

**COLORADO SUPREME COURT**  
2 E. 14th Avenue, Denver, CO 80202

Appeal from:  
DISTRICT COURT, WATER DIVISION 1, COLORADO  
Judge Todd L. Taylor  
Case No. 2021CW3046

**Appellant(s):** PARKER WATER AND SANITATION DISTRICT, a Colorado special district; and  
**Appellant-Intervenors:** MERIDIAN METROPOLITAN DISTRICT; ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY; EAST CHERRY CREEK VALLEY WATER AND SANITATION DISTRICT; RANGEVIEW METROPOLITAN DISTRICT; TOWN OF CASTLE ROCK; CHERRY CREEK PROJECT WATER AUTHORITY, and SOUTH METRO WATER SUPPLY AUTHORITY,

**Appellee(s):** KEVIN G. REIN, in his official capacities as the STATE ENGINEER FOR THE STATE OF COLORADO and DIRECTOR OF THE COLORADO DIVISION OF WATER RESOURCES; the COLORADO DIVISION OF WATER RESOURCES; COREY DEANGELIS, in his official capacity as the DIVISION ENGINEER FOR DIVISION ONE; and  
**Appellee-Intervenors:** CITY OF AURORA and CITY OF GREELEY.

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Case Number:

**JOINT NOTICE OF APPEAL**

Appellant Parker Water and Sanitation District (“Parker Water”) and the Appellant-Intervenors identified in Section V below (collectively “Appellants”), through their respective undersigned counsel, hereby submit their Joint Notice of Appeal pursuant to C.A.R. 3(a) and (d):

**I. DESCRIPTION OF THE NATURE OF CASE**

**A. Nature of the Controversy:**

For more than 50 years the State Engineer only imposed an average annual withdrawal ("AAW") on nontributary groundwater produced from Denver Basin aquifers in well permits issued pursuant to C.R.S. § 37-90-137(4). Beginning in 2021, with no change in the governing statutes or regulations, the State Engineer began to impose a new limitation – a total allowed withdrawal (“TAW”) – on groundwater produced from these aquifers. A TAW first appeared in five of Parker Water’s well permits issued in January of 2021 pursuant to C.R.S. § 37-90-137(4).

The State Engineer did commence a rulemaking proceeding to revise the applicable regulations to include a TAW but abandoned that proceeding after realizing that it was objectionable to many governmental water providers. Instead, the State Engineer simply began to impose the TAW limitation without statutory or regulatory authorization.

Upon the issuance of the 2021 well permits, Parker Water sought judicial review of the State Engineer's imposition of a TAW, and the Appellees counterclaimed for declaratory judgment. Other interested parties intervened. Upon motions for determinations of questions of law, the Water Court erred by ruling that C.R.S. § 37-90-137(4) and the associated administrative regulations imposed a TAW on well permits for withdrawals of nontributary groundwater. The Water Court further erred by ruling that a TAW is implied in every decree that includes an AAW.

The plain language of the statutes unambiguously does not impose or authorize a TAW on nontributary well permits. And even if the Water Court had found the statute ambiguous, extrinsic evidence would have shown that no TAW was intended by the General Assembly. Further, if the statute is deemed to be ambiguous as to a TAW, the Water Court also erred by staying all discovery, depriving Appellants of the ability to discover and present additional extrinsic evidence pertinent to the statutes and regulations that would have resolved any ambiguity.

The Water Court's erroneous rulings threaten the water supply of hundreds of thousands of citizens who rely on nontributary groundwater in the Denver metropolitan area as well as rural communities with no other alternative water

supply. If not reversed, the Water Court’s orders will curtail access to groundwater that is authorized by statute, existing decrees and well permits, and that is physically available for withdrawal by water providers, including Appellants.

**B. Judgement Being Appealed and Statement of Jurisdiction:**

Appellants appeal the following orders entered by the District Court, Water Division No. 1 (“Water Court”) in Case No. 2021CW3046 (collectively “Orders”) as certified by the *Entry of Final Judgment on Defendants Counterclaim for Declaratory Relief Pursuant to C.R.C.P. 54(b) and Entry of Stay on Remaining Issues and Claims* dated April 11, 2023 (“Final Judgment Order”):

i) *Order Staying Discovery Pending a Further Order of the Court and Setting Briefing Deadlines* dated December 7, 2021 (“2021 Order”);

ii) *Order Granting the State Engineer’s Motion for Determination of Two Questions of Law and Denying Parker Water’s and Plaintiff-Intervenors’ Cross-Motion for Determination of Three Questions of Law* dated June 22, 2022 (“2022 Order”); and

iii) *Order Granting State Engineer, City of Aurora and City of Greeley’s Motion for Determination of Questions of Law* dated March 2, 2023 (“2023 Order”).

