

<p>SUPREME COURT, STATE OF COLORADO Two East 14 Avenue Denver, Colorado 80203</p>	
<p>Appeal from District Court, Water Division 1 Honorable Judge Todd Taylor Case No. 2020CW3113</p>	
<p>IN RE THE APPLICATION FOR WATER RIGHTS OF LAZY D GRAZING ASSOCIATION, IN WELD COUNTY</p> <p>Opposers-Appellants: City of Sterling and City of Fort Collins</p> <p>v.</p> <p>Applicant-Appellee: Lazy D Grazing Association</p> <p>Opposers-Appellants: Basin Lands, LLC; Bijou Irrigation Company; Bijou Irrigation District; Cache La Poudre Water Users Association; City of Boulder; City of Englewood; City of Greeley, acting by and through its Water and Sewer Board; City of Thornton; L.G. Everist, Inc.; Northern Colorado Water Conservancy District; Mary Estabrook; State Engineer and Division Engineer for Water Division No. 1; and United Water and Sanitation District.</p>	
<p>Attorneys for City of Sterling, Colorado: Alan E. Curtis, #34571; Virginia M. Sciabbarrasi, #39753 WHITE & JANKOWSKI LLC 1333 W. 120th Ave., Suite 302 Westminster, Colorado 80234 Phone: (303) 595-9441 Fax: (303) 825-5632 Email: alanc@white-jankowski.com virginias@white-jankowski.com</p> <p>Attorney for the City of Fort Collins, Colorado: FORT COLLINS CITY ATTORNEY'S OFFICE Eric R. Potyondy, #38243 300 LaPorte Avenue Fort Collins, Colorado 80521 Phone: (970) 416-2126 Fax: (970) 221-6327 Email: epotyondy@fcgov.com</p>	<p>Case Number:</p>
<p align="center">NOTICE OF APPEAL</p>	

Opposers-Appellants, City of Sterling and City of Fort Collins (“Cities”), by and through their attorneys, and pursuant to Rule 3(d) of the Colorado Appellate Rules, respectfully submit this Notice of Appeal:

1. Description of the Nature of the Case.

a. General statement of the nature of the controversy.

- i. Lazy D Grazing Association (“Lazy D”) filed an application with the District Court for Water Division 1 (“Water Court”) designated as Case No. 2020CW3113 (“Application”). Lazy D sought a decree determining groundwater in the Upper Laramie Aquifer underlying approximately 24,711 acres of Lazy D’s land in northern Weld County (“Subject Groundwater”) to be nontributary (“Lazy D’s Nontributary Claims”).
- ii. The Colorado State Engineer (“State Engineer”) filed a *Determination of Facts*, dated March 31, 2021, regarding Lazy D’s Nontributary Claims, purportedly in accordance with C.R.S. § 37-92-305(6)(b) (“State Engineer’s Findings of Fact”).
- iii. Following a five-day bench trial held April 10-12 and 24-25, 2023, the Water Court entered its *Findings of Fact and Conclusions of Law* on August 18, 2023 (“Order”) and its *Findings of Fact, Conclusions of Law and Decree of the Water Court* on September 6, 2023 (“Decree”).

- iv. The Order and Decree approved Lazy D's Nontributary Claims.
- b. Judgment, order, or parts being appealed and the basis for appellate jurisdiction.
 - i. Cities appeal the Order and Decree.
 - ii. Appellate jurisdiction is under Rule 1(a)(2) of the Colorado Appellate Rules, which states an appeal may be taken regarding "a judgment and decree, or any portion thereof, in a proceeding concerning water rights."
 - iii. Supreme Court jurisdiction is appropriate under C.R.S. § 13-4-102(1)(d), which excludes water cases involving adjudications from the jurisdiction of the Court of Appeals.
- c. Whether the judgment or order resolved all issues pending before the trial court including attorneys' fees and costs.
 - i. The Order and Decree resolved all issues before the Water Court.
- d. Whether the judgment was made final for purposes of appeal pursuant to C.R.C.P. 54(b).
 - i. Not applicable.
- e. The date judgment or order was entered and the date of mailing to counsel.
 - i. The Order was entered by the Court and served upon all parties via the Colorado Courts E-Filing System ("CES") on August 18, 2023.
 - ii. The Decree was entered by the Court and served upon all parties via CES on September 6, 2023.

- f. Extensions to file motions for post-trial relief. No extensions to file motions for post-trial relief were sought or granted.
- g. Date any motion for post-trial relief was filed. Not applicable. *See* C.R.C.P. 59(b).
- h. Date any motion for post-trial relief was denied or deemed denied under C.R.C.P. 59(j).
 - i. Not applicable.
- i. Whether there were extensions granted to file notices of appeal.
 - i. Not applicable.
- j. Description of water rights.
 - i. *See* Rule 1(e) of the Colorado Appellate Rules. The water rights that are the subject of the appeal are the nontributary groundwater rights to the Subject Groundwater claimed in the Application and granted in the Decree.

2. Advisory Listing of Issues to be Raised on Appeal.

- a. Whether the Water Court erred in ruling that C.R.S. § 37-92-305(6)(b) and statutes referenced therein (“Relevant Statutes”) give the State Engineer authority to determine that groundwater is nontributary.
- b. Whether the Water Court, based on its interpretation and application of the Relevant Statutes, erred in ruling that Cities must rebut determinations in the

State Engineer's Findings of Fact before Lazy D had the burden of proving Lazy D's Nontributary Claims.

