

DISTRICT COURT, WATER DIVISION 1  
STATE OF COLORADO

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CASE NUMBER: 2008CW175

Weld County Courthouse  
901 9th Avenue  
Greeley, Colorado 80631  
Telephone: (970) 475-2510

CONCERNING THE APPLICATION FOR WATER  
RIGHTS OF THE CITY OF EVANS,  
IN LARIMER AND WELD COUNTIES.

▲COURT USE ONLY▲

**Attorneys for Opposer City of Loveland:**

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**Case No. 08CW175**

**STATEMENT OF OPPOSITION OF OPPOSER CITY OF LOVELAND**

1. Name, mailing address and telephone number of Opposer City of Loveland:

City of Loveland (“Loveland”)  
Attn: Larry D. Howard  
Senior Civil Engineer – Water Resources  
200 North Wilson Avenue  
Loveland, CO 80537  
Telephone: (970) 962-3703

Please transmit all correspondence to:

Brian M. Nazarenus, Esq.  
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2. State facts as to why the Second Amended Application for Change of Water Rights and Approval of Plan for Augmentation (“Application”) should not be granted or why it should be granted only in part or on certain conditions:

- a. Loveland owns numerous water rights that divert from the Big Thompson River, tributary to the South Platte River, which may be injured if the Application is granted without appropriate protective terms and conditions.
- b. City of Evans (“Applicant”) prove that the replacement water will be adequate to replace all depletions in amount, timing, and location, and that the replacement water will be of the required quality and quantity.
- c. Applicant’s right to divert water under the requested changes must be restricted to the times when the water rights described in the Application are in priority and to the extent that water is physically and legally available at the original points of diversion.
- d. Applicant must be placed on strict proof concerning all elements of the claimed changes in use.
- e. Applicant must prove that the change in type, manner, season, and place of use of the water right will not result in an expansion of the originally decreed water right.
- f. Applicant must prove that the water rights to be changed have not been abandoned in whole or in part.
- g. Applicant must prove its true date of appropriation based upon its intent to appropriate, and the specific rates and volumes of water and overt actions undertaken in furtherance of any such intent.
- h. Applicant must provide accurate measurement and accounting for the use of the subject water rights.

- i. Applicant must prove that they have permission to use all diversion, delivery and storage structures necessary to use the subject water rights in the manner described in the Application.
- j. The proposed plan for augmentation does not contain protective conditions to ensure that Applicant shall provide replacement water necessary to meet the lawful requirements of a senior diverter at the time and location and to the extent such water rights would be deprived of their lawful entitlement by Applicant's diversions.
- k. Applicant must prove that it can store the water rights sought to be changed in this Application, within lawful restrictions, without adversely affecting the water rights of Loveland.
- l. Applicant must prove the nature and location of the proposed new uses.
- m. The Application does not propose protective terms and conditions sufficient to insure that the proposed change of water rights will not injure Loveland's water rights.

3. The Application contains insufficient information to enable Loveland to determine whether other grounds for objection exist. Loveland therefore reserves the right to state further grounds for objection when more information is available.

4. To the extent this Application is treated as a complaint to which a responsive pleading is required under C.R.C.P. 8, Loveland submits this statement of opposition as a responsive pleading in compliance with the requirements in C.R.C.P. 8. Because the Application does not contain short and plain statements of the claims that show Applicant is entitled to the relief it is seeking, Loveland is unable to fairly deny or admit to the substance of each allegation and/or claim in the Application. Pursuant to C.R.C.P. 8(d), Loveland specifically denies all allegations, averments, and claims for relief contained in the Application.

5. Loveland's Statement of Opposition is continuing in nature and shall apply equally to any amended Application that may be filed herein, so that the filing of a separate statement of opposition to any such amended Application shall not be necessary.

Respectfully submitted this 29th day of February, 2016.

