

District Court, Boulder County, State of Colorado 1777 Sixth Street Boulder, Colorado 80302	DATE FILED October 9, 2026 12:05 PM CASE NUMBER: 2024CV127
Plaintiffs: DANDY LYONS BRIGADE, et al., v. Defendants: BOULDER COUNTY BOARD OF COUNTY COMMISSIONERS; and BOULDER COUNTY PARKS AND OPEN SPACE.	
	▲ COURT USE ONLY ▲ Case Number: 2024CV127 Division 2 Courtroom H
ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT	

A group of concerned citizens, organized in an organization calling itself the “Dandy Lyons Brigade,” has sued Boulder County to challenge the legality of its policy addressing noxious weeds in the county. Specifically, Plaintiffs argue that Boulder County has failed to comply with state law by adopting and implementing a weed management plan that is less comprehensive than state law requires and that the plan violates another state law governing pesticide application.¹

Both parties move for summary judgment. The Court agrees that the parties present no genuine issues of fact. The Court concludes that Boulder County is entitled to summary judgment on Plaintiffs’ claims for declaratory relief and mandamus.

¹ The named defendants are the Boulder County Board of County Commissioners (“BOCC”) and Boulder County Parks and Open Space (“BCPOS”). The Court will refer to them collectively as “Boulder County” unless context requires separating them.

FACTUAL BACKGROUND

A. Boulder County's Integrated Weed Management Plan.

Colorado law requires the “board of county commissioners of each county in the state [to] adopt a noxious weed management plan for all of the unincorporated lands within the county.”² The BOCC adopted the Integrated Weed Management Plan (“IWMP”) on November 19, 2024. By its terms, the IWMP applies “to all public and private lands within unincorporated Boulder County, except Federal and state lands and lands within municipalities.”³ But Section 4 of the IWMP, which concerns the “Application of IWM Adaptive Decision Process and Tools on BCPOS Natural Lands” applies only to “natural lands managed primarily by the Resource Management Division of BCPOS.”⁴ This excludes “leased dryland and irrigated crop production lands, irrigated pasturelands, and irrigated forage or leased rangelands.”⁵ Those lands are governed by the BCPOS Cropland Policy and their respective leases. The Cropland Policy was adopted in 2021 and doesn’t address noxious weeds or herbicides.

² C.R.S. § 35-5.5-105(1).

³ IWMP § 1.2. The IWMP is attached as Ex. A to both motions for summary judgment.

⁴ *Id.* § 4.1.

⁵ *Id.*

The IWMP provides that it will be reviewed “at regular intervals but not less than once every three years for approval or modification by the BOCC sitting as the Local Advisory Board.”⁶

B. Boulder County and the IWMP’s treatment of herbicides and pesticides.

The IWMP authorizes the use of an herbicide called Rejuvra, which uses the active ingredient indaziflam, on Boulder County natural lands. Specifically, it authorizes aerial applications of Rejuvra using drones over 3,000 acres on Rabbit Mountain, Hall Ranch, and Heil Valley Ranch.⁷ Multiple plaintiffs live near these proposed treatment areas.

With respect to herbicides, the IWMP states: “Adherence to product labels is essential; the label is the law.”⁸ It also states, as a “Strateg[y] to follow for use of the IWM Plan,” to “Protect Health and Safety: Follow equipment safety guidelines, herbicide application labels, and best management practices to protect the health and safety of staff, the public, and ecological values.”⁹

⁶ *Id.* § 2.1.1.

⁷ Pl.’s Mot for Summ. J. at ¶ 16. The IWMP states that Boulder County will not use indaziflam until the World Health Organization completes an evaluation. IWMP § 4.3.1. The record contains no reference to the WHO’s evaluation. But Boulder County did not dispute Plaintiffs’ contention that the IWMP authorizes the use of Rejuvra, so the Court treats the fact that the IWMP authorizes Rejuvra use as undisputed for purposes of the summary judgment motions.

⁸ IWMP § 3.3.4.

⁹ *Id.* § 1.4.

The Rejuvra label states, among other things¹⁰:

- “DO NOT apply this product in a way that will contact workers or other persons, either directly or through drift.”
- “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.”
- “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.”
- “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.”

