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| DISTRICT COURT, ARAPAHOE COUNTY, COLORADO<br><br>Arapahoe County Justice Center<br>7325 S. Potomac Street<br>Centennial, CO 80112 | DATE FILED: January 20, 2015 1:18 PM<br>FILING ID: 92867114C749B<br>CASE NUMBER: 2015CV30145 |
| **Plaintiff:**<br><br>VALLEY COUNTRY CLUB, a Colorado non-profit corporation;<br><br>v.<br><br>**Defendant:**<br><br>ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY, a quasi-municipal corporation. | **▲ COURT USE ONLY ▲**<br><br>Case No.: 15 CV _____<br><br>Division: |
| *Attorneys for Plaintiff Valley Country Club:*<br><br>Darrell G. Waas, #10003<br>Kathryn I. Hopping, #35036<br>WAAS CAMPBELL RIVERA JOHNSON & VELASQUEZ LLP<br>1350 17th Street, Suite 450<br>Denver, CO 80202<br>Telephone: (720) 351-4700<br>Facsimile: (720) 351-4745<br>waas@wcrlegal.com<br>hopping@wcrlegal.com | |

**COMPLAINT AND JURY DEMAND**

Plaintiff The Valley Country Club, a Colorado nonprofit corporation ("VCC") for its Complaint and Jury Demand against Arapahoe County Water and Wastewater Authority, a quasi-municipal corporation and political subdivision of the State of Colorado ("ACWWA"), states and alleges as follows:

1. VCC is a Colorado nonprofit corporation with its principal place of business in Arapahoe County, Colorado.

2. ACWWA purports to be a quasi-municipal corporation and political subdivision of the State of Colorado.

3. Venue is proper in this Court pursuant to C.R.C.P. 98(c) because VCC's primary place of business is in Arapahoe County, Colorado, and the subject matter of this action affects real property located in Arapahoe County, Colorado.

## GENERAL ALLEGATIONS

4. VCC is the owner of a 462 member country club (the "Club") located in Centennial, Colorado that consists of an 18-hole golf course, tennis courts, swimming pool, fitness center and dining facilities situated on approximately 222 acres.

5. VCC was formed in 1954 and construction started on the front nine holes of the golf course in 1955. The golf course was completed in July of 1960.

6. From its inception until the early 1980's, VCC irrigated its golf course and surrounding land using a series of wells. However, in 1980, the District approached VCC with a potential transaction that it claimed would mutually benefit the parties.

7. At that time, the District was anticipating significant growth within its boundaries that would increase the amount of wastewater effluent it generated beyond what it was capable of handling, primarily because the District had no means of storing, treating and properly disposing of the anticipated wastewater effluent.

8. By the early 1980s, the District was presented with two options – either construct the storage and treatment facilities necessary for future wastewater effluent disposal at significant expense or find a third party capable of handling its wastewater effluent on a permanent basis.

9. Thus, the District approached VCC and offered to provide the wastewater effluent to VCC, without charge, for irrigation of VCC's golf course and surrounding property. In exchange, VCC would be required to build the necessary onsite storage and infrastructure and, in this way, provide the District the opportunity to treat, store and discharge its wastewater effluent at no cost to the District.

10. On June 3, 1983, the District and VCC entered into the Wastewater Supply/Disposal Agreement (the "Effluent Agreement"), which set forth the terms of the parties' agreement, including the amount of wastewater effluent that the District would deliver and that VCC would accept. The Effluent Agreement provided, in relevant part:

a. That the District would supply and VCC would accept wastewater effluent up to a maximum of 400,000 gallons per day (gpd);

b. Over the course of five years VCC would construct and provide up to 184 acre-feet of storage capacity (*i.e.* storage lakes) onsite for storage of the wastewater effluent;

c. That VCC would design and construct all transmission piping to carry the wastewater effluent from its property line to the newly constructed storage lakes;

d. That VCC would design, construct and maintain at its expense any aeration facilities at the effluent storage sites as required by governmental agency or otherwise deemed necessary;

e. That VCC would be responsible for the maintenance and operation of all effluent related infrastructure and systems on its property, including the transmission piping, the aeration facilities and the storage lakes;

f. That the District would provide, in **"perpetuity"**, the first effluent generated by the District up to the 400,000 gpd;

g. That the District would not sell or deliver effluent to any other person or entity or otherwise dispose or discharge its effluent until all the agreed upon deliveries to VCC had been fulfilled.

