SUPREME COURT, STATE OF COLORADO

Case No. 99-SC-491

JOINT BRIEF OF THE COLORADO MUNICIPAL LEAGUE AND THE SPECIAL DISTRICT ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENT, BRECKENRIDGE SANITATION DISTRICT

MARSHALL B. KRUPP, RENATE D. KRUPP and CSA REAL ESTATE DEVELOPMENT, LLC, a Colorado limited liability company,

Petitioner

v.

THE BRECKENRIDGE SANITATION DISTRICT, a Colorado Special District; THE BOARD OF DIRECTORS of the Breckenridge Sanitation District; and ANDREW CARLBERG, as Manager of the Breckenridge Sanitation District,

Respondent.

Court of Appeals Case No. 97CA1996 (Decided April 1, 1999)
Opinion by Judge Plank, Judges Criswell and Kapelke concurring.

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COMES NOW the Colorado Municipal League ("League") and the Special District Association ("SDA"), by their undersigned attorneys and, pursuant to Rule 29, C.A.R., submit this brief as *amici curiae* in support of the position of Respondent, Breckenridge Sanitation District.

I. Interests of the League and Special District Association

The League is a voluntary nonprofit association consisting of 264 of the 269 municipalities in the state of Colorado. The League's membership includes every home rule municipality and 186 of the 191 statutory municipalities in Colorado, which collectively represent 99.9% of the municipal population of the state. The League has for decades appeared before this Court as *amicus curiae* to present the perspective of Colorado municipalities.

The Special District Association is a voluntary nonprofit association consisting of 420 of the approximately 1200 special districts in Colorado. Of the total number of special districts functioning in the state, approximately 420 are engaged in the providing of water and/or sanitary services, and of those 420 districts, 217 are members of the Special District Association. The ability of all of these districts to plan for and provide vital water and sanitary services is similarly affected by the decision of the Court in this case.

Statutory and home rule municipalities, and special districts throughout the state, have for many years imposed fees designed to defray the cost of providing various municipal services such as water, sewer, storm water collection and street maintenance. While municipalities' authority is somewhat different from that of special districts, the public purpose, the nature of the fee and the legal analysis is the same in both cases.

Relying on pronouncements by this Court, municipalities and special districts have understood that such fees are valid, so long as they are reasonably calculated to defray the cost of providing the service. To hold otherwise, as the Petitioner (hereinafter "the Krupps") invite this Court to do, would be to invalidate numerous legitimate, legislatively-determined special fees throughout the state, upon which municipalities and special districts depend to fund the provision of services to the citizens of this state.

II. Issues Presented for Review

Pursuant to the Court's Order of May 22, 2000 granting the Petition for Writ of Certiorari, the following issue is presented for review:

> Whether an impact fee levied against a development by a special district is a development exaction subject to a constitutional takings analysis under Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987) and Dolan v. City of Tigard, 512 U.S. 374 (1994).

III. Statement of the Case

The League and the SDA adopt and incorporate by reference the statement of the case as stated by Respondent, Breckenridge Sanitation District.

IV. Summary of Argument

The Krupps urge this Court to apply the constitutional test requiring "individualized determination," and "rough proportionality" outlined by the U.S. Supreme Court in Nollan v. California Coastal Commission, 483 U.S. 825 (1987) and Dolan v. City of Tigard, 512 U.S. 374 (1994) for testing the constitutionality of land dedications exacted in exchange for development

approvals to the Plant Investment Fee (PIF) charged by the Breckenridge Sanitation District (the "District").

In this case, the Court of Appeals correctly held that the Nollan/Dolan test is not the correct one for the special fees at issue. As the U.S. Supreme Court recently confirmed in City of Monterey v. Del Monte Dunes, 119 S.Ct. 1624 (1999), the Nollan/Dolan test only applies in certain, narrow circumstances. Colorado has judged special fees like the PIF based on whether they are "reasonably designed to defray the cost of providing the service." Loup-Miller Construction Co. v. City and County of Denver, 676 P.2d 1170 (Colo. 1984); Bloom v. City of Fort Collins, 784 P.2d 304 (Colo. 1990).

Upholding the Court of Appeals decision in this case would not do violence to the two main principles the Court sought to protect in Nollan and Dolan, namely that one individual or group should not be forced to bear costs that should be borne by the public as a whole, and that government should not be allowed to leverage its police power to demand unconstitutional concessions.

V. Argument -- The Nollan/Dolan test ("individualized determination" of "rough proportionality") doesn't apply to the PIF

A. The U.S. Supreme Court has recently confirmed that the Nollan/Dolan test does not apply outside a narrowly defined type of land exaction

In May 1999, the United States Supreme Court confirmed that the Nollan/Dolan test applied only to a narrowly defined set of circumstances, in which a local government entity conditions a land development approval on a dedication of land, determined solely with respect to the individual parcel of land in question. In City of Monterey v.Del Monte Dunes, where the

challenged action was a development denial, the Supreme Court was unanimous in holding that the Ninth Circuit had erred by applying the Dolan "rough proportionality" requirement to the case:

> Although in a general sense concerns for proportionality animate the Takings Clause . . . we have not extended the rough-proportionality test of Dolan beyond the special context of exactions – **land-use decisions conditioning approval of development on the dedication of property to public use.** . . . . The rule applied in Dolan considers whether dedications demanded as conditions of development are proportional to the development's anticipated impacts.

City of Monterey, 119 S.Ct. at 1635 (1999). [cites omitted] [emphasis added]

Thus the Supreme Court expressly clarified what it meant by exactions: "land use decisions conditioning approval of development on the dedication of property to public use." 119 S.Ct. at 1635. Generally applicable fees imposed by municipalities and special districts to recoup costs of providing water and sewer service do not, by any stretch, fit this definition. The establishment of a fee schedule is not a "land use decision." In no sense is payment of a fee in exchange for sewer service is a "dedication of property to public use."

B. Nollan/Dolan analysis is not appropriate because the District's fees are legislative, not adjudicative or discretionary

In its opinion in Dolan, the Court contemplated that the rough proportionality test might not apply to legislatively determined exactions when it said (after citing several land use cases):

> The sort of land use regulations discussed in the cases just cited, however, differ in two relevant particulars from the present case. First, they involved essentially legislative determinations classifying entire areas of the city, whereas here the city made an adjudicative decision to condition petitioner's application for a building permit on an individual parcel.

Dolan, 512 U.S. at 385, 114 S.Ct. at 2316.

The fee at issue in this case is not a Nollan/Dolan-type land exaction because it is not a discretionary, individual concession demanded as a condition of land approval, but rather is a legislative act, that applies uniformly to ***all*** property owners desiring sewer service. When a local government sets water rates it is a legislative act. Bennett Bear Creek Farm Water and Sanitation Dist. v. Board of Water Comm'rs, 928 P.2d 1254 (Colo. 1996).

