

DISTRICT COURT, WATER DIVISION 2 PUEBLO COUNTY, COLORADO 320 W. Tenth St., Rm. 207 Pueblo, CO 81003	DATE FILED: November 16, 2016 10:22 PM DATE FILED: June 25, 2013 12:58 PM CASE NUMBER: 2008CW47 ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR CHANGE OF WATER RIGHTS BY THE CITY OF FOUNTAIN AND WIDEFIELD WATER & SANITATION DISTRICT IN CUSTER COUNTY, COLORADO	Case No. 08CW47 Water Division 2
<p style="text-align: center;">ORDER RE: REQUEST TO CERTIFY ORDER OF JUNE 20, 2013 PURSUANT TO C.R.C.P. 54 (b)</p>	

This matter came before the court on June 25, 2013 at the request of the Applicants, the City of Fountain and Widefield Water and Sanitation District (Co-Applicants) for a status conference. The Applicants appeared by counsel Sarah Klahn and Cynthia Covell. The Opposers (4 separate parties), State and Division Engineers (“Engineers”) appeared by Paul Benington, Pueblo West Metropolitan District appeared by Robert Krassa and Thomas Mullans and Round Mountain Water and Sanitation District appeared by Robert Krassa, Custer County Investments, LLC appeared by Linda McMillan. Two Opposers have entered into settlement agreements with the Applicants but appeared at the Status Conference to monitor the case: City of Aurora appeared by Patricia Madsen, and Charles Schneider appeared by Leila Behnampour. The remaining parties (17) in this case have previously entered into settlement agreements with the Applicants. Therefore, this case involves multiple parties. A status conference was requested to address the Applicants request to have an order of this Court certified as final for purposes of an appeal. The court having reviewed the file herein, Colorado Rules of Civil Procedure Rule 54 (b) and the applicable law now enters the following **FINDINGS AND CONCLUSIONS:**

1. This Court on June 20, 2013 entered an Order Re: The State and Division Engineers Second Motion for the Determination of Questions of Law ("2013 Order").
2. Applicants request that this Court certify the 2013 Order as final under rule 54 (b) to enable an immediate appeal of that order.
3. This case is set for a seven-day trial beginning July 2, 2013. The Opposers request that the court deny certification of the 2013 Order as the trial will necessarily be vacated. Trial in this case was previously set in 2010, but was vacated to await a ruling from the Colorado Supreme Court.¹
4. The Honorable Dennis Maes² entered an order on April 24, 2012 (2012 Order) resolving certain questions of law. Applicants assert that the 2012 Order was subject to more than one interpretation. As a result their interpretation caused them to undertake a historic consumptive use (HCU) analysis based upon that interpretation. Applicants timely disclosed their HCU analysis which led the Engineers through counsel to file a Second Motion for Determination of Law in March of 2013. Applicants requested an extension of time to respond to the motion as a result the motion was not ripe for ruling until near the end of May 2013. Oral arguments were held on June 11, 2013.
5. The 2013 Order was based in part on the previous rulings entered in the 2012 Order. No party to this action filed a motion requesting reconsideration (although applicants in their oral argument requested this court to reconsider the 2012 Order) or a clarification of the 2012 Order.
6. The 2013 Order effectively would prevent Applicants from presenting their HCU analysis and therefore, as stated by the Engineers counsel during the status conference likely result in dismissal of the Applicants request for change of water right at the conclusion of the trial. That is, the legal effect of the 2013 Order regarding Applicants HCU claim could result in dismissal of the application for change of water rights.

¹ LoPresti v. Brandenburg, 267 P.3d 1211 (Colo. 2011), reh'g denied (Jan. 17, 2012).

² The Hon. Dennis Maes retired as the Water Division 2 judge effective June 1, 2012.

7. The court concludes that the 2013 Order is entered as a final judgment, as there is no just reason for delaying same. The court's 2013 Order is a ruling upon Applicants' HCU claim and is final in the sense of its legal effect on that claim and there is no just reason for delay in entry of a final judgment as to the HCU claim. *Levine v. Empire Savings & Loan*, 192 Colo. 188, 189, 557 P.2d 386, 387 (1976).

IT IS THEREFORE ORDERED:

- A. The 2013 Order is certified as a final order pursuant to C.R.C.P. Rule 54 (b);
- B. Trial scheduled to begin July 2, 2013 is hereby vacated;
- C. Applicants shall submit a joint status report every 147 days regarding the progress of the appeal beginning from the date of this order.

So ordered this 25th day of June, 2013.

BY THE COURT:


LARRY C. SCHWARTZ, WATER JUDGE
DISTRICT COURT, WATER DIVISION 2