Plaintiffs contend that a 2022 aerial application of Rejuvra violated the label and caused them injury. Several Plaintiffs claim they and/or their minor children were injured by drift from the 2022 application, which was done in violation of the wind requirements for Rejuvra applications. The Court previously dismissed a declaratory judgment claim based on the 2022 application as barred by the statute of limitations. The Court therefore considers facts concerning the 2022 application only to the extent such facts are probative of Plaintiffs’ claim that the 2024 IWMP is preempted by Colorado state law.

¹⁰ Pl.’s Mot for Summ. J. at ¶¶ 17-21.

LEGAL STANDARD

“Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.”¹¹ The party moving for summary judgment bears the “burden of establishing the lack of a triable factual issue.”¹² If the movant meets its burden, the burden shifts to the nonmovant to show the existence of a genuine issue of fact.¹³ “[A]ll doubts must be resolved in favor of the non-moving party and all reasonable inferences . . . must be drawn in favor of the non-moving party.”¹⁴

When presented with cross-motions for summary judgment, a court “must consider each motion separately, review the record, and determine whether a genuine dispute as to any fact material to that motion exists.”¹⁵

ANALYSIS

The Court previously addressed two motions to dismiss Plaintiffs’ complaint. Following those orders, two claims remain for judicial resolution: (I) a declaratory judgment claim alleging that the IWMP violates state law because (A) it doesn’t apply to all unincorporated lands in Boulder County and (B) its provisions relating to

¹¹ *Ravenstar LLC v. One Ski Hill Place LLC*, 2016 COA 11, ¶ 13.

¹² *Churchey v. Adolph Coors Co.*, 759 P.2d 1336, 1340 (Colo. 1988).

¹³ *See City of Aurora v. ACJ P’ship*, 209 P.3d 1076, 1082 (Colo. 2009).

¹⁴ *TABOR Found. v. Colo. Dep’t of Health Care Policy & Financing*, 2020 COA 156, ¶ 6 n.3.

¹⁵ *Churchey*, 759 P.2d at 1340.

application of Rejuvra violate the Pesticide Applicators Act (“PAA”); and (II) a mandamus claim alleging that Boulder County is failing to review the IWMP every three years as required by law.

I. Boulder County is entitled to summary judgment on Plaintiffs’ declaratory judgment claims.

A. The exclusion of croplands from section 4 doesn’t render the IWMP noncompliant with state law.

The Colorado Noxious Weed Act requires counties to “adopt a noxious weed management plan for all of the unincorporated lands within the county.”¹⁶ “A noxious weed management plan must include all of the requirements and duties imposed by” the Act.¹⁷

The plain language of the IWMP purports to do this. It states: “As outlined in the Act, this IWM Plan shall apply to all public and private lands within unincorporated Boulder County, except Federal and state lands and lands within municipalities.”¹⁸ The IWMP further provides: “As part of this Integrated Weed Management Plan, Boulder County adopts all requirements and duties set forth in The Act[.]”¹⁹

Plaintiffs argue that this broad language does not match the actual application of the IWMP. Section 4 of the IWMP details the IWMP’s “strategies and practices on

¹⁶ C.R.S. § 35-5.5-105(1).

¹⁷ *Id.*

¹⁸ IWMP § 1.2. The IWMP is attached as Ex. A to both motions for summary judgment.

¹⁹ *Id.* § 2.1.2.

natural lands managed primarily by the Resource Management Division of BCPOS.”²⁰

This excludes “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.”²¹ There is no dispute that Boulder’s Cropland Policy doesn’t apply to noxious weeds.²² According to Plaintiffs, then, by carving out croplands from the strategies and practices articulated in section 4, this exception swallows the IWMP’s rule that it broadly applies to all unincorporated lands.

The Court agrees with Plaintiffs that the broad statement of applicability contained in sections 1 and 2 of the IWMP is not determinative of the issue. A government does not comply with state law merely by stating it is complying with state law. Instead, the Court must look to what the law requires and determine whether the IWMP meets those requirements. The Act (1) requires a weed management plan for all unincorporated lands within the county, and (2) requires the plan to include all of the requirements and duties imposed by the Act. Putting these two propositions together, a county’s weed management plan must apply all requirements and duties imposed by the Act to all unincorporated lands.

²⁰ *Id.* § 4.1.