The Krupps concede that the fee in this case was not discretionary. Rather "the calculation of the PIF amounted to mere arithmetic, multiplying the PIF by the SFE [Single Family Equivalent] rate." Opening Brief at 18.

The Krupps rely heavily on a 1996 California case in an effort to show that the Nollan/Dolan test should apply to the District's fee. Actually, Ehrlich v. City of Culver City, 911 P.2d 429 (Cal. 1996), illustrates the contrary. In Ehrlich, two fees were at issue. One was a $280,000 fee imposed to compensate for the loss of recreational facilities occasioned by demolishing a private health club in favor of a condominium development. This fee was individually determined and applied only to this property. The other was a $32,000 "art fee," imposed by application of a uniform schedule based on land value. Not surprisingly, the Krupps' Opening Brief focuses only on the individually determined $280,000 recreational fee, which the court found invalid under the Nollan/Dolan takings test.

In contrast, the California Supreme Court held that the "art fee" was **not** a development exaction of the kind subject to the Nollan/Dolan takings analysis:

> "As both the trial court and the Court of Appeal concluded, the requirement to provide art or a cash equivalent is more akin to traditional land use regulations imposing minimal building setbacks, parking and lighting conditions, landscaping requirements and other design conditions such as color schemes, building materials and architectural amenities. Such aesthetic conditions have long been held to be valid exercises of the city's traditional police power and do not amount to a taking merely

> because they might incidentally restrict a use, diminish value or impose a cost in connection with the property.

Ehrlich, 911 P.2d at 429.

Several other courts have found the Nollan/Dolan test inapplicable outside of the narrow class of land exactions defined in Del Monte Dunes, even before 1999.

In Parking Ass'n of Georgia, Inc. v. City of Atlanta, 450 S.E. 2d 200 (1994), the Georgia Supreme Court upheld an ordinance passed by the City of Atlanta requiring owners of downtown parking lots to landscape and plant trees on their parking lots. Because the ordinances did not demand discretionary exactions, the court applied the takings standard articulated in Agins v. Tiburon, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980) (An exaction which "advances legitimate governmental interest" and leaves the landowner with an "economically viable use of his property" does not constitute a taking):

> Plaintiff's reliance on Dolan is misplaced. In that case, the city required an applicant for a building permit to deed portions of her property to the city. The Supreme Court held the required dedication violated the Takings Clause because the city did not "make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the development.' . . . **Here the city made a legislative determination with regard to many landowners** and it simply limited the use the landowners might make of a small portion of their lands.

Parking Ass'n, 450 S.E. 2d at 203. [emphasis added] [citations omitted].

The Arizona Supreme Court agrees with this interpretation. The Krupps completely misapprehend the holding of the Arizona Supreme Court in Homebuilders Association of Central Arizona v. City of Scottsdale when they cite that case in support of the argument that Nollan/Dolan should apply. Homebuilders Association of Central Arizona v. City of

Scottsdale, 930 P.2d 993 (Az. 1997). (In fact, the Krupps refer to the case below, Homebuilders Association of Central Arizona v. City of Scottsdale, 902 P.2d 1347 (Az. 1995).)

In that case, the Arizona Supreme Court articulated the same distinction between legislative and adjudicative land use regulation, holding that Dolan did not apply to an ordinance imposing a water development fee on new development. 930 P.2d at 999-1000. The court also pointed out that a regulation requiring a dedication of property is considerably more onerous, and requires stricter scrutiny, than a regulation imposing a fee. 930 P.2d at 1000.

C. Colorado statutes further prove that the Nollan/Dolan test doesn't apply to a legislative fee schedule such as the PIF

The Krupps argue that a recently enacted Colorado statute somehow supports their argument that the Nollan/Dolan test should apply to the PIF.

Not only is the Krupps' reliance on the Colorado takings statute, C.R.S. 29-20-203 misplaced, but the statute stands for the opposite proposition than he claims. The statute purports to codify the Nollan/Dolan standard into Colorado law, referring to an "essential nexus," and an "individualized determination" of "rough proportionality." C.R.C. 29-20-203(1). But the statute by its very language applies only to an "amount that is determined on an individual and discretionary basis." C.R.S. 29-20-203(1). Significantly, the statute further provides "This section shall not apply to any legislatively formulated assessment, fee or charge that is imposed on a broad class of property owners by a local government." C.R.S. 29-20-203(1). This deliberate choice of language evidences a clear intent by the General Assembly to apply the Nollan/Dolan standard only in limited circumstances. It clearly does not apply to the generally applicable fee imposed by the Breckenridge Sanitation District in this case, nor to the various types of plant improvement fees imposed by municipalities and special districts

throughout the state. Plaintiff admits as much when he points out that the PIF is imposed based on "simple arithmetic." Opening Brief at 18.

D. The public policies the Supreme Court sought to serve in Nollan/Dolan would not be violated by upholding the PIF

As the U.S. Supreme Court pointed out in Dolan, a principal purpose of the takings clause is "to bar government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Dolan, 512 U.S. at 384, (citing Armstrong v. United States, 364 U.S. 40, 49, 80 S.Ct. 1563, 1569, 4 L.Ed.2d 1554 (1960)). And, as the court noted in Nollan, one reason for adopting the "individualized determination" of "rough proportionality" test was to prevent a governmental entity from "leveraging its police power" to exact concessions from a landowner in exchange for development approval. Nollan, 107 S.Ct. at 3149.

Upholding the Court of Appeals decision in this case would not violate these principles.

Street, sidewalk, water, sewer and storm water improvements have been traditionally required by local governments to avoid excessive congestion and unsafe conditions, and to provide basic services to preserve the health of the whole community, as well as the residents of the proposed development. See Parking Ass'n, 450 S.E. 2d at 202 (discussing Gradous v. Board of Comm'rs., 349 S.E. 2d 707 (Ga. 1986). These types of improvements have traditionally been a part of the costs considered in a developer's reasonable investment-backed expectations for constructing a subdivision or other development. Home Builders Association of Central Arizona v. City of Scottsdale II, 930 P.2d 1347, 1350 (Az. 1995).

These traditional dedications and improvements address unsafe travel and living conditions caused by the ultimate development of the proposed subdivision and have

traditionally enhanced the value and salability of a developer's property. Homebuilders Ass'n of Central Arizona II, 930 P.2d 994. The developer and the ultimate residents of the subdivision benefit most directly from the traditional system of integrated, interconnected, common, publicly controlled and maintained streets, sidewalks, sewer, water and storm water facilities built as a part of the required dedications and improvements. Homebuilders Ass'n of Dayton v. City of Beaver Creek, 729 N.E.2d 349 (Ohio, 2000). Consequently, the burden of dedication and improvement for the new development has been fairly, justly, and traditionally borne by the developer, and ultimate residents of the subdivision. 729 N.E.2d 349.

