

Exhibit D to Motion for Summary Judgment
Case No. 19CW3220

DISTRICT COURT, WATER DIVISION 1, COLORADO Weld County Courthouse P.O. Box 2038 Greeley, CO 80632	DATE FILED: September 24, 2022 5:44 PM FILED IN: DEEDS & RECORDS DIVISION CASE NUMBER: 2019CW3220
CONCERNING THE APPLICATION FOR AMENDMENT OF AN AUGMENTATION PLAN OF INDEPENDENCE WATER AND SANITATION DISTRICT, Applicant,	▲ COURT USE ONLY ▲
IN ELBERT COUNTY	
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APPLICANT'S RESPONSE TO OPPOSER FRANKTOWN CITIZENS COALITION II'S FIRST SET OF DISCOVERY REQUESTS	

Applicant, Independence Water and Sanitation District (“IWSD”), by and through its undersigned counsel, hereby responds to opposer, Franktown Citizen’s Coalition II’s (“FCCII”), First Set of Discovery Requests as follows:

DEFINITIONS

When defined terms included in FCCII’s First Set of Discovery Requests are capitalized in the Responses herein, those defined terms are being used by IWSD. In addition, as used in IWSD’s Responses, the following term has the following meaning:

AUGMENTED WATER means the rights to 61.5 acre-feet per year of the UPPER DAWSON WATER owned by IWSD and the additional 13.5 acre-feet per year of UPPER DAWSON WATER that IWSD has an option to purchase from CB Independence Holding Company, LLC, all of which is authorized to be withdrawn pursuant to the augmentation plan approved in the 06CW59 DECREE.

GENERAL COMMENTS AND OBJECTIONS

1. The information provided in these responses is that currently available to IWSD, unless privileged or protected from discovery. IWSD reserves the right, but assumes no obligation beyond that imposed by C.R.C.P. 26, to supplement, amend or otherwise modify its objections as IWSD may decide is needed or the information contained in these responses should additional or different information become available.
2. IWSD objects to these requests to the extent that they seek information protected by the attorney-client privilege or work product doctrine, and to the extent that they seek to discover legal theories of counsel instead of facts about this case.
3. IWSD objects to these requests insofar as they seek information irrelevant to the issues presented by this case or not reasonably likely to lead to the discovery of admissible evidence.
4. IWSD objects to the General Instructions to FCCII's First Set of Discovery Requests insofar as they render these requests overly broad, unduly burdensome, or vague, and insofar as they require IWSD to do more than is required under the Colorado Rules of Civil Procedure. These responses are made in accordance with the Colorado Rules of Civil Procedure, FCCII's definitions and instructions notwithstanding.
5. IWSD objects to these requests to the extent that they request IWSD to provide information or summaries of information or to produce documents not presently within IWSD's possession, custody, or control.
6. IWSD objects to these requests insofar as they are vague, ambiguous, harassing, unduly burdensome, and duplicative of information or documents already in FCCII's possession, custody, or control, or available to FCCII from public records or another source, of which the burden of obtaining is the same for IWSD and FCCII.
7. IWSD reserves all objections to the admissibility at trial of any document provided herein including, without limitation, all objections on the grounds that such document is not relevant. Production of any information herein does not constitute an admission by IWSD that such information is relevant to any claim, defense, or other issue in this litigation, or that it is reasonably calculated to lead to the discovery of admissible evidence.
8. IWSD objects to the contention interrogatories that require it to identify definitely all facts pertaining to a particular claim or issue. Discovery is on-going and the parties may discover more or different facts on any claim or issue. IWSD may complete additional investigations and discovery of the facts and issues relating to this case and have not completed preparation for trial. Responses to the discovery requests are based on information currently known to IWSD and are given without waiving their rights to use evidence of any fact, subsequently or otherwise discovered or identified.

9. These general comments and objections are intended to apply whenever appropriate to all discovery responses herein.

INTERROGATORY RESPONSES

Without waiving any of its General Objections, IWSD provides the following responses to FCCII's discovery requests:

1. *Interrogatory No. 1: List all well permits by permit number that have been issued to withdraw any of the groundwater adjudicated in the 06CW59 DECREE, including well permits issued prior to entry of the 06CW59 DECREE.*

Response to Interrogatory No. 1:

81238-F
81239-F
81240-F
81341-F
82273-F
82274-F
83770-F
86435-F
86436-F

- a. *Request for Production No. 1: Produce all DOCUMENTS RELATED TO the well permits identified in response to Interrogatory No. 1.*

Response to Request for Production No. 1:

See the General Comments and Objections, including specifically Paragraph 6.

Without waiving the foregoing objections, IWSD currently has the following DOCUMENTS RELATED TO the well permits identified in Response to Interrogatory No. 1 in its custody and control which are in the document identified as **Exhibit A**. Original Permit File is defined to mean a copy of the well permit and other documents concerning such well permit obtained from the Division of Water Resources Well Permit search website at <https://dwr.state.co.us/Tools/WellPermits>. Well Permit is defined to mean a copy of the well permit obtained from the Division of Water Resources Well Permit search website at <https://dwr.state.co.us/Tools/WellPermits>.

