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| DISTRICT COURT, BOULDER COUNTY, COLORADO<br>1777 6 <sup>th</sup> Street, Boulder, CO 80302<br>(303) 441-3750                                                                                                                                                             |  | DATE FILED<br>May 22, 2026 3:20 PM<br>FILING ID: E250C598E406C<br>CASE NUMBER: 2024CV127 |
| <b>Plaintiffs:</b><br><br>DANDY LYONS BRIGADE, ET AL.<br><br>v.<br><br><b>Defendants:</b><br><br>BOULDER COUNTY BOARD OF COUNTY COMMISSIONERS; and BOULDER COUNTY PARKS AND OPEN SPACE.                                                                                  |  |                                                                                          |
| <b>Attorney for Plaintiffs:</b><br>Jeffrey C. Parsons # 30210<br>Parsons Law Office<br>2205 W. 136 <sup>th</sup> Avenue, Suite 106-311<br>Broomfield, CO 80023<br>Phone: 720-203-2871<br>Email: <a href="mailto:jeff@parsonslawoffice.com">jeff@parsonslawoffice.com</a> |  |                                                                                          |
| <b>PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT</b>                                                                                                                                                                                                                           |  |                                                                                          |

Pursuant to C.R.C.P. 56, Plaintiffs Dandy Lyons Brigade, et al. move for summary judgment on their declaratory judgment claim and their mandamus claims (Claims One and Three). No genuine issue of material fact exists on either claim and Plaintiffs are entitled to judgment as a matter of law.

Conferral: Counsel for Plaintiffs conferred with counsel for Defendants in connection with the parties' agreed cross-motions for summary judgment. Defendants oppose this motion.

### INTRODUCTION

This case presents a pure question of statutory interpretation requiring no factual development. The Colorado Noxious Weed Act ("the Act") requires that every county adopt a

noxious weed management plan “for all of the unincorporated lands within the county.” C.R.S. § 35-5.5-105(1) (emphasis added). The Act further requires that this plan be reviewed no less than once every three years. C.R.S. § 35-5.5-107(4)(a). The 2024 Integrated Weed Management Plan (“2024 IWMP”)<sup>1</sup> violates both requirements and it conflicts with the Pesticide Applicators Act (“PAA”) by authorizing pesticide use in a manner the applicable label expressly prohibits.

First, the 2024 IWMP affirmatively incorporates the Boulder County Parks and Open Space Cropland Policy (“Cropland Policy”) as its operative weed management framework for all county-owned cropland.<sup>2</sup> Section 4.1 of the 2024 IWMP expressly provides that cropland is “governed by the Cropland Policy and their leases,” making the Cropland Policy the designated instrument for weed management on those acres within the 2024 IWMP. However, the Cropland Policy contains no weed management plan, no management objectives, no designated species, and no treatment methods. The primary violation inheres in the 2024 IWMP itself: by incorporating a document with no weed management provisions as its operative framework for cropland, the 2024 IWMP fails to provide what C.R.S. § 35-5.5-105(1) demands—a plan that actually covers, in substance, all unincorporated lands.

Second, the 2024 IWMP independently violates C.R.S. § 35-5.5-107(4)(a)’s triennial review requirement with respect to cropland. Because the IWMP designates the Cropland Policy as its operative framework for cropland, the triennial review obligation applies to that incorporated framework. The Cropland Policy has never been reviewed by the Boulder County Board of County

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<sup>1</sup> The 2024 IWMP was attached as Exhibit A to Defendants’ Motion for Summary Judgment filed May 12, 2026. For ease of reference, the same document is similarly attached hereto as Plaintiffs’ Exhibit A.

<sup>2</sup> The Cropland Policy was attached as Exhibit B to Defendants’ Motion for Summary Judgment filed May 12, 2026. For ease of reference, the same document is similarly attached hereto as Plaintiffs’ Exhibit B.

Commissioners (“BOCC”) under the Act’s triennial framework since its adoption in December 2021, despite Plaintiffs’ repeatedly bringing this failure to the BOCC’s attention. An integrated weed management plan whose incorporated cropland component has not been submitted to triennial does not satisfy the Act’s mandate. This deficiency is independently significant for both the declaratory judgment claim and the mandamus claim: the triennial clock cannot run from adoption of the 2024 IWMP whose cropland component has never been reviewed.

