

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

IN THE MATTER OF THE JOINT APPLICATION)
OF COLORADO WATER UTILITY, INC. AND)
DEER CREEK WATER DISTRICT FOR AN)
ORDER: 1) APPROVING THE TRANSFER OF)
CONTROL AND OWNERSHIP OF COLORADO)
WATER UTILITY, INC.'S PUBLIC UTILITY) **Docket No. 08A-___W**
ASSETS TO DEER CREEK WATER DISTRICT;)
2) TERMINATING ALL CERTIFICATES OF)
PUBLIC CONVENIENCE AND NECESSITY)
ISSUED TO COLORADO WATER UTILITY,)
INC. IN CONJUNCTION THEREWITH; AND 3))
AUTHORIZING COLORADO WATER UTILITY,)
INC. TO ABANDON AND OTHERWISE CEASE)
PROVIDING WATER UTILITY SERVICE TO)
ALL CUSTOMERS LOCATED WITHIN THE)
DEER CREEK FARM AND DEER CREEK)
RANCH ESTATES SUBDIVISIONS)
CONCURRENT WITH THE TRANSFER OF)
ASSETS TO DEER CREEK WATER DISTRICT.)

VERIFIED JOINT APPLICATION

Colorado Water Utility, Inc. (“CWU”) and Deer Creek Water District (“Deer Creek”) (referred to collectively as the “Joint Applicants”), by and through their undersigned counsel, and pursuant to Colo. Rev. Stat. § 40-5-105 and Rule 723-5104, *Colo. Code Regs. 723* (2008) of the Public Utilities Commission of the State of Colorado (“Commission”), hereby respectfully request an order from Commission authorizing: 1) CWU to transfer ownership and control of CWU’s public utility assets in the State of Colorado to Deer Creek;¹ 2) terminating all

¹ The transfer of assets contemplated by the Joint Applicants also includes the transfer of water rights which are owned by CWU’s affiliate, Deer Creek Water Co., LLC. CWU notes that water

certificates of public convenience and necessity (“CPCN”) issued to CWU by the Commission in conjunction therewith; and 3) authorizing CWU to abandon and otherwise cease water utility service to all customers located within the Deer Creek Farm and Deer Creek Ranch Estates subdivisions concurrent with the transfer of assets to Deer Creek Water District. Joint Applicants note that Deer Creek Water District has been formed so that bonds can be issued for the purchase of utility assets from CWU as well as for the water rights from Deer Creek Water Co., LLC, and to commence operation of the utility upon purchase and conveyance of the assets. As a result, the relief requested herein is intended by the Joint Applicants to be contingent upon Deer Creek Water District issuing bonds and obtaining the necessary funding to allow the transactions proposed herein to be consummated and that such transactions actually be consummated.

In support of this Joint Application, Joint Applicants are submitting various exhibits attached hereto and incorporated herein by reference as Exhibit Nos. 1 through ____.

As grounds for this Joint Application, Joint Applicants state as follows:

I. INFORMATION REQUIRED BY RULE 723-3-5002(B) and (C)

1. Names and Addresses of the Joint Applicants. The Joint Applicants are Colorado Water Utility, Inc. and Deer Creek Water District. Colorado Water Utility, Inc.’s principal place of business is at 7810 Shaffer Parkway, Suite 120, Littleton, Colorado 80127. Organization of the Deer Creek Water District was authorized by Resolution of the Board of County Commissioners of Elbert County (attached as Exhibit No.____), followed by a court-ordered election and ensuing vote of the taxpaying electorate located within the boundaries of the Deer Creek Water District at the general election held in Elbert County, Colorado on November 4,

provided by it to its customers is purchased by CWU from Deer Creek Water Co., LLC pursuant to a contract that was approved by the Commission in Docket No. 05A-376W, through Commission Decision No. R06-1300.

2008. The certification of election result regarding organization of the Deer Creek Water District, including official ballot, is attached as Exhibit No. _____. After the positive election result was certified, the District Court for Elbert County issued its decree authorizing organization of the Deer Creek Water District (attached as Exhibit No. ____). The Deer Creek Water District's Board of Directors held an organizational meeting on December 9 2008, at which it approved a budget for 2009 (attached as Exhibit No. ____) and certified a 2009 tax mill levy of 8.0 mills (attached as Exhibit No. ____). Deer Creek's principal place of business is located at 41408 Deer Creek Circle, Parker, CO 80138.

2. Name under which service will be provided. The name under which Deer Creek will provide service in Colorado is Deer Creek Water District.

