NORWOOD WATER COMMISSION - minutes

Meeting on: Tuesday, October 13, 2026
Regular Session starting at: 6:30 p.m.
Meeting at: 1670 Naturita Street, Norwood CO 81423 at Norwood Town Hall and Zoom option.

Call Regular Meeting To Order

The regular meeting of the Norwood Water Commission was called to order by Tony Daranyi at 6:31 pm.

Board Attendance:

Board Chair - Tony Daranyi – Present
Member – Ray Cossey - Present
Member – Ryan Howe – Present
Member- Jaime Perce- Present

Staff Attendance:

Administrator Director – Sara Owens – Present
Public Works Director – Randy Harris – Present
Deputy Administrator – Annie Crews – Present

Public Attendance:

Michael Miller via zoom, Travis Fischer via Zoom, Nicole Garrimone-Campagna via zoom, Catherine Carella, Jaquelin Franklin, Robert Barks, Amanda Pierce, individual representing for Laura Ordonez

Public Comment For Items Not On The Agenda

Jaquelin Franklin expressed concerns about seating at Pioneer Days. She stated that by not having the benches in front of the pocket park was inconvenient due to less seating for the elderly.

Consent Agenda

1. September Financials
2. September 22, 2026, Meeting Minutes
3. Budget To Actuals

Ray Cossey motioned to approve September 22nd meeting minutes with corrections, September financials, and budget to actuals. Jaimie Perce seconded the motion. All voted, motion approved.

Board Business Agenda

Nicole Garrimone recommended that agenda item #4 Get retitled to Executive Session pursuant to C.R.S. § 24-6-402(4)(a) to discuss the purchase or acquisition of real property and/or pursuant to C.R.S. § 24-6-402(4)(e) for the purpose of determining positions relative to matters that may be subject to negotiation, developing a strategy for negotiations, and/or instructing negotiators regarding the redundant waterline easements.

1. Executive Session pursuant to C.R.S. 24-6-402 (4) (b) for a conference with the Commission's attorney for the purpose of receiving legal advice on specific legal questions regarding the hearing for Cossey Complaint.

Tony Daranyi called the meeting into executive session at 6:51 pm. Tony Daranyi ended the executive session at 7:21 pm.

2. Request for Extension of Hearing Date for Cossey Complaint

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Jaime Perce motioned to extend the Hearing Date for Cossey Complaint to the next Water Commission meeting. Ryan How seconded the motion. All voted, motion passed.

3. Hearing for Cossey Complaint

Request for the extension of Cossey Complaint was granted. Hearing for Cossey Complaint was tabled for the next water commission meeting.

4. Executive Session pursuant to C.R.S. § 24-6-402(4)(a) to discuss the purchase or acquisition of real property and/or pursuant to C.R.S. § 24-6-402(4)(e) for the purpose of determining positions relative to matters that may be subject to negotiation, developing a strategy for negotiations, and/or instructing negotiators regarding the redundant waterline easements.

Tony Daranyi called the meeting into executive session at 7:28 pm. Tony Daranyi ended the executive session at 8:32 pm.

5. Contract Approval with Land Right

Travis Fischer from Landright LLC explained that the URA process is necessary due to federal funding requirements and would involve valuing the existing easement against the new proposed easement location, with potential offset considerations if the new location has greater residual value. The group discussed concerns about the $15,000 cost of the process and whether it's worth pursuing given the complexity with landowner Belk, with some participants expressing concerns about adding more complications to an already challenging project.

6. Draft Environment Assessment and Cultural Resources Report for the Redundant Line Project. SGM

The board focused on a presentation about the Norwood Water Commission's redundant line project, which aims to replace an aging transmission line to reduce water outages and improve system resilience. The project has secured approximately $1.5 million in funding through grants, with an estimated total cost of $10.3 million, and requires a 5% water rate increase in 2027-2029 to support the debt. The environmental assessment found minimal long-term impacts, with only temporary disturbances during construction, and the next steps include submitting a loan application to CDPHE by November 5 and conducting a 30-day public comment period.

7. Leak Forgiveness- Robert Barks, 35640 HWY 145

Robert Barks was present during the meeting. Ryan Howe motioned to forgive the leak on not only the property listed above as well as Robert Barks's other property that also had a leak present but is not listed on the agenda due to the long wait Robert as well as others had to endure. Jaime Perce wanted to amend Ryan's motion stating to only address the property on the agenda and get Robert's other property on next month's agenda. Ryan disagreed. Ray Cossey seconded Ryan's motion. All voted, with one opposition, motion passed.

8. Leak Forgiveness- Jaquelin Franklin 1260 Summit St

Jaquelin Franklin was present during the meeting. Jaquelin stated that Austin Overholt turned the meter off and she plans to fix it in the spring. Ray Cossey motioned to apply leak forgiveness as long as the leak is fixed before the meter is turned back on. Ryan Howe seconded the motion. All voted, motion passed.

9. Leak Forgiveness- Laura Ordonez 1540 Juniper Lot 14

An individual representing Laura Ordonez was present during the meeting. No leak was ever found at this property. Ray Cossey motioned that with no leak, there can't be leak forgiveness. Tony Daranyi seconded the motion. All voted, motion passed.

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10. Leak Forgiveness- Ryan Higgins 1725 Grand Ave

Ryan Higgins was absent during the meeting. Randy Harris stated he would like to investigate this leak more. Ray Cossey motioned to table this discussion and to add Ryan Higgins on next month's water meeting agenda. Jaime Perce seconded the motion. All voted, motion passed.

11. 2027 Draft Budget

Sara Owens presented the 2027 draft budget to the board. The board reviewed the 2026 budget performance, noting it was tracking close to estimates and that the system was well-positioned for debt forgiveness with 2-3 years remaining on the current loan. The board scheduled a work session for November 2nd at 6 PM to review the 2027 budget and 2026 actual.

12. 2025 Audit

The board decided to push the 2025 audit to next month's meeting.

Board Member Reports and Announcements

Staff Reports and Announcements

1. Randy Harris, Public Works Director – written report
2. Sara Owens, Town Administrative Director – written report

Adjourn

Jaime Perce motioned that the Norwood Water Commission Regular Meeting be adjourned at 10:46 pm. Ryan Howe seconded the motion. All voted, meeting adjourned.

NORWOOD WATER COMMISSION

ACCOUNTS PAYABLE OCTOBER 2026

				NWC Portion	NSD Portion	TON Portion
PD	51-40-310	SGM	Water Supply Adequacy	$ 1,284.37	$ 1,284.37	
PD	51-40-310	Highmark Electric	Maintenance/Motor Replacement	$ 1,966.30		
PD	51-40-740	Ferguson Waterworks	Neptune 360	$ 4,100.00		
PD	51-40-760	SGM	Potable Transmission Main Design	$ 28,486.60		
PD	51-40-280	FirstNet	Public Works Phones Reimbursment	$ 75.01	$ 75.01	$ 225.02
PD	51-40-275	Bruin Waste	2096 CR Y43 Trash Pickup Reimbursment	$ 42.62	$ 42.62	$ 127.85
PD	51-40-132	United	Employee Life Insurance Reimbursment	$ 6.54	$ 5.60	$ 18.68
PD	51-40-132	AFLAC	Employee Insurance Reimbursment	$ 325.15	$ 129.09	$ 1,010.04
PD	51-40-620	San Miguel Basin Forum	Printing and Publishing Reimbursment	$ 141.26		$ 392.70
PD	51-40-490	ImageNet Consulting	Printer Rental Reimbursment	$ 107.78	$ 107.78	$ 323.34
PD	51-40-430	FP Mailing Solutions	Postage Machine Rental Reimbursment	$ 52.00	$ 52.00	$ 156.00
PD	51-40-290	Postage	Reimbursments 02/2026-09/2026	$ 2,478.86	$ 758.56	$ 3,538.41
PD	51-40-510	Pinnacol Insurace	Workers Compensation Insurance Reimbursment	$ 277.00	$ 277.00	$ 831.00
PD	51-40-490	ImageNet Consulting	Printer Rental Reimbursment	$ 26.12	$ 26.12	$ 78.35
PD	51-40-132	CEBT	Employee Insurance Reimbursment	$ 2,826.18	$ 1,039.72	$ 8,804.40
PD	51-40-270	FICA	08/2026 Reimbursment	$ 1,066.67	$ 574.53	
PD	51-40-270	FICA	09/2026 Reimbursment	$ 1,076.68	$ 572.91	
PD	51-40-110	Payroll	08/2026 Reimbursment	$ 13,943.46	$ 7,510.19	
PD	51-40-110	Payroll	09/2026 Reimbursment	$ 14,074.30	$ 7,488.98	
PD	51-40-490	Blair & Associates	2025 Audit	$ 6,000.00		$ 6,000.00
PD	51-40-420	Tera Alexander	Account Closure	$ 45.21		
PD	51-40-620	WEEDC	Colorado Water Plant Grant	$ 5,000.00		$ 5,000.00
PD	51-40-250	West Elk Supply	Chlorine Gas	$ 2,255.00		
PD	51-40-250	West Elk Supply	Chlorine Cylinder Rental	$ 200.00		
PD	51-40-840	Ferguson Waterworks	Construction Materials	$ 527.14		
PD	51-40-275	SMPA	10000 Gallon Tank #230147203	$ 45.61		
PD	51-40-275	SMPA	Blue Tank #230147204	$ 33.00		
PD	51-40-275	SMPA	Coventry Tank #140068901	$ 33.00		
PD	51-40-275	SMPA	Water Meter #140042207	$ 38.19		
PD	51-40-275	SMPA	162 Gurley Dr #140042209	$ 76.06		
PD	51-40-275	SMPA	2096 County Rd Y43 # 29484	$ 77.03		
PD	51-40-275	SMPA	Treatment Plant #230147202	$ 1,704.37		
PD	51-40-760	Garfield & Hecht	Redundant Waterline Project	$ 1,515.00		
PD	51-40-460	Garfield & Hecht	General Matters	$ 2,412.00		
PD	51-40-480	Timberline Ace Hardware	NWC Credit Card	$ 382.56		
PD CC		Mesa County	Water Testing	$ 30.93		

PD CC	Microsoft	Email Hosting	$	27.72
PD CC	Microsoft	Email Hosting	$	40.74
PD CC	Xpress Bill Pay	Maintenance/Support	$	105.75
PD CC	Clearnetworx	Internet Service	$	60.00
PD CC	Vero Broadband	Internet Service	$	38.00

$ 93,004.21	$ 19,944.48	$ 26,505.79

Report Criteria:
Includes only accounts with balances and activity
Includes grand totals

Account Number	Account Title	2026-26 Current year Actual	2026-26 Current year Budget	Earned Expended Percent
WATER FUND				
WATER FUND				
51-37-100	WATER SALES	591,456.16	675,000.00	87.62
51-37-200	CONNECTION FEES/RECONNECT	.00	400.00	.00
51-37-250	WATER TAPS CHARGES	3,000.00	12,000.00	25.00
51-37-300	DELINQUENT CHARGES	2,167.91	4,000.00	54.20
51-37-350	PUBLIC WATER METER/SHACK	19,446.11	22,000.00	88.39
Total WATER FUND:		616,070.18	713,400.00	86.36
WATER FUND				
51-38-100	INTEREST EARNINGS	248.56	.00	.00
51-38-200	PROJECT	83,443.40	120,857.00	69.04
51-38-201	EIAF 25-098-GRANT REDUNDANT	72,897.52	175,000.00	41.66
51-38-202	SRF D&E	.00	300,000.00	.00
51-38-203	Administrative Planning Grant	.00	8,687.00	.00
51-38-300	MISCELLANEOUS REVENUES	.00	150.00	.00
51-38-900	DEPOSITS/APP FEES	4,317.02	4,500.00	95.93
Total WATER FUND:		160,906.50	609,194.00	26.41
WATER FUND				
51-39-700	BEGINNING FUND BALANC/TRANSFER	.00	218,000.00	.00
Total WATER FUND:		.00	218,000.00	.00
WATER FUND				
51-40-110	SALARY REIMBURSEMENT - TOWN	133,915.03	202,515.00	66.13
51-40-115	GRANT WRITER	.00	25,000.00	.00
51-40-132	EMPLOYEE BENEFITS - HEALTH INS	17,246.28	21,500.00	80.22
51-40-210	DUES/CONFERENCES	658.00	4,000.00	16.45
51-40-230	TRAVEL	1,540.46	2,000.00	77.02
51-40-235	WRAP Donation	5,000.00	5,000.00	100.00
51-40-240	OFFICE SUPPLIES AND EXPENSE	453.86	2,500.00	18.15
51-40-245	Freight	118.51	3,000.00	3.95
51-40-250	CHEMICALS/SUPPLIES/MAINT	26,580.14	35,906.00	74.03
51-40-255	VEHICLE EXPENSES	.00	3,000.00	.00
51-40-270	FICA MATCHING/IRA REIMBURSEMEN	8,169.43	19,000.00	43.00
51-40-275	UTILITIES -	19,261.54	30,000.00	64.21
51-40-280	TELEPHONE	2,236.85	3,500.00	63.91
51-40-290	POSTAGE	3,528.92	5,500.00	64.16
51-40-310	CONTRACT LABOR	38,777.17	30,000.00	129.26
51-40-420	CREDITS/ADJUSTMENTS	940.68	350.00	268.77
51-40-430	SERVICE CHARGE	4,202.09	2,000.00	210.10
51-40-460	ATTORNEY FEES	18,684.00	35,000.00	53.38
51-40-480	MATERIALS & SUPPLIES	20,244.53	35,000.00	57.84
51-40-490	PROF/TECHNICAL/AUDIT	6,133.90	5,500.00	111.53
51-40-510	INSURANCE AND SURETY BONDS	22,883.56	22,000.00	104.02
51-40-620	MISCELLANEOUS SERVICES	12,843.40	8,000.00	160.54
51-40-630	WATER TESTING	7,321.98	8,000.00	91.52
51-40-661	WATER ASSESSMENTS - FWDC	2,727.50	31,500.00	8.66

Account Number	Account Title	2026-26 Current year Actual	2026-26 Current year Budget	Earned Expended Percent
51-40-740	CAPITAL OUTLAY/EQUIPMENT/PLANT	6,264.40	34,193.00	18.32
51-40-741	AERATOR	.00	72,913.00	.00
51-40-742	PRESSURE REDUCING VALVE	.00	78,500.00	.00
51-40-743	TANK MAINTENANCE	.00	100,000.00	.00
51-40-744	FILTER SAND REPLACEMENT	.00	25,000.00	.00
51-40-750	ENGINEERING	.00	40,000.00	.00
51-40-760	CAPITAL PROJECT/SYSTEM IMPROVE	215,287.33	411,000.00	52.38
51-40-761	REDUNDANT LINE EA COST	6,590.27	12,800.00	51.49
51-40-762	ADMINISTRATIVE PLANNING GRANT	779.00	165,016.00	.47
51-40-770	CWCB WATER STORAGE	44,546.98	.00	.00
51-40-830	DEBT SERVICE/LOAN/CWCB	51,400.00	51,401.00	100.00
51-40-840	SYSTEM UPGRADES	527.14	10,000.00	5.27
Total WATER FUND:		678,862.95	1,540,594.00	44.07
WATER FUND Revenue Total:		776,976.68	1,540,594.00	50.43
WATER FUND Expenditure Total:		678,862.95	1,540,594.00	44.07
Total WATER FUND:		98,113.73	.00	.00
Grand Totals:		98,113.73	.00	.00

Report Criteria:
Includes only accounts with balances and activity
Includes grand totals

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into as of this ____ day of November, 2026 ("Effective Date") by and between the NORWOOD WATER COMMISSION, governing body of the water activity enterprise of the Town of Norwood, ("NWC") and LAND RIGHT, LLC, a Colorado limited liability company (the "Professional")

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. SCOPE OF PROFESSIONAL SERVICES: Professional agrees to provide services to the NWC in accordance with the Right of Way Scope of Work proposal attached hereto as **Exhibit A** and incorporated herein by this reference (the "Services"). In the event of any conflict between the body of this Agreement and Exhibit A, the body of this Agreement shall control. A change in the Services shall not be effective unless authorized in writing by the NWC. If Professional proceeds without such written authorization, Professional shall be deemed to have waived any claim for additional compensation.

2. TIME OF COMMENCEMENT AND COMPLETION OF SERVICES: The Services to be performed pursuant to this Agreement shall commence upon the Effective Date and be completed within 60 days. If Professional cannot complete the Services within such 60-day period through no fault or delay by Professional, Professional shall have an additional 30 days within which to complete the Services. In no event shall the completion date exceed 90 days from the Effective Date. Time is of the essence in this Agreement. Provided, however, that any payment obligation of the NWC for fiscal years after the year in which this Agreement is executed is subject to and contingent upon annual budgeting and appropriation by NWC.

3. PROFESSIONAL RESPONSIBILITY: Professional shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services rendered by Professional and shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies. Professional represents that it has the special expertise and background necessary to provide the NWC with the Services, and the NWC is expressly relying on the technical and professional expertise of Professional. Professional shall comply with all applicable federal, state, and local laws, rules, and regulations in the provisions of the Services and performance of its obligations under this Agreement.

4. PAYMENT: For satisfactory performance of the Services pursuant to this Agreement, the NWC agrees to pay Professional fees in the total amount not to exceed $13,332.00, as set forth in Exhibit A. Monthly partial payments based upon Professional's billings are permissible. The amounts of all such partial payments shall be based upon Professional's progress in completing the Services, for which Professional shall submit to the NWC a detailed monthly invoice describing the Services rendered and hours worked. Upon request by the NWC, Professional shall provide backup payroll documentation identifying each individual employee or contractor, date of work performed, and respective hours worked. The NWC shall pay the invoice within 30 days of receipt unless the work or the documentation therefor is unsatisfactory, as determined by the NWC in its sole and

reasonable discretion. Final payment shall be made following satisfactory completion of the Services and acceptance by the NWC.

5. REPRESENTATIVES: Professional hereby designates Travis Fischer as its primary contact and representative for this Agreement.

The NWC hereby designates Sara Owens as its representative to make all necessary and proper decisions with reference to this Agreement. All requests for contract interpretations, changes, clarifications, or instructions shall be directed to the NWC representative.

6. **INDEPENDENT CONTRACTOR STATUS: Professional and any persons employed or retained by Professional for the performance of the Services shall be independent contractors and not agents or employees of the NWC. Any provisions in this Agreement that may appear to give the NWC the right to direct Professional as to details of doing work or to exercise a measure of control over the work mean that Professional shall follow the direction of the NWC as to end results of the work only.**

A. Professional is providing Services independently and, therefore, is not an employee, partner, or joint venturer with the NWC, and neither party has the authority to bind the other in any respect. Professional warrants to the NWC that Professional understands the difference in status between an independent contractor and an employee, and Professional acknowledges and stipulates that Professional is neither eligible nor entitled to statutory or legal benefits or provisions of labor codes or other such similar statutes. The parties further agree that the NWC shall not withhold from Professional unemployment insurance, social security, taxes, or any other withholdings. Professional agrees to be responsible for all such payments required by law.

B. Taxes. Professional acknowledges and agrees to report all payments received from the NWC on its federal and state income tax returns and is obligated to pay any and all resulting federal and state income tax obligations. Professional will indemnify the NWC for any such payments required but not paid.

C. No Insurance or Benefits. Professional acknowledges and agrees that it is not covered by any of the NWC's insurance, including the NWC's workers' compensation coverage, and is not entitled to any benefits otherwise provided to the NWC's employees, including vacation pay, sick leave, retirement benefits, social security, disability benefits, employee health benefits of any kind, or workers' compensation benefits. During the term of this Agreement, Professional will carry any insurance required by law at Professional's own expense.

7. PERSONAL SERVICES: It is understood that the NWC enters into this Agreement based on the special abilities of Professional and that this Agreement shall be considered as an agreement for personal services. Accordingly, Professional shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the NWC, which consent shall be at the sole discretion of the NWC.

8. ACCEPTANCE NOT WAIVER: The NWC's approval of any documentation, estimates, valuations, reports, or incidental work or materials furnished hereunder shall not in any way relieve Professional of responsibility for the technical accuracy of the Services. The NWC's approval or acceptance of, or payment for, any Services shall not be construed or operate as a waiver of any rights or benefits under this Agreement or of any cause of action arising out of the performance of this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the NWC except in writing.

9. DEFAULT: Each and every term and condition shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default hereof by written notice from the other party.

10. REMEDIES: In the event a party has been declared in default hereof by written notice from the other party, such defaulting party shall be allowed a period of five (5) days within which to cure said default. In the event the default remains uncorrected, the non-defaulting party may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. In the event Professional fails or neglects to carry out the Services in accordance with this Agreement, the NWC may elect to make good such deficiencies and charge Professional therefor.

11. TERMINATION BY THE NWC: The NWC may terminate this Agreement at any time for its convenience. In the event of termination, the NWC shall pay Professional for all work previously authorized and completed prior to the date of termination pursuant to Exhibit A. If, however, Professional has breached this Agreement, the NWC shall have any remedy or right of set-off available at law and equity.

12. LIMITATION ON DAMAGES: The partes agree that Professional's remedies for any claims asserted against the NWC shall be limited to proven direct damages in an amount not to exceed amounts due under this Agreement and that the NWC shall not be liable for indirect, incidental, special, consequential, or punitive damages, including but not limited to lost profits.

13. INSURANCE: Professional agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Professional under this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Professional shall not be relieved of any liability, claims, demands, or other obligations assumed in this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

Professional shall procure and maintain, and shall cause any subcontractor of the Professional to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the NWC. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Professional under this Agreement.

A. Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of the Services under this Agreement in at least the minimum amounts required under Colorado law.

B. Commercial General Liability insurance with minimum combined single limits of ONE MILLION FOUR HUNDRED TWENTY-ONE THOUSAND DOLLARS ($1,421,000) aggregate for each occurrence and FIVE HUNDRED FIVE THOUSAND DOLLARS ($505,000) per injured person, but in no event shall the policy reflect amounts less than those set forth in the Colorado Governmental Immunity Act ("CGIA"), C.R.S. § 24-10-114, as may be adjusted from time to time. The policy shall be applicable to all premises and operations.

C. Comprehensive Automobile Liability insurance with a minimum combined single limits for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND ($500,000) each occurrence and ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000) aggregate with respect to each of Professional's owned, hired, and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. If Professional has no owned automobiles, the requirements of this Paragraph (C) shall be met by each employee of the Professional providing Services to the NWC under this Agreement.

D. Errors and Omissions insurance in the amount of $500,000 per claim, as applicable.

The policy required by Paragraph B above shall be endorsed to include the NWC and its officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the NWC, its officers, or its employees, shall be excess and not contributory insurance to that provided by Professional. Professional shall be solely responsible for any deductible losses under any policy required above. The NWC reserves the right to request and receive a certified copy of any policy and any endorsement thereto or a certificate of insurance evidencing the coverage required hereby.

14. INDEMNIFICATION: Professional agrees to indemnify, defend, and hold harmless the NWC, its officers, employees, and insurers, from and against all liability, claims, and demands, including costs of defense and attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement or performance of the Services, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the omission, error, professional error, mistake, or negligence of Professional, any subcontractor of Professional, or any officer, employee, representative, or agent of Professional or of any subcontractor of Professional, or which arise out of any workers' compensation claim of any employee of Professional or of any employee of any subcontractor of Professional, except to the extent caused by the negligent acts or omissions of the NWC, its officers or employees. This indemnification provision shall survive the completion of the Services and the satisfaction, expiration, or termination of this Agreement.

15. RECORDS: The NWC and its duly authorized representatives shall have access to any books, documents, papers, and records of Professional and its subcontractors that are related to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

The NWC is subject to and bound by the Colorado Open Records Act, C.R.S. § 24-72-101, *et seq*. Any and all documents Professional prepares pursuant to this Agreement may be subject to production and/or reproduction pursuant to those statutes, irrespective of any copyrights held by Professional. Professional hereby waives any claims of any kind whatsoever against the NWC for the NWC's compliance or attempted compliance with the provisions of the Open Records Act.

16. APPROPRIATION: No provision of this Agreement shall be construed or interpreted: (i) to directly or indirectly obligate the NWC to make any payment in any year in excess of amounts appropriated for such year; (ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or (iii) as a donation or grant by the NWC to or in aid of any person, company or corporation under applicable Colorado law.

17. IMMUNITY: The parties hereto understand and agree that the NWC is relying on, and does not waive or intend to waive by any provision of this agreement, the monetary limitations and any other rights, immunities, or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, or otherwise available to the NWC, its officers, or its employees.

18. NOTICE: Any notices required or permitted under this Agreement shall be in writing and shall be deemed given when personally delivered or, if mailed, three (3) days after being deposited in the United States certified mail, postage prepaid, return receipt requested, and addressed as follows. Either party may change the address to which notices should be delivered by providing notice in accordance with this Section.

TO NWC:
Norwood Water Commission
Attn: Sara Owens, Administrator
1670 Naturita Street
P.O. Box 528
Norwood, CO 81423
Email: sowens@norwoodtown.com

TO PROFESSIONAL:
Land Right, LLC
Attn: Travis Fischer, Owner
P.O. Box 3714
Durango, CO 81302
Email: travis@landright.net

19. GOVERNING LAW; VENUE: This Agreement is being executed and is to be performed in the State of Colorado and shall be enforced and construed according to the laws of the State of Colorado. Venue for any dispute arising out of this Agreement shall lie in the court of San Miguel County, Colorado.

20. ATTORNEY FEES: Should this Agreement become the subject of legal action to resolve a claim of default in performance by any party, including the collection of past due amounts, the non-prevailing party shall pay the prevailing party's reasonable attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

21. SEVERABILITY: In the event any part of this Agreement is found to be void, illegal, invalid, or unenforceable under present or future laws, then, in such event, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though such part was deleted and shall be construed to effectuate, as nearly as possible, the original intentions of the parties based upon the entire contract, including the invalidated provision.

22. REPRESENTATION: Each person signing this Agreement represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

NORWOOD WATER COMMISSION

By: _____
Tony Daranyi, Chairperson

ATTEST:

_____
Sara Owens, Administrator

LAND RIGHT, LLC

By: Travis P Fischer
Travis Fischer, Owner/Mgr. Member (title)

STATE OF COLORADO)
)ss.
COUNTY OF La Plata)

The foregoing instrument was acknowledged before me this 5th day of November, 2026 by Travis Fischer as Owner/Managing Mbr. of Land Right, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.
My commission expires: 9/29/2027

SANDRA MARLATT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20034032802
MY COMMISSION EXPIRES 09/29/2027

Sandra Marlatt
Notary Public

EXHIBIT A
Scope of Professional Services and Fees

[ATTACHED]

Land Right, LLC
PO Box 3714 – Durango - CO 81302 | 970-769-6445

October 6, 2026

Ms. Sara Owens
Town Manager
Town of Norwood
1670 Naturita Street
PO Box 528
Norwood, CO 81423

RE: Right of Way Scope of Work (SOW) for acquisition services required for the Town of Norwood and Norwood Water Commission waterline project.

Dear Ms. Owens,

Land Right, LLC proposes the following scope of work for the right of way (ROW) services required to meet the conditions of the Uniform Relocation and Real Property Act of 1970 as amended (URA). The following scope of work will ensure meeting or exceeding all requirements and allow for an expedient review by the Town of Norwood and Norwood Water Commission, herein after collectively as "Norwood".

Norwood Waterline Project

1. Land Right, LLC, through Travis Fischer, will assume the responsibility of preparing documentation required and act as lead negotiator / liaison on behalf of Norwood and the affected property owner.
2. Will coordinate and collaborate, depending on the complexity of the task at hand, with Norwood staff and their agents in Right of Way, Environmental and Survey to efficiently remedy and address any concerns or issues as they arise.
3. Coordinate with Norwood and any environmental consultants to obtain environmental clearance, allowing the start of negotiations with the property owner.
4. Prepare the Chief Engineers Cost Estimate (CECE), which is an estimate of value.
5. Prepare a Waiver Valuation if the estimate of value of the proposed acquisition is less than $15,000.
6. In the event the property value estimates on the CECE are greater than $25,000, Land Right, LLC will request that Norwood make a determination if there should be an appraisal performed, or the agency funding the project consider approval exceeding the $25,000 threshold. If the agency requiring URA compliance, either state or federal, deems it necessary to have the property appraised, Land Right, LLC will assist in coordination and appraisal of the acquisition area on behalf of Norwood.
    a. The complexity of adding appraisal review and coordination with property owners will change the "*Acquisition – Basic-Moderately Complex Acquisition*" fee to "*Acquisition – Moderately Complex*" and adjusted through a change order of $2,000 additional fee.
7. Negotiate settlements, donations, and draft any settlement justification letters required.

8. Request right of way clearance through appropriate authority, by delivering the final documentation and closing statements, or donations, in accordance with regional filing and documentation requirements.
9. Be available to travel to on site meetings for initial inspection and property owner meetings up to three (3) times.

Based on the foregoing, the cost of the proposed services by Land Right, LLC will be as outlined in the below table:

Services Provided	**Fee**
Value Finding / Waiver Valuation / Chief Engineer Cost Estimate	$1,800
Basic / Mod. Complex Acquisition in Norwood and Disposal of Easement	$6,250
Disposal of Easement Valuation	$1,500
Travel to Norwood for three meetings	$3,132
Closing Coordination Services	$650
Total Services	$13,332

Acquisition Services

All acquisition services work shall be performed in accordance with the Uniform Relocation Assistance and Real Property Policies Act of 1970), as amended (URA).

Work Schedules:
Land Right, LLC, in conjunction with Norwood, will establish an estimated schedule for ROW services anticipated under the scope of work solicitation to be completed. Written status reports for ROW services will be provided to Norwood by Land Right, LLC on a periodic basis. Any requested deviations from the established schedule should be approved by Land Right, LLC and Norwood in writing.

Land Right, LLC will be responsible for ensuring all required notifications are provided in a prompt and timely manner as required in the URA.

Acquisition Procedures:

- Land Right, LLC will advise the property owner in writing, via certified mail return receipt requested, of Norwood's intention to acquire property and shall provide the owner with a copy of plans, easement language and associated deliverables. Land Right, LLC will provide notice to the property owner of their right under the provisions of the URA to prepare an appraisal if requested or necessary.

- For Norwood property valuation purposes with an estimated value of less than $15,000, Land Right, LLC will prepare a Waiver Valuation, as described in the URA, which Norwood will use as evidence of value and the offer, as approved by the review appraiser if that is required for this project.

- If the value is estimated to be greater than $15,000, Land Right, LLC will refer the remainder of the valuation work to a qualified Certified Appraiser, and will submit a reasonable bill for work performed to date – or – Land Right, LLC will engage and employ a sub-contractor, to be covered by the same insurance, based upon an estimate of pro-rata valuation work completed for the valuation assignment to be determined through a separate scope of work or service agreement and will prepare the required appraisal.

- Land Right, LLC personnel will attempt to *personally contact* property owner(s) and/or lessee(s), or their designated representative, who have a compensable interest in parcels to be acquired on the project, in a prompt and timely manner.

- Upon making such contact, a written offer, along with a summary statement based upon previously established Just Compensation, shall be presented to the owner(s).

The written offer includes the following documents:

- Offer of Fair Market Value / Just Compensation with summary explanation of rights to be acquired; and

- Memorandum of Agreement; and

- ROW plan sheet showing the effect of the acquisition; and

- Tax Form W-9 to be filled out by property owner for agency issuing payment; and

- A demographic information form (if provided by Norwood); and

- Self-addressed, postage prepaid return envelope.

Land Right, LLC shall exercise care to prevent any coercive action during the performance of the applicable ROW services. (Land Right, LLC *may* be responsible to obtain temporary easements, if needed, for environmental assessment activities and *may* also serve as liaison in the delivery and acknowledgment of permission to enter, access permits and/or agreements.)

Negotiations:
Successful Negotiation:
Upon successful negotiation, Land Right, LLC will prepare a settlement package containing all required documents, including, but not limited to, a signed MOA, up to date and detailed negotiation, and supporting documentation as required by the URA, outlining **all** activities conducted in the acquisition.

Counter-Proposals:
Any counter offers / proposals received by Land Right, LLC from a property owner(s), shall be submitted to Norwood for review along with said counter proposal. The counter proposal will include a complete, detailed, and current negotiation log that outlines activities conducted in the negotiation and acquisition, as well as any other information in support of the counterproposal or as requested.

Impasse:
In the event of an impasse in negotiations, Land Right, LLC shall notify Norwood; providing a complete and current negotiation log and dated agent's certificate, outlining activities conducted to attempt successful property acquisition. Land Right, LLC will continue to work with Norwood in attempts to remedy the impasse resulting in Land Right, LLC seeing the remaining parcel acquisition services through to fruition. In the event this changes the scope of work, Land Right, LLC Norwood will amend the SOW to reflect the changes of complexity in completing the work as detailed in the original SOW.

Possession and Use:

Following review of Land Right, LLC's report, Norwood may authorize Land Right, LLC to attempt to obtain an agreement for Possession and Use, to expedite the project. Closing under a Possession and Use agreement will be handled in the same manner as an acquisition settlement between Norwood and the property owner(s). Settlement negotiation will be continued by the Land Right, LLC, Norwood in attempt to ultimately achieve the completed acquisition of the desired property rights. A complete, detailed, and current negotiation log, to date, outlining activities conducted in the acquisition will be accessible and made available upon request at any point in the acquisition process. Possession and Use Agreements are considered a contract and intent to settle on future negotiations or valuations; in this event the acquisition is considered Complex and thus requires an amendment to this scope of work.

Administrative Settlement:
Any requests for administrative settlement shall be prepared and supported by Land Right, LLC and submitted to Norwood for review and request for approval by an authorized agency official. An Administrative Settlement is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official. Land Right, LLC must demonstrate justification of such items within the request for administrative settlement. Land Right, LLC will accompany said request with a complete, detailed, and current negotiation log, to date, outlining activities conducted in the acquisition, as well as any other information requested by Norwood.

Closing & Planning Services:

Coordination of Title Research/Abstracting Services:
Land Right, LLC will coordinate with Norwood regarding the requirements for title necessary for planning and establishing releases required for clean title. For this project, Norwood, it's surveyor, if possible, can provide Land Right, LLC copies of the vesting deeds for each ownership. The vesting deeds shall be the basis for the document preparation and owner contact. If possible, the title commitment should include Schedule 2-B Exceptions, which should also be shown on any right of way plans.

Check Request:
Upon execution of the MOA and receipt from the property owner(s). Land Right, LLC will prepare a settlement request package and present to Norwood for review and approval. Upon approval by Norwood, Land Right, LLC will prepare a Check Order Request and submit to Norwood for issuance of a Check payable to the property owner of title, or to the title company engaged for benefit of the owner of title.

Closings:
Land Right, LLC can perform closings on all easement parcels. It is also common for permanent rights to be closed and recorded through a permanent easement deed using a title company and temporary rights are closed through a closing statement and receipt of Check document. For the purposes of this proposal, Land Right, LLC has included closing costs, however these may be waived if the project is anticipated to use a title company for closing procedures. Temporary easements are typically not required to be recorded as the cloud of title remaining post construction is an additional step to vacate.

- As applicable, related activities are to include, but are not limited to: calculation of final settlement figures and preparation of all closing documents. Check requests are prepared by Land Right, LLC and the original documents (Originals) are personally delivered or mailed to Norwood for processing of the Check request.

- Originals are to be retained by Norwood in accordance with state and federal law and Land Right, LLC will also retain a copy for a period of three years after the completion and termination of the services as defined in this SOW. Land Right, LLC will assist in

copying and preparing all required documentation for approval for each settlement as necessary, allowing Norwood to process payment for the rights of way acquired and make payment to the property owners. Land Right, LLC will also provide scanned copies via email of this Check request to Norwood accompanied by the Originals via hand delivery or expedited mail.

- The Check will be made payable to the owner of record, as shown on the MOA and be made available to Land Right, LLC for processing of necessary copies and preparation of required closing statements and closing. The Land Right, LLC representative will personally meet, or mail certified a Closing Statement and Receipt, to show the tendering of funds to the owner of record.

- To expedite closings, Land Right, LLC will request the Check, or a copy of the Check be delivered direct to Land Right, LLC, via email or to PO Box 3714, Durango, CO 81302 for copies for files and preparation of the pre-closing documents. Remote closings will require certified US Mail return receipt requested along with all necessary closing documentation to be signed and returned by the property owner.

- Timing of the closing to allow for processing of the Check Request and potential retrieval or mail transmittal to Land Right, LLC directly, can be anticipated to be scheduled within two to three weeks from the date the Check Request and supporting documentation are approved by Norwood.

Preparation & Retention of Documents:
Originals are transmitted to Norwood as part of the Warrant Request or upon completion of the acquisition. Copies and file conveyance to each participating party, Norwood, are included in the fee schedule above and will be assisted or performed by Land Right, LLC.

Land Right, LLC will retain one copy of the complete parcel file as a working file for a period of three years after the date of termination of the contract resulting from the scope of work solicitation, or for such further period as may be necessary to resolve any pending matters.

Quality Assurance & Maintenance of Files:
Land Right will keep copies of all forms and materials and Originals will be delivered to Norwood.

- Land Right, LLC will retain copies of all files as a working file for a period of three years after the date of termination of the contract resulting from the original solicitation, or for such further period as may be necessary to resolve any pending matters. One original and one copy of any amendments to the working file will be forwarded to Norwood Right of Way Project Manager.

- Upon review, approval, and any required acknowledgements, originals will be forwarded to Norwood for further review and processing. Land Right, LLC will perform a Quality Assurance review on all maintained parcel files to assure that proper documentation is included.

    - (Acquisition Services may include the completion and/or coordination of the *following services and will be included under the parcel acquisition fee:* Acquisition Basic: *including closings, title and escrow services/coordination;* Land Right, LLC will complete a closing on all parcels and Temporary Easements are closed using a Closing Statement and Receipt of Warrant / Check form.

Timely Delivery:

Time is of the essence on this project and Land Right, LLC is expected to provide project services on an ASAP basis (As Soon As Possible). Timely delivery and response to all issues is required.

Problem Solving:

Special or unique problems should be submitted to Norwood Project Manager for solution concurrence. The purpose of this contract is to provide specialty support to local public agencies working with federal funds. Therefore, it is Land Right, LLC's responsibility to research and provide recommended solutions to special and unique problems. For any special or unique problem, Land Right, LLC should:

1. Collaborate with Norwood for possible solutions allowable under the URA and CRS.
2. Research applicable State and Federal laws and regulations related to the problem.
3. Develop a written summary of the problem that includes a summary of related guidance items above.
4. Develop at least one written recommended one solution for problem resolution, if possible multiple solutions are preferred.
5. Submit the problem summary and recommended solution(s) to Norwood for review, concurrence and possible alternative solution recommendation.

I appreciate the opportunity to assist in this project and look forward to starting as soon as possible.

Sincerely,

Travis P. Fischer
Principal/Owner
Land Right, LLC

Norwood Water Commission
Capital Improvement Plan
Date Revised: 11/3/2026

Item	Description	Unit	Quantity	Unit Price	Estimated Total Cost	Estimated Co-Funding	Estimated NWC Cost	Estimated Year	Priority
Domestic Water System									
A.	**Raw Water Supply**								
A.1	Raw Water Storage Reservoir #3	LS	1	$ 7,000,000	$ 7,000,000	$ 3,500,000	$ 3,500,000	2037	5
A.2	San Miguel River transmission main, pump station, and intake structure	LS	1	$ 8,000,000	$ 8,000,000	$ 4,000,000	$ 4,000,000	2051	12
A.3	Reservoir #2 Liner Replacement	SF	625,000	$ 5	$ 3,125,000	$ 2,000,000	$ 1,125,000	2046-2047	10
	Subtotal						*$ 8,625,000*		
B.	**Water Treatment Plant and Storage Tanks**								
B.1	Chlorine disinfection feed system and booster system (Coventry tank and remove chloramine sytem at WTP)	LS	1	$ 600,000	$ 600,000	$ 400,000	$ 200,000	2030	2
B.2	Backwash Recycle Study and Design/Permitting	LS	1	$ 200,000	$ 200,000	$ 100,000	$ 100,000	2045	9
B.3	Interior/Exterior 0.5 MG WTP Tank Rehab. & Baffles	GAL	500,000	$ 2.0	$ 1,000,000	$ 600,000	$ 400,000	2041	7
B.4	Interior/Exterior 0.1 MG WTP Tank Rehabilitation	GAL	138,000	$ 2	$ 276,000	$ -	$ 276,000	2043	8
B.5	Interior/Exterior Coventry Tank Rehabilitation & Pressure Sustaining Valve and install mixer for DBPs & CL2 booster	GAL	120,000	$ 3.50	$ 420,000	$ 200,000	$ 220,000	2032	3
B.6	Interior/Exterior Blue Tank Rehabilitation	GAL	204,000	$ 2	$ 408,000	$ -	$ 408,000		
B.7	Replace Reed Tank	GAL	10,000	$ 10	$ 100,000	$ -	$ 100,000	2039	6
B.8	New Storage Tank at WTP	EA	1	$ 2,000,000	$ 2,000,000	$ 1,000,000	$ 1,000,000	2049	11
B.9	Backup Power and Generator	LS	1	$ 300,000	$ 300,000	$ 150,000	$ 150,000		
B.10	Blue Tank Maintenance	LS	1	$ 75,000	$ 75,000	$ -	$ 75,000		1
B.11	Aerator at WTP	LS	1	$ 75,000	$ 75,000	$ -	$ 75,000		1
	Subtotal						*$ 2,554,000*		
C.	**Transmission and Distribution**								
C.1	Redundant Potable Transmission Main incl SCADA controls for Blue Tank, PRV#1A, 1B, 1C	LF	22,700	$ 400	$ 9,080,000	$ 5,750,000	$ 3,330,000	2027	1
C.2	PRV #1A, #2, #3, #4 Rehabilitation	LS	1	$ 300,000	$ 300,000	$ -	$ 300,000	2035	4
C.3	Replace existing 10-inch transmission line from WTP to Town	LF	22,000	$ 400	$ 8,800,000	$ 3,000,000	$ 5,800,000	2053	13
C.4	Distribution Replacement Project A	LF	1,000	$ 400	$ 400,000	$ -	$ 400,000		
C.5	Distribution Replacement Project B	LF	1,000	$ 400	$ 400,000	$ -	$ 400,000		
C.6	Distribution Replacement Project C	LF	1,000	$ 400	$ 400,000	$ -	$ 400,000		
	Subtotal						*$ 10,630,000*		
D.	**General Operations and Maintenance**								
D.1	Disinfection Byproduct (DBP) Chlorine Residual Study	LS	1	$ 50,000	$ 50,000	$ 25,000	$ 25,000		
D.2	Backwash Recycle Study and Design/Permitting	LS	1	$ 80,000	$ 80,000	$ 25,000	$ 55,000		
D.3	WTP Plant Expansion Study	LS	1	$ 50,000	$ 50,000	$ 25,000	$ 25,000		
D.4	Annual Water Rights Engineering Support	LS	1	$ 10,000	$ 10,000	$ -	$ 10,000		
D.5	Rate Study (every 5 years)	LS	1	$ 25,000	$ 25,000	$ 25,000	$ -		
D.6	GIS Mapping and Asset Mgt. of Infrastructure	LS	1	$ 100,000	$ 100,000	$ -	$ 100,000		
	Subtotal						*$ 215,000*		
	Soft Costs (Design)			12.5%			$ 2,726,125		
	Contingency			20.0%			$ 4,404,800		
	Total Water System CIP Cost						**$ 29,154,925**		

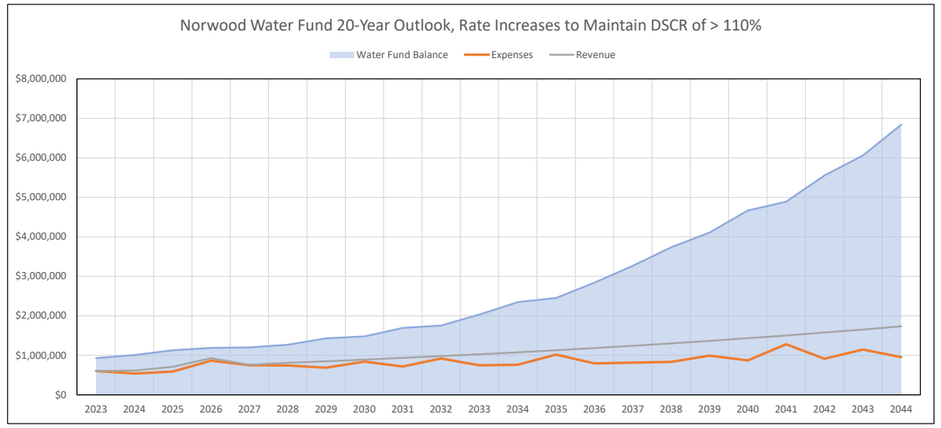
Norwood Water Commission

Norwood Transmission Pipeline 20-Year Cash Flow Projection
Alternate 1: WTP to Town of Norwood
Project: Potable Transmission Main
Prepared by: Catherine Carella, PE - SGM
Revised: 11/5/2026

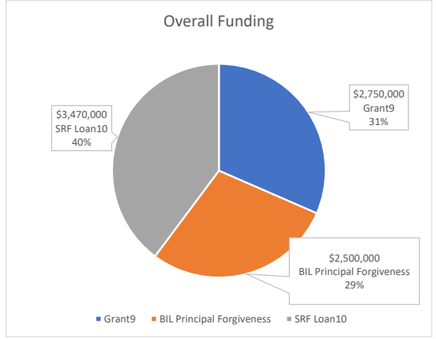
		Actuals	Actuals	Actuals	Actuals	Estimated based on Oct 2026 Actuals																				
		2022	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**	**2034**	**2035**	**2036**	**2037**	**2038**	**2039**	**2040**	**2041**	**2042**	**2043**	**2044**	**2045**	**2046**
Revenues	**Water Sales**[1]	$428,500	$447,700	$487,252	$571,269	$673,957	$721,808	$758,331	$796,703	$837,016	$879,369	$923,865	$970,613	$1,019,726	$1,071,324	$1,125,533	$1,182,485	$1,242,319	$1,305,180	$1,371,222	$1,440,606	$1,513,501	$1,590,084	$1,670,542	$1,755,071	$1,843,878
	PIFs[2]	$288,000	$60,000	$96,000	$60,000	$0	$12,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000	$24,000
	Grants		$65,000		$42,107	$224,665																				
	Misc.[3]	$26,070	$29,970	$32,868	$35,025	$27,721	$28,275	$28,841	$29,418	$30,006	$30,606	$31,218	$31,843	$32,480	$33,129	$33,792	$34,468	$35,157	$35,860	$36,577	$37,309	$38,055	$38,816	$39,592	$40,384	$41,192
	Combined Revenues	$742,570	$602,670	$616,120	$708,401	$926,343	$762,083	$811,172	$850,121	$891,022	$933,975	$979,084	$1,026,456	$1,076,205	$1,128,453	$1,183,325	$1,240,953	$1,301,476	$1,365,040	$1,431,799	$1,501,915	$1,575,556	$1,652,900	$1,734,134	$1,819,456	$1,909,070
Expenses	**O&M**[7]	$437,437	$524,544	$369,353	$460,550	$437,112	$450,225	$463,732	$477,644	$491,973	$506,733	$521,935	$537,593	$553,720	$570,332	$587,442	$605,065	$623,217	$641,914	$661,171	$681,006	$701,436	$722,480	$744,154	$766,479	$789,473
	Capital Outlay[8]	$17,000	$26,726	$118,333	$76,788	$376,157	$250,000	$80,000	$60,000	$200,000	$60,000	$250,000	$60,000	$60,000	$300,000	$60,000	$60,000	$60,000	$200,000	$60,000	$450,000	$60,000	$276,000	$60,000	$600,000	$700,000
	Debt Service (Existing)[4]	$54,086	$51,400	$51,401	$51,400	$51,400	$51,400	$50,390																		
	Debt Service (This SRF Loan)							$149,660	$149,660	$149,660	$149,660	$149,660	$149,660	$149,660	$149,660	$149,660	$149,660	$149,660	$149,660	$149,660	$149,660	$149,660	$149,660	$149,660	$149,660	$149,660
	Debt Service (Future Loan)																	$156,275	$156,275	$156,275	$156,275	$156,275	$156,275	$156,275	$156,275	$156,275
	Combined Expenses	$508,523	$602,670	$539,087	$588,738	$864,669	$751,625	$743,783	$687,304	$841,634	$716,393	$921,595	$747,253	$763,381	$1,019,992	$797,102	$814,725	$832,877	$991,574	$870,831	$1,280,667	$911,097	$1,148,140	$953,814	$1,516,139	$1,639,133
	Operating Income[5]	$234,047	$0	$77,033	$119,663	$61,674	$10,458	$67,390	$162,816	$49,389	$217,583	$57,489	$279,203	$312,825	$108,461	$386,223	$426,227	$468,598	$373,466	$560,968	$221,248	$664,459	$504,760	$780,320	$303,317	$269,937
	Ending Fund Balance	$929,356	$929,356	$1,006,389	$1,126,052	$1,187,726	$1,198,184	$1,265,574	$1,428,390	$1,477,779	$1,695,362	$1,752,850	$2,032,053	$2,344,878	$2,453,339	$2,839,561	$3,265,788	$3,734,387	$4,107,853	$4,668,821	$4,890,069	$5,554,528	$6,059,288	$6,839,608	$7,142,925	$7,412,862
	Growth Rate			2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%
	Water Rate Increase[6]		0%	2%	10%	10%	5%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
	Debt Service Coverage Ratio			250%	333%	220%	120%	134%	209%	133%	245%	138%	287%	151%	172%	358%	385%	202%	171%	232%	121%	266%	214%	304%	148%	137%