Third, the 2024 IWMP authorizes aerial drone application of the herbicide indaziflam (Rejuvra) in circumstances that directly violate the product’s EPA-registered label. The label is unequivocal: applicators must not apply the product in any way that will contact persons “directly or through drift”; applications must not occur “under circumstances where spray drift can reach unprotected persons, food, or forage”; and wind speeds must be between 2 and 10 mph. Notably, the label prohibits aerial application in New York due to documented drift concerns. C.R.S. § 35-10-117(1)(i) expressly makes applying a pesticide inconsistently with its label unlawful under Colorado law. By authorizing drone Rejuvra applications in steep foothill terrain adjacent to residential areas and organic farms where the documented 2022 application already caused drift injuries to multiple Plaintiffs, the IWMP authorizes what the label and state law forbid.

Plaintiffs are entitled to a declaration that the 2024 IWMP is invalid and to a writ of mandamus compelling the County to adopt a new, substantively compliant IWMP within a defined period. An IWMP that incorporates a document with no weed management provisions as its operative framework for cropland does not satisfy the County’s present statutory obligation under C.R.S. § 35-5.5-105(1), and the triennial clock cannot run from the adoption of a non-compliant plan.

## STATEMENT OF UNDISPUTED MATERIAL FACTS

### *A. The Act's Mandatory Requirements*

1. The Act requires the Commissioners of each county to adopt a noxious weed management plan “for all of the unincorporated lands within the county.” C.R.S. § 35-5.5-105(1) (emphasis added).
2. The Act requires the plan to be “reviewed at regular intervals but not less often than once every three years by the local advisory board.” C.R.S. § 35-5.5-107(4)(a).
3. The BOCC has appointed itself as the Local Advisory Board under the Act. (2024 IWMP at p. 14, § 2.1.1).
4. The previous Boulder County IWMP was adopted in 2004. Defendants admitted the BOCC did not review or approve any modified or amended 2004 IWMP from its adoption through at least April 15, 2024. (Answer to Third Claim ¶¶ 28, 31–33, 58; Second Am. Compl. ¶¶ 63–65). This failure to review the IWMP is relevant both to the declaratory judgment claim—it demonstrates the County’s pattern of non-compliance with the Act’s mandatory requirements—and to the mandamus claim, which asserts that the County presently lacks a statutorily compliant plan covering all unincorporated lands.

### *B. The 2024 IWMP and Its Incorporation of the Cropland Policy as the Operative Framework for Cropland*

5. The BOCC adopted the 2024 IWMP on November 19, 2024. (IWMP Cover Page; Second Am. Compl. ¶ 1).
6. The 2024 IWMP states in § 1.2 that it “shall apply to all public and private lands within unincorporated Boulder County, except Federal and state lands and lands within municipalities.” (2024 IWMP at p. 10, § 1.2).

7. Despite the general declaration in § 1.2, the 2024 IWMP in § 4.1 expressly removes cropland from its operative weed management framework:

“BCPOS natural lands do not include leased dryland and irrigated crop production lands, irrigated pasturelands, and irrigated forage or leased rangelands, which are governed by the Cropland Policy and their leases. Management of these leased lands is administered and enforced by the Agricultural Resources Division.” (2024 IWMP at p. 29, § 4.1 (emphasis added)).

By expressly providing that cropland is “governed by the Cropland Policy,” the 2024 IWMP designates the Cropland Policy as its own operative weed management instrument for those acres. Sections 4.1 through 4.8—which contain the 2024 IWMP’s entire weed management apparatus for natural lands, including BCPOS Management Objectives, treatment planning, herbicide selection, spray buffers, record-keeping, and safety requirements—do not apply to cropland. The Cropland Policy is therefore the 2024 IWMP’s sole designated framework for weed management on cropland.

8. BCPOS natural lands encompass approximately 34,000 acres. (2024 IWMP at p. 29 § 4.1). The cropland governed by the Cropland Policy is in addition to and separate from those lands.
9. The cropland covered by the Cropland Policy consists of unincorporated lands within Boulder County that are not federal, state, or municipal lands, and thus fall within § 35-5.5-105(1)’s mandate. (Second Am. Compl. ¶ 179).

***C. The Cropland Policy—the IWMP’s Incorporated Framework for Cropland—Contains No Weed Management Provisions***

10. The Cropland Policy—the document the 2024 IWMP designates as its operative framework for cropland management under § 4.1—was adopted by the BOCC on December 7, 2021. (Cropland Policy Cover Page).
11. As the 2024 IWMP’s designated operative framework for cropland, the Cropland Policy governs BCPOS management of leased agricultural cropland, including dryland and irrigated

crop production, irrigated pasture, and irrigated forage. (Cropland Policy, Purpose Statement, Scope).

