

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue, 4 th Floor Denver, CO 80203	
Original Proceeding Pursuant to Art. V, § 44.5 of the Colorado Constitution	
In re Colorado Independent Congressional Redistricting Commission	▲ COURT USE ONLY ▲
Attorneys for Summit County and the Town of Breckenridge: Keith Bradley, #50453 ScheLeese Goudy, #52075 Samuel Ballingrud, #52077 SQUIRE PATTON BOGGS (US) LLP 1801 California St., Suite 4900 Denver, CO 80202 Telephone: (303) 830-1776 Facsimile: (303) 894-9239 E-mail: keith.bradley@squirepb.com scheleese.goudy@squirepb.com samuel.ballingrud@squirepb.com	Case No. 2021SA208
BRIEF IN SUPPORT OF FINAL CONGRESSIONAL REDISTRICTING PLAN	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in this Court's Order dated July 26, 2021 because it contains 2,249 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

By: /s/ Keith Bradley
Keith Bradley

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STATEMENT OF ISSUES

Whether the Colorado Independent Congressional Redistricting Commission abused its discretion in approving the Final Congressional Redistricting Plan by a vote of 11-1.

INTRODUCTION

Summit County and the Town of Breckenridge (collectively, “Summit County” or “Summit”) submit this Brief in support of the Final Congressional Redistricting Plan adopted by the Independent Congressional Redistricting Commission on September 28, 2021. Summit County does not seek to participate in oral argument.

Until 2018, the authority to draw Colorado’s congressional districts was vested in the General Assembly. The outcomes routinely left large proportions of the populace unhappy for one reason or another, and the courts of the State were asked, decade after decade, to overturn the Assembly’s decisions. *E.g.*, *Hall v. Moreno*, 2012 CO 14, 270 P.3d 961; *Beauprez v. Avalos*, 42 P.3d 642 (Colo. 2002). In 2018, Colorado voters approved the creation of an Independent Congressional Redistricting Commission (“Commission”), made up of twelve citizens from across the State assisted by an able professional staff. The Court has before it the first congressional map adopted by the Commission, after a process and a level of public engagement that are unprecedented in the State’s modern history.

No map can truly satisfy all the demands made of it. The standards in the Colorado Constitution are inherently in tension; it is not possible, for example, to draw a map with contiguous districts of equal populations without dividing some

counties between districts. The Constitution tasks the Commission—which was at the dozens of hearings and reviewed the copious comments—to weigh the different considerations at issue. Summit County submits this Brief to ensure the Court is aware of its well-documented concerns. The Commission preserved the community of federal interests that Summit County shares with its neighbors to the near north and east, and Summit County urges the Court to respect that choice.

SUMMARY OF ARGUMENT

Amendment Y established a hierarchy of standards for drawing the State’s congressional districts. The Commission was charged with approving a map that:

- (1) “must be composed of contiguous geographic areas”;
- (2) “[c]ompl[ies] with the federal ‘Voting Rights Act’”;
- (3) represents “a good-faith effort to achieve precise mathematical population equality between districts”;
- (4) “[a]s much as is reasonably possible . . . preserve[s] whole communities of interest and whole political subdivisions”; and
- (5) is “as compact as is reasonably possible.” COLO. CONST. art V, § 44.3(1)-(3).

Once these conditions are satisfied, the Commission was to “maximize the number of politically competitive districts” “to the extent possible.” *Id.*, § 44.3(3)(a). No

map is permitted that “has been drawn for the purpose of protecting one or more incumbent members” or that “has been drawn for the purpose of or results in the denial or abridgement of the right of any citizen to vote on account of that person’s race or membership in a language minority group.” *Id.*, § 44.3(4).

The districts that the Commission designed are of course contiguous and have equal populations.¹ The other constitutional criteria required the Commission to balance the factors set out above, on the basis of the record it compiled over the months of public hearings and comments. To assess whether the Commission carried out its task properly, the Court must understand that record.

ARGUMENT

I. The Commission Properly Gave Significant Weight to Communities of Interest.

After contiguity, population equivalence, and Voting Rights Act compliance, the next criterion for the Commission was to preserve whole communities of interest and political subdivisions. Communities of interest are just as important as political subdivisions. This equal status is evident from the text of section 44.3, which speaks of them in the same breath: “preserve whole communities of interest and whole political subdivisions.” COLO. CONST. art V, § 44.3(2)(a). It is also apparent from

¹ Specifically, the Final Plan has 0.0% population deviation, Exhibit E to Final Plan.

a comparison to the State’s past approaches to redistricting. Before 2010, the statute governing congressional redistricting identified relevant factors in a prioritized list, in which “[t]he preservation of political subdivisions” was third (after population equivalence and compliance with the Voting Rights Act) and “[t]he preservation of communities of interest” was fourth. Colo. Rev. Stat. § 2-1-202(b) (2010) (repealed 2017). A 2010 amendment deleted the numbers identifying the priorities; and this Court recognized that the amended statute gave equal weight to these factors. *Hall*, 2012 CO 14, ¶ 41. That conclusion is all the stronger for the new constitutional provisions, which lists the preservation of communities of interest and counties and towns as a single criterion, and even mentions communities of interest first within the phrase.

A comparison to the criteria for state legislative districts strengthens the conclusion. Section 48.1 of the Colorado Constitution establishes a method, for use in that redistricting process, to choose between the preservation of political subdivisions and communities of interest where those values are in conflict: The state legislative redistricting commission “shall presume that [a] county, city, . . . or town should be wholly contained within a district,” but it can divide a county, city, or town “where, based on a preponderance of the evidence in the record, a community of interest’s legislative issues are more essential.” COLO. CONST. art V,

§ 48.1(2). The corresponding provision for congressional districts does not set forth such a method. Voters adopted both redistricting provisions at the same time. The absence of that language from the congressional criteria is strong evidence that the Commission was supposed to give full weight to communities of interest. *Cf. BP Am. Prods. Co. v. Colo. Dep't of Revenue*, 2016 CO 23, ¶ 19, 369 P.3d 281, 286 (“When the [General Assembly] includes a provision in one statute, but omits that provision from another similar statute, the omission is evidence of its intent.”) (alteration in original; citation omitted).

That the Commission understood this mandate is evident in the final statements of the commissioners. Repeatedly, they explained that the preservation of communities of interest was an important merit motivating their support for the final plan. *E.g.* Exhibit D to Final Plan, at 3-4 (stmt. of Comm’r Diawara); *id.* at 8 (Comm’r Leone); *id.* at 10-11 (Comm’r Shepherd Macklin); *id.* at 12 (Comm’r Moore); *id.* at 18-20 (Comm’r Wilkes); *id.* at 21 (Comm’r Brawner).

II. Summit County’s Communities of Interest Are With Its Near Neighbors to the North and East.

Summit County offers world-class skiing and is a major international tourist destination. It is only an hour-long drive from Golden and 90 minutes from Denver. Summit County is a part of the culture and environment of the metropolitan area to its east.

In the last redistricting process, the Court recognized Summit County’s ties to the Front Range. See *Hall*, 2012 CO 14, ¶¶ 60-63. Unlike that redistricting effort, this round has the benefit of a specific definition of the concept of a “community of interest.” It is a “group in Colorado that shares one or more substantial interests that may be the subject of federal legislative action, is composed of a reasonably proximate population, and thus should be considered for inclusion within a single district for purposes of ensuring its fair and effective representation.” COLO. CONST. art V, § 44(3)(b)(I). By that standard, Summit County’s current communities of interest are clear. On multiple fronts, including many of the federal policy questions that are most important to the County, Summit County shares its economy and its interests with its near neighbors in the metro area.

The record contains significant evidence on this point, in particular the comment that Summit County submitted to the Commission. A copy of that comment is attached as **Exhibit Summit-A**. The record illustrates some of the federal issues on which Summit County’s interests are shared with its eastern neighbors.

First, Summit County is unusually reliant on one transportation artery: Interstate 70, and particularly the Eisenhower-Johnson Memorial Tunnels through which visitors from the east access the mountains. *Id.* at 6-8. Few other

communities, even in Colorado, are as reliant on tourism as Summit County—it is one of the most-visited counties in the entire country—and so reliant on one single transportation route. *Id.* But this is hardly a Summit-only problem, as Summit recognized in its comment, “transportation issues are also important to the County’s metro area neighbors.” *Id.* at 6. It is therefore important for Summit County to share its congressional representation with others who share its strong concerns in the Tunnels and in Interstate 70. These are issues that “may be the subject of federal legislation,” for reasons detailed in Exhibit Summit-A. *Id.* at 7-8 (discussing Interstate 70 and the Tunnels as “key focuses of federal policy and legislation”).

The Final Plan preserves this community of interest, as much as reasonably possible, by locating Summit County in Congressional District 2 along with Clear Creek County, its immediate neighbor that shares transportation through the Tunnels; and with Grand County and Gilpin Counties, mountains counties just to the north for which access via Interstate 70 (through U.S. Highway 40 and State Highway 119 as connections) is critical.

Second, Summit County has direct interests in environmental sustainability and climate change. Summit County is particularly vulnerable to the changing climate, as its ski resorts suffer from less snow and its forests become more prone to fire and disease. *Id.* at 9. The economy and culture of Summit County and its

immediate neighbors are uniquely dependent on the beauty and safety of their environment. Summit County and its neighbors and near neighbors have demonstrated their shared interests by undertaking comparable plans for reducing carbon emissions. Exhibit Summit-A describes those plans, adopted for example by Summit County and by Boulder County. *Id.* at 9-12. These environmental concerns are also likely topics for federal legislation, particularly in areas like transportation and electricity that are in themselves focuses of communities of interest that Summit County shares.

The Final Plan preserves this community of interest to the extent reasonably possible, by locating Summit County in the same district with its immediate neighbor mountain counties; with Boulder County, which has a demonstrated interest in reducing carbon emissions and a ski area; and Larimer County, which contains most of Rocky Mountain National Park. The Final Plan ensures that this community will have a congressional representative who is focused on the shared interest in reducing and mitigating the impacts of climate change.

Third, Summit County faces a challenging transition in transportation and electricity systems in the coming decade. Electrical generation is shifting to greater use of renewable resources, a change that will necessitate investment in new transmission facilities, new generation, and in electricity storage. *Id.* at 13.