- c. Whether the Water Court, based on its interpretation and application of the Relevant Statutes, erred in the standard applied to Cities' rebuttal of the determinations in the State Engineer's Findings of Fact.
- d. Whether the Water Court erred, based on its interpretation and application of the Relevant Statutes, in ruling that the burden of proof shifted from Lazy D having to prove Lazy D's Nontributary Claims by clear and convincing evidence to Cities having to prove the Subject Groundwater is tributary.
- e. Whether the Water Court erred by speculating and relying on personal knowledge and information not in evidence.
- f. Whether the Water Court's findings, including with respect to expert witnesses and the weight accorded to their testimony and supporting exhibits, were manifestly erroneous.

3. Whether the Transcript of any Evidence Taken Before the Trial Court or Any Administrative Agency Is Necessary to Resolve the Issues Raised on Appeal.

The transcript of testimony and all exhibits offered and admitted into evidence during the five-day bench trial are necessary to resolve the issues raised on appeal.

4. Whether the Order on Review Was Issued by a Magistrate Where Consent Was Necessary.

a. Not applicable.

5. Names of Counsel for the Parties.

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6. Appendix.

Appendix A – Order, dated August 18, 2023.

Appendix B – Decree, dated September 6, 2023.

Respectfully submitted October 4, 2023.


WHITE & JANKOWSKI LLC

By:  _____

Alan E. Curtis, #34571
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**ATTORNEYS FOR CITY OF
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**FORT COLLINS CITY ATTORNEY'S
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By:  _____

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**ATTORNEY FOR CITY OF FORT
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E-Filed per C.R.C.P. 121. Duly signed
original on file at White & Jankowski LLC

CERTIFICATE OF SERVICE

I certify on October 4, 2023, a true and correct copy of the foregoing NOTICE OF APPEAL was served via Colorado Courts E-Filing, on the Division 1 Water Court and the following parties in Case No. 20CW3113:



Andrea Browne, Legal Administrative Assistant

Party Name	Party Type	Attorney Name/Organization
Basin Lands LLC	Opposer	MATTHEW MACHADO (Lyons Gaddis PC)
Bijou Irrigation Company	Opposer	BRADLEY NEIL KERSHAW (Vranesh and Raisch) STUART B CORBRIDGE (Vranesh and Raisch)
Bijou Irrigation District	Opposer	BRADLEY NEIL KERSHAW (Vranesh and Raisch) STUART B CORBRIDGE (Vranesh and Raisch)
Cache La Poudre Water Users Association	Opposer	DANIEL KENNETH BROWN (Fischer Brown Bartlett Larsen and Irby PC) WHITNEY PHILLIPS COULTER (Fischer Brown Bartlett Larsen and Irby PC)
City of Boulder	Opposer	JESSICA LYNN PAULT-ATIASE (Boulder City Attorney's Office) LISA M THOMPSON (Trout Raley) MICHAEL A KOPP (Trout Raley)
City of Englewood	Opposer	GEOFFREY M WILLIAMSON (Berg Hill Greenleaf & Ruscitti LLP) MEGAN CHRISTENSEN (Berg Hill Greenleaf & Ruscitti LLP) PATRICK MICHAEL HAINES (Berg Hill Greenleaf & Ruscitti LLP) PETER D NICHOLS (Berg Hill Greenleaf &

Party Name	Party Type	Attorney Name/Organization
		Ruscitti LLP)
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City of Greeley Acting By And Through	Opposer	CAROLYN F BURR (Welborn Sullivan Meck & Tooley, P.C.) DANIEL JAMES BIWER (City of Greeley) JAMES MERLE NOBLE (Welborn Sullivan Meck & Tooley, P.C.) JENS JENSEN (Welborn Sullivan Meck & Tooley, P.C.)
City of Sterling	Opposer	ALAN E CURTIS (White and Jankowski LLC) VIRGINIA MARIE SCIABBARRASI (White and Jankowski LLC)
City of Thornton	Opposer	KARA NICOLE GODBEHERE (City of Thornton)
Division 1 Engineer	Division Engineer	DIVISION 1 WATER ENGINEER (State of Colorado DWR Division 1)
Lazy D Grazing Assoc	Applicant	BRADLEY CHARLES GRASMICK (Lawrence Custer Grasmick Jones and Donovan LLP) RICHARD T LI PUMA (Lawrence Custer Grasmick Jones and Donovan LLP) RYAN MATTHEW DONOVAN (Lawrence Custer Grasmick Jones and Donovan LLP) WESLEY SAGE KNOLL (Lawrence Custer Grasmick Jones and Donovan LLP)
Lg Everist Inc	Opposer	MATTHEW LAKE MERRILL (MERRILL LAW LLC)
Mary Estabrook	Opposer	N/A
Northern	Opposer	BENNETT WILLIAM RALEY (Trout Raley)

Party Name	Party Type	Attorney Name/Organization
Colorado Water Conservancy District		LISA M THOMPSON (Trout Raley) MICHAEL A KOPP (Trout Raley)
State Engineer	State Engineer	COLORADO DIVISION OF WATER RESOURCES (State of Colorado - Division of Water Resources)
State Engineer And Water Div 1 Engineer	Opposer	BRUCE CONLAN WALTERS (CO Attorney General) EMILIE BLAKE POLLEY (CO Attorney General)
United Water And Sanitation District	Opposer	ANN MARIE RHODES (The Law Office of Tod J Smith) TOD JAY SMITH (The Law Office of Tod J Smith)