These traditional regulatory dedications and improvements are imposed because there is a well established cause-and-effect relationship between the property dedication and improvements required by the regulations and the social evils of congestion, safety and health problems that the regulations seek to remedy. But for the dedication and improvement regulation, the owner's use of the property is the source of the social problem. See Pennell v. San Jose, 485 U.S. 1, 20 (1988) (Scalia & O'Connor, JJ., concurring and dissenting). The development is hardly being singled out unfairly. Dedication and improvement regulations for streets, sidewalks, water, sewer and storm water facilities have been the traditional manner in which American local government has historically addressed issues of congestion and safety.

The California Supreme Court agreed when it summarized the philosophy behind Nollan/Dolan:

> government generally has greater leeway with respect to noninvasive forms of land use regulation, where the courts have for the most part given greater deference to its power to impose broadly applicable fees, whether in the form of taxes, assessments, user or development fees . . . . [s]uch [as] legislatively formulated development assessments imposed on a broad class of property owners. Fees of this nature may indeed be subject to a lesser standard of judicial scrutiny than that formulated by the court in Nollan and Dolan because the heightened

> risk of the 'extortionate' use of the police power to exact unconstitutional conditions is not present.

Ehrlich, 911 P.2d 443-444.

Of course, the Supreme Court ultimately found as much when it held in *Del Monte Dunes* in 1999, that the Nollan/Dolan test did not extend beyond a narrowly defined class of exactions. 119. S.Ct. at 1635.

E. An adverse decision in this case would jeopardize numerous special fees, which are a crucial component of the municipal financing system for water and sewer services

Municipalities and special districts usually levy tap fees (connection charges) for new wastewater service connections. Tap fees enable a wastewater utility to recover all or part of the costs of making a connection and sometimes defray the cost of making service available (capital cost replacement). Sometimes service to new customers requires future expansion of the plant or involves use of facilities paid for by former or present residents. One method many jurisdictions use to cope with these costs is to include a "plant investment" component as part of the tap fee.

Fifty-five percent of municipalities responding to a 1997 CML survey (58 of 105 municipalities) reported that their wastewater fees provide reserves for future expansion and improvement of the system.[1] Forty-seven percent include a capital cost replacement component; and 17 percent include debt reduction costs. See Table 25, Appendix A.

[1] Water and Wastewater, Utility Charges and Practices in Colorado, 1997 Edition. This publication updates a similar publication the League prepared in 1994. It is based on survey responses from 158 municipalities, representing a 60 percent return on 262 surveys mailed. The League conducted the survey in the fall of 1997. Excerpts from the publication are attached as Appendix A, B, C and D.

Seventeen municipalities charge a separate fee expressly entitled "Plant Investment." See Tables 23 and 24, Appendix B and C.

Survey results in 1997 show a 17.9 percent increase in average wastewater tap charges since 1994 for a single family residential tap inside the corporate limits. These increases are mostly due to either the addition of, or increases in, plant investment fees. In many municipalities, this is only a small fraction of the total tap fee. Usually these increases represent attempts to require growth to pay its own way, such as cost retrieval for expanded or updated facilities and reserves for future system development costs.[2] Other factors include the decreasing availability of federal and state grants and loans and cost retrieval for compliance with ever more stringent federal environmental mandates. See Table 17, pages 110-112, Appendix D.

In a 1999 survey of special districts by SDA, of 63 water districts and 58 sanitation districts responding, 34 water districts and 31 sanitation districts charge development fees (tap fees) or availability of service fees similar to the plant investment fees in this case. These fees are of great importance to the ability of these special districts to meet plant and facility needs caused by the development which pays the fees.

These plant investment fees are a legitimate method chosen by some municipalities to defray the cost of providing wastewater service. Municipalities have created these fee schedules

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[2] See, e.g., City of Arvada v. City and County of Denver, 663 P.2d 611 (Colo. 1983), in which this Court, in considering the validity of Arvada's water tap fee structure, which included a "System Development Charge" component similar to the PIF at issue here, held that "[t]he imposition of a development fee on new users is rationally related to the purpose, prominent in modern legislation, of making new development pay its own way. As stated by the trial court: 'This procedure of assessing a one-time development fee against new connectors to the water system and of increasing the amount of that fee pursuant to revised estimates of projected capital needs is consistent with Arvada's obligation to maintain and improve its water system for the benefit of its water users.'" 663 P.2d at 615. *See also*, Bennett Bear Creek Farm Water and Sanitation Dist. v. Board of Water Comm'rs, 928 P.2d 1254 (Colo. 1996), rehearing denied. ("Rate classifications which are rationally related to a legitimate governmental purpose will be upheld," and "[r]ates and charges rationally related to the governmental utility purpose, including having additional development pay its own way, are within the authority of section 31-35-

in reliance on this court's pronouncements that special fees are permissible where reasonably calculated to defray the cost of providing the service.[3]

As the state's population continues to grow at an unprecedented pace[4], local governments, including special districts will, continue to face increasing pressures on public facilities. Limitations on local governments' ability to finance public utilities such as the Taxpayers Bill of Rights, passed by the voters in 1992, and a current ballot proposal, known as TaxCut 2000, scheduled for a vote in November 2000, exacerbate this pressure.

A decision applying the Nollan/Dolan test to special fees, specifically plant investment fees such as the one at issue here, is not compelled by either the language of those decisions, or the policies they are intended to serve, and would substantially complicate the administration of these crucial fees.

Upholding the Court of Appeals decision in this case would strike an appropriate balance between owners' property rights and the responsibility of local governments to provide vital services for the protection of the public health, safety and welfare. Expanding the application of the Takings Clause in the way the Krupps ask would prevent legitimate uses of the police power, and ignore decades of decisions consistently sustaining regulations so long as they have a rational basis.

402(1)(f) [statute granting municipalities authority to operate and charge fees for a water system]) (citing Arvada, supra.)

[3] This Court has held that the appropriate test of the validity of a municipal fee schedule like the one at issue here is whether it is "reasonably calculated to defray the costs of providing the service." Loup-Miller Construction Co. v. City and County of Denver, 676 P.2d 1170 (Colo. 1983); Bloom v. City of Fort Collins, 784 P.2d 304 (Colo. 1989); City of Littleton v. State, 855 P.2d 448 (Colo. 1993), ("A service fee is a charge reasonably designed to meet overall costs of the service for which the fee is imposed.").
Incidentally, the Arizona Supreme Court undertook the same analysis in distinguishing between special assessments, and special fees, or development fees and holding that such fees are valid when rationally related to a need created by the development. Homebuilders Ass'n of Central Arizona, 930 P.2d at 997.

