

**SUPREME COURT, STATE OF COLORADO**

Ralph L. Carr Judicial Center  
2 East 14<sup>th</sup> Avenue  
Denver, Colorado 80203

DATE FILED: September 28, 2022 1:07 PM

Appeal from the District Court, Water Division No. 5  
Case No. 13CW3077  
The Honorable Judge James Berkley Boyd

Concerning the Application of the United States of America, the City and County of Denver, acting by and through its Board of Water Commissioners, the City of Colorado Springs, acting through its Enterprise Colorado Springs Utilities, the Colorado River Water Conservation District, the Northern Colorado Water Conservancy District, the Middle Park Water Conservancy District, the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, the Grand Valley Irrigation Company, the Palisade Irrigation District, and Climax Molybdenum Company for a Determination of Water Rights in Summit, Grand, Garfield, Eagle, Pitkin, Routt, Gunnison, Rio Blanco, and Mesa Counties, Colorado

**Opposer-Appellant:** City of Golden

v.

**Applicants-Appellees:** the United States of America, the City and County of Denver, Acting by and through its Board of Water Commissioners, the City of Colorado Springs, Acting through its Enterprise Colorado Springs Utilities, the Colorado River Water Conservation District, the Northern Colorado Water Conservancy District, the Middle Park Water Conservancy District, the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, the Grand Valley Irrigation Company, the Palisade Irrigation District, and Climax Molybdenum Company

**Opposers-Appellees:** the City of Aurora, the Chimney Rock Ranch LLC, the Clinton Ditch and Reservoir Company, the Eagle Park Reservoir Company, the Eagle River Water and Sanitation District, the Grand County Board of Commissioners, the Town of Gypsum, the Public Service Company of Colorado, the Snake River Water District, the Summit County Board of Commissioners, the Upper Eagle Regional Water Authority, and the Ute Water Conservancy District

**Division Engineer-Appellee:** James Heath, in his capacity as the Division Engineer for Water Division No. 5

**Δ COURT USE ONLY Δ**

Supreme Court Case No:

2022SA\_\_\_\_\_

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<b>CITY OF GOLDEN'S NOTICE OF APPEAL</b>	

Appellant, the City of Golden (“Golden”), submits the following Notice of Appeal pursuant to Colorado Appellate Rules (“C.A.R.”) 3 and 4(a):

**I. Description of the Nature of the Case and Disposition in Water Court**

**A. General statement of the nature of the controversy.**

Green Mountain Reservoir (“GMR”) was decreed 1935 water rights through a series of earlier cases collectively referred to as the “Blue River Decree.” To resolve ongoing administrative controversies that existed for decades, the Co-Applicants negotiated a complex water rights administrative protocol (“Protocol”) to manage future administration of GMR’s storage and hydropower rights and other water rights located upstream of GMR. The Co-Applicants filed in water court to

obtain a determination that the Protocol was consistent with the Blue River Decree and to direct future Blue River administration be in accordance with the Protocol.

Golden owns a transbasin water right appropriated in 1959 upstream of GMR. Golden raised concerns that the Protocol would injure its 1959 water right by increasing the frequency and duration of GMR calls. In short, the Protocol is inconsistent with the prior appropriation doctrine and through multiple subordinations it allows water rights upstream of GMR (including many junior to Golden) to divert and fill ahead of the more senior GMR. The result is to extend the GMR call against Golden's 1959 water right which does not benefit from the subordinations. Golden also maintains the Protocol is not consistent with the Blue River Decree. On motion for summary judgment, the water court ruled that Golden's injury concerns were not a proper inquiry, the Protocol is consistent with the Blue River Decree, and the State Engineer was ordered to administer the Protocol.