Transportation is shifting from vehicles directly powered by fossil fuels to electric vehicles. *Id.* at 15-17. Summit County shares interests with its near metropolitan neighbors on these issues. Unlike most of the western part of the State, Summit County is mostly served by the same electrical utility that serves the metropolitan Front Range. *Id.* at 12, Ex. 3. And its electric vehicle plans are shared with its eastern neighbors. *Id.* at 19. It collaborates with them on planning to increase the use of electric vehicles, and its infrastructure for electric vehicles is part of a network with its eastern neighbors. *Id.* at 15-17. These issues, too, are likely topics for federal legislation, for reasons detailed in Exhibit Summit-A.

The Final Plan preserves this community of interest, as much as reasonably possible, by including Summit County in a district that includes two counties that share the same utility provider and a county with which Summit County works closely on advancing both the renewables and the electrification transition.

III. The Court Should Respect the Commission’s Preservation of Communities of Interest

When an appellate court reviews a trial court’s decision under an abuse of discretion standard, the court will determine if the lower court’s decision was “manifestly arbitrary, unreasonable, or unfair” and “whether the trial court's decision fell within a range of reasonable options.” *Churchill v. Univ. of Colo.*, 2012 CO 54, ¶ 74, 285 P.3d 986, 1008 (citation and quotation omitted). This assessment is based

on the record before the trial court at the time it made its decision. *People v. Lindsey*, 2020 CO 21, ¶ 23, 459 P.3d 530, 535 (noting that “the record amply supports this finding, [and so] we perceive no abuse of discretion”).

Analogously here, the Court should review the Commission’s Final Plan against the record that the Commission compiled. Some of the constitutional factors, like the boundaries of political subdivisions, are easy enough to identify. Communities of interest, though they are of equal importance, can be harder to see. The real concerns of the people in an area are not visible on a map; and the Court cannot know, in the abstract, which concerns implicate federal policy, which is the relevant basis for delineating communities of interest for the congressional redistricting. To understand what communities the Commission considered, and what it preserved, the Court must review the evidence the Commission had.

On that evidence, the Commission’s choice to group Summit County with its Front Range neighbors was clearly correct. The record shows that Summit County’s federal concerns are shared with these areas, and it has little federal interest in common with areas to the west. A redistricting plan that divided Summit County from the Front Range would have done a significant disservice.

CONCLUSION AND RELIEF SOUGHT

Summit County consistently advocated for the preservation of its essential communities of interest. The Court should respect the Commission's choices to include those communities, as much as reasonably possible, within a single district.

Dated: October 8, 2021

/s/ Keith Bradley

Keith Bradley, # 50453

ScheLeese Goudy, # 52075

Samuel Ballingrud, # 52077

SQUIRE PATTON BOGGS (US) LLP

1801 California St., Suite 4900

Denver, CO 80202

Telephone: (303) 830-1776

Facsimile: (303) 894-9239

E-mail: keith.bradley@squirepb.com

scheleese.goudy@squirepb.com

samuel.ballingrud@squirepb.com

*Attorneys for Summit County and the
Town of Breckenridge*

CERTIFICATE OF SERVICE

I certify that on the 8th day of October, 2021, the foregoing was filed with the Clerk of the Court and served on all counsel of record electronically through the Colorado Courts E-Filing System.

Frederick R. Yarger
Meghan Frei Berglund
Wheeler Trigg O'Donnell LLP
370 Seventeenth Street, Suite 4500
Denver, CO 80202-5647

Jerome A. DeHerrera
Achieve Law Group LLC
146 West 11th Avenue
Denver, CO 80204

Misha Tseytlin
Troutman Pepper
227 W. Monroe Street, Suite 3900
Chicago, IL 60606

Jeremiah B. Barry
Colorado Independent Redistricting
Commissions Staff
1580 Logan Street, Suite 430
Denver, Colorado 80203

LeeAnn Morrill
Grant T. Sullivan
Peter G. Baumann
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203

Richard C. Kaufman
Law Office of Richard C. Kaufman PC,
Inc. 6464 S. Newport Court
Centennial, CO 80111

Timothy R. Odil
Peters Schulte Odil & Wallshein LLC
6125 Sky Pond Drive, Suite 250
Loveland, CO 80538

Mark G. Grueskin
Recht Kornfeld, P.C.
1600 Stout St., Ste. 1400
Denver, CO 80202

Kendra N. Beckwith
Bruce A. Montoya
Darren D. Alberti
Benjamin J. Brittain
Messner Reeves LLP
1430 Wynkoop Street, Suite 300
Denver, Colorado 80202

s/ Sarah Conley

Sarah Conley, Paralegal

DATE FILED: October 8, 2021 11:56 AM

EXHIBIT SUMMIT-A

August 20, 2021

Carly Hare, Chair
Colorado Independent Congressional Redistricting Commission
1580 Logan Street, Suite 430
Denver, CO 80203

Re: The Impact of Redistricting On Summit County

Dear Chairwoman Hare:

I write on behalf of Summit County and the Town of Breckenridge, to provide their comments on the preliminary map that the staff of the Commission developed; to give the Commission important information about the communities in which Summit County and its residents participate; and to propose different maps that would better preserve those communities' federal interests. We appreciate the opportunity to share these views with you, and we look forward to the next map that the staff develop—which we hope will be substantially different from the preliminary map.

I. Introduction

Summit County is a high-country area in north-central Colorado. Its boundaries are roughly defined by the watershed of the Blue River, the largest tributary of the Colorado River, and the population centers of the County are along the Blue River and its significant reservoirs. Above the high valley of the River—a minimum elevation of 7,947 feet where it exits the County—Summit County includes 3 of the highest 15 peaks in the State.

The County is home to four major ski resorts, and it offers myriad other outdoor recreation opportunities, including backpacking, biking, fishing, and kayaking. The economy of Summit County is based primarily on its beautiful mountain and outdoor resources. It is at heart a destination county, the most visited in Colorado and one of the most visited counties in the United States.

Summit County is also conveniently close—an hour's drive from Golden—to the larger metropolitan area that has grown around Boulder, Golden, and Denver. Summit County residents work in Boulder and Jefferson Counties. They rely on the metropolitan areas for healthcare, services, shopping, and other urban adventures. Meanwhile, Metro area

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residents travel to Summit County for recreation and other mountain adventures. Summit County shares its culture and economy with the Front Range neighbors with which it has such strong ties.

Breckenridge is the county seat of Summit County, located at 9,600 feet of elevation along the Blue River. Breckenridge is itself both a home for many residents that work in the Front Range and a destination for outdoor adventures.

II. Legal Standards

In the Colorado Constitution, the criteria that the Commission’s redistricting plan must respect are set forth in three tiers: first, contiguity, precise mathematical equality between districts, and compliance with the Voting Rights Act; second, compactness and preservation of “whole communities of interest” and “whole political subdivisions,” both as much as “reasonably possible”; and third, “to the extent possible,” maximum “political competitiveness.”¹ The voters adopted these standards in light of historical experience with redistricting both for Congress and for the State’s legislature. That background must inform the Commission’s understanding of the constitutional criteria.² The staff’s preliminary materials seem to have omitted two basic principles that are evident from the amended Constitution and its background.

First, communities of interest are just as important as political subdivisions. The equal status of these two groupings is evident from the text of section 44.3, which speaks of them in the same breath: “preserve whole communities of interest and whole political subdivisions.”³ It is also apparent from a comparison to the State’s past approaches to redistricting. Before 2010, the statute governing congressional redistricting identified relevant factors in a prioritized list, in which “[t]he preservation of political subdivisions” was third (after population equivalence and compliance with the Voting Rights Act) and “[t]he preservation of communities of interest” was fourth.⁴ A 2010 amendment deleted the numbers identifying the priorities; and the Colorado Supreme Court recognized that as amended the statute gave equal weight to these factors.⁵ That conclusion is all the stronger for the new constitutional provisions, which lists the preservation of communities of interest and counties and towns as a single criterion, and even mentions communities of interest first within the phrase.

¹ COLO. CONST., ART. V, § 44.3.

² “[A]lthough we now interpret and apply this new [provision] for the first time, we do so in light of this history and in recognition of . . . longstanding case law.” *Hall v. Moreno*, 2012 CO 14, ¶ 42 (2012).

³ COLO. CONST., ART. V, § 44.3(2)(a).

⁴ Colo. Rev. Stat. § 2-1-202(b) (2010) (repealed 2017).

⁵ *Hall*, 2012 CO 14, ¶ 41.

A comparison to the criteria for state legislative districts strengthens the conclusion. Section 48.1 establishes a precise method for choosing between the preservation of political subdivisions and communities of interest where those values are in conflict: The state legislative redistricting commission “shall presume that [a] county, city, . . . or town should be wholly contained within a district,” but it can divide a county, city, or town “where, based on a preponderance of the evidence in the record, a community of interest’s legislative issues are more essential.”⁶ The corresponding provision for congressional districts does not set forth such a presumption in favor of political subdivisions or require particular proof before choosing a community of interest above a county. The redistricting provisions for both legislatures were, of course, adopted at the same time. The omission from the congressional criteria of language that is present for the state legislative redistricting is strong evidence that this Commission is not permitted to prioritize counties and towns over communities of interest.⁷

When the Commission adopts a final redistricting plan, it must also adopt a written decision showing how its map balances the factors set forth in the Colorado Constitution. Section 44.3(c) requires that the record for the plan include “a report to demonstrate how the plan reflects the evidence presented to, and the findings concerning, the extent to which competitiveness in district elections is fostered consistent with the other criteria set forth in this section.”⁸ This report will have to discuss the Commission’s consideration of first tiers of criteria—population equivalency, the Voting Rights Act, communities of interest, political subdivisions, and compactness. Those are the “other criteria,” and the Commission could not conclude that its plan fosters competitiveness “consistent with” those criteria without assessing how its plan respects those criteria. Moreover, the Commission itself must adopt the report; it is not simply a report by the staff. Section 44.3(3)(c) does not describe it as a report for the staff to prepare, but rather instructs the staff to include the report in the record. The report is to describe “the findings,” but the Constitution does not authorize staff to make “findings” about a plan adopted by the Commission; therefore the “findings” must be those of the Commission itself. Moreover, the Commission’s obligation to provide a written explanation of its decision is implicit in the process for review by the Colorado Supreme Court for abuse of discretion.⁹ To assess how the Commission has used its discretion, the Supreme Court

⁶ COLO. CONST. ART. V, § 48.1(2).

⁷ Cf. *BP Am. Prods. Co. v. Colo. Dep’t of Revenue*, 2016 CO 23, ¶ 19 (“When the [General Assembly] includes a provision in one statute, but omits that provision from another similar statute, the omission is evidence of its intent.”) (alteration in original; citation omitted).