Well Permit No. 81238-F – Original Permit File
Well Permit No. 81239-F – Original Permit File
Well Permit No. 81240-F – Original Permit File
Well Permit No. 81241-F – Original Permit File
Well Permit No. 82273-F – Well Permit
Well Permit No. 82274-F – Well Permit

Well Permit No. 83770-F – Well Permit
Well Permit No. 86435-F – Well Permit
Well Permit No. 86436-F – Original Permit File

2. *Interrogatory No. 2: List all well permits by permit number that have a permitted well location on the SUBJECT PROPERTY that were not included in the list provided pursuant to Interrogatory No. 1.*

Response to Interrogatory No. 2:

29-WCB

- a. *Request for Production No. 2: Produce all DOCUMENTS RELATED TO the well permits identified in response to Interrogatory No. 2.*

Response to Request for Production No. 2:

See the General Comments and Objections, including specifically Paragraph 6.

Without waiving the foregoing objections, IWSD currently has the following DOCUMENTS RELATED TO the well permits identified in Response to Interrogatory No. 2 in its custody and control which are in the document identified as **Exhibit A**. Original Permit File is defined to mean a copy of the well permit and other documents concerning such well permit obtained from the Division of Water Resources Well Permit search website at <https://dwr.state.co.us/Tools/WellPermits>.

Well Permit No. 29-WCB – Original Permit File

3. *Interrogatory No. 3: State the volume of groundwater that has been withdrawn under each well permit listed in response to Interrogatory Nos. 1 and 2, and the source of such groundwater, as of the date of YOUR response to these discovery requests.*

Response to Interrogatory No. 3:

As of January 2022, IWSD has withdrawn the amounts of groundwater from Denver Aquifer Well No. 83770-F and Arapahoe Aquifer Well No. 82273-F shown on the spreadsheets titled “IWSD water report current” and “IWSD 21-22 water report Jan”. Well No. 83770-F and 82273-F are the only wells operating on the SUBJECT PROPERTY at this time. IWSD currently has no knowledge regarding whether water has been withdrawn by other wells with permits identified in the responses to Interrogatory Nos. 1 and 2.

- a. *Request for Production No. 3: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 3.*

Response to Request for Production No. 3:

Spreadsheet titled "IWSD 21-22 water report Jan" identified as **Table 1**.

Spreadsheet titled "IWSD water report current" identified as **Table 2**.

4. *Interrogatory No. 4: DESCRIBE YOUR planned municipal use of the UPPER DAWSON WATER, as requested in the APPLICATION, including but not limited to the municipality or quasi-municipal entity that will use the water, the location of the municipal use, and the estimated annual amount of water needed for such use.*

Response to Interrogatory No. 4:

See the General Comments and Objections, including specifically Paragraph 3. Further, it appears that FCCII is concerned about a showing of non-speculation during this case. Anti-speculation is addressed by the State Engineer in permitting, not by the water court in adjudication proceedings. IWSD is not required to make a threshold showing of non-speculative uses in this case. As confirmed in *ECCV v. Rangeview*, 109 P.3d 154, 158 (Colo. 2005):

The protection of potential appropriators is unnecessary in this context because, by statute, there can be none, *see* § 37-90-102(2); protection against waste at this stage is unnecessary because, by statute, a structure to withdraw nontributary ground water may not be constructed without satisfying the state engineer of a non-speculative, beneficial use to which the water will be put, *see* § 37-90-137(4); and perhaps most importantly, to require a showing of non-speculative, beneficial use at an adjudication proceeding would thwart a clearly expressed legislative intent to permit adjudication for future uses without a corresponding obligation to develop them.

Without waiving the foregoing objections, IWSD is a quasi-municipal special district obligated to provide water service to its customers. IWSD currently has a plan to put the AUGMENTED WATER to municipal use in certain common areas, including, but not limited to, irrigation of a community garden, medians, and buffer zones, and the existing homestead, which is expected to become a community clubhouse, on the SUBJECT PROPERTY. The current total estimated annual amount of these municipal uses is 8.43 acre-feet per year. The estimated annual amount is calculated using Table 1 of the Water Supply Plan Report dated April 18, 2017, which is the total of the following estimated demands at full build-out:

- Potable Demand
 - Homestead – 0.84 acre-feet per year
- Non-potable Irrigation Demand
 - Homestead – 0.59 acre-feet per year
 - Community Garden – 0.10 acre-feet per year
 - Entry/Median/Buffer/Open space/rear lot trans – 6.90 acre-feet per year

IWSD may also need to use AUGMENTED WATER for municipal purposes to satisfy its future water obligations.

- a. *Request for Production No. 4: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 4.*

Response to Request for Production No. 4:

Water Supply Plan Report dated April 18, 2017 identified as **Exhibit J**.

5. *Interrogatory No. 5: DESCRIBE YOUR planned domestic use of the UPPER DAWSON WATER, as requested in the APPLICATION, including but not limited to any difference from the "inhouse" use included in the plan for augmentation approved in the 06CW59 DECREE, the persons or entities that will use the water, the location of the domestic use, and the estimated annual amount of water needed for such use.*

Response to Interrogatory No. 5:

See the General Comments and Objections, including specifically Paragraph 3. Further, it appears that FCCII is concerned about a showing of non-speculation during this case. Anti-speculation is addressed by the State Engineer in permitting, not by the water court in adjudication proceedings. IWSD is not required to make a threshold showing of non-speculative uses in this case. As confirmed in *ECCV v. Rangeview*, 109 P.3d 154, 158 (Colo. 2005):

The protection of potential appropriators is unnecessary in this context because, by statute, there can be none, *see* § 37-90-102(2); protection against waste at this stage is unnecessary because, by statute, a structure to withdraw nontributary ground water may not be constructed without satisfying the state engineer of a non-speculative, beneficial use to which the water will be put, *see* § 37-90-137(4); and perhaps most importantly, to require a showing of non-speculative, beneficial use at an adjudication proceeding would thwart a clearly expressed legislative intent to permit adjudication for future uses without a corresponding obligation to develop them.

