

Colorado Supreme Court
2 East 14th Avenue, Denver, CO 80203

Appeal from the District Court, Water Division 1
Honorable Todd L. Taylor
Case No. 19CW3236

Applicant-Appellant:
TOWN OF FIRESTONE,

v.

Opposers-Appellees:
BCL COLORADO LP, CITY AND COUNT OF
BROOMFIELD, CITY OF BOULDER, CITY OF
ENGLEWOOD, CITY OF LAFAYETTE, CITY OF
LONGMONT, CITY OF WESTMINSTER, DREAM
WEAVER HOLDINGS, LLC, GODDING DITCH
COMPANY, LAST CHANCE DITCH COMPANY, LG
EVERIST, INC., LITTLE THOMPSON WATER DISTRICT,
NEW COAL RIDGE DITCH COMPANY, NEW
CONSOLIDATED LOWER BOULDER RESERVOIR AND
DITCH COMPANY, PUBLIC SERVICE COMPANY OF
COLORADO, RURAL DITCH COMPANY, SHORES ON
PLUM CREEK METROPOLITAN DISTRICT NO. 1, ST.
VRAIN LEFT HAND WATER CONSERVATION DISTRICT,
ST. VRAIN SANITATION DISTRICT, STATE ENGINEER
AND WATER DIVISION 1 ENGINEER, TOWN OF
FREDERICK, VARRA COMPANIES, INC., WATER USERS
ASSOCIATION OF DISTRICT NO. 6.

COURT USE ONLY

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Case No.

<p style="text-align:center">APPLICANT-APPELLANT TOWN OF FIRESTONE’S NOTICE OF APPEAL</p>
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Plaintiff-Appellant, Town of Firestone (“Firestone”), by and through its attorneys, Lawrence Custer Grasmick Jones & Donovan, LLP, hereby submits this Notice of Appeal pursuant to Rules 3(a), 3(d) and 4(a),C.A.R.

I. Nature of the Case.

A. Nature of the controversy.

Firestone filed a water rights application seeking conditional water rights for groundwater and a plan for augmentation in connection with the development of its municipal water system. Appellee St. Vrain Sanitation District (the “District”) was the only opposing party that participated at trial.

Prior to trial, the parties stipulated that: “The proposed URF depletion patterns for the FAST Well Field, Firestone Trail Well Field, and FAST North Well Field are adequate to prevent injury.” At trial, however, the District claimed for the first time that Firestone’s proposed URF depletion patterns for these wells were inadequate because the location of not-yet-constructed wells were not described with exact precision. The District contested Firestone’s proposed URF depletion pattern for the St. Vrain Sanitation District Well Field for the same reason. The water court then granted the District’s Rule 41(b) motion dismissing the conditional water right

claims for the St. Vrain Sanitation District Well Field, FAST North Well Field and Firestone Trail Well Field for failure to describe well locations with exact precision.

The Water Court subsequently entered its *Findings of Fact, Conclusions of Law, and Decree of the Water Court* on February 21, 2024, decreeing Firestone's uncontested claims and certain conditional groundwater right claims that were not dismissed pursuant to Rule 41(b). The Decree also approved Firestone's plan for augmentation for decreed structures.

B. The judgment and decree being appealed, including the basis for this Court's jurisdiction.

Firestone is appealing: (1) the Order Granting in Part, and Denying in Part, St. Vrain Sanitation District's Motion to Dismiss Pursuant to C.R.C.P. Rule 41(b)(1), entered on December 4, 2023; and (2) the Findings of Fact, Conclusion of Law, and Decree of the Water Court, entered on February 21, 2024. This Court has appellate jurisdiction pursuant to Rules 1(a)(2), 1(e), and 4(a), C.A.R., C.R.S. § 13-4-102(1)(d), and Colo. Const. Art. VI, § 2(2).

C. Whether the judgment and decree resolved all issues pending before the water court.

The February 21, 2024 Decree of the Water Court resolved all pending matters before the Water Court.

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

Not Applicable.

E. The date the order was entered.

The Rule 41 Order was entered on December 4, 2023; The Findings of Fact, Conclusion of Law, and Decree of the Water Court was entered on February 21, 2024.

F. Extensions to file motions for post-trial relief.

No extensions for post-trial relief were sought or granted.

G. Motions for post-trial relief.

Not Applicable.

H. Denials of motions for post-trial relief.

Not Applicable.

I. Extensions to file notice of appeal.

None.

J. Description of Water Rights.

Pursuant to Rule 1(e), C.A.R., the water rights involved in this appeal are conditional groundwater rights in the St. Vrain alluvium, as described in the proposed decree tendered to the Water Court for the St. Vrain Sanitation District

Well Field, the FAST North Well Field and the Firestone Trail Well Field, including those parts of the augmentation plan to replace depletions associated with groundwater diversions to be made from these structures.

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

A. Whether the Water Court erroneously required Firestone to support its claim for conditional groundwater rights with the exact location of diversions and precise determination of the timing, location and amount of depletions.

B. Whether the Water Court erroneously allowed the District to raise issues at trial for the first time after stipulating pursuant to U.L.R. 11(b)(6)(B) that such issues were undisputed.

C. Whether the Water Court applied the wrong standard for determining motions under C.R.C.P. 41(b)(1).

D. Whether the Water Court erroneously incorporated hypotheticals posed by opposing counsel into its factual findings.

E. Whether the Water Court erroneously dismissed Firestone's claims rather than allowing additional terms and conditions sufficient to remedy any potential injury to senior water rights.

F. Whether the Water Court misinterpreted its retained jurisdiction authority for conditional water rights and plans for augmentation for conditional water rights.

G. Whether the Water Court's findings of fact relating to URF calculations and the location of the claimed wellfields were clearly erroneous.

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

Transcripts of the trial and all related proceedings before the water court shall be necessary to resolve the issues raised in this appeal.

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

Not Applicable.

V. Names of Counsel for the Parties.

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VI. Appendices

Copies of the following orders are attached as Appendix A and B:

A. Order Granting in Part, and Denying in Part, St. Vrain Sanitation District's Motion to Dismiss Pursuant to C.R.C.P. Rule 41(b)(1), entered on December 4, 2023.

B. Findings of Fact, Conclusion of Law, and Decree of the Water Court, entered on February 21, 2024.

DATED April 10, 2024.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 10, 2024, a true and correct copy of the foregoing APPLICANT-APPELLANT TOWN OF FIRESTONE’S NOTICE OF APPEAL was served via Colorado Court E-Filing Service upon all parties of record in Case No. 19CW3236, District Court, Water Division 1.

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Pursuant to Rule 121, a printed or printable copy of the document bearing the original, electronic, or scanned signature is on file at the law offices of Lawrence Custer Grasmick Jones & Donovan, LLP