**B. Judgment and order being appealed and basis for Supreme Court jurisdiction.**

Golden appeals the water court's Order on USA Motion for Summary Judgment ("Order") that held that (1) injury is not a proper or essential inquiry in this case; (2) the Protocol is consistent with the Blue River Decree; (3) vacated the trial and precluded Golden's opportunity to present evidence germane to the foregoing factual issues; and (4) ordered the State Engineer to administer water

rights in accordance with certain sections of the Protocol even though the Protocol is inconsistent with the prior appropriation doctrine and no inquiry was conducted on whether such administration would cause injury to other water rights. The Colorado Supreme Court has jurisdiction pursuant to Colo. Const. Art. VI, § 2(2), C.A.R. 1(a)(1), 1(a)(2) and 4(a), and C.R.S. § 13-4-102(1)(d).

**C. Whether the judgment or order resolved all of the issues including attorney's fees and costs.**

The Order resolved all issues as a matter of law and there was no award of attorney's fees and costs.

**D. Whether the judgment was made final for purposes of appeal pursuant to C.R.C.P. 54(b).**

C.R.C.P. 54(b) is inapplicable to the Order.

**E. Date the judgment or order was entered.**

The Order was entered on May 26, 2022.

**F. Whether any extensions of time were granted to file post-trial relief.**

No extensions of time were sought or granted to file post-trial relief.

**G. Date any motion for post-trial relief was filed.**

Golden filed a Motion for Reconsideration and Clarification on June 9, 2022, which was within the deadline set forth in C.R.C.P. 59(a).

**H. The date any motion for post-trial relief was denied or deemed denied under C.R.C.P. 59(j).**

The Water Court did not rule on Golden's Motion for Reconsideration and Clarification, thus that motion was deemed denied under C.R.C.P. 59(j) on August 11, 2022.

**I. Whether any extensions were granted to file any notice of appeal.**

No such extensions were sought or granted.

**II. Advisory Listing of the Issues to be Raised on Appeal**

**A.** Whether the Water Court erred when it held that injury was not a proper or essential inquiry in this case as a matter of law.

**B.** Whether the Water Court erred when it held that the Protocol is consistent with the Blue River Decree.

**C.** Whether the Water Court erred when it ordered the State Engineer to administer water rights in accordance with certain sections of the Protocol, even though the Protocol is inconsistent with the prior appropriation doctrine and no inquiry was conducted on whether such administration would cause injury to water rights.

**D.** Whether the Water Court erred in denying Golden the opportunity to present evidence at trial on issues that are inherently factual in nature, including newly discovered evidence Golden obtained through ongoing and timely discovery

completed after the briefing on summary judgment and before the scheduled trial date that was vacated by the Order.

**III. Whether any Transcripts are Necessary**

No transcripts are necessary, and no transcripts of evidence taken before the water court exist. The only transcripts known to exist are from a deposition taken by Golden of the United States, and excerpts of those transcripts were filed with the water court as an exhibit. Evidence in the record consists of all pleadings and exhibits filed with the water court in this matter and related information.

**IV. Whether a Magistrate Issued the Order on Review**

A magistrate did not issue the order on review.

**V. Counsel for the Parties**

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**VI. Appendices**

Appendix 1, required by C.A.R. 3(d)(7)(A) – *Order on USA Motion for Summary Judgment*, entered May 26, 2022 in Case No 13CW3077 (referred to as the “Order” herein).

Appendix 2, required by C.A.R. 3(d)(7)(C) – *City of Golden's Motion for Reconsideration and Clarification*, filed June 9, 2022 in Case No. 13CW3077.

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of September 2022.

BUSHONG & HOLLEMAN PC



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PORZAK LAW LLC

/s/ Glenn E. Porzak (by SJB)

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Glenn E. Porzak (#2793)  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of September 2022, a true and correct copy of the foregoing **CITY OF GOLDEN'S NOTICE OF APPEAL** and its appendices was served electronically via Colorado Courts E-filing to the Water Court for Water Division 5 and each of the following parties that appeared in the action below:

