DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521 Telephone: (970) 494-3500	
Plaintiff: LOVELAND EISENHOWER INVESTMENTS, LLC, a California limited liability company, v. **Defendants:** THE CITY OF LOVELAND, THE GREELEY AND LOVELAND IRRIGATION COMPANY, a Colorado non-profit corporation and JOHN DOES 1 through 50.	▲ **COURT USE ONLY** ▲ Case No.: Courtroom:
Darrell G. Waas, #10003 Kathryn I. Hopping, #35036 WAAS CAMPBELL RIVERA JOHNSON & VELASQUEZ LLP 1350 17th Street, Suite 450 Denver, CO 80202 Telephone: 720-351-4700 Facsimile: 720-351-4745 waas@wcrlegal.com hopping@wcrlegal.com	
COMPLAINT AND JURY DEMAND	

Plaintiff Loveland Eisenhower Investments, LLC ("LEI"), by and through its undersigned counsel, for its Complaint and Jury Demand against Defendants The City of Loveland (the "City"), Greeley and Loveland Irrigation Company ("Company") and John Does 1-50, hereby states and alleges as follows:

PARTIES AND VENUE

1. LEI is a California limited liability company authorized to do business in the State of Colorado.

2. The City is a home rule municipality located in Larimer County, Colorado.

3. The Company is a Colorado corporation with its principal place of business located at 808 23rd Ave., Greeley, Colorado 80634.

4. John Does 1-50 are individuals who are Shareholders of the Company who are not parties to the Chubbuck Agreement (the "Non-Party Shareholders"), as those terms are defined below.

5. Venue is proper in this Court pursuant to C.R.C.P. 98(c) because Plaintiff's property is located in Larimer County, Colorado and the actions that are the subject of this complaint occurred in Larimer County, Colorado.

GENERAL ALLEGATIONS

6. LEI is the owner of approximately 58 acres of land located in Larimer County, Colorado (the "LEI Land").

7. The LEI Land was purchased in three main acquisitions. The first 17 acres were purchased in approximately 2001 (the "First Parcel"). In 2004, LEI purchased 31 acres of land (the "Second Parcel") and later acquired an adjacent 9 acres of land in 2007 (the "Third Parcel"). The First Parcel and the Second Parcel were partially separated by a privately owned 33 foot strip of land upon, on which the Company had a prescriptive easement.

8. The 33 foot strip of land went through a quiet title action from 2008-2010, which ultimately transformed the prescriptive easement into a permanent access easement (the "Quiet Title Action").

9. Along with the purchase of the Second Parcel and Third Parcel, LEI also acquired 31.25 "contractual inches" of Chubbuck water rights.

The History Of Chubbuck Water Rights

10. In 1865, Harrison Chubbuck constructed a ditch, later known as the "Chubbuck Ditch" and made initial appropriations of water along the Big Thompson River.

11. On November 1, 1877, Mr. Chubbuck entered into an agreement with several individuals, all shareholders in the Larimer County Irrigating and Manufacturing Company (the "Chubbuck Agreement"). Under this agreement, for consideration of $1000, Mr. Chubbuck agreed to enlarge his ditch and supply water from the ditch to other parties.

12. Pursuant to the Chubbuck Agreement, individual parties to that agreement (the "Contract Users") received first priority for deliveries under the Chubbuck Ditch system. These contractual rights to Chubbuck water are specified in "inches" and were to be delivered ahead of the company's regular shareholders. Thereafter, any senior water not needed by the Contract Users was available for use by the Company's other shareholders who were not individual parties to the Chubbuck Agreement (the "Non-Party Shareholders").

13. Among the parties to the Chubbuck Agreement designated as "Contract Users" were predecessors in the chain of title to the Second and Third Parcel.

14. On November 17, 1877, Mr. Chubbuck sold his interest in the Chubbuck Ditch to Sarah Barnes, expressly subject to the obligation to continue providing water pursuant to the Chubbuck Agreement.

15. In 1881, Ms. Barnes conveyed all of her interests and obligations in the Chubbuck Ditch to the Company's predecessor in interest. The Company's predecessor adjudicated the Chubbuck Ditch in 1883 and also enlarged the ditch, extending its service area as far east as Greeley, Colorado.

16. The Company, as successor, continues to make deliveries to the successors of the Chubbuck Agreement to this day, including LEI.