12. The Cropland Policy—the 2024 IWMP’s sole operative framework for cropland weed management—contains no noxious weed management plan, no weed management objectives, and no weed management methods. The word “weed” appears in the entire Cropland Policy exactly once—in § 6.3.2 (p. 14), which directs that trails be sited to reduce the chance of “weed transfer to ditches or fields.” That is an agricultural land-use provision, not a weed management mandate. Defendants’ own Answer denies that the Cropland Policy is a weed management plan or subject to any requirement of C.R.S. § 35-5.5-105. (Answer to Third Claim ¶¶ 37–39).
14. The Cropland Policy—the 2024 IWMP’s incorporated operative framework for cropland—has never been reviewed by the BOCC under the Act’s triennial review framework since its adoption in December 2021. (Second Am. Compl. ¶¶ 180, 182; Decl. of Meschke ¶ 17 (attached at Plaintiffs’ Exhibit C). No such review appears anywhere in the record. A plan whose incorporated cropland component has never been reviewed does not satisfy C.R.S. § 35-5.5-107(4)(a)’s requirement that the plan be reviewed not less than once every three years.
15. The 2024 IWMP’s incorporated cropland framework delegates weed management still further. The Cropland Policy’s § 3.3 provides: “Tenants shall operate in accordance with operating plans developed in collaboration with BCPOS.” (Cropland Policy at p. 8, § 3.3). Through this chain of delegation—from the 2024 IWMP to the Cropland Policy to individual tenant operating plans—the 2024 IWMP’s operative framework for cropland weed management ultimately resides in private, lease-based documents that the BOCC never reviews or adopts

and that are not subject to public comment. These tenant operating plans are not part of the record and do not appear to constitute a weed management plan under the Act.

***D. The Rejuvra Label and the 2024 IWMP's Authorized Uses***

16. The 2024 IWMP approves use of the herbicide indaziflam (Rejuvra) on Boulder County natural lands, including through drone aerial application. (Answer to Third Claim ¶¶ 41, 43, 46, 49; 2024 IWMP at pp. 29, 36, §§ 4.4, 4.1; 2024 IWMP at p. 44, App. B, Implementation Goal 2; Decl. of Meschke ¶ 16).
17. The 2024 IWMP's Appendix B commits Boulder County to drone application of herbicides, including Rejuvra, over approximately 3,000 acres at Rabbit Mountain, Hall Ranch, and Heil Valley Ranch—foothills properties adjacent to the Town of Lyons and to residential properties, organic farms, and food-growing operations where multiple Plaintiffs live and work. (2024 IWMP at p. 44, App. B, Implementation Goals 1–2; Second Am. Compl. ¶¶ 27–47, 111–132).
18. The EPA-registered label for Rejuvra (Indaziflam GRZ, EPA Reg. No. 101563-208, Oct. 15, 2024) (“the Label”)<sup>3</sup> states, under “DIRECTIONS FOR USE”:

“DO NOT apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application.” (Label at p. 3 (capitalization in original)).

The Label further states, under “Spray Drift Management—Sensitive Areas”:

“DO NOT apply under circumstances where spray drift can reach unprotected persons, food, or forage, except as otherwise permitted by this label. Food or forage may be rendered unfit for sale, use, or consumption.” (Label at p. 12, Spray Drift Management (capitalization in original)).

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<sup>3</sup>The EPA-registered Label for Rejuvra (Indaziflam GRZ, EPA Reg. No. 101563-208, Oct. 15, 2024) is attached as Exhibit D to Decl. of Meschke. The Label is authenticated in the Decl. of Meschke at ¶ 11 and is also subject to self-authentication under C.R.E. 902(5) as an official publication issued by a public authority.

19. The Label's "Wind" section provides:

"Drift potential increases if wind is in excess of 10 mph, gusty, or below 2 mph (due to inversion potential). Always make applications when there is some air movement to determine the direction and distance of possible spray drift." (Label at p. 12, Spray Drift Management—Wind).

20. The Label's "Use Restrictions" section provides: "DO NOT apply by air in the State of New York." The Label further states the product "is not for sale, distribution, or use in Nassau County or Suffolk County in New York State." (Label at p. 3, Use Restrictions). These geographic restrictions reflect the EPA's recognition of the product's documented aerial drift potential.

21. The Label also requires:

"Applications should be made only when there is little or no risk of spray drift or movement of applied product into sensitive areas. Sensitive areas are defined as bodies of water (ponds, lakes, rivers, and streams), habitats of endangered species and non-labeled agricultural crop areas." (Label at p. 4, Use Precautions).

The foothill areas targeted by the 2024 IWMP contain ephemeral streams, riparian corridors, and wetlands. (Second Am. Compl. ¶ 107; 2024 IWMP App. B; Decl. of S. McDonald ¶ 9 (attached as Plaintiffs' Exhibit D)).