Notes:

1 - Incorporates 2% growth and variable % rate increases
2 - Assumes PIFs based on NWC's 2023 Actuals.
3 - Connection Fees/Reconnect, Delinquent Charges, Water Meters, Non-operating revenue, etc.
4 - Debt service for existing loan ends in 2028
5 - Combined revenues less combined expenses
6 - Rate increase values can be adjusted
7 - O&M includes commission expeditures from salaries to equipment, and river filling.
8 - Engineering, Capital Projects and System Upgrades. Future Capital Projects assumed from Master Plan recommendations. See CIP Assumptions Tab.
9 - Assumes grants for construction include $1,250,000 CDS, $1,000,000 San Miguel County, and $500,000 OJT
10 - Actual loan amount would be twice this value but eligibile for up to 50% principal forgiveness



Potable Transmission Main Project Construction	
Loan Terms	
Estimated Cost	$8,720,000
Grant[9]	$2,750,000
Other	$0
BIL Principal Forgiveness	$2,500,000
SRF Loan[10]	$3,470,000
Term (Years)	30
Rate	1.75%
Yearly Payment	$149,660.25
Min. Debt Service Ratio	110%



Future Storage Reservoir #3 Project Construction	
Loan Terms	
SRF Loan	$3,500,000
Term (Years)	30
Rate	2.0%
Yearly Payment	$156,274.73

Norwood Water Commission

Norwood Transmission Pipeline Required Rate Increase
Project: Redundant Transmission Main Design
Prepared by: Catherine Carella, PE - SGM
Checked by: Scott Forrester, PE - SGM, Catherine Carella, PE - SGM
Date Revised: 10/7/2026

Town Rates				Town and Rural Rates	
Gallons	2023 Rates	2024 Rates	2025 Rates	2026 Rates	2027 Proposed Rates
≤1,000	$28.00	$31.00	$34.10	$37.51	$39.39
1,001	$28.00	$31.00	$34.10	$41.51	$43.59
2,001	$31.50	$34.50	$37.95	$45.51	$47.79
3,001	$35.00	$38.00	$41.80	$51.51	$54.09
4,001	$38.50	$41.50	$45.65	$57.51	$60.39
5,001	$42.00	$45.00	$49.50	$63.51	$66.69
6,001	$45.50	$48.50	$53.35	$73.51	$77.19
7,001	$49.00	$52.00	$57.20	$83.51	$87.69
8,001	$52.50	$55.50	$61.05	$93.51	$98.19
9,001	$56.00	$59.00	$64.90	$103.51	$108.69
10,001	$59.50	$62.50	$68.75	$113.51	$119.19
11,001	$63.00	$66.00	$72.60	$123.51	$129.69
12,001	$66.00	$79.50	$87.45	$143.51	$150.69
13,001	$70.00	$73.00	$80.30	$163.51	$171.69
14,001	$73.50	$76.50	$84.15	$183.51	$192.69
15,001	$77.00	$80.00	$88.00	$203.51	$213.69
16,001	$80.50	$83.50	$91.85	$223.51	$234.69
17,001	$84.00	$87.00	$95.70	$243.51	$255.69
18,001	$87.50	$90.50	$99.55	$263.51	$276.69
19,001	$91.00	$94.00	$103.40	$283.51	$297.69
20,001	$94.50	$97.50	$107.25	$303.51	$318.69

Commercial Rates (added in 2026)

Gallons	2026 Rates	2027 Proposed Rates
≤1,000	$37.51	$38.56
1,001	$42.01	$43.06
2,001	$47.01	$48.06
3,001	$52.01	$53.06
4,001	$58.01	$59.06
5,001	$64.01	$65.06
6,001	$70.01	$71.06
7,001	$76.01	$77.06
8,001	$82.01	$83.06
9,001	$88.01	$89.06
10,001	$94.01	$95.06
11,001	$100.01	$101.06
12,001	$106.01	$107.06
13,001	$112.01	$113.06
14,001	$118.01	$119.06
15,001	$124.01	$125.06
16,001	$130.01	$131.06
17,001	$136.01	$137.06
18,001	$142.01	$143.06
19,001	$148.01	$149.06
20,001	$154.01	$155.06

Typical User Cost increase

Typcical Usage Per ADD from 2020 Master Plan average of production data

3500 gals

2024 Cost	$38.00	Variance
2025 Cost	$41.80	$3.80
2026 Cost	$51.51	$9.71
2027 Cost	$54.09	$2.58

NORWOOD WATER COMMISSION

PO Box 528; 1670 Naturita St, Norwood, CO 81423

Phone: 970-327-4288 www.norwoodtown.com

NORWOOD WATER COMMISSION

TIERED PRICING STRUCTURE
APRIL 2026

Town of Norwood & Rural Customers

< 1000 gallons = BASE RATE ($37.51)
1001-3000 gallons = $4/1000 gallons
3001-6000 gallons = $6/1000 gallons
6001-12000 gallons = $10/1000 gallons
> 12001 gallons = $20/1000 gallons

Commercial Customers (including Churches)

< 1000 gallons = BASE RATE ($37.51)
1001-20000 gallons = $4.50/1000 gallons
20001-40000 gallons = $5/1000 gallons
> 40001 gallons = $6/1000 gallons

Taxing Districts

No changes to current pricing

To encourage water conservation, the **Norwood Water Commission** is instituting a tiered pricing structure that goes into effect April 1, 2026.

Applicant:	Norwood Water Commission
Project Name:	Redundant Potable Transmission Main
Applicant Contact:	Sara Owens - Town Administrator, Finn Kjome - N
Date:	2/17/2026

Project Budget - Design, Engineering,		
Budget Line Items	Total Cost	Revenues Matching
Planning and Project Needs Assessment: Expenses for the PNA already completed, planning, land easement research	$ 32,092.78	$ 10,000.00
		$ 22,092.78
Planning and Environmental Assessment: Environmental surveys and report, alignment easement planning, site visits, land easement negotiations	$ 72,200.00	$ 21,182.00
		$ 51,018.00
Engineering Design: survey, design, final plans and specs, geotechnical, land easement negotiations, final environmental report, preparing the SRF loan application, advertising for the public meeting and bidding, Bidding administration, General and Bond counsel opinions for the SRF loan agreement, legal fees for obtaining easements	$ 511,300.00	$ 175,000.00
		$ 226,889.22
Subtotal	**$ 615,592.78**	**$ 506,182.00**
Subtotal D&E Expenses		**$ 300,000.00**

Note: NWC is approved to receive max amount of $300,000 SRF D&E 100% principal forgiveness loan

WC President, Catherine Carella - SGM

Legal Before Construction			
Funding Source	Funding Committed (C) or Pending (P)	Match required	Total Expenses Spent to Date 02/17/2026
SRF Planning Grant	C	20%	$ 32,092.78
SRF D&E	P	$0	
DOLA A-0328	C	1:1	$ 72,200.00
SRF D&E	P	$0	
DOLA 25-098	C	1:1	$ 13,870.64
SRF D&E	P	$0	
			$ 118,163.42

Applicant:	Norwood Water Commission
Project Name:	Redundant Potable Transmission Main
Applicant Contact:	Sara Owens - NWC Administrator, Tony Daranyi - NWC President, Catherine Carella - Engine
Date:	11/5/2026

Project Budget - Construction				
Budget Line Items	Total Cost	Revenues Matching	Funding Source	Funding Committed (C) or Pending (P)
Construction: Installation of waterline and appurtenances	$ 7,727,000.00	$ 1,250,000.00	Congressionally Directed Spending (EPA Community Grant)	P
		$ 500,000.00	Town of Norwood via Office of Just Transition (OJT)	C
		$ 1,000,000.00	San Miguel County	P
		$ 4,977,000.00	SRF Loan	P
Construction Administration: materials testing, contract administration, construction observation, funding reporting requirements	$ 220,000.00	$ 220,000.00	SRF Loan	C
Contingency:	$ 773,000.00	$ 773,000.00	SRF Loan	P
Subtotal	**$ 8,720,000.00**	**$ 8,720,000.00**		
Subtotal SRF Loan Amount Application		**$ 5,970,000.00**		
Subtotal SRF Loan Amount with $2.5M Forgiveness		**$ 3,470,000.00**		

Note: NWC is eligible to receive up to $2.5M SRF loan principal forgiveness but we will not know the awarded amount until we apply for the SRF Loan.

Total estimated project cost incl. Design	$ 9,335,600.00

er

Match required	
20%	We will apply for a match waiver
$0	
$0	
0	
$0	
$0	

Complaint Against Ray Cossey for Violations of the Norwood Water Commission Board Code of Conduct

This complaint is against Ray Cossey for violating the following provisions of the Norwood Water Commission (NWC) Board Code of Conduct.

Ethical Standards / Conflicts of Interest. Cossey has an extreme conflict of interest that disqualifies him from representing NWC's rural service area. From early 2022 until January 2025, while a sitting NWC member, he argued in numerous court cases that NWC is not a legal water supplier outside the Town of Norwood, the part of the service area he was appointed to represent. He has never retracted that position, and he never disclosed it to his appointing body, the San Miguel Water Conservancy District (SMWCD), or to the NWC board.

Shortly after losing his last case, he asked NWC to approve a single tap for a 100-plus person "man camp" on his Redvale property and to send Montrose County a letter confirming NWC would serve it. Again, he did not disclose the conflict.

Guiding Principles of Conduct. Cossey failed to conduct himself with the highest standard of integrity, honesty, and fairness, and failed in his obligations of civility toward a member of the public, transparency in decision making, and accountability. His complaint against me also contains numerous blatant falsehoods, as the attached exhibits show.

General Standards of Conduct. Cossey acted with extreme hostility toward a neighbor and ditch owner, Matt Buckner, and continues to do so. He filed a false police report against Mr. Buckner and, as part of a campaign of harassment, trespassed on Mr. Buckner's ditch easement by driving down it beyond his own property and kept Mr. Buckner from accessing his own ditch and easement.

Interactions with Others: The Public. Cossey failed to approach a member of our community with patience, openness, and dignity. Instead, he intimidated and harassed Mr. Buckner for exercising his legal rights over a period of days and weeks. He also spent more than three years in pointless and expensive litigation against his Redvale neighbors, which is another example of intimidating and harassing the public in the rural part of NWC's service area that he is supposed to represent.

Interactions with Others: Other Government Agencies. Cossey failed to disclose his conflict to the SMWCD board at his initial appointment in 2023, when he was still litigating his claim that NWC is not a legal water supplier outside the Town, and at his reappointment in 2025, shortly after the litigation ended and just before he approached NWC for a tap and service commitment for his "man camp" in Redvale.

Background

Harassment of Neighboring Ditch Owner

Cossey intimidated and harassed his Norwood neighbor, Matt Buckner, for cleaning his lateral ditch that carries his ditch shares from the Lone Cone Ditch, which runs through Cossey's property. Mr. Buckner's timeline of events is attached as Exhibit A.

In June 2026, Cossey called me to complain that his Mr. Buckner had been cleaning the lateral that carries water from the Lone Cone Ditch to his property, through land owned by Cossey and another neighbor. I told Cossey that a ditch owner has the right to clean his ditch through other people's property because the ditch easement is the dominant property interest (Exhibit B explains Colorado ditch easement law). When we hung up, I thought he understood the law and that the matter was over.

Instead, several evenings later, Cossey and his wife drove their truck up Mr. Buckner's fence line via an adjacent property and pointed the headlights into the dining room where Mr. Buckner, his wife, and their two young children were eating dinner. Cossey and his wife left the truck lights on, got out and stood at the fence staring into the Buckner's house for about 20 minutes before leaving.

Over the next several days, the Cosseys drove around the property next to Mr. Buckner's, stopping to pull out a variety of guns and shoot them across the ditch easement. On the second night, Mr. Buckner called me. I told him it couldn't be Cossey, because I had explained to him that cleaning the ditch was legal. Nevertheless, my husband, another neighbor, and I went to Mr. Buckner's house and watched the Cosseys drive around at dusk, pull out different guns, aim and shoot across the easement, drive some more, and pull out more guns. This went on for an hour or more, until dark.

The next evening near dusk, Mr. Buckner called to say it was happening again. I went out to the county road to photograph the truck's license plate as it left a neighboring driveway. I wasn't able to see a license plate, but Cossey stopped to speak with me after driving out onto the county road. When I asked what he was doing, he said he was hunting prairie dogs (at dusk, with multiple rifles, shooting across the easement). I told him that was baloney, and he began complaining that Mr. Buckner had "overdug" the ditch and that I should see the mess. I said that in my career as a water lawyer I had handled many similar cases, that ditch cleaning is rarely pretty and often surprises the underlying landowner, but that it is perfectly legal. I added that "over digging" doesn't really exist: the ditch owner must get the water to flow downhill to his property and could be liable to the landowner if it overflowed the ditch.

Cossey continued to harass and intimidate Mr. Buckner and his family for more than a week. He trespassed onto Mr. Buckner's property and yelled at him uncontrollably in front of his family. He also complained to several Sheriff's deputies. When Mr. Buckner and I later met with the

deputies and, among other things, explained the parties' rights under ditch law, I learned that Cossey had filed a false police report. Among other things, he claimed Mr. Buckner had destroyed an "expensive gate" across the easement, and Deputy Wayne Eichenbaud told me he could charge Mr. Buckner with a felony based on the gate's value. I later gave the Deputy Eichenbaud photos showing a falling-down fence, not a gate, across the easement (Exhibit C) and asked what their evidence was that there had ever been a gate. Deputy Eichenbaud stopped responding to me after I sent him the photos and questioned their evidence.

Cossey's claim was entirely false, and the Sheriff's Office never charged Mr. Buckner. (It is also illegal to fence out an easement owner.) Nevertheless, Cossey continued to harass Mr. Buckner and to trespass on his ditch easement.

Discovery of Cossey's Years of Litigation Arguing NWC Is Not a Legal Water Supplier Outside the Town of Norwood

Because Cossey's behavior was so aggressive and threatening, and continued for weeks, I suspected he had a criminal history and wanted to know what risk he posed to Mr. Buckner and his young family. I searched his name on the state's court case website and found three full pages of cases naming Cossey as a defendant, almost all criminal, including theft, domestic violence, and a domestic protection order (Exhibit D). While I needed that information to assess the danger to Mr. Buckner's family, I did not provide it to NWC.

However, my search also turned up a series of cases arising from a dispute with Cossey's Redvale neighbors, Harold and Drue Priestley, over well permits Cossey received for property he owns in NWC's rural service area (Exhibit E). The Priestleys disputed the permits in part because Cossey failed to state on the well applications, as required, that his properties were in NWC's service area.

Cossey won before a State Engineer hearing officer, but that wasn't enough. He appealed to the State Engineer and then to Montrose County District Court, **seeking not only attorneys' fees but also a determination that NWC is not a legal water supplier outside the Town of Norwood,** even though he owned a rural NWC water tap for his Redvale property at the time. Simultaneously, he was pursuing the exact same claims in the water court.

As you will see in the attached timeline (Exhibit F) of cases that he filed in the District Court, Water Court, Court of Appeals, and the Colorado Supreme Court, Cossey continued to push his claim that NWC is not a legal water supplier outside of the Town until January 2025, long after

he was appointed to the Commission.[1] In fact, he pursued simultaneous claims in both the District Court and the Water Court on the same claim.[2]

While Cossey's many court cases were a comedy of legal errors, the point remains that **he spent over 3 years arguing that NWC is not a legal water supplier in its rural service area — the very area that he is supposed to represent on the NWC board. He also has never disavowed that position or removed that claim from his court filings.** He just lost - again, and again, and again. But that never stopped him. He continued pursuing his claim until he ran out of appeals, forcing the Priestleys to continue paying legal fees to defend against his baseless claim against them, too.

Failure to Disclose the Conflict to SMWCD

Contrary to the statement in his complaint against me, when Cossey first applied to SMWCD to represent NWC's rural water users, he never disclosed that he was actively seeking a determination that NWC is not a legal water supplier outside the Town.

SMWCD's board appoints NWC's rural members. In 2023 that board was made up entirely of new members recently appointed by the San Miguel County District Court judge, and it solicited applications for the three rural NWC seats. SMWCD's notice (Exhibit G) asked applicants to disclose any conflicts of interest concerning NWC and "any other relevant information that would be helpful for the SMWCD in making a selection."

Cossey's 2023 application (Exhibit H) disclosed neither the then-ongoing litigation nor his claim regarding NWC. The other two 2023 applicants, Tony Daranyi and Richard Nelson, both addressed the conflict issue in theirs applications (Exhibit I), as required.

Cossey again failed to disclose his conflict in his 2025 application to the SMWCD for reappointment to NWC representing the rural members. (Exhibit J).

Cossey did not tell the SMWCD board of his conflict when they interviewed him in 2023 and 2025 before his appointment and reappointment to the NWC Board. SMWCD Vice President Clay Wadman has confirmed by affidavit that Cossey never told SMWCD about the lawsuits or his conflict of interest. (Exhibit K). NWC Chair Tony Daranyi was present at those meetings and can confirm that Cossey never disclosed his conflict of interest.

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[1] I have highlighted the parts of documents filed in each of those courts demonstrating that Cossey was arguing that NWC is not a legal water supplier outside of the Town of Norwood.

[2] The reason he filed in two different courts is that he first filed in the District Court, which is the wrong court for appealing a ruling of the State Engineer. The District Court held that he needed to file in Water Court. He appealed that ruling to the Court of Appeals, lost, then appealed to the Supreme Court. While that appeal was occurring, he also filed in Water Court. The Water Court dismissed his case because it was not filed on time. He also appealed that ruling directly to the Supreme Court before withdrawing his appeal.

The prior NWC board, by contrast, was well aware of the conflict. Then-attorney Steve Johnson requested a copy of Cossey's application, and Exhibit L shows that the board knew of the conflict and did not want him appointed (for obvious reasons).

Failure to Disclose the Conflict to NWC

At the July and August 2025 NWC meeting, six months after his last case ended at the Supreme Court, Cossey asked the Commission to approve the purchase of a single tap for a 100-plus person "man camp" on his Redvale property and for a letter to Montrose County confirming that NWC would supply water to the development. The NWC board at the time did not know he had just ended years of litigation in multiple courts on his claim that NWC is not a legal water supplier in Redvale. He never told NWC, or the members of the public who attended the August meeting to oppose the development, of his position or his years of litigation.

Conclusion and Request for Removal of Cossey from the Norwood Water Commission

Cossey has a clear conflict of interest as a member representing NWC's rural service area and should never have been appointed to a rural seat. He spent three years arguing in Colorado courts, up to the Supreme Court (twice), that NWC is not a legal water supplier outside the Town, half of that time while he was a sitting Commission member representing that very area. That violates the Code's prohibition on conflicts of interest.

He never disclosed his obviously strong belief that the NWC is not a legal supplier in its rural service area to the entity that appointed him, SMWCD. And he did not disclose that conflict to the NWC board, even when requesting NWC water service for his Redvale property. That violates the Code's provisions on interactions with other government agencies and its conflict of interest prohibition.

When I disclosed that he had pursued the claim while serving on NWC, he filed a complaint against me. In it he stated that he was not pursuing that claim after joining the NWC board, that he had told the SMWCD board of his ongoing claim when he applied for a rural seat, and that I had known of the claim for years. All of these statements are false.

Beyond the conflict of interest and the falsehoods in his complaint, Cossey harassed and intimidated his neighbors in Norwood (Mr. Buckner) and in Redvale (the Priestleys, in court) and filed a false police report against Mr. Buckner. All of these actions violate the Code's Guiding Principles of Conduct, General Standards of Conduct, and Standards for Interactions with the Public and with Other Government Agencies.

Cossey cannot legitimately represent NWC's rural members when he does not believe NWC is a legal water supplier outside Town boundaries. He is also willing to file false police reports, harass and intimidate his neighbors, and lie to this board about his court claims and his failure to disclose his conflict to SMWCD and NWC. The only appropriate sanction is removal from the NWC board.

Raymond M. Cossey

970-729-0017

P.O. Box 681 / 21 Hazel St.

Norwood, CO.81423

raymondcossey@GMAIL.COM

Norwood Water Commission **8/12/26**

Attn: Tony Darani-Chairman

RE: Formal Complaint of a fellow Board Member Ms. Jenny Russell

Tony, I am sending you this letter in response to the deceptive, defamatory and slanderous actions by fellow Board Member Jenny Russel on July 14th at the NWC's monthly public meeting.

As you well know from Ms. Russell's conversations with you that I was thrust into a civil matter with a client and friend of Ms. Russell's. Ms. Russell has now used her official platform as an NWC Board member to undermine the cohesiveness of the board, deceive the board, defamed and bear false witness against me to the NWC Board and the public at large and now these statements are of public record and in the Minutes of the meeting.

I am requesting for whatever process there is for the immediate removal of Ms. Russell from the NWC Board.

Below are some of the actions and statements of Ms. Russell at that meeting.

-Towards the end of the meeting Ms. Russell used her official capacity as a board member to use the allotted time during the agenda item "Board Member Reports and Announcements" to stand up with documents hand them out to all board members present along with staff and ask staff member Annie Crews to "enter it into the record".

- Ms. Russell stated that this was information for everybody to be aware of.

- Ms. Russell stated that this was because of research she did because of a situation.

-Ms. Russell stated that I went to "Court", all the way to "Supreme Court" while I was a sitting board member

-Ms. Russell went on to read and affirm from the alleged Supreme Court documents, that I went all the way to the Supreme Court and asked the "Court" to determine that we (NWC) was not a legal water supplier and that our(NWC) authority does not extend beyond the town boundary and that our(NWC) service area boundary is irrelevant and to remove our(NWC) service area map from the DWR website.

-When asked by board member Ryan Howe why she was presenting this, Ms. Russell stated the reason for her actions where because of my (Ray's) "Intimidation of a ditch owner"

Purposeful Deception of the Board and Public, Defamatory Statements with Rebuttals

-Ms. Russell was already fully aware of these actions, I had asked if she would represent me when this all happened in 2021, Ms. Russell is the one that actually alerted me to some of the potential legal issues with the NWC in the first place. She did not simply stumble across this matter as a result of research as stated, Ms. Russell was more than fully aware of the 2021 action back in 2021.

-Ms. Russell stated that I was "Intimidating a ditch owner", this is false and there is no validity to this claim. This statement is simply a retaliatory action designed to be defaming and slanderous because of criminal charges that her friend and now client received in a criminal matter and soon to follow civil matter that I will be unfortunately involved in.

-Ms. Russell stated a couple of times that I did this while being a Seated Board Member. This is false, the Administrative Procedure Act with the State Engineer that mentioned the Legality issues of the NWC was over in Sept. 2022, my first term started on July 1st 2023

-Ms. Russell deceived everyone present and the Public at large by insinuating that the documents she presented and read from were from the "Supreme Court" Those documents are in fact from the "State Engineer" case # 21SE08, the "SE" in the case number means "State Engineer" this is by no means a "Court" of any kind and certainly not the "Supreme Court" it was actually an administrative procedure act (APA) within the Division of Water Resources solely. It was never in any "Court" as stated by Ms. Russell

-Ms. Russell only provided parts of the "documents". The documents were "cherry picked". The packet the board received and that she asked to be placed into the record consists of three (3) items. 1st is the search engine page, 2nd is a document titled "Order Granting Motion For Summary Judgment" that has page 1 through 3 and skips to page 8 and the remaining 11 pages are missing, there are a total of 19 pages in this document. 3rd is a document titled "Decision Of The State Engineer" that has page 1 and skips to page 4, skips to page 12 and 13 and the remaining 14 pages are missing, there are a total of 18 pages in this document. The rest of the pages would explain the rest of the story that did not favor Ms. Russell's negative narrative. I believe in a court of law this would fall under what is called exculpatory evidence, that's when favorable evidence is purposefully withheld, that would be in favor of the accused.

-This entire action that Ms. Russell falsely described actually started in 2021(case # 21SE08) when another party "The Priestly's" initiated the action with the State Engineer at the Division of Water Resources and the Priestly's attempted to bring the NWC into the action to help strengthen their complaint. All of my actions were reactive and defensive; I took no one to "Court". The NWC's legal issues that were raised during the Administrative Procedure Act with the DWR State Engineer were subsequent and came to be known from information provided by local(Division 4) DWR Staff during the proceeding action that had been started by the Priestly's.

Further Rebuttal & Statements:

-Please *note* that all documents with the exception of the "search engine page" Ms. Russell presented are from the "State Engineer" as shown at the top of each document and *NOT* from the "Supreme Court" as stated by Ms. Russell.

-This was very deceitful and misleading as most people are not familiar with these types of documents and when coming from an attorney and a sitting NWC Board Member, one would easily think the statements are true.

-The State Engineer is with the Division of Water Resources (DWR) not the "Supreme Court".

-The "Decision Of The State Engineer" was issued on Sept. 15th 2022 and that ended the Administrative Procedure Act.

-I was not a NWC Board Member at this time, My 1st term started on July 1st, 2023

-We never named the NWC as "Respondents" in any action, this is public record.

-One Extremely important thing to understand is that myself, the State Engineer or The Attorney General of the State of Colorado never said the NWC was not a *Legal Water Supplier* per statute, it was stated by the Division 4 Division of Water Resources staff that the NWC did not meet the *Legal* requirements to be a *Legal Water Supplier* per policy per Guideline 2003-5

-As a result of the "State Engineers "Final decision it was affirmed that we had legal "Well Permits", however the subsequent issues with the NWC's legality and boundary were not taken into consideration because the *NWC was not a party to the Administrative Procedure Act*, the NWC was never named as a party, furthermore we were not awarded attorney fees.

-We had the right to appeal the APA Final Decision from the "State Engineer" and that is exactly what we did, we appealed the *denial of attorney fee's portion of the Decision*, and that attempted appeal was denied by *District Court* not *Supreme Court* on January 9th 2023, nearly 6 months before my appointment to the NWC Board.

-We asked the "Supreme Court" to take up the denied case from the lower court and look at it; this is called a "Petition Of Writ of Certiorari". The Supreme Court took a long time to respond but eventually denied our Petition, we never took anyone or more importantly the NWC to "Supreme Court" as falsely stated by Ms. Russell, This can be clearly seen in public records that the NWC was

never named as a "Respondent" in our petition. Again, the NWC was not named in this Petition to The Supreme Court.

- Petitioning the Supreme Court for a Writ of Certiorari is a far cry from taking the NWC "all the way to Supreme Court" as stated by Ms. Russell.

-This would have been clearer information if Ms. Russell would have provided the entire documents instead of her "cherry picked" presented packet to the board on July 14th, 2026.

-The issues raised by Ms. Russell had been disclosed at my 1st interview for appointment with the appointing San Miguel Water Conservancy District Board in May, 2023. Ms. Russells Spouse Clay Wadman is a voting member of the appointing board and was at that first interview when I was asked about the situation with the NWC, I had told them that I was not bringing any personal negative agenda towards the NWC with me and was focusing my attention to the good of the NWC and Community.

-I was appointed to a 2nd term that started July 1st 2025 (Clay Wadman was there for that appointment as well).

-Seems coincidental that Ms. Russell is all of the sudden trying to make something out of this over 5 years after she knew about it firsthand.

-Ms. Russell has told me in the past that she has been a water attorney for over 30 years and has been quite successful.

-With 30 plus years as a successful attorney one would think that being very familiar with "Court" documents or any documents, knowing where they originated from and being able to read and understand them would be second nature.

-Ms. Russell's actions are of the most deceitful, defamatory and slanderous nature because Ms. Russell is an attorney of approximately 30 years and knows full well what she was doing at the July 14th NWC regular meeting.

-Ms. Russell's actions demonstrate that she is more than willing to use her official capacity as an appointed NWC Board Member to inappropriately publicly on the record, defame, slander, bear false witness, put profit, her personal agenda, career as an attorney, another feather in her hat and a

friend/client's criminal & civil matters squarely in the center of the Norwood Water Commission's business under the guise of "It was because of research" and rouse the NWC Board while working for a client.

-Ms. Russell stated and acted like she just innocently stumbled across this when she had first-hand knowledge at the beginning of the situation in 2021. Ms. Russell and her spouse both knew it had been fully disclosed before both of my appointments to the NWC Board.

-So, in simple terms Ms. Russell is furious at me about her friend's criminal charges and soon to be civil matters and is just working to character assassinate me and attempt to get me kicked off the NWC Board.

-There are several violations of the "Code of Conduct" to say the least.

I am certainly available to answer questions you may have and can provide the all the *complete* documents mentioned.

Respectfully

Raymond Cossey

EXHIBIT A

TIMELINE OF RAY COSSEY'S HARASSMENT
BY MATT BUCKNER

June 13

- Ray came on to my property to complain about the ditch. He called Jenny, then filed a false police report

June 16

- Phone call with Deputy in which he says Ray accused me of:
    - Loss of revenue from running cattle (he doesn't)
    - Overdigging the ditch
    - Destroying a gate (there was never a gate)

June 17th or 18th

- Ray and the Deputy walked the ditch without me on one of these days with Bobby Stark and Mark Ragsdale.

June 18th

- Deputy calls and leaves voice mail saying that we need to go over some stuff

June 19th

- Ray and Pam drive down the ditch and stand at our property line

June 20th

- Ray and Pam again drive down the ditch and stand at our property line. Jenny talked to Ray after he came out of the driveway. I have a photo of Ray standing at property line

June 21st

- Ray brings guns and opens his car doors to threaten us and starts shooting. Clay, Jenny, Ross and Steve Rogers are witnesses to this incident. Marisa called 911. Deputy showed up from Telluride hours later and said he would talk to Ray. No follow up from the sheriff's office on this.

June 22nd

- Ray calls the sheriff's office about skid steer being on my ditch on the Mock property. Two sheriff's deputies show up. Deputy calls Jenny twice and says "you're not a criminal attorney" and then hangs up. Ray has a melt down and screaming at the top of his lungs. Steve Rogers is a witness to this incident.

June 23

Matt and Jenny meet with Becky and Wayne, who accuse Matt of

- Destroying a gate
- Oil spill
- During this meeting they dropped the investigation, but stated that they could still charge me for destroying Ray's "gate". I told them there was no gate.
- Deputy said Ray wanted me trespassed and that I was trespassed and could be arrested if I crossed some imaginary line while working on the ditch. Under threat of being arrested in the future for trespass.
- They also said that they have no idea of water law and had never researched it.

June 24

- Deputy called Jenny to set up a meeting with Ray and his attorney about civil matter. Ray did not want Jenny there.

June 25

- Ray back driving around on the Mock property

EXHIBIT A

June 26th
Deputy calls Jenny and says there are issuing a summons for

- Destruction of a $ 2800 dollar gate that they could charge me with a felony and they would reduce it to a misdemeanor
    - They were reopening the investigation and wanted to see if Wayne could drop off the summons or if i wanted to pick it up, i said that i wanted to pick it up in 15 min, and then they called my attorney back and said don't come by the annex and they were going to give it to the DA.

June 26th

- Ray on my ditch (trespassing) with a surveyor who surveys my ditch all the way to my fence line.

June 28th

- Ray comes with Pam and starts shooting from behind the house and i call 911. This is during a stage two fire ban where he is not supposed to be driving on dry grass or shooting. Visibility was very low because of smoke. I have a video.

July 10th
Email from Galena explaining what the sheriff is doing

- Going to cite me for a missing gate also known as an H type structure.

July 14th

- Jenny provides Deputy with photos showing that there was no gate across the ditch easement
- Bobby Starks drives down the ditch to our fence line, which is a trespass. Have video.

8/2 ray drives down the ditch and around - have video
9/9 ray drives down the ditch and around - have video
9/11 ray drives down ditch and around

These are all trespasses by Ray on my ditch easement.

EXHIBIT B

Colorado Ditch Easement Law: Access, Maintenance, and Remedies

September 13, 2026

Colorado ditch easement law gives the holder of a water right a legally protected corridor across someone else's land to carry water from its source to where it's used, along with the right to enter that land for construction, maintenance, and repair. These rights are grounded in Colorado Revised Statutes 37-86-102 and 37-86-103, they run with the land, and they can bind a property owner even when nothing about the ditch appears in the deed or the public record. If you own land with a ditch on it, or you hold a water right that depends on one, the rules below control what each side can and cannot do.

What a Ditch Easement Actually Covers

A ditch easement is a real property interest, not a courtesy. Under Section 37-86-102, anyone who owns a water right is entitled to a right-of-way through the land between the point of diversion and the point of use.[1] Section 37-86-103 defines the scope: the right to build, operate, clean, maintain, repair, replace, and improve the ditch, plus the right to enter the burdened property for those purposes as conditions require. The statute also explicitly permits efficiency improvements such as lining or piping.[2]

The corridor is wider than the water itself. The right-of-way covers the ditch bed and enough ground on either side to properly operate the system, including room for equipment, workers, and bank maintenance. When no written agreement specifies the width, courts look at how the ditch has actually been maintained over time. A ditch that has always been cleared using a fifteen-foot working buffer on each side has likely established that buffer as its effective right-of-way.

This is where landowners most often go wrong. A fence, a garden bed, or a shed installed right up against the water's edge often turns out to sit inside the easement. If the ditch owner has historically used that ground for maintenance, the encroachment is the landowner's problem to remove.

How These Easements Come Into Existence

Not every ditch easement started with paperwork. Colorado recognizes three main ways one can arise, and the method matters for how easily it can be proved.

Express Easements

An express easement is granted by deed or written agreement that identifies the ditch's location, the scope of use, and access rights. These are the easiest to enforce because the terms are on paper. Many older Colorado ditches trace to express grants made when the first irrigation systems went in during the 1800s.

EXHIBIT B

Prescriptive Easements

When a ditch has crossed someone's land long enough without formal permission, the water user may acquire a prescriptive easement. Under Colorado Revised Statutes 38-41-101, the use must be open and obvious, continuous and uninterrupted for eighteen years, and adverse to the landowner's interests. A 2008 amendment added that the claimant must also show a good-faith belief they were the true owner and prove each element by clear and convincing evidence. Many of the state's oldest ditches rely on prescriptive rights because they predate modern recording.

Implied Easements

Easements can also arise by implication when land that was once under common ownership is divided. If the ditch was in use before the split and its continued use is reasonably necessary for the parcel it serves, courts will recognize an implied easement even without a written grant.

The practical takeaway for buyers: a title search alone won't necessarily surface prescriptive or implied easements, and title insurance may not cover them. A physical walk of the property, combined with a title search and a call to any local ditch company, is the most reliable way to identify what's there before you close.

Access Rights of the Ditch Owner

Section 37-86-103 gives ditch owners the right to enter the burdened property for reasonable and necessary purposes, including access to the ditch and its banks "as the exigencies then existing may require."[2] This access is built into the easement itself. The landowner cannot demand advance permission, and a change of ownership doesn't reset anything.

Access includes bringing in equipment. During spring cleaning or emergency repair, a backhoe or truck may be on the property for days. The limit is reasonableness. The ditch owner must use the least disruptive means available and cannot cause unnecessary damage. A ditch company that tears up a driveway when a gentler approach existed has exceeded its rights.

Timing is the recurring friction point. Ditch owners often need to enter during planting or harvest, which is exactly when the landowner least wants equipment on the fields. The statute doesn't impose a scheduling rule, but courts expect good faith on both sides. Access at unreasonable hours or work that causes avoidable crop damage invites a lawsuit even when the underlying right of entry is clear.

Who Maintains the Ditch

Maintenance is the ditch owner's job, not the landowner's. Colorado Revised Statutes 37-84-101 requires ditch owners to carefully maintain embankments so that water does not flood or damage neighboring land, and to construct a tail ditch that returns unused water to the stream with as little waste as possible.[3]

In practice that means clearing sediment, removing debris, repairing eroded banks,

EXHIBIT B

controlling vegetation, and keeping headgates operational. Sediment buildup is a constant issue in Colorado's dry climate. A ditch that isn't cleaned before irrigation season can overflow at peak flow and cause the exact damage the statute is designed to prevent.

Larger systems are typically run by ditch companies or irrigation districts governed by a board elected from among the shareholders. Those entities assess fees, set cleaning schedules, and handle the main channel. Individual shareholders usually maintain the laterals that serve their own parcels.

Landowners whose property a ditch crosses don't pay for routine upkeep, but they cannot obstruct the ditch, interfere with maintenance, or make unauthorized alterations. Dumping yard waste into the channel or redirecting runoff into it can produce liability for damages and cleanup costs.

Liability When a Ditch Fails

When a ditch overflows and floods a neighbor, the standard is negligence, not strict liability. Section 37-84-101 imposes the maintenance duty, and courts have read it to mean the ditch owner is liable for damage caused by negligent construction, maintenance, or operation.[3] A ditch owner who knew about a weak bank and didn't repair it stands in a very different position from one whose ditch failed in an unprecedented storm.

The same standard applies to seepage. Ditch owners are not liable for water that seeps into neighboring soil unless the seepage resulted from negligent construction or operation. When seepage does cause compensable harm, courts measure the loss as the difference in property value immediately before and after the injury.

Ditch companies and irrigation districts usually carry liability insurance. Private ditch owners sometimes don't. A single flood event can create liability that dwarfs the value of the water right itself, so reviewing coverage with an agent is worth the conversation.

Moving or Changing a Ditch

Landowners planning to develop often ask whether they can move a ditch. The Colorado Supreme Court answered this in *Roaring Fork Club, L.P. v. St. Jude's Company* (2001), holding that a burdened landowner may not relocate or alter a ditch easement unless one of two things happens:

- The ditch owner consents to the change.
- The landowner obtains a declaratory judgment that the change will not significantly lessen the utility of the easement, increase the burdens on the easement holder, or frustrate the purpose for which the easement was created.

The court also emphasized that "the right to inspect, operate, and maintain a ditch easement is a right that cannot be abrogated by alteration or change to the ditch."[4] Moving a ditch is a legal proceeding, not just a construction project. A landowner

EXHIBIT B

who relocates one without consent or a court order is violating the easement, and the ditch owner can get an injunction to restore the original alignment plus damages.

Even with consent or court approval, the landowner pays for the relocation. The new ditch must function at least as well as the old one, which typically means engineering studies, new headgate installations, and grade adjustments that cost more than most landowners expect.

Losing an Easement: Abandonment and Adverse Possession

A ditch easement cannot be lost through simple nonuse. Even a channel that hasn't carried water in decades remains legally valid unless the easement holder takes affirmative steps showing intent to abandon it. Colorado courts require "clear, unequivocal, and decisive evidence" of abandonment, which is a deliberately high bar. Letting a ditch fall into disrepair, skipping cleanings, or allowing sediment to fill it does not count on its own.

There is one other path to termination: adverse possession by the landowner. If the landowner uses the easement area in a way that is openly incompatible with the ditch owner's rights, continuously and without interruption for eighteen years, the easement can be extinguished. The clock starts when the easement holder actually demands use and is refused. Building over a dormant ditch doesn't start the eighteen-year period until the ditch owner tries to reassert access and the landowner says no.

Never assume an old, unused ditch on your property has lost its status. Before building over or filling in what looks like an abandoned channel, run a title search and check with local ditch companies or the Colorado Division of Water Resources. That call can save years of litigation.

Enforcement Options and Penalties

When someone obstructs a ditch, blocks access, or tampers with the flow, the ditch owner has both civil and criminal tools available.

Civil Remedies

The most common tool is an injunction ordering the landowner to remove the obstruction or stop interfering. Courts grant these readily once the easement is established, because damage from interrupted delivery during growing season is hard to make whole after the fact. Ditch owners can also recover damages for repair costs, lost water, and crop losses.

When the fight is about the easement's boundaries or scope rather than outright interference, either side can seek a declaratory judgment establishing dimensions and permitted uses. Courts rely on historical records, testimony about longstanding practices, and expert surveys to resolve those questions.

Criminal Penalties

EXHIBIT B

Colorado Revised Statutes 37-89-101 makes it a class 2 misdemeanor to knowingly and willfully damage or interfere with a ditch, canal, flume, reservoir, or drain. That covers breaking down banks, opening gates without authority, and diverting water for personal gain. The court must order full restitution for actual damages.[5] A class 2 misdemeanor carries up to 120 days in jail, a fine of up to $750, or both.[6]

Section 37-89-103 separately makes it a class 2 misdemeanor to tamper with any headgate that has been adjusted by the division engineer. Anyone using water taken through an unlawfully altered headgate is presumed to have violated this provision.[7]

Don't Use Self-Help

or fills in a ditch without consent or a court order is violating the easement. A ditch owner who bulldozes a fence without first trying to resolve the dispute has exceeded reasonable access. When the two sides cannot agree, the proper path is a declaratory judgment, not a backhoe at dawn.[4]

Where to File

Most ditch easement disputes belong in district court, not water court. Water courts have exclusive jurisdiction over water rights issues such as the right to divert, the amount of a water right, and changes to a previously decreed right. Disputes about the physical easement, its boundaries, access, and interference are property questions handled by district courts. The Colorado Division of Water Resources, through its division engineers, plays an administrative role managing headgates and enforcing delivery priorities, but it does not adjudicate easement boundaries.

Tue, Jun 30 at 7:12 AM

Change of plans I apologize we're not gonna serve him we're gonna do a filing with the DA and they will decide. I will get you the case number here in a second

EXHIBIT C

Do you have that case number? I would like to reach out to the Deputy DA. Thanks.

Tue, Jul 14 at 3:39 PM



In the lower left-hand corner of this photo, you can see the sagging fence. The red line shows the ditch itself. This is the fence that Matt had to drive over to clean the ditch. This is the "before" photo.



This is the photo after he repaired the fence. I am really wondering what evidence the Sheriff's office has showing the before condition of the fence. You'll note that it is not, and never was, a "gate".

Delivered


EXHIBIT C

EXHIBIT C



EXHIBIT D

Case Search

Court Location

All Trial Courts

Division

Case Class

All Cases

Case Type

Party Search

Person's Name

First Name: Raymond

Last Name: Cossey

Status

Case Year

Clear Search

Total Search Results:42

Location	Case Number	Case Caption	Case Type	Status
Chaffee County	1995R000008	The People of the State of Colorado v. Cossey, Raymond	Motor Vehicle	Closed
Delta County	2015T000608	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
La Plata County	2019T001050	The People of the State of Colorado v. Cossey, Raymond Matthew	Motor Vehicle	Closed
Mesa County	1998C000499	A1 Collection Agency Ltd v. Cossey, Raymond M	Money	Closed
Montrose County	2022CV030077	Barrett, Pamela et al v. Kevin Rein et al	Rule 106	Closed
Montrose County	2018R000027	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
Montrose County	1997DR000339	Cossey, Raymond M and Cossey, Katherine E	Dissolution of Marriage	Closed
Montrose County - Nucla	2017R000006	The People of the State of Colorado v. Cossey, Raymond Matthew	Motor Vehicle	Closed
Montrose County - Nucla	2006T000023	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
Montrose County - Nucla	1998T000020	The People of the State of Colorado v. Cossey, Raymond M	Driving Under Suspension	Closed
Montrose County - Nucla	1998T000009	The People of the State of Colorado v. Cossey, Raymond M	Driving Under Suspension	Closed
Montrose County - Nucla	1997T000075	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
Montrose County - Nucla	1997R000016	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
Montrose County -	1997R000010	The People of the State of Colorado v.	Motor Vehicle	Closed

EXHIBIT D

County - Nucla		State of Colorado v. Cossey, Raymond M	Vehicle	
Montrose County - Nucla	1997M000069	The People of the State of Colorado v. Cossey, Raymond Matthew	Domestic Violence	Closed
Montrose County - Nucla	1997C000044	Cossey, Katherine Elaine v. Cossey, Raymond Matthew	Protection Order Domestic Abuse	Closed
Montrose County - Nucla	1996T000118	The People of the State of Colorado v. Cossey, Raymond Matthew	Motor Vehicle	Closed
Montrose County - Nucla	1996T000027	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
Montrose County - Nucla	1996R000042	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
Montrose County - Nucla	1996R000020	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed

Showing 1 to 20 of 42 entries

EXHIBIT D

Colorado Courts E-Filing | Main | Filing | Search | Resources | Administrator | Hello, Jennifer Russell

Case Search

Court Location

All Trial Courts ×

Division

Case Class

All Cases ×

Case Type

Party Search

Person's Name

First Name: Raymond

Last Name: Cossey

Status

Case Year

Clear | Search

Total Search Results:42

Location	Case Number	Case Caption	Case Type	Status
Montrose County - Nucla	1995T000143	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
Montrose County - Nucla	1993T000019	The People of the State of Colorado v. Cossey, Raymond	Motor Vehicle	Closed
Ouray County	1998T000357	The People of the State of Colorado v. Cossey, Raymond M	Driving Under Suspension	Closed
Ouray County	1997R000091	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
Ouray County	1994R000115	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
Rio Blanco County	2001T000156	The People of the State of Colorado v. Cossey, Raymond M	Driving Under Suspension	Closed
San Miguel County	2001R000049	The People of the State of Colorado v. Cossey, Raymond Matthew	Motor Vehicle	Closed
San Miguel County	2001R000012	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
San Miguel County	2000R000029	The People of the State of Colorado v. Cossey, Raymond Mathew	Motor Vehicle	Closed
San Miguel County	1999R000014	The People of the State of Colorado v. Cossey, Raymond Matthew	Motor Vehicle	Closed
San Miguel County	1997M000070	The People of the State of Colorado v. Cossey, Raymond Matthew	Other	Closed
San Miguel County	1996T000583	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
San Miguel County	1996R000301	The People of the State of Colorado v.	Motor Vehicle	Closed

EXHIBIT D

		Cossey, Raymond M.		
San Miguel County	1996R000289	The People of the State of Colorado v. Cossey, Raymond M.	Motor Vehicle	Closed
San Miguel County	1995T000096	The People of the State of Colorado v. Cossey, Raymond M	Driving Under Suspension	Closed
San Miguel County	1995R000139	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
San Miguel County	1995R000112	The People of the State of Colorado v. Cossey, Raymond Matthew	Motor Vehicle	Closed
San Miguel County	1995R000058	The People of the State of Colorado v. Cossey, Raymond	Motor Vehicle	Closed
San Miguel County	1994T000529	The People of the State of Colorado v. Cossey, Raymond	Driving Under Suspension	Closed
San Miguel County	1994T000115	The People of the State of Colorado v. Cossey, Raymond M	Driving Under Suspension	Closed

Showing 21 to 40 of 42 entries

EXHIBIT D

Colorado Courts E-Filing Main Filing Search Resources Administrator Hello, Jennifer Russell

Case Search

Court Location

All Trial Courts

Division

Case Class

All Cases

Case Type

Party Search

Person's Name

First Name: Raymond

Last Name: Cossey

Status

Case Year

Clear Search

Total Search Results:42

Location	Case Number	Case Caption	Case Type	Status
San Miguel County	1994R000128	The People of the State of Colorado v. Cossey, Raymond M	Motor Vehicle	Closed
San Miguel County	1992CR000003	The People of the State of Colorado v. Cossey, Raymond	Theft	Closed

Showing 41 to 42 of 42 entries

EXHIBIT E

Colorado Courts E-Filing Main Filing Search Resources Administrator Hello, Jennifer Russell

Cases

Show 20 entries

Date Purchased	Expiration Date	Location	Case Number	Case Caption
10/09/2026 3:03 PM	10/23/2026 11:59 PM	Montrose County	2023CW003000	Barrett, Pamela et al v. Dwr State Engineer et al
10/08/2026 2:02 PM	10/22/2026 11:59 PM	Montrose County	2022CV030077	Barrett, Pamela et al v. Kevin Rein et al
10/08/2026 1:55 PM	10/22/2026 11:59 PM	Supreme Court	2023SA000145	Barrett, Pamela v. Division of Water Resources
10/08/2026 1:49 PM	10/22/2026 11:59 PM	Supreme Court	2024SC000250	Barrett, Pamela v Division of Water Resources
10/08/2026 1:41 PM	10/22/2026 11:59 PM	Court of Appeals	2023CA000243	Barrett, P v Division of Water

Showing 1 to 5 of 5 entries

EXHIBIT F

TIMELINE OF CASES BY COSSEY FOR DETERMINATION THAT NWC IS NOT A LEGAL WATER SUPPLIER OUTSIDE OF THE TOWN OF NORWOOD PRIOR TO APPLYING FOR A TAP FOR A 100-PLUS PERSON MAN CAMP IN REDVALE

1. **March 25, 2022.** Case No 21SE08. Order of the Hearing Officer (Exhibit 1) granting Cossey summary judgment (SJ Order) in the complaint filed by his neighbors Harold and Drue Priestley, and finding that his 13 well permits on his property in Redvale were issued legally.