17. There are a total of 1590.4 contractual inches of water available to the Contract Users under the Chubbuck Agreement (the "Chubbuck Inches"), equivalent to 41.3504 cubic feet per second. LEI, through its purchase of the Second and Third Parcels, has an interest in a total of 31.25 Chubbuck Inches, approximately 1.96% of the total Chubbuck Inches.

The City's Acquisition of Chubbuck Inches

18. As originally designed, all Chubbuck Inches were used for irrigation purposes.

19. Beginning in the early 1980s, the City began acquiring Chubbuck Inches from Contract Users and converting them through water court proceedings from irrigation to municipal use. Once the City acquires the Contract Users' irrigation Chubbuck Inches, the City exchanges these inches and delivers an equivalent amount of municipal water to the Contract User (based on the City's then-current exchange rate) through the City's delivery system.

20. Over the years, the City has obtained a number of decrees and has acquired and converted a cumulative total of 1411.58 Chubbuck Inches, or 88.8% of the total Chubbuck Inches.

21. The process to convert the acquired Chubbuck Inches from irrigation to municipal use is a lengthy and expensive process in water court.

22. The City makes conversion economically feasible by acquiring multiple Contract Users' irrigation Chubbuck Inches over time. The City then banks them as credit until such time as it has accumulated enough Chubbuck Inches from multiple users that the application for conversion in water court is economically feasible.

23. Once the Chubbuck Inches are acquired by the City and converted from irrigation to municipal use, the Chubbuck Inches are no longer available for irrigation use by either the Contract Users or the Non-Party Shareholders.

24. Because there were less unused portions of the Chubbuck Inches available to them, the Non-Party Shareholders became increasingly upset with the City's decision to acquire more and more Chubbuck Inches and convert them to municipal use.

25. Thus, the Company objected to the City's most recent change case of Chubbuck Inches involving a separate Contract User.

26. In order to settle the matter, the Company and the City entered into an agreement in April of 2010 (the "Settlement Agreement"), in which the City committed that it shall not apply for changes of any additional Chubbuck Inches and that no additional Chubbuck Inches will be used by the City, with certain exceptions not applicable to this case.

27. As set forth below, the City and the Company did not inform LEI of the Settlement Agreement until 2015.

Development and Annexation of the LEI Land

28. As set forth above, LEI, itself or through its predecessors, purchased the three parcels of LEI Land from 2000 to 2007.

29. LEI purchased the LEI Land with the intent and purpose of developing it as a unified project for mixed uses, including residential, commercial, open space, recreational and public use amenities (the "Project").

30. At the time of purchase of the Second and Third Parcels, the First Parcel was already located within the boundaries of the City and was zoned PUD with entitlements for high density residential development.

31. At purchase, both the Second and Third Parcel were located outside the boundaries of the City.

32. LEI submitted a concept Master Plan to the City for development of the Project on the LEI Land, which was approved by the City in 2008.

33. As part of the Master Plan approval, LEI was required to demonstrate that it had sufficient water to service the Project. LEI satisfied this requirement by providing the City a "Water Adequacy Assessment Summary," which showed that, among other water rights, LEI had a contractual right to 31.25 Chubbuck Inches that could be used to satisfy its water requirements.

34. LEI provided the Water Adequacy Assessment Summary with the understanding and expectation that LEI's Chubbuck Inches would be acquired by the City in exchange for water credits that would be made available to LEI for municipal use in order to provide water to the Project.

35. LEI had this understanding and expectation for two primary reasons. First, the City represented that it could and would acquire the Chubbuck Inches and convert them and, indeed, had done this for many other users in the past. Secondly, Title 19 of the Loveland Municipal Code (the "Code") at that time specifically contemplated acquisition of Chubbuck Inches by providing a specific conversion rate and storage fee for Chubbuck Inches. These provisions of the Code concerning acquisition, conversion and storage of Chubbuck Inches would not be changed in the Code until 2016.

36. As set forth in its Water Adequacy Assessment Summary, LEI's 31.25 Chubbuck Inches, together with its other available water rights, were more than sufficient to serve the Project and the City approved the Master Plan.

37. Without LEI's Chubbuck Inches, LEI did not have sufficient water to serve the Project. Thus, the City was specifically counting LEI's Chubbuck Inches as part of LEI's water requirement when it approved the Master Plan, otherwise the City would have required evidence of additional available water rights, which it did not.

38. At all relevant times, the City knew that LEI was relying on both the City Code and the City's representations that the City could and would acquire its irrigation Chubbuck Inches and grant LEI delivery of water for municipal use.