22. The Label states that the product is "toxic to fish, aquatic invertebrates, and plants" and that the product "has properties and characteristics associated with chemicals detected in groundwater" and "may impact water quality due to runoff of rainwater" and "is classified as having a high potential for reaching surface water via runoff for several months or more after application." (Label at p. 2, Environmental Hazards).

23. The Label states: "It is a violation of Federal Law to use this product in a manner inconsistent with its labeling." (Label at p. 3, Directions for Use). Colorado's PAA independently provides that it is "unlawful and a violation of this article for any person to use . . . pesticides . . . in a

manner inconsistent with labeling directions or requirements . . . or in an unsafe, negligent, or fraudulent manner.” C.R.S. § 35-10-117(1)(i).

***E. The 2022 Aerial Application Documented Label Violations and Plaintiffs’ Injuries***

24. On November 1, 2022, BCPOS applied Rejuvra by helicopter at Hall Ranch in Lyons, Colorado. Multiple Plaintiffs living adjacent to the spray zone were exposed to Rejuvra or its drift without advance notice. (Second Am. Compl. ¶¶ 76, 83–90, 111–132; Decl. of E. McDonald ¶¶ 3–9 (attached as Plaintiffs’ Exhibit E); Decl. of S. McDonald ¶¶ 4–8).
25. BCPOS conducted the 2022 aerial application when wind speeds were in excess of the Label’s requirements. The helicopter pilot recorded zero wind speed on the application form, which would also violate the Label’s prohibition on application below 2 mph due to inversion potential. (Second Am. Compl. ¶¶ 88–90; Decl. of Meschke ¶¶ 8, 9, Exs. A, B).
26. Unprotected residents—including Plaintiffs Ms. Cochran (within 2,000 feet of the spray area), Ms. Francis (whose husband and daughter were directly exposed), Mr. McDonald (who observed the spray mist drifting toward homes and could both see and smell it), Ms. Gordon (whose 18-year organic garden abuts the spray zone), and others—were directly contacted by Rejuvra or its drift. (Second Am. Compl. ¶¶ 113, 119, 121, 126; Decl. of E. McDonald ¶¶ 3–9, 10-11; Decl. of Cochran ¶¶ 1, 4 (attached as Plaintiffs’ Exhibit F); Decl. of Francis ¶¶ 3-6 (attached as Plaintiffs’ Exhibit G); Decl. of Gordon ¶ 2 (attached as Plaintiffs’ Exhibit H)). This constituted application “in a way that will contact . . . other persons . . . through drift” in direct violation of the Label.
27. Documented injuries from the 2022 aerial application include: Ms. Cochran’s thyroid markers changed substantially; her apple trees and grapevines failed to flower the following spring; her two beehives did not survive the winter; Ms. Reimer’s 1.5-year-old child developed a full-

body rash diagnosed as toxic overload; Ms. Francis’ family retreated to their basement for days; and other Plaintiffs suffered ongoing emotional distress, food security harm, and property damage. (Second Am. Compl. ¶¶ 113, 119, 129, 130; Decl. of Cochran ¶¶ 6–9; Decl. of Reimer ¶¶ 3–6 (attached as Exhibit I); Decl. of Francis ¶¶ 5-6).

***F. Plaintiffs Standing***

27. Multiple Plaintiffs, members of both Plaintiff Detox Boulder County and Dandy Lyons Brigade, live and recreate within the drift zone of the 2024 IWMP’s planned drone aerial application areas, grow food organically in those areas, or purchase food from Boulder County farms that would be affected by aerial applications of Rejuvra. (*See supra*; Second Am. Compl. ¶¶ 27–47, 111–132; Decl. of Cochran ¶¶ 2, 10-11; Decl. of S. McDonald ¶¶ 2, 9-10; Decl. of Meschke ¶ 18; Decl. of Francis ¶¶ 7-8; Decl. of Reimer ¶¶ 7-8). The 2024 IWMP, if implemented as written, authorizes continued drone applications of herbicide, including Rejuvra, in the same terrain adjacent to the same residential and agricultural properties that were harmed in 2022. Thus, Plaintiffs face an imminent, non-speculative threat of repeated exposure. (Second Am. Compl. ¶¶ 57, 258–259).

**STANDARD OF REVIEW**

Summary judgment is appropriate when “the pleadings and supporting documentation demonstrate that no issue of material fact exists and that the moving party is entitled to summary judgment as a matter of law.” *W. Elk Ranch, L.L.C. v. United States (In re Water Rights)*, 65 P.3d 479, 481 (Colo. 2002); C.R.C.P. 56.