IWSD also objects to Interrogatory No. 5 on the basis of claim preclusion. Domestic use is a decreed use for the UPPER DAWSON WATER in the 06CW59 DECREE, therefore the issue is settled and cannot be re-litigated. *See Meridian Serv. Metro. Dist. v. Ground Water Comm'n*, 361 P.3d 392 (Colo. 2015).

Without waiving the foregoing objections, the domestic use requested in the APPLICATION includes use inside residences and use outside residences for irrigation of home lawn and gardens. Inhouse use is limited to use inside residences. IWSD is a quasi-municipal special district obligated to provide water service to its customers. Although IWSD currently has no specific plans for domestic use of the AUGMENTED WATER, IWSD may need to put the AUGMENTED WATER to domestic use to satisfy its future water obligations.

- a. *Request for Production No. 5: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 5.*

Response to Request for Production No. 5:

IWSD currently has no DOCUMENTS RELATED TO Response to Interrogatory No. 5 in its custody and control.

6. *Interrogatory No. 6: DESCRIBE YOUR planned industrial use of the UPPER DAWSON WATER, as requested in the APPLICATION, including but not limited to the persons or entities that will use the water, the location of the industrial use, and the estimated annual amount of water needed for such use.*

Response to Interrogatory No. 6:

See the General Comments and Objections, including specifically Paragraph 3. Further, it appears that FCCII is concerned about a showing of non-speculation during this case. Anti-speculation is addressed by the State Engineer in permitting, not by the water court in adjudication proceedings. IWSD is not required to make a threshold showing of non-speculative uses in this case. As confirmed in *ECCV v. Rangeview*, 109 P.3d 154, 158 (Colo. 2005):

The protection of potential appropriators is unnecessary in this context because, by statute, there can be none, *see* § 37-90-102(2); protection against waste at this stage is unnecessary because, by statute, a structure to withdraw nontributary ground water may not be constructed without satisfying the state engineer of a non-speculative, beneficial use to which the water will be put, *see* § 37-90-137(4); and perhaps most importantly, to require a showing of non-speculative, beneficial use at an adjudication proceeding would thwart a clearly expressed legislative intent to permit adjudication for future uses without a corresponding obligation to develop them.

IWSD also objects to Interrogatory No. 6 on the basis of claim preclusion. Industrial use is a decreed use for the UPPER DAWSON WATER in the 06CW59 DECREE, therefore the issue is settled and cannot be re-litigated. *See Meridian Serv. Metro. Dist. v. Ground Water Comm'n*, 361 P.3d 392 (Colo. 2015).

Without waiving the foregoing objections, IWSD is a quasi-municipal special district obligated to provide water service to its customers. Although IWSD currently has no specific plans for industrial use of the AUGMENTED WATER, IWSD may need to put the AUGMENTED WATER to industrial use to satisfy its future water obligations.

- a. *Request for Production No. 6: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 6.*

Response to Request for Production No. 6:

IWSD currently has no DOCUMENTS RELATED TO Response to Interrogatory No. 6 in its custody and control.

7. *Interrogatory No. 7: DESCRIBE YOUR planned commercial use of the UPPER DAWSON WATER, as requested in the APPLICATION, including but not limited to the persons or entities that will use the water, the location of the commercial use, and the estimated annual amount of water needed for such use.*

Response to Interrogatory No. 7:

See the General Comments and Objections, including specifically Paragraph 3. Further, it appears that FCCII is concerned about a showing of non-speculation during this case. Anti-speculation is addressed by the State Engineer in permitting, not by the water court in adjudication proceedings. IWSD is not required to make a threshold showing of non-speculative uses in this case. As confirmed in *ECCV v. Rangeview*, 109 P.3d 154, 158 (Colo. 2005):

The protection of potential appropriators is unnecessary in this context because, by statute, there can be none, *see* § 37-90-102(2); protection against waste at this stage is unnecessary because, by statute, a structure to withdraw nontributary ground water may not be constructed without satisfying the state engineer of a non-speculative, beneficial use to which the water will be put, *see* § 37-90-137(4); and perhaps most importantly, to require a showing of non-speculative, beneficial use at an adjudication proceeding would thwart a clearly expressed legislative intent to permit adjudication for future uses without a corresponding obligation to develop them.

IWSD also objects to Interrogatory No. 7 on the basis of claim preclusion. Commercial use is a decreed use for the UPPER DAWSON WATER in the 06CW59 DECREE, therefore the issue is settled and cannot be re-litigated. *See Meridian Serv. Metro. Dist. v. Ground Water Comm'n*, 361 P.3d 392 (Colo. 2015).

Without waiving the foregoing objections, IWSD is a quasi-municipal special district obligated to provide water service to its customers. IWSD currently has a plan to put the AUGMENTED WATER to commercial use in the existing homestead, which is expected to be converted to the community clubhouse, on the SUBJECT PROPERTY. The current total estimated annual amount of commercial use is 0.84 acre-feet per year, which is based on the estimated potable use in the homestead at full build-out as shown on Table 1 of the Water Supply Plan Report dated April 18, 2017. IWSD may also need use of AUGMENTED WATER for commercial use to satisfy its future water obligations.