39. Indeed, in direct reliance on the City's representations that it could and would acquire its irrigation Chubbuck Inches and grant LEI delivery of water for municipal use, LEI expended in excess of half a million dollars on its concept master plan for the entire project, which included extensive land use analysis, architectural input and drawings for development going forward, significant traffic analysis to establish a traffic budget in order to resolve City concerns regarding traffic and detailed engineering plans, designs and drawings for all off-site public improvements and some on-site public improvements.

40. This extensive and expensive land use planning work is not normally done prior to the master plan submission, but was completed early by LEI with the understanding that LEI would be able to obtain the necessary municipal water for its Project and streamline the process for expedient approvals later on.

41. In April of 2010, the City and LEI entered into an Annexation and Development Agreement (the "Annexation Agreement") wherein the City and LEI agreed that the Second and Third Parcel would be annexed into the City.

42. LEI entered into the Annexation Agreement based upon the understanding that the City would acquire and convert LEI's Chubbuck Inches from irrigation to municipal use.

43. Indeed, Section 2.18 of the Annexation Agreement states as follows:

> Except as this Agreement expressly states otherwise, the City shall have the responsibility to provide its customary municipal services

> to the Project on an equivalent basis to those provided to any other area of the City on a uniform and non-discriminatory basis, including, without limitation: sanitary sewer and potable and non-potable water service and facilities (including supplies, conveyance and treatment capacities), police and fire protection, snow removal and road maintenance and repair of public streets, building code enforcement, maintenance of such facilities and other administrative and utility services.

44. Thus, Section 2.18 of the Annexation Agreement expressly obligated the City to provide customary municipal services to the Project, including sanitary sewer and potable and non-potable water service and facilities.

45. Additionally, the very first page of the Annexation Agreement states that "Approval of this Agreement constitutes a vested property right pursuant to Article 68 of Title 24, C.R.S., as amended."

46. Consequently, by operation of the Annexation Agreement, LEI had a vested right to undertake development of the Project as of the date the Annexation Agreement was executed.

47. Section 19.04.090 of the Code concerns "Vested rights concerning water rights owed" and provides:

> The water rights owed by an applicant for a development for which the applicant has obtained and possesses a vested right to undertake and compete [sic] the development pursuant to Article 68 of Title 24... shall be calculated in accordance with the water rights provisions in effect on the date applicant's right to develop was vested.....

48. Pursuant to the Code, the City has the obligation to calculate the water rights owed under the Annexation Agreement and as set forth in Water Adequacy Assessment Summary in accordance with the water rights provisions in effect in 2010 as of the date of the Annexation Agreement. As outlined above, these Code provisions specifically provided that the City would and could acquire, convert and store LEI's Chubbuck Inches.

49. At all relevant times, the City understood that LEI was relying upon the Code and the City's representations that it would acquire and convert LEI's Chubbuck Inches from irrigation to municipal use and contractual obligation to provide water for municipal use.

50. At all relevant times, the Company knew that LEI planned to development the Project on the LEI Land. In 2008, the Company and LEI began negotiations regarding the Quiet Title Action, which ultimately transformed the 33 foot strip of land from a prescriptive easement to a permanent access easement. As part of those ongoing negotiations, which took

approximately two years, the Company became aware of LEI's plans for development and its need to convert its Chubbuck Inches from irrigation to municipal use.

51. Additionally, throughout 2009, the Company and LEI had ongoing discussions regarding a joint used trail/ditch rider road, in which the parties extensively discussed LEI's development plans for the LEI Land and its need for municipal water. Thus, the Company was well aware of LEI's need to convert its Chubbuck Inches to municipal use.

The Dispute

52. The Settlement Agreement between the City and the Company and the Annexation Agreement between the City and LEI were both signed in April of 2010.

53. LEI was not a party to the Settlement Agreement and was unaware of the Settlement Agreement at the time it executed the Annexation Agreement. Upon information and belief, the City was actively negotiating the Settlement Agreement and the Annexation Agreement at the same time.

54. LEI was unaware that, as part of the Settlement Agreement, the City had committed that it would not convert additional Chubbuck Inches.

55. The City did not inform LEI of the Settlement Agreement or that acquiring and converting LEI's Chubbuck Inches would violate the terms of the Settlement Agreement.

