

DISTRICT COURT, WATER DIVISION 1 STATE OF COLORADO  Weld County Courthouse 901 9th Avenue Greeley, Colorado 80631 Telephone: (970) 475-2510	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE TOWN OF MILLIKEN,  IN WELD COUNTY.	
<p><b>Attorneys for Opposer City of Loveland:</b></p> <p>Brian M. Nazareus, #16984  William D. Wombacher, #42354  RYLEY CARLOCK &amp; APPLEWHITE  1700 Lincoln Street, #3500  Denver, Colorado 80203  Telephone: (303) 863-7500  Facsimile: (303) 595-3159  E-mail: <a href="mailto:bnazareus@rcalaw.com">bnazareus@rcalaw.com</a>  <a href="mailto:wwombacher@rcalaw.com">wwombacher@rcalaw.com</a></p> <p>Derek L. Turner, #44091  City of Loveland  Assistant City Attorney  500 East Third Street, Suite 330  Loveland, CO 80537  Telephone: (970) 962-2549  E-mail: <a href="mailto:derek.turner@cityofloveland.org">derek.turner@cityofloveland.org</a></p>	<p style="text-align: center;"><b>Case No. 16CW3150</b></p>
<p style="text-align: center;"><b>STATEMENT OF OPPOSITION OF CITY OF LOVELAND</b></p>	

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

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

Please transmit all correspondence to:

Brian M. Nazarenus, Esq.	Derek L. Turner, #44091
William D. Wombacher, Esq.	City of Loveland
RYLEY CARLOCK & APPLEWHITE	Assistant City Attorney
1700 Lincoln Street, #3500	500 East Third Street, Suite 330
Denver, Colorado 80203	Loveland, CO 80537
Telephone: (303) 863-7500	Telephone: (970) 962-2549

2. State facts as to why the 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. Loveland also owns an interest in a water right carried by the Hillsborough Ditch. Shares in the Hillsborough Ditch serve as the Applicant's replacement water for the augmentation plan decreed in Case No. 02CW339.
- B. Applicant must prove that wells sought in the Application can and will be operated pursuant to the terms of the augmentation plan previously decreed in Case No. 02CW339 ("339 Decree").
- C. The Application incorrectly states that "consumptive use for irrigation will be 15% as determined in the [339] Decree." Paragraph 24.3.3 of the 339 Decree establishes that consumptive use for irrigation is 85%. Any proposed decree entered in this case must accurately reflect this fact and accurately apply the terms and conditions from the 339 Decree.
- D. Applicant must prove that it has satisfied paragraph 20 of the 339 Decree, which establishes the requirements for adding wells to the augmentation plan decreed in Case No. 02CW339.
- E. Applicant must meet its burden of proof with respect to each element of its claims, including ownership of or right to use each water right and structure described in the Application.
- F. Applicant must 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.
- G. Applicant's right to divert water under the requested water right 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.

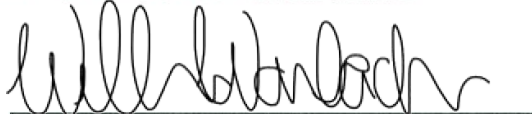
- H. The proposed addition of wells to the augmentation plan does not contain protective conditions to ensure that Applicant shall provide replacement water necessary to meet the lawful requirements of a senior diverter at the time and location and to the extent such water rights would be deprived of their lawful entitlement by Applicant's diversions.
- I. Applicant must be placed on strict proof with respect to each element of its claims for approval of water rights, including, but not limited to:
  - 1. Applicant's ownership of or enforceable property interest in the structures and water rights included in the Application, including:
    - a. whether Applicant has taken the steps required under Colorado law to initiate the claimed water right and, if so, on what date(s), in what amount(s) and for what uses(s);
    - b. whether the claimed appropriation can and will be completed with diligence and within a reasonable time, including, but not limited to, whether water is available for appropriation in the amount claimed and whether the claimed project is technically and financially feasible;
    - c. whether the claimed appropriation is speculative, in whole or in part;
    - d. the protective terms and conditions which must be imposed on Applicant to prevent injury to Loveland's water rights; and
    - e. the measurement, recording, and water handling obligations which must be assumed by Applicant in order to assure proper compliance with all terms and conditions of any decree ultimately entered herein.
- J. Applicant must prove that it has permission to use all diversion, delivery, and storage structures necessary to use the subject water rights in the manner described in the Application.
- K. The Application contains insufficient information to enable Loveland to determine whether other grounds for objection exist. Therefore, Loveland reserves the right to state further grounds for objection when more information is available.
- L. To the extent the 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.

M. 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 28th day of December, 2016.

RYLEY CARLOCK & APPLEWHITE

By: 

Brian M. Nazarens, #16984

William D. Wombacher, #42354

CITY OF LOVELAND

By: 

Derek L. Turner, #44091

*Attorneys for Opposer City of Loveland*

**VERIFICATION**

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF LARIMER         )

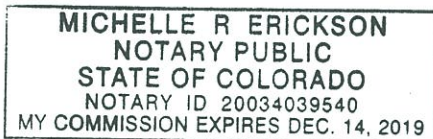
I, Larry Howard, state under oath that I am the Senior Civil Engineer –Water Resources, for the City of Loveland, that I have read the foregoing Statement of Opposition, and that the same is true to the best of my knowledge, information, and belief.


  
Larry Howard

SUBSCRIBED AND SWORN to before me this 27<sup>th</sup> day of December, 2016.

Witness my hand and official seal.

( S E A L )



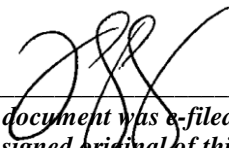
  
Notary Public

My commission expires: 12-14-2019

**CERTIFICATE OF SERVICE**  
**(Case No. 16CW3150, Water Division 1)**

The undersigned certifies that on this 28th day of December, 2016 a true and correct copy of the foregoing **STATEMENT OF OPPOSITION OF CITY OF LOVELAND** was filed and served electronically on the parties via Colorado Courts E-Filing as follows:

Party Name	Party Type	Attorney Name
Division 1 Engineer	Division Engineer	Division 1 Water Engineer (State of Colorado DWR Division 1)
Milliken Town of	Applicant	Kim Robert Lawrence (Lawrence Jones Custer Grasmick LLP)
State Engineer	State Engineer	Colorado Division Of Water Resources (State of Colorado - Division of Water Resources)

  
*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*