11. At the time it was executed, the parties to the Effluent Agreement intended and acknowledged in writing that the Effluent Agreement would perpetually provide wastewater effluent to VCC at no charge.

12. After execution of the Effluent Agreement, VCC expended hundreds of thousands of dollars in reliance upon and in order to fulfill its obligations under the Effluent Agreement. VCC designed, constructed and maintains two sizable lined storage ponds on its property to allow for the lawful disposal and treatment of wastewater. VCC also designed and constructed all piping and irrigation infrastructure necessary to accommodate the levels of wastewater disposal received from ACWWA, including piping from VCC's property line to the storage sites, construction of aeration facilities and the redesign and remodel of its irrigation system to accommodate the increased water supply. In exchange, the District began delivery of the wastewater effluent required by the parties' agreement.

13. Between 1983 and 1992, the parties executed four amendments to the Effluent Agreement. Each amendment served a different purpose, such as extending the amount of time VCC had to build additional storage or increasing the amount of wastewater effluent delivered.

14. In November of 1988, ACWWA became the assignee of the District's prior agreements with VCC.

15. On November 27, 1991, ACWWA and VCC executed the Third Amendment Wastewater/Supply Agreement (the "Third Amendment"). Under the Third Amendment, the parties agreed to the following revisions:

a. The parties allowed VCC an extension of time to construct additional storage lakes contemplated by the original Effluent Agreement;

b. The parties agreed that VCC was obligated to take 200,000 gpd of effluent from ACWWA and that ACWWA may deliver up to an additional 224 acre-feet in the period between April and October at a total rate not greater than 600,000 gpd.

16. On October 14, 1992, the parties executed the Fourth Amendment to the Effluent Agreement ("Fourth Amendment"), which:

a. Acknowledged that VCC had recently made improvements to its irrigation system such that it required only an additional 55 acre-feet of wastewater affluent to satisfy its then-current irrigation needs;

b. Acknowledged that VCC had constructed wastewater effluent storage capacity on its property and had an obligation to construct another pond to provide an additional 92 acre-feet of storage capacity in order to meet the 184 acre-feet storage capacity required by the original Effluent Agreement;

c. Stated that, instead of requiring VCC to build the additional 92-acre feet of storage capacity onsite, VCC would pay ACWWA $380,884.80 (the "Payment") and ACWWA would design and construct a 55 acre-feet effluent pond (the "Subject Pond") at a site owned by ACWWA;

d. Provided that, once the Payment was made, VCC's obligation to add additional storage capacity expired; however, ACWWA had and continues to have the obligation to deliver the required wastewater effluent whether or not the Subject Pond is constructed;

e. Provided that, ACWWA would deliver an annual average of 320,000 gpd of wastewater effluent to VCC on a year round basis up to a maximum of 358 acre-feet per year, not including the additional 55 acre-feet per year noted above;

f. Provided that from April through October ("Irrigation Season"), ACWWA would deliver up to 440,000 gpd of wastewater effluent and from November through March ("Offseason") ACWWA would deliver up to 200,000 gpd of wastewater effluent to VCC.

17. Under the Fourth Amendment VCC is entitled to an average of 320,000 gpd per year, with up to 200,000 gpd delivered during the Offseason and up to 440,000 gpd delivered in the Irrigation Season. VCC can also draw upon the addition 55 acre-feet of wastewater effluent from the Storage Pond on an as-needed basis, which equates to approximately 600,000 gpd delivery in the main irrigation system as contemplated by the Third Amendment.

18. The Effluent Agreement and its amendments are collectively referred to herein as the "Effluent Agreements."

19. In 1993, VCC made the Payment to ACWWA as required by the Fourth Amendment. However, ACWWA never constructed the Storage Pond.

20. From 1983 until 2010, ACWWA delivered the wastewater effluent to VCC as contemplated in the Effluent Agreements.

21. During this time, VCC also enabled ACWWA to operate its water rights and augmentation plan by permitting ACWWA to reuse VCC's return flows and use VCC's property as a recharge, reuse, and augmentation facility in ACWWA's augmentation plan. This also allows for the management of ACWWA's water and water rights. VCC assists in accounting and operations necessary to accomplish these tasks. Through the use of VCC in this way, ACWWA has been able to reclaim, use and reuse water that VCC accepts onto its property. Thus, the water is given back to ACWWA and benefits ACWWA's water rights and resources.