VI. Conclusion

Based on the language of Nollan and Dolan themselves, the U.S. Supreme Court's opinion in Del Monte Dunes, this Court's opinions dealing with special fees, Colorado statutes and the Krupps' own admissions, the Nollan/Dolan standard is not the appropriate test for the PIF.

WHEREFORE, *amici curiae* the Colorado Municipal League and the Special District Association respectfully request this Honorable Court uphold the decision of the Court of Appeals and find that the Nollan/Dolan test of constitutionality does not apply to legislatively determined, uniformly applied fees like the Plant Investment Fee imposed by Breckenridge Sanitation District.

Respectfully submitted this 7th day of August, 2000.

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[4] Colorado census counts (last modified may 30, 1998) <http:///www.state.co.us/gov_dir/obd/facts/population (1980-2010).htm>

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Joint Brief of the Colorado Municipal League and the Special District Association as *Amicus Curiae* was placed in the U.S. Postal System by first class mail, postage prepaid, on the 7th day of August 2000, addressed to the following:

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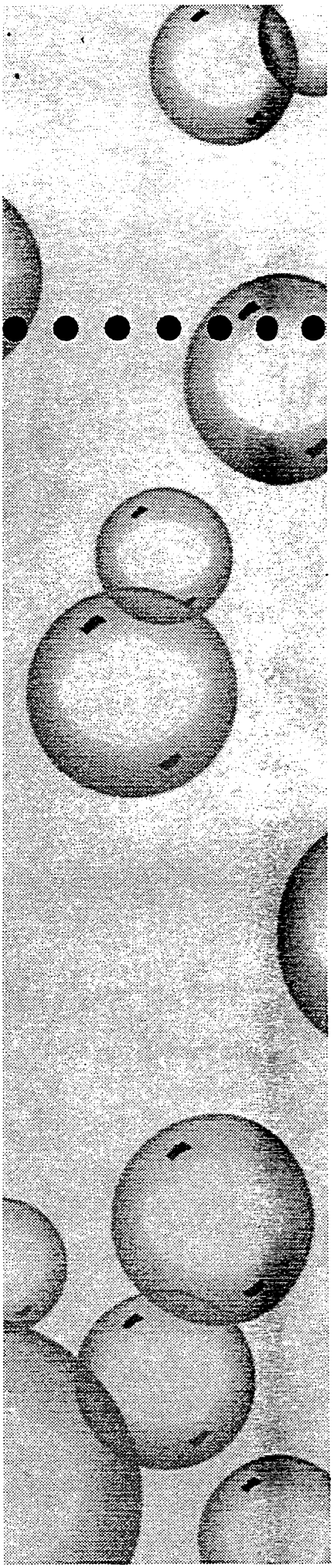
APPENDIX A



Water & Wastewater

Utility Charges and Practices in Colorado

1997 Edition

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Table 17. Federal Environmental Mandates

Municipality	Increased Costs as a Result of Federal Environmental Mandates *	Efforts Made to Increase Citizen Awareness of the Cost of Federal Environmental Mandates
Akron	Safe Drinking Water Act organics testing was $12,000+ the first year	newspaper articles
Alamosa	new WWTP added approx. $160,000/yr. in operating cost; debt service increased by $350,000/yr. for same	
Arvada	Safe Drinking Water Act--$5 million to upgrade WTP	
Black Hawk	corrosion control, $70,000; environmental impact statement, $750,000	
Boulder	Information Collection Rule--$250,000; additional testing and analysis--Safe Drinking Water Act	
Broomfield	THMs, disinfection by-products rule--phases I & II	
Brush	more intensive testing (i.e., lead and copper); $5,000 to $10,000 more per year	
Calhan	Clean Water Act	
Cheyenne Wells	lead and copper, nitrate testings; water samples--approx. $1,000 per year	
Collbran	operation and maintenance costs have increased due to the necessity of building a water treatment plant	
Colorado Springs	Surface Water Treatment Rule, $39,223,000 in major capital costs to filter previously unfiltered but excellent quality water	state costs of federal mandates during annual budget presentations to city council and the media
Crawford	Safe Drinking Water Act, $2,000	town council informed by public works director; newspaper reporter then puts mandates in newspaper
Crested Butte	water: new pollutants and stricter MCL's; sewer: sludge disposal regulations	
Cripple Creek	water meters on all homes by 2000; replacement of piped meters, $1,000,000	none
Delta	Project 7 installed new treated-water storage capacity--partially to satisfy req. of Disinfection Byproducts Rule--their debt incr. $4 million; Delta treated water costs incr. 5 cents/gal last yr + 5 cents/gal this yr; costs will incr. next yr also	
Denver	Safe Drinking Water Act	informal discussions with citizen's groups, and during rate/SDC public process
Dolores	water testing: $2,796.93	
Durango	Safe Drinking Water Act, treatment plant improvements $500,000; annual testing $8,000	
Eagle	minimal; testing costs $3,000 per year	
Englewood	lead and cooper rule increased use of causic soda; SDWA as a whole has increased costs approx. 10%	
Federal Heights	more water quality testing; $5,000 per year in testing	
Fleming	water testing	
Fort Collins	Information Collection Rule--$150,000 one-time cost; future impact on operations and maintenance costs unknown at this time	
Fort Morgan	due to litigation with the EPA for alleged violations, the city constructed a $10 million wastewater facility in 1996	wastewater issue was publicized on a regular basis in the local newspaper

* Since 1993

Table 17. Federal Environmental Mandates

Municipality	Increased Costs as a Result of Federal Environmental Mandates *	Efforts Made to Increase Citizen Awareness of the Cost of Federal Environmental Mandates
Genoa	test costs per Clean Water Act added $2,000 to $3,000 per year	town meetings
Gilcrest	treating existing lead levels in customer service lines; budgeted $20,000 in 1997	
Golden	Safe Drinking Water Act requirements (monitoring, enhanced coagulation, D/DBP requirements, ESWTR, for water; Clean Water Act (pretreatment) for sewer	identifying items in budget that are federally driven
Granada	additional water testing	
Grand Junction	surface water treatment rule and giardia and cryptosporidium monitoring--approx. $75,000/yr.	
Greeley	Safe Drinking Water Act, increased sampling and testing for Pb and Cu--$2,000/yr.; increased treatment costs--$15,000/yr. Cost of Joint Operations Plan (Forest Service mandates on High Mtn. Reservoir use): $70,000/yr. plus $430,000 one-time cost	
Gunnison	change wastewater treatment process to include composting of sludge; $605,000	
Gypsum	costs of labs for mandatory testing; cost of monitoring equipment cost to meet new regulation	
Haxtun	water testing	education - articles
Hayden	Safe Drinking Water Act - testing requirements	
Holly	wells inspected, more water testing, dues raised, more paper work, etc.	
Hot Sulphur Springs	increased water testing	
Hugo	Safe Drinking Water Act and increased water testing, approx. $750 per year more	newspaper reports
Julesburg	nitrate limitations--may cost the town between $500,000 and $1,000,000 to comply	
Kiowa	lead and copper	
La Jara	water sampling in re. Safe/Clean Water Act	
La Junta	corrosion control $39,000; increased monitoring $51,000	
Lamar	Colorado v. Kansas lawsuit	no efforts as of yet
Longmont	ammonia removal: $4,411,554; annual O & M: $100,000	
Louisville	increased lead and copper testing (laboratory costs) $25,000 to $50,000	
Loveland	many changes, both saving expense and requiring expense; costs unavailable	included in conservation programs
Lyons	Clean Water Act--chlorination time process required rehabilitation of water treatment plant--$500,000	
Manzanola	increased water testing	
Meeker	annual volatile organic chemicals testing and bi-weekly testing: $467. Town exempted in 1997 for SOC testing pending approval	notice of public meeting re reduced water monitoring schedule
Monte Vista	Clean Water Act--water testing costs	none
Montrose	Safe Drinking Water Act, Project 7, raised rates by 10%, which was passed along to city customers	white paper on utility rate increases Aug. 2, 1995 (copy on file in League office)