56. Instead, the City allowed LEI to enter into the Annexation Agreement and continue development of its Project until 2015, when LEI finally learned of the Settlement Agreement. At that time, the City informed LEI for the first time that it would not acquire and convert LEI's Chubbuck Inches because doing so would be a violation of the Settlement Agreement.

57. The Company and the City were at all times aware of the Annexation Agreement, knew that LEI was unaware of the Settlement Agreement and knew that LEI entered into the Annexation Agreement based upon the expectation and belief that its Chubbuck Inches could and would be converted.

58. The Company knew that LEI would be seeking to convert its Chubbuck Inches for use in the Project and that the Second and Third Parcel were about to be annexed into the City with that expectation.

59. The Company entered into the Settlement Agreement with the purpose and intent of interfering with the Annexation Agreement and to prevent conversion of the LEI's Chubbuck Inches.

60. The Company intentionally interfered with the Annexation Agreement and has attempted to prevent the lawful conversion of LEI's Chubbuck Inches solely to benefit the Non-

Party Shareholders, which would otherwise receive free, unused portions of LEI's irrigation water.

61. LEI cannot convert its Chubbuck Inches to municipal use on its own. Conversion in water court by LEI alone is cost prohibitive, would take an extremely long time and would require LEI to fund construction of additional infrastructure in order to make the water potable. Thus, without the City's agreement to convert the Chubbuck Inches, LEI is effectively prevented from converting the inches to municipal use.

62. Without conversion, LEI will be left with a substantially reduced project inconsistent with the concept plan approved by the City, or the need to acquire additional water rights on the open market at very substantial cost and expense.

FIRST CLAIM FOR RELIEF
(Breach of Contract – the City)

63. The allegations set forth in the preceding paragraphs are incorporated herein by this reference.

64. Section 2.18 of the Annexation Agreement specifically obligates the City to provide the Project with municipal services, including provision of municipal water for sanitary sewer and potable and non-potable water service and facilities.

65. The City has breached the Annexation Agreement by failing to provide the Project with water for municipal use including, but not limited to, sanitary sewer and potable and non-potable water service and facilities.

66. LEI is entitled to damages in an amount to be determined at trial or, in the alternative, to specific performance requiring the City to acquire and convert LEI's Chubbuck Inches from irrigation to municipal use, and for such other relief as the Court deems appropriate

SECOND CLAIM FOR RELIEF
(Breach of the Implied Covenant of Good Faith and Fair Dealing – the City)

67. The allegations set forth in the preceding paragraphs are incorporated herein by this reference.

68. The City's obligations under the Annexation Agreement contain discretionary authority with regard to approvals and acquisition and conversion of LEI's Chubbuck Inches.

69. Thus, the Annexation Agreement contains an implied covenant of good faith and fair dealing.

70. The City has breached the implied covenant of good faith and fair dealing contained in the Annexation Agreement by acting contrary to the agreed common purpose and the parties' reasonable expectations with respect to the City's acquisition and conversion of LEI's Chubbuck Inches from irrigation to municipal use.

71. LEI is entitled to damages in an amount to be determined at trial or, in the alternative, to specific performance requiring the City to accept LEI's Chubbuck Inches and give LEI credit towards its dedication requirement for municipal use, and for such other relief as the Court deems appropriate.

THIRD CLAIM FOR RELIEF

(Declaratory Relief – Unlawful Delegation of Authority – the City)

72. The allegations set forth in the preceding paragraphs are incorporated herein by this reference.

73. The City is a home rule municipality with legislative authority to acquire, purchase and deliver water and set and charge certain rates for water. *See* C.R.S. 31-35-101 *et seq.*

74. The Colorado Supreme Court has interpreted applicable Colorado statutes to allow municipalities to deliver and set rates for water services as a part of the municipality's governmental legislative powers. *Bennett Bear Creek Farm Water and San. Dist. v. City & County of Denver*, 928 P.2d 1254, 1263 (Colo. 1996).

75. Acquisition and delivery of water, how water will service areas within its boundaries and the rates that a municipality sets for such delivery is considered a legislative function. *Id.*

76. Municipalities may not contract away their legislative powers. *Id.* at 1269-70.

77. Here, the City's determination regarding acquisition and delivery of water, how water will service users within its boundaries and the rates to be charged are all within the municipality's legislative authority.

78. By entering into the Settlement Agreement, the City unlawfully delegated its legislative authority to purchase and deliver water, service property within its boundaries and set and charge certain rates for water.