²¹ *Id.*

²² Boulder Mot. for Summ. J. at 3.

But to the extent Plaintiffs argue that the IWMP is invalid solely because section 4 applies to less than all of the unincorporated lands in the county, the Court also disagrees with that proposition. While the IWMP must cover all unincorporated lands, it doesn't follow that it must apply the same to all unincorporated lands. There could be valid reasons for treating different lands within a county differently with respect to weed control. And the Noxious Weed Act doesn't prohibit a county from adopting a weed management plan that contains additional requirements than those imposed by the Act. Rather, the Act requires that all the duties and requirements of the Act must apply to all unincorporated lands. The question for the Court thus becomes: does section 4's exclusion of croplands mean that some of the Act's requirements and duties do not apply to croplands?

According to the IWMP's executive summary, the IWMP is organized as follows:

- Overview of state regulations (Section 1) and Boulder County responsibilities (Section 2).
- Section 3 describes the adaptive decision process and tools as a reference for weed management on any land in Boulder County.
- Section 4 describes how Boulder County Parks & Open Space applies these process and tools to achieve Boulder County's goals on county-owned natural lands.
- Appendix A provides definition of terms; Appendix B provides detailed implementation plans for the three-year period 2024 to 2027. Details

about costs of tools, herbicide selection process, and use of drones are provided in Appendices C, D, and E.²³

The section 4 application of the IWMP's processes and tools does not apply to croplands.

Boulder County has established that no factual dispute precludes entry of summary judgment in its favor on this claim because the exclusion of croplands from Section 4, while including croplands in Sections 1-3, does not violate the Noxious Weed Act. The only provision of state law cited by Plaintiffs in the briefing that spells out the "requirements and duties" imposed by the Act is C.R.S. § 35-5.5-108.5(3).²⁴ That statute "govern[s] the responsibilities of [] local governing bodies" and the subsection cited by Plaintiffs is entitled, "Duties of local governing bodies."²⁵ But Plaintiffs don't cite any duties imposed by that statute that the IWMP fails to impose. The statute broadly requires local governing bodies to maintain communications with landowners who are affected by the noxious weeds listed by the Commissioner; to provide technical assistance to landowners to assist in eradicating such weeds; to "carry out sufficient measures, including project oversight and enforcement[,] to ensure the eradication" of noxious weeds; and to assist the commissioner of the department of agriculture in disseminating financial assistance to affected landowners pursuant to rules

²³ IWMP at 9.

²⁴ See Pls.' Resp. at 10.

²⁵ § 35-5.5-108.5(1), (3).

promulgated by the commissioner.²⁶ The IWMP addresses these areas, directly or indirectly.²⁷ Plaintiffs have not identified any provisions of the Noxious Weed Act that the IWMP fails to apply to croplands.

In addition to imposing mandatory requirements on counties to adopt an IWMP, the Colorado Noxious Weed Act gives counties *discretionary* authority with respect to a wide array of decisions about implementing an IWMP.

[T]he board of county commissioners *may* adopt and provide for the enforcement, including the assessment and collection of fines, of ordinances, resolutions, rules, and other regulations as may be necessary and proper to enforce a noxious weed management plan and otherwise provide for the management of noxious weeds within the county.²⁸

Section 4's provisions fall within this discretionary authority the BOCC has to promulgate rules and regulations to manage noxious weeds in the county. Section 3 of the IWMP applies to all unincorporated lands (other than state or federal lands) in Boulder County, including croplands. It details numerous tools to be used as part of the IWMP on those lands, including: cultural tools (focused on education and prevention); mechanical tools (like mowing, weed pulling, and controlled burns); biological tools (using insects and grazers); and chemical tools (herbicides). Section 4 provides greater

²⁶ § 35-5.5-108.5(3).

²⁷ IWMP § 2.1.1 ("Staff may also provide technical assistance to private and public landowners and facilitate development of management plans for their land."); § 1.4 (identifying "collaborat[ion] and communicat[ion]" among "neighbors, expert staff, partners, peer agencies, private property owners, and the public" as one of the three strategies for the IWMP).