- a. *Request for Production No. 7: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 7.*

Response to Request for Production No. 7:

Water Supply Plan Report dated April 18, 2017 identified as **Exhibit J**.

8. *Interrogatory No. 8: DESCRIBE YOUR planned augmentation use of the UPPER DAWSON WATER as requested in the APPLICATION, other than use in the plan for augmentation approved in the 06CW59 DECREE, including but not limited to the persons or entities that will use the water, any existing plans for augmentation in which the water will be used, and the estimated annual amount of water needed for such use.*

Response to Interrogatory No. 8:

See the General Comments and Objections, including specifically Paragraph 3. Further, it appears that FCCII is concerned about a showing of non-speculation during this case. Anti-speculation is addressed by the State Engineer in permitting, not by the water court in adjudication proceedings. IWSD is not required to make a threshold showing of non-speculative uses in this case. As confirmed in *ECCV v. Rangeview*, 109 P.3d 154, 158 (Colo. 2005):

The protection of potential appropriators is unnecessary in this context because, by statute, there can be none, *see* § 37-90-102(2); protection against waste at this stage is unnecessary because, by statute, a structure to withdraw nontributary ground water may not be constructed without satisfying the state engineer of a non-speculative, beneficial use to which the water will be put, *see* § 37-90-137(4); and perhaps most importantly, to require a showing of non-speculative, beneficial use at an adjudication proceeding would thwart a clearly expressed legislative intent to permit adjudication for future uses without a corresponding obligation to develop them.

IWSD also objects to Interrogatory No. 8 on the basis of claim preclusion. Augmentation is a decreed use for the UPPER DAWSON WATER in the 06CW59 DECREE, therefore the issue is settled and cannot be re-litigated. *See Meridian Serv. Metro. Dist. v. Ground Water Comm'n*, 361 P.3d 392 (Colo. 2015).

Without waiving the foregoing objections, IWSD is a quasi-municipal special district obligated to provide water service to its customers. Although IWSD currently has no specific plans for augmentation use of the AUGMENTED WATER, other than use in the plan for augmentation approved in the 06CW59 DECREE, IWSD may need to put the AUGMENTED WATER to augmentation use to satisfy its future water obligations.

- a. *Request for Production No. 8: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 8.*

Response to Request for Production No. 8:

IWSD currently has no DOCUMENTS RELATED TO Response to Interrogatory No. 8 in its custody and control.

9. *Interrogatory No. 9: DESCRIBE YOUR planned exchange use of the UPPER DAWSON WATER as requested in the APPLICATION, other than use in the plan for augmentation approved in the 06CW59 DECREE, including but not limited to the persons or entities that will use the water, any existing appropriative rights of exchange or plans for augmentation in which the water will be used, and the estimated annual amount of water needed for such use.*

Response to Interrogatory No. 9:

See the General Comments and Objections, including specifically Paragraph 3. Further, it appears that FCCII is concerned about a showing of non-speculation during this case. Anti-speculation is addressed by the State Engineer in permitting, not by the water court in adjudication proceedings. IWSD is not required to make a threshold showing of non-speculative uses in this case. As confirmed in *ECCV v. Rangeview*, 109 P.3d 154, 158 (Colo. 2005) :

The protection of potential appropriators is unnecessary in this context because, by statute, there can be none, *see* § 37-90-102(2); protection against waste at this stage is unnecessary because, by statute, a structure to withdraw nontributary ground water may not be constructed without satisfying the state engineer of a non-speculative, beneficial use to which the water will be put, *see* § 37-90-137(4); and perhaps most importantly, to require a showing of non-speculative, beneficial use at an adjudication proceeding would thwart a clearly expressed legislative intent to permit adjudication for future uses without a corresponding obligation to develop them.

IWSD also objects to Interrogatory No. 9 on the basis of claim preclusion. Exchange use is a decreed use for the UPPER DAWSON WATER in the 06CW59 DECREE, therefore the issue is settled and cannot be re-litigated. *See Meridian Serv. Metro. Dist. v. Ground Water Comm'n*, 361 P.3d 392 (Colo. 2015).

Without waiving the foregoing objections, IWSD is a quasi-municipal special district obligated to provide water service to its customers. Although IWSD currently has no specific plans for exchange use of the AUGMENTED WATER, IWSD may need to put the AUGMENTED WATER to exchange use to satisfy its future water obligations.

a. *Request for Production No. 9: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 9.*

Response to Request for Production No. 9:

IWSD currently has no DOCUMENTS RELATED TO Response to Interrogatory No. 9 in its custody and control.

10. Interrogatory No. 10: DESCRIBE YOUR planned stock watering use of the UPPER DAWSON WATER, as requested in the APPLICATION, including but not limited to the persons or entities that will use the water, the location of the stock watering use, and the estimated annual amount of water needed for such use.