***2. **April 25, 2022.** Case No. 21SE08. Cossey files Notice of Exceptions (Exceptions) to Order Granting Summary Judgment (Exhibit 2). **THE EXCEPTIONS ARE THE BASIS FOR ALL OF THE APPEALS FILED BY COSSEY UNTIL HE WITHDRAWS HIS FINAL SUPREME COURT APPEAL IN JANUARY 2025.**

Among other things, Cossey states the following:

- "The SJ Order erroneously accepts NWC's self-proclaimed service area as NWC's legal boundary. This is problematic because it sanctions the NWC's unlawful expansion of authority. The NWC was created by the Town of Norwood… **Consequently, the NWC's authority is also limited to its municipal boundaries. Redvale is not within the Town and therefore it is not lawfully within the NWC's service area.**" (Page 11).1

- The "NWC cannot exercise authority over lands outside the Town's jurisdiction. (Page 12).

- **"Cossey takes exception with all statements and inferences … related to NWC's service area as extending beyond the Town's jurisdictional limits."** (Page 13).

- He then asks that the summary judgment order be amended as follows:

    - "Remove all references to the NWC as a legal water supplier … Cossey disputes that NWC qualifies as a 'legal water supplier'".

    - "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.

    - **"Order the DWR [Division of Water Resources] to remove the NWC's service area map from its website because it incorrectly represents the NWC's authority.**

      (Page 13).

3. **September 15, 2022**. Case No. 21SE08. State Engineer denies Cossey's motion to amend the SJ Order of the hearing officer based upon the Exceptions. (Exhibit 3).

2. **October 19, 2022.** Case No. 22CV30077. Cossey files an Amended Complaint (Exhibit 4) in the Montrose County District Court requesting that the decisions of the State Engineer and Hearing Officer be overruled. With respect to the NWC, Cossey demanded a "Finding that the SEO's acquiescence to the **NWC's claimed status as a legal water supplier with a service area extending beyond the territorial boundaries of the Town [of Norwood] is arbitrary, capricious, an abuse of discretion, a denial of statutory right, and contrary to law.**

In particular, in this case before the District Court, Cossey stated the following:

- He did not know that his properties in Redvale were in the service area of the NWC. (Paragraph 9). (At the time, he had at least one tap for a different Redvale property.)

- The State Engineer's determination that the NWC is a legal water supplier with an extensive service area that includes lands in both San Miguel and Montrose Counties is, "unsupported by substantial evidence" and "contrary to law". (Paragraph 22).

- Cossey's Redvale properties were not within the service area of a known water supplier. (Paragraph 24).

3. **January 19, 2023.** Case No. 23CW3000. Cossey files Complaint for Judicial Review of Agency Action in the water court. (Exhibit 5). This is essentially the same complaint as the Amended Complaint in the District Court case and requests the exact same determinations, including that NWC is not a legal water supplier outside Town boundaries. (Paragraphs 9, 22 and Paragraph D on page 11).

4. **January 29, 2023**. Case No. 22CV30077. Cossey's Amended Complaint dismissed by the District Court because it should have been filed in the water court. (Exhibit 6).

5. **February 11, 2023.** Case No. 23CA243. Cossey files a Notice of Appeal (Exhibit 7) with the Colorado Court of Appeals, appealing the dismissal of his complaint by the District Court. The Notice of Appeal states that the issues Cossey is appealing are those in the Notice of Exceptions and references the Amended Complaint for a full statement of issues. (Page 4).

6. **April 18, 2023.** Case No. 23CW3000. The water court dismissed this case because it was filed after expiration of the statute of limitations. (Exhibit 8). The decision confirms that Cossey was continuing to fight to obtain a determination that the NWC is not a legal water supplier outside the Town. (See highlights).

7. **June 1, 2023.** Case No. 23SA145. Cossey filed a Notice of Appeal (Exhibit 9) to the Supreme Court, appealing the water court's dismissal of Cossey's complaint. The Notice confirms that Cossey is appealing the hearing officer's failure to determine that NWC is a legal water supplier outside the Town. (Page 3).

8. **February 29, 2024.** Case No. 23CA243. The Court of Appeals issued an opinion (Exhibit 10) that affirmed the order of the District Court, and holding that Cossey's complaint should have been filed in water court. Again, it is clear that Cossey's appeal is an attempt to obtain a determination that NWC is not a legal water supplier outside the Town. (Paragraphs 8, 9, 23 and 24).

9. **May 2, 2024.** Case No. 24SC250. Cossey files an appeal to the Supreme Court appealing the Court of Appeals' decision in Exhibit 8. This called a Petition for a Writ of Certiorari (Exhibit 11) because the Supreme Court has discretion as to whether to take the case. **The Petition expressly asks for review of the State Engineer's decision regarding NWC. (Exhibit 11, page 8).** Attached is a listing of all of the pleadings in this case. (Exhibit 12). You can see by the date stamp on top that the State Engineer's decision is attached to the Petition. (Exhibit 13), demonstrating yet again that Cossey was continuing to seek a determination that the NWC is not a legal water supplier outside Town boundaries.

10. **October 21, 2024.** Case No. 24SC250. The Supreme Court denies Cossey's Petition for Writ of Certiorari. (Exhibit 14).

11. **January 2, 2025.** Case No. 23SA145. Finally, years after the State Engineer issued his decision and **a year and a half after Cossey was first appointed to the NWC**, Cossey files a motion to withdraw his Notice of Appeal in the Supreme Court. (Exhibit 15). This was the appeal of the water court's dismissal of his complaint in Case No. 23CW3000.

12. **January 8, 2025.** Case No. 23SA145. The Supreme Court grants Cossey's motion to withdraw his appeal and closes the case. (Exhibit 16).

SIX MONTHS LATER, COSSEY REQUESTS THE NWC SSUE A SINGLE WATER TAP AND AN ASSURANCE OF WATER SERVICE TO HIS PROPERTY IN REDVALE FOR A 100-PLUS PERSON "MAN CAMP" — AN NWC TAP FOR PROPERTY THAT, ACCORDING TO COSSEY, IS OUTSIDE OF NWC'S LEGAL SERVICE AREA.

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**	**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 [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. 8[2] 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.

4. Award Cossey damages, attorney fees, and costs.

Staff takes no formal position on the Motion or on Cossey's request for damages, fees, costs, or additional sanctions against the Priestleys. However, Staff opposes Cossey's request that the Hearing Officer declare the NWC is not a "legal water supplier" and has no legal boundary, and that the Hearing Officer order the DWR to remove the NWC's boundaries from its website.

STANDARD OF REVIEW AND RELEVANT LAW

On a motion to dismiss for failure to state a claim pursuant to C.R.C.P. 12(b)(5), a court "may not consider matters outside the allegations in the complaint. . . [but if] a complaint is challenged for failure to state a claim, and matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in [C.R.C.P. 56]." *Dunlap v. Colorado Springs Cablevision, Inc.,* 829 P.2d 1286, 1290 (Colo. 1992)(internal citations omitted); C.R.C.P. 12(c).

Summary judgment is appropriate when there are no issues of material fact and the moving party is entitled to judgment as a matter of law. C.R.C.P. 56(c); *Greenberg v. Perkins, 845 P.2d 530* (Colo. 1993). A material fact is a fact that will affect the outcome of the case. *Dominguez Reservoir Corp. v. Feil*, 854 P.2d 791, 795 (Colo.1993).

Summary judgment permits "'the parties to pierce the formal allegations of the pleadings and save the time and expense connected with a trial when, as a matter of law, based on undisputed facts, one party could not prevail.'" *Roberts v. Am. Family Mut. Ins. Co.*, 144 P.3d 546, 548 (Colo. 2006) (citation omitted).

A motion for summary judgment should be granted when the facts are undisputed and the non-moving party cannot prevail as a matter of law. *American*

Water Dev., Inc. v. City of Alamosa, 874 P.2d 352, 360 (Colo. 1994). The burden of establishing the nonexistence of a genuine issue of material fact is on the moving party. *Continental Air Lines, Inc. v. Keenan*, 731 P.2d 708, 712 (Colo. 1987). Once the moving party meets the initial burden of producing those portions of the record to demonstrate the absence of any genuine issue of material fact, the burden shifts to the non-moving party to establish that there is a triable issue of fact.

The Court must view all evidence in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence, and resolve all doubts as to whether an issue of fact exists against the moving party. *Luttgen v. Fischer*, 107 P.3d 1152, 1155 (Colo. App. 2005). The ultimate burden of persuasion in connection with a motion for summary judgment always rests on the moving party. *Continental Air Lines, Inc.*, at 712.

A genuine issue of material fact cannot be raised solely by means of argument. *Sullivan v. Davis*, 474 P.2d 218, 221 (Colo. 1970). The party opposing a motion for summary judgment cannot rest upon the allegations or denials in its pleading, but instead must produce specific facts showing there is a genuine issue for the hearing officer to resolve. *See Fed. Land Bank of Wichita v. Deatherage*, 739 P.2d 905, 906 (Colo. App. 1987); C.R.C.P. 56(e).

A motion to dismiss for lack of subject matter jurisdiction under C.R.C.P. 12(b)(1) includes lack of standing. Standing concerns a tribunal's subject matter jurisdiction. A plaintiff must have standing to bring a case, *Ainscough v. Owens*, 90 P.3d 851, 855 (Colo. 2004), and in Colorado, *"parties to lawsuits benefit from a relatively broad definition of standing.*" (Emphasis added).

SUMMARY OF RELEVANT ARGUMENTS

Cossey's Arguments

In the Prayer for Relief section of the Supplemental Brief and Verified Reply, Cossey asks the Hearing Officer to grant summary judgment affirming the Cossey Permits. Cossey makes the following arguments in the Motion, Supplemental Brief, Verified Reply to Staff, and Verified Reply to Priestleys in support of this position:

1. The Exempt Well Statute, C.R.S. § 37-92-602, controls the DWR's evaluation and issuance of exempt well permits; not Guideline 2003-5.

    a. Guideline 2003-5 is a non-binding rule. "A well permit cannot be contested based on an administrative guideline or its application." Motion pg. 4 and Supplemental Brief pg. 16.
    b. The "NWC does not" - and therefore did not at the time of the Cossey Applications - "meet the requirements of any three (3) qualifying entities"[3] as contemplated under Guideline 2003-5 AND because the DWR staff "did not have alleged legal boundaries on file or accessible to the SEO", the NWC's legal boundaries were unknown to DWR staff at the time of review of the Cossey Applications.[4] Motion pgs. 5-7.
    c. The DWR issued the Cossey Permits in compliance with the Exempt Well Statute.

[3] DWR's Guideline 2003-5 Regarding the Use of Wells Within Water Service Areas defines three types of entities that it would consider legal water suppliers within Colorado.
[4] Guideline 2003-5 at ¶ E states "If a proposed well will be in a *known* water service area that is served by a central system, we *(the DWR*) will not issue an exempt well permit unless accompanied by a letter from the supplier stating that they cannot provide water to the applicant or they do not object to the applicant obtaining a well permit within the water service area."

2. The Priestleys have presented no evidence showing that the Cossey Permits cause injury to their water right(s) or well.

    a. C.R.S. § 37-92-602 instructs the DWR to apply a presumption "that there will not be material injury to the vested water rights of others or to any existing well" when issuing a well permit for "wells not exceeding fifteen gallons per minute of production . . . used for household purposes, fire protection, the watering of poultry, domestic animals, livestock on farms and ranches and for the irrigation of not over one acre of home lawns and gardens." Motion pg. 3.
    b. The Cossey Permits are entitled to a presumption of non-injury under the Exempt Well Statute, and "Priestley has the burden to rebut that presumption in order to prevail." Motion pg. 3-8 and Supplemental Brief pg. 6.
    c. The DWR did not find that the Cossey Permits would result in injury; and therefore it subsequently complied with C.R.S. § 37-92-602 when issuing the Cossey Permits.
    d. The Priestleys did not hire a professional to issue an expert opinion on the question of injury; the Priestleys have presented no sufficient evidence to show material injury has occurred; the Priestleys have subsequently abandoned any argument of injury. Motion pg. 3-4; Verified Reply to Priestley pg. 2.
    e. "The legal standard for issuing an exempt well permit is controlled *solely* by C.R.S.§ 37-92-602(3), and without an allegation of injury, Priestley cannot state a claim to revoke the Cossey Permits." Verified Reply to Priestley and Verified Reply to Staff.

3. Cossey did not make any false statements on the well permit applications or to DWR Staff, and the Priestleys have not provided sufficient evidence to show Cossey made any deliberately false statements on the Cossey Applications or to the DWR during its evaluation of the Cossey Applications. Supplemental Brief and Verified Reply to Priestleys.

    a. When Cossey submitted the Cossey Applications, he was unaware that the NWC claimed that its legal water service area extended to the Cossey Properties. Section No. 8 on the Cossey Applications was left blank because to the best of Cossey's knowledge, the Cossey Properties were not within a water service area.
    b. Cossey points to Staff's assertion that the DWR staff was unaware during its evaluation and issuance of the Cossey Permits that the NWC's service area included the Cossey Properties. Cossey relied on the guidance and direction of DWR Staff when applying for the well permits.
    c. In discussions with DWR staff during the Cossey Application evaluation, Cossey accurately represented its understanding that the NWC's boundaries did not include the Cossey Properties. Verified Reply to Priestleys pg. 3.
    d. "The two (2) water taps that Cossey currently owns in Redvale were issued by the San Miguel Water Conservancy District ("District") to Cossey's predecessors…and the lots are not within the boundaries of a water service area." Id. pg. 6-7.
    e. "Until the Division of Water Resources uploaded an outline of the NWC's claimed water service area, Cossey had never seen a territorial map of the NWC and understood his water taps in Redvale were extra-territorial (i.e., outside the NWC service area)." Id. pg. 3.

4. The Hearing Officer does not have subject matter jurisdiction to adjudicate the Priestleys' claims because the Priestleys are unable to prove material injury, and without proof of injury, the Priestleys do not have standing to bring this action. Motion pgs. 9–12.

Priestleys' Arguments

1. In response to Cossey paragraph no. 1 above, the Priestleys argue that the DWR staff issued the Cossey Permits in contravention to C.R.S. § 37-92-602(6), arguing that, during its review of the Cossey Applications, the DWR staff did not do its due diligence in determining whether there was a legal water supplier with a known water service area that included the Cossey Properties. Priestleys' Response pgs 4-5. The Priestleys present the following arguments in support of this issue:

    a. The Priestleys refer to C.R.S. § 37-92-602(6), indicating that the statute is "is intended to allow citizens to obtain a water supply in less densely populated areas…*where other water supplies are not available.*" Id. pg 1. The Cossey's other available water supply was the NWC. Id. pgs 1-4.
    b. DWR staff should have been aware of the NWC's legal boundaries because DWR staff had access to the records of the State of Colorado which include filings and decrees for water rights in division 4. The Priestley refer to filings for water decrees made by the NWC/Town of Norwood, specifically Case No. 10CW202[5], that the DWR should have been aware of, and therefore the DWR staff had the NWC's legal boundaries on file or accessible for its evaluation of the Cossey Permits. Id. pg. 4-5

[5] Case no. 10CW203 describes the NWC's boundaries

c. The Priestleys contend that it is the DWR's responsibility "to [operate] and maintain accurate and up to date information for their jobs as [stewards] of the water resources of the State of Colorado." Id. pg. 4.

2. In response to Cossey paragraph no. 2 above on whether the Priestleys can claim injury to a vested water right, the Priestleys present the following arguments in support of this issue:

a. The Priestleys refer to C.R.S. § 37-92-602(6), specifically calling out the statutory language, "it is not the intent that these wells be used to cause material injury to prior vested water rights…" Id. pg. 1 and 6.
b. The Priestleys state that "our actions were to prevent damage to our water rights and therefore the water rights of the State of Colorado". Priestley Response pg. 6. The Priestleys also point to decrees for their water rights. Id. pg. 1 and 6.

3. In response to Cossey paragraph no. 3 above on whether Cossey made any false statements on the well permit applications or to DWR Staff, the Priestleys present the following arguments in support of this issue:

a. The Priestleys point to section no. 8 of the Cossey Applications not being completed when the applications were submitted, and that Cossey intentionally left out relevant information to help ensure the issuance of the permits. Priestley Response pg. 1.
b. Cossey knew the Cossey Properties were located within a known water service area served by the NWC and intentionally did not provide that

information on the Cossey Applications. "Cossey owns two water taps in Redvale, Colorado."[6] Priestley's Response pg. 7.

c. When the DWR staff reached out to Cossey to resolve their questions over the missing information in Section No. 8 of the Cossey Applications, Cossey told the DWR staff that the Cossey Properties were not within a known water service area. Cossey misrepresented and/or deliberately falsified information in Section No. 8 of the well permit applications to the DWR staff.

d. On April 19, 2021, the NWC held a board meeting, in which the DWR staff attended, and voted to provide Cossey with water taps.[7] Id. pg. 4

4. In response to Cossey paragraph no. 4 above on whether the Priestleys have a claim for relief and standing to bring this action, the Priestley assert that they may request the revocation of the Cossey Permits under C.R.S § 24-4-104(5). Additionally, the Priestleys claim that under C.R.S § 24-4-104, they are not required to make a legal claim for relief. Priestley Response pg. 6.

Staff's Arguments

Staff takes no position on whether summary judgment should be granted or whether any sanctions, including damages, attorney fees, and costs, should be imposed on the Priestleys. Staff's Response pg. 4. Staff, however, does support certain arguments made by Cossey in the Motion and Supplemental Brief.

[6] There does not appear to be any additional details in the record provided by the Priestleys identifying where these taps are located.
[7] This NWC board meeting occurred 21 days after the issuance of the Cossey Permits.

1. Staff makes the following comments in response to Cossey's arguments that the Exempt Well Statute, C.R.S. § 37-92-602 controls the DWR's evaluation and issuance of exempt well permits; not Guideline 2003-5:

   a. Staff agrees that Guideline 2003-5 is a non-binding guidance for the DWR. Guideline 2003-5 is an interpretive rule that is non-binding and, in contrast to a binding legislative rule that carries the force of law, Guideline 2003-5 does not mandate a particular result in its application. Staff Response pg. 7-8.
   b. Staff also agrees the DWR staff did not consider the NWC a legal water supplier at the time the Cossey Applications were under the DWR staff's evaluation. DWR staff was not aware the NWC claimed to be a legal water supplier with known water service area that included the Cossey Properties. The DWR staff did not have knowledge of the NWC boundaries and did not have access to these boundaries or have those boundaries on file. Staff Response pg. 4-5.

      Staff disagrees with Cossey's argument that there are only three types of entities that the DWR could consider a legal water supplier. Staff asserts that because Guideline 2003-5 is a guidance document, not a binding rule that carries the force of law, it is subject to interpretation on a case-by-case basis and the three types of entities listed in Guideline 2003-5 are not an "exhaustive and exclusive list" of the entities that the DWR would consider "legal water suppliers" when evaluating whether other water supplies are available under C.R.S. § 37-92-602(6). Staff Response pg. 4-9.

c. Staff agrees that the DWR evaluated and issued the Cossey Permits in compliance with the Exempt Well Statute.

2. On whether the Priestleys have presented evidence showing that the Cossey Permits cause injury to their water right(s) or well, Staff indicates in its responsive brief that the Priestleys have failed to show any evidence that the Cossey wells will or have caused any material injury to the Priestleys' water rights or wells, and Staff agrees with Cossey that the Priestleys have presented no evidence that would be sufficient to rebut the presumption of no injury under C.R.S. § 37-92-602(3)(b). Staff Response pg. 4.

3. Staff's Response takes no position on whether Cossey deliberately provided false or untruthful information on the Cossey Applications, or to the DWR staff during the DWR Staff's review of the Cossey Application.

4. In response to Cossey's assertion regarding subject matter jurisdiction summarized in paragraph no. 4 above, Staff indicates, "The Hearing Officer has jurisdiction over the present matter to hear a complaint for the revocation of well permits pursuant to C.R.S. § 24-4-104. That is the only matter over which the Hearing Officer has jurisdiction." Staff Response pg. 13. Additionally, Staff disagrees that the "only basis for the revocation of an exempt well permit can be the showing of material injury." Staff Response pg. 4.

FINDINGS

As stated in the Standard of Review section above that bears repeating at this point, a genuine issue of material fact cannot be raised solely by means of argument.

Sullivan, 474 P.2d at 221. The party opposing a motion for summary judgment cannot rest upon the allegations or denials in its pleading, but instead must produce specific facts showing there is a genuine issue to be resolved. *Fed. Land Bank of Wichita,* 874 P.2d 352 at 906. Priestleys do not provide specific facts in their response indicating a genuine issue to be resolved.

The Hearing Officer finds the following facts to not be in dispute, and these undisputed facts are the only facts relevant to the decision of summary judgment:

1. The DWR evaluated and issued the Cossey Permits under C.R.S. § 37-92-602, the Exempt Well Statute.

2. The 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. The DWR did not have on file or access to the NWC's legal boundaries that would support the NWC's qualification as a "legal water supplier" under Guideline 2003-5.

3. The Priestleys have presented no evidence showing that the Cossey Permits cause injury to their water right(s), well, or other legally protected interests.

ANALYSIS

The record is clear. Each of the Cossey Permits were evaluated and issued appropriately pursuant to the Exempt Well Statute.

Section 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). Notably, § 37-92-602(6) provides no direction for the DWR on how to determine whether "other water supplies are not available". In the absence of clear statutory direction, Guideline 2003-5 provides guidance for the consistent review of well permit applications under § 37-92-602(6).

Guidelines are interpretive rules that exist to provide general direction for the DWR Staff. They are not formally promulgated rules and regulations that go through a statutory process including vetting, notice and due process. An interpretive rule "serves the advisory function of explaining the meaning of a word or phrase in a statute or other rule, and describes the type of factors which an agency will consider in future administrative proceedings without, however, binding the agency to a particular result." *Doe 1 v. Colorado Dep't of Pub. Health & Env't*, 451 P.3d 851, 857 (Colo. 2019). They have no force or effect of law and are merely intended to assist Staff in their day-to-day activities in many, but not all, of the situations encountered. All well permit decisions under the Exempt Well Statute are controlled by that statute.

Inspection of Guideline 2003-5 reveals, "If a proposed well will be in a *known water service area* that is served by a central system, we *(the DWR)* will not issue an exempt well permit unless accompanied by a letter from the supplier stating that they cannot provide water to the applicant or they do not object to the applicant obtaining a well permit within the water service area." Guideline 2003-5 at ¶ E. The NWC is not participating in this revocation request proceeding and therefore takes no formal position as to the revocation of the Cossey permits, and it is undisputed that the DWR staff was not aware that the Cossey Properties were located within a "known water service area" at the time of DWR staff's evaluation and issuance of the Cossey Permits. The DWR staff had no knowledge of the NWC's legal boundaries at the time of its evaluation of the Cossey Applications. It is impractical for the DWR staff to search through every water court decree, all of DWR's files, and any other publicly available

information to identify possible legal boundaries of water service providers. A more limited interpretation of the intent of Guideline 2003-5 is appropriate, where only the legal boundaries of water suppliers that DWR has on file or has access to *for the purpose of assessing whether other water supplies are available in the context of reviewing exempt well permit application*s should be considered. At 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.

Under the Exempt Well Statute, the State Engineer has the sole authority to issue well permits exempt from the requirements of article 92 of title 37. As directed by C.R.S. § 37-92-602(3)(b)(I), if the State Engineer determines that the well permit will not materially injure the vested water rights of others or any other existing well, the permit shall be issued. The DWR did not find that the Cossey Permits would result in injury; and therefore it subsequently complied with C.R.S. § 37-92-602 when issuing the Cossey Permits. The Priestleys have not rebutted the presumption of no injury afforded to the Cossey Permits under the Exempt Well Statute as directed by C.R.S. § 37-92-602(3)(b)(II)(A). The Priestleys have presented no evidence demonstrating that the Cossey Permits will cause material injury to a specific water right, well, or other legally protected interest, and it appears they have abandoned any argument to that effect. There is no genuine issue of dispute regarding Priestley's inability to claim or prove injury to their water right or well permit.

The Hearing Officer notes the Priestleys' allegation that the Cossey Applications were deliberately submitted with "incomplete and incorrect information" as well as their allegation that Cossey provided false information to the DWR staff when the DWR staff asked about the missing information. Regardless of whether or not Cossey deliberately

misrepresented information on the application, the fact remains that the DWR staff (in their evaluation of the Cossey Applications) determined the Cossey Properties were not within the NWC service area when it issued the Cossey Permits pursuant to the Exempt Well Statute.

The Priestleys' complaint was determined by the Hearing Officer to be a verified complaint pursuant to C.R.S § 24-4-104(5). The Hearing Officer has jurisdiction over the present matter to hear a complaint for the revocation of well permits pursuant to C.R.S § 24-4-104.[8]

Issues have been raised in this case that are beyond the scope of the matter for a ruling on summary judgment. For the purpose of this motion, nothing else needs to be decided. *See*, *e.g.*, *Sedgwick Properties Dev. Corp. v. Hinds*, 456 P.3d 64, 70 (Colo. App. 2019) ("[W]e follow the 'cardinal principle of judicial restraint — if it is not necessary to decide more, it is necessary not to decide more.'" (quoting *Mulberger v. People*, 366 P.3d 143).

ORDER

The Priestleys have not demonstrated any facts justifying the revocation of the Cossey Permits as requested in the Complaint. The Hearing Officer finds that summary judgment is appropriate based on the undisputed facts in this matter and there is no genuine issue of material fact for the Hearing Officer to resolve. The moving party is entitled to a judgment as a matter of law under C.R.C.P. 56(c).

The Cossey Permits are valid and in full force and effect and the Priestleys' complaint is **DISMISSED**. There being no issues to resolve, the Hearing scheduled for March 28th and 29th, 2022 is **VACATED.**

[8] On September 28. 2021 the Hearing Officer issued an order denying Cossey's Motion to Dismiss this case. The Hearing Officer's position on the Priestleys "standing" has not changed here.

The Hearing Officer does not find the Priestleys' complaint to be frivolous or vexatious. The Preistleys had a valid argument in its assertion that the Cossey permits were improperly issued under the statutes. The Hearing Officer **DENIES** Cossey's request for damages, attorney fees, and cost, or other sanctions against Priestley.

Dated this 25th day of March 2022.



Chris Grimes, Hearing Officer
1313 Sherman Street, Room 818
Denver, CO 80203 E-Mail:
chris.grimes@state.co.us

CERTIFICATE OF SERVICE

I hereby certify that I have duly served the within **ORDER** to the parties herein on March 25, **2022**, addressed as follows:

Via Email:

For the Respondents:
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Colorado Water and Land Law, LLC
amy@waterland-law.com

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_____

BEFORE THE STATE ENGINEER, COLORADO 1313 Sherman Street, Rm. 821 Denver, Colorado 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**	
Attorney for Respondents/Permit Owners Amy N. Huff COLORADO WATER & LAND LAW, LLC 679 E. 2ND Avenue, Unit 11 B Durango, CO 81301 Reg. No. 34897 **Telephone No.:** (970) 403-1770 **Email**: amy@waterland-law.com	Case No. 21SE08 Div.: Ctrm.:

NOTICE OF EXCEPTIONS TO ORDER GRANTING SUMMARY JUDGMENT

PAMELA BARRETT and RAYMOND COSSEY (collectively "Cossey"), by and through their attorney Amy N. Huff of Colorado Water & Land Law, LLC, hereby submit this NOTICE OF EXCEPTIONS TO ORDER GRANTING SUMMARY JUDGMENT, which was entered on March 25, 2022 ("SJ Order"). In accordance with the Colorado APA (C.R.S. 24-4-104(14)(a)(II))

and the Colorado Code of Regulations (2 CCR 402-5), Cossey explains why the Office of the State Engineer ("SEO") should revise the SJ Order to correct the exceptions described herein.

I. SUMMARY OF ARGUMENT

The SJ Order correctly affirms the validity of the Cossey Permits[1] and dismisses the Complaint filed by Harold & Drue Priestly, HDP Revocable Trust (the "Priestleys"). The SJ Order, however, omits critical facts, makes flawed statements concerning the Norwood Water Commission ("NWC"), mistakenly applies non-binding guidance as a legal standard, and erroneously concludes that the Priestleys had a valid argument for objecting to the Cossey Permits.

Cossey's exceptions concern both evidentiary facts and ultimate facts. Cossey respectfully requests that the SEO revise the SJ Order to: (i) clarify the controlling law; (ii) accurately represent the Priestleys' misrepresentations; (iii) correct statements regarding the NWC; and (iv) award Cossey damages, costs, and attorney fees.[2]

The Priestleys had no factual or legal basis for objecting to the Cossey Permits. The SJ Order confirms that they did not demonstrate any facts "justifying the revocation of the Cossey Permits as requested in the Complaint." SJ Order, pg. 17. They fabricated a claim of injury and argued that non-binding guidance should have the effect of law to harass Cossey through this proceeding. Cossey has incurred over Thirty Thousand Dollars ($30,000.00) in legal fees and costs, including expert costs, and sustained approximately One Hundred Thousand Dollars ($100,000.00) in

[1] The Cossey Permits are defined as Permits No. 321172-321180, 321183, and 321185-321187.

[2] Cossey will prove all claims of damages, costs, and attorney fees.

damages[3] to defend the Priestleys' frivolous attack on their valid well permits. Plain and simple, the Priestleys exploited the administrative process. It is imperative that the SEO amend the SJ Order to correct the exceptions described herein and preserve the integrity of the adjudicatory process.

II. STANDARDS OF REVIEW

The Colorado APA and the Colorado Code of Regulations require a party to file exceptions prior to seeking judicial review so that the agency can correct mistakes made by its hearing officer. C.R.S. 24-4-104(14)(a)(II); 2 CCR 402-5. Evidentiary facts, which are the raw historical data underlying the controversy, should not be set aside unless they are "contrary to the weight of the evidence." C.R.S. § 24-4-105(15)(b); *Samaritan Inst. v. Prince-Walker*, 883 P.2d 3, 9 (Colo. 1994). The SEO, however, can substitute its own judgment for the hearing officer's findings of ultimate facts. Ultimate facts are "conclusions of law or mixed questions of law and fact that are based on evidentiary facts and determine the rights and liabilities of the parties." *Federico v. Brannan Sand & Gravel Co*., 788 P.2d 1268, 1272 (Colo. 1990).

III. FINDINGS OF FACT

The SJ Order's (pg. 14) finds that the following facts are undisputed:

[3] Since the Priestleys filed this action, Cossey has been unable to sell any of the lots affected by the well permits at issue. Cossey has lost property sales and investment opportunities. Cossey will prove damages, if necessary.

1. The DWR evaluated and issued the Cossey Permits under C.R.S. § 37-92-602, the Exempt Well Statute.

2. The 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. The DWR did not have on file or access to the NWC's legal boundaries that would support the NWC's qualification as a "legal water supplier" under Guideline 2003-5.

3. The Priestleys have presented no evidence showing that the Cossey Permits cause injury to their water right(s), well, or other legally protected interests.

Cossey agrees that DWR evaluated and issued the Cossey Permits under C.R.S. § 37-92-602 and that the Priestley presented "no evidence showing that the Cossey Permits cause injury to their water right(s) well, or other legally protected interest." SJ Order, pg. 14. Cossey takes exception to the findings concerning the NWC (and the implications associated therewith) because they are wrong, and because they suggest that Guideline 2003-5 is binding.

The SJ Order also makes the following findings regarding Cossey's request for damages, costs, attorney fees, and sanctions. SJ Order, pg. 18.

> The Hearing Officer does not find the Priestleys' complaint to be frivolous or vexatious. The Preistleys had a valid argument in its assertion that the Cossey permits were improperly issued under the statutes. The Hearing Officer **DENIES** Cossey's request for damages, attorney fees, and cost, or other sanctions against Priestley.

The weight of the evidence shows that the Priestleys ***did not*** have a valid argument for objecting to the Cossey Permits and that their Complaint was both frivolous and vexatious. Cossey therefore takes exception to the factual findings stated above.

IV. LISTING OF EXCEPTIONS & DESCRIPTION OF ERROR

A. Injury is the only legal standard for evaluating an exempt well permit; Guideline 2003-5 is non-binding and therefore irrelevant.

The SJ Order contains conflicting statements and a confused analysis regarding the applicable legal standard for issuing, denying, or revoking an exempt well permit. It correctly states that the Exempt Well Statute[4], not Guideline 2003-5, provides the legal criteria for evaluating whether an exempt well permit should be issued. SJ Order, pg. 15 ("All well permit decisions under the Exempt Well Statute are controlled by that statute"). It also correctly confirms that Guideline 2003-5 does not have the force and effect of law. SJ Order, pg. 15. Yet, the hearing officer applies Guideline 2003-5 to the dispute and makes flawed statements concerning the NWC related thereto.

By evaluating the DWR's compliance with Guideline 2003-5, the SJ Order improperly implies that Guideline 2003-5 can be the basis for denying or revoking an exempt well permit. The SJ Order affirms that Guideline 2003-5 is not an agency rule and that it is non-binding. The statements in Guideline 2003-5 are merely guidance intended to assist the staff for the Division of Water Resources ("DWR") in their review of applications for exempt well permits[5] when the property for which a well permit is sought is served by an existing central water system of a taxing

[4] The Exempt Well Statute is C.R.S. 37-92-602

[5] Exempt well permits are well permits issued under C.R.S. § 37-92-602(3).

municipality, a water company registered by the Public Utilities Commission, or the owner of decreed augmentation plan. The DWR has full discretion to apply Guideline 2003-5 or to ignore it. Cossey notes that the NWC is a not a taxing entity. It is water activity enterprise and is statutorily prohibited from levying taxes.

Guideline 2003-5 cannot (and does not) establish additional legal criteria for issuing an exempt well permit. *Martinez v. Colorado Dep't of Human Servs.*, 97 P.3d 152, 157 (Colo. App. 2003) (holding that an administrative agency "has no authority to set aside or circumvent legislative mandates"). Material injury is the only legal standard relevant to the SEO's issuance of a well permit under Section 602. C.R.S. § 37-92-602(3)(b)(I). The SJ Order gives Guideline 2003-5 more weight than it is due, which has resulted in unnecessary (and erroneous) statements concerning the NWC.

Cossey respectfully requests that the SEO revise the SJ Order to remove all implications that Guideline 2003-5 creates enforceable legal standards. Specifically, Cossey seeks the following:

1. Clarify that the Exempt Well Statute dictates the only applicable legal standard, which is injury;

2. Remove the references to Guideline 2003-5 from the relevant factual background, claims, and legal analysis;

3. Delete Paragraph 2, pg. 14, which is a disputed fact (as explained by Cossey in prior briefing and herein); and

4. Confirm that, as stated in the SJ Order, pg. 15, "All well permit decisions under the Exempt Well Statute are controlled by that statute."

B. The Priestleys' objection was based on lies and speculation; They intentionally deceived the Hearing Officer to maintain this action.

The Priestleys initiated this action to revoke the Cossey Permits because they did not want Cossey to develop their neighboring property into a subdivision. It is important that the SJ Order accurately recount the Priestleys' objection and their conduct throughout this proceeding. They do not (and did not) own a water right that was injured by the Cossey Permits. They were dishonest and did not attempt to meet their burden of proof. The Priestleys forced Cossey to defend this meritless action in bad faith. It is essential that the SEO accurately recite the facts and discourage this type of conduct. *Samaritan Inst. v. Prince-Walker*, 883 P.2d 3, 9 (Colo. 1994).

The Priestleys' Complaint was founded on the absurd notion that because Cossey did not fill out No. 8 on the well permit applications[6] the Cossey Permits could be revoked.[7] Number 8 on the well permit application asks the applicant whether the parcel is located "within the boundaries of a water service area." As explained in Cossey's Verified Reply in Response to Complainant's Response to Respondents' Motion to Dismiss and Summary Judgment, Cossey did not know if the parcels at issue were within the boundaries of water service area and relied on the DWR staff to assist in completing the well permit applications.

When the Priestleys realized that their Complaint was in jeopardy of being dismissed because they did not have a legitimate basis for contesting the Cossey Permits, they falsified

[6] No. 8 on Cossey's well permit applications was completed by Mr. Greg Powers because Cossey did not know whether the DWR considered the real property at issue to be "within boundaries of a water service."

[7] Although the Priestleys' Complaint also states that one of the Cossey well was "drilled on the irrigation ditch right of way," their Complaint did not assert injury to a water right.

ownership of a water right and resorted to schoolyard antics. Their letter Complaint dated April 29, 2021, unambiguously states that the objection is based solely on an allegation that the applications were not completed properly, but they changed their story. See below.

> We are contesting these 13 well permits for an area of 20 acers on the grounds that the permits were not completed properly and the permitting was therefore incorrect. Mr. Cossey has stated and Mr. Bob Hurford has verified. that the permits where not filled out completely.

However, when Cossey sought to dismiss the Priestleys' Complaint because it did not allege injury and therefore the Priestleys' lacked standing[8], the Priestleys claimed that they owned a senior water right that could be injured. See below from the Priestleys' letter dated July 6, 2021.

> In response to the Motion to Dismiss made in behalf of Mr. Cossey and Ms. . Barrett we would first state that we are owner of property on the north boundary of the property on 35.75 Rd., Redvale, CO. and also owners of a senior water right on said property. Our rights may be affected by the development of this subdivision and the wells that have been drilled in this subdivision.

Based on this false allegation, the hearing officer found that Priestleys had standing and denied Cossey's Motion to Dismiss. See below from Order Denying Motion to Dismiss, entered on September 28, 2021.

> When evaluating a complaint under a motion to dismiss, a court (hearing officer in this matter) must accept a factual allegation as true and view it in the light most favorable to the plaintiff. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011). While the Complaint does not describe a specific injury, taking the Complaint as a whole it is fair to infer that Complainants allege potential injury to their water rights from the permits issued in an area where the existence of a legal water supplier should have precluded issuance of the permits in the first place. This creates a plausible claim for relief sufficient to overcome a motion to dismiss.

[8] See Cossey's Verified Answer and Motion to Dismiss.

The Priestleys' initial disclosures and their amended disclosures did not identify any documents or water rights. It was not until the Priestleys responded to Cossey's discovery requests, that the Priestleys identified the water right for which they claimed injury. In their sworn responses, both Drue and Harold Priestley claimed that they owned a spring in the Pleasant View Ditch that had been injured. The water right at issue, however, is owned by Don Wilson. It was decreed in Case No. 89CW120. See below from Drue Priestleys' Discovery Responses.

3.1 Spring in the Pleasant View Ditch.
This spring is now dry. This spring is located approximately 200 feet from a well on North side of the Cossey/Barrett property. This spring has historically produced from 5 to 10 gal. per min. which is a minimum of 8 acre feet of water per year. Picture attached and letter from Don Wilson stating what he had observed. Don Wilson, 34445 CR 35.75, Redvale, CO 81431, Dontc26@yahoo.com, 970-729-2995. (exhibit #2)

See below from Harold Priestleys' responses to discovery requests.

3.3
Other damages that can be attributed to this incident, spring in the Pleasant View ditch has went dry since the drilling of wells. One well is not over 200 feet from the spring. See statement from Mr. Don Wilson. (Exhibit #2)

Drue and Harold Priestley continued to lie regarding their ownership of the Pleasant View Spring water right in their depositions. They both knew that this water right is owned by Don Wilson, but they testified otherwise to fabricate a claim of injury. Cossey's Supplemental Brief in Support of Motion to Dismiss, as Converted to Motion for Summary Judgment, details the Priestleys' lies concerning injury to a water right. Cossey incorporates said arguments herein.

After Cossey exposed the Priestleys' misrepresentations, the Priestleys abandoned their claim of injury and reverted maintaining their opposition solely on the fact that Cossey did not

personally fill out No. 8 on the well permit applications. See below from the Priestleys' Response to Respondents Motion to Dismiss and Summary Judgement [sic].

> We have based our objection on the fact that Raymond Cossey and Pamela Barrett ("Cossey") did not complete #8; the application was not complete at the time that they submitted it.

In a desperate attempt to legitimize their opposition to the Cossey Permits, the Priestleys invented an argument that Cossey intentionally mislead the DWR and committed perjury when he did not fill in No. 8 on the well permit applications. As explained in Cossey's Verified Reply in Response to Complainant's Response to Respondents' Motion to Dismiss and Summary Judgment and herein, Cossey did not complete No. 8 out of an abundance of caution. There is no factual basis for the Priestleys' claim of perjury; it is nothing more than grade school name calling.

The Priestleys had the burden of proof, but they made no effort to prosecute their claim. They did not attempt to prove injury. The SJ Order accurately finds that "The Priestleys have not demonstrated any facts justifying revocation of the Cossey Permits as requested in the Complaint." SJ Order, pg. 17.

The weight of the evidence supports the SEO amending the SJ Order to identify the following evidentiary facts:

1. The Complaint was based on the Priestleys' allegation that Cossey did not complete no. 8 on the well permit applications, which is not grounds for objecting to a well permit.

2. The Priestleys claimed to own the Pleasant View Spring water right so that they could claim injury and have standing.

3. The Priestleys lied about owning the Pleasant View Spring water right in their responses to discovery and at their depositions. The Pleasant View Spring water right, which was decreed in Case No. 89CW120, is owned by Don Wilson.

4. The Priestleys abandoned their claim of injury when their dishonesty was exposed.

5. The Priestleys did not engage in discovery and did not attempt to prove injury.

6. The Priestleys did not demonstrate any facts justifying the revocation of the Cossey Permits as requested in the Complaint.

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

The SJ Order erroneously accepts the NWC's self-proclaimed service area as the NWC's legal boundary. This is problematic because it sanctions the NWC's unlawful expansion of authority. The NWC was created by the Town of Norwood (the "Town"). It is a water activity enterprise that is empowered to exercise only the Town's "legal authority relating to water activities." C.R.S. § 37-45.1-103(4). The Town's municipal powers are limited to its territorial boundaries. Consequently, the NWC's authority is also limited to the Town's municipal boundaries. Redvale is not within the Town and therefore it is not lawfully within the NWC's service area. *Bennett Bear Creek Farm Water & Sanitation Dist. v. City & Cty. of Denver,* 907 P.2d 648, 657 (Colo. App. 1995), *aff'd in part, rev'd in part sub nom. Bennett Bear Creek Farm Water & Sanitation Dist. v. City & Cty. of Denver By & Through Bd. of Water Comm'rs,* 928 P.2d 1254 (Colo. 1996) (affirming that municipal services provided to properties outside the jurisdictional boundaries are extra-territorial).

When the Town acquired the Wrights Mesa Rural Water System ("WMRWS") it refused to annex the WMRWS's service area. This is material because the NWC's authority is derived from the Town; the NWC cannot exercise authority over lands outside the Town's jurisdiction. See below from Agreement between San Miguel Water Conservancy District, Wrights Mesa Rural Water System, and the Town of Norwood, dated December 23, 1992.

E. Annexation: As a result of this Agreement, there is no implied consent to the annexation of any property within the WMRWS Area into the TOWN, nor is there any undertaking, implied or expressed, by the TOWN to annex any portion of the WMRWS Area. Further, this Agreement is not intended to affect in any way the TOWN'S ability to annex property within the WMRWS Area pursuant to state law, including, but not limited to, entering into pre-annexation agreements as provided for at 31-12-121, C.R.S.

The SJ Order incorrectly relies on the decree in Case No. 10CW203 to assume that the legal service area of NWC extends beyond the Town's boundary. SJ Order, pg. 9, fn 5. While the NWC may elect to serve properties outside the Town, the NWC cannot require property owners outside the Town's boundaries to purchase water taps. The decree in Case No. 10CW203 does not expand the NWC's legal authority or legal boundaries.

Cossey finds exception with the SJ Order's finding 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, pg. 14. The foregoing implies that the NWC has authority to control the development of extraterritorial lands.

Cossey takes exception with all statements and inferences in the SJ Order related to the NWC's service area as extending beyond the Town's jurisdictional limits.[9] Colorado law is clear that the NWC's authority is derived from its enabling entity, which is the Town of Norwood. The weight of the evidence supports amending the SJ Order 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.