²⁸ § 35-5.5-105(1) (emphasis added).

detail as to how these tools are to be employed on a subset of unincorporated lands, including provisions to identify and prioritize treatment for noxious weeds. Because these provisions are an exercise of the county's discretionary authority under the Noxious Weed Act, and are not mandatory provisions under the Act, the fact that they do not apply to the greatest scope of lands permitted by the Act does not render the IWMP violative of state law.

Boulder County is therefore entitled to summary judgment on this declaratory judgment claim.

B. The PAA does not preempt the IWMP because the IWMP does not, on its face, materially impede the PAA's interest in following labels on herbicides.

Plaintiffs next seek declaratory relief that the IWMP violates and is preempted by state law because its authorization of drone applications of Rejuvra is contrary to the Pesticide Applicators' Act ("PAA").²⁹ Plaintiffs' preemption argument is based on the operational effect of the IWMP. A "state law may preempt a local regulation when the operational effect of the local law conflicts with the application of the state law."³⁰ A local regulation is preempted if "the effectuation of a local interest would materially

²⁹ Plaintiffs also assert that the IWMP violates the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). But their brief doesn't analyze federal preemption or even cite to the applicable FIFRA statute. In any event, Plaintiffs appear to argue that FIFRA is violated for the same reason that the PAA is violated, namely, that the IWMP authorizes Rejuvra applications that violate the restriction on its label. That argument is addressed below.

³⁰ *City of Longmont v. Colo. Oil & Gas Ass'n*, 2016 CO 29, ¶ 36.

impede or destroy a state interest.”³¹ This preemption analysis “involve[s] a facial evaluation of the respective statutory and regulatory schemes, not a factual inquiry as to the effect of those schemes ‘on the ground.’”³²

The PAA provides that it is unlawful for any person “[t]o use [] pesticides [] in a manner inconsistent with labeling directions or requirements, unless otherwise provided by law, or in an unsafe, negligent, or fraudulent manner.”³³ Boulder County first argues that the IWMP is not a “use” of a pesticide and so cannot be preempted by the PAA. But that argument misunderstands the preemption analysis here, which looks to whether the IWMP’s effectuation of Boulder County’s interest would impede or destroy Colorado’s state interest as reflected in the PAA. In other words, if the IWMP authorizes uses of Rejuvra that violate its labeling restrictions, the IWMP may impede the state interest, reflected in the PAA, that such restrictions must be followed.

Plaintiffs identify five provisions of the Rejuvra label that they maintain are violated by the IWMP:

- 1) “DO NOT apply this product in a way that will contact workers or other persons, either directly or through drift.”
- 2) “DO NOT apply under circumstances where spray drift can reach unprotected persons, food, or forage, except as otherwise permitted by

³¹ *Id.* at ¶ 42.

³² *Id.*

³³ § 35-10-117(1)(i).

this label. Food or forage may be rendered unfit for sale, use, or consumption.”

- 3) “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.”
- 4) “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.”
- 5) “DO NOT apply by air in the State of New York.”

The fifth provision is easily addressed. Boulder County’s IWMP doesn’t authorize Rejuvra applications in New York. Plaintiffs assert that the New York restriction is “a regulatory acknowledgement that aerial Rejuvra application poses drift risks that cannot be consistently managed by applicator status alone.”³⁴ Plaintiffs cite no support for this bare assertion, nor do they explain why, if Rejuvra’s drift applications are uncontrollable, they are not barred in the other 49 states by the label. If anything, the bar on aerial applications being limited to New York demonstrates an intent *not* to bar such uses in Colorado.³⁵

As to the other four label provisions, Boulder County argues it is entitled to summary judgment because, evaluating the PAA and IWMP on their faces, there is no

³⁴ Pls.’ Mot. for Summ. J. at 18.

³⁵ See, e.g., *Beeghly v. Mack*, 20 P.3d 610, 613 (Colo. 2001) (“Under the rule of interpretation *expressio unius exclusio alterius*, the inclusion of certain items implies the exclusion of others.”).

conflict. The Court agrees. The IWMP stresses several times that herbicide application labels must be followed when implementing the IWMP:

- § 1.4: “Follow equipment safety guidelines, herbicide application labels, and best management practices to protect the health and safety of staff, the public, and ecological values.”
- § 3.3.4: “Adherence to [herbicide] product labels is essential; the label is the law.”
- § 4.5: “When spraying herbicide adjacent to property boundaries, BCPOS follows buffer distances depending on application method, location, and herbicide label.”