22. In 2010, after nearly 20 years of delivery under the Effluent Agreements, a dispute arose between the parties concerning the amount of wastewater effluent that could be delivered free of charge under Fourth Amendment. ACWWA began to take the position that the Fourth Amendment only allowed for delivery of an average of 320,000 gpd, with up to 200,000 gpd in the Offseason and up to 440,000 gpd in the Irrigation Season. VCC took the position that, as it had for the last 20 years, VCC was entitled to take these amounts plus an additional 55 acre feet on an as-needed basis as provided in the Fourth Amendment and for which it had made the Payment for construction of the Storage Pond in order to store this added amount offsite.

23. The parties continued to negotiate over this issue until March of 2014. On March 3, 2014, ACWWA sent VCC a letter (the "March 3rd Letter") that, for the first time in over 30 years, took the position that ACWWA was entitled to begin charging VCC for all the wastewater effluent it delivers. ACWWA asserted that this new position was based on its legislative ratemaking authority under C.R.S. §29-1-204.2(3)(j).

24. By letter dated April 22, 2014, VCC disputed ACWWA's new position and asserted that ACWWA was acting in its proprietary function at the time it executed the Effluent Agreements, which are binding on both ACWWA and VCC, and that VCC has expended considerable sums and forgone numerous opportunities over the course of 30 years in reasonable reliance on those agreements.

25. Regardless, ACWWA has informed VCC that it will begin charging for all wastewater effluent deliveries. ACWWA's assertion that it will begin billing VCC for the wastewater effluent is in direct contravention of the Effluent Agreements and will cause real, immediate and irreparable harm to VCC. In the event that VCC fails to pay for the wastewater delivered, ACWWA will discontinue its delivery of effluent and VCC may be unable to irrigate its golf course. In the event that VCC elects to pay for the wastewater effluent, it will be forced to raise its membership dues or assess its members in order to afford these payments. An increase in membership dues would cause VCC to permanently lose members and make it nearly impossible to recruit new members.

26. As a result of the Effluent Agreements, VCC has constructed and maintains sizable lined storage on its property to allow for the lawful disposal and treatment of wastewater.

This storage requires regular inspection and maintenance and also periodic repair and replacement, which must be in compliance with CDPHE requirements.

27. Also as a result of the Effluent Agreements, VCC was required to design its golf course and size its water distribution and irrigation infrastructure to accomplish the level of waste water disposal required by ACWWA. VCC must now maintain its golf course and infrastructure to continue to provide this service to ACWWA. The services provided to ACWWA require detailed operations and accounting. These contractual obligations represent continuing burdens for VCC in providing services for ACWWA.

28. Additionally, in reasonable reliance on the Effluent Agreements, VCC has relinquished substantial water rights, forgone other opportunities for acquisition and preservation of water and water rights, foregone other opportunities for development and service of its property and invested considerably in performing its obligations under the Effluent Agreements.

29. VCC's reasonable reliance on the Effluent Agreements, and their perpetual nature, has caused VCC to foreclose other opportunities and the ability to operate its property and golf course in any other economical and practical manner.

## FIRST CLAIM FOR RELIEF
**(Declaratory Judgment)**

30. Plaintiff restates and re-alleges paragraphs 1-29 as though fully set forth herein.

31. ACWWA claims that it is entitled to begin billing VCC for the wastewater effluent it delivers under the Effluent Agreements based on its ratemaking legislative function.

32. VCC disagrees and contends that the contractual obligations of the Effluent Agreements are binding upon ACWWA, which was acting in its proprietary function when it entered into these contacts.

33. Consequently, the parties hereto have an extant dispute concerning their rights and obligations relating to the Effluent Agreements.

34. Pursuant to C.R.C.P. 57, VCC is entitled to a declaratory judgment that the contractual obligations of ACWWA under the Effluent Agreements are binding upon ACWWA and, as such, and in exchange for its contractual commitments and consideration given, VCC is entitled to receive a perpetual fixed amount of wastewater effluent from ACWWA as outlined in the Effluent Agreements.

