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throughout the Commission's proceedings was now the Commission's attorney in the action in district court.

On August 15, 2001, the Arapahoe District Court granted the Applicant's motion to dismiss in part, stating that they had no jurisdiction under § 37-90-115(1)(a) to review rights to designated groundwater in Adams county. Also on August 15, 2001, the Arapahoe District Court denied the District's motion to strike the Commission's motions and responses, and denied both the Applicant's and Commission's motions to dismiss. However, on August 15, 2001, the Arapahoe District Court granted the Commission's motion for a more definite statement. On August 16, 2001, the Arapahoe District Court granted partial summary judgment to the issues requested by the Applicant. The Arapahoe District Court found that Colo. Rev. Stat. § 37-90-107(7) is constitutional and that the legislature has plenary authority to enact legislation for the management and control of designated groundwater. Furthermore the Arapahoe District Court ordered that the since Colo. Rev. Stat. § 37-90-107(7) is constitutional, the statute clearly indicates that the applications must be made to the Commission, and that there is no statutory authority supporting the claim that the applications first be submitted to the District. The Arapahoe District Court also denied the Applicant's motion claiming that the anti-speculation doctrine does not apply to determination of water right applications within the designated groundwater basins. Finally, the Arapahoe District Court ordered that the anti-speculation doctrine applies to Denver Basin groundwater within the designated groundwater basins.

On August 21, 2001, the District filed an amended compliant and on September 10, 2001, the Commission filed its answer to the original complaint and the amended complaint. Currently, motion has been made to the Arapahoe District Court to vacate all aforementioned orders because of lack of jurisdiction. This new motion is based upon the reading of Colo. Rev. Stat. § 37-90-115, which states that all designated groundwater issues shall be heard by the designated groundwater judge as appointed by the Colorado Supreme Court, not the Arapahoe District Court judge. The Arapahoe District Court is still reviewing this motion as of the writing of this case summary.

William H. Fronczak

WATER COURT DIVISION 1

AMENDMENT TO THE APPLICATION FOR UNDERGROUND WATER RIGHT FROM THE LOWER DAWSON AQUIFER IN THE DENVER BASIN. Case No. 98CW377 (Water Division 1, May 31, 2001). Applicant: City and County of Denver (Atty. Michael D. Shimmin, Vranesh & Raisch, LLP).

AMENDMENT TO THE APPLICATION FOR UNDERGROUND WATER RIGHT FROM THE DENVER AQUIFER IN THE DENVER BASIN. Case No. 98CW378 (Water Division 1, May 31, 2001). Applicants: City and County of Denver and Waste Management of Colorado, Inc. (Atty. Michael D. Shimmin, Vranesh & Raisch, LLP).

AMENDMENT TO THE APPLICATION FOR UNDERGROUND WATER RIGHT FROM THE LARAMIE-FOX HILLS AQUIFER IN THE DENVER BASIN. Case No. 98CW379 (Water Division 1, May 31, 2001). Applicants: City and County of Denver and Waste Management of Colorado, Inc. (Atty. Michael D. Shimmin, Vranesh & Raisch, LLP).

AMENDMENT TO THE APPLICATION FOR UNDERGROUND WATER RIGHT FROM THE UPPER AND LOWER ARAPAHOE AQUIFERS IN THE DENVER BASIN. Case No. 98CW380 (Water Division 1, May 31, 2001). Applicants: City and County of Denver and Waste Management of Colorado, Inc. (Atty. Michael D. Shimmin, Vranesh & Raisch, LLP).

1. Applications

In September of 1998, the City and County of Denver ("Denver") submitted four applications for underground water rights. The applications covered the lower Dawson Aquifer in the Denver Basin (98CW377), the Denver Aquifer in the Denver Basin (98CW378), the Laramie-Fox Hills Aquifer in the Denver Basin (98CW379), and the Upper and Lower Arapahoe Aquifers in the Denver Basin (98CW380). In May 2001, Denver filed amendments to each of these applications. The property concerned in this case consists of 1598.4 acres bounded by East Yale Avenue to the north, East Quincy Avenue to the south, and Gun Club Road to the west.

In the first application ("377"), Denver claimed all of the groundwater in the Lower Dawson Aquifer beneath its property. Denver estimated this annual amount at twenty-two acre-feet. Denver requested a right to use the water for environmental remediation, industrial, commercial, irrigation, livestock watering, recreational, fish and wildlife, fire protection, or any other beneficial use. In addition, Denver asked for the right to withdraw more than the estimated twenty-two acre-feet per year pursuant to rule 8A of the Statewide Rules, 2 C.C.R. 402-7, as well as the right to revise the estimated amount based on better or revised data. Finally, Denver stated that it did not seek to adjudicate a plan for augmentation, but only to adjudicate its right to use the requested groundwater.

The second application, ("378"), addressed the water in the Denver Aquifer beneath the same property. The application was identical to 377 except that it estimated the annual average amount available from the Denver Aquifer at 980 acre-feet. 378 also addressed not nontributary water.