* Since 1993

Table 17. Federal Environmental Mandates

Municipality	Increased Costs as a Result of Federal Environmental Mandates *	Efforts Made to Increase Citizen Awareness of the Cost of Federal Environmental Mandates
Monument	additional water testing	
Nederland	lead and copper rule--$10,000 annually	
New Castle	503 regulations regarding wastewater sludge handling	meetings with developers
Northglenn	1986 SDWA Amendment--one additional staff member at $34,000/yr.; lead and copper rule--additional monitoring and testing	part of public education program
Norwood	Safe Drinking Water Act; upgrades to our water plant and storage facilities cost approx. $1.5 million over the past few years	town will be formulating a Customer Confidence Report (CCR) as required by the revised SDWA
Olney Springs	increased water testing	
Paonia	treatment and discharge standards in water and sewer; undetermined at this time since we are planning for compliance	
Peetz		ordinance adopted prohibiting contamination within 2.5 mile radius of water supply
Poncha Springs	Safe Drinking Water Act; additional testing requirements, $3,000/yr.	
Pueblo	water treatment/quality	open houses, system tours
Rangely	additional tests and monitoring--minimal effect so far	
Salida	testing requirements and turbidity requirements	
Seibert	organic tests	
Springfield	regulations on testing and compliance	news publications
Sterling	clean water testing requirements	
Stratton	testing, approx. $1,000	
Telluride	503 regs for biosolids; cost $2.4 million to construct aerobic digester	
Thornton	SDWA requirements	
Walden	additional sampling; loss of ground water source due to surface water treatment rule	
Wellington	extra water testing, approx. $5,000	
Wiggins	Clean Water Act, Safe Drinking Water Act	

Water Table 17 - Footnotes

Greeley - Safe Drinking Water Act: increased sampling and testing for lead and copper, $2,000/yr.; increased treatment costs, $15,000/yr. Cost of Joint Operations Plan (Forest Service mandates on high mountain reservoir use): $70,000 annual cost; $430,000 one-time cost associated with studies, legal fees, staff time, etc.

* Since 1993

APPENDIX B

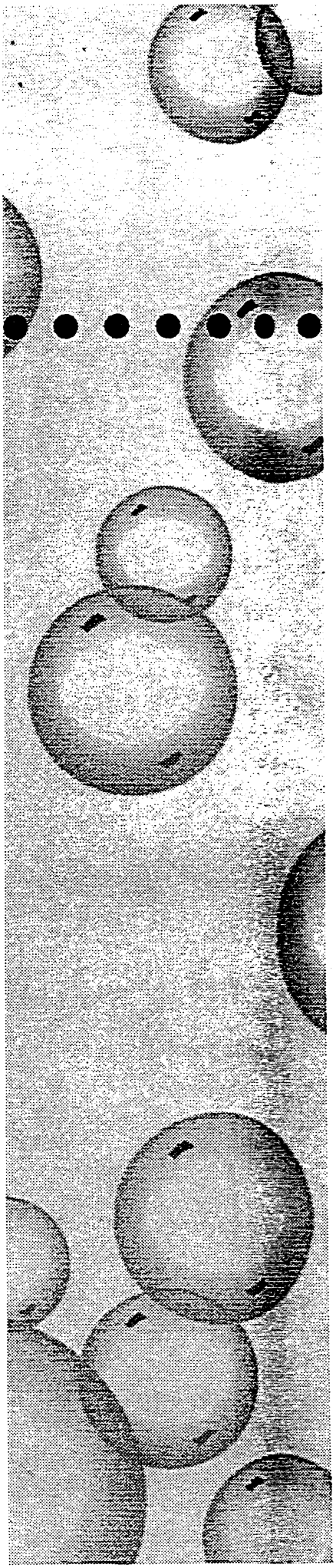

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Table 23. Sewer Tap Fees--Inside and Outside Corporate Limits

Schedules Based on Water Line Size, Flat Rate, or EQR Units (See also Table 24 for schedules based on sewer tap size.)

