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Exhibit C to Notice of Appeal

Before the State Engineer, Colorado 1313 Sherman St., Rm. 821, Denver, CO 80203 IN THE MATTER OF A COMPLAINT TO REVOKE WELL PERMIT NOS. 321172 – 321180, 321183, AND 321185 - 321187 Complainant: Harold & Drue Priestley, HDP Revocable Trust Respondents/Permit Owners: Pamela Barrett & Raymond M. Cossey In Montrose County	DATE FILED February 11, 2023 5:03 PM FILING ID: 7344225D9C780 CASE NUMBER: 2023CA243 All filings can be found at: https://dnrftp.state.co.us/#/DWR/Hearings/
	Case Number: 21SE08 Make all filings via pdf at: jody.grantham@state.co.us
ORDER GRANTING MOTION FOR SUMMARY JUDGMENT	

On February 23, 2022, Respondents Pamela Barrett and Raymond Cossey (collectively, "Cossey"), through their counsel, filed a Motion to Dismiss Pursuant to C.R.C.P. 12(b)(1) and (5), and Request for Damages, Attorney Fees, and Costs ("Motion") against the complainants, Harold Priestley and Drue Priestley, HDP Revocable Trust (hereinafter, "Priestleys"). In consideration of this Motion, at the March 3, 2022, prehearing conference, the Hearing Officer put the parties on notice that the claims pursuant to C.R.C.P. 12(b)(5) in the Motion would be treated as a motion for summary judgment under C.R.C.P. 56.

On March 6, 2022, Cossey filed a Verified Supplemental Brief in Support of Motion to Dismiss, as Converted to a Motion for Summary Judgment ("Supplemental

Brief"). On March 9, 2022, Staff for the Office of the State Engineer ("Staff") filed a response to the Motion and Supplemental Brief ("Staff's Response") and the Priestleys filed a response to the Motion and Supplemental Brief ("Priestleys' Response"). On March 16, 2022, Cossey filed a Verified Reply to Staff's Response ("Verified Reply to Staff") and a Verified Reply to the Priestleys' Response ("Verified Reply to Priestleys"). All response and reply briefs have been received and fully considered.

BACKGROUND AND CURRENT POSTURE

This case involves a Complaint filed by the Priestleys seeking relief under C.R.S. § 24-4-104(5) and requests revocation of 13 exempt well permits ("Cossey Permits") "on the grounds that the permits were not completed properly and the permitting was therefore incorrect", as stated in the Priestleys' original complaint letter. Complaint pg. 1

The Division of Water Resources ("DWR") evaluates and issues exempt well permit applications under C.R.S. § 37-92-602 ("Exempt Well Statute"). C.R.S. § 37-92-602(6) declares that "the policy of the state of Colorado," and the exemptions in section 602, are "intended to allow citizens to obtain a water supply in less densely populated areas...*where other water supplies are not available.*" (Emphasis added.) DWR Guideline 2003-5 "Regarding the Use of Wells Within Water Service Areas" ("Guideline 2003-5") was approved by the State Engineer in 2003 to assist the DWR "in an effort to provide consistent review of well permit applications pursuant to C.R.S. § 37-92-602(6), CRS (2003)," and, among other things, describes how DWR will identify legal water suppliers.

On March 29, 2021, the Division Engineer's Office for Water Division 4 received thirteen residential well permit applications ("Cossey Applications") from Cossey. It was

¹ Submitted to the State Engineer in a letter dated April 29, 2021.

not indicated in Section No. 8² of the Cossey Applications whether the subject parcels ("Cossey Properties") were located within the boundaries of a known water service area. Following discussions with Raymond Cossey, Gregory Powers, the Well Commissioner and Augmentation Coordinator for Water Division 4, marked "no" in box 8 for the Cossey Application for well permit no. 321183, indicating that the parcel was not located within the boundaries of a known water service area. The DWR approved and issued the Cossey Permits on March 29, 2021.

The Priestleys' property borders the Cossey Properties to the north. The Priestleys' original Complaint and subsequent briefs allege that Cossey did not provide truthful information in response to the "Water Supplier" question in item no. 8 of their Cossey Applications, and they argue that regardless of the misleading and untruthful information provided on the Cossey Applications -- and to the DWR staff during its review -- the DWR should have identified and recognized the Norwood Water Commission ("NWC") as a legal water supplier (as contemplated under Guideline 2003-5) with legal boundaries that extended to the thirteen Cossey Properties that were issued the Cossey Permits; and therefore, the DWR issued the Cossey Permits in contravention to C.R.S. § 37-92-602(6).

In the Prayer for Relief in the Supplemental Brief and Verified Replies, Cossey asks the Hearing Officer to do the following:

1. Grant summary judgment affirming the Cossey Permits.
2. Declare that the NWC is not a "legal water supplier", has no legal boundary, and instruct the removal of the NWC map from the DWR website.
3. Sanction Priestley.

² Item No. 8 on Form GWS-44(*Residential Well Permit Application*) asks the applicant to indicate, "yes or no", if the subject parcel is within the boundaries of a water service area.