The third application, ("379"), addressed the Laramie-Fox Hills Aquifer, and proposed an estimated average annual amount available at 360 acre-feet. In addition, 379 did not include the paragraph stating that Denver would not submit a plan for augmentation.

The final application, ("380"), pertained to the Upper and Lower Arapahoe Aquifers. Well Permit No. 37665-F had already been issued for an annual amount of eighty acre-feet on the property. Denver claimed an estimated average annual amount of 411 acre-feet for the Upper Arapahoe, and 307 acre-feet for the Lower Arapahoe. These amounts included the eighty acre-feet previously permitted under the well permit. 380 was otherwise identical to 379, also pertaining to nontributary water.

In May 2001, Denver submitted its amended applications. Denver amended 377 to account for the fact that it had sold approximately 35.8 acres of its property to Waste Management of Colorado, Inc. ("WMC"). Since no water in the Lower Dawson Aquifer underlies the property conveyed to WMC, Denver amended the application to change the legal description of the property. In addition, Denver amended the estimated average amount available from twenty-two acre-feet to 30.5 acre-feet. Denver also asked for the right to revise this estimated average annual amount without the necessity of republishing or amending the application.

In the remaining three applications, the parcel conveyed did overlie water in the subject aquifers. These applications all asked to amend the original application to recognize Denver and WMC as co-applicants, and accordingly, requested separate decrees. In addition, the three applications all amended the legal description of the property to reflect the transfer of land. Amended application 378, applying the State Engineer's Determination of Facts, divided the property overlying the Denver Aquifer into two parts. Part One was that portion closer than one mile to any point of contact between any natural surface stream, including alluvium, and the Denver Aquifer. Part Two contained the remaining land. The amended application determined the average annual amount of water available from Part One lands to be 61.0 acre-feet, and the average amount available from Part Two lands as 751.5 acre-feet. WMC's property does not overlie any area in Part One; accordingly, Denver claims the full 61.0 acre-feet. Of Part Two lands, Denver claims 727.7 acre-feet and WMC claims 23.8 acre-feet.

Amended application 379 changed the average annual amount of water available from the Laramie-Fox Hills aquifer to 347.7 acre-feet from 360 acre-feet. Of this amount, Denver claimed 340.0 acre-feet and WMC claimed 7.7 acre-feet. Amended application 380, which addressed both the Upper and Lower Arapahoe Aquifers, changed the estimated average annual amount in the Upper Arapahoe Aquifer from 411 acre-feet to 380.4 acre-feet. Of this amount, Denver claimed 370.9 acre-feet and WMC claimed 9.5 acre-feet. The amounts include the eighty acre-feet already permitted in the aquifer. The amended application also changed the estimated annual average amount of

water available in the Lower Arapahoe from 307 acre-feet to 296.2 acre-feet. Of this amount, Denver claimed 290.1 acre-feet and WMC claimed 6.1 acre-feet.

All of the amended applications include a provision that all previously filed statements of opposition apply to the amended applications without the necessity of further filing.

2. Opposition

Both the City of Aurora ("Aurora") and the United States filed statements of opposition to the applications. In objecting to 377 and 378, Aurora stated that it is the owner and claimant of numerous water rights in the Lower Dawson and Denver Aquifers and that Denver's proposed use may adversely affect its rights. Aurora asked that Denver be placed on strict proof concerning its ownership or permission for its requested rights and for the subject property. Aurora next stated that Denver must show compliance with applicable statutes and regulations controlling the Denver Basin. Finally, Aurora asked that no decree issue until Denver has an approved plan for augmentation. Aurora's opposition to 379 and 380 was identical, for the Laramie-Fox Hills and the Upper and Lower Arapahoe Aquifers, excluding the provision requesting a plan for augmentation.

The United States submitted the same statement of opposition for all four applications. The United States stated that the applications requested a right to withdraw water underlying the Lowry Superfund site. The United States objected because it has a lien on that property and thus has an interest in how the water is used. The United States asked that the applications not be granted unless the applicants comply with terms and conditions necessary to protect the interests of other water users, as well as the public. Finally, the United States asked that the applicants be placed on strict proof of each element of the claimed appropriations.

Rebekah King

APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION INCLUDING EXCHANGE, IN JEFFERSON COUNTY, COLORADO. Case No. 01CW140 (Water Division 1, August 2001) (Original decree: July 19, 1977). Applicant: Scott A. Wilson ("Wilson") (Atty. Douglas M. Sinor, Trout, Witwer & Freeman, P.C.).

1. Application

Scott A. Wilson ("Wilson") seeks to construct eight wells on individually owned ten acre lots, limited to household and domestic use. Total consumptive use for the eight wells is estimated at 0.2512 acre-feet per year, not to exceed 0.02 c.f.s. Water rights through direct exchange or releases from Cold Springs Reservoir ("Reservoir") will provide the required volume for augmentation.

Although an approved subdivision plat is necessary to determine