Response to Interrogatory No. 10:

See the General Comments and Objections, including specifically Paragraph 3. Further, it appears that FCCII is concerned about a showing of non-speculation during this case. Anti-speculation is addressed by the State Engineer in permitting, not by the water court in adjudication proceedings. IWSD is not required to make a threshold showing of non-speculative uses in this case. As confirmed in *ECCV v. Rangeview*, 109 P.3d 154, 158 (Colo. 2005):

The protection of potential appropriators is unnecessary in this context because, by statute, there can be none, *see* § 37-90-102(2); protection against waste at this stage is unnecessary because, by statute, a structure to withdraw nontributary ground water may not be constructed without satisfying the state engineer of a non-speculative, beneficial use to which the water will be put, *see* § 37-90-137(4); and perhaps most importantly, to require a showing of non-speculative, beneficial use at an adjudication proceeding would thwart a clearly expressed legislative intent to permit adjudication for future uses without a corresponding obligation to develop them.

IWSD also objects to Interrogatory No. 10 on the basis of claim preclusion. Stock watering use is a decreed use for the UPPER DAWSON WATER in the 06CW59 DECREE, therefore the issue is settled and cannot be re-litigated. *See Meridian Serv. Metro. Dist. v. Ground Water Comm'n*, 361 P.3d 392 (Colo. 2015).

Without waiving the foregoing objections, IWSD is a quasi-municipal special district obligated to provide water service to its customers. Although IWSD currently has no specific plans for stock watering use of the AUGMENTED WATER, IWSD may need to put the AUGMENTED WATER to stock watering use to satisfy its future water obligations.

- a. *Request for Production No. 10: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 10.*

Response to Request for Production No. 10:

IWSD currently has no DOCUMENTS RELATED TO Response to Interrogatory No. 10 in its custody and control.

11. Interrogatory No. 11: DESCRIBE any locations, other than on the SUBJECT PROPERTY, where YOU plan to use the UPPER DAWSON WATER including but not limited to the persons or entities that own the property where such use will occur, the persons or entities that will use the water off the SUBJECT PROPERTY, the types of use that will occur off the SUBJECT PROPERTY, and the estimated annual amount of water needed for such use.

Response to Interrogatory No. 11:

See the General Comments and Objections, including specifically Paragraph 3. Further, it appears that FCCII is concerned about a showing of non-speculation during this case. Anti-speculation is addressed by the State Engineer in permitting, not by the water court in adjudication proceedings. IWSD is not required to make a threshold showing of non-speculative uses in this case. As confirmed in *ECCV v. Rangeview*, 109 P.3d 154, 158 (Colo. 2005):

The protection of potential appropriators is unnecessary in this context because, by statute, there can be none, *see* § 37-90-102(2); protection against waste at this stage is unnecessary because, by statute, a structure to withdraw nontributary ground water may not be constructed without satisfying the state engineer of a non-speculative, beneficial use to which the water will be put, *see* § 37-90-137(4); and perhaps most importantly, to require a showing of non-speculative, beneficial use at an adjudication proceeding would thwart a clearly expressed legislative intent to permit adjudication for future uses without a corresponding obligation to develop them.

IWSD also objects to Interrogatory No. 11 on the basis of claim preclusion. Use off the SUBJECT PROPERTY is a decreed use for the UPPER DAWSON WATER in the 06CW59 DECREE, therefore the issue is settled and cannot be re-litigated. *See Meridian Serv. Metro. Dist. v. Ground Water Comm'n*, 361 P.3d 392 (Colo. 2015).

Without waiving the foregoing objections, IWSD is a quasi-municipal special district obligated to provide water service to its customers. Although IWSD currently has no specific plans for use of the AUGMENTED WATER at any location other than the SUBJECT PROPERTY, IWSD may need to put the AUGMENTED WATER to use off the SUBJECT PROPERTY to satisfy its future water obligations.

- a. *Request for Production No. 11: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 11.*

Response to Request for Production No. 11:

IWSD currently has no DOCUMENTS RELATED TO Response to Interrogatory No. 11 in its custody and control.

12. *Interrogatory No. 12: DESCRIBE how YOU will withdraw and deliver the LARAMIE-FOX HILLS WATER for replacement of post-pumping depletions under the plan for augmentation adjudicated in the 06CW59 DECREE, as such plan may be amended pursuant to the APPLICATION, including but not limited to any proposed or planned methods to deliver such water to any streams affected by withdrawals of the UPPER DAWSON WATER.*

Response to Interrogatory No. 12:

IWSD objects to Interrogatory No. 12 on the basis of claim preclusion. IWSD is not proposing to make any changes to the decreed terms and conditions governing how post-pumping replacements are made under the plan for augmentation approved in the 06CW59 DECREE, therefore the issue is settled and cannot be re-litigated. *See Meridian Serv. Metro. Dist. v. Ground Water Comm'n*, 361 P.3d 392 (Colo. 2015).

Without waiving the foregoing objection, the 06CW59 DECREE requires that IWSD reserve 75 acre-feet per year of LARAMIE-FOX HILLS WATER for replacement of post-pumping depletions, but also provides flexibility to use other nontributary groundwater, including return flows, either underlying the SUBJECT PROPERTY, or from another location which is legally available for such purpose, for the replacement of post-pumping depletions. That requirement has been carried forward into the Ruling of the Referee. At this time IWSD has not determined whether the reserved 75 acre-feet per year of LARAMIE-FOX HILLS WATER will be used for post-pumping replacement of depletions, or whether IWSD may use one of the other approved sources described in this response. Those plans will be developed in the future closer to the time when IWSD will be required to make post-pumping replacement of depletions. The Ruling of the Referee does not change the sources of, or how, post-pumping replacement of depletions will be made as approved in the 06CW59 DECREE.

