of Paragraph 61 of the Complaint and deny that it is applicable to this action."

62. Defendants admit the averments of Paragraph 62 of the Complaint and deny that it is applicable to this action."

63. Defendants admit the averments of Paragraph 63 of the Complaint.

64. Defendants deny the averments of Paragraph 64 of the Complaint.

65. Defendants deny the averments of Paragraph 65 of the Complaint.

66. Defendants incorporate herein their responses to the individually numbered Paragraphs set out above.

67. Defendants deny the averments of Paragraph 67 of the Complaint.

68. Defendants deny the averments of Paragraph 68 of the Complaint.
69. Defendants deny the averments of Paragraph 69 of the Complaint.
70. Defendants incorporate herein their responses to the individually numbered Paragraphs set out above.
71. Defendants deny the averments of Paragraph 71 of the Complaint.
72. Defendants deny the averments of Paragraph 72 of the Complaint.

### **Demand for Relief**

WHEREFORE Defendants request that the Court enter judgment in favor of Defendants and against Plaintiff and award Defendants costs, fees, and such other and further relief as the Court may deem just.

### **THIRD-PARTY COMPLAINT AND JURY DEMAND**

Third-Party Plaintiffs Casas Limited Partnership #4 (“Casas”) and IQ Investors, LLC (“IQI”), through the undersigned counsel, state the following as their complaint against Third-Party Defendant Park Forest Water District:

#### **Parties, Jurisdiction, and Venue**

1. Casas is a Colorado Limited Partnership in good standing with a principal office address of 5390 North Academy, Suite 300, Colorado Springs, CO 80918. 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. Third-Party 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 related to water rights within this division.

#### **Background Facts**

4. Third-Party Plaintiffs each purchased real property together with water rights within the geographic boundaries of PFWD on or about February 29, 2012. Each Third-Party 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 Third-Party Plaintiffs acquired their properties, Third-Party Plaintiffs and PFWD engaged in negotiations concerning use of Third-Party 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 Third-Party Plaintiffs to join their properties to PFWD.

6. 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 Third-Party 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. Third-Party 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, Third-Party Plaintiffs agreed to (a) contribute water rights to the District, (b) pay District taxes and water rates, and (c) finance the costs of infrastructure construction relating to the facilities that PFWD needed to exploit its water rights, among other things.

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 Third-Party 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. Third-Party 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. The repairs and maintenance have occurred, in part, within the two years prior to the filing of this Third-

Party Complaint and Jury Demand, and were necessitated by ordinary wear and tear. Such repairs and maintenance will continue to be necessary in the future.

13. Third-Party 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. Third-Party Plaintiffs incorporate herein the averments set forth above.

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

17. Third-Party 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 replacement/augmentation water sufficient to maintain the Existing Ponds at a full stage, and to augment depletions resulting from surface evaporation, without additional charges or fees assessable upon Petitioner or the Association” as required under Paragraph 8 of the Inclusion Agreement, and
- B. Purporting to “rescind” the Inclusion Agreement.

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

WHEREFORE Third-Party Plaintiffs request the relief set out below.

**Second Claim for Relief**  
**Declaratory Judgment**

20. Third-Party Plaintiffs incorporate herein the averments set forth above.

21. Third-Party Plaintiffs and PFWD are parties to an express and written contract the Inclusion Agreement.

22. A dispute has risen among the parties as to the existence or validity of



the Inclusion Agreement.

23. Pursuant to C.R.S. § 13-51-106 and C.R.C.P. 57, Third-Party Plaintiffs are entitled to obtain a declaration as to the rights and obligations of the parties under the Inclusion Agreement.

24. A declaration of the rights and obligations of the parties under the Inclusion Agreement would terminate the controversy that presently gives rise to this proceeding.

WHEREFORE Third-Party Plaintiffs request the relief set out below.

### **Demand for Relief**

WHEREFORE, Third-Party Plaintiffs requests that the Court enter judgment in their 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, as well as enter judgment in its favor and against Park Forest Water District declaring that the Inclusion Agreement is a valid and existing contract among Third-Party Plaintiffs and Park Forest Water District, effective as of September 19, 2013.

### **Jury Demand**

Third-Party Plaintiffs hereby demands a trial by jury on all issues so triable.

Dated this 12<sup>th</sup> day of January, 2018.

SHERMAN & HOWARD L.L.C.

/s/ Stephen A. Hess

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*Attorneys for Third- Party Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 12th day of January, 2018, a true and correct copy of the foregoing document was electronically filed and sent via email by the Court-authorized E-System provider to the following:

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/s/ Stephen A. Hess  
(Original signature on file at Sherman & Howard L.L.C.)