D. The Complaint did not have a factual or legal basis and therefore it lacked substantial justification.

As explained herein and in Cossey's prior briefs, the Priestleys' Complaint was not well-grounded in the facts or the law. The Priestleys did not research the law or attempt to substantiate the groundless allegations in the Complaint before this action was instituted, or thereafter.[10] The substantive law does not authorize revocation of a well permit based on whether an applicant or DWR staff filled in the boxes on a well permit application or DWR's application of a non-binding guideline (i.e., Guideline 2003-5). *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo. 1984) (a well permit cannot be contested based on an administrative guideline or its application).

[9] Cossey also disputes that the NWC qualifies as a "legal water supplier," under Guideline 2003-5 for the reasons set forth in Cossey's prior briefs.

[10] Both Harold Priestley and Drue Priestley admit that they are not claiming injury to water rights in this action, but instead the sole legal premise upon which they ask the Hearing Officer to revoke the Cossey Permits is an unsubstantiated allegation that Mr. Cossey fraudulently filled out the well permit applications.

The Priestleys lied about injury to a water right and did not even attempt to prosecute a legal claim or obtain admissible facts to meet their burden of proof.

In their response to Cossey's Motion to Dismiss, the Priestleys audaciously claim that under the APA they are not required to have a legal basis for their claim. See below from Complainant's Response to Respondents Motion to Dismiss and Summary Judgement [sic], pg. 6.

> C.R.S. 24-4-104 does not state that we have to make a claim of relief. In C.R.S. 24-4-104(1 & 2) states the agency issuing the permit is the responsible for it. The

Nothing could be further from the truth. The APA does not create substantive legal rights. *Romer v. Bd. of Cty. Comm'rs of Cty. of Pueblo, Colo.*, 956 P.2d 566, 576 (Colo. 1998), *as modified on denial of reh'g* (Apr. 27, 1998) ("the APA does not create substantive legal rights on which a claim for relief can be based. That is, such substantive legal rights must exist either by statutory language, by the agency's rules and regulations, or by some constitutional command").

The Priestleys brought this claim in bad-faith, and while they sustained a motion to dismiss, they had no credible evidence and did not present a rational argument based on the law or the evidence. See below from SJ Order, pg. 16:

> Cossey Permits. The Priestleys have not rebutted the presumption of no injury afforded to the Cossey Permits under the Exempt Well Statute as directed by C.R.S. § 37-92-602(3)(b)(II)(A). The Priestleys have presented no evidence demonstrating that the Cossey Permits will cause material injury to a specific water right, well, or other legally protected interest, and it appears they have abandoned any argument to that effect. There is no genuine issue of dispute regarding Priestley's inability to claim or prove injury to their water right or well permit.

The Priestleys' conduct was aimed at unwarranted delay and was disrespectful of the truth.

It is the definition of vexatious. *In re Estate of Becker*, 68 P.3d 567, 569 (Colo. App. 2003). As explained in *Becker*:

> A vexatious claim or defense is one brought or maintained in bad faith. Bad faith may include conduct that is arbitrary, vexatious, abusive, or stubbornly litigious, and it may also include conduct that is aimed at unwarranted delay or is disrespectful of truth and accuracy. A claim is groundless if the allegations in the complaint, while sufficient to survive a motion to dismiss for failure to state a claim, are not supported by any credible evidence at trial. A claim is frivolous if the proponent can present no rational argument based on the law or evidence to support it.
>
> *Citing Zivian v. Brooke–Hitching, 28 P.3d 970 (Colo.App.2001); Collins v. Colo. Mountain Coll., 56 P.3d 1132 (Colo.App.2002); Western United Realty, Inc. v. Isaacs, 679 P.2d 1063 (Colo.1984).*

The SJ Order correctly found that "The Priestleys have presented no evidence showing that the Cossey Permits cause injury to their water right(s), well, or other legally protected interests." SJ Order, pg. 14. They presented no argument in the law or based on the facts to support revocation of the Cossey Permits and therefore their complaint was frivolous. *Int'l Tech. Instruments, Inc. v. Eng'g Measurements Co.,* 678 P.2d 558, 563 (Colo. App. 1983) (a claim is frivolous if the proponent can present no rational argument based on the evidence or law in support thereof).

Cossey is entitled to an award of damages, costs, and attorney fees under both C.R.S. § 13-17-102 and C.R.S. § 13–17–201. The Priestleys' complaint lacks substantial justification and their sole claim is fraud, which is a tort claim. Section 13–17–201 of the Colorado Revised Statutes mandates an award of Cossey's attorney fees and costs. *Dubray v. Intertribal Bison Co-op*., 192 P.3d 604, 606 (Colo. App. 2008) ("An award of attorney fees is appropriate under section 13–17–201 when the trial court dismisses an entire tort action").

Cossey has incurred damages, attorney fees and costs to defend Priestley's improper complaint. The Priestley's actions justify sanctions and a monetary award to Cossey. Among the factors evaluated in determining whether Cossey is entitled to an award of attorney fees are: "(1) the extent of any effort made to determine the validity of any action or claim before the action or claim was asserted; (2) the extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses found not to be valid within an action; and (3) the availability of facts to assist a party in determining the validity of a claim or defense." *Remote Switch Sys., Inc. v. Delangis,* 126 P.3d 269, 275 (Colo. App. 2005) (citing *Bilawsky v. Faseehudin,* 916 P.2d 586 (Colo.App.1995)). The Priestleys lied, disregarded the findings and legal arguments set forth in the DWR filings, Cossey's Motion to Dismiss, and the Hearing Officer's Order Denying Motion to Dismiss. They did not engage in any discovery and failed to investigate the validity of their claims. As such, an award of damages, attorney fees, and costs is warranted. C.R.S. § 13–17–102.

Cossey takes exception to the SJ Order's finding that the Priestleys' Complaint was not frivolous or vexatious, and the conclusion that the Priestleys had a valid argument under the statutes. The weight of the evidence supports a finding that the Priestleys' Complaint was meritless; it was not grounded in fact or law. Cossey respectfully requests that the SEO amend the SJ Order to find and affirm the following:

1. The Priestleys did not have a factual or legal basis for objecting to the Cossey Permits.

2. The Priestleys did not investigate their claim.

3. The Priestleys lied to manufacture a claim of injury.

4. The Priestleys disrespected the adjudicatory process.

5. The Priestleys' Complaint lacked substantial justification.

6. The Priestleys' only remaining claim is a tort claim.

7. The Complaint was dismissed before a trial.

8. Cossey is entitled to damages, costs, and attorney fees.

V. PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth herein and in Cossey's prior briefs[11], Cossey respectfully requests that the SEO amend the SJ Order to correct the exceptions set forth herein, award Cossey damages, costs, and attorney fees, and award all other relief the SEO deems proper and just under the circumstances.

Respectfully submitted this 25th day of April 2022.

COLORADO WATER & LAND LAW, LLC

___/s/ Amy N. Huff_____
By: Amy N. Huff, #34897
Attorney for Pamela Barrett and Raymond Cossey

[11] Cossey incorporates all prior briefings in this Notice of Exceptions as if set forth fully herein.

CERTIFICATE OF SERVICE

I, the undersigned person, do hereby certify that on this 25th day of April 2022, a true and correct copy of the foregoing was served on all parties of record.

__/s/ Amy N. Huff_____
Amy N. Huff

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**	**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

("Notice of Exceptions") on April 25, 2022. The Notice of Exceptions identifies four primary components of the Hearing Officer's March 25, 2022 Order Granting Motion for Summary Judgment ("SJ Order") that are subject of Cossey's request of the State Engineer to revise the SJ Order. The Notice of Exceptions is limited in scope and the findings and decisions on appeal are limited to those issues in Case 21SE08 that are identified in the Notice of Exceptions.

The original Notice of Complaint ("Complaint") filed by Harold and Drue Priestley, HDP Revocable Trust ("Priestley") on April 29, 2021 was limited in scope. It specifically stated that the "permits [applications] were not completed properly and the permitting was therefore incorrect." Complaint, p. 1. In the Prehearing Statement by Complainant submitted by Priestley on February 23, 2021, Priestley reiterates that the only issue is incorrect permitting of the wells, based on the improper completion of the well permit applications and DWR's failure to determine the correctness of the information on the well permit application. Therefore, decisions, evidence, and requests in the Notice of Exceptions outside that limited scope, including questions regarding the evaluation and finding of injury, are not relevant to the SJ Order in Case No. 21SE08 and this appeal.

History of Case No. 21SE08

On March 29, 2021, the Division Engineer's Office for Water Division 4 received thirteen applications for exempt residential well permits submitted by Cossey under section 37-92-602, C.R.S. The Colorado Division of Water Resources ("DWR") issued

thirteen exempt well permits (Well Permit Nos. 321172-321180, 321183, 321185-321187) (hereinafter, "Cossey Permits") to Cossey on March 29, 2021. On April 29, 2021, the Priestleys filed the Complaint contesting the issuance of the Cossey Permits.

As stated above, the Complaint alleged, among other things, that Cossey did not properly complete the well permit applications and, therefore, the Cossey Permits were incorrect. Complaint, p. 1. More specifically, the Priestley Complaint alleged that Mr. Cossey and Ms. Barrett neglected to inquire with or apply for taps from the Norwood Water Commission ("NWC"). *Id*.

The State Engineer assigned this case to a Hearing Officer to conduct hearing proceedings. On June 18, 2021, Cossey filed a verified answer and motion to dismiss in response to the Complaint. The motion to dismiss requested that the Hearing Officer dismiss the Complaint under C.R.C.P. 12(b)(5) because the Priestleys failed to state a claim upon which relief can be granted. DWR staff ("Staff") filed a response but took no formal position on the motion's overall request for relief, and argued that the well permits were properly issued given the information Staff had at the time of the permit applications. On September 28, 2021, the Hearing Officer entered an order denying Cossey's motion to dismiss and finding that the information provided in the Complaint satisfied the requirements for an adjudicatory hearing under Procedural Regulations for the Division of Water Resources, 2 CCR 402-5 ("Procedural Regulations"), Rule 10.

On October 15, 2021 the Hearing Officer issued a Notice of Hearing and Case Management Order setting the matter for hearing on March 28 and 29, 2022.

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

further requested that the Hearing Officer reject Cossey's request for a declaration that the NWC is not a legal water supplier and that its identified boundaries be removed from the DWR website. *Id.* at 15.

On March 25, 2022, the Hearing Officer entered the SJ Order and vacated the hearing. The SJ Order did not reach the issue of whether the NWC is a "legal water supplier" and denied Cossey's request for sanctions and damages against the Priestleys, including attorney fees and costs. SJ Order, p. 18. The SJ Order included a statement of findings and conclusions on all the material issues of fact and law presented by the record and constitutes the "initial decision" of the Hearing Officer for this matter under §§ 24-4- 102(6), and105(14)(a), C.R.S. and Procedural Regulations Rules 4.J and 10.G.3.

Cossey now appeals the SJ Order to the State Engineer in accordance with sections 24-4-105(14)(a)(II) and (15)(a), C.R.S., and Procedural Regulations Rule 10.G.4.

Standard of Review

This is an appeal to the State Engineer of an order of the Hearing Officer granting summary judgment pursuant to section 24-4-105(14)(a)(II) C.R.S. and Procedural Regulations Rule 10.G.4. The findings of evidentiary fact made by the Hearing Officer shall not be set aside by the State Engineer on review of the Hearing Officer's initial decision unless such findings of evidentiary fact are contrary to the weight of the

evidence. § 24-4-105(15)(b) C.R.S., Procedural Regulations Rule 10.G.6. An evidentiary fact is the detailed factual or historical data underlying the controversy. *Barrett v. Univ. of Colo. Health Sciences Center*, 851 P.2d 258, 261 (Colo. App 1993); *State Bd. of Med. Exam'rs v. McCroskey*, 880 P.2d 1188, 1193 (Colo. 1994).

The ultimate conclusions of fact made by the Hearing Officer shall not be set aside by the State Engineer on review of the Hearing Officer's initial decision unless such findings of ultimate conclusions of fact are unsupported by substantial evidence in the record, are unsupported by any competent evidence, or are based on an incorrect legal conclusion applied to the underlying facts. *Moczygemba v. Colo. Dept. of Health Care Policy & Fin.*, 51 P.3d 1083, 1087 (Colo. Ap. 2002); *Barrett,* 851 P.2d at 261. An ultimate conclusion of fact involves a question of law, or at least a mixed question of law and fact, and settles the rights and liability of the parties. *McCroskey,* 880 P.2d at 1193.

Exceptions from Notice of Exceptions

The Notice of Exceptions submitted by Cossey identified four areas where Cossey requested that the State Engineer order that the SJ Order be revised. For each of the four areas, Cossey more specifically identified multiple, discrete requests for revisions. Those four areas are listed below in the order they were presented in the Notice of Exceptions.

A. Injury is the only legal standard for evaluating an exempt well permit; Guideline 2003-5 is non-binding and therefore irrelevant.

B. The Priestleys' objection was based on lies and speculation; They intentionally deceived the Hearing Officer to maintain this action.

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

D. The Complaint did not have a factual or legal basis and therefore it lacked substantial justification

For each of the four areas, the issue raised in the Notice of Exceptions and the more detailed requests will be addressed as a group unless one of the specific requests needs to be addressed individually for clarity.

Exception A, Injury is the only legal standard for evaluating an exempt well permit; Guideline 2003-5 is non-binding and therefore irrelevant.

Analysis

In the SJ Order, the Hearing Officer addressed the extent to which Guideline 2003-5 influenced the evaluation of the subject well permit applications. In the SJ Order, the Hearing Officer noted that "DWR 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." SJ Order, p. 2. The Hearing Officer also notes that "[i]n the absence of clear statutory direction, Guideline 2003-5 provides guidance for the consistent review of well permit applications under § 37-92-602(6)." SJ Order, p. 15. The Hearing Officer notes that "[g]uidelines are interpretive rules that exist to provide general direction for the DWR Staff. They are not formally promulgated rules and regulations that go through a statutory process including

vetting, notice and due process." SJ Order, p. 15. The Hearing Officer provides relevant case law to support that finding.

Cossey argues that the SJ Order suggests that 2003-5 is binding, requesting the deletion of paragraph 2 of page 14 of the SJ Order. Cossey Brief, p. 6. However, the cited statement does not suggest that Guideline 2003-5 is binding even though it does recognize its influence in the evaluation as an interpretive rule. Notably, this same statement also does not expand the NWC's authority as Cossey asserts, which will be discussed in more detail below.

Cossey also argues that "[m]aterial injury is the only legal standard relevant to the SEO's issuance of a well permit under Section 602. C.R.S. § 37-92-602(3)(b)(I)." Cossey Brief, p. 5. This statement is incorrect. The General Assembly intentionally included the language in section 37-92-602(6), C.R.S. and if statutory language is clear and unambiguous, words are given ordinary meaning and applied as written and effect must be given to all of its parts. *Mounkes v. Indus. Claim Appeals Off.*, 251 P.3d 485, 487 (Colo. App. 2010); *Young v. Brighton School Dist*. 27J, 325 P.3d 571 (Colo. 2014). While material injury is a critical evaluation criterion, a well may be found to not cause material injury but its permit application may be denied due to failure to comply with other statutory provisions, including those in 37-92-602(6).

Cossey argues that "[t]he substantive law does not authorize revocation of a well permit based on the SEO's construction and application of a non-binding guideline (i.e., Guideline 2003-5)." Cossey Brief, p. 16. This argument does not affect the outcome and it also misrepresents the legal basis for the SJ Order's decision, which, as discussed

earlier, is based on consideration of Guideline 2003-5 as an interpretive rule that supports the application of section 37-92-602(6), C.R.S.

Staff accurately states, "[b]ecause section 602(6), C.R.S., does not provide specific direction for how the State Engineer is to determine the availability of other water supplies, Guideline 2003-5 provides guidance to DWR and the public on the factors the agency will evaluate when considering exempt well permit applications." Answer Brief of Staff, p. 10. Staff also correctly argues that "Cossey's argument ignores the State Engineer's responsibility under section 37-92-602(6), C.R.S. This is contrary to the rule of statutory interpretation that effect must be given to all a statute's provisions, and constructions that render any provision meaningless should be discounted." Answer Brief of Staff, p. 14.

The Hearing Officer did not give Guideline 2003-5 undue influence in his decision. Guideline 2003-5 was adopted to provide consistent review of well permit applications pursuant to section 37-92-602(6). Guideline 2003-5 is a valid tool for assisting in the evaluation of well permit applications under the provisions of section 37-92-602(6), even as DWR considers all other applicable statutes in the evaluation.

Decision

Therefore, the exceptions requested in section IV.A of the Notice of Exceptions are denied. The SJ Order correctly states the effect of the statutory law and the relevant guideline in the evaluation of a well permit application.

Exception B. The Priestleys' objection was based on lies and speculation; They intentionally deceived the Hearing Officer to maintain this action.

Analysis

The SJ Order states that "[i]n the Prayer for Relief section of the Supplemental Brief and Verified Reply, Cossey asks the Hearing Officer to grant summary judgment affirming the Cossey Permits. Cossey makes the following arguments in the Motion, Supplemental Brief, Verified Reply to Staff, and Verified Reply to Priestleys in support of this position:..." SJ Order p. 6, and Item 2 of the listed arguments states that "(t)he Priestleys have presented no evidence showing that the Cossey Permits cause injury to their water right(s) or well." SJ Order p. 7. The SJ Order further quotes Cossey, "[t]he legal standard for issuing an exempt well permit is controlled solely by C.R.S.§ 37-92-602(3), and without an allegation of injury, Priestley cannot state a claim to revoke the Cossey Permits." (SJ Order p 7, Item 2.e). Cossey asserts that Priestley falsely alleged injury. In response to these legal arguments and assertions by Cossey that Priestley did not present evidence showing injury, Priestley attempted to address the injury question in the response to the initial Motion to Dismiss, by stating they own a water right that may be affected. Priestley also responded to discovery requests regarding their water rights.

The Priestley's attempt was unnecessary because Cossey raised injury only in an attempt to remove what Cossey believed was the one obstacle to the well permits' issuance. (As stated above, the State Engineer disagrees with this position.) It was a foregone conclusion that the well permits were issued under a presumption of no injury.

Further, Priestley had not raised the issue of injury in the Notice of Complaint and, therefore, it was not before the Hearing Officer. Nonetheless, the Hearing Officer did make a finding that "(t)he Priestleys have presented no evidence showing that the Cossey Permits cause injury to their water right(s), well, or other legally protected interests." SJ Order, p. 14, Item 3.

The Hearing Officer makes additional findings regarding injury, accounting for DWR's evaluation of the well permit applications in that context. SJ Order, p. 16. This is in spite of the fact that the question was not before the Hearing Officer.

In Exception B, the sixth amendment requested by Cossey is to state that "[t]he Priestleys did not demonstrate any facts justifying the revocation of the Cossey Permits as requested in the Complaint." Notice of Exceptions, p. 11. On its face, this statement is false. The Complaint likely did set forth the bases for the Hearing Officer to find that the well permits were improperly issued. Cossey's sixth amendment request, however, appears to be a statement solely in the context of Exception B, regarding injury and it is treated as such here. In the context of whether the Priestleys demonstrated injury to justify revocation of the Cossey Permits, the SJ Order found that the Priestleys have presented no evidence of injury to water rights, and since Cossey agrees with that finding, no amendment is necessary and there is no basis for the sixth amendment request.

Decision

Exception B deals entirely with the question of injury to the Priestleys from the wells permitted by DWR for Cossey. The original Notice of Complaint and the Complaint

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

"(a)ccordingly, DWR staff evaluated whether there was a known water supplier consistent with Guideline 2003-5." This is an important distinction in concluding that the Hearing Officer did not find that NWC is a legal water supplier in the context of Guideline 2003-5.

The controlling finding from the Hearing Officer was 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, emphasis added. It is on that basis that the Hearing Officer issued his order that "[t]he Cossey Permits are valid and in full force and effect and the Priestleys' complaint is DISMISSED." SJ Order, p. 17. Staff may have concluded that NWC did not qualify as a "legal water supplier," however, the Hearing Officer did not affirm that or base his decision on that conclusion. Rather, his decision was based on the finding that Staff acted according to the best information it had at the time of the evaluation and issuance of the well permit applications in determining the Cossey property is not within the NWC service area. I find no dispute to that finding in the record.

Decision

Exception C requests amendments to the SJ Order to remove any reference to the NWC as a legal water supplier under Guideline 2003-5 because Guidelines 2003-5 is not controlling. As noted above, Guideline 2003-5 may be used in a permit application evaluation as an interpretive rule. However, even that is not relevant to Exception C

due to the fact that the Hearing Officer decided the matter on the basis that Staff acted properly based on the information it had at the time of the application. The Hearing Officer did not make a determination as to NWC's service area, its authority, or whether it should be considered under section 37-92-602(6) or Guideline 2003-5. Inclusion of a map of the NWC service territory by DWR on its website is informational and does not predispose DWR to any decision for future well permit applications. The questions of whether NWC is a legal supplier, the extent of NWC's service area, and whether DWR has a map of NWC's service area on its website were not before the Hearing Officer.

Therefore, the exceptions requested in section IV.C of the Notice of Exceptions are denied.

Exception D. The Complaint did not have a factual or legal basis and therefore it lacked substantial justification

In the original Notice of Complaint, Priestley asserted that "...the permits [applications] were not completed properly and the permitting was therefore incorrect." Complaint p. 1. The information that was not on the permit was for permit application Item 8: "Is this parcel within the boundaries of a water service area." The question, and the surrounding issue is relevant. As noted above, material injury is not the sole consideration in the evaluation of a well permit application and section 37-92-306(6), C.R.S. gives DWR guidance on the issuance of exempt well permits. Guideline 2003-5, like an interpretive rule, gives DWR more detailed guidance on the application of 37-92-602(6) in well permit application evaluations. Therefore, it is reasonable that a party would raise the issue of whether an important piece of information related to

relevant statutory standards is missing and whether the information was considered during the course of the well permit applications. The Hearing Officer found that ultimately, Staff evaluated the permit applications with the understanding that there was no legal water supplier in the area. SJ Order, p. 16. However, whether DWR took all information into account and issued the permit applications consistent with 37-92-602(6) and Guideline 2003-5 was a legitimate question for Priestley to raise.

The Notice of Exceptions includes numerous assertions about Priestley's claims of water rights and associated injury. However, the evaluation and determination of material injury was not before the Hearing Officer until Cossey filed a motion to dismiss on the basis that Preistley did not demonstrate injury. Regardless of the outcome of the injury discussion, the allegation of improper issuance of the well permits in the Complaint was the one issue to be decided in 21SE08.

Decision

The argument that "(t)he weight of the evidence supports a finding that the Priestleys' Complaint was meritless; it was not grounded in fact or law" and the suggestion that the Complaint was frivolous and vexatious, and Cossey is entitled to damages, costs, and attorney fees, is rejected. As demonstrated by the record, the Complaint was not meritless and was grounded in both fact and law. The exceptions requested in section IV.D of the Notice of Exceptions are denied.

Order

The evidence in the record supports the findings and conclusions of the Hearing Officer to which Cossey take exception. The SJ Order is affirmed on these points and the requests to amend the SJ Order are denied.

Dated this 15th day of September, 2022

Kevin G. Rein, P.E.
State Engineer
State of Colorado

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the DECISION OF THE STATE ENGINEER was sent September 15, 2022, to the following parties:

Via Email:

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MONTROSE COUNTY DISTRICT COURT Montrose County Justice Center 1200 North Grand Avenue Montrose, Colorado 81401 Telephone: (970) 252-4300 _____ Plaintiffs: **PAMELA BARRETT and RAYMOND M. COSSEY** v. Defendants**: DIVISION OF WATER RESOURCES, STATE OF COLORADO; OFFICE OF THE STATE ENGINEER; KEVIN G. REIN, P.E., as STATE ENGINEER, STATE OF COLORADO; HAROLD PRIESTLEY; DRUE PRIESTLEY, and the HDP REVOCABLE TRUST**	_COURT USE ONLY_
Attorney for Plaintiffs: Amy N. Huff COLORADO WATER & LAND LAW, LLC 679 E. 2ND Avenue, Unit 11 B Durango, CO 81301 Reg. No. 34897 Telephone No.: (970) 403 1770 Email: amy@waterland-law.com	Case No.: 2022CV30077 Div.: Ctrm.:
AMENDED COMPLAINT FOR JUDCIAL REVIEW OF AGENCY ACTION	

Plaintiffs, PAMELA BARRETT and RAYMOND M. COSSEY (collectively

"Cossey") by and through their undersigned counsel, Amy N. Huff of COLORADO WATER & LAND LAW, LLC, hereby state their AMENDED COMPLAINT FOR JUDICIAL REVIEW OF AGENCY ACTION ("Amended Complaint") against DIVISION OF WATER RESOURCES, STATE OF COLORADO; OFFICE OF THE STATE ENGINEER; KEVIN G. REIN, P.E., as STATE ENGINEER, STATE OF COLORADO (collectively "SEO" or "DWR"); and HAROLD PRIESTLEY; DRUE PRIESTLEY, and the HDP REVOCABLE TRUST (collectively "the Priestleys").

This AMENDED COMPLAINT supersedes and replaces, in its entirety, the Complaint filed by Cossey on October 13, 2022. For their Amended Complaint, Cossey sets forth the following:

General Allegations

1. On March 29, 2021, DWR issued Cossey thirteen (13) exempt well permits for thirteen (13) lots in Redvale, Colorado (collectively "Cossey Permits"). The Cossey Permits provide a legal water supply to thirteen (13) investment properties owned by Cossey, which properties Cossey has been developing to sell ("Cossey Properties").

2. The Cossey Permits were issued under Section 37-92-602, C.R.S. ("Section 602"), as exempt from administration under the Water Right Determination and Administration Act. C.R.S. § 37-92-101 *et seq*. The Cossey Permits were lawfully entitled to the presumption that they would not result in "material injury to the vested water rights of others or to any

other existing well." C.R.S. § 37-92-602(3)(b)(II)(A). The record contains no evidence to rebut this presumption of non-injury.

3. Material injury is the only legal standard for evaluating a well permit application. C.R.S. § 37-92-602(3)(b)(II). Colorado's General Assembly has instructed the state engineer to deny an application for a well permit ***only when he finds that "the vested water rights of others or any other existing well will be materially injured***." C.R.S. § 37-92-602(3)(b)(I). "Otherwise, the permit shall be issued." *Id.*

4. Subsection (6) of Section 602 explains the legislative intent for creating the exemptions in Section 602. Subsection (6) does not modify the legal standards set forth in Section 602 and it does not give the DWR discretion to ignore the mandates therein.

5. On September 16, 2003, State Engineer Hal D. Simpson adopted GUIDELINE 2003-5 REGARDING THE USE OF WELLS WITHIN WATER SERVICE AREAS ("Guideline 2003-5"). The stated purpose of Guideline 2003-5 is to provide consistent review of well permits pursuant to C.R.S. § 37-92-602(6).

6. The State Engineer's Guideline 2003-5 mistakenly construes Subsection (6) as establishing a legal standard beyond that directed by Colorado's General Assembly for issuing a well permit. Subsection (6) does not authorize the DWR to deny an application for a well permit

in the absence of a finding of material injury. It also does not authorize the DWR to ignore the presumption of non-injury granted by the legislature to certain small capacity wells.

7. Guideline 2003-5 states that the DWR will deny an application for an exempt well permit if the "proposed well will be in a known water service area that is served by a central system.," unless the supplier provides a letter "stating that they cannot provide water to the applicant or they do not object to the applicant obtaining a well permit." Guideline 2003-5(E). It identifies three distinct types of entities that DWR would consider "legal water suppliers:"

> I. Municipal or quasi-municipal water supplier (e.g., water district) that would assess property taxes for individuals within their taxing boundaries.
>
> II. Private water company who is registered with the Secretary of State and/or the Public Utilities Commission.
>
> III. Operators of decreed plans for augmentation (e.g., homeowner associations) to augment on-lot wells or central wells for a residential or commercial development.

8. To qualify as a "legal water supplier," under Guideline 2003-5, the DWR "must have on file or access to, the legal boundaries of each water supplier."

9. The DWR staff assisted Cossey in completing the applications that resulted in the Cossey Permits. When the applications were filed, Cossey was aware that the Norwood Water Commission ("NWC") provided domestic water service to properties within the Town of Norwood (the "Town") and to certain properties located outside the Town's jurisdictional

boundary. Cossey did not however know whether the Cossey Properties were within the "boundaries of a water service area," as asked on the well permit application form and left that question unanswered.

10. The DWR did not consider Guideline 2003-5 when it issued the Cossey Permits. The DWR did not possess a map that showed the Cossey Permits as within the legal boundary of a water supplier.

11. On April 29, 2021, the Priestleys sent a letter to Kevin Rein, State Engineer, contesting the Cossey Permits (the "Priestley's Complaint"). The Priestley's Complaint sought to revoke the domestic water supply for the Cossey Properties. It alleged that the "permits were not completed properly and the permitting was therefore incorrect."

12. By a letter dated May 11, 2021, the Division Engineer Hurford informed the NWC that it did not qualify as legal water supplier under Guideline 2003-5.

13. On May 20, 2021, the DWR issued a NOTICE OF FILING OF VERIFIED COMPLAINT TO REVOKE WELL PERMIT NOS. 321172-321180, 321183, AND 321185-321187 AS ISSUED TO PAMELA BARRETT AND RAYMOND M. COSSEY (the "Notice"). The Notice informed Cossey of the Priestley's Complaint, mandated a response, and directed that a hearing would be held.

14. On June 18, 2021, Cossey filed a VERIFIED ANSWER AND MOTION TO DISMISS THE PRIESTLEY'S COMPLAINT (the "First MTD"). The First MTD explained that the Priestleys did not have standing to contest the Cossey Permits because they had not alleged injury to a legally protected interest.[1] The Priestleys response to the First MTD states that the Priestleys own real property and a senior water right that "may be affected by the development of this subdivision and the wells that have been drilled in this subdivision."

15. On September 28, 2021, Chris Grimes, Hearing Officer, Office of the State Engineer, entered an ORDER DENYING MOTION DISMISS ("Order Denying MTD"). The Order Denying MTD found that the Priestley's Complaint, coupled with their response to the First MTD, stated a plausible claim for relief. Case management deadlines were established, and a two-day hearing was set to commence on March 29, 2022.

16. Cossey's development plan for the Cossey Properties included a domestic water supply (i.e., Cossey Permits), utilities, and high-speed internet. The Priestley's Complaint created uncertainty regarding the legal water supply for the Cossey Properties and, until the matter was resolved, Cossey could not market and sell Cossey Properties as planned. For nearly a year, Cossey was prevented from completing the development of the Cossey Properties while forced to defend the Priestley's Complaint. Cossey suffered significant damages

[1] The First MTD also sought dismissal based on procedural defects in the Priestley's Complaint.

from the delay caused by the Priestley's Complaint. Cossey lost sales, lost profits, and lost development opportunities.

17. The Priestley's Complaint was a scam. They did not have a factual or legal basis for objecting to the Cossey Permits. Arrogantly, they did not even attempt to prove their objection. The Priestleys failed to comply with their disclosure obligations, did not engage in any discovery, and lied to unreasonably delay a determination regarding the validity of the Cossey Permits.

18. The Priestleys used the SEO's administrative process for their financial gain. Without any legal basis, they forced Cossey into a legal battle and delayed Cossey from completing the development of the Cossey Properties. Days before the final oral argument, the Priestleys sold their property and water rights.

19. After discovery and extensive briefing, the Hearing Officer affirmed the Cossey Permits and summarily dismissed the Priestley's Complaint ("SJ Order"). Cossey prevailed, but the SJ Order misstated controlling law, failed to accurately represent the Priestleys' bad-faith conduct, cloaked the NWC with unfounded legal authority, and declined to award Cossey damages, costs, and attorney fees.

20. Cossey timely filed exceptions to the SJ Order and requested that the SEO correct errors therein. The parties submitted written briefs and State Engineer Rein allowed each party

to present fifteen (15) minutes of oral argument. On September 15, 2022, State Engineer Rein issued the Decision of the State Engineer ("SEO Decision"). The SEO Decision finds that the "evidence in the record supports the findings and conclusions of the Hearing Officer to which Cossey takes exception," affirms the SJ Order, and denies Cossey's requests for amendments thereto.

21. After the Priestley's Complaint was filed, the DWR modified its electronic files and published the NWC's claimed legal boundary in its MapViewer program as the NWC's known water service area.

22. The SEO's Decision and the DWR's determination that the NWC classifies as a legal water supplier with an extensive service area that includes lands in both San Miguel and Montrose Counties is arbitrary, capricious, a denial of Cossey's statutory rights, unsupported by substantial evidence in the record, an abuse of discretion, and contrary to law.

23. The NWC claims to be a "water activity enterprise," created by the Town of Norwood under Colorado law. C.R.S. § 37-45.1-101, et seq. The authority of a water activity enterprise is derived from the power held by its enabling entity. C.R.S. § 37-45.1-103(4).

24. The Town's jurisdiction does not extend to the Cossey Properties. Given the DWR's determination that the NWC did not qualify as a water supplier under Guideline 2003-5

and the jurisdictional authority of the NWC, there was no factual basis for the Priestleys to assert that there were irregularities in the permitting process. The Cossey Properties were not within the service area of a known water supplier.

Jurisdiction and Venue

25. Cossey hereby incorporates the foregoing allegations, as if set forth fully herein.

26. This Court has subject matter jurisdiction over this matter under C.R.S. § 24-4-106.

27. Venue is proper under Rule 98(a) as the SEO's Decision affects real property and the subject of the action is situated in Montrose County, Colorado.

Claim for Relief

28. The forgoing allegations are hereby incorporated, as if set forth fully herein.

29. The matters herein concern agency action under C.R.S. § 24-4-106. Cossey has been adversely affected by the SJ Order and the SEO's decision.

30. The Priestleys did not have a legal basis for objecting to the Cossey Permits. They used the DWR's administrative process in a substantially vexatious manner to delay development of the Cossey Properties.

31. Injury is the only legal standard for issuing a well permit and the Cossey Permits are statutorily entitled to a presumption of non-injury. Subsection (6) of Section 602 and/or Guideline 2003-5 cannot be the basis for revoking a well permit.

32. The Priestleys did not (and do not) own a water right that could be injured by the Cossey Permits. The Priestleys misrepresented material facts and did not attempt to substantiate their objection to the Cossey Permits.

33. The SJ Order and the SEO's decision affirming the same are arbitrary and capricious, constitute an abuse of discretion, are "based upon finding of fact that are clearly erroneous on the whole record," and are contrary to law. C.R.S.§ 24-4-106.

34. Cossey has incurred substantial damages as a result of Priestley's vexatious actions, as sanctioned by DWR

35. The SJ Order finds that the Priestleys had a valid argument for contesting the Cossey Permits because of a clerical error in the permitting process that was based on the self-proclaimed jurisdiction of the NWC. The SEO abused its discretion, ignored the record

as a whole, and made determinations that are contrary to law when it upheld the SJ Order without amendment, held that the Priestley's Complaint was not frivolous or vexatious, and denied Cossey's request for damages, attorney fees, and costs, and other sanctions. The evidence in the record does not support the SJ Order or the SEO's Decision to support this decision. C.R.S. § 24-4-106.

36. The findings in the SJ Order, as affirmed by the SEO Decision, are clearly erroneous.

37. The Priestley's Complaint was an abuse of process that resulted in measurable damages.

Prayer for Relief

NOW THEREFORE, for the reasons set forth herein Cossey respectfully requests that this Court enter an Order:

A. Overruling the SJ Order/SEO Decision;

B. Holding that material injury is the only legal standard for issuing a well permit;

C. Determining that Guideline 2003-5 and/or Subsection (6) of Section 602 cannot be the basis for denying or revoking a well permit;

D. Finding that the SEO's acquiescence to the NWC's claimed status as a legal water supplier with a service area extending beyond the territorial boundaries of the Town is arbitrary, capricious, an abuse of discretion, a denial of a statutory right, and contrary to law;

E. Declaring that the Priestley's Complaint was groundless, frivolous, and vexatious;

F. Finding that the SEO's determination that the Priestleys had a legal basis for filing and maintaining the Priestley's Complaint was an abuse of discretion, arbitrary and capricious, and not based upon the record;

G. Holding that Cossey incurred damages as a result of the Priestley's bad-faith actions;

H. Awarding Cossey damages, attorney fees, costs, and sanctions; and

I. All other relief this Court deems just and proper.

Respectfully submitted this 19th day of October, 2022.

COLORADO & LAND LAW, LLC

_____*s/Amy N. Huff*_____
By: Amy N. Huff, #34897

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CASE NUMBER: 2023CW3000

MONTROSE COUNTY DISTRICT COURT **WATER DIVISION NO. 4** Montrose County Justice Center 1200 North Grand Avenue Montrose, Colorado 81401 Telephone: (970) 252-4300 _____ Plaintiffs: **PAMELA BARRETT and RAYMOND M. COSSEY** v. Defendants**: DIVISION OF WATER RESOURCES, STATE OF COLORADO; OFFICE OF THE STATE ENGINEER; KEVIN G. REIN, P.E., as STATE ENGINEER, STATE OF COLORADO; HAROLD PRIESTLEY; DRUE PRIESTLEY, and the HDP REVOCABLE TRUST**	_COURT USE ONLY_
Attorney for Plaintiffs: Amy N. Huff COLORADO WATER & LAND LAW, LLC 679 E. 2ND Avenue, Unit 11 B Durango, CO 81301 Reg. No. 34897 Telephone No.: (970) 403 1770 Email: amy@waterland-law.com	Case No.: 2022CW ____ Div.: Ctrm.:

COMPLAINT FOR JUDCIAL REVIEW OF AGENCY ACTION

Plaintiffs, PAMELA BARRETT and RAYMOND M. COSSEY (collectively "Cossey") by and through their undersigned counsel, Amy N. Huff of COLORADO WATER & LAND LAW, LLC, hereby state their AMENDED COMPLAINT FOR JUDICIAL REVIEW OF AGENCY ACTION ("Amended Complaint") against DIVISION OF WATER RESOURCES, STATE OF COLORADO; OFFICE OF THE STATE ENGINEER; KEVIN G. REIN, P.E., as STATE ENGINEER, STATE OF COLORADO (collectively "SEO" or "DWR"); and HAROLD PRIESTLEY; DRUE PRIESTLEY, and the HDP REVOCABLE TRUST (collectively "the Priestleys").

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2. The Cossey Permits were issued under Section 37-92-602, C.R.S. ("Section 602"), as exempt from administration under the Water Right Determination and Administration Act. C.R.S. § 37-92-101 *et seq*. The Cossey Permits were lawfully entitled to the presumption

that they would not result in "material injury to the vested water rights of others or to any other existing well." C.R.S. § 37-92-602(3)(b)(II)(A). The record contains no evidence to rebut this presumption of non-injury.

3. Material injury is the only legal standard for evaluating a well permit application. C.R.S. § 37-92-602(3)(b)(II). Colorado's General Assembly has instructed the state engineer to deny an application for a well permit ***only when he finds that "the vested water rights of others or any other existing well will be materially injured***." C.R.S. § 37-92-602(3)(b)(I). "Otherwise, the permit shall be issued." *Id.*

4. Subsection (6) of Section 602 explains the legislative intent for creating the exemptions in Section 602. Subsection (6) does not modify the legal standards set forth in Section 602 and it does not give the DWR discretion to ignore the mandates therein.

5. On September 16, 2003, State Engineer Hal D. Simpson adopted GUIDELINE 2003-5 REGARDING THE USE OF WELLS WITHIN WATER SERVICE AREAS ("Guideline 2003-5"). The stated purpose of Guideline 2003-5 is to provide consistent review of well permits pursuant to C.R.S. § 37-92-602(6).

6. The State Engineer's Guideline 2003-5 mistakenly construes Subsection (6) as establishing a legal standard beyond that directed by Colorado's General Assembly for issuing a well permit. Subsection (6) does not authorize the DWR to deny an application for a well permit

in the absence of a finding of material injury. It also does not authorize the DWR to ignore the presumption of non-injury granted by the legislature to certain small capacity wells.

7. Guideline 2003-5 states that the DWR will deny an application for an exempt well permit if the "proposed well will be in a known water service area that is served by a central system.," unless the supplier provides a letter "stating that they cannot provide water to the applicant or they do not object to the applicant obtaining a well permit." Guideline 2003-5(E). It identifies three distinct types of entities that DWR would consider "legal water suppliers:"

I. Municipal or quasi-municipal water supplier (e.g., water district) that would assess property taxes for individuals within their taxing boundaries.

II. Private water company who is registered with the Secretary of State and/or the Public Utilities Commission.

III. Operators of decreed plans for augmentation (e.g., homeowner associations) to augment on-lot wells or central wells for a residential or commercial development.

8. To qualify as a "legal water supplier," under Guideline 2003-5, the DWR "must have on file or access to, the legal boundaries of each water supplier."

9. The DWR staff assisted Cossey in completing the applications that resulted in the Cossey Permits. When the applications were filed, Cossey was aware that the Norwood Water Commission ("NWC") provided domestic water service to properties within the Town of Norwood (the "Town") and to certain properties located outside the Town's jurisdictional

boundary. Cossey did not however know whether the Cossey Properties were within the "boundaries of a water service area," as asked on the well permit application form and left that question unanswered.

10. The DWR did not consider Guideline 2003-5 when it issued the Cossey Permits. The DWR did not possess a map that showed the Cossey Permits as within the legal boundary of a water supplier.

11. On April 29, 2021, the Priestleys sent a letter to Kevin Rein, State Engineer, contesting the Cossey Permits (the "Priestley's Complaint"). The Priestley's Complaint sought to revoke the domestic water supply for the Cossey Properties. It alleged that the "permits were not completed properly and the permitting was therefore incorrect."

12. By a letter dated May 11, 2021, the Division Engineer Hurford informed the NWC that it did not qualify as legal water supplier under Guideline 2003-5.

13. On May 20, 2021, the DWR issued a NOTICE OF FILING OF VERIFIED COMPLAINT TO REVOKE WELL PERMIT NOS. 321172-321180, 321183, AND 321185-321187 AS ISSUED TO PAMELA BARRETT AND RAYMOND M. COSSEY (the "Notice"). The Notice informed Cossey of the Priestley's Complaint, mandated a response, and directed that a hearing would be held.

14. On June 18, 2021, Cossey filed a VERIFIED ANSWER AND MOTION TO DISMISS THE PRIESTLEY'S COMPLAINT (the "First MTD"). The First MTD explained that the Priestleys did not have standing to contest the Cossey Permits because they had not alleged injury to a legally protected interest.[1] The Priestleys response to the First MTD states that the Priestleys own real property and a senior water right that "may be affected by the development of this subdivision and the wells that have been drilled in this subdivision."

15. On September 28, 2021, Chris Grimes, Hearing Officer, Office of the State Engineer, entered an ORDER DENYING MOTION DISMISS ("Order Denying MTD"). The Order Denying MTD found that the Priestley's Complaint, coupled with their response to the First MTD, stated a plausible claim for relief. Case management deadlines were established, and a two-day hearing was set to commence on March 29, 2022.

16. Cossey's development plan for the Cossey Properties included a domestic water supply (i.e., Cossey Permits), utilities, and high-speed internet. The Priestley's Complaint created uncertainty regarding the legal water supply for the Cossey Properties and, until the matter was resolved, Cossey could not market and sell Cossey Properties as planned. For nearly a year, Cossey was prevented from completing the development of the Cossey Properties while forced to defend the Priestley's Complaint. Cossey suffered significant damages

[1] The First MTD also sought dismissal based on procedural defects in the Priestley's Complaint.

from the delay caused by the Priestley's Complaint. Cossey lost sales, lost profits, and lost development opportunities.

17. The Priestley's Complaint was a scam. They did not have a factual or legal basis for objecting to the Cossey Permits. Arrogantly, they did not even attempt to prove their objection. The Priestleys failed to comply with their disclosure obligations, did not engage in any discovery, and lied to unreasonably delay a determination regarding the validity of the Cossey Permits.

18. The Priestleys used the SEO's administrative process for their financial gain. Without any legal basis, they forced Cossey into a legal battle and delayed Cossey from completing the development of the Cossey Properties. Days before the final oral argument, the Priestleys sold their property and water rights.

19. After discovery and extensive briefing, the Hearing Officer affirmed the Cossey Permits and summarily dismissed the Priestley's Complaint ("SJ Order"). Cossey prevailed, but the SJ Order misstated controlling law, failed to accurately represent the Priestleys' bad-faith conduct, cloaked the NWC with unfounded legal authority, and declined to award Cossey damages, costs, and attorney fees.

20. Cossey timely filed exceptions to the SJ Order and requested that the SEO correct errors therein. The parties submitted written briefs and State Engineer Rein allowed each party

to present fifteen (15) minutes of oral argument. On September 15, 2022, State Engineer Rein issued the Decision of the State Engineer ("SEO Decision"). The SEO Decision finds that the "evidence in the record supports the findings and conclusions of the Hearing Officer to which Cossey takes exception," affirms the SJ Order, and denies Cossey's requests for amendments thereto.

21. After the Priestley's Complaint was filed, the DWR modified its electronic files and published the NWC's claimed legal boundary in its MapViewer program as the NWC's known water service area.

22. The SEO's Decision and the DWR's determination that the NWC classifies as a legal water supplier with an extensive service area that includes lands in both San Miguel and Montrose Counties is arbitrary, capricious, a denial of Cossey's statutory rights, unsupported by substantial evidence in the record, an abuse of discretion, and contrary to law.

23. The NWC claims to be a "water activity enterprise," created by the Town of Norwood under Colorado law. C.R.S. § 37-45.1-101, et seq. The authority of a water activity enterprise is derived from the power held by its enabling entity. C.R.S. § 37-45.1-103(4).

24. The Town's jurisdiction does not extend to the Cossey Properties. Given the DWR's determination that the NWC did not qualify as a water supplier under Guideline 2003-5

and the jurisdictional authority of the NWC, there was no factual basis for the Priestleys to assert that there were irregularities in the permitting process. The Cossey Properties were not within the service area of a known water supplier.

Jurisdiction and Venue

25. Cossey hereby incorporates the foregoing allegations, as if set forth fully herein.

26. This Court has subject matter jurisdiction over this matter under C.R.S. § 24-4-106 and C.R.S. § 37-92-602(3)(f).

27. Venue is proper under Rule 98(a) as the SEO's Decision affects real property and the subject of the action is situated in Montrose County, Colorado.

Claim for Relief

28. The forgoing allegations are hereby incorporated, as if set forth fully herein.

29. The matters herein concern agency action under C.R.S. § 24-4-106. Cossey has been adversely affected by the SJ Order and the SEO's decision.

30. The Priestleys did not have a legal basis for objecting to the Cossey Permits. They used the DWR's administrative process in a substantially vexatious manner to delay development of the Cossey Properties.

31. Injury is the only legal standard for issuing a well permit and the Cossey Permits are statutorily entitled to a presumption of non-injury. Subsection (6) of Section 602 and/or Guideline 2003-5 cannot be the basis for revoking a well permit.

32. The Priestleys did not (and do not) own a water right that could be injured by the Cossey Permits. The Priestleys misrepresented material facts and did not attempt to substantiate their objection to the Cossey Permits.

33. The SJ Order and the SEO's decision affirming the same are arbitrary and capricious, constitute an abuse of discretion, are "based upon finding of fact that are clearly erroneous on the whole record," and are contrary to law. C.R.S.§ 24-4-106.

