

# HUSCH BLACKWELL

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September 6, 2023

## VIA EMAIL

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Re: **Subject to C.R.E. and F.R.E. 408**

*Granby Ranch Metropolitan District v. Headwaters Metropolitan District, et al.*; Grand County, Colorado, District Court  
No. 2021CV300008; and  
*GRCO LLC v. Granby Ranch Metropolitan District*, U.S. District  
Court for District of Colorado No. 1:23-cv-01351

Mr. Batchelder, Ms. Marks, Mr. TeSelle, and Mr. O'Connell:

We are writing in response to Mr. Batchelder's letter dated August 31, 2023, rejecting the Defendants' counteroffer ("Rejection Letter") and Ms. Mark's e-mail sent yesterday regarding a "negotiation/settlement conference" with GRMD's litigation negotiation committee.

Considering the positions taken in the Rejection Letter, GR Terra LLC ("GR Terra") does not believe that a settlement meeting would be productive at this time. We disagree with your contention that the counterclaims filed by GR Terra and Headwaters Metropolitan District ("Headwaters") are moot. To the contrary, the Court's summary judgment orders affirm that GR Terra and Headwaters had no obligations to acquire or take any other action with respect to the

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ski/golf amenities under any of the agreements that gave rise to GRMD's claims against them. This supports these defendants' counterclaims that GRMD's decision to file and pursue these claims was a breach of the various agreements GRMD entered with the defendants over the years. Headwaters and GRMD intend to proceed with presenting their claims to the Court.

Per our notice to GRMD's counsel in the LPA litigation last week, our paralegal spoke with the clerk yesterday regarding dates for a status conference to discuss a trial setting for the counterclaims. She provided the following options:

10/5/23 at 8:45, 2:45 or 4:00

10/12/23 at 8:45, 1:15 or 2:00

11/2/23 at 8:45, 9:30, 1:00, 3:45 or 4:30.

Please advise if you have conflicts on any of these days, and we will schedule and notice.

Regardless of the counterclaims, GR Terra and Headwaters can pursue claims for recovery of attorneys' fees expended in defending against GRMD's claims against them under C.R.S., § 13-17-102 (2021), which provides that:

The court shall assess attorney fees if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure or a designation by a defending party under section 13-21-111.5 (3) that lacked substantial justification. As used in this article, 'lacked substantial justification' means substantially frivolous, substantially groundless, or substantially vexatious.

Here, the GRMD's own documents and other information available to it before suit was filed revealed that GRMD could not prevail on its claims, yet GRMD and its counsel chose to institute and pursue groundless claims that misstated the facts and forced the defendants to collectively incur well over a million dollars in defense costs. We believe a statutory fee award is justified under these circumstances.

Finally, with respect to the GRCO litigation, we disagree that GRCO has asked for any terms that would result in breach of trust to the taxpayers. It is GRMD's blatant disregard of the limitations on use of the capital facilities fees and its misuse of those funds that is a violation of GRMD's obligations to all its property owners.

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In light of GR Terra's position with respect to a settlement meeting, we do not see any reason to obtain a formal response from Headwaters. We look forward to your prompt response regarding availability for the status conference.

Sincerely,

HUSCH BLACKWELL LLP

A handwritten signature in blue ink, appearing to read "JoAnn T. Sandifer".

JoAnn Sandifer

cc: Robert B. Glarner, Jr.  
P. David Glarner  
Roxanne Hoover  
Kyler Burgi, Esq.  
David G. Richardson, Esq.