

DISTRICT COURT, EL PASO COUNTY,  
STATE OF COLORADO  
270 South Tejon St.  
Colorado Springs, Colorado 80903

FILED Document

CO El Paso County District Court 4th JD

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**Plaintiffs:**

M. B. ANDERSON; SASHA DAVIS-ELMORE; JONTREA DAVIS-ELMORE; DIANE A. DAVIS-ELMORE; CLYDE DEPEW; RUTH HACKER; DAVID HACKER; LEWIS JACKSON; BERTHA JACKSON; GAYLE Y. JONES; ROBERT W. KEENAN; RUTH D. KEENAN; LINDA KELEHER; ANDREANA KELEHER; JUDITH LEDEAN; CHRISTINE MCELHANEY; HERMAN R. MCELHANEY; CLAYTON L. NELSON; ELFRIEDE NOLAN; DORIAN O'LEARY; HEATHER O'LEARY; RONNIE REEVES; SANDRA REEVES; PAULA SCHOFIELD; DAVID SCHOFIELD; PAM SCHRODER; PATTI TEAL; KURT VANDENBOOGAARD; KURT WILLIAMS; ANNITA WILLIAMS; and MARCY WILMORE, Individual Taxpayers of the Cimarron Hills Fire Protection District  
v.

▲ COURT USE ONLY ▲

**Defendants:**

THE CIMARRON HILLS FIRE PROTECTION DISTRICT;  
THE BOARD OF DIRECTORS OF THE CIMARRON HILLS FIRE PROTECTION DISTRICT; ROBERT C. BALINK, in His Official Capacity as TREASURER, EL PASO COUNTY, COLORADO

Case Number: 2010CV7256

Div.: 2

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**STIPULATION FOR THE TREASURER OF EL PASO COUNTY TO DEPOSIT A PORTION OF THE 2010 AD VALOREM TAXES COLLECTED IN 2011 FOR CIMARRON HILLS FIRE PROTECTION DISTRICT INTO THE REGISTRY OF THE COURT, AND FOR STAY FOR FURTHER SETTLEMENT NEGOTIATIONS**

The Plaintiffs and the Defendants, Cimarron Hills Fire Protection District (“CHFPD”) and Robert C. Balink, in his official capacity as Treasurer of El Paso County (“County Treasurer”), hereby submit the following Stipulation requesting that the Court enter a Stipulated Preliminary Injunction and Order for the Treasurer of El Paso County to Deposit a Portion of the 2010 Ad Valorem Taxes Collected in 2011 for Cimarron Hills Fire Protection District Into the Registry of the Court, and for Stay for Further Settlement Negotiations. Pursuant to this Stipulation, the parties stipulate and agree:

1. The Plaintiffs filed the Complaint in this action against CHFPD, “the El Paso County Board of County Commissioners, and the El Paso County Assessor.”<sup>1</sup>

2. In the Complaint, the Plaintiffs allege that the Board of Directors of CHFPD’s certification of a mill levy of 11.11 mills on or about December 8, 2010 was in excess of the amount that could be legally certified,<sup>2</sup> and that the maximum mill levy the Board of CHFPD (the “Board”) could legally certify was 7.598 mills.

3. CHFPD contends that the mill levy certified on December 8, 2010 was proper, and that the amount certified (i.e., 11.11 mills) is not in excess of the maximum amount allowed by law.

4. Robert C. Balink, the El Paso County Treasurer, is a party because the County Treasurer is required by law to collect ad valorem taxes on behalf of CHFPD based upon the mill levies certified by the Board of CHFPD, then pay the taxes collected to CHFPD. Neither El Paso

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<sup>1</sup> Robert C. Balink, in his official capacity as Treasurer of El Paso County, was not originally named as a party, but agrees to be joined as a party to this action for the limited purpose of giving effect to this Stipulation. The El Paso County Board of County Commissioners and the El Paso County Assessor will be dismissed with prejudice as parties to this action under the terms of this Stipulation. The Treasurer will also be dismissed as a party if this Stipulation is approved by the Court, and after the Court enters the Stipulated Preliminary Injunction and Order for the Treasurer of El Paso County to Deposit a Portion of the 2010 Ad Valorem Taxes Collected in 2011 for Cimarron Hills Fire Protection District into the Registry of the Court, and for Stay for Further Settlement Negotiations. The Treasurer agrees to comply with all orders of the Court regarding the payment of the Ad Valorem taxes at issue in this case. The El Paso County Treasurer participates in this stipulation in furtherance of resolution of the instant dispute and as assistance to the parties and Court but otherwise does not concede he is a necessary party.

<sup>2</sup> The Complaint also alleges that the Board of CHFPD certified mill levies in excess of the maximum allowed by law in prior years. The issue of whether mill levies were in excess of the maximum amount which could have been legally certified in prior years is not the subject of this Stipulation.