34. Cossey has incurred substantial damages as a result of Priestley's vexatious actions, as sanctioned by DWR

35. The SJ Order finds that the Priestleys had a valid argument for contesting the Cossey Permits because of a clerical error in the permitting process that was based on the self-proclaimed jurisdiction of the NWC. The SEO abused its discretion, ignored the record

as a whole, and made determinations that are contrary to law when it upheld the SJ Order without amendment, held that the Priestley's Complaint was not frivolous or vexatious, and denied Cossey's request for damages, attorney fees, and costs, and other sanctions. The evidence in the record does not support the SJ Order or the SEO's Decision to support this decision. C.R.S. § 24-4-106.

36. The findings in the SJ Order, as affirmed by the SEO Decision, are clearly erroneous.

37. The Priestley's Complaint was an abuse of process that resulted in measurable damages.

Prayer for Relief

NOW THEREFORE, for the reasons set forth herein Cossey respectfully requests that this Court enter an Order:

A. Overruling the SJ Order/SEO Decision;

B. Holding that material injury is the only legal standard for issuing a well permit;

C. Determining that Guideline 2003-5 and/or Subsection (6) of Section 602 cannot be the basis for denying or revoking a well permit;

D. Finding that the SEO's acquiescence to the NWC's claimed status as a legal water supplier with a service area extending beyond the territorial boundaries of the Town is arbitrary, capricious, an abuse of discretion, a denial of a statutory right, and contrary to law;

E. Declaring that the Priestley's Complaint was groundless, frivolous, and vexatious;

F. Finding that the SEO's determination that the Priestleys had a legal basis for filing and maintaining the Priestley's Complaint was an abuse of discretion, arbitrary and capricious, and not based upon the record;

G. Holding that Cossey incurred damages as a result of the Priestley's bad-faith actions;

H. Awarding Cossey damages, attorney fees, costs, and sanctions; and

I. All other relief this Court deems just and proper.

Respectfully submitted this 19th day of January, 2023

COLORADO & LAND LAW, LLC

_____*s/Amy N. Huff*_____
By: Amy N. Huff, #34897

DISTRICT COURT, MONTROSE COUNTY, COLORADO 1200 North Grand Avenue Montrose, Colorado 81401	
PAMELA BARRETT and RAYMOND M. COSSEY, Plaintiffs, v. DIVISION OF WATER RESOURCES, STATE OF COLORADO, et al., Defendants.	DATE FILED January 9, 2023 12:41 PM CASE NUMBER: 2022CV30077 COURT USE ONLY
	Case Number: 22CV30077 Division: 2
ORDER RE: THE STATE ENGINEER'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT FOR JUDICIAL REVIEW	

The State Engineer has moved to dismiss this action for lack of subject matter jurisdiction under C.R.C.P. Rule 12(b)(1). Plaintiffs contest the motion. Having reviewed the parties' briefs, the file and relevant authorities, the Court enters this order.

I. FACTS & HISTORY

Plaintiffs seek judicial review of the State Engineer's order approving their thirteen exempt well permit applications (hereinafter "Cossey Permits"). Plaintiffs filed their applications under section 37-92-602(3), C.R.S., and the Priestley Defendants filed an administrative complaint challenging the applications and seeking revocation of the Cossey Permits. The State Engineer assigned the matter to a hearing officer and Plaintiffs moved for summary judgment in their favor regarding the Priestleys' complaint while also requesting an award for sanctions and costs. The hearing officer granted Plaintiffs' summary judgment motion, dismissed the

Priestleys' complaint, and confirmed the Cossey Permits. But the hearing officer's order did not address Plaintiffs' request for sanctions.

Plaintiffs appealed the hearing officer's order to the State Engineer, claiming that the hearing officer erred by not awarding them sanctions and costs related to the dismissal of the Priestleys' complaint. Plaintiffs also asked the State Engineer to amend certain portions of the hearing officer's decision, specifically relating to the legal jurisdiction of the Norwood Water Commission ("NWC"). The State Engineer issued a written order ("SEO Decision") affirming all portions of the hearing officer's decision and denying Plaintiffs' request for sanctions and costs. Plaintiffs then filed the present action for judicial review.

II. STANDARD OF REVIEW

The State Engineer moves to dismiss for lack of subject matter, arguing that Plaintiffs must seek review of the SEO Decision in water court. Plaintiffs insist that their petition for review is not a "water matter" that could be filed in water court. Under Rule 12(b)(1), a court may decide jurisdiction as a matter of law without a hearing when "the parties dispute only the characterization of the complaint at issue and not the jurisdictional facts alleged within it[.]". *City of Boulder v. Public Serv. Co. of Colorado*, 420 P.3d 289, 293 (Colo. 2018). That is the case here where the parties disagree as to whether this case is a "water matter" that must be litigated in water court. This is a pure issue of law that the Court will decide without a hearing.

III. ANALYSIS

The State Engineer approved the Cossey Permits pursuant to his statutory authority under section 37-92-602(3)(b)(I), C.R.S., which states that a well permit must be granted unless the State Engineer finds "the exercise of the requested permit will materially injure the vested water

rights of others or any other existing well[.]". Plaintiffs do not challenge the approval of their permits but only challenge the portion of the SEO Decision that affirmed the hearing officer's denial of their request for sanctions and costs against the Priestleys, and the hearing officer's findings concerning the NWC's legal authority. For these reasons, Plaintiffs insist that this case is not a water matter.

But the controlling statute supports the State Engineer's argument that Plaintiffs' sole remedy is in the water court. In relevant part, section 37-92-602(3)(f) states that "[a]ny person aggrieved by a decision of the state engineer granting or denying an application filed under this subsection (3) may within thirty-five days after such decision file a petition for review with the water clerk of the water division in which the well is located." Plaintiffs argue that this provision does not apply to their petition for review because they were not "aggrieved" by the decision affirming the Cossey Permits but were only harmed by the other ancillary matters that the State Engineer decided against them. Plaintiffs contend that those matters must be reviewed in district court under the APA, and not in water court under section 37-92-602(3)(f).

The State Engineer concedes that a well permit is a "license" under the APA. Section 24-4-102(7), C.R.S. (defining "license" under the APA as "the whole or any part of any agency permit, certificate, registration, charter, membership, or statutory exemption"). In general, an agency's action pertaining to a license is subject to judicial review in district court under the APA. Section 24-4-104(9), C.R.S.

Even so, the APA's provisions are a "gap-filler" that apply to agency actions "unless they conflict with a specific provision of the agency's statute or another statutory provision preempts the provisions of the APA." *Well Augmentation Subdistrict of Central Colo. Water Conserv. Dist. v. City of Aurora*, 221 P.3d 399, 417 (Colo. 2009). The State Engineer insists that review in this matter must be in the water court because section 37-92-602(3)(f) preempts the APA. Plaintiffs disagree and contend that this Court has jurisdiction under the APA.

The APA establishes jurisdiction for judicial review under section 24-4-106(4), C.R.S., which states that "[a]ny person adversely affected or aggrieved by any agency action may commence an action for judicial review in the district court within thirty-five days after such agency action becomes effective[.]". But the State Engineer's actions pertaining to well permits are specifically governed by section 37-92-602(3)(f), which requires a claim for judicial review to be filed in the water court. As the more specific statute, section 37-92-602(3)(f) is controlling over the APA. *L.D.G. By and Through S.G. v. E.R.*, 723 P.2d 746, 748 (Colo. App. 1986) ("If specific and general statutes conflict, provisions of the specific statute prevail.").

Plaintiffs contend that the water court lacks jurisdiction over their claim because the issues raised in this case are not water matters. "Water matters involve determinations regarding the right to use water, the quantification of a water right, or a change in a previously decreed water right." *In re Tonko*, 154 P.3d 397, 404 (Colo. 2007). The State Engineer's approval of the exempt well permits is a water matter because it authorized the use of certain water rights. *See V Bar Ranch, LLC v. Cotton*, 233 P.3d 1200, 1205 (Colo. 2010) (describing the State Engineer's well permitting decisions as "water matters").

Plaintiffs do not challenge that part of the SEO Decision but only seek review of the denial of their request for sanctions and for amendment of the hearing officer's findings concerning the NWC's legal authority. Even so, a water matter also includes all ancillary issues that are related to the use of water or creation of a water right. *Glover v. Serratoga Falls LLC*, 498 P.3d 1106, 1114 (Colo. 2021). Therefore, the issues raised in this case are water matters because they are ancillary to the approval of the well permits.

Plaintiffs further contend that this Court has jurisdiction under the APA because the State Engineer upheld the hearing officer's findings under the provisions of the APA. This argument is not persuasive because while the APA governed the administrative proceedings, that does not mean that the APA confers jurisdiction upon this Court for purposes of judicial review. For example, the supreme court in *V Bar Ranch* held that the State Engineer had the authority

under the APA to revoke or modify a well permit, but that judicial review was proper in the water court because water courts have exclusive jurisdiction over all water matters. 233 P.3d at 1207. Likewise, Plaintiffs must seek judicial review in the water court even though the State Engineer conducted the administrative proceedings under the APA.

IV. CONCLUSION

Accordingly, the Court finds that Plaintiffs' complaint must be filed in water court because it involves a water matter under section 37-92-602(3)(f). The Court will dismiss this case for lack of subject matter jurisdiction. Plaintiffs have requested that the Court transfer this case to the water court if jurisdiction is lacking. The Court denies this request because Plaintiffs have not cited any legal authority that would allow this Court to transfer a case to the water court. The only remedy under Rule 12(b)(1) is a dismissal without prejudice.

Based on the foregoing, IT IS ORDERED that the State Engineer's Motion to Dismiss Plaintiffs' Amended Complaint for Judicial Review of Agency Action is granted. The amended complaint is dismissed without prejudice.

Dated this 9th day of January 2023.

BY THE COURT:

J. Steven Patrick
District Court Judge

COURT OF APPEALS, STATE OF COLORADO 2 East 14th Avenue, Denver, CO 80203 _____ DISTRICT COURT, MONTROSE COUNTY COLORADO Hon. J. Steven Patrick District Court Judge Case No. 22CV30077 _____ **Plaintiffs/Appellants:** PAMELA BARRETT and RAYMOND M. COSSEY v. **Defendants/Appellees:** DIVISION OF WATER RESOURCES, STATE OF COLORADO; OFFICE OF THE STATE ENGINEER; KEVIN G. REIN, P.E., as STATE ENGINEER, STATE OF COLORADO; HAROLD PRIESTLEY; DRUE PRIESTLEY, and the HDP REVOCABLE TRUST	DATE FILED February 11, 2023 5:03 PM FILING ID: 7344225D9C780 CASE NUMBER: 2023CA243 ▲COURT USE ONLY▲
Attorney for Appellants: Amy N. Huff COLORADO WATER & LAND LAW, LLC 679 E. 2ND Avenue, Ste 11B Durango, CO 81301 Reg. No. 34897 **Telephone No.:** (970) 403-1770 **Email**: amy@waterland-law.com	Case No: 23CA _____ Div.: Ctrm.:
NOTICE OF APPEAL	

In accordance with Rules 3 and 4 of the Colorado Appellate Rules, and Section 24-4-106(9) of the Colorado Revised Statutes, PAMELA BARRETT and RAYMOND M. COSSEY (collectively "Cossey"), by and through their undersigned counsel, Amy N. Huff, Colorado Water & Land Law, LLC, hereby provide notice to the Defendants in Case No. 22CV30077, District Court, Montrose County, and to the Colorado Court of Appeals that Cossey intends to appeal the districts court's ORDER RE: THE STATE ENGINEER'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT FOR JUDICIAL REVIEW in Case No. 2022CV30077, District Court, Montrose County.

I. BRIEF DESCRIPTION OF NATURE OF CASE

A. Statement of Controversy:

Cossey appeals the district court's dismissal of their Complaint for Judicial Review of a Decision of the State Engineer, which denied Cossey's exceptions to the hearing officer's order in Administrative Action No. 21SE08. Administrative Action No. 21SE08 was initiated by the Priestleys'1 Complaint, which sought to revoke certain well permits issued to Cossey. During the administrative action, the

1 The Priestleys collectively refers to Harold Priestley, Drue Priestley, and the HDP Revocable Trust.

Priestley did not attempt to substantiate their legal burden, they did not comply with the Colorado Rules of Civil Procedure, they did not perform any discovery, and they intentionally misrepresented their ownership of a water right and legal injury thereto. Based on the undisputed facts, the hearing officer summarily held that the well permits were valid and that the Priestleys did not present any evidence of injury.

The hearing officer's order contained statements and conclusions that were not supported by the record. Cossey filed exceptions under C.R.S.§ 24-4-105(14)(a)(II), which asserted that the hearing officer wrongly: (i) applied non-binding guidance as a legal standard; (ii) cloaked the Norwood Water Commission with ultra vires authority to veto certain well permit applications; (iii) found that the Priestley's complaint did not lack substantial justification; and (iv) denied Cossey's request for damages, attorney fees, and costs. The State Engineer's Decision rejected Cossey's exceptions.

Cossey appealed the Decision of the State Engineer to the District Court.

The Amended Complaint for Judicial Review2 asserts that the State Engineer's Decision contains findings that are not supported by the evidence in the record and exceed the scope of the proceeding, and legal conclusions that are arbitrary and contrary to law. 3 The Priestleys filed an Answer. The State Engineer filed a Motion to Dismiss that claimed the district court lacked jurisdiction. Cossey explained in their Response to the State Engineer's Motion to Dismiss Plaintiffs' Amended Complaint for Lack of Subject Matter Jurisdiction and in their Motion for Determination of a Question of Law that the issues before the court did not concern a water matter or the decision to grant or deny a well permit.

The only issues preserved for appeal were those set forth in Cossey's Notice of Exceptions. C.R.S. §24-4-105(14)(c). None of the parties in the administrative hearing took exception to the hearing officer's affirmation of Cossey's well permits and the timeframe for challenging said permits has expired. Yet, the district court found that because the decision on review was entered in an administrative proceeding that was commenced for the purpose of revoking well

2 Cossey's filed an Amended Complaint to satisfy concerns raised by counsel for the Office of the State Engineer regarding potential confusion with referencing both Rule 106 and C.R.S. § 24-4-106 in the original complaint.

3 The Amended Complaint articulates a more detailed factual basis and description of Cossey's claims.

permits, the water court had exclusive jurisdiction.

B. The Judgment, Order or Parts Being Appealed and a Statement Indicating the Basis for the Appellate Court's Jurisdiction:

Cossey appeals the Order Re: State Engineer's Motion to Dismiss Plaintiffs' Amended Complaint for Judicial Review of Agency Action, which was entered on January 9, 2023. Cossey appeals the district court's determination that Cossey's exclusive remedy is in the water court and that the issues raised in the Amended Complaint are "water matters" because they are ancillary to the approval of a well permit. Cossey's appeals the district court's dismissal for lack of jurisdiction. This Court has jurisdiction pursuant to C.R.S. § 13-4-102, and C.R.S. § 24-4-105(9).

C. Whether the Judgment or Order Resolved All Issues Pending Before the Trial Court, Including Attorneys' Fees and Costs:

The Order Re: The State Engineer's Motion to Dismiss Plaintiffs' Amended Complaint for Judicial Review of Agency Action resolved all issues pending before the district court.

D. Whether the Judgment Was Made Final for Purposes of An Appeal Pursuant to CRCP 54(b):

Yes.

E. The Date the Judgment or Order was Entered:

January 9, 2023

F. Whether There Were Any Extensions Granted to File Any Motions for Post-Trial Relief:

No.

G. The Date Any Motion for Post-Trial Relief Was Filed:

None.

H. The Date Any Motion For Post-Trial Relief Was Denied or Deemed Denied Under CRCP 59(j):

None.

I. The Date the Notice of Intent to Seek Appellate Review was Filed with the District Court Pursuant to Section 24-4-106(9), C.R.S.

February 11, 2023

J. Whether There Were Any Extensions Granted to File Any Notice(s) of Appeal:

No.

II. AN ADVISORY LISTING OF THE ISSUES TO BE RAISED ON APPEAL

A. Whether the trial court incorrectly applied § 37-92-602, C.R.S., as providing the exclusive means for appealing the Decision of the State Engineer.

B. Whether the trial court erred by finding that Cossey's sole remedy is in the water court.

C. Whether the trial court incorrectly determined § 37-92-602, C.R.S., is inconsistent or conflicts with Colorado Administrative Procedure Act.

D. Whether the trial court erred in finding that the matters in Cossey's Amended Complaint are water matters.

E. Whether the trial court erred in dismissing the Amended Complaint.

III. WHETHER A TRANSCRIPT OF ANY PROCEEDING TAKEN BEFORE THE LOWER COURT OR ADMINISTRAITVE AGENCY IS NECESSARY TO RESOLVE THE ISSUES RAISED ON APPEAL

A transcript of the oral argument on Cossey's exceptions, which occurred in the administrative action, is necessary to resolve the issues raised on appeal. The lower court did not hold a hearing.

IV. NAMES, ADDRESSES, TELEPHONE NUMBERS, AND REGISTRATION NUMBERS OF COUNSEL FOR THE PARTIES

Counsel for Cossey: Amy N. Huff, Reg. No. 34897, (amy@waterland-law.com), COLORADO WATER & LAND LAW, LLC, 679 E. 2nd Avenue, Ste 11B, Durango, Colorado 81301. (970) 403-1770.

Counsel for the Priestleys: Nathan A. Keever, Reg. No. 24630, (keever@dwmk.com), DUFFORD WALDECK, 744 Horizon Court, #300, Grand Junction, Colorado 81506. (970) 241-5500.

Counsel for the State Engineer, the Division of Water Resources, and Kevin Rein: Bruce C. Walters, Assistant Attorney General, Reg. No. 50235, (bruce.walters@coag.gov), Office of the Attorney General, 1300 Broadway, 7th Floor, Denver, Colorado 80203. (720) 508-6255.

V. AN APPENDIX CONTAINING A COPY OF THE JUDGMENT OR ORDER BEING APPEALED.

The orders referenced herein are attached.

Exhibit A – Order Re: The State Engineers Motion to Dismiss Plaintiffs' Amended Complaint for Judicial Review of Agency Action

Exhibit B – Decision of the State Engineer

Exhibit C- Order Granting Motion for Summary Judgment

VI. CERTIFICATE OF SERVICE

Attached below is a Certificate of Service in compliance with CAR 25, which shows that service of the Notice of Appeal (with attachments) was made on the following via ICCES:

Nathan Keever, Reg. No. 24630
Bruce Walters, Reg. No. 50235

This Notice of Appeal was also filed with the District Court, Montrose County, through ICCES and the electronic procedures authorized by CRCP 121, Sec 1-26.

Respectfully submitted this 11th day of February 2023.

COLORADO WATER & LAND LAW, LLC
*____/s/ Amy N. Huff*_____
By: Amy N. Huff, #34897

CERTIFICATE OF SERVICE

The undersigned certifies that, on this 11th day of February, 2023 a true and correct copy of the foregoing was served on the following via ICCES:

Nathan Keever, Reg. No. 24630
Bruce Walters, Reg. No. 50235

The undersigned also certifies that, on this 11th day of February, 2023, a true and correct copy of the foregoing was filed with the District Court, Montrose County.

____*/s/ Amy N. Huff*_____
Amy N. Huff

Pursuant to CRCP 121, a duly signed copy of the foregoing is available for inspection at the office of Colorado Water & Land Law, LLC

DISTRICT COURT, WATER DIVISION 4 1200 North Grand Avenue Montrose, Colorado 81401	
PAMELA BARRETT and RAYMOND M. COSSEY, Plaintiffs, v. DIVISION OF WATER RESOURCES, STATE OF COLORADO, et al., Defendants.	DATE FILED April 18, 2023 9:39 AM CASE NUMBER: 2023CW3000 COURT USE ONLY
	Case Number: 23CW3000 Division: 4
ORDER RE: MOTION TO DISMISS	

This matter is before the Court on a motion to dismiss filed by the Priestley Defendants. Having reviewed the parties' briefs, the file and relevant authorities, the Court enters this order.

I. FACTS & HISTORY

Plaintiffs seek judicial review of the State Engineer's order approving their thirteen exempt well permit applications (hereinafter "Cossey Permits"). Plaintiffs filed their applications under section 37-92-602(3), C.R.S., and the Priestley Defendants filed an administrative complaint challenging the applications and seeking revocation of the Cossey Permits. The State Engineer assigned the matter to a hearing officer and Plaintiffs moved for summary judgment in their favor regarding the Priestleys' complaint while also requesting an award for sanctions and costs. The hearing officer granted Plaintiffs' summary judgment motion,

dismissed the Priestleys' complaint, and confirmed the Cossey Permits. But the hearing officer's order did not address Plaintiffs' request for sanctions.

Plaintiffs appealed the hearing officer's order to the State Engineer, claiming that the hearing officer erred by not awarding them sanctions and costs related to the dismissal of the Priestleys' complaint. Plaintiffs also asked the State Engineer to amend certain portions of the hearing officer's decision, specifically relating to the legal jurisdiction of the Norwood Water Commission ("NWC"). The State Engineer issued a written order ("SEO Decision") affirming all portions of the hearing officer's decision and denying Plaintiffs' request for sanctions and costs.

The SEO Decision was issued on September 15, 2022. On October 13, 2022, Plaintiffs first filed for judicial review under the APA, section 24-4-104(9), C.R.S., in Montrose County case no. 22CV30077. That case was dismissed without prejudice because Plaintiffs' complaint for judicial review concerns a "water matter" that must be filed in water court under section 37-92-602(3)(f), C.R.S. Thereafter, Plaintiff filed the present action on January 19, 2023.

The Priestleys argue that the Court lacks jurisdiction because this action is untimely. In relevant part, section 37-92-602(3)(f) states: "[a]ny person aggrieved by a decision of the state engineer granting or denying an application filed under this subsection (3) may within thirty-five days after such decision file a petition for review with the water clerk of the water division in which the well is located." There is no dispute that Plaintiffs filed their first complaint in 22CV30077 within 35 days of the SEO Decision, but they filed this action after the statutory deadline. Plaintiffs contest the Priestleys' motion.

II. ANALYSIS

The Priestleys maintain that the time limitation is jurisdictional because section 37-92-602(3)(f) contains a "non-claim" provision that automatically strips a court of subject matter jurisdiction if the complaint is untimely. A non-claim statute usually contains language stating that "(1) the failure to file a claim within the statutory period bars the claim, (2) a timely filing is a

condition to the existence of the claim itself, or (3) the failure to file within the statutory period 'deprives courts of jurisdiction over such a claim.'" *UMB Bank, N.A. v. Landmark Towers Assoc., Inc.*, 408 P.3d 836, 841 (Colo. 2017). This language distinguishes a non-claim statute from a statute of limitations such that the former is not subject to any equitable exceptions such as waiver, tolling or estoppel. *Id*.

But section 37-92-602(3)(f) does not contain any of the typical language of a non-claim statute. It simply states that an aggrieved party may file a petition for review within 35 days after the administrative decision. The statute does not state that an untimely filing bars the claim or that it deprives a court of jurisdiction. Thus, the Court finds that section 37-92-602(3)(f) is a statute of limitations and not a non-claim provision. This means that Plaintiffs may raise any judicially recognized exceptions that apply to statutes of limitations.

Plaintiffs contend that they have substantially complied with the limitations period because they filed their first complaint in 22CV30077 within 35 days of the SEO Decision. Whether a statutory requirement is subject to strict or substantial compliance is a matter of statutory construction. *Wainscott v. Centura Health Corp.*, 351 P.3d 513, 520 (Colo. App. 2014). For purposes of this motion, the Court will assume that section 37-92-602(3)(f) is subject to a substantial compliance standard. While strict compliance leaves no margin for error, substantial compliance "is less than absolute, but still requires a significant level of conformity." *Id*. This principal must be balanced with the general purpose of a statute of limitations which is to promote justice, avoid unnecessary delays, and prevent the litigation of stale claims. *Morrison v. Goff*, 91 P.3d 1050, 1052 (Colo. 2004).

The Court finds that Plaintiffs have not substantially complied with the statute of limitations. Plaintiffs improperly filed their complaint in 22CV30077 under section 24-4-106, C.R.S., even though section 37-92-602(3)(f) specifically applies to a petition for judicial review concerning the issuance of a well permit. Subsection (3)(f) expressly states that a petition for review must be filed "with the water clerk of the water division in which the well is located." The

statute places all parties on notice that the water court is the proper venue for challenging a well permit decision. Instead, Plaintiffs filed their first complaint in the wrong division which resulted in a dismissal. This caused unnecessary delay and expense to the defending parties.

In general, courts may toll a statute of limitations "where the defendant's wrongful conduct prevented the plaintiff from asserting his or her claims in a timely manner," or when "extraordinary circumstances make it impossible for the plaintiff to file his or her claims within the statutory period." *Dean Witter Reynolds, Inc. v. Hartman*, 911 P.2d 1094, 1096-7 (Colo. 1996). Neither of those exceptions apply here because the late filing was solely caused by Plaintiffs' neglect. Furthermore, Plaintiffs have cited no authorities that would allow a court to set aside a statute of limitations to excuse a party's own neglect.

Accordingly, there is no dispute that this action was filed well after the statute of limitations expired. The filing of Plaintiffs' first complaint in 22CV30077 did not toll the statute of limitations, nor did Plaintiffs substantially comply with the statute of limitations. Therefore, the complaint is time barred and will be dismissed.

Based on the foregoing, IT IS ORDERED that the Priestleys' motion to dismiss is granted. The complaint is dismissed as time barred.

Dated this ** day of April 2023.

BY THE COURT:

J. Steven Patrick
District Court Judge

cc: e-filed to parties of record

COLORADO SUPREME COURT Ralph Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203 Phone No. 720-625-5150 DISTRICT COURT, WATER DIVISION NO. 4 Hon. J. Steven Patrick District Court Judge Case No. 23CW3000 **Plaintiffs/Appellants:** PAMELA BARRETT and RAYMOND M. COSSEY v. **Defendants/Appellees:** DIVISION OF WATER RESOURCES, STATE OF COLORADO; OFFICE OF THE STATE ENGINEER; KEVIN G. REIN, P.E., as STATE ENGINEER, STATE OF COLORADO; HAROLD PRIESTLEY; DRUE PRIESTLEY, and the HDP REVOCABLE TRUST	DATE FILED June 1, 2023 3:10 PM FILING ID: 37A2FA83CBEB5 CASE NUMBER: 2023SA145 ▲COURT USE ONLY▲
Attorney for Appellants: Amy N. Huff COLORADO WATER & LAND LAW, LLC 679 E. 2ND Avenue, Ste 11B Durango, CO 81301 Reg. No. 34897 **Telephone No.:** (970) 403-1770 **Email**: amy@waterland-law.com	Case No: _____ Div.: Ctrm.:
NOTICE OF APPEAL	

In accordance with Rule 3 and 4 of the Colorado Appellate Rules of the Colorado Revised Statutes, PAMELA BARRETT and RAYMOND M. COSSEY (collectively "Cossey"), by and through their undersigned counsel, Amy N. Huff, Colorado Water & Land Law, LLC, hereby provide notice to the Defendants in Case No. 23CW30077, District Court, Water Division No. 4, and to the Colorado Supreme Court that Cossey intends to appeal the water court's ORDER RE: MOTION TO DISMISS in Case No. 2023CW3000, District Court, Water Division No. 4.

I. TRIAL COURT INFORMATION

COURT: District Court, Water Division No. 4

COUNTY: Montrose County

JUDGE'S NAME: Hon. J. Steven Patrick

PARTIES INITIATING THE APPEAL: Pamela Barrett and Raymond M. Cossey

TRIAL COURT CASE NUMBER: 2023CW30000

II. BRIEF DESCRIPTION OF NATURE OF CASE

A. Statement of Controversy:

Cossey appeals the water court's dismissal of their Complaint for Judicial Review of a Decision of the State Engineer, which affirmed without modification the hearing officer's order in Administrative Action No. 21SE08. Administrative Action No. 21SE08 was initiated by the Priestleys'1 Complaint to Revoke Well Permit Nos. 31172-321180, and 321185-321187 (the "Cossey Permits"). The Cossey Permits were issued as exempt from priority administration under Section 37-92-602 of the Water Right Determination and Administration Act. During the Administrative action, the Priestleys claimed to own water rights that belonged to their neighbor, made false statements while under oath, and did not attempt to comply with their disclosures obligations or meet their burden of proof.

Based on the undisputed facts, the hearing officer summarily held that the Cossey Permits were valid, and that the Priestley did not present any evidence of injury. The hearing officer's order, however, contained statements of fact and conclusions of law that were not supported by the record and were contrary to law. Cossey's exceptions asserted that the hearing officer wrongly: (i) applied non-binding guidance as a legal standard; (ii) cloaked the Norwood Water Commission with ultra vires authority to veto certain well permit applications; (iii) found that

1 The Priestleys collectively refers to Harold Priestley, Drue Priestley, and the HDP Revocable Trust.

the Priestley's complaint did not lack substantial justification; and (iv) denied Cossey's request for damages, attorney fees, and costs. The State Engineer rejected Cossey's exceptions and affirmed the hearing officer's order in its entirety.

Cossey timely appealed the Decision of the State Engineer to the District Court, Montrose County, under the Colorado Administrative Procedure Act (C.R.S. § 24-4-106(4). The Montrose County District Court found that Cossey's appeal of the decision of the State Engineer was within the exclusive jurisdiction of the water court and dismissed Cossey's case (Case No. 22CV30077) without prejudice. Cossey then filed their Complaint for Judicial Review in the District Court, Water Division No. 4 (Case No. 23CW3000). The water court found that Cossey's complaint was untimely and dismissed it.

B. The Judgment, Order or Parts Being Appealed and a Statement Indicating the Basis for the Appellate Court's Jurisdiction:

Cossey appeals the Order Re: Motion to Dismiss, which was entered on April 18, 2023. Cossey appeals the water court's determination that Cossey improperly filed their complaint in 22CV30077 under section 24-4-106, C.R.S.,

that Cossey's complaint must be filed under C.R.S. § 37-92-602(3)(f), that Cossey failed to substantially comply with the statute of limitations in C.R.S. § 37-92-602(3)(f), and that Cossey's complaint is time barred. This Court has jurisdiction pursuant to C.R.S. § 13-4-102(1)(d); See *Meridian Ranch Metro. Dist. v. Colorado Ground Water Comm'n*, 240 P.3d 382, 385 (Colo. App. 2009).

C. Whether the Judgment or Order Resolved All Issues Pending Before the Trial Court, Including Attorneys' Fees and Costs: The Order Re: Motion to Dismiss resolved all issues.

D. Whether the Judgment Was Made Final for Purposes of An Appeal Pursuant to CRCP 54(b): Yes.

E. The Date the Judgment or Order was Entered: April 18, 2023

F. Whether There Were Any Extensions Granted to File Any Motions for Post-Trial Relief: No.

G. The Date Any Motion for Post-Trial Relief Was Filed: None.

H. The Date Any Motion For Post-Trial Relief Was Denied or Deemed Denied Under CRCP 59(j): None.

I. Whether There Were Any Extensions Granted to File Any Notice(s) of Appeal: No.

III. AN ADVISORY LISTING OF THE ISSUES TO BE RAISED ON APPEAL

A. Whether the water court incorrectly determined that Cossey's complaint was improperly filed in the district court, instead of the water court.

B. Whether Cossey substantially complied with the statutory procedure for filing an appeal the State Engineer's decision.

C. Whether Cossey's complaint is time barred.

IV. WHETHER THE TRANSCRIPT OF ANY EVIDENCE TAKEN BEFORE THE TRIAL COURT IS NECESSARY TO RESOLVE THE ISSUES RAISED ON APPEAL

No. No evidence was presented to the district court. The district court did not hold a hearing and there are no transcripts.

V. WHETHER THE ORDER ON REVIEW WAS ISSUED BY A MAGISTRATE

No.

VI. NAMES, ADDRESSES, TELEPHONE NUMBERS, AND REGISTRATION NUMBERS OF COUNSEL FOR THE PARTIES

Counsel for Cossey: Amy N. Huff, Reg. No. 34897, (amy@waterland-law.com), COLORADO WATER & LAND LAW, LLC, 679 E. 2nd Avenue, Ste 11B, Durango, Colorado 81301. (970) 403-1770.

Counsel for the Priestley: Nathan A. Keever, Reg. No. 24630, (keever@dwmk.com), DUFFORD WALDECK, 744 Horizon Court, #300, Grand Junction, Colorado 81506

Counsel for the State Engineer, the Division of Water Resources, and Kevin Rein: Bruce C. Walters, Assistant Attorney General, Reg. No. 50235,

(bruce.walters@coag.gov), Office of the Attorney General, 1300 Broadway, 7th Floor, Denver, Colorado 80203. (720) 508-6255

VII. AN APPENDIX CONTAINING A COPY OF THE JUDGMENT OR ORDER BEING APPEALED.

The order referenced herein is attached.

VIII. CERTIFICATE OF SERVICE

Attached below is a Certificate of Service in compliance with CAR 25, which shows that service of the Notice of Appeal (with attachments) was made on the following via ICCES:

Nathan Keever, Reg. No. 24630
Bruce Walters, Reg. No. 50235

This Notice of Appeal was also filed with the District Court, Water Division No. 4, through ICCES and the electronic procedures authorized by CRCP 121, Sec 1-26.

Respectfully submitted this 1st day of June 2023.

COLORADO WATER & LAND LAW, LLC

_____*/s/ Amy N. Huff*_____
By: Amy N. Huff, #34897

CERTIFICATE OF SERVICE

The undersigned certifies that, on this 1st day of June 2023 a true and correct copy of the foregoing was served on the following via ICCES:

Nathan Keever, Reg. No. 24630
Bruce Walters, Reg. No. 50235

The undersigned also certifies that, on this 1st day of June 2023, a true and correct copy of the foregoing was filed with the District Court, Water Division No. 4.

____*/s/ Amy N. Huff*_____
Amy N. Huff

Pursuant to CRCP 121, a duly signed copy of the foregoing is available for inspection at the office of Colorado Water & Land Law, LLC

The summaries of the Colorado Court of Appeals published opinions constitute no part of the opinion of the division but have been prepared by the division for the convenience of the reader. The summaries may not be cited or relied upon as they are not the official language of the division. Any discrepancy between the language in the summary and in the opinion should be resolved in favor of the language in the opinion.

DATE FILED
February 29, 2024
CASE NUMBER: 2023CA243

SUMMARY
February 29, 2024

2024COA23

No. 23CA0243, *Barrett v. Division of Water* — Water and Irrigation — Water Right Determintion and Administration Act of 1969 — Water Judges — Jurisdiction — Water Matters

A division of the court of appeals considers whether the claims at issue are "water matters" within the meaning of section 37-92-203(1), C.R.S. 2023, such that the water court has exclusive jurisdiction over the claims. The division holds that a claim seeking interpretation of the Water Right Determination and Administration Act of 1969 (the Act), sections 37-92-101 to -602, C.R.S. 2023, is inherently a "water matter" because it fundamentally involves determinations regarding the right to use water, the quantification of a water right, or a change in a previously decreed water right.

Because certain of the plaintiffs' claims involve interpretation of the Act as it pertains to exempt well permits, the division

concludes that those claims implicate the overall management of the state's water resources and are thus water matters. Accordingly, the water court has exclusive jurisdiction over those claims, as well as ancillary jurisdiction over the plaintiffs' other claims.

For these reasons, the division affirms the district court's dismissal of the plaintiffs' claims for lack of subject matter jurisdiction under C.R.C.P. 12(b)(1).

COLORADO COURT OF APPEALS **2024COA23**

Court of Appeals No. 23CA0243
Montrose County District Court No. 22CV30077
Honorable J. Steven Patrick, Judge

Pamela Barrett and Raymond M. Cossey,

Plaintiffs-Appellants,

v.

Division of Water Resources, State of Colorado; Office of the State Engineer; Kevin Rein, P.E., as State Engineer, State of Colorado; Harold Priestley; Drue Priestley; and HDP Revocable Trust,

Defendants-Appellees.

JUDGMENT AFFIRMED

Division VII
Opinion by JUDGE LIPINSKY
Tow and Grove, JJ., concur

Announced February 29, 2024

Colorado WATER & LAND LAW, LLC, Amy N. Huff, Durango, Colorado, for Plaintiffs-Appellants

Philip J. Weiser, Attorney General, Christopher R. Stork, Senior Assistant Attorney General, Mackenzie T. Herman, Assistant Attorney General, Denver, Colorado, for Defendants-Appellees Division of Water Resources, State of Colorado; Office of the State Engineer; Kevin Rein, P.E., as State Engineer, State of Colorado

Dufford Waldeck, Nathan A. Keever, Grand Junction, Colorado, for Defendants-Appellees Harold Priestley; Drue Priestley; and HDP Revocable Trust

¶ 1 Unlike the water-rich eastern states, Colorado, with its semi-arid climate, "has always faced" issues concerning the use of its water resources. *Gallegos v. Colo. Ground Water Comm'n*, 147 P.3d 20, 27 (Colo. 2006). For this reason, our General Assembly enacted legislation — including legislation establishing separate water courts — to resolve conflicts over the right to use water. The Water Right Determination and Administration Act of 1969 (the Water Right Act), sections 37-92-101 to -602, C.R.S. 2023, provides a framework for "implementing the constitutional right to divert the unappropriated waters of any natural stream to beneficial uses." *State ex rel. Danielson v. Vickroy*, 627 P.2d 752, 757 (Colo. 1981). Among other provisions, the Water Right Act created "the current system of water divisions and [water] courts" and vested the State Engineer and Division Engineers with administrative duties. *Simpson v. Bijou Irrigation Co.*, 69 P.3d 50, 60 (Colo. 2003). The Colorado water courts retain exclusive jurisdiction over all "water matters." *Tonko v. Mallow*, 154 P.3d 397, 404 (Colo. 2007); *see* § 37-92-203(1), C.R.S. 2023.

¶ 2 The sole, but important, issue in this case is whether the claims at issue are water matters over which only a water court can

exercise jurisdiction. We conclude, as did the district court, that the claims are water matters.

¶ 3 Plaintiffs, Pamela Barrett and Raymond M. Cossey (jointly, Cossey), appeal the judgment of the district court dismissing their State Administrative Procedure Act (APA) action against defendants, the Division of Water Resources, the Office of the State Engineer, Kevin Rein in his capacity as State Engineer, Harold Priestley, Drue Priestley, and the HDP Revocable Trust. We affirm.

I. Background and Procedural History

¶ 4 Cossey owns thirteen exempt well permits (the Cossey permits). The well permits are licenses issued by the Office of the State Engineer, also known as the Division of Water Resources (the state engineer), under section 37-92-602(3), C.R.S. 2023 (the Exempt Well Statute). The Exempt Well Statute is part of the Water Right Act. The Cossey permits authorize Cossey to construct and use thirteen residential wells. Those wells are exempt from certain of the administrative requirements of the Water Right Act. *See* § 37-92-602.

¶ 5 Harold Priestley, Drue Priestley, and the HDP Revocable Trust (collectively, the Priestleys) filed an administrative complaint (the

Priestley complaint) with the state engineer pursuant to section 24-4-104(5), C.R.S. 2023, which is part of the APA's licensing provisions.

¶ 6 Section 24-4-104(5) states, in relevant part, that "[a] proceeding for the revocation, suspension, annulment, limitation, or modification of a previously issued license shall be commenced . . . by the filing with the agency of a written complaint." § 24-4-104(5). In their complaint, the Priestleys sought revocation of the Cossey permits on the grounds that Cossey had allegedly improperly completed the applications for those permits.

¶ 7 The state engineer assigned the Priestleys' case to a hearing officer, who granted summary judgment to Cossey and dismissed the Priestley complaint. In the "Order Granting Motion for Summary Judgment" (the order), the hearing officer expressly found that the Cossey permits are "valid and in full force and effect." However, the hearing officer denied Cossey's request for damages, attorney fees, or other sanctions against the Priestleys because the hearing officer did "not find the Priestleys' complaint to be frivolous or vexatious," as Cossey had argued.

¶ 8 Although Cossey agreed with the hearing officer's determination regarding the validity of the Cossey permits, Cossey disagreed with other portions of the order. Cossey appealed those portions by submitting a "Notice of Exceptions to Order Granting Summary Judgment" (the exceptions) to the state engineer pursuant to section 24-4-105(14)(a)(II), C.R.S. 2023, of the APA.

¶ 9 In the exceptions, Cossey requested that the state engineer revise the order to "(i) clarify the controlling law; (ii) accurately represent the Priestleys' misrepresentations; (iii) correct statements regarding the [Norwood Water Commission (NWC)]; and (iv) award Cossey damages, costs, and attorney fees." (Because we conclude that we lack subject matter jurisdiction over this dispute, we do not address the hearing officer's statements regarding the NWC that Cossey challenges.) The state engineer denied Cossey's request, concluding that "evidence in the record supports the findings and conclusions of the hearing officer to which Cossey take[s] exception" and affirming the order "on those points" (the state engineer's decision).

¶ 10 Cossey then filed a complaint for judicial review of the state engineer's decision (the Cossey complaint) in district court. Cossey

asserted that the district court had subject matter jurisdiction over the claims pleaded in the Cossey complaint under section 24-4-106, C.R.S. 2023 — the judicial review provision of the APA. Cossey alleged that the order and the state engineer's decision are "arbitrary and capricious, constitute an abuse of discretion," are "based upon finding[s] of fact that are clearly erroneous on the whole record," and are "contrary to law."

¶ 11 The district court dismissed the Cossey complaint for lack of subject matter jurisdiction under C.R.C.P. 12(b)(1). The district court concluded that the Cossey complaint "must be filed in water court because it involves a water matter." Cossey appeals the district court's dismissal of the Cossey complaint.

II. Analysis

¶ 12 The single question before us is whether the claims pleaded in the Cossey complaint are water matters. If so, the water court has exclusive jurisdiction over those claims pursuant to section 37-92-203(1). We conclude that, because certain of Cossey's claims are water matters, the water court has exclusive jurisdiction over all the claims pleaded in the Cossey complaint.

A. Standard of Review and Relevant Law

¶ 13 "When there are no disputed facts, . . . the determination of a court's subject matter jurisdiction presents a question of law which is reviewed de novo. Statutory interpretation is likewise a question of law subject to de novo review." *Tulips Invs., LLC v. State ex rel. Suthers*, 2015 CO 1, ¶ 11, 340 P.3d 1126, 1131 (citation omitted).

¶ 14 District courts are courts of general jurisdiction, having original jurisdiction in all civil matters "except as otherwise provided" and appellate jurisdiction as "prescribed by law." Colo. Const. art. VI, § 9(1). Under the APA, the district courts have jurisdiction to review final agency actions. *See* § 24-4-106(2), (4).

¶ 15 The APA generally specifies "the procedures that must be followed in state administrative proceedings." *Ricchio v. Colo. Sec. Comm'r*, 2022 COA 35, ¶ 1, 512 P.3d 1058, 1059. It allows "any person adversely affected or aggrieved by any agency action" to "commence an action for judicial review in the district court within thirty-five days after such agency action becomes effective." § 24-4-106(4). However, an agency action is not subject to judicial review in a district court if a statute governing the proceedings in a specific agency provides otherwise. *See* § 24-4-107, C.R.S. 2023

("[W]here there is a conflict between [the APA] and a specific statutory provision relating to a specific agency, such specific statutory provision shall control as to such agency.").

¶ 16 The water courts have "exclusive jurisdiction of water matters . . . and no judge other than the one designated as a water judge shall act with respect to water matters." § 37-92-203(1); *see also V Bar Ranch LLC v. Cotten*, 233 P.3d 1200, 1206 (Colo. 2010) ("[T]he General Assembly has . . . chosen to delegate certain administrative actions involving 'water matters' to the State Engineer."). For this reason, jurisdiction over appeals of the state engineer's decisions involving water matters is "proper in the water court rather than in the district court." *V Bar Ranch LLC*, 233 P.3d at 1207.

¶ 17 An action is a "water matter within the exclusive jurisdiction of the water judge" if it implicates the right to *use* water, the quantification of a water right, or a change in a previously decreed water right. *Farmers Reservoir & Irrigation Co. v. Pub. Serv. Co. of Colo.*, 2022 CO 22, ¶ 61, 526 P.3d 161, 175 (quoting *Crystal Lakes Water & Sewer Ass'n v. Backlund*, 908 P.2d 534, 540 (Colo. 1996)). "The overall management of the state's water resources, including issuance of well permits and distribution of water in accordance

with court-issued decrees," constitutes "involvement with the issues related to 'the right to use water and the quantification of . . . water right[s],'" *V Bar Ranch LLC*, 233 P.3d at 1206 (quoting *Tonko*, 154 P.3d at 404), and is therefore a water matter. *Id.* at 1205. Thus, the APA and certain provisions of the Water Right Act empower the state engineer to rule on petitions seeking the revocation or modification of well permits, such proceedings involve water matters, and parties dissatisfied with the state engineer's rulings on such petitions must appeal to the water court. *Id.*

¶ 18 In certain circumstances, the water courts may also adjudicate claims that do not fall squarely within the definition of "water matter." "In addition to having exclusive jurisdiction over water matters, a water court is also a district court with general jurisdiction." *Crystal Lakes Water & Sewer Ass'n*, 908 P.2d at 543. Accordingly, "[a]ncillary jurisdiction over non-water matters exists in Colorado water courts where the ancillary claims are 'interrelated with the use of water or . . . directly affect the outcome of water matters within the exclusive jurisdiction of the water court.'" *Glover v. Serratoga Falls LLC*, 2021 CO 77, ¶ 22, 498 P.3d 1106, 1114 (quoting *Kobobel v. Colo. Dep't of Nat. Res.*, 249 P.3d 1127, 1132

(Colo. 2011)). "Put differently, once a water court has jurisdiction over a water matter, it maintains exclusive jurisdiction over other subjects and matters considered ancillary or attendant to the original matter." *Farmers Reservoir & Irrigation Co.*, ¶ 62, 526 P.3d at 175.

¶ 19 Ancillary jurisdiction advances judicial efficiency because "requiring rulings in two different actions to 'bring about [a just and final] result' approaches absurdity.'" *Glover*, ¶ 22, 498 P.3d at 1114 (quoting *Crystal Lakes*, 908 P.2d at 543-44). However, if a water court dismisses all the claims that are water matters in a case, the court loses jurisdiction over the remaining claims, which can no longer be deemed ancillary to water matter claims. *See Sheek v. Brooks*, 2019 CO 32M, ¶ 22, 440 P.3d 1145, 1149; *see also Woo v. El Paso Cnty. Sheriff's Off.*, 2022 CO 56, ¶ 38, 528 P.3d 899, 909 ("Ancillary jurisdiction is not a substitute for subject matter jurisdiction; it is a supplement to subject matter jurisdiction."); *cf. United States v. Wahi*, 850 F.3d 296, 300 (7th Cir. 2017) ("The term 'ancillary jurisdiction' refers to the court's power to hear claims that are closely linked to other claims over which the court's jurisdiction is otherwise secure."); *Jenkins v. Weinshienk*, 670 F.2d 915, 918

(10th Cir. 1982) ("Ancillary jurisdiction rests on the premise that a . . . court acquires jurisdiction of a case or controversy in its entirety. Incident to the disposition of the principal issues before it, a court may decide collateral matters necessary to render complete justice."). Under these circumstances, a water court must dismiss the erstwhile ancillary claims. *See Sheek*, ¶ 20, 440 P.3d at 1149.

¶ 20 When determining whether a court has subject matter jurisdiction over a claim, "[w]e are not bound by the form in which the plaintiff asserts [the] claim, but rather it is the facts alleged and the relief requested that decide the substance of a claim, which in turn is determinative of the existence of subject matter jurisdiction." *Trans Shuttle, Inc. v. Pub. Utils. Comm'n*, 58 P.3d 47, 50 (Colo. 2002) (quoting *City of Boulder v. Pub. Serv. Co. of Colo.*, 996 P.2d 198, 203 (Colo. App. 1999)).