- a. *Request for Production No. 12: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 12.*

Response to Request for Production No. 12:

See the Ruling of the Referee in Case No. 19CW3220 which was provided to FCCII and all other opposers via CCE on July 21, 2021.

See the Independence Water & Sanitation District Augmentation Plan dated June 15, 2020 prepared by Jehn Water Consultants, which was served on FCCII and all other opposers via CCE on June 15, 2020.

The 06CW59 DECREE is identified as **Exhibit B**.

13. *Interrogatory No. 13: IDENTIFY any DOCUMENTS RELATED to water quality, including but not limited to any water quality treatment, of the UPPER DAWSON WATER.*

Response to Interrogatory No. 13:

IWSD currently has no DOCUMENTS RELATED TO water quality, including but not limited to any water quality treatment, of the UPPER DAWSON WATER in its custody and control.

- a. *Request for Production No. 13: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 13.*

Response to Request for Production No. 13:

IWSD currently has no DOCUMENTS RELATED TO Response to Interrogatory No. 13 in its custody and control.

14. Interrogatory No. 14: IDENTIFY any DOCUMENTS RELATED to water quality, including but not limited to any water quality treatment, of the ARAPAHOE WATER.

Response to Interrogatory No. 14:

IWSD currently has the following DOCUMENTS RELATED TO water quality, including but not limited to any water treatment, of the ARAPAHOE WATER in its custody and control:

- Independence Water System Basis of Design Report – 11-14-19
- CDPHE Drinking Water Design Submittal Forms – 11-12-19
- Approval of Drinking Water Final Plans and Specifications for Construction - Potable Water System - 4-14-20
- Certification to Discharge Under CDPS General Permit COG589000 - 1-14-21
- Notice of Authorization for the Treatment and Delivery of Reclaimed Water - COE036000 - 4-8-21

a. Request for Production No. 14: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 14.

Response to Request for Production No. 14:

The documents identified in Response to Interrogatory No. 14 are identified as **Exhibit C**, **Exhibit D**, **Exhibit E**, **Exhibit F**, and **Exhibit G**, respectively.

15. Interrogatory No. 15: IDENTIFY any DOCUMENTS RELATED to water quality, including but not limited to any water quality treatment, of the DENVER WATER.

Response to Interrogatory No. 15:

IWSD currently has the following DOCUMENTS RELATED TO water quality, including but not limited to any water quality treatment, of the DENVER WATER in its custody and control:

- Denver Well D-1 Basis of Design Report – 2-24-21
- Approval of Drinking Water Final Plans and Specifications for Construction - Denver Well - 6-1-21
- Notice of Authorization for the Treatment and Delivery of Reclaimed Water - COE036000 - 4-8-21

a. Request for Production No. 15: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 15.

Response to Request for Production No. 15:

The documents identified in Response to Interrogatory No. 15 are identified as **Exhibit H** and **Exhibit I**, and **Exhibit G**, respectively.

16. Interrogatory No. 16: IDENTIFY any DOCUMENTS RELATED to water quality, including but not limited to any water quality treatment, of the LARAMIE-FOX HILLS WATER.

Response to Interrogatory No. 16:

IWSD currently has no DOCUMENTS RELATED TO water quality, including but not limited to any water quality treatment, of the LARAMIE-FOX HILLS WATER in its custody and control.

- a. Request for Production No. 16: Produce all DOCUMENTS RELATED TO YOUR response to Interrogatory No. 16.*

Response to Interrogatory No. 16:

IWSD currently has no DOCUMENTS RELATED TO Response to Interrogatory No. 16 in its custody and control.

17. Request for Admission No. 1: Admit that YOU do not propose to deliver water to Cherry Creek to replace depletions caused by the withdrawal of UPPER DAWSON WATER, either during pumping of the UPPER DAWSON WATER or during the post-pumping period after withdrawals of UPPER DAWSON WATER have ceased.

Response to Request for Admission No. 1:

See General Comments and Objections, including specifically Paragraph 4.

In addition, Request for Admission No.1 is requesting IWSD to respond to two requests for admission: (1) regarding replacement of depletions during pumping, and (2) regarding replacement of depletions post-pumping. Therefore IWSD objects as to the form of the question.

Finally, IWSD objects because “deliver water” is an ambiguous term and is not defined. Delivery of water to replace depletions caused by withdrawal of the AUGMENTED WATER is accomplished using a number of methods, and depletions and replacements accrue to both the Running Creek and Cherry Creek basins.