79. The City and LEI have an extant dispute concerning the City's ability to enter into the Settlement Agreement, which effectively prevents the City from exercising its legislative authority to service property and set rates for delivery of water to users within its boundaries.

80. Pursuant to C.R.C.P. 57, Plaintiffs are entitled to declaratory judgment that the requirement in the Settlement Agreement in which the City committed that it shall not apply for

changes of any additional Chubbuck Inches and that no additional Chubbuck Inches will be used by the City for any purpose is an unlawful delegation of the City's legislative authority and is invalid.

81. A judicial declaration is necessary and appropriate at this time under the circumstances in order that LEI may ascertain its rights and duties.

FOURTH CLAIM FOR RELIEF
(Permanent Injunction – the City and the Company)

82. The allegations set forth in the preceding paragraphs are incorporated herein by this reference.

83. In the event this Court determines that the provision of the Settlement Agreement in which the City committed that it shall not apply for changes of any additional Chubbuck Inches and that no additional Chubbuck Inches will be used by the City for municipal purposes is an unlawful delegation of the City's legislative authority and invalid, enforcement of this provision of the Settlement Agreement is a violation of Colorado law.

84. Thus, the City's failure to acquire and convert LEI's Chubbuck Inches due to the Settlement Agreement in violation of Colorado law and the Annexation Agreement has injured Plaintiffs.

85. A danger of real, immediate and irreparable injury exists that may be prevented by injunctive relief and no plain, speedy and adequate remedy at law is available to enforce the Annexation Agreement and require the City to acquire and convert LEI's Chubbuck Inches in compliance with its contractual obligations.

86. An injunction will not disserve the public interest and the public interest favors the injunction to prevent future invalid fee assessments.

87. Plaintiffs are therefore entitled to a permanent injunction requiring the City to convert LEI's Chubbuck Inches to municipal use and preventing the Company from enforcing the provision of the Settlement Agreement prohibiting future conversion and use of Chubbuck Inches.

FIFTH CLAIM FOR RELIEF
(Intentional Interference with Contractual Relations – the Company)

88. The allegations set forth in the preceding paragraphs are incorporated herein by this reference.

89. As set forth above, the Company has intentionally interfered with Annexation Agreement.

90. The Company's unlawful interference with the Annexation Agreement has induced or otherwise cause the City not to perform its duties and responsibilities with respect to that agreement.

91. This intentional interference has caused damages in an amount to be determined at trial.

SIXTH CLAIM FOR RELIEF

(Intentional Interference with Prospective Business Advantage – the Company)

92. The allegations set forth in the preceding paragraphs are incorporated herein by this reference.

93. A valid business relationship or expectancy existed between the City and LEI concerning the Annexation Agreement and conversion of LEI's Chubbuck Inches.

94. The Company was aware of the valid business relationship or expectancy.

95. As described above, the Company intentionally interfered with the valid business relationship or expectancy causing the City to breach the Annexation Agreement and expectancy that the City would convert LEI's Chubbuck Inches.

96. The Company's intentional interference has resulting in damages to LEI in an amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF

(Unjust Enrichment – Non-Party Shareholders)

97. The allegations set forth in the preceding paragraphs are incorporated herein by this reference.

98. The Company has unlawfully interfered with the Annexation Agreement causing the City to fail to convert LEI's Chubbuck Inches, resulting in a benefit to the Non-Party Shareholders who continue to receive the unused portion of LEI's Chubbuck Inches free of charge.

99. It is unjust for the Non-Party Shareholders to retain that benefit.

100. As a direct and proximate result of the Non-Party Shareholders unjust enrichment, LEI has been damaged in an amount to be proven at trial.

WHEREFORE, the Plaintiff Loveland Eisenhower Investments, LLC pray for judgment against the Defendants as set forth above in an amount to be proven at trial, together with all interest, fees, costs and expenses allowable by law and any other relief this Court deems just.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Respectfully submitted this 11th day of April, 2016.

WAAS CAMPBELL RIVERA JOHNSON & VELASQUEZ LLP

By: */s/ Kathryn I. Hopping*
Darrell G. Waas
Kathryn I. Hopping

Attorneys for Plaintiff Loveland Eisenhower Investments, LLC

Plaintiff's Address:

233 E. Carrillo Street, Suite D
Santa Barbara, CA 93101

In accordance with C.R.C.P. 121 §1-26(9), a printed copy of this document with original signature(s) is maintained by Waas Campbell Rivera Johnson & Velasquez LLP, and will be made available for inspection by other parties or the Court upon request.