B. The District Court Lacked Jurisdiction Over the Claims Pleaded in the Cossey Complaint Because Some of Those Claims Are Water Matters

¶ 21 The essence of Cossey's argument is that the district court could exercise subject matter jurisdiction over the claims pleaded in the Cossey complaint because those claims were limited to the

issues addressed in the exceptions, and those claims are not water matters. We are not persuaded.

¶ 22 In the exceptions, Cossey listed four exceptions to the state engineer's decision: (1) "[i]njury is the only legal standard for evaluating an exempt well permit; Guideline 2003-5 is non-binding and therefore irrelevant"; (2) the "Priestleys' objection was based on lies and speculation"; (3) contrary to a prior stipulated water court decree, the boundaries of the NWC's authority do not extend beyond the Town of Norwood's municipal boundaries; and (4) because the Priestley complaint "lacked substantial justification," Cossey is "entitled to an award of damages, costs, and attorney fees." (For the reasons explained above, we need not provide detailed explanations of those exemptions, as we consider only their general subject areas.)

¶ 23 In the Cossey complaint, Cossey sought an order

> A. Overruling the [order and state engineer's decision];
>
> B. Holding that material injury is the only legal standard for issuing a well permit;
>
> C. Determining that Guideline 2003-5 and/or Subsection (6) of [the Exempt Well

> Statute] cannot be the basis for denying or revoking a well permit;
>
> D. Finding that the [state engineer's] acquiescence to the NWC's claimed status as a legal water supplier with a service area extending beyond the territorial boundaries of [the Town of Norwood] is arbitrary, capricious, an abuse of discretion, a denial of a statutory right, and contrary to law;
>
> E. Declaring that the [Priestley complaint] was groundless, frivolous, and vexatious;
>
> F. Finding that the [state engineer's] determination that the Priestleys had a legal basis for filing and maintaining the [Priestley complaint] was an abuse of discretion, arbitrary and capricious, and not based upon the record;
>
> G. Holding that Cossey incurred damages as a result of the Priestley[s'] bad-faith actions;
>
> H. Awarding Cossey damages, attorney fees, costs, and sanctions; and
>
> I. All other relief [the district court] deems just and proper.

¶ 24 As far as we can discern from Cossey's arguments, exceptions (1) and (3) listed in the exceptions, and the correlating requests for relief B, C, and D in the Cossey complaint, involve water matters because they seek determinations regarding the "right to use

water." *Farmers Reservoir & Irrigation Co.*, ¶ 61, 526 P.3d at 175. This is so because

- resolution of exception (1) and request for relief B requires interpretation of the Exempt Well Statute;
- resolution of exception (1) and request for relief C requires interpretation of a guideline of the state engineer (Guideline 2003-5); and
- resolution of exception (3) and request for relief D requires interpretation of a water court decree that references the boundaries of NWC, which is a water commission.

¶ 25 Combined, these issues require determinations regarding how the interplay between the statute, guideline, and decree affects — in Cossey's words — the "legal standard for issuing" or "evaluating" a well permit. Indeed, in the exceptions, Cossey expressly asked the state engineer to "clarify the controlling law." A party's request for a determination of the legal standard for issuance of a well permit and for distribution of water in accordance with a court-issued decree constitutes a water matter because the request implicates

the "overall management of the state's water resources." *V Bar Ranch LLC*, 233 P.3d at 1206.

¶ 26 Moreover, we hold that a claim seeking interpretation of the Water Right Act is inherently a water matter, subject to the exclusive jurisdiction of the water courts, because it fundamentally involves "determinations regarding the right to use water, the quantification of a water right, or a change in a previously decreed water right." *Farmers Reservoir & Irrigation Co.*, ¶ 61, 526 P.3d at 175 (quoting *Tonko*, 154 P.3d at 404). We conclude that a water court is the proper forum for claims and issues requiring interpretation of the Water Right Act in light of such courts' specialized expertise in water law. *Cf. Crystal Lakes Water & Sewer Ass'n*, 908 P.2d at 542 (holding that the water court is the proper forum to define the scope of plans for augmentation that it previously decreed because the "specialized expertise of the water court is essential in determining whether wells are subject to a plan for augmentation").

¶ 27 Further, request for relief A in the Cossey complaint involves a water matter because it asks the district court to "overrul[e]" the order. As Cossey acknowledges, the order concerned the validity of

the Cossey permits, and thus the legal right to use water. *See V Bar Ranch LLC*, 233 P.3d at 1205 ("[P]etitions to revoke or modify well permits . . . constitute 'water matters' . . . .").

¶ 28 Because the exceptions involved water matters, Cossey needed to appeal the state engineer's decision to the water court, which had exclusive jurisdiction over the issues raised in the exceptions. And exercising jurisdiction over Cossey's water matter claims would have meant the water court had exclusive jurisdiction over the "other subjects and matters" contained in the exceptions — the Priestleys' conduct in filing their complaint and Cossey's entitlement to damages, costs, and attorney fees — because those issues are "ancillary or attendant" to the water matters. *Farmers Reservoir & Irrigation Co.*, ¶ 62, 526 P.3d at 175. Specifically, Cossey's entitlement to sanctions would depend, in part, on whether the Priestley complaint was frivolous, which, in turn, requires an evaluation of the merits of the Priestleys' request to revoke the Cossey permits — a water matter. Holding otherwise would produce the "absurd result" of requiring the parties to first litigate the water matters in a water court and then proceed to a district court to litigate "the same facts and significantly related

issues" underlying Cossey's prayer for sanctions, attorney fees, and costs. *Glover*, ¶ 24, 498 P.3d at 1114.

¶ 29 Accordingly, the district court did not err by dismissing the Cossey complaint for lack of subject matter jurisdiction. *Cf. Archuleta v. Gomez*, 140 P.3d 281, 284 (Colo. App. 2006) (concluding that the district court erred by exercising jurisdiction over a defense involving adverse possession of ditches because, although the issues underlying the defense were "within the jurisdiction of the district court, [they were] ancillary to the dispute regarding the use of the water and, thus, [were] . . . issue[s] that could properly be resolved by the water court").

¶ 30 Although Cossey filed the Cossey complaint under the judicial review provision of the APA, the nature of the relief sought determines whether the district court had subject matter jurisdiction. *See Trans Shuttle, Inc.*, 58 P.3d at 50. And because the relief Cossey sought involved interpretation of the Water Right Act as it pertains to exempt well permits, which is a water matter, the district court lacked jurisdiction. Thus, the water court had exclusive jurisdiction over the claims pleaded in the Cossey complaint.

III. Disposition

¶ 31 The judgment is affirmed.

JUDGE TOW and JUDGE GROVE concur.

EXHIBIT 10

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Gilbert M. Román,
Chief Judge

DATED: January 6, 2022

Notice to self-represented parties**: The Colorado Bar Association provides free volunteer attorneys in a small number of appellate cases. If you are representing yourself and meet the CBA low income qualifications, you may apply to the CBA to see if your case may be chosen for a free lawyer. Self-represented parties who are interested should visit the Appellate Pro Bono Program page at* ***http://www.cobar.org/appellate-pro-bono

COLORADO SUPREME COURT Ralph Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203 Phone No. 720-625-5150 Colorado Court of Appeals, Division VII Honorable Judge Lipinsky Case No. 2023CA0243 **Petitioners:** PAMELA BARRETT and RAYMOND M. COSSEY v. **Respondents:** DIVISION OF WATER RESOURCES, STATE OF COLORADO; OFFICE OF THE STATE ENGINEER; JASON ULLMANN, P.E., as STATE ENGINEER, STATE OF COLORADO; HAROLD PRIESTLEY; DRUE PRIESTLEY, and the HDP REVOCABLE TRUST	DATE FILED May 2, 2024 11:09 PM FILING ID: 9E207D2972048 CASE NUMBER: 2024SC250 ▲COURT USE ONLY▲
Attorney for Petitioners: Amy N. Huff COLORADO WATER & LAND LAW, LLC 679 E. 2ND Avenue, Ste 11B Durango, CO 81301 Reg. No. 34897 **Telephone No.:** (970) 403-1770 **Email**: amy@waterland-law.com	Case No: 24SC250 Div.: Ctrm.:
PETITION FOR WRIT OF CERTIORARI	

Petitioners, PAMELA BARRETT and RAYMOND M. COSSEY (collectively "Cossey" or "Petitioners"), by and through their attorney Amy N. Huff of Colorado Water & Land Law, LLC, hereby submit this PETITION FOR WRIT OF CERTIORARI.

CERTIFICATE OF COMPLIANCE

I, Amy N. Huff, attorney for Petitioners, hereby certify that this brief complies with all requirements of C.A.R. 32 and C.A.R. 53.

It contains no more than 3,800 words.

/s/ Amy N. Huff
Amy N. Huff, Reg. No. 34897

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ADVISORY LISTING OF ISSUES PRESENTED FOR REVIEW

1. **Whether the Court of Appeals erred in holding that the issues presented for judicial review constitute water matters.**

2. **Whether the District Court has subject matter jurisdiction to review decisions within an order issued by the State Engineer that are unrelated to the use of water.**

3. **Whether the Court of Appeals misconstrued precedent to expand the definition of a water matter.**

REFERENCE TO OFFICIAL OPINIONS AND JUDGMENTS

This Writ seeks review of:

(i) The Court of Appeals decision in Case No. 2024CA0243, entered on February 29, 2024;

(ii) The Order Re: The State Engineer's Motion to Dismiss Plaintiffs' Amended Complaint for Judicial Review in Case No. 2022CV3007, District Court, Montrose County, entered on January 9, 2023; and

(iii) The Decision of the State Engineer in Case No. 2021SE08, entered in on September 15, 2022.

*The foregoing Orders are attached hereto as an Appendix

BASIS FOR JURSIDICTION

This Court has jurisdiction over this action under C.A.R. 51.

The Order of the Court of Appeals in Case No. 23CA243, Division VII, was announced on February 29, 2024. Petitioners timely filed a Motion for Extension of Time for Filing a Petition for Writ of Certiorari Pursuant to C.A.R. 56 on April 11, 2024.

This Court entered an Order on April 22, 2024, that extended the time period for Petitioners to file this Petition, up to and including May 2, 2024.

PENDING CASES WITH THE SAME LEGAL ISSUES

This case and Case No. 23SA135 are based on the same underlying factual dispute. The controversy concerns Petitioners' right to judicial review of the Decision of the State Engineer entered in Case No. 21SE08, dated September 15, 2022.

Petitioners filed a complaint for judicial review in the District Court of Montrose County (Case No. 22CV30077) pursuant to the statutory directives of the Colorado Administrative Procedure Act ("APA"). Upon the motion of the State Engineer, the district court dismissed Petitioners' complaint, without prejudice, on the basis that it lacked subject matter jurisdiction.[1] The district court held that Petitioners must seek judicial review in the water court.

Petitioners promptly filed a complaint for judicial review in the District Court, Water Division No. 4 (Case No. 23CW3000). The water court dismissed Petitioners' complaint as untimely. Petitioners subsequently filed a Notice of Appeal directly to this Court (Case No. 23SA135).

This Petition seeks review of the Court of Appeals decision (Case No. 24CA23), which affirmed the district court's dismissal of Petitioners' complaint for lack of subject matter jurisdiction.

While Case No. 24CA23 was pending, Petitioners requested, and were

[1] Harold Priestley, Drue Priestley, and the HDP Revocable Trust, the parties that initiated the administrative action, admitted in their answer that the district court had subject matter jurisdiction.

granted, a stay in Case No. 23SA135. It is Petitioners' intent to consolidate Case No. 23SA135 with this action, if this writ is granted.

STATEMENT OF THE CASE

This case, coupled with Case No.23SA135, present unique issues of first impression. Accepting this Petition will provide the Court with an opportunity to clarify Colorado's juris prudence by refining case law interpreting the APA and the exclusive jurisdiction of the water courts.

A simple administrative complaint, which could have been expediently resolved, has spawned years of litigation and an unjust outcome. It started as a neighbor dispute whereby Harold Priestley, Drue Priestley, and the HDP Revocable Trust (collectively "the Priestleys") filed a complaint with the Office of the State Engineer to revoke their neighbors' (i.e., Cossey's) exempt well permits. The face of their complaint, which is nothing more than a few paragraphs, eludes that the basis of opposition is questionable. They merely allege that "the permits were not completed properly and the permitting was therefore incorrect."

At the end of the administrative action, it was clear that the Priestleys' complaint was a sham. They did not have a legal or factual basis for their complaint, and it was dismissed. They did, however, successfully use the administrative process to delay Cossey's development and require him to expend tens of thousands of dollars defending their bogus complaint to retain his lawfully issued well permits.

Petitioners ask this court to review the Opinion of the Court of Appeals, which affirmed the district court's dismissal of their complaint for judicial review of agency action.

As summarized above, the underlying action is a revocation proceeding that was initiated by Priestleys on April 29, 2021. The Priestleys attempted to revoke Cossey's exempt well permits on the grounds that he did not fill out the permit applications correctly. The Division Engineer assisted Cossey in completing the well permit applications, so how was it possible that he completed them incorrectly?

Cossey filed a motion to dismiss the Priestleys' administrative complaint.

The Priestleys responded with a fabricated claim of injury to a water right that they did not own. The hearing examiner accepted their allegations as true, which allowed the Priestleys to prolong the action, delay Cossey's development, and require Cossey to hire counsel and experts to defend his exempt well permits.

The Priestleys acted in bad faith throughout the administrative action. They did not comply with the disclosure requirements, failed to respond to discovery, lied during their depositions, and manufactured outrageous arguments for the sole purpose of halting the development of Cossey's subdivision. Cossey ultimately prevailed, but at a significant expense.

On March 25, 2022, after more than a year of litigation before the Office of the State Engineer (Case No. 21SE08), the hearing officer granted Cossey's Motion for Summary Judgment, which was initially filed as a motion to dismiss but was converted by the hearing officer. The Order Granting Motion for Summary Judgment ("SJ Order") finds that "The Priestleys have presented no evidence showing that the Cossey Permits cause injury to their water right(s), well, or other legally protected interests." It further states "The record is clear. Each of the Cossey Permits were evaluated and issued appropriately pursuant to the

Exempt Well Statute." The SJ Order holds that "The Priestleys have not demonstrated any facts justifying the revocation of the Cossey Permits as requested in the Complaint," but states "[t]he hearing officer does not find the complaint to be frivolous or vexatious," and denies Cossey's request for damages, attorney fees, and costs or other sanctions."

The SJ Order confirmed the validity of Cossey's permits, but it also omitted critical facts, misapplied the law, and erroneously concluded that the Priestleys had a valid argument perpetuating the meritless action. Thus, denying Petitioners' request for attorney fees, costs, and damages.

Petitioners filed a Notice of Exceptions under the APA (C.R.S. § 24-4-104) that sought correction of the foregoing matters. None of Cossey's exceptions concerned the State Engineer's grant or denial of the Cossey Permits or the use of water.

On September 15, 2022, the State Engineer issued his decision on Petitioners' exceptions. The Decision of the State Engineer ("SEO Decision") denied all of Petitioners' exceptions ("SEO Decision").

Cossey incurred measurable damages to defend the Priestleys' groundless claims. The administrative record shows that the Priestleys' claims were vexatious, and that the SEO Decision was contrary to law, not supported by the record, as a whole, and arbitrary.

Petitioners timely filed a complaint for judicial review in the District Court of Montrose County. The order under review was the SEO Decision (entered on Sept. 15, 2022), not the SJ Order (entered on March 25, 2022). The trial court correctly found that Petitioners did "not challenge the approval of their well permits but only challenge the portion of the SEO Decision that affirmed the hearing officer's denial of their request for sanctions and costs against the Priestleys, and the hearing officer's finding concerning the NWC's legal authority."

The district court, however, dismissed Petitioners' complaint for lack of subject matter jurisdiction. It determined that C.R.S. § 37-92-602(3)(f), which is contained in the Water Rights Determination and Administration Act (the "Act") was the controlling statute even though the "grant or denial" of an exempt well

permit was not being challenged. 2

Cossey's permits do not involve water rights. They relate to wells that are exempt from administration under the Act. This is important because both the trial court and the Court of Appeals rely on *V Bar Ranch, LLC, v Cotten*, 233 P.3d 1200 (Colo. 2010), to assert that the water court has exclusive jurisdiction over appeals from decisions of the State Engineer. The facts and claims in *V Bar Ranch* are materially different from those in this dispute.

The district court also misconstrued the concept of ancillary jurisdiction in its Order Re: The State Engineer's Motion to Dismiss Plaintiffs' Amended Complaint for Judicial Review. The validity of Cossey's permits and the right to use water was resolved in the SJ Order, which findings were not preserved for appeal or appealed. Petitioners sought judicial review of the SEO Decision, which

2 C.R.S. § 37-92-602 (3)(f) states: "Any person aggrieved by a decision of the state engineer granting or denying an application filed under this subsection (3) may within thirty-five days after such decision file a petition for review with the water clerk of the water division in which the well is located. Upon receipt of such petition, the water judge of said water division shall promptly conduct such hearings as are necessary to determine whether or not the decision of the state engineer shall be upheld."

did not pertain the use of water. Yet, the district court held that the issues raised on review "are water matters because they are ancillary to the approval of the well permits."

The Court of Appeals determined that the claims in Petitioners' complaint concerned water matters and affirmed the district court's dismissal for lack of subject matter jurisdiction. It misconstrued *Trans Shuttle v. Puc*, 58 P.3d 47, 50 (Colo. 2002) to deprive Petitioners of their day in court when *Trans Shuttle* stands for the opposite proposition.

The Court of Appeals confused the procedural stature of the action before the district court and mischaracterized the relief that was available to Petitioners under their complaint for judicial review. "Judicial review of state agency action is governed by section 24-4-106(7)". *Brennan v. Broadmoor Hotel Inc.*, 2023 COA 53, ¶ 13, 535 P.3d 1016, 1020. The reviewing court is required to affirm the agency action unless it finds "that the agency action was arbitrary and capricious, an abuse of discretion, or based on findings of fact that are clearly erroneous on the whole record, unsupported by substantial evidence, or otherwise contrary to law."

Black Diamond Fund, LLLP v. Joseph, 211 P.3d 727, 730 (Colo. App. 2009). The court does not take new evidence or argument; it simply reviews the record.

In its resolution of the appeal, the court of appeals undertook an independent evaluation of the allegations in the underlying complaint to hold the two of the exceptions taken by Petitioners and three of the requests for relief "involve water matters because they seek determinations regarding the 'right to use water.'" But Petitioners' complaint for judicial review did not seek a determination regarding the use of water. Again, the right to use water was resolved in the SJ Order. The SEO Decision, which was the order under review, concerned general APA issues.

Petitioners maintain that the APA, not the Act, controls their complaint for judicial review. The statutory process for a person aggrieved by the issuance of an exempt well permit, as set forth in the Act (§ 37-92-602(3)(f)), was not followed by the Priestleys when they filed a complaint to revoke the Cossey Permits and it is not relevant to Petitioners' complaint for judicial review.

JUSTIFICATION FOR THE WRIT

The decision of the trial court and opinion of the Court of Appeals reveal that there is dangerous uncertainty around the definition of a "water matter," and what cases can only be adjudicated by a water court. The Act provides that water courts have exclusive jurisdiction over water matters. *Park Cty. Water Pres. Coal. v. Columbine Assocs. (In re Application for Water Rights)*, 993 P.2d 483, 488 (Colo. 2000). But, what triggers the water court's exclusive jurisdiction? Colorado's juris prudence needs further refinement on the term "water matters" and actions that fall under the exclusive jurisdiction of the water court.

Petitioners present the following arguments in support of this Petition.

1. The district court had subject matter jurisdiction to review Petitioners' claims for judicial review because they did not concern the use of water.

The APA applies to the Office of the State Engineer because it is a state agency. The APA vests the State Engineer with general authority to make legal determinations in adjudicatory proceedings. C.R.S. § 24-4-105(3). For example,

under the powers conferred by the APA, the State Engineer can determine dispositive motions and award attorney fees. *Id.* The APA also authorizes any person adversely affected or aggrieved by an agency action to "commence an action for judicial review in the district court" and vests the district court with subject matter jurisdiction to review agency decisions. *Weld Cty. Colo. Bd. of Cty. Comm'rs v. Ryan*, 2023 CO 54, ¶ 14, 536 P.3d 1254, 1258; C.R.S. § 24-4-106.

The district court is fully empowered to determine the relief requested by Petitioners. *Paine, Webber, Jackson & Curtis, Inc. v. Adams*, 718 P.2d 508, 513 (Colo. 1986) (A court has "jurisdiction of the subject matter of an action if the case is one of the type of cases that the court has been empowered to entertain by the sovereign from which the court derives its authority."). The APA specifies that an appeal of an agency action falls within the district court's jurisdiction. C.R.S. § 24-4-104.

When the Hearing Officer entered the SJ Order, which dismissed the Priestleys' complaint for revocation, the administrative action (Case No. 21SE08) no longer involved the use of water and lost classification as a "water matter." *Sheek v. Brooks*, 440 3d 1145, 1149 (Colo. 2019)(holding that non-water related

issues cannot retain their status as water matters once the water matter is dismissed). The trial court was wrong to hold that the issues on review were water matters "because they are ancillary to the approval of the well permits."

Moreover, Petitioners did not challenge the SJ Order, which contained the State Engineer's well permitting decision. Instead, Petitioners sought review of findings and conclusions in the SEO Decision that related to non-water issues made pursuant to the State Engineer's authority under the APA. C.R.S. § 24-4-106. The APA is clear that only those claims identified in the Notice of Exceptions and adjudicated in the SEO Decision are subject to judicial review. C.R.S. § 24-4-105(14). Under the facts in this case, the district court was wrong to hold that the Act superseded the APA and mandated review by the water court.

The issues on review do not require the specialized knowledge of the water court and the Act does not require water court jurisdiction. *Crystal Lakes Water & Sewer Ass'n v. Backlund*, 908 P.2d 534, 542 (Colo. 1996). The district court has general subject matter jurisdiction to review and adjudicate claims for damages, attorney fees, costs, and other sanctions. Without a water matter at issue or a statutory directive requiring water court jurisdiction, the district court is the proper

forum to adjudicate Petitioners' complaint for judicial review. C.R.S. § 24-4-106(4).

2. Petitioners' claims for judicial review did not present water matters and they were not ancillary to water matters.

Both the district court and the court of appeals erroneously concluded that Petitioners' complaint concerned a water matter, which is contrary to Colorado's statutes and its judicial precedent. Water matters "include only those matters which [the Act] and any other law shall specify to be heard by the water judge of the district courts." *Crystal Lakes Water*, 908 P.2d at 540. "'Water matters' involve determinations regarding 'the right to use water, the quantification of a water right, and changes in a previously decreed water right.'" *V Bar Ranch*, 233 P.3d at 1205 (*citing In re Tonko*, 154 P.3d 397, 404 (Colo. 2007).

The Court of Appeals misconstrues the relief sought in Petitioners' complaint and expands the holdings in *V. Bar Ranch* and *Trans Shuttle* to deprive Petitioners of a remedy. "A primary purpose of courts is to provide a forum for litigating disputes." *Trans Shuttle v. Puc*, 58 P.3d 47, 50 (Colo. 2002). "Unless enforcement of procedural requirements is essential to shield substantive rights,

litigation should be determined on the merits and not on the basis of technical rules." *People v. Dickinson*, 197 Colo. 338, 339, 592 P.2d 807, 808 (Colo. 1979).

Petitioners preserved the foregoing arguments in their court filings in both the district court and the court of appeals. See *Plaintiffs' Response and Objection to the State Engineer's Motion to Dismiss Plaintiffs' Amended Complaint for Judicial Review of Agency Action, and Alternatively Request to Transfer Action to District Court, Water Division No. 4*, *Plaintiffs' Motion for Determination of Question of Law, Pursuant to Rule 56(h) of the Colorado Rules of Civil Procedure. Opening Brief, and Reply Brief.*

This Court reviews the Court of Appeals' determination that the trial court lacked subject matter jurisdiction under a de novo standard because it is a question of law. *City of Boulder v. Pub. Serv. Co. of Colo.*, 2018 CO 59, ¶ 14, 420 P.3d 289, 293.

PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth herein, Petitioners respectfully request that the Court accept this Petition, and allow Petitioners an opportunity to fully brief and argue the significant legal issues presented herein to better refine Colorado law.

Respectfully submitted this May 2, 2024.

COLORADO WATER & LAND LAW, LLC

_____*/s/ Amy N. Huff*_____
By: Amy N. Huff, #34897

CERTIFICATE OF SERVICE

The undersigned certifies that on this 2nd day of May 2024, a true and correct copy of the foregoing was served on the following via ICCES.

Christopher Robert Stork, Senior Assistant Attorney General
Mackenzie Theresa Herman, Assistant Attorney General
Nathan A. Keever, Attorney for the Priestleys and the HDP Revocable Trust

____*/s/ Amy N. Huff*_____
Amy N. Huff

Pursuant to CRCP 121, a duly signed copy of the foregoing is available for inspection at the office of Colorado Water & Land Law, LLC

EXHIBIT 12

Case History

Filed by Appellant
Filed by Appellee
Filed by Court

Case Number: 2024SC000250
Case Type: Cert Petition - To COA - Civil
Case Caption: Barrett, Pamela v Division of Water Resources

Court Location: Supreme Court
Referring Case Number: 2023CA243 - Colorado Court of Appeals
2022CV30077 - Montrose County

** Pending Acceptance by the Court*

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N/A	07/08/2024 12:00 AM	N/A	N/A	N/A	Petition for Writ of Certiorari	N/A
5513CA750A7DA	05/29/2024 9:52 PM	Amy N Huff	Huff Water and Land Law LLC	Pamela Barrett, Raymond M. Cossey	Reply in Support of Petition	Reply Brief
					Exhibits	Exhibit A (Oct 2022 Email)
50CC31A8480D6	05/22/2024 2:50 PM	Amy N Huff	Huff Water and Land Law LLC	Raymond M. Cossey, Pamela Barrett	Motion or Request	Unopposed Motion for Enlargement of Time to Fi Reply Brief
N/A (Details)	05/22/2024 12:00 AM	N/A	Colorado Supreme Court	N/A	Order	ORDER OF COURT
F488F8EE3B5A3	05/15/2024 12:15 PM	Mackenzie Theresa Herman	CO Attorney General	Division of Water Resources, State of Colorado, Office of the State Engineer (more)	Opposition to Petition	OPPOSITION TO PETITION FOR WRIT OF CERTIORAR
9E207D2972048	05/02/2024 11:09 PM	Amy N Huff	Huff Water and Land Law LLC	Pamela Barrett, Raymond M. Cossey	Petition for Writ of Certiorari	Petition for Writ of Certior
					COA Opinion/Order	Court of Appeals decision Case No. 2024CA0243

EXHIBIT 12

					Other	Order ReState Engineer Motion to Dismiss Plaintiff Amended Complaint for Judicial Review in Case No 2022CV3007
					Attachments to Pleading	Decision of the State Engi in Case No. 2021SE08
N/A (Details)	04/22/2024 12:00 AM	N/A	Colorado Supreme Court	N/A	Order	ORDER OF COURT
DFDFEF2CD4C6D	04/11/2024 6:03 PM	Amy N Huff	Huff Water and Land Law LLC	Pamela Barrett, Raymond M Cossey	Motion or Request	Motion for Extension of Ti Pursuant to CAR 56
					Entry of Appearance	Entry of Appearance
N/A	04/11/2024 12:00 AM	N/A	N/A	N/A	Not At Issue Pending	N/A

Showing 1 to 11 of 11 entries

DATE FILED
May 2, 2024 11:09 PM
FILING ID: 9E207D2972048
CASE NUMBER: 2024SC250

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**	**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

("Notice of Exceptions") on April 25, 2022. The Notice of Exceptions identifies four primary components of the Hearing Officer's March 25, 2022 Order Granting Motion for Summary Judgment ("SJ Order") that are subject of Cossey's request of the State Engineer to revise the SJ Order. The Notice of Exceptions is limited in scope and the findings and decisions on appeal are limited to those issues in Case 21SE08 that are identified in the Notice of Exceptions.

The original Notice of Complaint ("Complaint") filed by Harold and Drue Priestley, HDP Revocable Trust ("Priestley") on April 29, 2021 was limited in scope. It specifically stated that the "permits [applications] were not completed properly and the permitting was therefore incorrect." Complaint, p. 1. In the Prehearing Statement by Complainant submitted by Priestley on February 23, 2021, Priestley reiterates that the only issue is incorrect permitting of the wells, based on the improper completion of the well permit applications and DWR's failure to determine the correctness of the information on the well permit application. Therefore, decisions, evidence, and requests in the Notice of Exceptions outside that limited scope, including questions regarding the evaluation and finding of injury, are not relevant to the SJ Order in Case No. 21SE08 and this appeal.

History of Case No. 21SE08

On March 29, 2021, the Division Engineer's Office for Water Division 4 received thirteen applications for exempt residential well permits submitted by Cossey under section 37-92-602, C.R.S. The Colorado Division of Water Resources ("DWR") issued

thirteen exempt well permits (Well Permit Nos. 321172-321180, 321183, 321185-321187) (hereinafter, "Cossey Permits") to Cossey on March 29, 2021. On April 29, 2021, the Priestleys filed the Complaint contesting the issuance of the Cossey Permits.

As stated above, the Complaint alleged, among other things, that Cossey did not properly complete the well permit applications and, therefore, the Cossey Permits were incorrect. Complaint, p. 1. More specifically, the Priestley Complaint alleged that Mr. Cossey and Ms. Barrett neglected to inquire with or apply for taps from the Norwood Water Commission ("NWC"). *Id*.

The State Engineer assigned this case to a Hearing Officer to conduct hearing proceedings. On June 18, 2021, Cossey filed a verified answer and motion to dismiss in response to the Complaint. The motion to dismiss requested that the Hearing Officer dismiss the Complaint under C.R.C.P. 12(b)(5) because the Priestleys failed to state a claim upon which relief can be granted. DWR staff ("Staff") filed a response but took no formal position on the motion's overall request for relief, and argued that the well permits were properly issued given the information Staff had at the time of the permit applications. On September 28, 2021, the Hearing Officer entered an order denying Cossey's motion to dismiss and finding that the information provided in the Complaint satisfied the requirements for an adjudicatory hearing under Procedural Regulations for the Division of Water Resources, 2 CCR 402-5 ("Procedural Regulations"), Rule 10.

On October 15, 2021 the Hearing Officer issued a Notice of Hearing and Case Management Order setting the matter for hearing on March 28 and 29, 2022.

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

further requested that the Hearing Officer reject Cossey's request for a declaration that the NWC is not a legal water supplier and that its identified boundaries be removed from the DWR website. *Id.* at 15.

On March 25, 2022, the Hearing Officer entered the SJ Order and vacated the hearing. The SJ Order did not reach the issue of whether the NWC is a "legal water supplier" and denied Cossey's request for sanctions and damages against the Priestleys, including attorney fees and costs. SJ Order, p. 18. The SJ Order included a statement of findings and conclusions on all the material issues of fact and law presented by the record and constitutes the "initial decision" of the Hearing Officer for this matter under §§ 24-4- 102(6), and105(14)(a), C.R.S. and Procedural Regulations Rules 4.J and 10.G.3.

Cossey now appeals the SJ Order to the State Engineer in accordance with sections 24-4-105(14)(a)(II) and (15)(a), C.R.S., and Procedural Regulations Rule 10.G.4.

Standard of Review

This is an appeal to the State Engineer of an order of the Hearing Officer granting summary judgment pursuant to section 24-4-105(14)(a)(II) C.R.S. and Procedural Regulations Rule 10.G.4. The findings of evidentiary fact made by the Hearing Officer shall not be set aside by the State Engineer on review of the Hearing Officer's initial decision unless such findings of evidentiary fact are contrary to the weight of the

evidence. § 24-4-105(15)(b) C.R.S., Procedural Regulations Rule 10.G.6. An evidentiary fact is the detailed factual or historical data underlying the controversy. *Barrett v. Univ. of Colo. Health Sciences Center*, 851 P.2d 258, 261 (Colo. App 1993); *State Bd. of Med. Exam'rs v. McCroskey*, 880 P.2d 1188, 1193 (Colo. 1994).

The ultimate conclusions of fact made by the Hearing Officer shall not be set aside by the State Engineer on review of the Hearing Officer's initial decision unless such findings of ultimate conclusions of fact are unsupported by substantial evidence in the record, are unsupported by any competent evidence, or are based on an incorrect legal conclusion applied to the underlying facts. *Moczygemba v. Colo. Dept. of Health Care Policy & Fin.*, 51 P.3d 1083, 1087 (Colo. Ap. 2002); *Barrett,* 851 P.2d at 261. An ultimate conclusion of fact involves a question of law, or at least a mixed question of law and fact, and settles the rights and liability of the parties. *McCroskey,* 880 P.2d at 1193.

Exceptions from Notice of Exceptions

The Notice of Exceptions submitted by Cossey identified four areas where Cossey requested that the State Engineer order that the SJ Order be revised. For each of the four areas, Cossey more specifically identified multiple, discrete requests for revisions. Those four areas are listed below in the order they were presented in the Notice of Exceptions.

A. Injury is the only legal standard for evaluating an exempt well permit; Guideline 2003-5 is non-binding and therefore irrelevant.

B. The Priestleys' objection was based on lies and speculation; They intentionally deceived the Hearing Officer to maintain this action.

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

D. The Complaint did not have a factual or legal basis and therefore it lacked substantial justification

For each of the four areas, the issue raised in the Notice of Exceptions and the more detailed requests will be addressed as a group unless one of the specific requests needs to be addressed individually for clarity.

Exception A, Injury is the only legal standard for evaluating an exempt well permit; Guideline 2003-5 is non-binding and therefore irrelevant.

Analysis

In the SJ Order, the Hearing Officer addressed the extent to which Guideline 2003-5 influenced the evaluation of the subject well permit applications. In the SJ Order, the Hearing Officer noted that "DWR 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." SJ Order, p. 2. The Hearing Officer also notes that "[i]n the absence of clear statutory direction, Guideline 2003-5 provides guidance for the consistent review of well permit applications under § 37-92-602(6)." SJ Order, p. 15. The Hearing Officer notes that "[g]uidelines are interpretive rules that exist to provide general direction for the DWR Staff. They are not formally promulgated rules and regulations that go through a statutory process including

vetting, notice and due process." SJ Order, p. 15. The Hearing Officer provides relevant case law to support that finding.

Cossey argues that the SJ Order suggests that 2003-5 is binding, requesting the deletion of paragraph 2 of page 14 of the SJ Order. Cossey Brief, p. 6. However, the cited statement does not suggest that Guideline 2003-5 is binding even though it does recognize its influence in the evaluation as an interpretive rule. Notably, this same statement also does not expand the NWC's authority as Cossey asserts, which will be discussed in more detail below.

Cossey also argues that "[m]aterial injury is the only legal standard relevant to the SEO's issuance of a well permit under Section 602. C.R.S. § 37-92-602(3)(b)(I)." Cossey Brief, p. 5. This statement is incorrect. The General Assembly intentionally included the language in section 37-92-602(6), C.R.S. and if statutory language is clear and unambiguous, words are given ordinary meaning and applied as written and effect must be given to all of its parts. *Mounkes v. Indus. Claim Appeals Off.*, 251 P.3d 485, 487 (Colo. App. 2010); *Young v. Brighton School Dist*. 27J, 325 P.3d 571 (Colo. 2014). While material injury is a critical evaluation criterion, a well may be found to not cause material injury but its permit application may be denied due to failure to comply with other statutory provisions, including those in 37-92-602(6).

Cossey argues that "[t]he substantive law does not authorize revocation of a well permit based on the SEO's construction and application of a non-binding guideline (i.e., Guideline 2003-5)." Cossey Brief, p. 16. This argument does not affect the outcome and it also misrepresents the legal basis for the SJ Order's decision, which, as discussed

earlier, is based on consideration of Guideline 2003-5 as an interpretive rule that supports the application of section 37-92-602(6), C.R.S.

Staff accurately states, "[b]ecause section 602(6), C.R.S., does not provide specific direction for how the State Engineer is to determine the availability of other water supplies, Guideline 2003-5 provides guidance to DWR and the public on the factors the agency will evaluate when considering exempt well permit applications." Answer Brief of Staff, p. 10. Staff also correctly argues that "Cossey's argument ignores the State Engineer's responsibility under section 37-92-602(6), C.R.S. This is contrary to the rule of statutory interpretation that effect must be given to all a statute's provisions, and constructions that render any provision meaningless should be discounted." Answer Brief of Staff, p. 14.

The Hearing Officer did not give Guideline 2003-5 undue influence in his decision. Guideline 2003-5 was adopted to provide consistent review of well permit applications pursuant to section 37-92-602(6). Guideline 2003-5 is a valid tool for assisting in the evaluation of well permit applications under the provisions of section 37-92-602(6), even as DWR considers all other applicable statutes in the evaluation.

Decision

Therefore, the exceptions requested in section IV.A of the Notice of Exceptions are denied. The SJ Order correctly states the effect of the statutory law and the relevant guideline in the evaluation of a well permit application.

Exception B. The Priestleys' objection was based on lies and speculation; They intentionally deceived the Hearing Officer to maintain this action.

Analysis

The SJ Order states that "[i]n the Prayer for Relief section of the Supplemental Brief and Verified Reply, Cossey asks the Hearing Officer to grant summary judgment affirming the Cossey Permits. Cossey makes the following arguments in the Motion, Supplemental Brief, Verified Reply to Staff, and Verified Reply to Priestleys in support of this position:..." SJ Order p. 6, and Item 2 of the listed arguments states that "(t)he Priestleys have presented no evidence showing that the Cossey Permits cause injury to their water right(s) or well." SJ Order p. 7. The SJ Order further quotes Cossey, "[t]he legal standard for issuing an exempt well permit is controlled solely by C.R.S.§ 37-92-602(3), and without an allegation of injury, Priestley cannot state a claim to revoke the Cossey Permits." (SJ Order p 7, Item 2.e). Cossey asserts that Priestley falsely alleged injury. In response to these legal arguments and assertions by Cossey that Priestley did not present evidence showing injury, Priestley attempted to address the injury question in the response to the initial Motion to Dismiss, by stating they own a water right that may be affected. Priestley also responded to discovery requests regarding their water rights.

The Priestley's attempt was unnecessary because Cossey raised injury only in an attempt to remove what Cossey believed was the one obstacle to the well permits' issuance. (As stated above, the State Engineer disagrees with this position.) It was a foregone conclusion that the well permits were issued under a presumption of no injury.

Further, Priestley had not raised the issue of injury in the Notice of Complaint and, therefore, it was not before the Hearing Officer. Nonetheless, the Hearing Officer did make a finding that "(t)he Priestleys have presented no evidence showing that the Cossey Permits cause injury to their water right(s), well, or other legally protected interests." SJ Order, p. 14, Item 3.

The Hearing Officer makes additional findings regarding injury, accounting for DWR's evaluation of the well permit applications in that context. SJ Order, p. 16. This is in spite of the fact that the question was not before the Hearing Officer.

In Exception B, the sixth amendment requested by Cossey is to state that "[t]he Priestleys did not demonstrate any facts justifying the revocation of the Cossey Permits as requested in the Complaint." Notice of Exceptions, p. 11. On its face, this statement is false. The Complaint likely did set forth the bases for the Hearing Officer to find that the well permits were improperly issued. Cossey's sixth amendment request, however, appears to be a statement solely in the context of Exception B, regarding injury and it is treated as such here. In the context of whether the Priestleys demonstrated injury to justify revocation of the Cossey Permits, the SJ Order found that the Priestleys have presented no evidence of injury to water rights, and since Cossey agrees with that finding, no amendment is necessary and there is no basis for the sixth amendment request.

Decision

Exception B deals entirely with the question of injury to the Priestleys from the wells permitted by DWR for Cossey. The original Notice of Complaint and the Complaint

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

"(a)ccordingly, DWR staff evaluated whether there was a known water supplier consistent with Guideline 2003-5." This is an important distinction in concluding that the Hearing Officer did not find that NWC is a legal water supplier in the context of Guideline 2003-5.

The controlling finding from the Hearing Officer was 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, emphasis added. It is on that basis that the Hearing Officer issued his order that "[t]he Cossey Permits are valid and in full force and effect and the Priestleys' complaint is DISMISSED." SJ Order, p. 17. Staff may have concluded that NWC did not qualify as a "legal water supplier," however, the Hearing Officer did not affirm that or base his decision on that conclusion. Rather, his decision was based on the finding that Staff acted according to the best information it had at the time of the evaluation and issuance of the well permit applications in determining the Cossey property is not within the NWC service area. I find no dispute to that finding in the record.

Decision

Exception C requests amendments to the SJ Order to remove any reference to the NWC as a legal water supplier under Guideline 2003-5 because Guidelines 2003-5 is not controlling. As noted above, Guideline 2003-5 may be used in a permit application evaluation as an interpretive rule. However, even that is not relevant to Exception C

due to the fact that the Hearing Officer decided the matter on the basis that Staff acted properly based on the information it had at the time of the application. The Hearing Officer did not make a determination as to NWC's service area, its authority, or whether it should be considered under section 37-92-602(6) or Guideline 2003-5. Inclusion of a map of the NWC service territory by DWR on its website is informational and does not predispose DWR to any decision for future well permit applications. The questions of whether NWC is a legal supplier, the extent of NWC's service area, and whether DWR has a map of NWC's service area on its website were not before the Hearing Officer.

Therefore, the exceptions requested in section IV.C of the Notice of Exceptions are denied.

Exception D. The Complaint did not have a factual or legal basis and therefore it lacked substantial justification

In the original Notice of Complaint, Priestley asserted that "...the permits [applications] were not completed properly and the permitting was therefore incorrect." Complaint p. 1. The information that was not on the permit was for permit application Item 8: "Is this parcel within the boundaries of a water service area." The question, and the surrounding issue is relevant. As noted above, material injury is not the sole consideration in the evaluation of a well permit application and section 37-92-306(6), C.R.S. gives DWR guidance on the issuance of exempt well permits. Guideline 2003-5, like an interpretive rule, gives DWR more detailed guidance on the application of 37-92-602(6) in well permit application evaluations. Therefore, it is reasonable that a party would raise the issue of whether an important piece of information related to

relevant statutory standards is missing and whether the information was considered during the course of the well permit applications. The Hearing Officer found that ultimately, Staff evaluated the permit applications with the understanding that there was no legal water supplier in the area. SJ Order, p. 16. However, whether DWR took all information into account and issued the permit applications consistent with 37-92-602(6) and Guideline 2003-5 was a legitimate question for Priestley to raise.

The Notice of Exceptions includes numerous assertions about Priestley's claims of water rights and associated injury. However, the evaluation and determination of material injury was not before the Hearing Officer until Cossey filed a motion to dismiss on the basis that Preistley did not demonstrate injury. Regardless of the outcome of the injury discussion, the allegation of improper issuance of the well permits in the Complaint was the one issue to be decided in 21SE08.

Decision

The argument that "(t)he weight of the evidence supports a finding that the Priestleys' Complaint was meritless; it was not grounded in fact or law" and the suggestion that the Complaint was frivolous and vexatious, and Cossey is entitled to damages, costs, and attorney fees, is rejected. As demonstrated by the record, the Complaint was not meritless and was grounded in both fact and law. The exceptions requested in section IV.D of the Notice of Exceptions are denied.

Order

The evidence in the record supports the findings and conclusions of the Hearing Officer to which Cossey take exception. The SJ Order is affirmed on these points and the requests to amend the SJ Order are denied.

Dated this 15th day of September, 2022

Kevin G. Rein, P.E.
State Engineer
State of Colorado

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the DECISION OF THE STATE ENGINEER was sent September 15, 2022, to the following parties:

Via Email:

For the Respondents:
Amy N. Huff
Colorado Water and Land Law,
LLC amy@waterland-law.com

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Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED October 21, 2024 CASE NUMBER: 2024SC250
Certiorari to the Court of Appeals, 2023CA243 District Court, Montrose County, 2022CV30077	
Petitioners: Pamela Barrett and Raymond M. Cossey, **v.** **Respondents:** Division of Water Resources, State of Colorado; Office of the State Engineer; Kevin Rein, P.E., as State Engineer, State of Colorado; Harold Priestley; Drue Priestley; and HDP Revocable Trust.	Supreme Court Case No: 2024SC250
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, OCTOBER 21, 2024.

COLORADO SUPREME COURT Ralph Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203 Phone No. 720-625-5150 DISTRICT COURT, WATER DIVISION NO. 4 Hon. J. Steven Patrick District Court Judge Case No. 23CW3000 **Plaintiffs/Appellants:** PAMELA BARRETT and RAYMOND M. COSSEY v. **Defendants/Appellees:** DIVISION OF WATER RESOURCES, STATE OF COLORADO; OFFICE OF THE STATE ENGINEER; KEVIN G. REIN, P.E., as STATE ENGINEER, STATE OF COLORADO; HAROLD PRIESTLEY; DRUE PRIESTLEY, and the HDP REVOCABLE TRUST	DATE FILED January 2, 2025 10:26 AM FILING ID: 86ED77111990B CASE NUMBER: 2023SA145 ▲COURT USE ONLY▲
Attorney for Appellants: Amy N. Huff COLORADO WATER & LAND LAW, LLC 679 E. 2ND Avenue, Ste 11B Durango, CO 81301 Reg. No. 34897 **Telephone No.:** (970) 403-1770 **Email**: amy@waterland-law.com	Case No. 23SA145 Div.: Ctrm.:
MOTION TO WITHDRAW NOTICE OF APPEAL	

In accordance with Rule 41 of the Colorado Appellate Rules of the Colorado Revised Statutes, PAMELA BARRETT and RAYMOND M. COSSEY (collectively "Cossey"), by and through their undersigned counsel, Amy N. Huff, Colorado Water & Land Law, LLC, hereby submit this MOTION TO WITHDRAW NOTICE OF APPEAL. In support thereof, Cossey makes the following representations:

1. Cossey's undersigned counsel conferred with counsel for the Division of Water Resources about the relief requested herein and is authorized to represent that the Division of Water Resources does not oppose this motion.

2. This appeal concerns the water court's dismissal of Cossey's action. This action was stayed while this Court determined whether to accept Cossey's parallel appeal from the Court of Appeals. This Court declined to accept Cossey's petition for certiorari filed in Case No. 24SA250, which concerned the same parties and the same controversy.

3. Cossey no longer desires to pursue this dispute. No parties have submitted briefs or any filings in this action, other than Cossey. As a result, no parties will be prejudiced by Cossey's withdrawal of the Notice of Appeal.

WHEREFORE, for the reasons set forth herein, Cossey respectfully requests that this Court enter an order dismissing this action with prejudice and with all parties bearing their own costs and fees.

Respectfully submitted this 2nd day of January 2025.

COLORADO WATER & LAND LAW, LLC

/s/ Amy N. Huff
By: Amy N. Huff, #34897

CERTIFICATE OF SERVICE

The undersigned certifies that, on this 2nd day of January 2025, a true and correct copy of the foregoing was served on all parties of record via ICCES.

