

<p>Colorado Supreme Court 2 East 14th Avenue, Denver, CO 80203</p> <p>Appeal from the District Court, Water Division 1 Honorable Todd L. Taylor Case No. 21CW3111</p>	
<p>Plaintiff-Appellant: FRONT RANGE FEEDLOTS, LLC,</p> <p>v.</p> <p>Defendants-Appellees: KEVIN G. REIN, in his capacity as the COLORADO STATE ENGINEER; COREY DEANGELIS, in his capacity as the DIVISION ENGINEER IN AND FOR WATER DIVISION NO. 1, STATE OF COLORADO</p>	<p>COURT USE ONLY</p>
<p>David P. Jones, #34029 Wesley S. Knoll, #48747 David L. Strait, #52659 Lawrence Custer Grasmick Jones & Donovan, LLP 5245 Ronald Reagan Blvd., Suite 1 Johnstown, CO 80534 Phone: (970) 622-8181 Email: david@lcwaterlaw.com; wes@lcwaterlaw.com; dstrait@lcwaterlaw.com</p>	<p>Supreme Court Case No.</p> <p>2022SA_____</p>
<p>PLAINTIFF-APPELLANT FRONT RANGE FEEDLOTS, LLC'S NOTICE OF APPEAL</p>	

Plaintiff-Appellant, Front Range Feedlots, LLC (hereinafter, “Front Range”), by and through its attorneys, Lawrence Custer Grasmick Jones & Donovan, LLP, hereby PROVIDES ITS Notice of Appeal, pursuant to Rule 3(d) of the Colorado Appellate Rules (“CAR”).

I. Nature of the Case.

A. Nature of the controversy.

This case involves the continuing effort of the State and Division Engineer (“Engineers” or “Defendants-Appellees”) to obtain injunctive relief over Front Range in the context of an application for underground water rights and approval of plan for augmentation (“the Application”) applied for by Front Range in Case No. 2017CW3043, Water Division 1, that was to supply water to Front Range’s and another operator’s commercial cattle feeding operations. Following the filing of initial expert disclosures pursuant to Uniform Water Court Rule 11(b)(5)(B) by the parties, Front Range assessed that it was unlikely to prevail in its burden under C.R.S. § 37-92-305(8) to show the absence of potential injury from operation of the newly applied for water rights and proposed plan for augmentation. Therefore, the Application was withdrawn by Front Range without prejudice pursuant to the Order Granting Applicant’s Motion to Withdraw Application dated March 10, 2021 (“Order Granting Withdraw”). The Order Granting Withdraw was granted by the Water Court over the objection of the Engineers without any ongoing replacement requirement by Front Range, but subjecting the water rights to curtailment. The record reflected that Front Range had operated the wells under certain water rights following their curtailment in 2016 under the substitute water

supply plans applied for and approved by the Engineers pursuant to C.R.S. § 37-92-308(4) while Case No. 2017CW3043 was pending. Other parties who had filed statements of opposition to protect their water rights either consented to or did not oppose the Motion to Withdraw. The Engineers have appealed the Order Granting Withdraw to this Court under Case No. 21SA138.

Unpersuaded by the Water Court's denial of relief in the context of the now withdrawn water court application, the Engineers on May 3, 2021, purporting to exercise their lawful administrative authority under C.R.S. §§ 37-92-501 and 502, issued to Front Range the "Order to Comply with February 2020 Substitute Water Supply Plan ("2020 SWSP") Requirements to Replace Ongoing Depletions to the South Platte River System" (hereinafter, "Order to Comply"). The 2020 SWSP was approved by the Engineers to allow temporary operation of the plan for augmentation pursuant to C.R.S. § 37-92-308(4) while Case No. 2017CW3043 was pending.

Front Range sought judicial review of the Order to Comply in Water Court pursuant to C.R.S. § 24-4-106 captioned under Case No. 21CW3111. Following the submittal of competing motions for summary judgment, the Water Court issued its Order Granting Judgement in Favor of the Engineers dated March 11, 2022. Front Range now appeals this order and the Order Granting Mandatory Injunction

dated May 16, 2022, that requires *inter alia* Front Range to comply with the terms and condition of the 2020 SWSP. Front Range and the Engineers intend to file a notice of stipulation to consolidate Case No. 21SA138 with this Appeal for briefing and oral argument as allowed under C.A.R. Rule 3(c).

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

The Final Order Granting Mandatory Injunction in Case No. 2021CW3111 was issued May 16, 2022, following issuance of the underlying Order Granting Judgement in Favor of the Engineers dated March 11, 2022. This is a proceeding concerning a water matter and this Court has jurisdiction pursuant to C.A.R. Rule 1(a)(2) and C.A.R. Rule 4(a).

C. Whether the judgment and decree resolved all issues pending before the water court, including attorneys' fees and costs.

The Order Granting Mandatory Injunction resolved all matters before the water court, including awarding the Engineers their reasonable attorney fees. A Bill of Costs was filed by the Engineers on June 6, 2022. However, as of the date of this Notice, the water court has not yet entered an order or judgment concerning the amount of fees and costs to be awarded the Engineers. Additionally, Front Range filed a Motion to Stay Mandatory Injunctive Relief during Appeal on June 20,

2022, and said motion remains pending 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 Order Granting Mandatory Injunction was entered on May 16, 2022.

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

No extensions for post trial relief were sought.

G. Motions for post-trial relief.

A motion for reconsideration of the Order Granting Judgement in Favor of the Engineers together with objections to the Proposed Order Granting Mandatory Injunction were filed on April 11, 2022, following a 14-day extension of time in which to file objections to the proposed injunction under C.R.C.P. Rule 121-16(1).