⁸ COLO. CONST. ART. V, § 44.3(3)(c).

⁹ COLO. CONST. ART. V, § 44.5(2).

will need to see an explanation of what choices the Commission made and why.¹⁰ The Commission’s written decision must describe what communities of interest the Commission has recognized, state whether they are divided between districts, and for those that are, explain why the Commission has chosen to divide those communities rather than other communities or political subdivisions.

The preliminary staff map is deficient in this regard because the staff appear to have prioritized the preservation of counties over the preservation of communities of interest. This prioritization is evident in the memoranda that accompanied the preliminary map. The staff stressed that “[t]he only counties that staff split into separate proposed congressional districts . . . are the more populous counties along the Front Range.”¹¹ Yet the staff made no comparable assessment of whether it had split communities of interest. The memos do not even identify what communities of interest exist, so the staff and the Commission could not reach a conclusion about whether the preliminary map had preserved them.¹² This approach had the benefit of ensuring the Commission and the staff could hear extensively from the public before drawing any conclusions about communities of interest. But the consequence is that the preliminary map cannot be anything more than an intellectual exercise. The development of the preliminary map openly did not treat communities of interest as equally important with counties, so the preliminary map cannot be assumed to satisfy the constitutional criteria.

Second, terrain features are not, in themselves, valid considerations. This State is of course rich in interesting geographical features—mountains, rivers, watersheds, geological domains, and more. If the Commission began to give weight to these features in themselves, the difficulties would be endless. And the Commission’s task would be even more difficult given its mandate to weigh factors such as compactness and the preservation of communities of interest.

The 2018 amendments conclusively eliminated terrain as a criterion. The old statute described communities of interest as “including ethnic, cultural, economic, trade area, geographic, and demographic factors.”¹³ The new constitutional provisions do not include “geographic . . . factors.” A community of interest means solely a “group”—that

¹⁰ Cf. *Chase v. Colo. Oil & Gas Conservation Comm’n*, 2012 COA 94M, ¶ 53; *People v. McIntyre*, 789 P.2d 1108, 1110 (Colo. 1990) (“Implicit in these rules is the requirement that the trial court . . . place its findings on the record. Otherwise, appellate review may be impossible, requiring remand for further findings.”).

¹¹ *Memorandum to the Commission re: Preliminary Congressional Plan 5* (June 23, 2021).

¹² See *id.* at 4-5 (noting that “Attachment C summarizes the public comments” about communities of interest, but taking no position about any particular communities).

¹³ Colo. Rev. Stat. § 2-1-102(b)(II) (2016).

means people, not terrain—“that shares one or more substantial interests that may be the subject of federal legislative action.”¹⁴

We have heard suggestions that certain features, like the Continental Divide, are a natural way to divide the state. The commission must recognize that the Colorado Constitution does not allow this way of thinking. A geographic feature can at the same time generate both common interests and different polities. The Continental Divide is the basis of county lines in part of the state; yet it runs through the middle of Saguache County. The preliminary map does not propose to split Saguache County into two districts on account of this geographical feature, presumably because the staff recognized the value of keeping Saguache County intact. Nor should the Commission split a community of interest in two just because it straddles the Continental Divide or any other terrain feature. The Commission’s task under the Colorado Constitution is to assess the public policy concerns and interests of the people of the State, whether those interests align with geographical features or run across them.

III. The Key Communities of Interest for Summit County

Summit County is a part of the culture and environment of the metropolitan area to its east. On multiple fronts, including many of the federal policy questions that are most important to the County, Summit County shares its economy and its interests with its near neighbors in the metro area. As just one illustration, the COVID-19 pandemic has demonstrated vividly the County’s need for open and easy intercourse with its neighboring areas, and the extent to which it shares that interest with the Front Range—and less so with the westernmost segment of the state. Summit County has the State’s second-highest rate of completed COVID-19 vaccinations,¹⁵ because Summit County and its residents recognize that they need to be able to move freely among their metropolitan neighbors and for those neighbors to be able to visit. This response to the pandemic mirrors what the metro area has done, and it is significantly different from the westernmost areas of the state. *See* Exhibit I.

A. Tourism and Transportation

Summit County is a county of dedicated mountain residents who travel into the metro area, and who serve tourists coming from the metro area and through the metro area. The ability to have travelers come to and from the County is vital to its economy.

¹⁴ COLO. CONST. ART. V, § 44(3)(b)(I).

¹⁵ COLO. DEP’T OF PUBLIC HEALTH & ENV’T, COUNTY AND AGE GROUP UP TO DATE, https://drive.google.com/drive/folders/1_TXxL4RdCTGHJRjPkkxUKMjVrzkDa8bFP (last visited Aug. 16, 2021); *see also* COLO. DEP’T OF PUBLIC HEALTH & ENV’T, PERCENT OF ELIGIBLE COUNTY POPULATION IMMUNIZED WITH 1 OR MORE DOSES OF ANY COVID-19 VACCINE, <https://covid19.colorado.gov/vaccine-data-dashboard> (last visited Aug. 16, 2021).

I. The Eisenhower-Johnson Memorial Tunnels

Summit County's most important transportation artery is Interstate 70. The highway enters the eastern side of the County through the Eisenhower-Johnson Memorial Tunnels, a landmark of highway engineering that was almost entirely funded by the federal government.¹⁶ About 35,000 vehicles pass through the Tunnels per day, and a significant portion of that traffic represents travel between the metro area and Summit County. *See* Exhibit 2.¹⁷

The economy of Summit County depends on that traffic. As of 2017, more than twice as many Summit County residents worked outside the County as in the County itself, and the vast majority of those commuting out are going to the metropolitan areas.¹⁸ The growth in remote work has surely increased this proportion by making it even more feasible and convenient to live in Summit County and commute to metro area jobs a couple days a week. Meanwhile, only 37% of the jobs in Summit County are held by Summit County residents, and a significant portion of those traveling in are coming from Clear Creek County.¹⁹ Moreover, the County is host to multiple world-class ski resorts, more than any other county in the State. Most of the visitors to those ski resorts are coming up through the Tunnels.

These transportation issues are also important to the County's metro area neighbors. Many residents of Clear Creek County work in Summit County and depend on the Tunnels for their livelihoods. Many Clear Creek, Gilpin, and Jefferson County businesses depend on the integrated tourist opportunity presented by the towns along Clear Creek and the ski resorts of Summit. All of these areas depend on Denver International Airport as the primary means of access for tourists from outside Colorado; Interstate 70 is then the route by which these tourists reach businesses in Jefferson, Clear Creek, Gilpin, and Summit Counties. Demonstrating the shared importance of this interest, municipalities in these areas have long collaborated through the I-70 Coalition to advocate for maintenance of and improvements to this stretch of Interstate 70. A majority of the Coalition's members represent Summit County and its neighbors to the east: Summit County and the majority of its towns; Clear Creek County and a majority of its towns; the

¹⁶ Colo. Dep't of Transp., *Eisenhower-Johnson Memorial Tunnels* (2021), <https://www.codot.gov/about/CDOTHHistory/50th-anniversary/interstate-70/eisenhower-johnson-memorial-tunnels.html> (last visited Aug. 16, 2021).

¹⁷ Traffic data are available at the Colorado Department of Transportation's Online Transportation Information System, Traffic Data Explorer, <https://dtdapps.coloradodot.info/otis/TrafficData#ui/o/o/o/criteria//117/true/true/>.

¹⁸ ECONOMIC & PLANNING SYSTEMS, INC., SUMMIT COUNTY HOUSING NEEDS UPDATE 56 & tbl. 26 (Mar. 5, 2020), <https://www.summitcountycogov/DocumentCenter/View/28656/2020-Summit-County-Housing-Needs-Update-Final?bidId> (last visited Aug. 16, 2021).

¹⁹ *Id.* at 55 & tbl. 25.

City of Golden, a key Jefferson County nexus along the highway; Black Hawk, the largest town in Gilpin County, and Central City, the county seat; and the Copper Mountain ski resort in Summit County.²⁰ These members work together to ensure the continued vitality of Interstate 70 because they recognize how central it is to their shared economy.

In its review of the 2010 congressional redistricting, the Colorado Supreme Court described “the I-70 corridor from just west of Denver at C-470 up through the mountain and resort towns of Summit, Grand, and Eagle counties to Avon” as a “major communit[y] of interest.”²¹ In the prior cycle, the Denver District Court observed that “I-70 through Clear Creek, Summit, and Eagle Counties is extremely congested. Any improvements of this necessary highway in large part come from federal aid. For this reason, among others, it appears wise to have the counties burdened by the heavy I-70 traffic to be in the same congressional district.”²²

Interstate 70 and the Tunnels remain key focuses of federal policy and legislation. Both maintenance of these facilities and future improvements depend on federal aid and support. The Colorado Department of Transportation is 42% funded by the federal gas tax.²³ Upgrades to the Tunnels will require specific federal investment. Legislation has been introduced in Congress to provide some of that funding;²⁴ support for important safety upgrades has also come from the federal TIGER grant program, and it will be important for Congress to establish and fund successors to that program.²⁵ The long-range plan for this stretch of Interstate 70—adopted by the Federal Highway

²⁰ I-70 Coalition, *About the I-70 Coalition: Current Members*, <https://i70solutions.org/about/> (last visited Aug. 16, 2021).

²¹ *Hall*, 2012 CO 14, ¶ 60.

²² *Avalos v. Davidson*, No. 01-CV-2897, 2002 WL 1895406 at *5 (Denver Dist. Ct. Jan. 25, 2002), *affirmed*, *Beauprez v. Avalos*, 42 P.3d 642 (Colo. 2002).

²³ Colo. Dep’t of Transp., *Transportation Funding: CDOT Funding at a Glance* (2021), <https://www.codot.gov/programs/your-transportation-priorities/your-transportation-plan/transportation-funding> (last visited Aug. 16, 2021).

²⁴ H.R. 3684, 117th Cong. (2021).