3. Names and addresses for Inquiries. All inquiries concerning this Joint Application should be made to the undersigned counsel, and all notices, pleadings, correspondence and other documents regarding this Joint Application and proceeding should be served upon counsel, as well as upon the following persons:

For CWU:

Timothy Johnston, President
Colorado Water Utility, Inc.
7810 Shaffer Parkway, Suite 120
Littleton, CO 80127
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For Deer Creek:

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Parker, CO 80138
Telephone: (303) 646-9850

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390 Union Boulevard, Suite 400
Denver, Colorado 80228
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4. Agreement to Abide by specified rules. Deer Creek Water Utility has read, and agree to abide by, Rule 723-5-5002(b)(IV) through (b)(VI) of the Commission's Rules Regulating Water Utilities.

5. Joint Applicants' existing operations and general service areas. CWU currently provides water service in designated service areas within Elbert County, Colorado, under a CPCN granted to CWU in Decision No. R06-1300, Docket Number 05A-376W. Pursuant to this CPCN, CWU is the exclusive water service provider within the Deer Creek Farm and Deer Creek Ranch Estates subdivisions located in Elbert County. Exhibit No. ___ is a map of CWU's service territory in Elbert County, Colorado.

6. Applying utility's financial statements and qualifications.

a. Financial Statements. Attached as Exhibit No. ___ is the audited balance sheet, income statement, statement of retained earnings, and statement of cash flows for CWU. Because Deer Creek Water District has only just been created, it does not currently have any existing public utility operations in Colorado, nor does it have financial statements that may be included with this Joint Application other than its 2009 budget (referenced earlier as Exhibit No. ___).

b. Qualifications of Deer Creek. Following purchase of CWU's water utility assets, Deer Creek Water District will operate the water service operations in essentially the same manner as operations have been maintained by CWU, except that Deer Creek will not be a public utility subject to the jurisdiction of the Commission. Deer Creek will have approximately the same income stream currently realized by CWU, but will have the authority to increase fees and charges as needed to cover operation and debt repayment costs. Deer Creek will have interest and principal payments due on the bonds that it will issue in order to fund the purchase of CWU's assets and the water rights from Deer Creek Water Co., LLC. Evidence will be presented at hearing, if necessary, to show Deer Creek's ability to carry on CWU's water service operations and repayment of its bonds going forward.

7. Location of Hearing. If a hearing is required, Joint Applications request that the hearing be held in Denver, Colorado.

8. Acknowledgments. Colorado Water Utility has read, and agrees to abide by, Rule 723-5-5002(b)(XI)(A) through (C) of the Commission's Rules Regulating Water Utilities.

9. Statement Under Penalty of Perjury. The statement to be made under penalty of perjury required by Rule 723-5-5002(b)(XII) appears at the end of this Joint Application.

10. Miscellaneous Docket Information Required by Rule 723-5-5002(c) of the Commission's Rules Regulating Water Utilities.

Colorado Water Utility ("CWU") – Copies of the information listed in Rule 723-1-1310(a)(I) through (V) is attached hereto as follows: (1) CWU's Articles of Incorporation is attached as Exhibit No. ____; (2) a list of the names of the Officers, and Directors of CWU and the contact information for each is attached as Exhibit No. ____; and (3) a list of the names and affiliated companies that conduct business with CWU is attached as Exhibit No. ____.

The name and address of CWU's Colorado agent for service of process is:

Kenneth C. Wolfe
7810 Shaffer Parkway, Suite 120
Littleton, Colorado 80127

Deer Creek Water District –Copies of the information listed in Rule 723-1-1310(a)(I) through (V) is attached hereto as follows: (1) Deer Creek's organizational documents are attached as Exhibit Nos. ____; (2) a list of the names of the Officers and Directors of Deer Creek and the contact information for each is attached as Exhibit No. ____; and (3) a list of the names and affiliated companies that conduct business with Deer Creek is attached as Exhibit No. ____.

The name and address of Deer Creek's Colorado agent for service of process is as follows:

Bruce Leonard McQuaid
41408 Deer Creek Circle
Parker, Colorado 80138

II. INFORMATION REQUIRED BY RULE 723-5-5104(B)

11. The information required in Rules 5002(b) and (c) is set forth in Section I of this Joint Application and the exhibits attached hereto.

12. Financial information showing accounting entries, under the Uniform System of Accounts, for each party before and after the acquisition transaction are not yet available and will not be available until after the Commission approves the transaction and the transaction is consummated. Thus, the parties request that they be authorized to submit the required accounting entries to the Commission as late-filed Exhibit No. __ as soon as they are available following closing.

13. Attached as Exhibit No. ____ is a copy of the proposed (Asset Sale and Purchase Agreement, dated _____).

14. Section III of this joint Application sets forth the facts showing that the acquisition transaction, which is the subject of this Joint Application, is not contrary to the public interest.

15. Section IV of this Joint Application contains an evaluation of the benefits to CWU customers and to all other persons who will be affected by the transaction, which is the subject of this Joint Application. The Joint Applicants do not believe there will be any detriment to CWU customers or to any other persons who will be affected by the acquisition transaction, which is the subject of this Joint Application.