This case presents a pure question of statutory compliance. Whether the 2024 IWMP satisfies the mandatory requirement of C.R.S. § 35-5.5-105(1) to cover all unincorporated lands is a question of statutory interpretation reviewed de novo. *Colo. Dep’t of Revenue v. Hibbs*, 122 P.3d

999, 1002 (Colo. 2005). Courts give effect to the plain language of a statute and apply unambiguous text as written. *Jefferson Cty. Bd. of Equalization v. Gerganoff*, 241 P.3d 932, 935 (Colo. 2010). No deference is owed to the County’s interpretation of what the statute requires—that is a legal question for the Court. The same de novo standard governs the mandamus claim: whether the County has a clear legal duty under § 35-5.5-105(1) to maintain a compliant plan covering all unincorporated lands, and whether it is presently satisfying that duty, are questions of law this Court decides independently. Where a local enactment conflicts on its face with a mandatory state statutory command, that conflict is resolved by the Court as a matter of law. *City of Longmont v. Colo. Oil and Gas Ass’n*, 2016 CO 29, ¶ 36, *see also, generally, Bd. of Cty. Comm’rs v. Moreland*, 764 P.2d 812 (Colo. 1988).

## **ARGUMENT**

### **I. THE 2024 IWMP VIOLATES C.R.S. § 35-5.5-105(1) BECAUSE ITS INCORPORATED FRAMEWORK FOR CROPLAND DOES NOT SATISFY THE ACT’S MANDATORY REQUIREMENTS.**

#### ***A. The Statutory Mandate Is Unambiguous: “All” Means All.***

The Act commands: “The board of county commissioners of each county in the state shall adopt a noxious weed management plan for all of the unincorporated lands within the county.” C.R.S. § 35-5.5-105(1) (emphasis added). The legislature used “all” with only three enumerated exceptions: federal lands, state lands, and municipal lands. There is no exception for county-owned agricultural land, no exception for land governed by separate county policy, and no exception for land leased to private farmers.

Colorado courts apply the plain meaning of statutory text. “All” means every parcel without further exception. *See Winslow v. Morgan Cnty. Comr’s*, 697 P.2d 1141, 1141 (Colo. App. 1985). The legislature’s use of “all” with only specified exceptions confirms that it intended no

others. *See BP Am. Prod. Co. v. Colorado Dep't of Revenue*, 2016 CO 23, ¶ 18, 369 P.3d 281, 286 (expression of specific exceptions implies no additional exclusions).

***B. The 2024 IWMP Incorporates the Cropland Policy as Its Operative Framework for Cropland Weed Management.***

Despite the Act's unqualified command, the 2024 IWMP does not ignore cropland—it affirmatively designates the Cropland Policy as the governing instrument for weed management on cropland acres. Section 4.1 is explicit: the weed management provisions of the 2024 IWMP apply to BCPOS natural lands, and those natural lands “do not include leased dryland and irrigated crop production lands, irrigated pasturelands, and irrigated forage or leased rangelands, which are governed by the Cropland Policy and their leases.” (2024 IWMP at p. 29, § 4.1). The 2024 IWMP does not merely leave cropland unaddressed—it expressly assigns responsibility for those acres to the Cropland Policy, making the Cropland Policy the 2024 IWMP's own operative weed management instrument for that land.

The operational consequence is that the Cropland Policy stands as the 2024 IWMP's sole weed management instrument for cropland, yet it contains none of the substantive content the Act requires. Sections 4.1 through 4.8 of the 2024 IWMP—which contain every operative weed management provision for natural lands, including BCPOS Management Objectives, treatment planning, herbicide selection criteria, spray buffers, record-keeping requirements, and training mandates—do not apply to cropland. The document the 2024 IWMP designates as the operative framework for those acres designates no noxious weed species, establishes no management objectives, and prescribes no treatment methods. An IWMP that incorporates a document with no weed management provisions as its operative framework for a substantial category of unincorporated land does not, in any operative sense, comply with C.R.S. § 35-5.5-105(1).

***C. Defendants’ Own Admissions Establish That the 2024 IWMP’s Incorporated Cropland Framework Does Not Satisfy the Act.***

Defendants’ own Answer establishes that the Cropland Policy—the document the 2024 IWMP designates as its operative framework for cropland weed management—does not satisfy the Act’s requirements. Defendants expressly deny that the Cropland Policy is a weed management plan and deny it is subject to any requirement of C.R.S. § 35-5.5-105. (Answer to Third Claim ¶¶ 37–39). That admission is dispositive under the incorporation framing: if the document the 2024 IWMP designates as its operative cropland framework is not a weed management plan—as Defendants themselves admit—then the 2024 IWMP’s incorporated framework for cropland does not satisfy C.R.S. § 35-5.5-105(1). The statute requires a plan but the 2024 IWMP’s incorporated instrument for cropland is, by Defendants’ own admission, not one.

