

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401 Telephone: 303-271-6215	DATE FILED: April 14, 2023 4:01 PM FILING ID: B55637A878135 CASE NUMBER: 2005CV3044
IN RE: THE ORGANIZATION OF FOSSIL RIDGE METROPOLITAN DISTRICT NO. 1, CITY OF LAKEWOOD, JEFFERSON COUNTY, COLORADO	
<i>Attorneys for Fossil Ridge Metropolitan District Nos. 1, 2 and 3</i> Kelley B. Duke, #35168 Benjamin J. Larson, #42540 IRELAND STAPLETON PRYOR & PASCOE, PC 1660 Lincoln Street, Suite 3000 Denver, Colorado 80264 Telephone: (303) 623-2700 Fax No.: (303) 623-2062 E-mail: kduke@irelandstapleton.com blarson@irelandstapleton.com	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case No. 2005 CV 003044 Division: 1
<p style="text-align: center;">FOSSIL RIDGE METROPOLITAN DISTRICT NOS. 1, 2, AND 3'S MOTION FOR LEAVE TO FILE SUR-REPLY IN OPPOSITION TO AMENDED MOTION TO ENJOIN A MATERIAL MODIFICATION OF SERVICE PLAN</p>	

Fossil Ridge Metropolitan District Nos. 1, 2 and 3 (collectively, the “Districts”), by and through undersigned counsel, IRELANDSTAPLETONPRYOR & PASCOE, PC, hereby move for leave to file a Sur-Reply in opposition to Solterra, LLC’s (“Brookfield”) Amended Motion Pursuant to C.R.S. § 32-1-207(3)(a) to Enjoin a Material Modification to the Service Plan and Enforce Mandatory Obligations of the Service Plan (“Amended Motion”), stating as follows:

CERTIFICATE OF CONFERRAL

Pursuant to C.R.C.P. 121 § 1-15(8), the Districts’ undersigned counsel conferred with Brookfield’s counsel on April 11, 2023. As of the date of this filing, Brookfield’s counsel has not responded or indicated whether the requested relief is opposed or unopposed.

ARGUMENT

1. On April 7, 2023, Brookfield filed its Reply Brief in support of its Amended Motion (“Reply”). With the Reply, Brookfield attaches a new affidavit made by Anastasia Urban and additional documents, which contain new factual statements. The factual statements purportedly support two arguments made by Brookfield: (1) that the Reserved Capacity Term is irrelevant to Brookfield’s current situation; and (2) that Fossil Ridge is the sewer service provider and thus can be enjoined from “denying” sewer service. These arguments are central to the issues before the Court, and since the new factual statements continue to perpetuate fundamental misconceptions of the facts and the law, a brief response is necessary.

2. The Districts seek leave to file this Sur-Reply for the purpose of responding to new factual statements contained in Brookfield’s Reply Brief.

3. A sur-reply allows a nonmoving party “to respond to new evidence and new legal arguments raised for the first time in the moving party’s reply brief.” *Olson v. State Farm Mut. Auto. Ins. Co.*, 174 P.3d 849, 860 (Colo. App. 2007) (citing *Green v. New Mexico*, 420 F.3d 1189, 1196 (10th Cir. 2005) (“Generally, the nonmoving party should be given an opportunity to respond to new material raised for the first time in the movant’s reply”)).

4. Here, the Court should not consider new material submitted by Brookfield in its Reply unless it permits the Districts an opportunity to respond. *Pippin v. Burlington Res. Oil And Gas Co.*, 440 F.3d 1186, 1192 (10th Cir. 2006).

5. No party will be harmed or unfairly prejudiced by the Court's consideration of the Sur-Reply. The Sur-Reply is a brief, combined filing on behalf of all the Districts and addresses the new material raised in Brookfield's Reply. The Districts believe their Sur-Reply will complete the record and be helpful to the Court in resolving the issues presented.

WHEREFORE, the Districts respectfully request that the Court grant this Motion for Leave to File Sur-Reply and deem the attached Sur-Reply filed as of the date of this Motion.

DATED: April 14, 2023

IRELAND STAPLETON PRYOR & PASCOE, PC

/s/ Benjamin J. Larson

Kelley B. Duke, #35168

Benjamin J. Larson, #42540

Attorneys for the Districts

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2023, a true and correct copy of the foregoing **FOSSIL RIDGE METROPOLITAN DISTRICT NOS. 1, 2, AND 3'S MOTION FOR LEAVE TO FILE SUR-REPLY IN OPPOSITION TO AMENDED MOTION TO ENJOIN A MATERIAL MODIFICATION OF SERVICE PLAN** was filed and served via CCEF on all counsel of record.

/s/ Dawn A. Brazier

Dawn A. Brazier