County, nor the County Treasurer, had any involvement in setting the amount of mills levied by CHFDP, nor is El Paso County or the County Treasurer responsible for determining whether the amount of the mill levies certified by CHFDP is proper. The County Treasurer expresses no opinion on the amount of the CHFDP mill levy at issue.

5. The Complaint requests an injunction prohibiting the County from distributing to CHFDP, and prohibiting CHFDP from receiving or spending, 2010 ad valorem tax revenues (collected in 2011) to the extent the revenues are in excess of the amount which would have been collected based upon a mill levy of 7.598. In other words, the Plaintiffs have requested injunctive relief which would prohibit "El Paso County" from paying CHFDP any amount of 2010 taxes (collected in 2011) in excess of 68.4% of the amount collected based upon a 11.11 mill levy certification as applied to the assessed value of the property in CHFDP.

6. Without any party admitting liability, or acknowledging the position of any other party as correct or incorrect, the parties have entered into this Stipulation in an effort to avoid the inconvenience, expense and uncertainty of a hearing on the Plaintiffs' request for an injunction.

7. The Plaintiffs, CHFDP and the County Treasurer agree that the Court may enter a Stipulated Preliminary Injunction and Order directing the County Treasurer to deposit into the Registry of the Court the 2010 ad valorem tax revenue collected in 2011 on behalf of CHFDP which is in excess of 7.598 mills. In other words, the amount to be paid to CHFDP by the County Treasurer for 2010 ad valorem tax revenue collected in 2011 will not exceed \$1,096,711.60, and any 2010 ad valorem tax revenue (collected in 2011) which exceeds \$1,096,711.60 will be deposited into the Registry of the Court in an interest bearing account. This amount was determined based upon a mill levy of 7.598 mills times the \$144,342,150 assessed value of taxable property in CHFDP.<sup>3</sup>

8. The County Treasurer will, pursuant to the Stipulated Preliminary Injunction and Order, deposit all amounts collected in 2011 for the 2010 tax year on behalf of CHFDP in excess of \$1,096,711.60 into the Registry of the Court unless the County Treasurer receives a further order of this Court.

9. The Plaintiffs and CHFDP further agree that they will continue to negotiate in good faith to reach an agreement that will resolve all issues and claims in this civil action, and respectfully request that the Court stay further proceedings in this matter through May 31, 2011, to allow the parties to focus on settlement negotiations without incurring the expense of litigation, and without diverting their time and energy from attempting to resolve this matter without further litigation.

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<sup>3</sup> To the extent the County Treasurer has paid, or inadvertently pays, CHFDP an amount in excess of \$1,096,711.60, CHFDP shall promptly deposit such amount into the Registry of the Court, pending the resolution of this civil action or as otherwise directed by an order of the Court. The parties understand and agree that all sums disbursed by the County Treasurer to the CHFDP account or to the Registry of the Court, as the case may be, shall be net of all abatements and statutory fees.

10. If, by May 31, 2011, the parties have not reached a complete settlement of all claims, the stay will no longer be in effect, however, the funds in excess of \$1,096,711.60 (i.e., ad valorem taxes for 2010 collected in 2011 based on a mill levy in excess of 7.598 mills) will continue to be deposited and held in the Registry of the Court until further order of the Court.

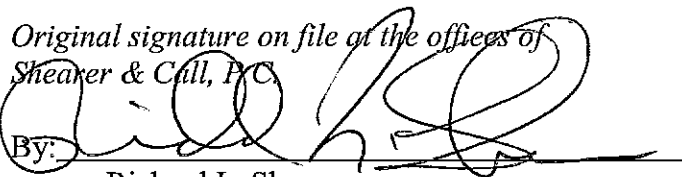
11. Nothing in this Stipulation is intended to prohibit CHFPD from using its existing financial reserves (to the extent it is allowed to do so by law) to continue to provide the level of service it currently provides to the community.

12. Nothing in this Stipulation or any Orders of the Court entered pursuant to this Stipulation shall prohibit CHFPD from holding an election in November 2011 (or at any other time allowed by law), or from engaging in lawful activities related to such an election, to obtain voter approval to increase its mill levy for future years.

13. The parties agree that either Plaintiffs or CHFPD may revoke this Stipulation by filing a motion to vacate the preliminary injunction entered pursuant to this Stipulation. A hearing on any such motion shall be set no earlier than thirty (30) days after the motion is fully briefed. Any ad valorem tax revenue deposited in the Registry of the Court pursuant to the Stipulated Preliminary Injunction and Order to be entered by the Court as a result of this Stipulation will continue to be held in the Registry of the Court, unless, after a hearing, the Court decides to vacate the preliminary injunction. The County Treasurer's participation in this action is limited and as described herein. The County Treasurer shall not be required to answer or otherwise respond to the complaint or otherwise participate in further litigation, if any, between Plaintiffs and CHFPD.

DATED this 18<sup>th</sup> day of April, 2011.

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