Without waiving the foregoing objections, to the extent “deliver water” is intended to refer to providing water to replace depletions to Cherry Creek caused by withdrawal of the AUGMENTED WATER (1) during pumping through percolation of AUGMENTED WATER into the ground after use through the septic system at the Homestead, which is expected to become a community clubhouse, and following the use of AUGMENTED WATER for irrigation on the SUBJECT PROPERTY, a portion of which offsets depletions to Cherry Creek, and/or (2)

during pumping and post-pumping through release of return flows following use of Denver and Arapahoe aquifer groundwater from the IWRRF to directly percolate into the ground, where a portion of which then offsets depletions Cherry Creek, and/or (3) during pumping and post-pumping through release of return flows following use of the Denver and Arapahoe aquifer groundwater from the IWRRF, which can then be used for irrigation on the SUBJECT PROPERTY, with resulting unconsumed return flows allowed to percolate into the ground, a portion of which then offsets depletions to Cherry Creek, and/or (4) during pumping and post-pumping through direct discharge of nontributary groundwater, which would be allowed to percolate into the ground, a portion of which then offsets depletions Cherry Creek, IWSD responds as follows:

Regarding the first request for admission included in Request for Admission No. 1: IWSD denies that it does not propose to deliver water to Cherry Creek to replace depletions during pumping of the AUGMENTED WATER. IWSD will deliver water to Cherry Creek to replace depletions accruing to Cherry Creek during pumping of the AUGMENTED WATER. As described in Paragraph 9 of the Ruling of the Referee, during pumping of the AUGMENTED WATER, IWSD will deliver water to Cherry Creek to replace depletions through the use of return flows from septic systems or through release of return flows from the IWRRF directly or following irrigation use. If return flows from septic systems and the IWRRF are not adequate to replace all depletions caused during pumping of the AUGMENTED WATER, IWSD will deliver water directly by releasing nontributary Denver and Arapahoe aquifer groundwater in the amount needed to replace all depletions that are not replaced by such return flows.

Regarding the second request for admission included in Request for Admission No. 1: IWSD denies that it does not propose to deliver water to Cherry Creek to replace post-pumping depletions caused by withdrawal of AUGMENTED WATER. IWSD will deliver water to Cherry Creek to replace post-pumping depletions accruing to Cherry Creek caused by the withdrawal of the AUGMENTED WATER. The 06CW59 DECREE requires that IWSD reserve 75 acre-feet per year of LARAMIE-FOX HILLS WATER for replacement of post-pumping depletions, but also provides flexibility to use other nontributary groundwater, including return flows, either underlying the SUBJECT PROPERTY, or from another location which is legally available for such purpose, to deliver water to Cherry Creek for the replacement of post-pumping depletions. That requirement has been carried forward into the Ruling of the Referee. At this time IWSD has not determined whether the reserved 75 acre-feet per year of LARAMIE-FOX HILLS WATER will be used for post-pumping replacement of depletions, or whether IWSD will use one of the other approved sources described in this response. Those plans will be developed in the future closer to the time when IWSD will be required to make post-pumping replacement of depletions. The Ruling of the Referee does not change the sources of, or how, post-pumping replacement of depletions will be made as approved in the 06CW59 DECREE. Direct discharges to deliver water to Cherry Creek can also be made from the previously completed nontributary Denver and Arapahoe aquifer wells described in Response to Interrogatory No. 3.

- a. *Request for Production No. 17: If YOU do not admit to Request for Admission No. 1, produce all DOCUMENTS RELATED TO YOUR response to Request for Admission No. 1.*

Response to Request for Production No. 17:

See the Independence Water & Sanitation District Augmentation Plan dated June 15, 2020 prepared by Jehn Water Consultants, which was previously provided via CCE to FCCII and all opposers on June 15, 2020.

See the Ruling of the Referee in Case No. 19CW3220, which was provided to FCCII and all other opposers via CCE on July 21, 2021.

See Response to Request for Production Nos. 12, 14, and 15.

18. Request for Admission No. 2: Admit that YOU have not entered into any contracts or other agreements for the sale, lease, or use of the UPPER DAWSON WATER to any persons or entities, other than any contracts or agreements related to the use of the UPPER DAWSON WATER as currently approved in the 06CW59 DECREE, including the plan for augmentation approved therein.

Response to Request for Admission No. 2:

See the General Comments and Objection, including specifically Paragraph 3. Further, it appears that FCCII is concerned about a showing of non-speculation during this case. Anti-speculation is addressed by the State Engineer in permitting, not by the water court in adjudication proceedings. IWSD is not required to make a threshold showing of non-speculative uses in this case. As confirmed in *ECCV v. Rangeview*, 109 P.3d 154, 158 (Colo. 2005):

The protection of potential appropriators is unnecessary in this context because, by statute, there can be none, *see* § 37-90-102(2); protection against waste at this stage is unnecessary because, by statute, a structure to withdraw nontributary ground water may not be constructed without satisfying the state engineer of a non-speculative, beneficial use to which the water will be put, *see* § 37-90-137(4); and perhaps most importantly, to require a showing of non-speculative, beneficial use at an adjudication proceeding would thwart a clearly expressed legislative intent to permit adjudication for future uses without a corresponding obligation to develop them.

IWSD also objects to Request for Admission No. 2 on the basis of claim preclusion. Use off the SUBJECT PROPERTY was decreed for the UPPER DAWSON WATER in the 06CW59 DECREE, therefore the issue is settled and cannot be re-litigated. *See Meridian Serv. Metro. Dist. v. Ground Water Comm'n*, 361 P.3d 392 (Colo. 2015).

Without waiving foregoing objections, the Water Rights Option Agreement between CB Independence Holding Company, LLC and Independence Water and Sanitation District, dated June 15, 2020, is the only contract or other agreement for the sale, lease, or use of the UPPER DAWSON WATER that IWSD has with any persons or entities.

- a. *Request for Production No. 18: If YOU do not admit to Request for Admission No. 2, produce all DOCUMENTS RELATED TO YOUR response to Request for Admission No. 2.*

Response to Request for Production No. 18:

See the Water Rights Option Agreement dated June 15, 2020, which was provided to FCCII and all other opposers via CCE on June 15, 2020.