²⁵ For example, the State received a \$10 million grant to improve fire suppression facilities in the Tunnel. Colo. Dep’t of Transp., *Eisenhower/Johnson Memorial Tunnels Receive Tiger Grant Funds for Fire Suppression System* (Sept. 5, 2013), <https://www.codot.gov/news/2013-news-releases/09-2013/eisenhower-johnson-memorial-tunnels-receive-tiger-grant-funds-for-fire-suppression-system>. Congress appropriated \$1 billion for the BUILD program, the successor to TIGER, for fiscal year 2020. Fed. Highway Admin., *RAISE-BUILD-TIGER Discretionary Grants*, <https://ops.fhwa.dot.gov/freight/infrastructure/tiger/> (last visited Aug. 16, 2021). Future funding will depend on effective representation in Congress.

Administration in 2011²⁶— was based on planning for 2035 and 2050,²⁷ and much of the work in the plan remains to be done.²⁸ In addition, there are increasing calls to improve the route for trucks carrying hazardous materials, which must go around the Tunnels on U.S. Highway 6 over Loveland Pass. Summit County and its eastern neighbors have a strong interest in seeing improvements to that route to increase safety and reduce the risk of hazardous material spills (the burden of which would be felt most immediately in Summit and Clear Creek Counties).

The areas that share this federal interest in securing and maintaining strong federal support for Interstate 70 and the Tunnels should have a shared congressional representative to advocate for that interest.

2. Denver International Airport

Unlike Vail, Aspen, Telluride, and Steamboat, Summit County does not have its own airport. Visitors to the Summit ski resorts are, if they are arriving by air, coming through Denver International Airport—the main airport for everyone in the Boulder-Golden-Denver metro area—or through Rocky Mountain Metropolitan Airport in Jefferson County. (And then they drive up through the Tunnel.) Summit County has a vital connection with these airports. Travelers spend over \$1 billion in Summit County each year,²⁹ and 28% of overnight travelers arrive through these airports.³⁰

Because of this dependency on the metro area airports, Summit County has a common interest with the other tourist destinations that similarly rely on the airports to deliver visitors—notably Larimer and Boulder Counties, which draw tourists through Denver International Airport to Rocky Mountain National Park. Maintaining robust air connections is also a federal issue. The growth and vitality of Denver International Airport depends on federal aviation policy, implemented by the Federal Aviation

²⁶ FED. HIGHWAY ADMIN. & COLO. DEP'T OF TRANSP., I-70 MOUNTAIN CORRIDOR RECORD OF DECISION AND FINAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT (June 16, 2011), <https://spl.cde.state.co.us/artemis/tramonos/tra12d352011internet/>.

²⁷ Fed. HIGHWAY ADMIN. & COLO. DEP'T OF TRANSP., I-70 MOUNTAIN CORRIDOR FINAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT I-22 (Mar. 2011), <https://www.codot.gov/projects/i-70-old-mountaincorridor/final-peis/final-peis-file-download.html> (“Mountain Corridor EIS”).

²⁸ See Colo. Dep't of Transp., *I-70 Mountain Corridor ROD Preferred Alternative Implementation Status* (Sept. 11, 2019), https://www.codot.gov/projects/i70mountaincorridor/assets/i-70-mtn-corridor-preferred-alternative-tracking-sheet_current-091119.pdf (last visited Aug. 16, 2021).

²⁹ Colo. Tourism Office, *Colorado Dashboard: Travel Impacts* <https://www.travelstats.com/dashboard/colorado> (last visited Aug. 16, 2021).

³⁰ LONGWOODS INT'L, TRAVEL USA VISITOR PROFILE: OVERNIGHT VISITATION COLORADO 21 (2020), https://oedit.colorado.gov/sites/coedit/files/2021-08/2020_longwoods_travel_usa_colorado_report_1.pdf.

Administration but established in periodic transportation authorization legislation; and on continued financial support from multiple agencies within the federal Department of Transportation.³¹ The most recent transportation authorization bill was enacted in 2015,³² and there are likely to be two within this redistricting cycle.

B. Environmental Issues

Environmental sustainability and the adoption of proactive climate strategies are vital to Summit County, and these are interests it shares with its metro area neighbors. Summit County residents, like metro area residents, expect that their elected representatives will promote policies and dedicate resources to protect and preserve the shared environment, and navigate the changing climate and its consequences.

I. Carbon emissions

Summit County is particularly vulnerable to the changing climate—its ski resorts suffer from less snow, its forests become more prone to fire and disease. All areas of Colorado experience the impacts of climate change in some way or another. But Summit, like its immediate neighbors, has an economy and culture that is uniquely dependent on the beauty and safety of its environment. The central mountain counties—Summit, Clear Creek, and Gilpin—are uniquely dependent on the outdoor recreation economy. These counties do not have substantial resource extraction industries,³³ and they do not have significant agricultural economies.³⁴

³¹ Robert Davis, *Colorado airports to receive \$19.1 million from feds for improvement projects*, THE CENTER SQUARE (Apr. 2, 2021), https://www.thecentersquare.com/colorado/colorado-airports-to-receive-19-1-million-from-feds-for-improvement-projects/article_7b007b6c-93e4-11eb-a3e7-a338a807538e.html.

³² FAST Act, Pub. L. 114-94 (2015).

³³ The Henderson in Clear Creek County is not expected to stay open past 2026. *Data center wins Henderson Mine Sustainability Challenge*, MINES NEWSROOM (Jan. 17, 2019), <https://www.minesnewsroom.com/news/data-center-wins-henderson-mine-sustainability-challenge>. Grand County has tried to avoid oil and gas exploration, while “the oil and gas industry is ‘clearly in decline’ in Larimer County.” Molly Bohannon and Sady Swanson, *Larimer County tightens oil and gas rules, becoming perhaps the most strict in the state*, THE FORT COLLINS COLORADOAN (Aug. 4, 2021), <https://www.coloradoan.com/story/news/2021/08/03/larimer-county-oil-and-gas-rules-get-more-strict-many-cases/5424142001/>; see *BLM modifies parcel list for June 2017 oil and gas lease sale* (April 17, 2017), <https://www.co.grand.co.us/CivicAlerts.aspx?AID=382&ARC=510>.

³⁴ According to the U.S. Department of Agriculture’s National Agricultural Statistics Service, Gilpin and Clear Creek Counties rank 61st and 62nd in the state for agricultural production; Summit County is 55th. See U.S. DEP’T OF AGRICULTURE, CENSUS OF AGRICULTURE – 2017 STATE AND COUNTY PROFILES (Feb. 11, 2019), <https://quickstats.nass.usda.gov/>.

Summit County shares with its metro area neighbors both a culture and a program of reducing carbon emissions. Summit County maintains a Climate Action Plan, adopted in 2019, to reduce the county's total emissions 50% by 2030 and 80% by 2050.³⁵ Boulder County has adopted similar goals,³⁶ and Jefferson County has committed to completing a Climate Action Plan ("CAP") this year.³⁷ Significantly, in proposing the development of its CAP, Jefferson County looked to the Summit CAP and the Summit Climate Action Collaborative as an example of the collaborations necessary to prepare a successful Jeffco CAP. Summit County has planned to reduce emissions from waste by 50% by 2030 and 90% by 2050, by expanding waste reduction and recycling programs, encouraging less consumption and more re-use, and making recycling and composting easy and economical for all residents and business owners. Summit County formed a Zero Waste Task Force in 2005 along with the Towns of Breckenridge, Dillon, Frisco and Silverthorne to accomplish the Zero Waste goals of the entire community.³⁸ Similarly Boulder County has implemented a Zero Waste Action Plan.³⁹ Boulder County and Summit County (including the Towns of Breckenridge, Dillon, and Frisco) are leading the way on building emissions through building codes designed for energy efficiency.⁴⁰

These areas are obviously likely topics for federal legislation in the coming decade. Multiple bills have been introduced in this session of Congress on issues such as energy policy,⁴¹ carbon dioxide emissions,⁴² and climate change mitigation.⁴³ Efforts in Summit County and in the metro area are facilitated by the presence in Jefferson County of one of the nation's most important research hubs for energy efficiency, the federal National

³⁵ SUMMIT CLIMATE ACTION COLLABORATIVE, SUMMIT COMMUNITY CLIMATE ACTION PLAN: STRATEGIES FOR A SUSTAINABLE FUTURE (2018), <https://www.summitcountyco.gov/DocumentCenter/View/31980/Summit-Community-Climate-Action-Plan>

³⁶ *Climate Action in Boulder County* (2021), <https://www.bouldercounty.org/climate-action-2/>; Boulder County's goals are a 45% reduction by 2030 and 90% by 2050. *Id.*

³⁷ JEFFERSON COUNTY SUSTAINABILITY COMMISSION, CLIMATE ACTION PLAN STATEMENT (Sept. 25, 2020), <https://www.jeffco.us/DocumentCenter/View/24691/2020-09-25-Climate-Action-Plan-Statement-FINAL?bidId=> ; JEFFERSON COUNTY SUSTAINABILITY COMMISSION, JEFFERSON COUNTY SUSTAINABILITY COMMISSION UPDATE, <https://www.jeffco.us/DocumentCenter/View/24692/2020-08-25-BCC-Briefing-Presentation-FINAL?bidId>.

³⁸ *See* SUMMIT COUNTY, ZERO WASTE TASK FORCE, [HTTPS://WWW.SUMMITCOUNTYCO.GOV/807/ZERO-WASTE-TASK-FORCE](https://www.summitcountyco.gov/807/ZERO-WASTE-TASK-FORCE).

³⁹ BOULDER COUNTY, ZERO WASTE (2021), <https://www.bouldercounty.org/environment/sustainability/waste-services/zero-waste/>.

⁴⁰ BOULDER COUNTY, BOULDER COUNTY BUILDSMART (2021), <https://www.bouldercounty.org/property-and-land/land-use/building/buildsmart/>; HIGH COUNTRY CONSERVATION CENTER, SUSTAINABLE BUILDING CODE, <https://highcountryconservation.org/sustainable-building-code/>.

⁴¹ *E.g.* S. 2377, 117th Cong. (2021).

⁴² *E.g.* H.R. 1992, 117th Cong. (2021); S. 761, 117th Cong. (2021).

⁴³ *E.g.* S. 1201, 117th Cong. (2021).

Renewable Energy Laboratory (“NREL”), and in Boulder County of the National Center for Atmospheric Research (“NCAR”). Summit County shares with its neighbors an interest in seeing continued strong support for NREL and NCAR and continued connections to share among this community the fruits of their research. These are also likely areas for federal legislation.⁴⁴

Moreover, key targets for emission reductions require coordination among Summit and the Front Range Counties, and coordination in areas that involve significant federal policy. The largest sources of carbon emissions are transportation and electricity generation.⁴⁵

Transportation is a regional issue. Reducing emissions will partly require improvements in transportation networks. For Summit County, particularly important road links include Interstate 70, as discussed above; as well as its linkages to U.S. Highways 6 and 9, and through them to U.S. Highways 24, 34, 40, and 285. (As noted above, Highway 6 forms an important part of the Interstate 70 route, because hazardous cargo must go over Loveland Pass rather than through the Tunnels.) These improvements will require significant federal involvement, through funding from the Department of Transportation and coordination with the Forest Service, the Department of Transportation, and the Environmental Protection Agency.