Admissions in pleadings bind the party that makes them. *See Ehrlich v. Valdez*, 100 Colo. 233, 236 (1937). Having admitted that the Cropland Policy is not a weed management plan, Defendants cannot argue that the 2024 IWMP’s designation of the Cropland Policy as the operative framework for cropland satisfies the Act. The logical consequence of their own admission is that the 2024 IWMP’s incorporated cropland component fails to provide the weed management plan C.R.S. § 35-5.5-105(1) requires.

The Cropland Policy’s own text confirms this conclusion. As the 2024 IWMP’s designated weed management instrument for cropland, the Cropland Policy must satisfy the Act’s substantive requirements. It does not. The Cropland Policy addresses lease administration, genetically engineered crops, general agricultural pest management, soil health, livestock, and resource values. (Cropland Policy §§ 1–6). It designates no noxious weed species, establishes no management objectives, and prescribes no weed management methods. The word “weed” appears once—in passing, in a trail-siting provision. (Cropland Policy at p. 14, § 6.3.2). Whatever the

Cropland Policy accomplishes for agricultural land management generally, it does not function as a noxious weed management plan and does not satisfy the Act's requirements for the cropland acres the 2024 IWMP assigns to it.

The 2024 IWMP's incorporated cropland framework is further deficient because it delegates weed management responsibility through a chain that terminates in private hands. The Cropland Policy's § 3.3 provides that "[t]enants shall operate in accordance with operating plans developed in collaboration with BCPOS." (Cropland Policy at p. 8, § 3.3). This means the 2024 IWMP's operative framework for cropland ultimately delegates weed management—to the extent it exists at all—to individualized tenant operating plans that are private, non-public, lease-based documents the BOCC never reviews or adopts and that are not subject to public comment.

The Act does not permit this chain of delegation. It places the obligation squarely on the board of county commissioners—not on the Cropland Policy, and not on individual tenants—to adopt a weed management plan. C.R.S. § 35-5.5-105(1). Beyond that, it requires the local advisory board—the BOCC itself—to review that plan no less than once every three years. C.R.S. § 35-5.5-107(4)(a). The 2024 IWMP itself recognizes that this review “will take place every three years as a public hearing and incorporate input from a variety of resources, including public comment.” (2024 IWMP at p. 14, § 2.1.1). Private tenant operating plans are lease documents. They are not adopted by the BOCC. They are not reviewed at public hearings. They are not subject to public comment. The 2024 IWMP cannot satisfy a mandatory public statutory obligation—assigned by the legislature to elected officials, subject to public accountability—by incorporating a document that itself delegates weed management to private parties.

***D. The Triennial Review Deficiency Is Independent and Compounds the Coverage Violation.***

The triennial review deficiency is an independent basis for both the declaratory judgment claim and the mandamus claim. Under C.R.S. § 35-5.5-107(4)(a), the weed management plan “shall be reviewed at regular intervals but not less often than once every three years.” Because the 2024 IWMP designates the Cropland Policy as its operative framework for cropland, this triennial review obligation applies to the Cropland Policy component as part of the 2024 IWMP. The plan is complaint for purposes of the Act if its incorporated cropland framework is never reviewed. This Court has already held that the triennial review obligation is a “purely ministerial duty” and that Boulder County violated state law by failing to review the 2004 IWMP. (Order Granting in Part Motion To Dismiss at 2–3). Defendants admitted no review occurred from 2004 to April 2024. (Answer to Third Claim ¶¶ 28, 31–33, 58). The same deficiency afflicts the Cropland Policy component of the 2024 IWMP: it has never been reviewed by the BOCC under the Act’s triennial framework.

The County will argue that adoption of the 2024 IWMP resets the triennial clock through November 2027. That argument fails for cropland because the 2024 IWMP’s incorporated Cropland Policy component has never been reviewed under the Act at all. Adoption of the 2024 IWMP as a whole does not satisfy the triennial review requirement because a component of that plan was never brought before the BOCC for review. For purposes of the mandamus claim, the County presently lacks a valid, fully reviewed IWMP covering all unincorporated lands, *and the duty to adopt one is immediate*—it cannot be deferred to 2027 by pointing to the 2024 IWMP whose cropland component has never been reviewed.