19. *Request for Admission No. 3: Admit that YOU are not claiming the use of UPPER DAWSON WATER, as augmented under the plan for augmentation set forth in the 06CW59 DECREE as such plan for augmentation may be amended pursuant to this APPLICATION, for YOUR reasonably anticipated future water requirements based on substantiated projections of future growth, as discussed in Pagosa Area Water and Sanitation Dist. v. Trout Unlimited, 170 P.3d 307 (Colo. 2007).*

Response to Request for Admission No. 3:

IWSD objects to Request for Admission No. 3 because it requests IWSD to make a legal conclusion regarding the definition of “reasonably anticipated future water requirements based on substantiated projections of future growth” in the context of the *Pagosa* case. Accordingly, IWSD does not have sufficient knowledge to admit or deny the Request for Admission No. 3.

Without waiving the foregoing objection, IWSD is a quasi-municipal special district obligated to provide water service to its customers. Although IWSD currently has limited plans for use of the AUGMENTED WATER, as described in the Response to Interrogatory Nos. 4 and 7 above, IWSD may need to put the AUGMENTED WATER to additional uses to satisfy its future water obligations.

- a. *Request for Production No. 19: If YOU do not admit to Request for Admission No. 3, produce all DOCUMENTS RELATED TO YOUR response to Request for Admission No. 3.*

Response to Request for Production No. 19:

Water Supply Plan Report dated April 18, 2017 identified as **Exhibit J**.

20. *Request for Production No. 20: Please provide all DOCUMENTS that you have not provided pursuant to Request for Production Nos. 1 – 19 that are RELATED TO YOUR specific plan and intent to use the UPPER DAWSON WATER, as augmented under the plan for augmentation set forth in the 06CW59 DECREE as such plan for augmentation may be amended pursuant to this APPLICATION, for the types and places of use requested in the APPLICATION other than those types and places of use of the UPPER DAWSON WATER that are currently approved under the plan for augmentation set forth in the 06CW59 DECREE.*

Response to Request for Production No. 20:

See General Comments and Objections, including specifically Paragraphs 4 and 6.

Without waiving the foregoing objections, the only DOCUMENTS RELATED TO IWSD's specific plan and intent to use the AUGMENTED WATER are those provided in Response to Request for Production Nos. 1 and 12.

The exhibits and tables identified above are available at the following link:

https://petroswhite-my.sharepoint.com/:f/g/personal/eric_hpkwatlaw_com/EtaGG4LCKK5EIPeOVrKwi_YBY6s7p8Ud-AYncao0Y0Vr3Q?e=sSwhJK

Submitted this 24th day of March, 2022.

AS TO FORM AND OBJECTIONS:

HAYES POZNANOVIC KORVER LLC

//s// Eric K Trout

David S. Hayes, #28661

Matthew S. Poznanovic, #29990

Eric K. Trout, #48640

*Attorneys for Independence Water
and Sanitation District*

VERIFICATION

I, Timothy Craft, President of Independence Water and Sanitation District, state under oath that I have read the foregoing **APPLICANT'S RESPONSE TO OBJECTOR FRANKTOWN CITIZENS COALITION II'S FIRST SET OF DISCOVERY REQUESTS** and the same is true and correct to the best of my knowledge.




Timothy Craft

STATE OF COLORADO)
)ss.
COUNTY OF DENVER)

The foregoing was acknowledged, subscribed and sworn to before me this 24th of March 2022, by Timothy Craft, President of Independence Water and Sanitation District.

WITNESS my hand and official seal.

MARGARET BRADLEY BROWN
Notary Public
State of Colorado
Notary ID # 20214018574
My Commission Expires 05-11-2025

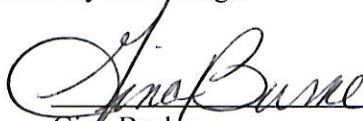


Notary Public

My Commission Expires:

VERIFICATION

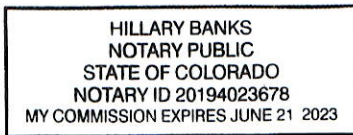
I, Gina Burke, water resources consultant for Independence Water and Sanitation District, state under oath that I have read the foregoing **APPLICANT'S RESPONSE TO OBJECTOR FRANKTOWN CITIZENS COALITION II'S FIRST SET OF DISCOVERY REQUESTS** and the same is true and correct to the best of my knowledge.



Gina Burke

STATE OF COLORADO)
)ss.
COUNTY OF Arapahoe)

The foregoing was acknowledged, subscribed and sworn to before me this 24th of March 2022, by Gina Burke, water resources consultant for Independence Water and Sanitation District.

WITNESS my hand and official seal.




Notary Public

My Commission Expires:

June 21, 2023

CERTIFICATE OF SERVICE

The undersigned certifies that on March 24, 2022 a true and correct copy of the foregoing **APPLICANT'S RESPONSE TO OBJECTOR FRANKTOWN CITIZENS COALITION II'S FIRST SET OF DISCOVERY REQUESTS** was filed and served via CCE on all parties of record:

//s// Eric K Trout
Eric K. Trout

This document was e-filed pursuant to C.R.C.P. 121 and a printed or printable copy with the original, electronic, or scanned signatures is available for inspection upon request at the offices of Hayes Poznanovic Korver LLC.