Reducing emissions will also require a transition to electrified transportation. As discussed below, electrification is also a regional issue that Summit County shares with metro area neighbors. Given much travel there is between Summit and the Front Range Counties, the infrastructure for electric vehicles (“EVs”) must be developed in coordination. Drivers coming from the metro area need confidence they can recharge when they need to in Summit County and vice versa. Summit County also shares with metro area neighbors a significant interest in supporting sales of electric vehicles, to accelerate the EV transition directly and to facilitate the growth of EV infrastructure. This is a federal issue. The current Administration has made EV investment a priority. The details of how, when, where, and how much matter greatly, and it will take a coordinated effort by shared representation in Congress to ensure that the federal government’s efforts on EVs are effective for the Summit and metro area community.

Electricity is also a regional issue for Summit County and the metro area. As discussed below, Summit County shares electrical resources with metro area. In addition, Summit

⁴⁴ *E.g.* H.R. 3593, 117th Cong. (2021); H.R. 2225, 117th Cong. (2021).

⁴⁵ According to the EPA, nearly 30% of U.S. carbon emissions come from transportation, and nearly 60% of that is from the country’s 250 million passenger cars, S.U.V.s and pickup trucks with freight trucks contributing an additional 24 percent. EPA, FAST FACTS U.S. TRANSPORTATION SECTOR GREENHOUSE GAS EMISSIONS 1990-2019 at 2 (June 2021), <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P10127TU.pdf>.

County and its metro area neighbors have adopted their own goals to shift to renewable sources even faster than the overall Colorado plan. To achieve those goals they need coordination with each other, and with the utility that serves both Summit and the metro area; and they need effective common representation on the federal policies that affect electricity.

2. Water and Drought

Drought is, obviously, an ongoing problem throughout Colorado. The Colorado Supreme Court has recognized that shared concerns about water can be an important common interest to be considered in redistricting.⁴⁶

Water use and drought issues are sometimes thought of in terms of watersheds, and of course Summit County is part of the Colorado River basin. But as far as federal policy is concerned, there exists a fundamental community of interest among the headwaters counties. These are the areas where the rivers and creeks begin, and gather the bulk of their snowmelt to provide water to the lower-lying areas. This summer, much of Summit County has shared similar weather conditions with our eastern neighbors in Clear Creek, Gilpin, and Boulder Counties. The severe drought and drought emergencies right now are farther west.⁴⁷

The headwaters areas are sensitive to the concerns of the downstream areas suffering from severe drought. But in Summit County, as with its near neighbors in Clear Creek, Gilpin, and Boulder Counties, a principle impact of drought is the increased dangers of wildfire. A substantial portion of the land in all these Counties is heavily forested; and two of the largest fires in history of Colorado occurred last year in this region (the East Troublesome fire and the Cameron Peak fire).⁴⁸ Summit, Clear Creek, Gilpin, Jefferson, and Boulder Counties have significant populations—more than most areas of the state—living in the wildlife-urban interface, where low-to-moderate density residential areas are nestled among the trees.⁴⁹ We have particular shared interests in how fire is managed, an area of federal policy.⁵⁰

⁴⁶ *Hall*, 2012 CO 14, ¶ 85.

⁴⁷ U.S. Drought Monitor, *Colorado* <https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?CO> (last visited August 17, 2021).

⁴⁸ Lucy Haggard, *2020's wildfire season is historic, charring more acres than any year before. But Colorado has a complicated past with its forests* COLORADO SUN (Oct. 26, 2020), <https://coloradosun.com/2020/10/26/colorados-2020-wildfire-season-history/>

⁴⁹ Colorado State Forest Service, *Colorado's Wildland-Urban Interface* (2018), <https://csfs.colostate.edu/wildfire-mitigation/colorados-wildland-urban-interface/>

⁵⁰ The Colorado Supreme Court has recognized that a common interest in disaster response can generate a community of interest. *Hall*, 2012 CO 14, ¶¶ 60, 85.

Fire management is an area of federal policy that is likely to be the subject of legislation in the coming decade. The forested lands in these counties are largely federal land managed by the U.S. Forest Service, and fire response has become an increasingly important issue, involving difficult policy decisions such as the potential trade-off between controlled burns to reduce the availability of fuel and the values of protecting property at the wildlife-urban interface. These are likely topics for legislation in the coming decade. For example, Representative Boebert has introduced the Active Forest Management, Wildfire Prevention and Community Protection Act, which would establish a policy favoring prescribed burns.⁵¹ Meanwhile, Senators Romney and Kelly and Representative Curtis have introduced the Wildland Fire Mitigation and Management Commission Act, which would establish a commission to assess the difficult choices in this area and recommend policies on fire management.⁵²

C. Electricity

Electricity generation, transmission, distribution, and usage are central to the economy in all areas. But for this critical infrastructure, Summit County is tied to the metro area. Electricity systems will change significantly in coming decades and will be an important focus for federal legislation and policy.⁵³

I. Existing infrastructure and renewables transition

The vast majority of Summit County's population is served by Xcel Energy (supplying about 99% of the actual electricity used). This is the same utility that serves most of Clear Creek County, most of Boulder County, and most of the population of Jefferson County.⁵⁴ Exhibit 3. Thus, these counties share electrical resources. They are linked by a transmission system, and their electricity is generated at the same facilities.

⁵¹ H.R. 4032, 117th Cong. (2021).

⁵² H.R. 4082, 117th Cong. (2021).

⁵³ "Climate change is expected to have far-reaching effects on the electricity grid that could cost billions and could affect every aspect of the grid from generation, transmission, and distribution to demand for electricity." U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-346, ENERGY GRID RESILIENCE: CLIMATE CHANGE IS EXPECTED TO HAVE FAR-REACHING EFFECTS AND DOE AND FERC SHOULD TAKE ACTIONS I (Mar. 2021). In its 2018 appropriation, Congress called for a study by the National Academies of Sciences, Engineering, and Medicine on the coming changes to electricity systems. NAT'L ACADS. OF SCIENCES, THE FUTURE OF ELECTRIC POWER IN THE UNITED STATES vii (Nat'l Academies Press 2021). The National Academies' report describes a wide range of changes that will be needed in the coming decades.

⁵⁴ Colorado Energy Office, *Electric Utilities* (2021), <https://energyoffice.colorado.gov/electric-utilities>.

Summit County has made a commitment to having 100% of its electricity supply come from renewable sources by 2035.⁵⁵ The City of Boulder has made a similar commitment,⁵⁶ and so has the City of Golden.⁵⁷ Reaching this goal will require coordination, because these communities all get their electricity through the same transmission grid, and from the same electric utility.

These efforts involve significant federal policies and legislation. The Congressional Research Service has identified seven bills introduced in this Congress just on the topic of “clean energy standards,” i.e., reductions in the carbon emissions from electricity;⁵⁸ and the National Academy of Sciences has recommended federal legislation on multiple fronts regarding electricity.⁵⁹ Some examples of federal legislation in which Summit County and its metro area neighbors have shared interests:

- Under Senate Bill 19-236, Xcel is required to develop a clean energy plan. A significant driver for the analysis in that plan, and the Public Utilities Commission’s review of the plan, is the “social cost of carbon dioxide,” as developed by the federal government and revised over time.⁶⁰ How to assess the social cost of carbon dioxide has been a contentious issue for the five years, and the Congressional Research Service says it “remains a topic of interest in the 117th Congress.”⁶¹
- Recent state legislation requires Xcel to join a regional wholesale market by 2030, a step that will make federal regulation of wholesale electricity markets (through FERC, the Federal Energy Regulatory Commission) much more important in the delivery of electricity in Colorado.⁶² How Xcel participates in a regional market may determine the success of the collective efforts, in Summit County and the metro, to achieve their 100% renewable goals. Federal policy will be particularly critical regarding the development of transmission facilities. Significant investments in transmission will be needed for

⁵⁵ Summit County, *Climate Action and Sustainability*,

<https://www.summitcountycolorado.gov/1259/Climate-Sustainability> (last visited Aug. 17, 2021).

⁵⁶ Renewables 100 Policy Institute, *City of Boulder – 100% Renewable Electricity Community Wide by 2030* (Aug. 2021), http://www.go100percent.org/cms/index.php?id=77&tx_ttnews%5Btt_news%5D=440&cHash=047589ba09eec8ee5eaadb4bbce66e91

⁵⁷ City of Golden, *Goals* (2016), <https://www.cityofgolden.net/live/sustainability-initiative/renewable-energy/>.

⁵⁸ ASHLEY J. LAWSON, CONG. RSCH. SERV., R46691, CLEAN ENERGY STANDARDS: SELECTED ISSUES FOR THE 117TH CONGRESS 1-2 (Mar. 26, 2021).

⁵⁹ NAT’L ACADS. OF SCIENCES, THE FUTURE OF ELECTRIC POWER IN THE UNITED STATES 5-12 & tbl. S.1 (Nat’l Academies Press 2021).

⁶⁰ Colo. Rev. Stat. § 40-3.2-106(1), (4).

⁶¹ KAREN C. SHOUSE, CONG. RSCH. SERV., IF-11844, SOCIAL COST OF GREENHOUSE GASES: ISSUES FOR CONGRESS 1 (June 7, 2021), <https://crsreports.congress.gov/product/pdf/IF/IF11844>.

⁶² S.B. 21-072, 73rd Gen. Assemb. (Colo. 2021).

Summit County and the metro area to balance the generation and consumption of electricity from a variety of renewable sources—different kinds (wind, solar, etc.) and different geographical areas (given the fluctuations in some renewable resources). FERC is just beginning a major reform of transmission policy,⁶³ and Members of Congress are already considering legislation to guide that reform. For example, the proposed Energy Infrastructure Act would increase FERC’s power to authorize construction of transmission lines.⁶⁴

- Hydropower is an important resource for Summit County and the metro area. For example, Lake Dillon in Summit County feeds a hydropower plant with 1.8 MW capacity, and Xcel’s Cabin Creek pumped hydro facility in Clear Creek County is an important energy storage facility that Xcel has been upgrading to 369 MW capacity.⁶⁵ These hydropower resources—both generation and storage—are particularly important for achieving the 100% renewable goal set by Summit County and its metro area neighbors.⁶⁶ Federal policy governs the use of hydropower.