Party Name	Party Type	Attorney Name
Aurora, City of	Opposer	JOHN MARSHALL DINGESS (HAMRE RODRIGUEZ OSTRANDER AND DINGESS PC)
Chimney Rock Ranch Llc	Opposer	KAREN LEIGH HENDERSON (Bushong and Holleman PC) STEVEN J BUSHONG (Bushong and Holleman PC)
Climax Molybdenum Company	Applicant	BRIAN M NAZARENUS (Nazarenus Stack and Wombacher LLC) SHEELA S STACK (Nazarenus Stack and Wombacher LLC)
Clinton Ditch And Reservoir Company	Opposer	GLENN EDWARD PORZAK (Porzak Law LLC)
Colorado River Water Conservation Dist.	Applicant	JASON VICTOR TURNER (Colorado River Water Conservation District) PETER CHENEY FLEMING (Colorado River Water Conservation District)
Colorado Springs Utilities	Applicant	MICHAEL JOHN GUSTAFSON (Colorado Springs Office of the City Attorney) NATHAN M ENDERSBEE (Colorado Springs Office of the City Attorney) WILLIAM ARTHUR PADDOCK (Carlson, Hammond & Paddock, L.L.C.)
Denver, City & County of	Applicant	DANIEL JOHN ARNOLD (Denver Water) JAMES MICHAEL WITTLER (Denver Water)
Division 5 Engineer	Division Engineer	DIVISION 5 WATER ENGINEER (State of Colorado DWR Division 5)
Eagle Park Reservoir Company	Opposer	GLENN EDWARD PORZAK (Porzak Law LLC)
Eagle River Water And Sanitation Dist	Opposer	GLENN EDWARD PORZAK (Porzak Law LLC)
Englewood, City of	Opposer	ANN MARIE RHODES (The Law Office of Tod J Smith) BENJAMIN MICHAEL WILSON (Berg Hill Greenleaf & Ruscitti LLP) DAVID GOWER HILL PATRICK MICHAEL HAINES (Berg Hill Greenleaf & Ruscitti LLP)
Grand County Board of Commissioners	Opposer	DAVID C TAUSSIG (White and Jankowski LLC) MITRA MARIE PEMBERTON (CO Attorney General)
Grand Valley Irrigation Company	Applicant	FREDERICK G ALDRICH (Aldrich Law Firm LLC)

Party Name	Party Type	Attorney Name
Grand Valley Water Users Association	Applicant	KIRSTEN MARIE KURATH (Williams Turner and Holmes PC)
Gypsum, Town of	Opposer	JASON M GROVES (Patrick Miller and Noto PC) KEVIN LAND PATRICK (Patrick Miller and Noto PC)
Middle Park Water Conservancy District	Applicant	KAITLIN LOISEAU RANDALL (Kent H. Whitmer) KENT HOWARD WHITMER (Kent H. Whitmer)
Northern Colo Water Conservancy Dist.	Applicant	BENNETT WILLIAM RALEY (Trout Raley) PEGGY E MONTANO (Trout Raley)
Orchard Mesa Irrigation District	Applicant	KIRSTEN MARIE KURATH (Williams Turner and Holmes PC)
Palisade Irrigation District	Applicant	NATHAN A KEEVER (Dufford, Waldeck, Milburn & Krohn, LLP)
Public Service Company of Colorado	Opposer	CAROLYN F BURR (Welborn Sullivan Meck & Tooley, P.C.) JAMES MERLE NOBLE (Welborn Sullivan Meck & Tooley, P.C.)
Snake River Water District	Opposer	GLENN EDWARD PORZAK (Porzak Law LLC)
State Engineer	State Engineer	COLORADO DIVISION OF WATER RESOURCES (State of Colorado - Division of Water Resources)
Summit County Board of Commissioners	Opposer	THOMAS W KORVER (Hayes Poznanovic Korver LLC)
United States	Applicant	JAMES J DUBOIS (US Department of Justice ENRD) JEFFREY NEEL CANDRIAN (US Department of Justice ENRD) ROMNEY SHARPE PHILPOTT (US Department of Justice ENRD)
Upper Eagle Regional Water Authority	Opposer	GLENN EDWARD PORZAK (Porzak Law LLC)
Ute Water Conservancy District	Opposer	CHRISTOPHER L GEIGER (Balcomb and Green PC) SARA MARIE DUNN (Balcomb and Green PC)

**Gunnar J.  
Paulsen**

Digitally signed by Gunnar J. Paulsen  
Date: 2022.09.28 10:45:29 -06'00'