Municipality	Fee	SINGLE-FAMILY RESIDENTIAL Inside	SINGLE-FAMILY RESIDENTIAL Outside	1 INCH Inside	1 INCH Outside	1-1/2 INCH Inside	1-1/2 INCH Outside	2 INCH Inside	2 INCH Outside	3 INCH Inside	3 INCH Outside	LAST INCR. (DECR.)	REVISION PLANNED 1997/98
Akron	TOTAL TAP	275		275		275		275		275		1983	No
Alma	TOTAL TAP	1,750										1996	No
Antonito	Cost (outside is cost + 1/2)											1997	No
Arvada	TOTAL TAP plus Metro WW Recl. D.	1,000	1,000	1,900	1,900	4,400	4,400	8,100	8,100	19,100	19,100	(1994)	No
Bennett	Basic Fee	1,250		2,000		3,000		4,000		negot.		1997	No
	Plant Investment	1,750		1,750		1,750		1,750					
	Inspection Fee	150		150		150		150					
	TOTAL TAP	3,150		3,900		4,900		5,900					
Blanca	TOTAL TAP	600										1996	No
Boulder	TOTAL TAP (avg. size residence) + $80/gpm of peak water demand > 18 gpm	1,140										1997	Yes
Brighton	Pit Fee	154		185									
	Plant Investment	3,250		4,250		5,250		8,000					
	TOTAL TAP	3,404		4,435									
Broomfield	TOTAL TAP (EQR)	2,642										1997	Yes
Brush	TOTAL TAP (ET)	750										1989	No
Calhan	Basic Fee	1,500										1997	Yes
	Connect Fee	50											
	TOTAL TAP	1,550											
Canon City	TOTAL TAP	1,500		5,000		9,900		15,900				1997	No
Cedaredge	Basic Fee	1,500	2,000									1997	No
	Plant Investment	2,500	2,500										
	TOTAL TAP	4,000	4,500										
Collbran	TOTAL TAP	1,500	3,000									1996	No
Colorado Springs	Basic Fee	50	50	120	120	275	275	515	515	990	990	1997	Yes
	Dev. Charge	738	1,107	3,118	4,672	7,165	10,747	13,483	20,224	25,898	38,847		
	TOTAL TAP	788	1,157	3,238	4,792	7,440	11,022	13,998	20,739	26,888	39,837		
Crawford	TOTAL TAP	2,000	5,000										No
Crested Butte	TOTAL TAP/EQR *	4,250										1996	Yes
Cripple Creek	TOTAL TAP FEE *	3,000	6,000									1991	No
De Beque	TOTAL TAP	1,200										1985	No
Delta	TOTAL TAP	1,000	2,000	1,500	3,000	3,000	6,000	5,500	11,000	11,000	22,000	1984	Yes
Dinosaur	TOTAL TAP	500										1995	No
Dolores	TOTAL TAP	2000	4000									1997	Yes
Durango	Plant Investment	1,520	1,520	2,275	2,275	5,420	5,420	8,800	8,800	16,600	16,600	1983	No
Eads	TOTAL TAP	100	100	100	100							1984	No
Eagle	TOTAL TAP	3,500	3,500										
Eaton	TOTAL TAP	1,000	2,000	negot.	negot.							1997	No

** See Table 23 Footnotes

Table 23. Sewer Tap Fees--Inside and Outside Corporate Limits

Schedules Based on Water Line Size, Flat Rate, or EQR Units (See also Table 24 for schedules based on sewer tap size.)

Municipality	Fee	SINGLE-FAMILY RESIDENTIAL Inside	SINGLE-FAMILY RESIDENTIAL Outside	1 INCH Inside	1 INCH Outside	1-1/2 INCH Inside	1-1/2 INCH Outside	2 INCH Inside	2 INCH Outside	3 INCH Inside	3 INCH Outside	LAST INCR. (DECR.)	REVISION PLANNED 1997/98
Englewood	Basic Fee	1,400	1,400	2,333	2,333	4,667	4,667	7,467	7,467	14,932	14,932	1982	No
	Relief Line	500		833		1,667		2,667		5,333			
	Surcharge *												
Evans	TOTAL TAP	1,250	1,875	2,088	3,131	4,163	6,244	6,663	9,994	14,588	21,881	1997	Yes
Federal Heights	TOTAL TAP	800		1,400		2,800		4,500		9,100		1985	Yes
Fleming	TOTAL TAP	2,500										1996	No
Fort Collins	Basic Fee	250	250	250	250	250	250	250	250	250	250	1991	Yes
	Plant Investment	1,600	1,600	5,100	5,100	9,350	9,350	15,100	15,100	based	on use		
	TOTAL TAP	1,850	1,850	5,350	5,350	9,350	9,350	15,350	15,350	based	on use		
Fort Morgan	TOTAL TAP FEE	1,200	1,200	2,000	2,000	4,000	4,000	6,400	6,400			1995	No
Frederick*	Basic Fee	1,500										1992	No
	Plant Investment	1,500											
	Inspection Fee	40											
	TOTAL TAP	3,040											
Genoa	Basic Fee	500	500									1996	No
	Plant Investment	1,000	2,000										
	TOTAL TAP	1,500	2,500										
Gilcrest	TOTAL TAP/SFE	3,000										1980	No
Glendale	Basic Fee	1,300											
	Other	25											
	TOTAL TAP	1,325										1986	No
Golden	TOTAL TAP	1,419		5,170		10,296		16,489		36,102		1994	No
Granada	TOTAL TAP	200											No
Grand Junction	TOTAL TAP/EQU	750										1980	No
Greeley	TOTAL TAP	1,288	1,288	2,150	2,150	4,290	4,290	6,865	6,865	15,030	15,030	1997	Yes
Grover	Basic Fee	1,000										1996	No
Gunnison	Construction Cost												Yes
Hayden	Plant Investment	2,000	4,000	2,000	4,000	2,000	4,000	2,000	4,000	2,000	4,000	1996	No
Holly	TOTAL TAP	300	600	300	600	300	600	300	600	300	600	1994	Yes
Holyoke	Basic Fee	712	712									1997	No
	If Street Paved	150	150										
	Line Charge: $9.56/front ft.												
Hot Sulphur Spgs	TOTAL TAP	750	1500										Yes
Hugo	TOTAL TAP	250											No
Idaho Springs	TOTAL TAP	2,500	5,000	4,500	9,000	10,000	20,000	17,850	35,700	40,200	80,400	1996	No
Julesburg	TOTAL TAP	100	100									1975	No
Kiowa	TOTAL TAP	4,500											No
Lafayette	TOTAL TAP FEE *	2,400										1990	No
La Jara	Customer pays for complete hook-up												
La Junta	TOTAL TAP	300	600	600	1,200							1982	No

** See Table 23 Footnotes

Table 23. Sewer Tap Fees--Inside and Outside Corporate Limits

Schedules Based on Water Line Size, Flat Rate, or EQR Units (See also Table 24 for schedules based on sewer tap size.)