- Given the variable nature of some renewable resources, federal policies to facilitate the participation of energy storage in electricity markets will also be critical. For example, pending federal legislation would create a tax investment credit for building storage resources.⁶⁷ The Better Energy Storage Technology Act, enacted at the end of last year, authorized \$200 million of federal investment per year in energy storage research and development for the next five years.⁶⁸ More federal involvement, and legislation to extend and continue these investments, will definitely be needed over the next decade and beyond.

2. Electric vehicles

Summit County has been a leader in driving the EV transition. Summit County’s Climate Action Plan includes a goal of increasing EV usage 30% by 2030.⁶⁹ The High Country

⁶³ Miranda Willson, *FERC launches first transmission reforms in a decade*, ENERGYWIRE (July 16, 2021), <https://www.eenews.net/articles/ferc-launches-first-transmission-reforms-in-a-decade/>.

⁶⁴ S. 2377, § 1005.

⁶⁵ XCEL ENERGY, CABIN CREEK HYDROELECTRIC PLANT UPCOMING PROJECTS (Mar. 7, 2017), <https://www.co.clear-creek.co.us/AgendaCenter/ViewFile/Item/3302?fileID=1712>.

⁶⁶ See EPA, *Electricity Storage* (Dec. 22, 2020), <https://www.epa.gov/energy/electricity-storage#storage> (last visited Aug. 16, 2021) (noting that pumped hydro represents 94% of U.S. storage capacity).

⁶⁷ H.R. 1684, 117th Cong. (2021).

⁶⁸ H.R. 133, § 3201, 116th Cong. (2020).

⁶⁹ SUMMIT CLIMATE ACTION COLLABORATIVE, SUMMIT COMMUNITY CLIMATE ACTION PLAN: STRATEGIES FOR A SUSTAINABLE FUTURE 28 (2018), <https://www.summitcountycogov/DocumentCenter/View/31980/Summit-Community-Climate-Action-Plan>

Conservation Center in Summit County is preparing a community EV Readiness Plan in collaborating with local municipalities and other stake holders to increase EV infrastructure. It has also received Charge Ahead Colorado Grants to install additional Level 2 EV chargers, and local municipalities provide rebates to residents for home charging infrastructure. The County has committed to be 100% electric by 2050.

The EV transition is an interest shared with metro area neighbors. The County is a member of Drive Clean Colorado, and in that forum it has worked in partnership with Jefferson County, Boulder County, and other metro area governments towards educating consumers with information and facts about EVs in order to increase the adoption of EVs in Colorado. In the 100% electrification goal itself, Summit County is following Boulder County. Many cities within Jefferson County have developed EV Action Plans as strategic roadmaps to facilitate their part of the EV transition. For example, the City of Westminster plans to electrify 25% of the City's light duty fleet by 2025, and to provide public charging at half of city facilities by 2025.⁷⁰ The City of Lakewood plans to require new construction to include charging stations, and plans to create new infrastructure to support more charging stations.⁷¹

Exhibit 4, showing existing EV charging stations, illustrates how connected Summit County is to the metro areas. This connection is in important ways a manifestation and consequence of the close ties within this economy overall. Residents in Summit County drive EVs to the metro area, and residents in the metro area drive EVs to Summit County. The charging networks follow the traffic; people need to know they can charge their vehicles at their destinations and along the way. Summit County's electrification plans will only succeed in partnership with those of the metro areas. Conversely, Summit County's commitment to electrification helps encourage the EV transition in the metro areas, by contributing a pool of EV vehicles coming from Summit County commuters and showing metro area residents that charging will be available when they come to enjoy outdoor adventures in the County.

Achieving the shared electrification goals will require significant federal policies and legislation.

The federal government already subsidizes EV sales through a federal tax credit. Legislation is pending in the Senate that would extend and enlarge that tax credit.⁷² Summit County and its EV-dedicated neighbors need shared representation in the House to push legislation like this. In addition, through Drive Clean Colorado, Summit and its

⁷⁰ CITY OF WESTMINSTER, ELECTRIC VEHICLE ACTION PLAN 6 (July 2020), <https://www.cityofwestminster.us/Portals/1/Documents/Residents%20-%20Documents/Sustainability-Documents/Westminster%20EV%20Plan.pdf?ver=2020-09-29-140754-063>

⁷¹ CITY OF LAKEWOOD, CO ZONING ORDINANCE § 17.8.5.

⁷² S. 1298, 117th Cong. (2021).

metro area neighbors are participating in Drive Electric Colorado, a project to engage utilities, legislators, dealerships and others in reducing the barriers to EV adoption. Drive Electric Colorado is funded by the U.S. Department of Energy, and the collective effort needs continued federal support for programs like this.⁷³

Electrification also requires significant infrastructure investments. One key area will be charging stations. The federal government has suggested it wants to spend about \$174 billion to support the national EV charging network.⁷⁴ That investment, over time, will require significant congressional support. Summit County will need support from programs like these. It will need to work with its metro area neighbors on collaborative projects to receive funding, and on advocating for continued and strengthened federal support.

IV. FLAWS IN THE PRELIMINARY STAFF MAP

We recognize the difficulty that the Commission faces. Redistricting is necessarily a balance of many factors and interests, and of course the preliminary map was based on estimated figures, given the late release of final Census data. Still, the preliminary map that the staff prepared suffers from important flaws. Whatever map the Commission settles on, we urge it to avoid these problems.

A. The map partly tracks the Continental Divide.

From the northern border of the State to the boundary of Clear Creek County (with several notable variations), the preliminary map divides the Second and Third Districts at the Continental Divide. As discussed above, this terrain feature is not, in itself, a valid consideration for redistricting. Such features matter only to the extent they shape communities and political divisions. To be sure, in this area of the State the Continental Divide marks the boundary between Jackson and Larimer Counties, between Grand and Boulder Counties. But to divide Summit County from Boulder County just because of the Divide is inconsistent with cultural and economic reality. The economy of Summit County is tied most closely with its neighbors to the east. The Eisenhower-Johnson Tunnels are where *people* travel through, allowing Interstate 70 to provide the continuous, dynamic connection for the vital communities of interest on either side of the Divide. The environmental interests of Summit County are tied most closely with its central mountain neighbors at the headwaters of all the rivers. It has much more in common with Clear Creek and Boulder Counties, as places that are the sources of water for the rest

⁷³ Drive Electric Colorado, *Mission & Drive Electric USA* (2021), <https://driveelectriccolorado.org/mission-drive-electric-usa>

⁷⁴ Nandita Bose & David Shepardson, *Biden pitches \$174 bln EV plan in Michigan, takes truck for a spin* REUTERS (May 18, 2021), <https://www.reuters.com/world/us/biden-pitch-his-174-bln-electric-vehicle-plan-michigan-2021-05-18/>.

of the State, than it does with counties that are downstream of it and happen to be on the same side of the Divide.

B. The map treats the western half of the State as a community of interest.

If the map preserves any communities of interest—it is impossible to know for sure, because the staff’s memorandum did not identify any—it appears to have preserved most of the western half of the State. But that is not a community of interest, at least not to the extent of including Summit County. Between Summit County and the far western regions of the State, there are more differences than common interests.

Far western counties are much more rural, with economies based significantly on agriculture. Club 20, an organization that describes itself as the Voice of the Western Slope,⁷⁵ identified to the Commission this key commonality: “As Club 20 evaluated the communities of interest, the agriculture community immediately stands out as possessing unique challenges and opportunities and should not be divided.”⁷⁶ The challenges include, for example, drought, which manifests in less water on the land and restrictions on usage of water from the rivers.⁷⁷ The federal water issues for the agricultural west revolve around the Bureau of Land Management, which oversees grazing on federal land, and Bureau of Reclamation conservation projects. Other issues include the management of land overall; federal land in the far west is “managed for multiple uses—from livestock grazing to energy extraction to outdoor recreation.”⁷⁸

These issues that have much less impact on Summit County. As discussed above, the headwaters counties are not experiencing the same drought as the far western counties; and their drought concerns are different. The federal land in Summit County is not managed for multiple uses; outdoor recreation and environmental conservation are the concerns, without competing concerns from grazing, mining, and oil and gas production. Most fundamentally, Summit County does not have significant agriculture. It produces just \$1.5 million in agricultural products a year, about 0.2% of its tourism economy, putting it 55th among Colorado counties. This production represents an average of \$2,400 per square mile. That is less than 1/10 the per-area production of Mesa County,

⁷⁵ Summit County is not a member of Club 20 and neither is any governmental body within the County. In the last redistricting, the trial court recognized that Club 20 does not represent the views of Summit County. *Hall*, 2012 CO 14, ¶ 24.

⁷⁶ Letter from Club 20 to Colo. Indep. Redistricting Comm’ns 5 (May 5, 2021), <https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:332208b4-b903-4605-b480-28ae68c026d9#pageNum=1>.

⁷⁷ *Id.* at 2.

⁷⁸ *Id.* at 3.

and 1/30 of the statewide average.⁷⁹ The challenges faced by the agricultural economy of the western areas are a concern to Summit County as fellow Coloradans, but they are not a common interest.

Infrastructure concerns are also different from those farther west. As Club 20 pointed out, in the far west it is difficult to build utilities, telecommunications, and transportation infrastructure over the long distances between communities, while the metro areas build around a growing population. Between those poles, Summit County is much closer to the metro areas. For example, the traffic patterns through the Tunnels are more like those in the metro areas, with substantial usage for commuting, and significant and worsening weekday congestion that is not expected in the far west.⁸⁰ The EV transition noted above is another example. Electric vehicles are not close to being a competitive alternative for personal transportation in the far west, because of a combination of range limitations on the cars, and the difficulty of building charging infrastructure that would require significant transmission upgrades in sparsely populated rural areas. But EVs work in Summit County, as they do in the metro areas, and Summit County is committed to encouraging its residents to electrify. Telecommunications is another example. The major broadband providers in Summit County are Comcast and Century Link, the same as in the Front Range; whereas neither offers coverage in most of the western areas.