Exhibit B to Notice of Appeal

Before the State Engineer, Colorado 1313 Sherman St., Rm. 821, Denver, CO 80203 IN THE MATTER OF A COMPLAINT TO REVOKE WELL PERMIT NOS. 321172 - 321180, 321183, AND 321185 - 321187 Complainant: Harold & Drue Priestley, HDP Revocable Trust Respondents/Permit Owners: Pamela Barrett & Raymond M. Cossey In Montrose County	DATE FILED February 11, 2023 5:03 PM FILING ID: 7344225D9C780 CASE NUMBER: 2023CA243 All filings can be found at: https://dnrftp.state.co.us/#/DWR/Hearings/
	Case Number: 21SE08
DECISION OF THE STATE ENGINEER	

This matter came before the State Engineer pursuant to an appeal of the March 25, 2022 Order Granting Motion for Summary Judgment. Having reviewed the record, written argument and briefs submitted, the oral argument of the parties, and being fully advised in the premises, the State Engineer hereby finds and orders as follows:

Introduction

Case No. 21SE08 is before the State Engineer on appeal, specifically due to Pamela Barrett and Raymond Cossey, the Respondents/Permit Owners (collectively “Cossey”), filing their Notice of Exceptions to Order Granting Summary Judgment

On February 23, 2022, Cossey filed a second motion to dismiss and request for damages, attorney fees, and costs. At a status conference on March 3, 2022, the Hearing Officer put the parties on notice that the motion to dismiss under C.R.C.P. 12(b)(5) would be treated as a motion for summary judgment under C.R.C.P. 56(h).

On March 6, 2022, Cossey filed a Verified Supplemental Brief in Support of Motion to Dismiss, as Converted to a Motion for Summary Judgment ("Motion for Summary Judgment"). In the Motion for Summary Judgment, Cossey requested that the Hearing Officer grant summary judgment and affirm the Cossey Permits, declare that the NWC is not a "legal water supplier" and has no legal boundaries, instruct DWR to remove the NWC map from its website, impose sanctions on the Priestleys, and award Cossey damages, attorney fees, and costs.

The Priestleys and Staff filed responses to Cossey's Motion for Summary Judgment. Priestley's response focused on the issues surrounding whether other water supplies are available to the Cossey property. Staff's response took no position on the overall claim for summary judgment or whether any sanctions, damages, fees, or costs should be imposed on the Priestleys. Staff in its response agreed with Cossey that the Priestleys did not present sufficient evidence to rebut the presumption of no injury but also argued that injury is not the only basis for the revocation of an exempt well permit given the requirement of 37-92-602(6) C.R.S. that exempt well permits be issued where "other water supplies are not available." Staff Response, p. 4. Staff

Prehearing Statement alleged only that the permits were improperly issued because the applications were not properly completed. The question of injury was not before the Hearing Officer until Cossey filed the Motion to Dismiss.

The Hearing Officer accurately addressed the question of injury to the extent it is relevant to Case 21SE08. Cossey raised it only to assert a claim that injury was the only basis for denying a well permit. Since the Hearing Officer did not have that issue before him, the Hearing Officer does not need to comprehensively describe every aspect of the injury question in the SJ Order, and only addressed injury to explain his position on damages.

The exceptions requested in section IV.B of the Notice of Exceptions are denied. Priestley's Notice of Complaint was not based on lies or speculation. The SJ Order properly accounts for the facts related to injury to the extent necessary to make a determination on the permits' correct issuance and the claim for damages.

Exception C. The jurisdiction of the NWC is determined by its legal authority, not a stipulated water court decree.

Analysis

The language of the main statement of Exception C does not clearly state Cossey's issue, however, Cossey cites three specific requests within Exception C. Cossey requests that the SJ Order be amended to:

1. Remove all references to the NWC as a legal water supplier under Guideline 2003-5. Guideline 2003-5 is not controlling and Cossey disputes that the NWC qualifies as a "legal water supplier."
2. Remove all references to the NWC's service area. The NWC's authority does not extend beyond the Town and the NWC's self-proclaimed (albeit unlawful) service area boundary is irrelevant to the SJ Order.

3. Order that the DWR remove the NWC's service area map from its website because it incorrectly represents the NWC's authority.

Notice of Exceptions, p. 13. In the SJ Order, the Hearing Officer cites Guideline 2003-5 and in doing that, uses the term "known water service area." SJ Order, p. 15. The Hearing Officer also frequently uses the term "legal water supplier." But in no instance did the Hearing Officer make a finding as to whether NWC is a water supplier that satisfies the criteria in Guideline 2003-5 nor that it qualifies as "other water supplies" as described in section 37-92-602(6), C.R.S.

The Hearing Officer did determine as a matter of fact that "DWR staff reviewing the Cossey Applications was not aware that the Cossey Properties were located within the NWC service area at the time of the evaluation and when they issued the Cossey Permits." SJ Order, p. 14. The Hearing Officer found that "[a]t the time DWR staff evaluated and issued the Cossey Permits, it was the DWR staff's understanding there was no legal water supplier in the area of the proposed wells, and the DWR staff had no information to contradict that understanding. Accordingly, DWR staff evaluated whether there was a known water supplier consistent with Guideline 2003-5." SJ Order, p. 16. Based on a review of the SJ Order, the Hearing Officer's finding that "(a)t the time DWR staff evaluated and issued the Cossey Permits, it was the DWR staff's understanding there was no legal water supplier in the area of the proposed wells..." refers to a determination that NWC was not a "legal water supplier" in the context of Guideline 2003-5 as opposed to a determination that there was no water supply in the area. The Hearing Officer reinforces this as he continues with the determination that