16. The Joint Applicants do not believe that there will be any material difference in the kinds of service rendered before and after the acquisition transaction which is the subject of this Joint Application. In terms of costs of service before and after the transaction, Deer Creek Water District anticipates that initial rates for service to its water customers will be reduced by approximately \$10.00 per month because Deer Creek will likely have lower overhead than that CWU currently recovers through its rates. This reduction in rates is possible because Deer Creek, through its status as a special district, will not have to file and pay income taxes, which are currently paid by CWU and which are included within its rates to customers. Additional potential cost savings to benefit customers result from Deer Creek's ability to operate as a governmental nonprofit entity and are discussed in Section IV of this Joint Application.

III. THE TRANSACTION THAT IS THE SUBJECT OF THIS JOINT APPLICATION IS IN NOT CONTRARY TO THE PUBLIC INTEREST

17. The public interest will be served by Deer Creek's acquisition of Colorado Water Utility, Inc.'s assets and by the contemporaneous termination of CWU's CPCNs and abandonment of water utility service to customers by CWU, all as proposed in this Joint Application. The Special District structure proposed for the acquisition and operation of the

ownership of CWU is beneficial to customers in a number of ways. First, and foremost, is that the Special District formed to acquire CWU was approved by 90% of the eligible voters at the time of its creation. As a nonprofit, governmental entity, Deer Creek will be able to offer a reduction of \$10 per month in its initial rate proposed to its customers. Furthermore, it is those very customers who will now own and control the operations of Deer Creek. As a consequence, the Commission will no longer need to regulate the rates and service of the utility since the customers will also be the owners and operators of the system through the Special District. Another benefit of transferring CWU's ownership to Deer Creek is the ability of Deer Creek, as a governmental entity, to seek public grants and low cost financing for future improvements to the water system. Consummation of the transactions proposed herein will allow the existing levels of service provided to CWU's current customers to be maintained and/or improved and may result in cost savings for customers, as discussed in Section IV of this Joint Application. Further evidence will be presented at hearing, if necessary, to establish the facts stated herein.

IV. EVALUATION OF THE BENEFITS AND DETRIMENTS TO CUSTOMERS AND ALL OTHER AFFECTED PERSONS

18. As previously stated, the Joint Applicants do not believe there will be any detriment to CWU customers or to any other persons who will be affected by the transactions proposed herein. Rather, water service customers of the Deer Creek Water District may enjoy cost of service savings that are not available to them as customers of CWU. Previously noted above is the example of cost of service savings to customers related to Deer Creek's status as a special district, which would not require Deer Creek to file and pay income tax and to include an associated charge to customers in rates.

19. Deer Creek intends to contract with CWU for the continued provision of operation and maintenance services for the sixty (60) days immediately following final

administrative approval of this Application by the Commission. This will give the Deer Creek operations personnel sufficient time to familiarize themselves with the operations of the water system. Deer Creek has already contracted and had initial discussions with a contractor who would take over the maintenance and operation of the water system upon approval of the Application. The contractor with whom preliminary discussions have been held has extensive experience operating and maintaining water systems throughout Colorado and surrounding states.

20. In addition to the operation and maintenance arrangements discussed above, Deer Creek wishes to emphasize for the Commission the fact that the Special District will have approximately double the amount of water required by the County for adequate operation of the water distribution system. Furthermore, Deer Creek will have control over the water rights to be used in providing services to its customers. The fact that the customers of the water service are also the owners of the water rights will provide significant security to Deer Creek for its future operations.

21. As required by Rule 723-5-5002(b)(XII), this Joint Application is verified by the attached affidavits of _____ on behalf of CWU and _____ on behalf of Deer Creek, which affirm that the contents of this Joint Application and the supporting exhibits are true, accurate, and correct.

WHEREFORE, the Joint Applicants respectfully request that the Commission issue an Order: 1) approving the transfer of ownership and control of all of Colorado Water Utility, Inc.'s water utility assets located in the State of Colorado to Deer Creek Water District; 2) terminating all certificates of public convenience and necessity issued to CWU by the Commission; 3) authorizing CWU to abandon and otherwise cease providing water utility service to end users

located with the Deer Creek Farm and Deer Creek Ranch Estates subdivisions concurrent with the transfer of assets to Deer Creek Water District; and 4) granting all such additional relief as the Commission may deem necessary in order to grant the relief requested in this Joint Application in its entirety. The Joint Applicants further request that such relief be contingent upon Deer Creek Water District issuing bonds and obtaining the necessary funding to allow the transactions proposed herein to be consummated and that such transactions actually be consummated.

Dated: January ____, 2009

Respectfully submitted,

HOLLAND & HART LLP

By _____

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