There are, of course, tourist centers throughout Colorado, and there are other ski resorts. We have heard it said that the preliminary map skillfully includes all the ski resorts in one district. But the Colorado Constitution defines a “community of interest” to be a grouping with shared federal legislative interests among “a reasonably proximate population.”⁸¹ Summit County and its next-door neighbors in the metro areas, with their constantly intermingling populations, are reasonably proximate. Summit County and, say, Telluride or Crested Butte are not. And Summit County is separated from many other ski areas not only by distance, but by large areas with different interests, such as the agricultural and rural concerns discussed above. Summit County values the partnership and cooperation of other areas with ski resorts on issues where they share similar views. But to treat such widely dispersed populations as communities of interest would make the constitutional instruction to preserve communities of interest almost meaningless, because it would result in multiple communities of interest that span large swathes of the State.

⁷⁹ Production values are from the U.S. Department of Agriculture’s 2017 Census of Agriculture. U.S. DEP’T OF AGRICULTURE, 2017 CENSUS OF AGRICULTURE (April 2019), https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf.

⁸⁰ Mountain Corridor EIS, at 1-13, 1-25, 1-27.

⁸¹ COLO. CONST. ART. V, § 44.

V. SUMMIT COUNTY'S PROPOSALS

We are submitting two proposed maps for the Commission's consideration. These two alternatives show how Summit County can be kept with significant portions of its communities of interest. And they demonstrate vividly that the Commission should place no weight on keeping Summit County with the majority of the far west. There is simply too little commonality.

In the last redistricting, too, there were some who urged that Summit County should be part of a district with far western counties.⁸² The courts wisely recognized that a district containing Summit, Grand, Clear Creek, Gilpin, and Larimer Counties as well as part of Boulder, Jefferson, Park, and Eagle Counties preserved important communities of interest. These included the I-70 corridor; the preservation of forests in Grand, Summit, Boulder, and Larimer Counties; and Rocky Mountain National Park, which is part of Boulder, Larimer, and Grand Counties and presents similar issues of transportation, environmental protection and land management to those that Gilpin, Clear Creek, and Summit Counties face.⁸³ The courts rejected proposals to district Summit County with the far west last time, and the Commission should keep Summit County with its eastern neighbors again this time.

We stress that this is not simply a plea to stay in a congressional district that looks like the Second District of the last 10 years. Multiple configurations may be possible that would take reasonable account for the communities of greatest interest to Summit County. We suggest, simply, that the interests that motivated the decisions with respect to Summit County last time are largely still present, and still important. And just as there was no good evidence of a community of interest between Summit County and the far west last time, there is no greater evidence of that community today.

A. Map 1 (Exhibit 5)

This map⁸⁴ includes Summit, Clear Creek, and Jefferson Counties in a single district, along with Broomfield and part of Douglas County. The population needed to make up the Third District is added by including the Rio Grande Valley. We recognize, based on some presentations at the Commission's hearing in Frisco, that there is some desire in the southern counties to form their own community of interest, spanning the south of the State. But at least the Rio Grande Valley does depend on agriculture, in common with the western areas. Summit County's first map, meanwhile, would ensure that Summit County's representative in Congress also represents the metro counties that depend most directly on Interstate 70 and have the greatest traffic directly to and from Summit

⁸² See *Hall*, 2012 CO 14, ¶ 24.

⁸³ *Id.* ¶¶ 60-69.

⁸⁴ <https://davesredistricting.org/join/efab1039-4e18-4f36-82a0-f94325d25b15>.

County; and that Summit County is represented by the same person that represents the home of NREL, the federal lab that contributes most to its plans for a sustainable future.

This map has average Reock score of 0.42, nearly the same as the Commission's preliminary map (0.41); and average Polsby-Popper score of 0.28, significantly better than the Commission's preliminary map (0.23). This map has a maximum population deviation of just 0.04%, and a total deviation of only 0.06%. The map preserves intact within congressional districts all but eight counties, fewer than the nine counties that the preliminary map split up.

B. Map 2 (Exhibit 6)

This map⁸⁵ includes in one district large portions of the current Second District, but removes the portions of Park and Jefferson Counties that are in the current Second District. Again, the population balance in the Third District is achieved by adding the Rio Grande Valley, and additionally Las Animas County. This map preserves much of Summit County's communities of interest around environmental concerns, the responsibilities of headwaters communities, and efforts to mitigate climate change, and the important changes needed in electricity infrastructure.

This map has average Reock score of 0.42, and average Polsby-Popper score of 0.26, also better than the preliminary staff map. It preserves intact all but nine counties, the same as the preliminary staff map. And this map, too, achieves nearly exact population equivalence, with a maximum deviation of only 0.02% and a total deviation of 0.03%.

Thus, both of our proposed maps are at least as good as the preliminary staff map on many metrics. Yet they better preserve the integrity of Summit County's communities of interest.

We appreciate the dedication that the Commission has shown throughout this process, and we are confident the Commission will pay careful heed to the specific mandates that Colorado voters set forth, in the Constitution, for this redistricting. As we look forward to the first staff map, we urge the Commission and the staff to respect the communities of interest in which Summit County participates.

Sincerely,



Keith Bradley

⁸⁵ <https://davesredistricting.org/join/27893bc7-a12d-4e9d-8186-660ad5bda72f>.

EXHIBIT 1

Percent of Eligible County Population Immunized with 1 or More Doses of Any COVID-19 Vaccine

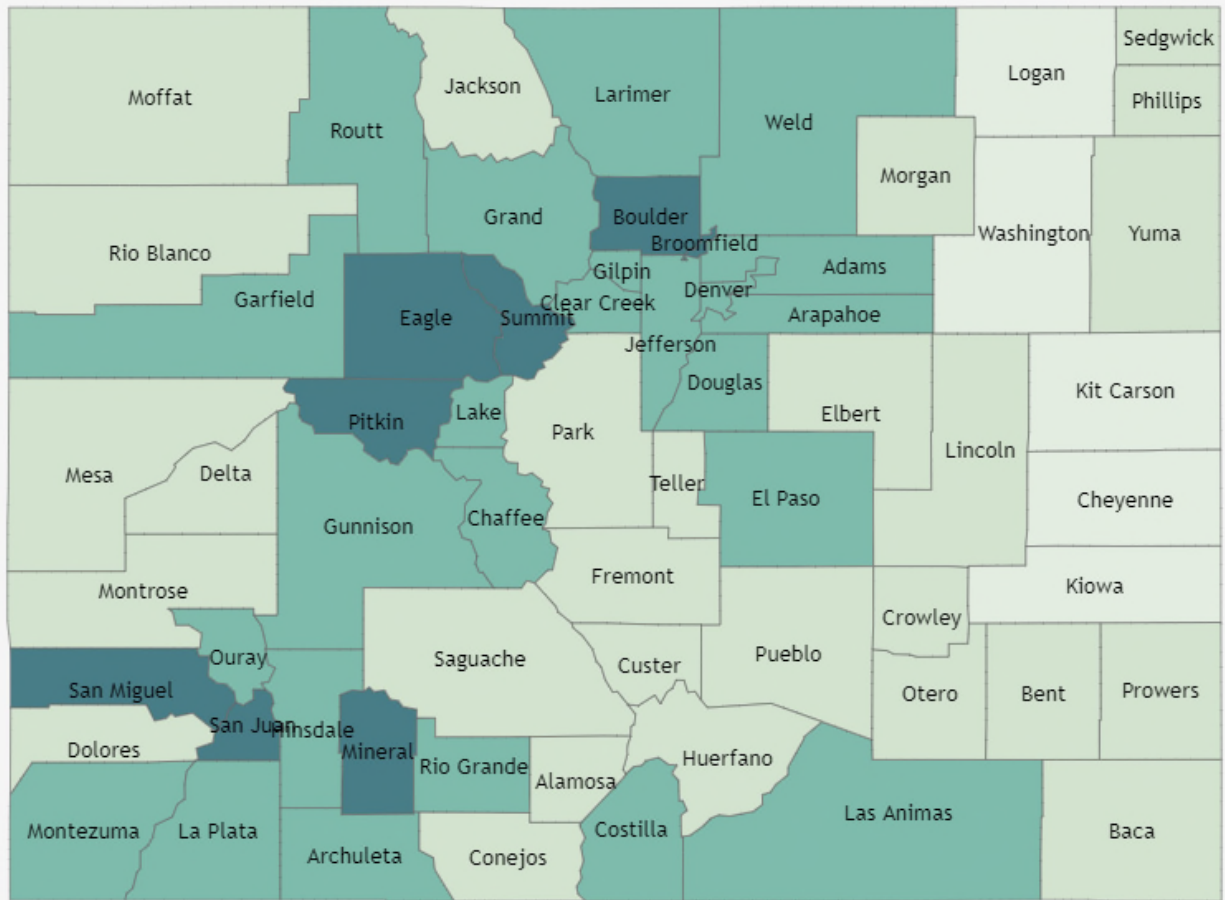


EXHIBIT 2



Note the 46,000 Average Daily Traffic (ADT) figure measured near Dillion Reservoir and 20,000 ADT on CO-9 near Breckenridge; this drops to only 23,000 ADT at Vail Pass and as low as 11,000 ADT near Gypsum. Travelers from the Front Range travel on I-70 to get to Summit County.