The Orders are attached in the Appendix.

This appeal concerns water matters and water rights. This Court has jurisdiction to hear this appeal pursuant to: Colo. Const. Art. VI, § 2(2); C.R.S. § 13-4-102(1)(d); and C.A.R. 1(a)(1), 1(a)(2) and 1(e).

**C. Whether Judgment Resolved All Issues:**

No. The Water Court's Final Judgment Order resolved Appellees' and Appellee-Intervenors' counterclaim for declaratory relief. However, the Water Court stayed and held in abeyance Parker Water's claim for judicial review under C.R.S. § 24-4-106(4) and similar claims of the Appellant-Intervenors. The Water Court concluded that the outcome of this appeal may be dispositive of, render moot, and/or otherwise affect the claims stayed and held in abeyance.

**D. Whether Judgment was Made Final:**

Yes. The Water Court's Final Judgment Order was certified as a final judgment pursuant to C.R.C.P. 54(b).

**E. The Date of Final Judgment:**

April 11, 2023.

**F. Extensions for Motions for Post-Trial Relief:**

None; not applicable.

**G. The Date of Motions for Post-Trial Relief:**

None; not applicable.

**H. Date of Denial of Motions for Post-Trial Relief:**

None; not applicable.

**I. Extensions Granted to File Notice of Appeal:**

None; not applicable

**II. ADVISORY LISTING OF ISSUES ON APPEAL**

1. Did the Water Court err in its 2022 Order by determining that, as a matter of law:

A. the plain language of C.R.S. § 37-90-137 sets forth and imposes a volumetric limit on the total amount of groundwater recoverable for well permits issued in accordance with C.R.S. §37-90-137(4); and

B. the Statewide Nontributary Groundwater Rules require that well permits include a total amount of groundwater recoverable for well permits issued in accordance with C.R.S. § 37-90-137(4)?

2. Did the Water Court err in its 2023 Order by determining that, as a matter of law:

A. the State Engineer has administrative authority to issue well permits that include a total volumetric limit that is compatible with the provisions of the court decree;

B. the total volumetric limit imposed by C.R.S. § 37-90-137(4) is implied in every court decree that establishes an average annual allowed withdrawal (or its functional equivalent) and this total volumetric limit does not need to be expressly stated to be enforced; and

C. the plain language of Senate Bill 213 (in effect from 1973 to 1985) also imposes a volumetric limit on the total amount of nontributary, non-designated groundwater recoverable for well permits?

3. Did the Water Court err in its 2021 Order by staying all discovery and precluding the presentation of evidence, thereby making the determinations in the 2022 Order and 2023 Order without affording Appellants the ability to conduct discovery or present evidence that would help resolve any ambiguity in the statute or regulations?

4. Did the Water Court err in permitting the State Engineer to adopt and implement a policy change concerning a major issue involving water rights without notice, hearing or rulemaking?

5. Did the Water Court err in deferring to the State Engineer's interpretation of the relevant statute?

### **III. NECESSITY OF TRANSCRIPT**

No evidence was taken before the Water Court and no transcripts are necessary.

### **IV. MAGISTRATE INVOLVEMENT**

None; not applicable.

### **V. ATTORNEY AND PARTY INFORMATION**

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## **VI. APPENDICES**

A copy of the following Water Court Orders being appealed are attached hereto as Appendices A, B, C and D:

A. April 11, 2023 *Entry of Final Judgement on Defendants Counterclaim for Declaratory Relief Pursuant to C.R.C.P. 54(b) and Entry of Stay on Remaining Issues and Claims.*

B. March 2, 2023 *Order Granting State Engineer, City of Aurora, and City of Greeley's Motion for Determination of Questions of Law.*

C. June 22, 2022 *Order (1) Granting the State Engineer's Motion for Determination of Two Questions of Law and (2) Denying Parker Water's and Plaintiff-Intervenors' Cross-Motion for Determination of Three Questions of Law.*

D. December 7, 2021 *Order Staying Discovery Pending a Further Order of the Court and Setting Briefing Deadlines.*

Respectfully Submitted this 30<sup>th</sup> day of May 2023.

**HOFFMANN, PARKER, WILSON  
& CARBERRY, P.C.**

By: /s/ Patrick Wilson  
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## CERTIFICATE OF SERVICE

I certify that on this 30<sup>th</sup> day of May, 2023, I caused a true and correct copy of the foregoing **NOTICE OF APPEAL** to be served via CCES, electronic mail, and/or U.S. mail on the following:

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**And filed with the**

WATER COURT, DIVISION 1, COLORADO  
in Case No. 2021CW3046

*/s/ Jenny Latta*

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Jenny Latta, Paralegal