## **II. THE 2024 IWMP IS INVALID UNDER THE PESTICIDE APPLICATORS ACT BECAUSE IT AUTHORIZES REJUVRA APPLICATIONS INCONSISTENT WITH THE PRODUCT LABEL.**

### ***A. The Statutory Framework: Label Compliance Is Both Federal and Colorado Law.***

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), it is “a violation of Federal Law to use this product in a manner inconsistent with its labeling.” (Label at p. 3, Directions for Use). Colorado’s PAA independently provides that it is “unlawful and a violation of this article for any person to use . . . pesticides . . . in a manner inconsistent with labeling directions or requirements . . . or in an unsafe, negligent, or fraudulent manner.” C.R.S. § 35-10-117(1)(i).

A county enactment conflicts with state law when “the operational effect of the local law conflicts with the application of the state law.” *City of Longmont v. Colo. Oil and Gas Ass’n*, 2016 CO 29, ¶ 36. Such a conflict exists when “the effectuation of a local interest would materially impede or destroy a state interest.” *Id.* at ¶ 37. When the 2024 IWMP specifically authorizes and directs pesticide applications that would, upon execution, violate the PAA and FIFRA, the 2024 IWMP conflicts with both state and federal law.

### ***B. The Rejuvra Label Contains Multiple Prohibitions That the 2024 IWMP’s Authorized Aerial Applications Would Violate.***

The Label imposes five categories of restriction directly relevant to the 2024 IWMP’s planned drone applications in Boulder County’s foothills:

First, the core prohibition on person exposure: “DO NOT apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application.” (Label at p. 3, Directions for Use). The 2024 IWMP authorizes drone aerial applications at Rabbit Mountain, Hall Ranch, and Heil Valley Ranch—and at

properties and businesses adjacent to residences, trails, and organic farms where Plaintiffs and members of the public routinely are present. (2024 IWMP App. B; Second Am. Compl. ¶¶ 27–47; Decl. of S. McDonald ¶¶ 9-10; Decl. of Cochran ¶¶ 10-11; Decl. of Meschke ¶ 18). The 2024 IWMP’s Uncrewed Aircraft Systems (“UAS”) Policy provides a 660-foot buffer from homes and a 50-foot buffer from property boundaries. (2024 IWMP at p. 60, App. A to UAS Policy). But the Label’s prohibition on drift reaching unprotected persons is absolute—it admits of no distance-based exception. A buffer measured in feet does not satisfy a prohibition that has no geographic limit.

Second, the prohibition on applying near food and forage: “DO NOT apply under circumstances where spray drift can reach unprotected persons, food, or forage, except as otherwise permitted by this label. Food or forage may be rendered unfit for sale, use, or consumption.” (Label at p. 12, Spray Drift Management—Sensitive Areas). Multiple Plaintiffs grow food organically in areas adjacent to the planned application zones, purchase food from Boulder County farms within those areas, and forage in areas they believe to be pesticide-free. (Second Am. Compl. ¶¶ 113, 119, 121, 124–125, 129–130; Decl. of Cochran ¶¶ 5, 7, 8, 10-11; Decl. of S. McDonald ¶¶ 7, 9-10; Decl. of Gordon ¶¶ 3-5). The Label independently prohibits application in circumstances where drift may reach food sources.

Third, the wind speed prohibition: “Drift potential increases if wind is in excess of 10 mph, gusty, or below 2 mph (due to inversion potential). Always make applications when there is some air movement to determine the direction and distance of possible spray drift.” (Label at p. 12, Spray Drift Management—Wind). The 2022 aerial application at Hall Ranch violated this requirement: the helicopter pilot recorded zero wind speed, which both violates the below-2-mph inversion potential restriction and raises false-records concerns under C.R.S. § 35-10-117(2)(f).

(Second Am. Compl. ¶¶ 88–90). Nothing in the 2024 IWMP prevents a recurrence of this violation during planned drone applications.

Fourth, the sensitive areas prohibition: “Applications should be made only when there is little or no risk of spray drift or movement of applied product into sensitive areas. Sensitive areas are defined as bodies of water (ponds, lakes, rivers, and streams), habitats of endangered species and non-labeled agricultural crop areas.” (Label at p. 3, Use Precautions). The 2024 IWMP’s planned drone application areas in the foothills contain ephemeral streams, riparian corridors, and habitat for the threatened Northern Leopard Frog and Preble’s Meadow Jumping Mouse—precisely the sensitive areas the Label requires applicators to protect. (Second Am. Compl. ¶ 107; 2024 IWMP, at pp. 33, 44-45, 51, App. B). The Label also notes the product “is toxic to fish, aquatic invertebrates, and plants” and “is classified as having a high potential for reaching surface water via runoff.” (Label at p. 2, Environmental Hazards). The rocky, steep terrain of the foothills application sites presents precisely the conditions where runoff risk is highest.