H. Denials of motions for post-trial relief.

In its Order Granting Mandatory Injunction dated May 16, 2022, the water court denied Front Range's Motion for Reconsideration.

I. Extensions to file notice of appeal. None.

J. Notice of Intent Pursuant to C.R.S. § 24-4-106(9).

A Notice of Intent to seek appellate review was filed with the water court on May 24, 2022.

II. Advisory listing of issues to be raised on appeal.

A. Whether the Order to Comply is an unlawful order under section 106 of title 24, article 4, C.R.S?

B. Whether the Engineers have authority and jurisdiction under sections 308(4), 501 and 502, of title 37, article 92, C.R.S., to issue the Order to Comply?

C. Whether the Order to Comply is an abuse of discretion or is otherwise contrary to existing law and the Colorado Supreme Court's holding in *Well Augmentation Subdistrict of the Central Colorado Water Conservancy District v. City of Aurora*, 221 P.3d 399, 408 (Colo. 2009) ("WAS v. Aurora") regarding the jurisdiction of the water court, and by extension the Engineers, to condition replacement of future potential out-of-priority well depletions for water rights included in the proposed plan for augmentation?

D. Assuming the Order Granting Withdraw is upheld by this Court, whether the Order Granting Mandatory Injunction is barred by the doctrines of claim and issue preclusion?

E. Whether the water court abused its discretion in issuing the Order Granting Mandatory Injunction by relying on or giving deference to the Engineer's approval of the SWSP in this proceeding for presumptions of injury or regarding the burden of proof in violation of section 308(4)(c)'s prohibition on such reliance?

F. Whether the water court abused its discretion in issuing the Order Granting Mandatory Injunction by ordering replacement of future, potential out-of-priority well depletions created from well pumping that occurred prior to the Engineers approval of the SWSPs?

G. Whether the relief sought by the Engineers and the Order Granting Mandatory Injunction are in excess of statutory jurisdiction and/or authority, or are otherwise an abuse of discretion or are unlawful in that they require Front Range to deliver water to the stream to make up for replacement water that was owed to the stream but not delivered between the time Front Range

stopped accounting for the 2020 SWSP and the time the Court entered the Order Granting Mandatory Injunction?

H. Assuming *arguendo* this Court determines that the Engineers have the generic authority to issue an order to comply with the conditions of a substitute water supply plan (“SWSP”) approved under C.R.S. § 37-92-308(4) after expiration of the SWSP approval period, and/or subsequent to withdrawal or dismissal of the underlying water court application, whether the relief sought by the Engineers and the Order Granting Mandatory Injunction are in excess of statutory jurisdiction and/or authority, or are otherwise an abuse of discretion or are unlawful, in that they require Front Range to “acquire” additional unidentified replacement water sources not included in the SWSP approvals in order to maintain compliance with the 2020 SWSP and the Order to Comply?

III. Transcript of evidence taken before the water court that is necessary to resolve the issues raised on appeal.

No trial or hearing was held and no evidence was taken before the water court.

IV. Whether the order on review was issued by a magistrate where consent was necessary.

Not applicable.

V. The names of counsel for the parties, their addresses, telephone numbers, e-mail addresses, and registration numbers:

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VI. Attached Appendix (containing certain pleadings and Orders of the Water Court).

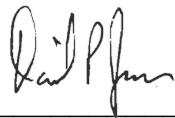
The following orders and pleadings of the Water Court are included in the attached **Appendix A:**

- A. Case No. 17CW3043, Application for Underground Water Rights and Approval of Plan for Augmentation, dated March 16, 2017;

- B. Case No. 17CW3043, Order Granting Applicant's Motion to Withdraw Application, dated March 10, 2021;
- C. Case No. 17CW3043, Division of Water Resources Order to Comply with February 2020 Substitute Water Supply Plan Requirements to Replace Ongoing Depletions to the South Platte River System [Case No. 17CW3043, WDID 0302584, Plan ID 5902, Water District 3, Water Division 1], dated May 3, 2021; and
- D. Case No. 21CW3111, Order Granting Mandatory Injunction, dated May 16, 2022.

DATED: June 22, 2022

LAWRENCE CUSTER GRASMICK JONES & DONOVAN LLP



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Attorneys for Plaintiff-Appellant

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 22, 2022, a true and correct copy of the foregoing PLAINTIFF-APPELLANT FRONT RANGE FEEDLOTS, LLC'S NOTICE OF APPEAL was served via Colorado Court E-Filing Service upon the following:

Party Name	Party Type	Attorney Name
Corey Deangelis As Division Engineer	Defendant	PAUL LOUIS BENINGTON (CO Attorney General) WILLIAM D DAVIDSON (CO Attorney General)
Division 1 Engineer	Division Engineer	DIVISION 1 WATER ENGINEER (State of Colorado DWR Division 1)
Front Range Feedlots Llc	Plaintiff	DAVID PHILLIP JONES (Lawrence Custer Grasmick Jones and Donovan LLP) DAVID LEE STRAIT (Lawrence Custer Grasmick Jones and Donovan LLP) WESLEY SAGE KNOLL (Lawrence Custer Grasmick Jones and Donovan LLP)
Kevin G Rein As State Engineer	Defendant	PAUL LOUIS BENINGTON (CO Attorney General) WILLIAM D DAVIDSON (CO Attorney General)
State Engineer	State Engineer	COLORADO DIVISION OF WATER RESOURCES (State of Colorado - Division of Water Resources)

Jessica Green

Jessica Green

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