RYLEY CARLOCK & APPLEWHITE

By: 

Brian M. Nazarenus, #16984

~~Susan M.~~ Ryan, #36695

Matthew K. Tieslau, #47483

*Attorneys for Opposer City of Loveland*

## VERIFICATION

STATE OF COLORADO )  
 )  
COUNTY OF LARIMER )  
 )

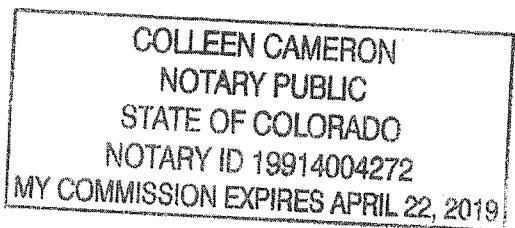
I, Larry Howard, Senior Civil Engineer for City of Loveland, state under oath that I have read the foregoing Statement of Opposition and verify its content.

Larry Howard  
Larry Howard

Subscribed and sworn to before me this 26 day of February, 2016 by Larry Howard.

Witness my hand and official seal.

(SEAL)



DeeDee Cameron  
Notary Public

My commission expires: 4-22-2019

## **CERTIFICATE OF SERVICE**

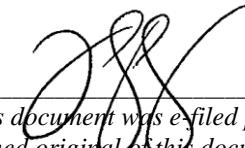
**(Case No. 08CW175 / Div. 1)**

The undersigned certifies that on this 29th day of February, 2016, a true and correct copy of the foregoing **Statement of Opposition of Opposer City of Loveland** was filed and served via ICCES on the following:

<b>Party Name</b>	<b>Party Type</b>	<b>Party Status</b>	<b>Attorney Name</b>
Advantage Bank	Intervenor	Active	Peter Charles Johnson (PC Johnson Attorney at Law LLC) Robert D Lantz (Coan Payton and Payne LLC)
CCWCD	Opposer	Active	Kim Robert Lawrence (Lawrence Jones Custer Grasmick LLP)
City of Aurora	Opposer	Active	John A Helfrich (Brownstein Hyatt Farber Schreck LLP) Steven Owen Sims (Brownstein Hyatt Farber Schreck LLP)
City of Evans	Applicant	Active	Dennis Michael Montgomery (Hill and Robbins PC) Matthew A. Montgomery (Hill and Robbins PC)
City of Greeley	Opposer	Active	Douglas M Sinor (Trout, Raley, Montano, Witwer & Freeman, PC) James Stow Witwer (Trout, Raley, Montano, Witwer & Freeman, PC) Jerrae Christine Swanson (City of Greeley)

Party Name	Party Type	Party Status	Attorney Name
Colorado Community Bank	Opposer	Active	Adam Thomas Devoe (Lewis Roca Rothgerber Christie LLP) Trevor Glen Bartel (Lewis Roca Rothgerber Christie LLP)
Division Engineer	Division Engineer	Active	Division 1 Water Engineer (State of Colorado DWR Division 1)
Godfrey Ditch Company	Opposer	Active	Kim Robert Lawrence (Lawrence Jones Custer Grasmick LLP)
Greeley and Loveland Irrigation Company	Opposer	Active	Elizabeth M. Joyce (Lyons Gaddis Kahn Hall Jeffers Dworak and Grant PC) Jeffrey J Kahn (Lyons Gaddis Kahn Hall Jeffers Dworak and Grant PC)
Lower Latham Reservoir Company	Opposer	Active	Daniel Kenneth Brown (Fischer Brown Bartlett and Gunn PC)
Public Service Company of Colorado	Opposer	Active	Carolyn F Burr (Welborn Sullivan Meck & Tooley, P.C.) James Merle Noble (Welborn Sullivan Meck & Tooley, P.C.)
State and Division Engineers	Opposer	Active	Derek L. Turner (CO Attorney General)
State Engineer	State Engineer	Active	Colorado Division Of Water Resources (State of Colorado - Division of Water Resources)

Party Name	Party Type	Party Status	Attorney Name
Town of La Salle	Opposer	Active	Evan D Ela (Collins Cockrel and Cole) Joseph William Norris (Collins Cockrel and Cole)
United Water and Sanitation District	Opposer	Active	Ann Marie Rhodes (The Law Office of Tod J Smith) Tod Jay Smith (The Law Office of Tod J Smith)

  
*This document was e-filed pursuant to Rule 121. A duly signed original of this document is on file at the law firm of RYLEY CARLOCK & APPLEWHITE.*