On the face of the IWMP, then, the IWMP doesn’t impede or destroy the state interest in following herbicide labels—it supports that interest. In considering Boulder County’s motion for summary judgment, Boulder County has met its initial obligation of showing no genuine dispute of fact that it is entitled to judgment on the declaratory judgment claim related to PAA preemption.

The burden thus shifts to Plaintiffs to come forward with facts establishing a genuine issue of fact.³⁶ Plaintiffs assert that some of the drone areas are near residences, trails, and farms, and that merely providing a buffer distance doesn’t ensure the “no contact” that the label requires. Three Plaintiffs attached declarations stating that they own properties adjacent to areas designated for aerial applications of Rejuvra or purchase food from such properties. But they do not identify a basis for asserting that

³⁶ See *City of Aurora*, 209 P.3d at 1082.

drift will impact their properties. Plaintiffs have not provided any expert testimony stating that they will be impacted by drift contrary to the label requirements. Instead, they provide only lay testimony that some individuals believe they will be subject to herbicide exposure if Rejuvra is applied in the areas designated in the IWMP. But statements of subjective belief, unsupported by facts, are insufficient to avoid summary judgment.³⁷ Plaintiffs also point to the 2022 incident, but that application was before the 2024 IWMP was enacted. Even if the 2022 Rejuvra application was contrary to the label requirements, the 2024 IWMP—which requires compliance with label restrictions—was not in effect at the time, so the 2022 application doesn’t establish that the 2024 IWMP conflicts with the PAA.

Plaintiffs also assert that the areas designated for application “contain ephemeral streams, riparian corridors, and habitat for the threatened Northern Leopard Frog and Preble’s Meadow Jumping Mouse.”³⁸ The label requires applications to be made “only when there is little or no risk of spray drift or movement of applied product into sensitive areas” like bodies of water and “habitats of endangered species.” Plaintiffs haven’t identified any endangered species whose habitats are in these areas, only threatened species. And Plaintiffs assert that the “rocky, steep terrain of the foothills

³⁷ See, e.g., *People v. Hernandez & Assocs., Inc.*, 736 P.2d 1238, 1240 (Colo. App. 1986).

³⁸ Pls.’ Mot at 18.

application sites presents precisely the conditions where runoff risk is highest,” but cite no support for this proposition at all.³⁹

In short, Plaintiffs have not come forward with record evidence establishing that the Rejuvra aerial applications permitted by the IWMP would materially impede or destroy a state interest. The IWMP requires any such applications to be accomplished while complying with the label’s requirements and restrictions. Plaintiffs’ assertions that drift will nevertheless occur contrary to the label requirements if applications are made in conformity with the IWMP are not supported by any record evidence. There is therefore no conflict between the IWMP and the PAA and Boulder County is entitled to summary judgment.

II. Plaintiffs are not entitled to mandamus relief because the BOCC has not failed to act in spite of a clear statutory mandate to do so.

Plaintiffs also bring a claim for mandamus relief to ensure the BOCC reviews the IWMP on a triennial basis as required by law.⁴⁰ Because the IWMP was not adopted until November 19, 2024, the BOCC doesn’t have a duty to review the IWMP until November 19, 2027. Mandamus is available as a remedy when “a public official fails to act despite a clear statutory mandate that he or she do so.”⁴¹ The BOCC has not failed to act to review the IWMP despite a clear statutory mandate to do so. If the BOCC fails to

³⁹ *Id.*

⁴⁰ *See* § 35-5.5-107(4)(a).

⁴¹ *Miller v. Collier*, 878 P.2d 141, 144 (Colo. App. 1994).

review the IWMP by November 2027, Plaintiffs may be justified in seeking mandamus at that point. But based on the present record, Boulder County is entitled to summary judgment on the claim for mandamus relief.

CONCLUSION

Boulder County's motion for summary judgment is granted and judgment is entered in Boulder County's favor on Plaintiffs' claims for declaratory judgment and for mandamus relief under Rule 106(a)(2). Plaintiffs' motion for summary judgment is denied.

Dated: October 9, 2026

BY THE COURT

A handwritten signature in black ink, appearing to read "Michael Kotlarczyk", written in a cursive style.

Michael Kotlarczyk
District Court Judge