Municipality	Fee	SINGLE-FAMILY RESIDENTIAL Inside	SINGLE-FAMILY RESIDENTIAL Outside	1 INCH Inside	1 INCH Outside	1-1/2 INCH Inside	1-1/2 INCH Outside	2 INCH Inside	2 INCH Outside	3 INCH Inside	3 INCH Outside	LAST INCR. (DECR.)	REVISION PLANNED 1997/98
Lakewood	TOTAL TAP (incl. Metro WW)	2,800		6,375		15,000		23,750		51,250			No
Lamar	TOTAL TAP	240	240	400	400	800	800	1,280	1,280	2,400	2,400	1996	No
La Salle	TOTAL TAP	1,800	3,600										
La Veta	Basic Fee	2,000											
	Connect	800											
	TOTAL TAP	2,800										1992	No
Limon	TOTAL TAP (per 15 fixture unit eq.)	1,000	2,000									1989	No
Littleton	TOTAL TAP	1,125	1,350	2,250	2,700	4,500	5,400	9,000	10,800	20,250	24,300	1982	No
Louisville	TOTAL TAP	2,525	2,525	7,010	14,020	14,025	28,050	28,050	56,100	63,115	126,230	1997	
Loveland	Plant Investment	1,080	1,620	2,470	3,705	8,220	12,330	13,140	19,710	24,690	37,035		Yes
Lyons	TOTAL TAP	4,000	4,000									1995	No
Mancos	TOTAL TAP	1,500	3,000	3,150	6,300	3,650	7,300	4,150	8,300	5,150	10,300	1995	No
Manzanola	TOTAL TAP	800	1,200									1997	Yes
Metro WW Dist.	TOTAL TAP (SFRE)	1,250		6,375		15,000		23,750		51,250		1997	Yes
Monte Vista	Permit Charge plus $50 per 15 Family Unit Equiv	50										1997	No
	System Developmt plus $1000 per 15 Family Unit Equiv	1,500											
	TOTAL TAP	1,550											
Morrison	Basic Fee/EQR	3,000	5,250									1992	
New Castle	TOTAL TAP	2,250	3,000	2,250	3,000	2,250	3,000	2,250	3,000	2,250	3,000	1997	No
Norwood	Combined with water												Yes
Olathe	TOTAL TAP	1,200	1,500										Yes
Olney Springs	TOTAL TAP	250	250										No
Pagosa Springs	TOTAL TAP	1,500	1,500										Yes
Palisade	TOTAL TAP; $2,000 per addl unit	2,000										1997	No
Paonia	TOTAL TAP	2,500	4,500									1995	Yes
Peetz	TOTAL TAP (no fee required)												No
Platteville	TOTAL TAP	2,000										1993	Yes
Poncha Springs	TOTAL TAP	1,400	2,800									1995	Yes
Pueblo	Basic Fee	640		640		1,670		2,670		5,340		1995	No
	Plant Investment (per EQR)	0	2,050										
	TOTAL TAP	640	2,050	640		1,670		2,670		5,340			
Rangely	TOTAL TAP	700	1,400									1985	No
Romeo	TOTAL TAP		420									1994	No

** See Table 23 Footnotes

Table 23. Sewer Tap Fees--Inside and Outside Corporate Limits

Schedules Based on Water Line Size, Flat Rate, or EQR Units (See also Table 24 for schedules based on sewer tap size.)

Municipality	Fee	SINGLE-FAMILY RESIDENTIAL Inside	SINGLE-FAMILY RESIDENTIAL Outside	1 INCH Inside	1 INCH Outside	1-1/2 INCH Inside	1-1/2 INCH Outside	2 INCH Inside	2 INCH Outside	3 INCH Inside	3 INCH Outside	LAST INCR. (DECR.)	REVISION PLANNED 1997/98
Saguache	TOTAL TAP	250										1974	No
Salida	TOTAL TAP (EQR)	1,000	2,000									1981	No
Sanford	TOTAL TAP	300											No
Seibert	TOTAL TAP	350										1996	No
Severance	Basic Fee	250										1995	
	Plant Investment	2,200											
	TOTAL TAP	2,450											
Silt	TOTAL TAP	3,000										1996	Yes
	saddle only)												
Sterling	Alley Basic Fee	100	100	100	100	100	100	100	100	100	100		No
	Street Basic Fee	275	275	275	275	275	275	275	275	275	275		
	Plant Investment	1,300	1,521	3,250	3,803	6,500	7,605	10,605	12,168	19,500	22,815		
Stratton	TOTAL TAP	250	500	250	500							1996	No
Swink	Hard Water	500	1,000	1,000	2,000							1997	No
	Soft Water	500	1,000	1,000	2,000								
Telluride	WATER & SEWER TAP + $6.25/sq. ft. over 2,500 sq. ft *	7,632	9,998									1997	
Thornton	Physical Tap	110	110									1997	Yes
	Basic Fee	150	150										
	Metro WW Recl. D.	1,250	1,250										
	TOTAL TAP	1,510	1,510										
Victor	TOTAL TAP	2,000	2,500									1994	No
Walden	TOTAL TAP FEE	750	750	750	750	750	750	750	750	750	750	1985	No
Wellington	TOTAL TAP	2,400										1994	Yes
Westminster	TOTAL TAP FEE	1,614		2,674		5,193		8,099		15,767		1994	No
Wiggins	TOTAL TAP plus time & materials	1,500	1,500									1992	No
Windsor	Plant Investment	1,900	3,800	3,230	6,460	6,270	12,540	10,070	20,140	22,230	44,460	1995	No
Wray	Basic Fee	250										1993	No
	Plant Investment	1,200											
	TOTAL TAP	1,450											
Yampa	TOTAL TAP	1,500	2,250									1994	Yes

** See Table 23 Footnotes

APPENDIX C

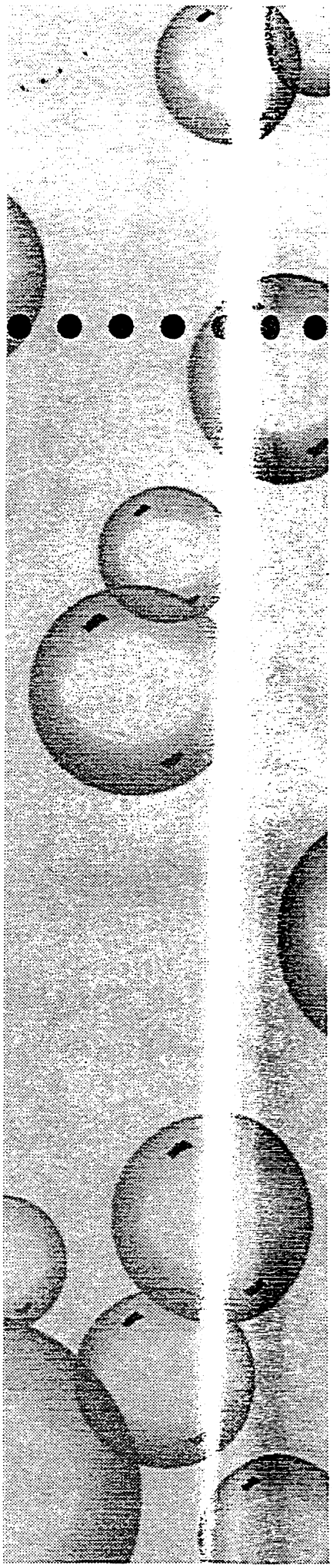

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Table 24. Sewer Tap Fees--Inside and Outside Corporate Limits

Schedules Based on Sewer Tap Size (See also Table 23 for schedules based on water line size, flat rate, or EQR units.)