____*/s/ Amy N. Huff*_____
Amy N. Huff

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED January 8, 2025 CASE NUMBER: 2023SA145
Appeal from the District Court, Water Division 4, 2023CW3000	
Plaintiffs-Appellants: Pamela Barrett and Raymond M. Cossey, **v.** **Defendants-Appellees:** Division of Water Resources; State of Colorado; Office of the State Engineer; Kevin G. Rein, P.E. as State Engineer; Harold Priestley; Drue Priestley; and HDP Revocable Trust.	Supreme Court Case No: 2023SA145
ORDER OF COURT	

Upon consideration of the unopposed "Motion to Withdraw Notice of Appeal" filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Motion shall be, and the same hereby is, GRANTED. Pursuant to C.A.R. 42, the Court hereby dismisses the above-captioned matter and CLOSES the case.

BY THE COURT, JANUARY 8, 2025.

EXHIBIT G

From: **ETW - Candy Meehan** candy@earthtechwest.com
Subject: RE: Open Records Request
Date: October 7, 2026 at 2:23 PM
To: Jenny Russell jrussellpc@mac.com, Candy Meehan smwcd@yahoo.com
Cc: April Montgomery aprildmontgomery@gmail.com, ETW - Candy Meehan candy@earthtechwest.com



Jenny,

Here is the advertisement that all applicants had as a guideline. There were no specific questions geared at any of the applicants I can recall through the application process. We have used the same ad for each round of appointments and the only thing that has changed is the dates on the document.

Candy

From: Jenny Russell <jrussellpc@mac.com>
Sent: Wednesday, October 7, 2026 1:43 PM
To: Candy Meehan <smwcd@yahoo.com>
Cc: April Montgomery <aprildmontgomery@gmail.com>; ETW - Candy Meehan <candy@earthtechwest.com>
Subject: Re: Open Records Request

Hi Candy,

It looks from Tony and Richard's letters that they were asked to respond to a series of form questions. Can you please provide that document to me?

Thanks,
Jenny

> On Oct 7, 2026, at 11:05 AM, Candy Meehan <smwcd@yahoo.com> wrote:
>
> Jenny,
>
> Here is his letter for 2025, however, I dont have the minutes in my records and I am still looking for them as others took over the minutes for me.
> I can keep looking, but, I need to reach out to Clay or Caroline to see if either one of them have a copy.
>
> On Wednesday, October 7, 2026 at 10:46:30 AM MDT, Jenny Russell <jrussellpc@mac.com> wrote:
>
> Thank you, Candy! Do you have the same documents for the 2025 appointments?
>
> Jenny
>
> > On Oct 7, 2026, at 10:38 AM, Candy Meehan <smwcd@yahoo.com> wrote:

Jenny,

As per your CORA request, here are the applications and the meeting minutes for the appointees to the NWC by the SMWCD for 2023.
If you have any additional questions, please feel free to contact me.

Candy
On Wednesday, October 7, 2026 at 09:58:49 AM MDT, Jenny Russell <jrussellpc@mac.com> wrote:

Hi Candy,

I believe you are the custodian of records for SMWCD. Please see the attached open records request and let me know if you have any questions.

Thanks,

Jenny

<SMWCD - NWC Apointee Applications 07072023.pdf><SMWCD - Regular Meeting Minutes 05152023.pdf>

<NWC - Cossey Reappointment Letter 05212025.pdf>

San Miguel Water Conservancy District
PO Box 640, Norwood, CO 81423
smwcd@yahoo.com

SAN MIGUEL WATER CONSERVANCY DISTRICT APPOINTMENTS TO THE NORWOOD WATER COMMISSION

The San Miguel Water Conservancy District (SMWCD) is responsible for selecting 2 members for the Norwood Water Commission (NWC) in 2025. SMWCD is seeking letters from interested residents. **To be eligible to apply**: Applicants must live within the Norwood Water Commission district boundaries.

Priority will be given to those who live outside of the incorporated Town of Norwood boundaries and who own a water tap. However, the SMWCD board is interested in applicants with multiple skills to address the water quality and supply challenges NWC faces to serve a growing community; therefore, applicants who live within the town boundaries or do not own a water tap may be considered.

Applicants are encouraged to review the **2020 Norwood Water Commission Water Master Plan** and **2022 Town of Norwood/Norwood Water Commission Water Supply Adequacy Update** (Available on the Town of Norwood website/NWC tab or request a copy via smwcd@yahoo.com).

These reports demonstrate that planning for new water infrastructure, supply sources, and multiple water treatment improvements will need to begin in the immediate future and prioritizing these and other needs highlighted in the reports will be critical to achieve water security for Wright's Mesa. Therefore, it is SMWCD's intent to appoint members who can demonstrate:

- Government board experience
- Experience implementing water or other infrastructure projects
- Experience implementing strategic plans and timelines
- Experience with public financing and stacking funding sources
- Grant writing or management experience
- Understanding of federal, state, and local water funding resources and/or
- Other experience relevant to the NWC

Submit letters of interest by **June 1, 2025** to smwcd@yahoo.com or SMWCD, PO Box 640, Norwood, CO 81423. Letters should include the following:

- Name, Email, Phone
- Physical and Mailing Address
- Explain your water use or ownership as it relates to the NWC
- Length of time you have lived on Wright's Mesa and relevant work/involvement in the area
- Your understanding of the role and challenges of the NWC
- Your skills that are relevant to these roles or challenges
- Any relationship or conflict of interest with Town of Norwood, NWC, or SMWCD board members/staff
- Any other relevant information that would be helpful for the SMWCD in making a selection

EXHIBIT H

Raymond M. Cossey

21 Hazel St. / PO Box 681

Norwood, CO. 81423

970-729-0017

raymondcossey@gmail.com

I am submitting this letter asking for an appointment to one of the available rural seats on the board of the Norwood Water Commission.

I am personally excited to see that the SMWCD has a new and active board. It has been a long time coming! I have been concerned that your organization would become defunct and that the Town of Norwood would then be the sole entity for appointing NWC Board members. At the March 2023 NWC meeting there was discussion amongst some NWC board members whether the SMWCD would survive if they(you) lost the "river rights" and then would the SMWCD even serve a purpose? And who would do all the NWC Board appointments?

The intent of the original Merger Agreement in 1992 and the First Amendment to Merger Agreement in 1997, I believe was to preserve a voice for the rural water customers on the board and to make sure that the Rural system received the same attention that the Town system received. This is certainly necessary to keep a balance and continue the intent of those original documents.

I reside in the Rural area where the SMWCD is tasked with appointing NWC Rural Board members from.

The community, water system and the Norwood Water Commission would greatly benefit from some new faces on the board and with that comes a clear path of succession for the NWC board's future.

The NWC is facing some serious challenges ranging from being basically a single source water system, aging and deteriorated infrastructure and more than expected growth in the community along with a general lack of funding. All these challenges are becoming more and more apparent at a rapid rate.

I bring strong and practical no nonsense business practices and demeanor to the board and at the same time represent SMWCD and the community in a courteous and professional manner. It is of utmost importance to be able to work with a group and achieve common goals. According to the 2020 SGM Water Master plan and the 2022 Water Supply Adequacy Update there is a long list of goals that need to be achieved.

I bring and offer to the San Miguel Water Conservancy District Board all the life experiences and knowledge I have gained from growing up in this community, starting and operating two businesses from the ground up, employing 12 to 13 people full time, successfully operating for nearly 24 consecutive years and being a strongly vested member of the community.

General Background Information:

-Own 6 Water Taps; 3 Rural and 2 Town, 1 Raw

-Own shares in Farmers Water Development Company

-Own 23 Properties: 4 commercial in Rural east of Town, 2 residences in Town, 4 residences in Rural and 14 buildable vacant parcels in Rural.

-Own & Operate Two Companies with a staff of approximately 13

-Government Board & Governmental Experience:

- 2007 - 2008 Wrights Mesa Citizen Advisory Committee Member to the San Miguel County Planning Dept. that helped create the new San Miguel County Land Use Code.

-Strong knowledge of the Wrights Mesa Land Use Code.

-Developed and Rezoned Three properties from the old Wrights Mesa land use code to the new Wrights Mesa Light Industrial Zone District.

-Strong skill set in navigating San Miguel and Montrose County Planning, Zoning and Building Departments for obtaining permits for construction projects encompassing commercial and residential.

-Infrastructure Projects:

-Developed a 20-acre subdivision into 15 house sites and installed all utilities directly ourselves while practicing current construction methods and obtaining all necessary inspections. Those utilities included High voltage underground power, Natural Gas main lines, Fiber Optic Internet, On Site Wastewater Systems.

-Completed multiple projects that included utility installations

Implementing Water infrastructure Projects:

-Have developed water sources for two commercial Rural properties, applied for and received permits from the State of Colorado for 17 residential domestic drilled wells and installed those wells in rural areas.

Strategic plans & timelines:

-Own and operate an Automotive, Light Truck & Heavy Equipment repair facility employing a staff of 6 people. Operate a very strategic schedule every day for as many as 16 vehicles per day during peak season while maintaining a constant flow of parts and supplies for roughly 2500 repairs/transactions per year.

-Own & Operate a Construction company employing 6 to 7 people, specializing in commercial projects but also doing Residential from the ground up along with installation of infrastructure.

- Handle multiple projects that are under various stages of construction, managing several people, Sub-contractors, maintaining safety protocols along with scheduling various material deliveries from multiple vendors in an orderly fashion to keep projects on track and on time.

Experience with public financing and Stacking funding sources:

-Experience with financing, creating deposit and payment/draw schedules for clients for construction projects, budgeting funds to maintain perfect credit ratings and see that vendors and Sub-contractors are paid timely without fail.

Grant writing Or Management Experience:

Writing: Construction Company: I personally write the client engagement letters, project descriptions and scope of work letters. Draft scheduling letters and the deposit and payment schedules and Write multiple estimates per day.

Management: Reflected in Business experience

-Manage Two companies and Staff for both.

-Manage Five residences/rental properties with tenants.

Other Experience Relevant to the NWC:

-General knowledge of water law pertaining to how water can be used based on its decree, diversion points, beneficial use and due diligence to maintain water rights.

-Have read and started to study the 2020 NWC/SGM Master Water Plan.

- Have read and started to study the 2022 Water Adequacy Update.

- Have proven business knowledge and acumen.

-Direct experience with infrastructure and utility installation to commercial and residential projects with installations being inspected and approved with governing entities.

-Worked for the Town of Norwood water system under Bob Mckeever and Twila Hovey the summer of 1989, walked every street in town reading meters, helped locate and replaced shut off valves, Painted the big tank out at the treatment plant and Helped repair multiple main line water breaks along Hwy 145.

- I have direct knowledge of what the current crew deals with to be in an excavated trench full of water repairing the main line.

It was June of 1988 when I moved here; it's going on 35 years now. When I moved here as a fourteen-year-old kid I knew I would never leave. I graduated from Norwood High School in 1992 and have remained here ever since. I am now 49 years old.

I look forward to the possibility of being part of a board that can hopefully make a positive impact on the future of the Community, water sources, the water system overall and the Norwood Water Commission.

Thank you for your time and consideration.

Raymond M. Cossey

EXHIBIT I

Consideration for SM Water Conservancy Board

From: Richard Nelson (ncrwoodnelson@yahoo.com)

To: smwcd@yahoo.com

Date: Tuesday, April 18, 2023 at 10:50 AM MDT

SMWCD:

Richard L. Nelson
Norwoodnelson@yahoo.com
970.442.1492
Physical address - 2302 CR 42Z N, Norwood, CO 81423..... since 2011
Mailing address - PO Box 1414, Norwood, CO 81423
Owner of domestic water tap at 2302 CR 42Z N (Deer Mesa) since 2011

Education/Experience: BS/MS degree in Natural Resouces from South Dakoata State University and have 43 years' professional experience (retired) working for South Dakota Game, Fish, and Parks, Nebraska Game and Parks Commission, and Alaska Department of Fish and Game. Work experience includes managing large budgets and solving natural resource issues including water issues in Nebraska associated with the Platte, Niobrara, and Republican Rivers.

No known conflicts of interest with town of Norwood, NWC, or SMWCD.

One minor challenge is solving low water pressure issues for residents of Deer Mesa.

Please email if you need additional information or local references. Please respond that SMWCD received this email. Thanks!

Richard

Richard L. Nelson
2302 CR 42Z N
Norwood Colorado 81423

EXHIBIT I

NWC Board Seat Application:

Tony Daranyi
PO Box 963
1401 43ZN
Norwood, CO 81423

970-708-7889
daranyi@rmi.net

These are my answers to questions as requested by the memo on submitting a "Letter of Interest" to be seated on the Norwood Water Commission:

• Explain your water use or ownership as it relates to the NWC:

I will soon be applying for at least one water tap as we continue to work with the NWC on extending a waterline north on 43ZN from AA42. (For more information on this project, please see the Engineering Report completed by SGM in 2022, and the Construction Drawings completed by Bohannan in 2023. We hope to have an application for a water line extension and water tap submitted to the NWC in May, 2023.)

As to water ownership and use, our property (two homes, and the 120-acre Indian Ridge Farm) is served by domestic wells and we own rights to springs in two different drainages that run through the property. We also own water shares in the Lone Cone and Farmers Water ditch systems, and have a old decreed water right from the Maverick Draw. The farm has six ponds.

For years we have also relied on the Water Shack as a supplemental source for water.

• Length of time you have lived on Wright's Mesa and relevant work/involvement in the area

I am a 19-year volunteer member of the Norwood Fire District, serving as an EMT. My wife and I have lived in San Miguel County since 1985, and on Wrights Mesa for 23 years.

We are co-owners of Indian Ridge Farm, which we built from the ground-up. I have been employed by the Telluride Ski & Golf Co. on a seasonal basis for 23 years as a Ski Patroller, and have carried out duties as an Avalanche Technician, which involves weather and avalanche forecasting and dispatching to mitigate avalanche hazards on the Telluride Ski Area.

• Your understanding of the role and challenges of the NWC

In effect, the NWC acts as a public utility, providing Wrights Mesa and beyond with domestic potable water. This is a vitally critical component of the region's sustainability and livability. The NWC's work is comprised primarily of a "boots on the ground" role for the water district.

The NWC has many challenges before it. Primarily, many aspects of the water system's aging distribution, storage and treatment processes are in need of upgrades and/or improvements.

• Your skills that are relevant to these roles or challenges

I am a planner and a builder. I have started several businesses (*Telluride Daily Planet*, Indian Ridge Farm, Indian Ridge Bakery), worked for or been involved with several non-profit organizations (Norwood Fire District, Telluride Academy, Telluride Farmers Market, among others) and helped plan for and complete construction of the Down Valley Park. I know what it takes to take a vision and see it through to completion. I'm not pie-in-the-sky type of a guy. I'm a realist and like to get things done. Farming for the past 20 years here on Wrights Mesa has certainly allowed me to hone those skills.

Meanwhile, my work experience for 23 years in the winter as a Ski Patroller and Avalanche Technician (weather and avalanche forecasting and dispatching) has intimately connected me with the snowpack in the wintertime, which is obviously relevant to the eventual water sources on the mesa.

• Any relationship or conflict of interest with Town of Norwood, NWC, or SMWCD board members/staff

The only conflict I see is with the review and approval of the water line extension on 43ZN. I would remove myself from the discussion and not cast a vote if seated as a seated boardmember.

• Any other relevant information that would be helpful for the SMWCD in making a selection

I've read the Water Master Plan of 2020 and the 2022 update and am familiar with water issues directly influenced by NWC.

As farmers, we live and breathe water every day of the year. It's in our DNA. It's our lifeblood. It's this mesa's lifeblood. I've developed a passion for water and related issues. I can proudly say that in 22 years of farm operations, in spite of operating under adverse drought conditions during this entire time, we have not missed a single year of production.

As to the NWC and how it conducts itself, I'm an advocate for an open and transparent process. I also firmly believe in being fair in the review and approval of projects. I'm also thorough in my decision-making and a fairly quick study when it

comes to understanding complex issues. I also understand water issues broadly, as a farmer and homeowner on Wrights Mesa.

• Government board experience:

I don't have any direct "government" board experience, but am very familiar with Roberts Rules of Order from my experience serving as the President of several non-profit organizations (including roles as President of the Telluride Academy and Telluride Farmers Market). I have also dealt directly with numerous government agencies at the local, state and federal levels in various capacities and involvements.

• Experience implementing water or other infrastructure projects

My wife and I built the successful Indian Ridge Farm from the ground up, putting together water systems, developing water delivery and water storage systems, and generally improving the hydrology and soils of the land. We also built the infrastructure on the farm, except for the historic ditches that irrigate some 65 acres of grassland pasture.

Currently, I'm working with the NWC on extending a waterline from AA42 to our properties at 1363 and 1401 43ZN.

We also helped build our house and have been involved in constructing all of the infrastructure at the farm, including gardens, fencing, greenhouses, a barn, a processing plant, several outbuildings and a distribution shed.

I've essentially been involved in building infrastructure since the day we started this farm.

• Experience implementing strategic plans and timelines

I have a lot of experience with implementing strategic plans on a timely basis.

1) The pursuit of a graduate degree in business from Northwestern University and my financial work experience prior to moving to this region, exposed me in my 20s to implementing strategic plans and timelines;
2) Publishing a daily newspaper (*Telluride Daily Planet*) took that up several notches, with its daily deadline requirement;
3) Deciding on a daily basis what avalanche terrain to open for the skiing public on the ski area forced me to adhere to deadlines and timelines;
4) Producing food for the region on a timely basis, with a requirement for daily and weekly deliveries, is consistent with the apparent theme in my life of living under constant timelines and deadlines!

• Experience with public financing and stacking funding sources

I have successfully garnered numerous grants as they relate to Indian Ridge Farm. I also believe my MBA will be very helpful in understanding and securing public financing.

• Grant writing or management experience

See answers to questions above.

• Understanding of federal, state, and local water funding resources

I am intimately familiar with water law as it relates to securing water rights on the property. I've been following water issues in the Western US seemingly my entire life, having been raised in the deserts and mountains of the Four Corners region. I also stay abreast of current water funding resources, as I read about water funding resources and water issues several times a week.

I also learned about water law through my reporting for the *Telluride Times* and *Telluride Daily Planet* newspapers.

The NWC and San Miguel County, and other water entities (i.e. Farmers Water, Lone Cone) have a unique, generational opportunity at this very moment to obtain grant monies at the State and Federal levels made available through infrastructure funding. It's incumbent on the NWC to take advantage of this opportunity to improve upon its infrastructure needs.

EXHIBIT J

Raymond M. Cossey

970-729-0017

P.O. Box 681 / 21 Hazel St.

Norwood, CO.81423

raymondcossey@GMAIL.COM

San Miguel Water Conservancy District **May 21st 2025**

RE: Reappointment to the NWC Rural Seat

Dear SMWCD Board,

I would like to be considered for reappointment to my rural seat on the NWC Board that I have held for the last two years.

I believe that I have been a voice of reason and have helped keep unity among the community, NWC Board members, Town of Norwood, Sanitation and other fellow Boards, particularly with all the challenges that the NWC faced this last year with all the Town administrative and staff issues that greatly affected us.

Our Boards work has gained tremendous momentum on critical infrastructure projects, and I feel that this is a direct result of our current NWC Boards resolve. It has been very rewarding to see “water projects” start to flow!

Being a junior board member has its challenges, and it has been a steep learning curve. I rely heavily on senior board members for their knowledge of an old and severely aged infrastructure and the ins and outs of our system.

I feel that my strong business acumen, ability to work with people from all different backgrounds and my professional experience in commercial construction and utility construction are my best contributions to the NWC currently.

The Norwood area has certainly changed a lot since I first moved here as a 14-year-old kid in 1988 and it has been fun and rewarding to be a part of it in this capacity for the last two years.

Respectfully

Raymond M. Cossey

AFFIDAVIT OF CLAY WADMAN

Clay Wadman, being of lawful age, states the following:

1. I am the Vice-President of the Board of the San Miguel Water Conservancy District; I was the Vice-President of the Board in 2023 and 2025; and I make this Affidavit based on my own personal knowledge.

2. I was present at the meetings when the SMWCD Board appointed Ray Cossey as a rural member of the Norwood Water Commission in 2023 and reappointed him in 2025.

3. I do not recall Mr. Cossey advising SMWCD of any conflicts of interest, and I do not recall him advising SMWCD that he had ever claimed that NWC was not a legal water supplier outside the Town of Norwood.

4. Further affiant saith not.

Clay Wadman

EXHIBIT L

Begin forwarded message:

From: Clay Wadman <clay.wadman@gmail.com>
Subject: **Fwd: SMCWCD - 2023 Board Appointees 07032023**
Date: October 7, 2026 at 7:17:30 AM MDT

On Sun, Jul 9, 2023 at 11:00 AM April M <aprildmontgomery@gmail.com> wrote:

Hi Clay
Yes I talked to Candy about this last Friday. I asked her to check with Jenny's I figured she would know off the top of her head. Candy did provide the applications of all applicants. They are doing this because they don't want Ray on the board and are trying to find a way to keep him off. Candy is livid and is willing to fight this tooth and nail.

So we'll see what their next step is.

Would love to grab coffee but kelvin and I are in Washington in the Olympic Pennsylvania. Hanging in the van, riding bikes, camping at great state parks and hoping to pick raspberries and strawberries and make ham (we have all our canning stuff with us). But finding it hard to find you pick opportunities for organic.

We're back 7/20! Hope all is well with you and Jenny!
April

---------- Forwarded message ---------
From: **Jenny Russell** <jenny.russell@lawtelluride.com>
Date: Fri, Jul 7, 2023 at 9:33 AM
Subject: Re: SMCWCD - 2023 Board Appointees 07032023
To: Candy Meehan <smwcd@yahoo.com>
CC: Clay Wadman <clay.wadman@gmail.com>

Candy,

Those are public documents, so if he submits an open records request to the SMWCD board (probably you as secretary). Or, you can just give him all of the applications. But I do wonder why he is requesting Ray's in particular and whether he was directed to do that by the existing NWC members?

Jenny

On Jul 6, 2023, at 8:12 PM, Candy Meehan <smwcd@yahoo.com> wrote:

We might need some help.

Candy A. Meehan
970.208.7829

Begin forwarded message:

y

Dear Members of the Norwood Water Commission,

I am writing to formally clarify the facts around the false allegations made against me while also addressing the harassing and intimidating behavior directed toward my family and me by Ray Cossey. Although Ray's abuses to this community are plentiful and far reaching, I am only focusing specifically on his complaint regarding Jenny RussellL In Mr. Cossey's complaint he falsely asserts that I am under active criminal investigation and denies engaging in intimidation tactics against me and my family. I am submitting this statement to correct the official record and to file a formal complaint against Ray Cossey.

Response to Specific Allegations made against me by Mr Cossey;

Mr. Cossey filed a police report containing several unsubstantiated and false claims:

1. Loss of Cattle Business Revenue: This is false. The property lacks basic infrastructure for a cattle operation, such as watering stations, functional irrigation, and adequate fencing. Additionally, a resident tenant uses the primary pasture for large debris storage and a burn pile. Routine ditch cleaning did not disrupt grazing

revenue, as no commercial livestock operation exists on the land.

2. Destruction of a Gate: This is false. No gate was damaged or destroyed because no gate existed. Photographic evidence and recorded statements confirm that only a sagging fence was located across my ditch easement. Despite the fact that fencing across my ditch easement is illegal, I promptly repaired the fence after maintaining the ditch.

3. Destruction of the Ditch: My actions were limited to legal maintenance of my ditch: removing trash, seepage, and overgrown grass obstructing water flow within my recorded ditch easement. This routine clearing is standard maintenance required to keep the ditch operational and prevent water from overflowing the ditch onto properties through which it runs.

4. Hydraulic Leak: A minor fluid leak occurred from an excavator during the ditch maintenance. Once I discovered the leak, I repaired the equipment, and was subsequently prevented by Mr. Cossey from cleaning up the contamination until it was too late.

Timeline of Events and Legal Status

The following timeline demonstrates that no criminal charges have been filed against me:

- June 23: Jenny and I met with the Sheriff's Office to explain the ditch easement and maintenance context, at which point the matter appeared resolved. The Sheriff's Office was informed of an eyewitness who confirms that I was maintaining my ditch easement and that there isn't an operational cattle business on Mr. Cossey's property.

- June 26: We were notified of a potential court summons regarding the alleged gate damage. The Sheriff's Office subsequently stated that the case file would be forwarded to the District Attorney.

- July 14: We submitted photographic evidence to the Sheriff's Office confirming that no gate existed and showing the actual condition of the fence. No response was received.

- July 15: Legal counsel verified with the District Attorney's Office that no filings had been submitted.

- August 12: Mr. Cossey filed a complaint with the Water Commission referencing an active criminal matter.

- September 24: Legal counsel re-confirmed directly with the

District Attorney's Office that no criminal or felony charges exist regarding this matter.

Summary

Since June 13, Ray Cossey has engaged in repeated harassment against me to try to intimidate and intentionally restrict my lawful access to my ditch easement. This includes conducting approximately a dozen communications with law enforcement, filing false reports with the sheriff, making false statements to neighbors, Lone Cone Ditch board members, and shareholders. He also has been documented several times driving around on dry grass while discharging firearms near our home in direct violation of a Stage 2 fire ban, including illegally driving on my ditch easement. In addition, Ray's other claims of property damage and financial loss are directly contradicted by physical evidence.

This ongoing harassment and intimidation continues to this day.

To be clear I am not the only person Mr Cossey continues to harass: Many others in this community have experienced being placed into terrible situations that Ray has intentionally created to target and abuse them, such as the priestleys in redvale.

Ray is easy to predict, and I can assure you that if he is not held accountable for this recent abuse then he will continue to attack and abuse other people and institutions that we all depend on as a community.

Ditch systems depend on shared easements, adherence to rules, and standard maintenance practice to preserve water flow. Based on body cam footage I received from the sheriff's office, Mr Cossey doesn't believe that these rules should apply to him. In a specific example I have body cam footage from the sheriff's deputy in which Mr. Cossey stated that property owners should be allowed to file criminal trespass charges against ditch owners when the property owners don't like the work performed on the ditch, in violation of ditch easement law and contrary to ditch owners' statutory responsibility to maintain their ditches. Mr Cosseys disregard, ignorance, and misunderstanding of well known and established water law and harassment of other shareholders are clearly disqualifying factors for him to serve on any water board or governing body, including the norwood water commission.

I respectfully request that this Board review this information to ensure the official record accurately reflects these facts. Furthermore, I request that Ray Cossey be immediately removed

from the Norwood Water Commission and permanently barred from serving on any water board based upon his documented harassment of water shareholders, ditch easement owners, and his false statements against me and others.

Sincerely,

Matthew Buckner

Norwood Water Commission 2027 Draft Budget

		2024 Actual	2025 Actual	2026 Estimate	2027 Budget	Notes	5% Increase	10% increase
Operating Revenues								
51-37-100	Water Sales	$487,252.00	$ 571,268.94	$ 673,957.50	$ 675,000.00	5% and 10% example	$ 708,750.00	$ 742,500.00
51-37-200	Connection Fees/Reconnect	$800.00	$ -	$ -	$ 200.00			
51-37-250	Water Tap Charges-PIF	$84,000.00	$ 60,000.00	$ 3,000.00	$ 12,000.00			
51-37-300	Delinquent Charges	$5,000.00	$ 4,755.47	$ 2,211.25	$ 2,500.00			
51-37-350	Public Water Meter/Shack	$9,000.00	$ 22,094.21	$ 22,510.00	$ 22,000.00	5% and 10% example	$ 23,100.00	$ 24,200.00
	Total Operating Revenue	**$586,052.00**	**$ 658,118.62**	**$ 701,678.75**	**$ 711,700.00**		**$ 746,550.00**	**$ 781,400.00**
Non-Operating Revenue							$ 34,850.00	$ 69,700.00
51-38-200	Capcity Grant CWCB 75%	$300,000.00	$ 42,107.94	$ 120,857.00	$ -	Closing out		
51-38-201	EIAF 25-098-Grant Redundant line D&E	$0.00	$ -	$ 91,121.00	$ 83,879.00			
51-38-202	SRF D&E	$0.00	$ -	$ -	$ 300,000.00			
51-38-203	Administrative Planning Grant EIAF328 50%	$0.00	$ 17,919.32	$ 8,687.00	$ -	Closed out		
51-38-300	Miscellaneous Revenues	$550.00	$ 3,076.63	$ -	$ -			
51-38-900	Deposit/App Fees	$6,500.00	$ 4,540.00	$ 4,000.00	$ 4,000.00			
51-39-600	Grants/Loans/Leases	$8,120.00	$ -	$ -	$ 2,250,000.00	CDS/County		
	Total Non-Operating Revenue	**$315,170.00**	**$ 67,643.89**	**$ 224,665.00**	**$ 2,637,879.00**			
Contributions								
51-39-700	Beginning Fund Balance Transfer	$50,000.00	$ 314,667.00	$ 218,000.00	$ 250,000.00			
	Total Contributions							
Total Norwood Water Commission Revenues		**$951,222.00**	**$ 1,040,429.51**	**$ 1,144,343.75**	**$ 3,599,579.00**			
Account #	***Account Description***							
51-40-110	Salary Reimbursement	$191,128.00	$ 191,225.01	$ 165,000.00	$ 205,000.00			
51-40-115	Grant Writer	$0.00	$ 810.00	$ -	$ -			
51-40-132	Employee Benefits	$23,500.00	$ 18,163.01	$ 18,500.00	$ 25,000.00			
51-40-210	Dues/Conferences	$5,000.00	$ 563.42	$ 1,000.00	$ 2,500.00			
51-40-230	Travel/Training	$1,000.00	$ 214.00	$ 1,000.00	$ 1,500.00			
51-40-235	WRAP Donation	$0.00	$ -	$ 5,000.00	$ -			
51-40-240	Office Supplies & Expense	$2,200.00	$ 1,340.32	$ 800.00	$ 2,500.00			
51-40-245	Freight	$3,000.00	$ 4,022.20	$ 250.00	$ 2,500.00			
51-40-250	Chemicals/Supplies/Maint.	$45,000.00	$ 52,509.92	$ 33,000.00	$ 45,000.00			
51-40-255	Vehicle Expense	$16,000.00	$ 3,047.24	$ 1,000.00	$ 2,000.00			
51-40-270	FICA Matching & Retirement	$21,650.00	$ 11,364.12	$ 7,550.00	$ 19,000.00			
51-40-275	Utilities	$35,000.00	$ 31,400.15	$ 21,500.00	$ 30,000.00			
51-40-280	Telephone/Cell	$5,000.00	$ 2,630.73	$ 2,600.00	$ 3,200.00			
51-40-290	Postage	$3,000.00	$ 5,139.43	$ 4,200.00	$ 5,500.00			
51-40-310	Contract Labor	$43,000.00	$ 30,329.07	$ 43,000.00	$ 45,000.00			
51-40-420	Credits/Adjustments	$500.00	$ (889.11)	$ 950.00	$ 1,000.00			
51-40-430	Service Charge	$3,100.00	$ 1,970.60	$ 4,900.00	$ 6,500.00			
51-40-460	Attorney Fees	$10,000.00	$ 47,410.50	$ 24,000.00	$ 35,000.00			
51-40-480	Materials & Supplies	$35,000.00	$ 34,466.44	$ 25,305.00	$ 40,000.00			
51-40-490	Prof/Technical/Audit	$5,200.00	$ 10,750.00	$ 6,000.00	$ 6,500.00			
51-40-510	Insurance & Surety Bonds	$16,000.00	$ 21,678.01	$ 22,650.00	$ 28,000.00			

51-40-620	Miscellaneous Contracts	$8,000.00	$ 8,305.94	$ 9,175.00	$ 12,000.00
51-40-630	Water Testing	$10,000.00	$ 7,331.58	$ 5,505.00	$ 7,000.00
51-40-661	Water Assessments/FWDC	$30,000.00	$ 41,507.50	$ 34,227.00	$ 41,500.00
51-40-750	Engineering	$10,000.00	$ 1,625.25	$ -	$ 10,000.00
51-40-830	CWCB Payment	$51,400.00	$ 51,400.00	$ 51,400.00	$ 51,400.00
51-40-840	System Upgrades	$17,044.00	$ 7,499.57	$ -	$ 10,000.00
51-40-910	River Filing	$500.00	$ 587.25	$ -	$ -
51-40-911	Transfer to ICS	$0.00	$ -	$ -	$25,000.00
Norwood Water Commission Expenditures		**$593,246.00**	**$ 586,402.15**	**$ 488,512.00**	**$ 662,600.00**
Norwood Water Commission Capital/Grants					
51-40-740	Equipment	$10,000.00	$ 3,000.00	$ 8,000.00	$ 58,100.00
51-40-741	Aerator	$0.00	$ -	$ -	$ 70,000.00
51-40-742	Pressure Reducing Vault	$0.00	$ -	$ -	$ 75,000.00
51-40-743	Tank Maintenance	$0.00	$ -	$ -	$ 75,000.00
51-40-744	Filter Sand Replacement	$0.00	$ -	$ -	$ 25,000.00
51-40-760	D&E Rendunant Line Cost	$350,000.00	$ 97,119.13	$ 233,500.00	$ 383,879.00
51-40-761	Redundant Line EA Cost	$0.00		$ 12,800.00	$ -
51-40-762	Admin Planning Grant	$0.00	$ 17,919.32	$ 1,000.00	$ -
51-40-770	CWCB Water Storage	$0.00	$ -	$ 120,857.00	$ -
51-40-771	Redunant Line Construction	$0.00	$ -	$ -	$ 2,250,000.00
Norwood Water Commission Capital/Grants Expenditures		**$360,000.00**	**$ 118,038.45**	**$ 376,157.00**	**$ 2,936,979.00**
Total Expenditures		**$953,246.00**	**$ 704,440.60**	**$ 864,669.00**	**$ 3,599,579.00**
Excess (-Deficit) of Revenues					
Over Expenditures					
Fund Balance NWC-Beginning		$951,222.00	$ 1,470,931.02	$ 1,504,925.27	$ 1,535,000.00
Fund Balance NWC-Ending					
ICS Savings					
Revenue					
	Interest-Contingency 3.75%	$0.00	$ 2,872.90	$ 14,400.00	$ 15,600.00
	Transfer from Operating	$ -	$ -	$ -	$ 25,000.00
	Total Revenues	$ -	**$ 2,872.90**	**$ 14,400.00**	**$ 40,600.00**
Expenditures					
	Capital Outlay	$ -	$ -	$ -	$ -
	Transfer to Operating	$ -	$ -	$ -	$ -
	Total Expenditures	$ -	$ -	$ -	$ -
Excess (-Deficit) of Savings					
Over Expenditures					
Fund Balance ICS Beginning		$ -	$ 700,000.00	$ 702,872.90	$ 717,272.90
Fund Balance ICS Ending		$ -	$ 702,872.90	$ 717,272.90	$ 757,872.90
Money Market Donation					

Revenue					
Interest -APY .089%	$ 362.74	$ 238.95	$ -	$ -	
Donations	$ -	$ -	$ -	$ -	
Total Revenues	**$ 362.74**	**$ 238.95**	**$ -**	**$ -**	
Expenditures					
Redundant Line	$ -	$ -	$ -	$ -	
Transfer to ICS	$ -	$ 395,721.89	$ -	$ -	
Total Expenditures	**$ -**	**$ 395,721.89**	**$ -**	**$ -**	
Excess (-Deficit) of Savings Over Expenditures					
Fund Balance Money Market Beginning	$ 395,122.15	$ 395,484.89	$ 1.95	$ 1.95	
Fund Balance Money Market Ending	$ 395,484.89	$ 1.95	$ 1.95	$ 1.95	

Adopted this ___ day of _____

By:_____
NWC Chair

Attest:_____
Annie Crews, NWC Deputy Admin

Town of Norwood
Financial Statements and
Independent Auditor's Report
as of
December 31, 2025

Town of Norwood
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Blair and Associates, P.C.
Cedaredge, Colorado

INDEPENDENT AUDITOR'S REPORT

To the Board of Trustees
Town of Norwood, Colorado

Opinions

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Norwood, Colorado, as of and for the year ended December 31, 2025, and the related notes to the financial statements, which collectively comprise the Town of Norwood, Colorado's basic financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Norwood, Colorado, as of December 31, 2025, and the respective changes in financial position and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Town of Norwood, Colorado, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Town of Norwood, Colorado's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.

Certified Public Accountants
105 S.E. Frontier Ave, Suite A Cedaredge, CO 81413 | 970-856-7550 | 970-856-2122 | www.bandacpas.com

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Town of Norwood, Colorado's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Town of Norwood, Colorado's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and budgetary comparison information be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Supplementary Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Town of Norwood, Colorado's basic financial statements. The combining and individual nonmajor fund financial statements are presented for purposes of additional analysis and are not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the combining and individual nonmajor fund financial statements are fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Blair and Associates, P.C.

Cedaredge, Colorado
May 13, 2026

TOWN OF NORWOOD
Management's Discussion and Analysis
Fiscal Year Ended December 31, 2025

As management of the Town of Norwood (the "Town"), we offer readers of the Town's basic financial statements this narrative overview and analysis of the financial activities of the Town for the fiscal year ended December 31, 2025. We encourage readers to consider the information presented here in conjunction with additional information provided in the financial statements.

FINANCIAL HIGHLIGHTS

- The Town's assets exceeded its liabilities and deferred inflows of resources by $ 7,908,755 (i.e. net position) as of December 31, 2025, an increase of $ 115,940 in comparison to the prior year.
- Governmental funds reported combined fund balances of $ 1,638,842, an increase of $ 31,322 in comparison with the prior year.
- The Town's fund balance for the General Fund was $ 454,998, an increase of $ 24,612 in comparison to the prior year.
- General property tax, sales tax, and other tax totaled $ 678,663, or 64% of general revenues.

OVERVIEW OF FINANCIAL STATEMENTS

This discussion and analysis is intended to serve as an introduction to the Town's basic financial statements. The basic statements are comprised of three components: 1) government-wide financial statements, 2) fund financial statements, and 3) notes to the financial statements.

Government-wide Financial Statements

The government-wide financial statements are designed to provide readers with a broad overview of the Town's finances in a manner similar to a private-sector business.

The **statement of net position** presents information on all the Town's assets, liabilities and deferred inflows of resources, with the difference being reported as net position. Over time, the increases or decreases in net position may serve as a useful indicator of whether the financial position of the Town is improving or deteriorating.

The **statement of activities** presents information showing how the Town's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, *regardless of the timing of related cash flows.* Thus, revenues and expenses reported in this statement for some items will result in cash flows in future periods (e.g. uncollected taxes and earned but unused personal time).

The government-wide financial statements distinguish functions of the Town that are principally supported by taxes and intergovernmental revenues (*Governmental Activities*) from other functions that are intended to recover all or a significant portion of their costs through user fees and charges (*Business-type Activities*). The Governmental Activities of the Town include general government administration, police, fire, public works, and community center. The Business-type Activities of the Town include a water fund.

Fund Financial Statements

A *fund* is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. Fund accounting is used to ensure and demonstrate compliance with finance-related legal requirements. The Town's funds can be divided into two categories: Governmental Funds and Proprietary Funds.

Governmental Funds – *Governmental funds* are used to account for essentially the same functions reported as *governmental activities* in the government-wide financial statements. However, unlike the government-wide financial statements, governmental fund financial statements focus on *short-term inflows and outflows of spendable resources*, as well as on *balances of spendable resources* available at the end of the fiscal year. Such information may be useful in evaluating a government's short-term financing requirements. The accounting method is called *modified accrual* accounting.

Because the focus of governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for governmental activities in the *governmental funds* with similar information presented for *governmental activities* in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the government's short-term financing decisions. Both the governmental fund balance sheet and the governmental fund statement of revenues, expenditures, and changes in fund balances provide a reconciliation to facilitate this comparison between *governmental funds* and *governmental activities*.

The Town maintains two major government funds, the General and Contingency Funds. Information is presented separately in the governmental fund balance sheet and in the governmental fund statement of revenues, expenditures, and changes in fund balances for the General and Contingency Funds.

Proprietary Funds – The Town maintains one type of proprietary fund. *Enterprise Funds* are used to report the same functions presented as *business-type activities* in the government-wide financial statements. The Town uses separate enterprise funds to account for its utility funds: Water and Raw Water Irrigation System Funds.

Notes to Financial Statements

The notes provide additional information that is essential to a full understanding of the data provided in the financial statements.

GOVERNMENT-WIDE FINANCIAL ANALYSIS

Net Position

As noted previously, net position may serve over time as a useful indicator of the Town's financial position. For the year ended December 31, 2025, the Town's combined assets exceed liabilities and deferred inflows of resources by $ 7,908,755. Of this amount, $ 1,744,359 is unrestricted and available to meet the Town's ongoing financial obligations.

By far the largest portion of net position is the investment in capital assets (net of related debt) of $ 4,943,101 (63% of net position). This amount reflects the investment in all capital assets (e.g. infrastructure, land, buildings, and equipment) less any related debt used to acquire those assets that are still outstanding. These capital assets are used to provide services to citizens; consequently, these assets are not available for future spending. Although the investment in capital assets is reported net of debt, it should be noted that the resources needed to repay this debt must be provided from other sources since capital assets themselves cannot be used to liquidate these liabilities.

The following table summarizes the Town's governmental and business-type net position for 2024 and 2025:

	Governmental Activities		Business-Type Activities		Total	
	2024	2025	2024	2025	2024	2025
Assets						
Current and other assets	$ 1,739,277	$ 1,760,586	$ 1,348,117	$ 1,388,052	$ 3,087,394	$ 3,148,638
Capital assets	1,520,668	1,584,718	3,519,001	3,476,783	5,039,669	5,061,501
Total assets	3,259,945	3,345,304	4,867,118	4,864,835	8,127,063	8,210,139
Current liabilities	53,844	34,603	11,871	37,590	65,715	72,193
Non-current liabilities						
Loans payable	-	-	163,268	118,399	163,268	118,399
Total liabilities	53,844	34,603	175,139	155,989	228,983	190,592
Deferred inflow of resources						
Deferred property taxes	105,266	110,792	-	-	105,266	110,792
Net position						
Investment in capital assets, net of related debt	1,520,668	1,584,718	3,355,733	3,358,384	4,876,401	4,943,102
Restricted	1,214,584	1,221,294			1,214,584	1,221,294
Unrestricted	365,584	393,897	1,336,246	1,350,462	1,701,830	1,744,359
Total net position	$ 3,100,836	$ 3,199,909	$ 4,691,979	$ 4,708,846	$ 7,792,815	$ 7,908,755

An additional portion of net position, $ 1,221,294, represents resources that are subject to external restrictions on how they may be used. The remaining balance of unrestricted net position, $ 1,744,359 (22% of net position), may be used to meet the government's ongoing obligations to citizens and creditors.

Change in Net Position

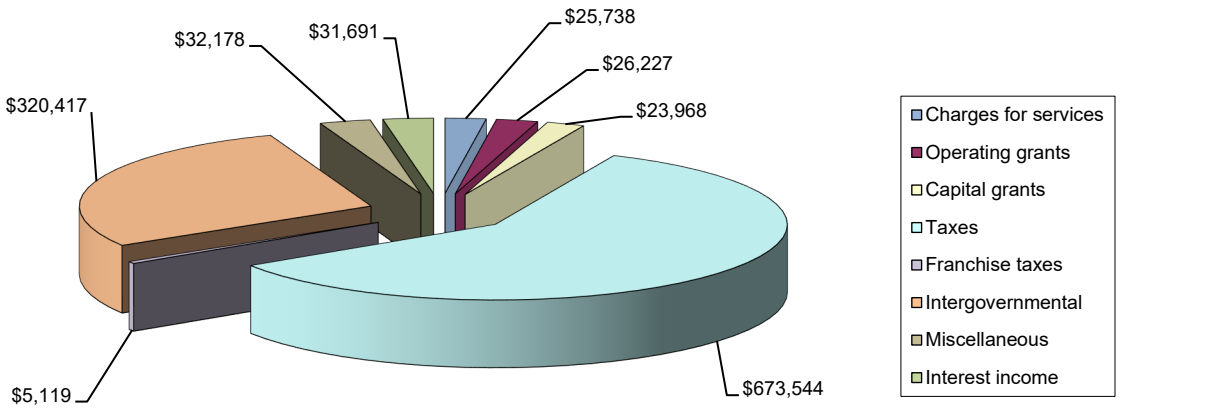
Governmental and business-type activities increased the Town's net position by $ 115,940 in 2025.

	Governmental Activities		Business-Type Activities		Totals	
	2024	2025	2024	2025	2024	2025
Revenues						
Program revenues						
Charges for services	$ 8,508	$ 25,738	$ 562,527	$ 621,518	$ 571,035	$ 647,256
Operating grants	33,775	26,227	-	-	33,775	26,227
Capital contributions	-	23,968	96,000	92,632	96,000	116,600
General Revenues						
Property taxes	125,579	108,788	-	-	125,579	108,788
Specific ownership	2,368	3,596	-	-	2,368	3,596
Sales taxes and other	530,246	561,160	-	-	530,246	561,160
Franchise taxes	5,563	5,119	-	-	5,563	5,119
Miscellaneous	21,432	32,178	6,593	7,627	28,025	39,805
Intergovernmental	282,175	320,417	33,394	42,108	315,569	362,525
Interest income	2,824	31,691	573	3,712	3,397	35,403
Totals	1,012,470	1,138,882	699,087	767,597	1,711,557	1,906,479
Expenses						
General Government	558,826	500,954	-	-	558,826	500,954
Judicial	225	4,819	-	-	225	4,819
Public safety	101,431	106,800	-	-	101,431	106,800
Public works	351,178	386,599	593,127	750,730	944,305	1,137,329
Culture and recreation	41,230	40,637	-	-	41,230	40,637
Total Expenses	1,052,890	1,039,809	593,127	750,730	1,646,017	1,790,539
Increase in net position	(40,420)	99,073	105,960	16,867	65,540	115,940
Beginning	3,141,256	3,100,836	4,586,019	4,691,979	7,727,275	7,792,815
Ending	$ 3,100,836	$ 3,199,909	$ 4,691,979	$ 4,708,846	$ 7,792,815	$ 7,908,755

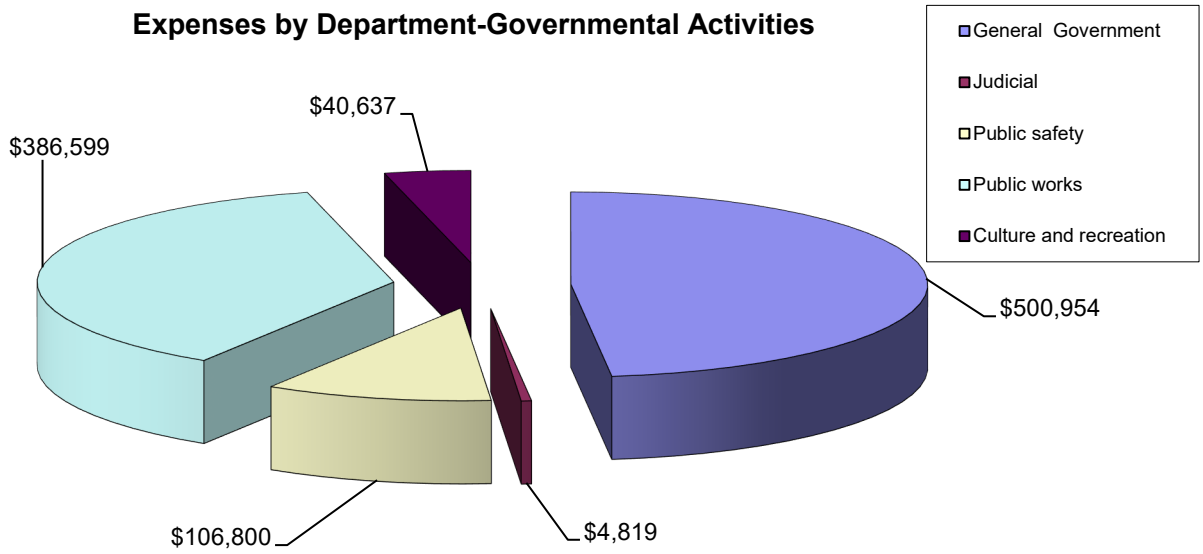
Governmental Activities

Governmental activities increased the Town's net position by $ 99,073.