EXHIBIT 3

Colorado Electric Utilities Service Territories

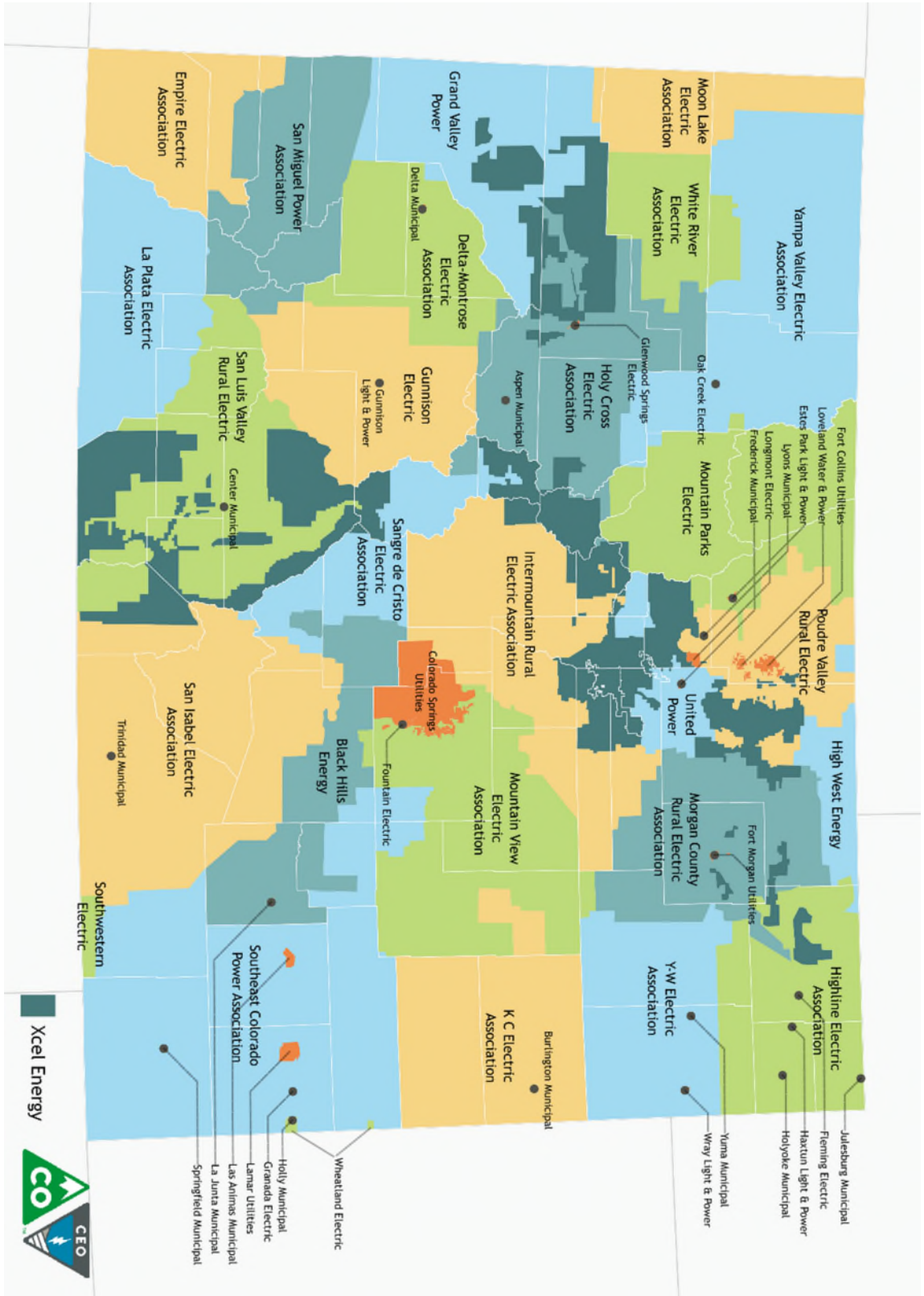


EXHIBIT 4

Charging Stations by Network

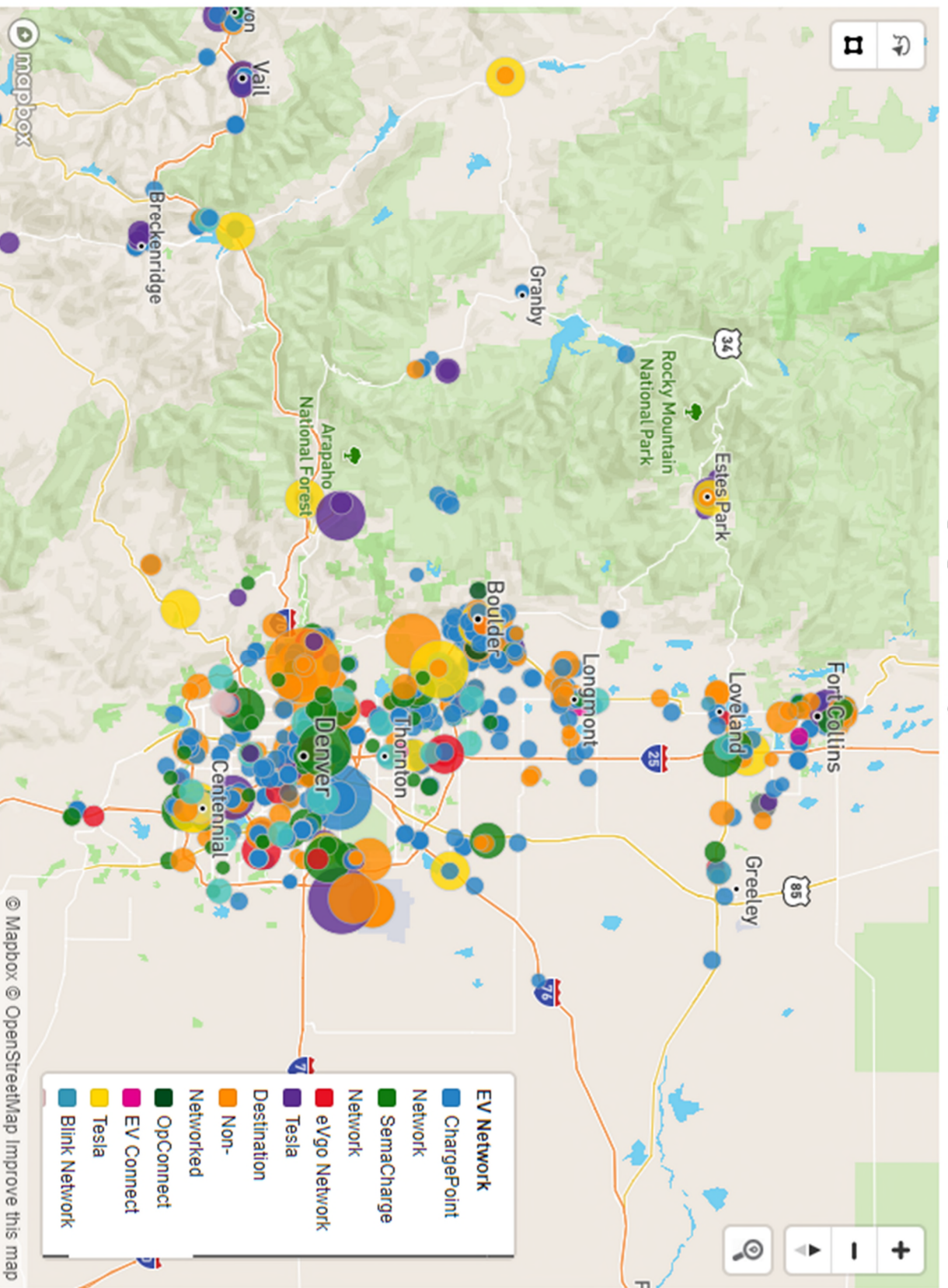


EXHIBIT 5

Map 1

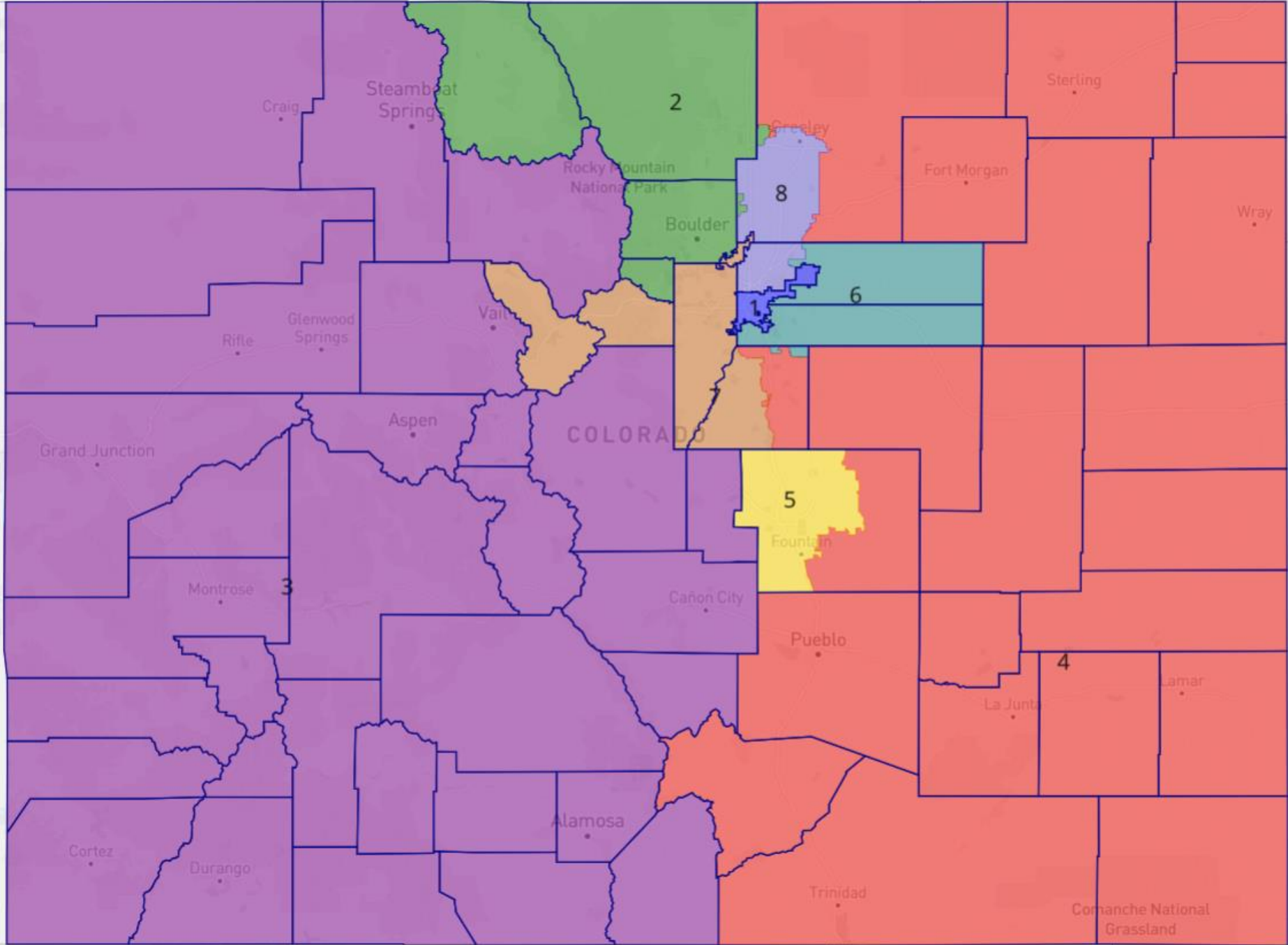


EXHIBIT 6

Map 2