Municipality	Fee	4 INCH Inside	4 INCH Outside	6 INCH Inside	6 INCH Outside	8 INCH Inside	8 INCH Outside	YEAR TAP FEE LAST INCREASED (DECREASED)	TAP FEE REVISION PLANNED IN 1997 OR 1998
Alamosa	Basic Fee	500	500	750	750	1,000	1,000	1992	No
	Plant Investment	500	500	1,250	1,250	3,000	3,000		
	TOTAL TAP	1,000	1,000	2,000	2,000	4,000	4,000		
Elizabeth	TOTAL TAP	3000						1994	Yes
Montrose	Basic Fee	2,320	2,900	5,220	6,525	9,280	11,600	1997	Yes
Norwood	TOTAL TAP per EQR	1,500	2,000					1993	No
Rocky Ford	TOTAL TAP	0	500					1993	No
Springfield	TOTAL TAP (tap saddle only)	150	150	150	150	150	150		No
Yuma	Basic Fee, O&M	300	300						No
	Saddle	25	25						
	TOTAL TAP	325	325						

** See Table 24 Footnotes

APPENDIX D

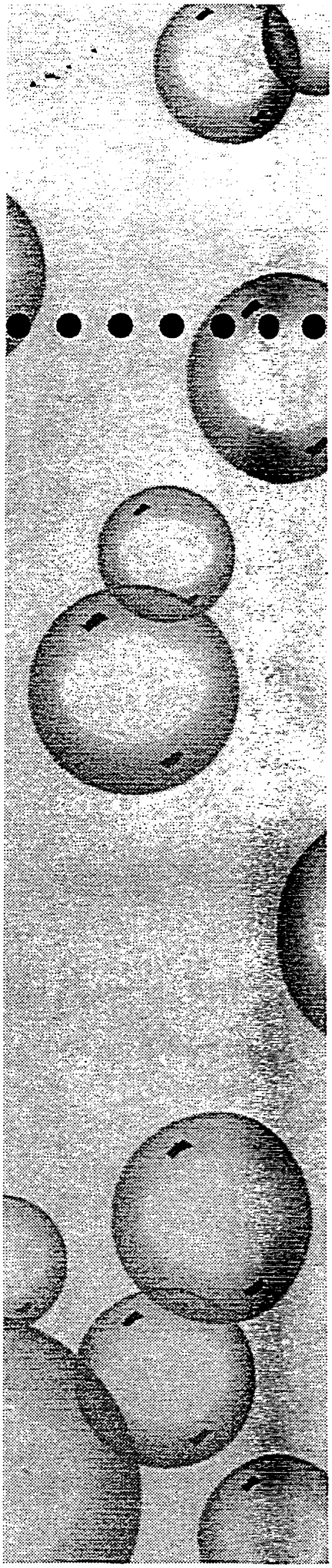

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Table 25. Items Included in Sewer Tap Fee and Maintenance Costs

Municipality	TAP FEE INCLUDES: Future System Development Costs	Capital Cost Replacement	Labor & Materials	Debt Reduction	Main to Property Line	Pavement Cut	WHO PAYS FOR MAINTENANCE FROM MAIN TO PROPERTY LINE
Akron			Yes		Yes	Yes	M
Alamosa		Yes	Yes				C
Alma	Yes	Yes					C
Antonito					Yes		M
Arvada	Yes			Yes			
Bennett	Yes	Yes		Yes			C
Blanca			Yes		Yes	Yes	C
Boulder		Yes	Yes				M
Brighton							
Broomfield		Yes		Yes			M
Brush	Yes	Yes					C
Calhan	Yes	Yes		Yes			M
Canon City	Yes						C
Cedaredge	Yes						M
Collbran	Yes	Yes		Yes			C
Colorado Springs	Yes	Yes		Yes			C
Crawford							C
Crested Butte	Yes	Yes		Yes			C
Cripple Creek			Yes		Yes	Yes	M
De Beque		Yes					M
Delta		Yes					C
Dinosaur							C
Dolores			Yes		Yes		M
Durango	Yes						C
Eads	Yes						C
Eagle	Yes	Yes					C
Eaton	Yes		Yes		Yes	Yes	C
Elizabeth	Yes	Yes					C
Englewood	Yes						
Evans	Yes	Yes		Yes			C
Federal Heights	Yes	Yes	Yes		Yes		M
Fleming	Yes						M
Fort Collins	Yes	Yes	Yes	Yes			C
Fort Morgan		Yes					C
Frederick							C
Genoa					Yes		M
Gilcrest	Yes	Yes		Yes			M
Glendale							
Golden	Yes	Yes	Yes				C
Granada			Yes				C
Grand Junction				Yes			C
Greeley	Yes	Yes	Yes				C
Grover	Yes	Yes	Yes	Yes	Yes		C
Gunnison			Yes				M
Hayden	Yes						C
Holly			Yes				M
Holyoke		Yes	Yes			Yes	C
Hot Sulphur Spgs.	Yes	Yes					C
Hugo		Yes					C
Idaho Springs							C
Julesburg							C
Kiowa							C
Lafayette		Yes					
La Jara			Yes		Yes		C

Table 25. Items Included in Sewer Tap Fee and Maintenance Costs

Municipality	TAP FEE INCLUDES: Future System Development Costs	Capital Cost Replacement	Labor & Materials	Debt Reduction	Main to Property Line	Pavement Cut	WHO PAYS FOR MAINTENANCE FROM MAIN TO PROPERTY LINE
La Junta	Yes						C
Lakewood	Yes	Yes					C
Lamar	Yes		Yes			Yes	C
La Salle		Yes	Yes		Yes	Yes	M
La Veta							
Limon	Yes	Yes					C
Littleton	Yes						C
Louisville	Yes						C
Loveland	Yes	Yes	Yes				C
Lyons	Yes	Yes		Yes			C
Mancos			Yes		Yes		C
Manzanola	Yes	Yes	Yes				C
Metro WW Dist.	Yes	Yes					
Monte Vista	Yes	Yes					M
Montrose	Yes	Yes					M
Morrison		Yes					C
New Castle	Yes	Yes		Yes			C
Norwood	Yes						M
Olathe	Yes	Yes	Yes		Yes	Yes	C
Olney Springs			Yes		Yes	Yes	M
Pagosa Springs	Yes	Yes					M
Palisade		Yes					C
Paonia	Yes						C
Peetz							M
Platteville							C
Poncha Springs	Yes		Yes				M
Pueblo	Yes						C
Rangely	Yes	Yes		Yes			C
Rocky Ford		Yes					M
Romeo			Yes				M
Saguache			Yes				C
Salida	Yes						C
Sanford					Yes		M
Seibert					Yes		M
Severance		Yes			Yes		C
Silt	Yes	Yes		Yes			M
Springfield							C
Sterling	Yes	Yes	Yes		Yes	Yes	M
Stratton							C
Swink					Yes		M
Telluride							M
Thornton	Yes		Yes				C
Victor			Yes		Yes		M
Walden			Yes		Yes	Yes	M
Wellington	Yes			Yes			C
Westminster	Yes	Yes					C
Wiggins	Yes	Yes			Yes		M
Windsor	Yes						C
Wray	Yes						C
Yampa	Yes	Yes					C
Yuma							C