Revenues by Source-Governmental Activities



Expenses by Department-Governmental Activities



Business-type Activities

Business-type activities for the year resulted in an increase in net position of $ 16,867. Charges for services accounted for 81% of total revenues.

FINANCIAL ANALYSIS OF GOVERNMENT'S FUNDS

Governmental funds - The focus of the Town's governmental funds is to provide information on near-term inflows, outflows, and balances of spendable resources. Such information is useful in assessing the Town's financing requirements. In particular, unreserved fund balance may serve as a useful measure of the Town's net resources available for spending at the end of the fiscal year.

As of the end of 2025, the Town's governmental funds reported combined ending fund balances of $ 1,638,842, an increase of $ 31,322 in comparison with the prior year. Of the combined ending fund balances for all governmental funds 25% of this total amount, $ 417,548, constitutes unreserved fund balance, which is available for appropriation at the Town's discretion. The remainder of the fund balance is reserved to indicate that it is not available for new spending because it is already committed to meet a State constitution mandated emergency reserve, $ 37,450, restricted for parks and recreation $17,464 and $ 1,166,380 for other purposes.

The Town has two major governmental funds, the General and Contingency Funds. At the end of 2025, the unreserved fund balance of the General Fund was $ 417,548, while the total fund balance was $ 454,998. As a measure of the General Fund's liquidity, it may be useful to compare both unreserved fund balance and total fund balance to total fund expenditures. The fund balance of the Town's General Fund increased by $ 24,612 during 2025.

Proprietary funds - The Town's proprietary fund statements provide the same type of information found in the government-wide financial statements, but in more detail.

The Town has two enterprise funds: Water and Raw Water Irrigation Funds. At the end of 2025, the fund represented the following net position amounts:

Fund:	Water	Raw Water Irrigation System
Unrestricted net position	$ 1,134,463	$ 215,999
Total net position	$ 3,243,147	$ 1,465,699
Increase or (decrease) in net position	$33,933	($17,066)

GENERAL FUND BUDGETARY HIGHLIGHTS

The Town budgeted $ 2,332,390 for 2025 expenditures. The actual expenditures were $ 1,079,481. There was no amendment to the original budget for General Fund.

CAPITAL ASSET AND DEBT ADMINISTRATION

The Town's investment in capital assets for its governmental and business-type activities as of December 31, 2025, was $ 5,061,500. As required by GASB 34, the investment in capital assets includes land, buildings, building improvements, and equipment.

Governmental Activities	Balance January 1, 2025	Additions	Dispositions	Balance December 31, 2025
Capital assets not being depreciated				
Land	$ 545,901	$ 25,003	$ -	$ 570,904
	545,901	25,003	-	570,904
Capital assets being depreciated				
Buildings	484,312	41,000	-	525,312
Equipment	424,229	32,916	-	457,145
Park Expansion	511,853	13,127	-	524,980
Infrastrucure	295,111	33,509	-	328,620
	1,715,505	120,552	-	1,836,057
Less accumulated depreciation				
Buildings	(127,773)	(12,453)	-	(140,226)
Equipment	(283,879)	(38,324)	-	(322,203)
Park Expansion	(141,453)	(21,497)	-	(162,950)
Infrastrucure	(187,633)	(9,231)	-	(196,864)
	(740,738)	(81,505)	-	(822,243)
Capital assets being depreciated, net	974,767	39,047	-	1,013,814
Total Governmental Activities Capital Assets	$ 1,520,668	$ 64,050	$ -	$ 1,584,718

Business - Type Activities	Balance January 1, 2025	Additions	Dispositions	Balance December 31, 2025
Capital assets not being depreciated				
Land and source of supply	$ 290,207	$ -	$ -	$ 290,207
Capital assets being depreciated				
Utility plant	6,756,297	115,038	-	6,871,335
Vehicles and equipment	72,528	15,000	-	87,528
Less accumulated depreciation	(3,600,031)	(172,256)	-	(3,772,287)
Capital assets being depreciated, net	3,228,794	(42,218)	-	3,186,576
Total Business-Type Activities Capital Assets	$ 3,519,001	$ (42,218)	$ -	$ 3,476,783

Long-term Debt

As of December 31, 2025, the Town had long-term debt as follows:

Enterprise Activities	Balance 1/1/2025	Additions	Reductions	Balance 12/31/2025	Due Within One Year
Loans-CWCB	$ 163,268	$ -	$ (44,869)	$ 118,399	$ 46,664
Totals	$ 163,268	$ -	$ (44,869)	$ 118,399	$ 46,664

Request for Information:

This financial report is designed to provide a general overview of the Town's finances for all those with an interest in the government's finances. Questions concerning any of the information provided in the report or requests for additional financial information should be addressed to:

Sara Owens, Administrator
P.O. Box 528
Norwood, CO 81423

Town of Norwood
Statement of Net Position
December 31, 2025

	Governmental Activities	Business -Type Activities	Total
ASSETS			
Cash and cash equivalents	$ 1,589,481	$ 1,278,768	$ 2,868,249
Property taxes receivable	110,792	-	110,792
Accounts receivables	60,313	61,282	121,595
Advance water assessments-net	-	48,002	48,002
Capital assets, net	1,584,718	3,476,783	5,061,501
Total assets	3,345,304	4,864,835	8,210,139
LIABILITIES			
Accounts payable	-	25,620	25,620
Customer deposits	-	3,432	3,432
Accrued payroll taxes	10,952	8,393	19,345
Accrued compensated absences	23,651	-	23,651
Accrued interest payable	-	145	145
Non current liabilities			
Due within one year	-	46,664	46,664
Due in more than one year	-	71,735	71,735
Total liabilities	34,603	155,989	190,592
DEFERRED INFLOWS OF RESOURCES			
Property taxes revenues	110,792	-	110,792
NET POSITION			
Invested in capital assets, net of related debt	1,584,718	3,358,384	4,943,102
Restricted for:			
Emergencies	37,450	-	37,450
Other purposes	1,183,844	-	1,183,844
Unrestricted	393,897	1,350,462	1,744,359
Total net position	$ 3,199,909	$ 4,708,846	$ 7,908,755

The accompanying notes are an integral part of this statement.

Town of Norwood
Statement of Activities
For the Year Ended December 31, 2025

Functions/Programs	Expenses	Program Revenues: Charges for Service and Fees	Program Revenues: Operating Grants and Contributions	Program Revenues: Capital Grants and Contributions	Net (Expense) Revenue and Changes in Net Position: Primary Government: Governmental Activities	Primary Government: Business-Type Activities	Primary Government: Total
Primary government:							
Governmental activities:							
General government	$ 500,954	$ 1,962	$ -	$ -	$ (498,992)	$ -	$ (498,992)
Judicial	4,819	-	-	-	(4,819)	-	(4,819)
Public Safety	106,800	3,481	-	-	(103,319)	-	(103,319)
Public Works	386,599	2,620	22,835	23,968	(337,176)	-	(337,176)
Culture and Recreation	40,637	17,675	3,392	-	(19,570)	-	(19,570)
Total governmental activities	1,039,809	25,738	26,227	23,968	(963,876)	-	(963,876)
Business-type activities:							
Water	677,631	598,118	-	60,000	-	(19,513)	(19,513)
Raw Water Irrigation System	73,098	23,400	-	32,632	-	(17,066)	(17,066)
Total business- type activities	750,729	621,518	-	92,632	-	(36,579)	(36,579)
Total primary government	$ 1,790,538	$ 647,256	$ 26,227	$ 116,600	(963,876)	(36,579)	(1,000,455)
		General Revenues					
		Taxes:					
		Property taxes			108,788	-	108,788
		Specific ownership			3,596	-	3,596
		Sales taxes and miscellaneous			561,160	-	561,160
		Franchise taxes			5,119	-	5,119
		Mineral leasing and severance taxes			238	-	238
		Miscellaneous			32,178	7,627	39,805
		Intergovernmental			320,179	42,108	362,287
		Investment earnings			31,691	3,712	35,403
		Total General Revenues			1,062,949	53,447	1,116,396
		Changes in Net Position			99,073	16,868	115,941
		Net Position-January 1			3,100,836	4,691,979	7,792,815
		Net Position-December 31			$ 3,199,909	$ 4,708,847	$ 7,908,756

The accompanying notes are an integral part of this statement.

Town of Norwood
Governmental Funds
Balance Sheet
December 31, 2025

	General Fund	Contingency Fund	Non-major Funds	Total Governmental Funds
Assets				
Cash and cash equivalents	$ 405,637	$ 1,166,381	$ 17,464	$ 1,589,482
Taxes receivable	110,792	-	-	110,792
Accounts receivable	60,313	-	-	60,313
Total assets	576,742	1,166,381	17,464	1,760,587
Liabilities				
Accrued payroll taxes	10,952	-	-	10,952
Total liabilities	10,952	-	-	10,952
Deferred inflows of resources				
Deferred property taxes	110,792	-	-	110,792
Fund balance				
Restricted for emergencies	37,450		-	37,450
Restricted for Parks and Recreation	-	-	17,464	17,464
Committed for capital Improvements	-	1,166,380	-	1,166,380
Unassigned	417,548	-	-	417,548
Total fund balance	$ 454,998	$ 1,166,380	$ 17,464	$ 1,638,842

The accompanying notes are an integral part of this statement.

Town of Norwood
Reconciliation of the Governmental Funds Balance
Sheet to the Statement of Net Position
December 31, 2025

Total fund balance, governmental funds		$ 1,638,842
Amounts reported for governmental activities in the Statement of Net Position are different because:		
Capital assets used in governmental activities are not current period expenditures and therefore are not reported in this fund financial statement, but are reported in the governmental activities of the Statement of Net Position.		
Cost of capital assets	$ 2,406,961	
Less accumulated depreciation	(822,243)	
		1,584,718
Some liabilities, (such as Notes Payable, Capital Lease Contract Payable, Long-term Compensated Absences, and Bonds Payable), are not due and payable in the current period and are not included in the fund financial statement, but are included in the governmental activities of the Statement of Net Position.		
Compensated absences		(23,651)
Net Position of Governmental Activities in the Statement of Net Position		$ 3,199,909

The accompanying notes are an integral part of this statement.

Town of Norwood
Governmental Funds
Statement of Revenues, Expenditures and Changes in Fund Balances
For the Year Ended December 31, 2025

	General Fund	Contingency Fund	Non-major Funds	Total Governmental Funds
Revenues				
Taxes	$ 697,902	$ -	$ -	$ 697,902
Licenses and permits	2,312	-	-	2,312
Intergovernmental	342,506	-	3,392	345,898
Charges for services	2,270	-	-	2,270
Fines and forfeitures	3,481	-	-	3,481
Miscellaneous	55,622	31,382	15	87,019
Total revenues	1,104,093	31,382	3,407	1,138,882
Expenditures				
Current:				
General government	499,067	-	-	499,067
Judicial	4,819	-	-	4,819
Police department	106,800	-	-	106,800
Public works	413,088	-	-	413,088
Culture and recreation	16,064	-	3,076	19,140
Capital Outlay	39,643	25,003	-	64,646
Total expenditures	1,079,481	25,003	3,076	1,107,560
Net change to fund balance	24,612	6,379	331	31,322
Fund balance, January 1	430,386	1,160,001	17,133	1,607,520
Fund balance, December 31	$ 454,998	$ 1,166,380	$ 17,464	$ 1,638,842

The accompanying notes are an integral part of this statement.

Town of Norwood
Reconciliation of the Governmental Funds Statement of Revenues, Expenditures, and Changes in Fund Balances to the Statement of Activities
For the Year Ended December 31, 2025

Net change in fund balances - total governmental funds		$ 31,322
Amounts reported for governmental activities in the statement of activities are different because:		
Governmental funds report capital outlays as expenditures. However, in the statement of activities the cost of those assets is allocated over their estimated useful lives and reported as deprecation expense. This is the amount by which capital outlays expense exceeded depreciation in the current period.		
Fixed assets current additions	$ 145,554	
Depreciation expense	(81,505)	
Excess of capital outlay over depreciation		64,049
Under the modified accrual basis of accounting used in governmental funds, expenditures are not recognized for transactions that are not normally paid with expendable available financial resources and revenues are not recognized until they become both measurable and available. In the statement of activities however, which is presented on the accrual basis, expenses and liabilities are reported regardless of when the financial resources are available.		
Changes in compensated absences		3,702
Change in net position of governmental funds		$ 99,073

The accompanying notes are an integral part of this statement.

Town of Norwood
Statement of Net Position
Enterprise Funds
December 31, 2025

	Enterprise Funds		
	Water Fund	Raw Water Irrigation System Fund	Totals
ASSETS			
Current Assets			
Cash and cash equivalents	$ 1,062,769	$ 215,999	$ 1,278,768
Accounts receivable, net	61,282	-	61,282
Total Current Assets	1,124,051	215,999	1,340,050
Other Assets			
Advance water assessments-net	48,002	-	48,002
Noncurrent Assets			
Capital assets			
Water rights	290,207	-	290,207
Utility system	5,328,910	1,542,425	6,871,335
Vehicle & Equipment	52,528	35,000	87,528
Less accumulated depreciation	(3,444,562)	(327,725)	(3,772,287)
Total Noncurrent Assets	2,227,083	1,249,700	3,476,783
Total Assets	3,399,136	1,465,699	4,864,835
LIABILITIES			
Current Liabilities			
Accounts payable	25,620	-	25,620
Customer deposits	3,432	-	3,432
Accrued interest payable	145	-	145
Accrued payroll	8,393	-	8,393
Current portion on long-term debt	46,664	-	46,664
Total Current Liabilities	84,254	-	84,254
Long-Term Debt			
Loans payable	71,735	-	71,735
Total Long-Term Debt	71,735	-	71,735
Net Position			
Invested in capital assets, net of related debt	2,108,684	1,249,700	3,358,384
Unrestricted	1,134,463	215,999	1,350,462
Total Net Position	$ 3,243,147	$ 1,465,699	$ 4,708,846

The accompanying notes are an integral part of this statement.

Town of Norwood
Statement of Revenues, Expenses and Changes in Net Position
Enterprise Funds
Year Ended December 31, 2025

	Enterprise Funds		
	Water Fund	Raw Water Irrigation System Fund	Totals
Operating revenues:			
Charges for services	$ 598,118	$ 23,400	$ 621,518
Total operating revenues	598,118	23,400	621,518
Operating expenses:			
Salaries and benefits	229,955	-	229,955
Maintenance and supplies	141,417	-	141,417
Water assessments	41,508	-	41,508
Utilities	34,031	522	34,553
Other expenses	120,695	2,481	123,176
Depreciation	103,494	70,095	173,589
Total operating expenses	671,100	73,098	744,198
Operating income (loss)	(72,982)	(49,698)	(122,680)
Nonoperating revenues (expenses):			
Grants and contributions	42,108	32,632	74,740
Interest income	3,712	-	3,712
Miscellaneous	7,627	-	7,627
Interest expense	(6,531)	-	(6,531)
Total nonoperating revenues (expenses)	46,916	32,632	79,548
Income (loss) before transfers and capital contributions	(26,066)	(17,066)	(43,132)
Capital contributions-Tap fees	60,000	-	60,000
Change in net position	33,934	(17,066)	16,868
Total net position, January 1	3,209,214	1,482,765	4,691,979
Total net position, December 31	$ 3,243,148	$ 1,465,699	$ 4,708,847

The accompanying notes are an integral part of this statement.

Town of Norwood
Statement of Cash Flows
Enterprise Funds
Year Ended December 31, 2025

	Enterprise Funds		
	Water Fund	Raw Water Irrigation System Fund	Totals
Cash Flows From Operating Activities			
Cash received from charges for services	$ 597,975	$ 23,400	$ 621,375
Cash payments for salaries and benefits	(221,562)	-	(221,562)
Cash payments for goods and services	(320,188)	(3,003)	(323,191)
Net cash provided (used) by operating activities	56,225	20,397	76,622
Cash Flows from Noncapital Financing Activities			
Grants and contributions	42,108	32,632	74,740
Miscellaneous revenues	7,627	-	7,627
Net cash provided (used) by noncapital financing activities	49,735	32,632	82,367
Cash Flows from Capital and Related Financing Activities			
Tap fees	60,000	-	60,000
Purchase of capital assets	(130,038)	-	(130,038)
Principal paid on loans and leases	(44,869)	-	(44,869)
Interest expense	(6,531)	-	(6,531)
Net cash provided (used) by capital and related financing activities	(121,438)	-	(121,438)
Cash Flows from Investing Activities			
Interest on investments	3,712	-	3,712
Net increase (decrease) in cash and equivalents	(11,766)	53,029	41,263
Cash balances, January 1	1,074,535	162,970	1,237,505
Cash balances, December 31	$ 1,062,769	$ 215,999	$ 1,278,768
Reconciling of operating income (loss) to net cash provided (used) by operating activities:			
Operating income (loss)	$ (72,982)	$ (49,698)	$ (122,680)
Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities:			
Depreciation expense	103,494	70,095	173,589
Assets (increase) decrease:			
Accounts receivables	(6)	-	(6)
Liabilities increase (decrease):			
Accounts payable	17,463	-	17,463
Customer deposits	(137)	-	(137)
Accrued payroll	8,393	-	8,393
Total adjustments	129,207	70,095	199,302
Net cash provided (used) by operating activities	$ 56,225	$ 20,397	$ 76,622

The accompanying notes are an integral part of this statement.

Note 1 – Summary of Significant Accounting Policies

The financial statements of the Town of Norwood, Colorado (the Town) have been prepared in conformity with accounting principles generally accepted in the United States of America (GAAP) as applied to government units. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles.

The more significant of the Town's accounting policies are described below:

A. Financial Reporting Entity

The Town is a statutory municipality with a mayor – council form of government with five elected Council members. As required by accounting principles generally accepted in the United States of America, these financial statements present the Town of Norwood (the primary government). The Town has no oversight responsibility for any other governmental entity since no other entities are considered to be controlled by or dependent on the Town. Control or dependence is determined on the basis of budget adoption, taxing authority, funding, and appointment of the respect governing body.

B. Government-wide Financial Statements

The government-wide financial statements (i.e., the statement of net position and the statement of changes in net position) report information on all of the activities of the Town. For the most part, the effect of inter-fund activity has been removed from these statements. Governmental activities, which normally are supported by taxes, charges for services and intergovernmental revenues, are reported separately from business-type activities, which rely to a significant extent on user charges for support.

The statement of activities demonstrates the degree to which the direct expenses of a given function or segment is offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include 1) charges to those who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment, and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not properly included among program revenues are reported instead as general revenues.

C. Fund Financial Statements

The accounts of the Town are organized on the basis of funds and account groups, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund equity, revenues, and expenditures, or expenses, as appropriate. Government resources are allocated to and accounted for in individual funds based upon the purposes for which they are to be spent and the means by which spending activities are controlled.

All governmental funds are accounted for on a flow of current financial resources basis. Balance sheets for these funds generally include only current assets and current liabilities. Reported fund balances are considered a measure of available, spendable resources. Operating statements for these funds present a summary of available, spendable resources and expenditures for the period.

Note 1 – Summary of Significant Accounting Policies – (continued)

C. Fund Financial Statements – (continued)

Separate financial statements are provided for governmental funds and proprietary funds. Major individual governmental funds and major individual enterprise funds are reported as separate columns in the fund financial statements.

The Town reports the following major governmental fund:

- The General Fund is the Town's primary operating fund. It accounts for all financial resources of the Town, except those required to be accounted for in another fund.

The remaining governmental funds are aggregated and presented as non-major funds. Those funds include:

- Contingency Fund, which accounts for expenditures that could not have been reasonably foreseen.
- The Conservation Trust Fund, which accounts for State of Colorado lottery funds to be used for parks and recreation services and capital investment.

Enterprise Funds account for operations that are financed and operated in a manner similar to private business enterprises, where the intent is that the costs of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges. Enterprise funds are considered major funds because of community interests in the activities and sources of funding supporting these operations.

Enterprise funds distinguish operating revenues and expenses from nonoperating items. Operating revenues and expenses generally result from providing services and producing and delivering goods in connection with an enterprise fund's principal ongoing operations. The principal operating revenues of the Town are charges for water fees. Operating expenses for the enterprise funds include purchased services, utilities, repairs and maintenance, supplies, insurance and depreciation cost. All revenues and expenses not meeting this definition are reported as non-operating revenues and expenses. When both restricted and unrestricted resources are available for use, it is the Town's policy to use restricted resources first, then unrestricted resources as needed.

The Town reports the following major enterprise fund business-type activity:

- Water Fund, which accounts for all operations of the Town's water services. This is primarily financed by user charges.
- Raw Water Irrigation System Fund, which accounts for all operations of the Town's raw water irrigation services. This is primarily financed by grants and contributions and by user charges.

D. Measurement Focus and Basis of Accounting

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting, as are the enterprise fund financial statements. Revenues are recorded when earned and expenses are recorded when liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year for which they are levied. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

Note 1 – Summary of Significant Accounting Policies – (continued)

D. Measurement Focus and Basis of Accounting – (continued)

The modified accrual basis of accounting is used by all governmental funds. Under the modified accrual basis of accounting, revenues are recognized when susceptible to accrual (i.e., when they become both measurable and available). "Measurable" means the amount of the transaction can be determined and "available" means collectible within the current period or soon enough thereafter to be used to pay liabilities of the current period. For this purpose, the government considers revenues to be available if they are collected within 60 days at the end of the current fiscal period. Expenditures are recorded when the related fund liability is incurred. Exceptions to this general rule include principal and interest on general long-term debt which is recognized when due, and compensated absences which are recognized when the obligations are expected to be liquidated with expendable available resources.

Those revenues susceptible to accrual are interest revenue and charges for services. Entitlement revenues are not susceptible to accrual because generally, they are not measurable until received. Grant revenues are recognized as they are earned.

The accrual basis of accounting is utilized by enterprise funds. Under this method, revenues are recorded when earned and expenses are recorded at the time liabilities are incurred.

Deferred Outflows / Inflows of Resources

In addition to assets, the statement of net position will sometimes report a separate section of deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of net position that applies to a future period(s) and will not be recognized as an outflow of resources (expense/ expenditure) until then.

In addition to liabilities, the statement of net position will sometimes report a separate section of deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of net position that applies to a future period(s) and will not be recognized as an inflow of resources (revenue) until that time. Property taxes revenue that are related to a future period have been recorded as deferred inflows. Grants and entitlements received before eligibility requirements are met (e.g., cash advances) are recorded as deferred inflows. These amounts are deferred and will be recognized as an inflow of resources in the period that the amounts become available.

E. Cash and Cash Equivalents

For the purposes of the statement of cash flows of the enterprise funds, cash and cash equivalents consist of operating and restricted cash and highly liquid securities with an initial maturity of three months or less.

Note 1 – Summary of Significant Accounting Policies – (continued)

F. Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

G. Property Taxes

Property taxes for the current year are levied and attached as a lien on property the following January 1. They are payable in full by April 30 or in two equal installments due February 28 and June 15. Property taxes levied in the current year and collected in the following year are reported as receivable at December 31. However, since the taxes are not available to pay current liabilities, the receivable is recorded as deferred inflows of resources in the governmental and enterprise funds.

H. Capital Assets

Capital assets, which include property, equipment and infrastructure assets, are reported in the applicable governmental or business-type activities columns in government-wide financial statements. Capitalized assets are defined by the Town as assets that have a useful life of one or more years, and for which the initial, individual value equals or exceeds $ 5,000.

All purchased assets are valued at cost where historical records are available and at an estimated historical cost where no historical records exist. Donated assets are valued at their estimated fair market value on the date received. The cost of normal maintenance and repairs that does not add to the value of an asset or materially extend asset life is not capitalized.

Depreciation on all assets is provided on the straight-line basis over the following estimated useful lives:

Asset Class	Useful Life
Utility Plant and System	50 years
Machinery and Equipment	5-10 years
Infrastructure assets	15-40 years

Public domain assets consisting of roads, bridges, curbs and gutters, streets and sidewalks, drainage systems and lighting systems are examples of infrastructure assets. Infrastructure assets are distinguished from other capitalized assets as their useful life often extends beyond most other capital assets and are stationary in nature. General infrastructure assets are those associated with or arising from governmental activities.

Under GASB 34 the town is not required to retroactively report on infrastructure assets before June 30, 2004. Therefore, infrastructure assets before that date are not shown on the financial statements.

Note 1 – Summary of Significant Accounting Policies – (continued)

I. Long-Term Liabilities

In the government-wide financial statements, and enterprise fund types in the fund financial statements, long-term debt and other long-term obligations are reported as liabilities in the applicable government activities, business-type activities, or enterprise fund type statement of net position.

The long-term compensated absences are serviced from revenues of the General Fund from future appropriations.

J. Compensated Absences

A total of 21 days of vacation for the 1 to 10 years of service and 26 days for 10 + years of service may be accrued by each employee. Employees are paid for the accumulated vacation leave upon retirement or other termination. Employees are encouraged to use accumulated vacation by the end of each year and Employees may carry over any unused PTO into the next year. The Entities will pay an employee for their accrued but unused PTO at the time of separation from employment, up to the maximum accruals of 21/26 days described above, respectively. The Entities will make such payment at the employee's pay rate in effect at the time the employee accrued the leave time.

K. Net Position

Net position represents the difference between assets, deferred outflows of resources, liabilities and deferred inflows of resources. Net position invested in capital assets, net of related debt consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of any borrowing used for the acquisition or construction of improvements on those assets. Net position is reported as restricted when there are limitations imposed on their use either through the enabling legislation adopted by the Town or through external restrictions imposed by creditors, grantors, laws or regulations of other governments.

L. Interfund Transactions

Interfund receivables and payables arise from interfund transactions and are recorded by all funds affected in the period in which transactions are executed. At year end, outstanding balances between funds are reported as “due to/from other funds.” Nonrecurring or non-routine permanent transfers of equity are reported as residual equity transfers. All other interfund transfers are reported as operating transfers. Any residual balances outstanding between the governmental activities and business-type activities are reported in the government-wide financial statements as “internal balances.”

M. Encumbrances

The Town does not use an encumbrance system for budgetary control.

N. Accounts Receivable

The Town considers accounts receivable for the water fund to be fully collectible because the Town can place liens on the individual properties; accordingly, no allowance for doubtful accounts is required. If amounts become uncollectible, they will be charged to operations when that determination is made.

Note 1 – Summary of Significant Accounting Policies – (continued)

O. Fund Equity

In the fund financial statements, governmental funds report the following classifications of fund balance:

- Non-spendable fund balance-amounts that are not in spendable form (such as inventory) or are required to be maintained intact;
- Restricted fund balance-amounts constrained to specific purposes by their providers (such as grantors, bondholders, and higher levels of government), through constitutional provisions or by enabling legislation;
- Committed fund balance-amounts constrained to specific purposes by a government itself, using its highest level of decision-making authority; to be reported as committed, amounts cannot be used for any other purpose unless the government takes the same highest-level action to remove or change the constraint;
- Assigned fund balance-amounts a government intends to use for a specific purpose; intent can be expressed by the governing body or by an official or body to which the governing body delegates the authority;
- Unassigned fund balance-amounts that are available for any purpose; positive amounts are reported only in the general fund.

When an expenditure is incurred for purposes for which both restricted and unrestricted fund balance is available, the Town considers restricted funds to have been spent first. When an expenditure is incurred for which committed, assigned, or unassigned fund balances are available, the Town considers amounts to have been spent first out of committed funds, then assigned funds, and finally unassigned funds, as needed, unless Town Council has provided otherwise in its commitment or assignment actions.

Note 2 – Reconciliation of Government-wide and Fund Financial Statements

The governmental funds balance sheet includes reconciliation between fund balances total governmental funds and net position - governmental activities as reported in the government-wide statement of net position. Additionally, the governmental fund statement of revenues, expenditures, and changes in fund balances includes reconciliation between net change in fund balances - total governmental funds and changes in net position of governmental activities as reported in the government-wide statement of activities. The enterprise fund statement of net position and statement of revenues, expenses and changes in net position also includes reconciliation to the government-wide statement of net position and activities.

These reconciliations detail items that require adjustment to convert from the current resources' measurement and modified accrual basis for governmental fund statements to the economic resources measurement and full accrual basis used for government-wide statements. However, certain items having no effect on measurement and basis of accounting were eliminated from the governmental fund statements during the consolidation of governmental activities.

Note 3 – Tax, Spending and Debt Limitations

Colorado voters passed an amendment to the State Constitution, Article X, Section 20, which has several limitations, including revenue raising, spending abilities, and other specific requirements of state and local governments. The amendment is complex and subject to judicial interpretation. However, the Town had made certain interpretations of the amendment's language in order to determine its compliance.

On the November 8, 1994 municipal election ballot, the voters authorized the Town, without any increase in the Town's Current tax mill levy rate of 15.129 mills or any increase in the Town's current sales tax and use tax rate of 2.0%, except by prior voter approval, to be authorized to generate, collect and retain all revenues from and in fiscal year 1993 and subsequent years and increase fiscal year spending up to the amount of such revenues generated and collected without limitation under Article X, Section 20, Colorado Constitution, or any other law, and without limiting in any year the amount of all lawful sources of Town revenues that may be collected and spent by the Town of Norwood for street improvements and maintenance, capital improvements and construction, and all other lawfully authorized municipal; purposes, including but not limited to property taxes at current level of 15.129 mills, sales and use tax of 2.0%, and any state, federal or other grants; provided that such voter-approved revenue change for fiscal year 1993 shall be in the amount of $ 10,000.

Note 4 – Budgets

The Town adheres to the following procedures in establishing budgetary data reflected in the financial statements:

A. By October of each year, the Finance Officer gives public notice of the budget calendar for the next fiscal year. The Finance Officer asks that all Town departments, boards, commissions, or citizens submit within thirty days from the notice any request for funds under the budget being prepared. The Finance Officer then prepares a proposed budget for the ensuing fiscal year and submits it to the Council no later than forty-five days prior to any date required by state law for the certification to the County of the tax levy.

B. The budget provides a complete financial plan of all Town funds and activities for the ensuing fiscal year indicating anticipated revenues, proposed operating and capital expenditures, a provision for contingencies, and anticipated net surplus or deficit for the ensuing fiscal year.

C. A public hearing on the proposed budget is held by the Council in early December.

D. The Council adopts the budget by resolution on or before the final day established by law for the certification of the ensuing year’s tax levy to the County. Adoption of the budget by the Council shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated and shall constitute a levy of the property tax therein proposed.

E. If during the fiscal year the Finance Officer determines that there are expenses in excess of those estimated in the budget, the Council by resolution may make supplemental appropriations for the year up to the amount of such excess. To meet an emergency affecting public property, health, peace or safety, the Council may make emergency appropriations. If at any time during the fiscal year it appears probable to the Finance Officer that the revenues available will be insufficient to meet the amount appropriated, the Finance Officer reports to the Council, indicating the estimated amount of deficit, any remedial action already taken, and a recommendation as to any other steps to be taken. At any time during the fiscal year the Finance Officer may transfer part or all of any unencumbered appropriation balance within a department.

Note 4 – Budgets – (continued)

F. Budget appropriations lapse at the end of each year.

G. Expenditures may not exceed appropriations at the fund level. Budget amounts included in the financial statements are based on the final amended budget. No revisions were made to the original budget.

H. Budgets for governmental funds are adopted on a basis consistent with accounting principles generally accepted in the United States of America (GAAP), except for long-term receivables and advances and capital lease financing which are budgeted when liquidated rather than when the receivable/liability is incurred. Budgets for enterprise funds are adopted on a basis consistent with the spending measurement focus of the governmental funds. The Town could be in violation of Colorado Budget Law because the following funds actual expenditures exceeded budgetary amounts in the Contingency Fund.

Note 5 – Deposits and Investments

The Colorado Public Deposit Protection Act (PDPA) requires that all units of local government deposit cash in eligible public depositories; eligibility is determined by state regulators. Amounts on deposit in excess of federal insurance levels must be collateralized. The eligible collateral is determined by the PDPA. PDPA allows the institution to create a single collateral pool for all public funds. The pool is to be maintained by another institution or held in trust for all the uninsured public deposits as a group. The market value of the collateral must be at least equal to the aggregate uninsured deposits. Collateral in the pool is considered to be equal to depository insurance pursuant to definitions listed in GASB Statement No. 40. At December 31, 2025, the bank balance of the Town's deposits was $1,484,630 of which $250,000 was covered by federal depository insurance and $1,234,630 was collateralized under PDPA.

The Town invested $733,432 in the Colorado Government Liquid Asset Trust (COLOTRUST). COLOTRUST is an investment vehicle established by state statute for local government entities in Colorado to pool surplus funds for investment purposes. The State Securities Commission administers and enforces all state statutes governing public investment pools. The investment is an external investment pool that reports at the fair value per share of the pool's underlying portfolio. The unit of account is each share held, and the value of the position is the fair value of the pool's share price multiplied by the number of shares held. For pricing and redeeming share COLOTRUST maintains a stable net asset value (NAV) of $1 per share, which approximates fair value. The government-investor does not "look through" the pool to report a pro rata share of the pool's investments, receivables and payables. All COLOTRUST investments are reported at NAV and do not have any unfunded commitments, redemption restrictions or redemption notice periods. COLOTRUST offers shares in two portfolios, COLOTRUST PRIME and COLOTRUST PLUS+, which are both rated AAAm by Standard & Poor's. Both portfolios may invest in U.S. Treasury securities and repurchase agreements collateralized by U.S. Treasury securities. COLOTRUST PLUS+ may also invest in certain obligations of U.S. government agencies, highest rated commercial paper and repurchase agreements collateralized by certain obligations of U.S. government agencies. Financial statements and information about the pool for COLOTRUST may be obtained through its website at www.colotrust.com. COLOTRUST may, without the necessity of a formal meeting of their Board, temporarily suspend the right of redemption or postpone the date of payment for redeemed shares under certain specific conditions described in their trust indenture and during any financial emergency when it is not reasonably practicable because of substantial losses which might be incurred.

Note 5 – Deposits and Investments – (continued)

The composition of all cash and cash investments held by the Town at December 31, 2025, is as follows

Cash on hand and with County Treasurer	$	2,905
Cash in bank and savings accounts		2,131,912
Cash investments		733,432
	$	2,868,249

Interest rate risk-The town does not have a formal policy limiting investment maturities, other than that established by the state statue of five years, which would help manage its exposure to fair value losses from increasing interest rates.

Credit risk-Credit risk is the risk that the issuer or other counterparty to an investment will not fulfill its obligations. It is the Town's policy to limit its investments to U.S. Treasury obligations, certain U.S. government agencies securities, commercial paper, local government investment pools, repurchase agreements and money market funds.

Custodial Credit Risk- For an investment, custodial credit risk is the risk that, in the event of the failure of the counterparty, the Town will not be able to recover the value of its investment or collateral securities that are in the possession of an outside party.

Note 6 – Long-Term Liabilities

Enterprise Activites	Balance 1/1/2025	Additions	Reductions	Balance 12/31/2025	Due Within One Year
Loans- CWCB	$ 163,268	$ -	$ (44,869)	$ 118,399	$ 46,664
Totals	$ 163,268	$ -	$ (44,869)	$ 118,399	$ 46,664

Note Payable- CWCB - The Town obtained loans from the Colorado Water Conservation Board (CWCB) in the amount of $950,000, to build a 92-acre-foot reservoir. The remaining loan of $630,000 will be at an annual interest rate of 4% over 40 years at $ 31,830 with an additional payment of $19,570. The first payments are due January 1, 1998, and are due annually on the first of each year. The following is the annual maturities for the years subsequent to 2025:

Year	Principal	Interest	Total
2026	$ 46,664	$ 4,736	$ 51,400
2027	48,531	2,869	51,400
2028	23,204	928	24,132
Total	$ 118,399	$ 8,533	$ 126,932

Note 7 – Proprietary Fund Type Non-GAAP Budgetary Basis

The accompanying schedules of revenues, expenditures and changes in available resources, budget and actual (Non-GAAP budgetary basis) for the proprietary fund types, presents comparisons of the legally adopted budget with actual data on a budgetary basis. Since accounting principles applied for purposes of developing data on a budgetary basis differ significantly from those used to present financial statements in conformity with generally accepted accounting principles, a reconciliation of resultant basis, timing, perspective, and entity differences in the excess (deficiency) of financial resources over expenditures and other uses of financial resources for the year ended December 31, 2025 is presented below:

Expenses (GAAP Basis)	$	750,730
Adjustments		
Add:		
Capital assets purchased		130,038
Principal payments		44,869
Less:		
Depreciation expense		(173,590)
Expenditures (Budgetary Basis)	$	752,047

Note 8 – State Impact Assistance Grant

During 1988, the Town applied for and received a grant from the Colorado Department of Local Affairs in the amount of $100,000. The grant proceeds were passed through to the Farmers Water Development Company (FWDC) to finance improvements to the Gurley Reservoir, which the FWDC owns and operates and from which the Town draws its water.

In order for public financing of improvements to the Gurley Reservoir to be legal, the funds must be used for public purposes. Since the grant proceeds were passed through to the FWDC, which is privately owned, the terms of the grant agreement include the stipulation that the FWDC will not charge the Town its yearly water assessment until the amount of $100,000 is exceeded. The Town's yearly assessment in past years has been $ 500 to $ 600. The Town has recorded the $100,000 grant receipts as contributed capital and the resulting prepayment of water assessments as an asset. A period of seventy-five years was used to amortize the prepaid water assessments based on the estimated life of the improvements financed by the grant. Amortization began in 1989 and amounts to $ 1,333 per year. At December 31, 2025, a total of $ 51,998 had been amortized, leaving a balance of $ 48,002 of advanced water assessments remaining unamortized.

Note 9 – Contingent Liabilities

Risk Management

The Town is exposed to various risks of loss related to torts; theft of, damages to, and destruction of assets; errors and omissions; injuries to employees; and natural disasters. The Town pays an annual premium to CIRSA Property/Casualty and Workers' Compensation for its general liability and workmen's compensation insurance coverage. The agreement with CIRSA will be self-sustaining through member premiums. CIRSA rate-setting policies are established by the Board of Directors, in consultation with independent actuaries. The Board of Directors may credit member municipalities' future contributions in the event of a surplus. Although it has never occurred, CIRSA member municipalities are subject to a supplemental assessment in the event of a deficiency.

Note 10 – Capital Assets

Governmental Activities	Balance 1/1/2025	Additions	Dispositions	Balance 12/31/2025
Capital assets not being depreciated				
Land and improvements	$ 545,901	$ 25,003	$ -	$ 570,904
	545,901	25,003	-	570,904
Capital assets being depreciated				
Buildings	484,312	41,000	-	525,312
Equipment	424,229	32,916	-	457,145
Park Expansion	511,853	13,127	-	524,980
Infrastructure	295,111	33,509	-	328,620
	1,715,505	120,552	-	1,836,057
Less accumulated depreciation				
Buildings	(127,773)	(12,453)	-	(140,226)
Equipment	(283,879)	(38,324)	-	(322,203)
Park Expansion	(141,453)	(21,497)	-	(162,950)
Infrastructure	(187,633)	(9,231)	-	(196,864)
	(740,738)	(81,505)	-	(822,243)
Capital assets being depreciated, net	974,767	39,047	-	1,013,814
Total governmental Activities capital assets	$ 1,520,668	$ 64,050	$ -	$ 1,584,718

Business-type Activities	Balance 1/1/2025	Addition	Disposition	Balance 12/31/2025
Capital assets not being depreciated				
Land and source of supply	$ 290,207	$ -	$ -	$ 290,207
Capital assets being depreciated				
Utility plant	6,756,297	115,038	-	6,871,335
Vehicles and equipment	72,528	15,000	-	87,528
Less accumulated depreciation	(3,600,031)	(172,256)	-	(3,772,287)
Capital assets being depreciated, net	3,228,794	(42,218)	-	3,186,576
				-
Total business-type activities capital assets	$ 3,519,001	$ (42,218)	$ -	$ 3,476,783

Note 10 – Capital Assets – (continued)

Depreciation expense was charged to functions/programs of the Town as follows:

General government	$	3,738
Culture and recreation		21,497
Public works, including depreciation of general infrastructure assets		56,270
Total depreciation expenses	$	81,505

Water - depreciation	$	102,161
Water - amortization		1,333
Raw water - depreciation		70,095
Total	$	173,589

Required Supplementary Information

Town of Norwood
Schedule of Revenues, Expenditures and Changes in Fund Balance-Budget and Actual
General Fund
For the Year Ended December 31, 2025

	Budgeted			Favorable
Revenues	**Original**	**Final**	**Actual**	**(Unfavorable)**
Taxes	$ 591,488	$ 591,488	**$ 697,902**	$ 106,414
Licenses and permits	10,200	10,200	**2,312**	(7,888)
Intergovernmental revenues	1,420,354	1,420,354	**342,506**	(1,077,848)
Charges for services	7,000	7,000	**2,270**	(4,730)
Fines and forfeitures	5,000	5,000	**3,481**	(1,519)
Miscellaneous revenue	62,000	62,000	**55,622**	(6,378)
Total revenues	2,096,042	2,096,042	**1,104,093**	(991,949)
Expenditures				
General government	473,990	473,990	**499,067**	(25,077)
Judicial	6,100	6,100	**4,819**	1,281
Police department	107,200	107,200	**106,800**	400
Public works	1,453,909	1,453,909	**413,088**	1,040,821
Culture and recreation	18,600	18,600	**16,064**	2,536
Capital Outlay	272,591	272,591	**39,643**	232,948
Total Expenditures	2,332,390	2,332,390	**1,079,481**	1,252,909
Excess of revenues over (under) expenditures	(236,348)	(236,348)	**24,612**	260,960
Fund balance, January 1	1,108,692	1,108,692	**430,386**	(678,306)
Fund balance, December 31	$ 872,344	$ 872,344	**$ 454,998**	$ (417,346)

The accompanying notes are an integral part of this statement.

Town of Norwood
Contingency Fund
Schedule of Revenues, Expenditures and Changes in Fund Balance
Budget and Actual
Year Ended December 31, 2025

	Original Budget	Final Budget	Actual	Favorable (Unfavorable)
Revenues				
Interest income	$ 300	$ 300	**$ 31,382**	$ 31,082
Total revenues	300	300	**31,382**	31,082
Expenditures				
Capital outlay	75,000	75,000	**25,003**	49,997
Total expenditures	75,000	75,000	**25,003**	49,997
Excess of revenues over (under) expenditures	(74,700)	(74,700)	**6,379**	81,079
Fund balance, January 1	417,583	417,583	**1,160,001**	742,418
Fund balance, December 31	$ 342,883	$ 342,883	**$ 1,166,380**	$ 823,497

Town of Norwood
Conservation Trust Fund
Schedule of Revenues, Expenditures and Changes in Fund Balance
Budget and Actual
Year Ended December 31, 2025

	Original Budget	Final Budget	Actual	Favorable (Unfavorable)
Revenues				
Lottery	$ 3,400	$ 3,400	**$ 3,392**	$ (8)
Interest income	7	7	**15**	8
Total revenues	3,407	3,407	**3,407**	-
Expenditures				
Parks	3,100	3,100	**3,076**	24
Total expenditures	3,100	3,100	**3,076**	24
Excess of revenues over (under) expenditures	307	307	**331**	24
Fund balance, January 1	16,270	16,270	**17,133**	863
Fund balance, December 31	$ 16,577	$ 16,577	**$ 17,464**	$ 887

Town of Norwood
Water Fund
Schedule of Revenues, Expenditures and Changes in Available Resources-Budget and Actual
(Non-GAAP Budgetary Basis)
Year Ended December 31, 2025

	Original Budget	Final Budget	Actual	Favorable (Unfavorable)
Revenues				
Water fees	$ 540,477	$ 540,477	**$ 576,024**	$ 35,547
Tap fees	72,000	72,000	**60,000**	(12,000)
Public Water Meter/shack	12,800	12,800	**22,094**	9,294
Interest Income	-	-	**3,712**	3,712
Grants and loans	287,891	287,891	**42,108**	(245,783)
Miscellaneous	4,650	4,650	**7,627**	2,977
Total revenues	917,818	917,818	**711,565**	(206,253)
Expenditures				
Salaries and benefits	237,500	237,500	**229,955**	7,545
Maintenance and supplies	105,200	105,200	**120,356**	(15,156)
Water assessments	30,000	30,000	**41,508**	(11,508)
Utilities	40,000	40,000	**34,031**	5,969
Other expenses	117,831	117,831	**120,695**	(2,864)
Capital Outlay	725,028	725,028	**151,099**	573,929
Debt service	51,401	51,401	**51,400**	1
Total expenditures	1,306,960	1,306,960	**749,044**	557,916
Excess of revenues over (under) expenditures	(389,142)	(389,142)	**(37,479)**	351,663
Available resources, beginning	708,555	708,555	**1,173,276**	464,721
Less: Amortization expense			**(1,333)**	
Available resources, ending	$ 319,413	$ 319,413	**$ 1,134,464**	$ 816,384

Town of Norwood
Raw Water Irrigation System Fund
Schedule of Revenues, Expenditures and Changes in Available Resources-Budget and Actual
(Non-GAAP Budgetary Basis)
Year Ended December 31, 2025

	Original Budget	Final Budget	Actual	Favorable (Unfavorable)
Revenues				
Grants and contributions	$ -	$ -	**$ 32,632**	$ 32,632
Charges for services	-	-	**23,400**	23,400
Total revenues	-	-	**56,032**	56,032
Expenditures				
Utilities	-	-	**522**	(522)
Miscellaneous	-	-	**2,481**	(2,481)
Total expenditures	-	-	**3,003**	(3,003)
Excess of revenues over (under) expenditures	-	-	**53,029**	59,035
Available resources, Beginning	-	-	**162,970**	-
Available resources, Ending	$ -	$ -	**$ 215,999**	$ 59,035

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TOWN MANAGER REPORT – NOVEMBER 2026

STAFF

- Weekly staff meetings
- Monthly board meetings
- New Hire Public Works – Kenith Kirby

OPERATIONS

- Reconciliations
- 2027 draft budgets TON/NWC/NSD
- Current year budget clean up
- Marshals closet inventory
- Grant reimbursements
- Agenda/Supporting Documents
- Process Payroll
- Auditor JEs
- CEBT renewal
- Public complaint
- Fireworks planning
- Trash dumping at Town Hall follow up
- HSIP follow up to the County and press release
- Town Facebook posting
- Town stickers
- Property clean up follow up
- Public works job description updated and advertising
- DOLA sidewalk grant extension
- Floating solar meeting
- SRF docs
- Prop 123 commitment filed

TRAINING

- Blink (EV Charger) Portal Training
- New student orientation
- Club 20 Caucus
- San Miguel Watershed Forum
- WE Housing Collaboration
- Account Certification Course 1 – Foundations of Financial Statements

PUBLIC OUTREACH

- Master Plan Community Engagement
- Town Park Community Engagement
- 2nd Annual Food Drive
- Moratorium Lifted