Fifth, the geographic aerial prohibition: “DO NOT apply by air in the State of New York.” (Label at p. 3, Use Restrictions). The EPA’s decision to prohibit all aerial application in an entire state—with no exception for terrain, buffers, or notification procedures—is a regulatory acknowledgment that aerial Rejuvra application poses drift risks that cannot be consistently managed by applicator precautions alone. The 2024 IWMP’s authorization of drone aerial application of Rejuvra over thousands of Boulder County acres proceeds in the face of this recognized and documented risk.

***C. The 2022 Aerial Application Establishes That These Label Violations Are Not Hypothetical.***

BCPOS’s documented record establishes that it has already applied Rejuvra aerially in violation of each of the foregoing Label restrictions. In 2022, BCPOS applied Rejuvra by

helicopter at Hall Ranch at a time and in conditions that: (a) allowed drift to contact multiple unprotected residents directly, including through drift reaching residential properties and organic gardens; (b) allowed drift to reach food and forage, damaging fruit trees, grapevines, beehives, and organic food crops; (c) involved wind speeds that violated the Label's 2 to 10 mph requirement; and (d) occurred in proximity to riparian corridors and wildlife habitat identified as sensitive areas under the Label. (Second Am. Compl. ¶¶ 83–90, 107, 113, 119, 121, 129; Decl. of Meschke ¶¶ 7–9, Ex. B–C; Decl. of E. McDonald ¶¶ 5–8; Decl. of Cochran ¶¶ 3–9). These were not isolated operator errors—they were systematic label violations that injured multiple Plaintiffs and their properties.

Moreover, the 2024 IWMP does not merely create a risk of future violations—it affirmatively structures ongoing operations to produce them. The 2024 IWMP commits Boulder County to applying Rejuvra by drone over 3,000 foothill acres (2024 IWMP App. B at p. 44, Implementation Goal 2) while providing only a 660-foot buffer from homes and a 50-foot buffer from property boundaries and streams. (2024 IWMP at p. 60, App. A to UAS Policy). These distances are insufficient to prevent drift from reaching unprotected persons and sensitive water features in terrain where the 2024 IWMP's own maps show the planned application areas directly abut trails and areas adjacent to communities. (2024 IWMP at pp. 52, 53, 55, Implementation Maps B-4b, B-5, B-6 (showing open space areas subject to drone aerial herbicide application along trails at Hall Ranch, Heil, Ranch, and Rabbit Mountain)). Further, the Label recognizes that the product has a high potential for reaching surface water via runoff, including in proximity to riparian corridors and wetlands in the foothills application zones. (Label at p. 2, Environmental Hazards; Decl. of S. McDonald ¶ 7). An IWMP that plans, funds, and operationally directs applications that

will violate the Label is not merely creating a risk of unlawful use—it is authorizing and directing it.

## **CONCLUSION**

The 2024 IWMP is invalid on the undisputed record and the County presently lacks a statutorily compliant weed management plan covering all unincorporated lands in Boulder County. The 2024 IWMP violates C.R.S. § 35-5.5-105(1) by incorporating the Cropland Policy as its operative framework for cropland weed management while that incorporated framework contains no weed management plan, no management objectives, no designated species for management, and no treatment methods—a deficiency Defendants’ own Answer admits. The 2024 IWMP independently violates C.R.S. § 35-5.5-107(4)(a) because its incorporated Cropland Policy component has never been reviewed by the BOCC on the triennial schedule state law requires and the triennial clock cannot run from adoption of a plan whose cropland component has never been reviewed. Beyond that, the 2024 IWMP violates C.R.S. § 35-10-117(1)(i) of the Pesticide Applicators Act by authorizing drone aerial application of Rejuvra in terrain and circumstances where the Label’s mandatory prohibitions cannot be consistently satisfied—as BCPOS’ own documented history of label violations and the resulting injuries to Plaintiffs confirm.

No genuine issue of material fact exists on either remaining claim. The Court should enter summary judgment in Plaintiffs’ favor, declare the 2024 IWMP null and void for failure to comply with C.R.S. §§ 35-5.5-105(1) and 35-10-117(1)(i), and issue a writ of mandamus compelling the County to adopt a new, statutorily compliant Integrated Weed Management Plan covering all unincorporated lands within Boulder County within a reasonable period not to exceed 90 days.

Dated this 22nd day of May, 2026,

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on May 22, 2026, I electronically filed the foregoing via Colorado Courts E-Filing System (CCEF), and will serve the same via email to the following:

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