## SECOND CLAIM FOR RELIEF
**(Permanent Mandatory Injunction)**

35. Plaintiff restates and re-alleges paragraphs 1-34 as though fully set forth herein.

36. ACWWA and VCC entered into the Effluent Agreement and the Fourth Amendment whereby they agreed that ACWWA could dispose of and VCC agreed to accept an annual average of 320,000 gpd of wastewater effluent on a year round basis up to a maximum of 358 acre-feet per year, with an additional 55 acre-feet per year that could be drawn on an as-needed basis.

37. The parties agreed that ACWWA would deliver a perpetual fixed amount of wastewater effluent to VCC without charge in exchange for VCC's contractual commitment that it would accept such effluent and design and construct adequate storage facilities and related infrastructure and bear the sole expense of continuing maintenance and repair of such facilities.

38. ACWWA's statements that it intends to begin billing VCC for delivery of the wastewater effluent contemplated in the Effluent Agreements is a violation of the Effluent Agreements.

39. ACWWA's violation of the Effluent Agreements has injured VCC.

40. VCC is therefore entitled to a permanent injunction requiring ACWWA to: (1) continue delivery of wastewater effluent as agreed upon in the Effluent Agreements; and (2) otherwise abide by all other terms and conditions of the Effluent Agreements and for such other relief as the Court deems appropriate.

## THIRD CLAIM FOR RELIEF
**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

41. Plaintiff restates and re-alleges paragraphs 1-40 as though fully set forth herein.

42. ACWWA's statements that it intends to begin billing VCC for delivery of the wastewater effluent under the Effluent Agreements are contrary to the intent of the Effluent Agreements and the reasonable expectations of the parties.

43. ACWWA have therefore breached the implied covenant of good faith and fair dealing in the Effluent Agreements.

44. Such breach has caused VCC damages in an amount to be proved at trial.

## FOURTH CLAIM FOR RELIEF
**(Quantum Meruit)**

45. Plaintiff restates and re-alleges paragraphs 1-44 as though fully set forth herein.

46. ACWWA received the benefit of the Payment totaling $380,884.80 at VCC's expense.

47. ACWWA has failed to design and construct the Storage Pond as required by the Fourth Amendment and, in the event that it is determined that ACWWA may bill VCC for the

wastewater effluent received under the Agreements based on its legislative ratemaking function, it would be unjust for ACWWA to retain the benefit of the Payment without refunding this amount with statutory interest.

48. Consequently, in the event that is it determined that ACWWA may bill VCC for the wastewater effluent received under the Agreements based on its legislative ratemaking function, ACWWA has been unjustly enriched resulting in injury to VCC in an amount to be proven at trial.

**FIFTH CLAIM FOR RELIEF**
**(Equitable Estoppel)**

49. Plaintiff restates and re-alleges paragraphs 1-48 as though fully set forth herein.

50. In the event that this Court determines that ACWWA may begin billing for wastewater effluent delivered to VCC under it legislative ratemaking powers, such billing is barred by the doctrine of equitable estoppel.

51. The doctrine of equitable estoppel is based on principles of fairness, and it may invoked against municipalities to prevent manifest injustice.

52. In the context of governmental agencies, the doctrine of equitable estoppel bars a governmental entity from enforcing some obligation by taking a position contrary to a previous representation reasonably relied upon by the party dealing with the governmental agency to his detriment.

53. Here, ACWWA knew the facts and intended that its representations be acted upon by VCC when it approached VCC and signed the Effluent Agreements.

54. VCC was ignorant of the actual facts and reasonably relied on ACWWA's conduct and/or misrepresentations to its own detriment as outlined above, resulting in injury and manifest injustice.

55. In light of the foregoing, ACWWA should be estopped from any assertion that it is not bound by the terms of the Effluent Agreements.

WHEREFORE, VCC requests entry of judgment in its favor and against ACWWA on VCC's claims, for entry of a permanent injunction against ACWWA, and for such other and further relief as this Court deems just and proper.

**VCC DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

DATED this 20th day of January, 2015.

WAAS CAMPBELL RIVERA JOHNSON & VELASQUEZ LLP

By: */s/ Kathryn I. Hopping*
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***In accordance with C.R.C.P. 121 §1-26(9), a printed copy of this document with original signature(s) is maintained by Waas Campbell Rivera Johnson & Velasquez LLP, and will be made available for inspection by other parties or the Court upon request.***