

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

DOCKETING STATEMENT

Appeal Number	19-1025
Case Name	Hill v. Warsewa et al
Party or Parties Filing Notice of Appeal Or Petition	ROGER HILL
Appellee(s) or Respondent(s)	MARK EVERETT WARSEWA, LINDA JOSEPH, AND THE STATE OF COLORADO
List all prior or related appeals in this court with appropriate citation(s).	None.

I. JURISDICTION OVER APPEAL OR PETITION FOR REVIEW

A. APPEAL FROM DISTRICT COURT

1. Date final judgment or order to be reviewed was **entered** on the district court docket: January 10, 2019
2. Date notice of appeal was **filed**: January 17, 2019
3. State the time limit for filing the notice of appeal (cite the specific provision of Fed. R. App. P. 4 or other authority): FRAP 4(a)(1)(A)
 - a. Was the United States or an officer or an agency of the United States a party below? No.

b. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing the notice of appeal: No.

4. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).

a. Give the filing date of any motion that tolls the time to appeal pursuant to Fed. R. App. P. 4(a)(4)(A) or 4(b)(3)(A):

N/A.

b. Has an order been entered by the district court disposing of any such motion, and, if so, when?

N/A.

5. Is the order or judgment final (i.e. does it dispose of **all** claims by and against **all** parties)? *See* 28 U.S.C. § 1291. Yes.

(If your answer to Question 5 is no, please answer the following questions in this section.)

a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done?

b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. ' 1292(a)? _____

c. If none of the above applies, what is the **specific** legal authority for determining that the judgment or order is appealable? _____

6. Cross Appeals.

a. If this is a cross appeal, what relief do you seek beyond preserving the judgment below? *See United Fire & Cas. Co. v. Boulder Plaza Residential, LLC*, 633 F.3d 951, 958 (10th Cir. 2011) (addressing jurisdictional validity of conditional cross appeals).

N/A.

b. If you do not seek relief beyond an alternative basis for affirmance, what is the jurisdictional basis for your appeal? *See Breakthrough Mgt. Group, Inc. v. Chukchansi Gold*

Casino and Resort, 629 F.3d 1173, 1196-98 and n.18 (10th Cir. 2010) (discussing protective or conditional cross appeals). N/A.

B. REVIEW OF AGENCY ORDER (To be completed only in connection with petitions for review or applications for enforcement filed directly with the court of appeals.)

1. Date of the order to be reviewed: N/A.
2. Date petition for review was filed: N/A.
3. Specify the statute or other authority granting the Tenth Circuit Court of Appeals jurisdiction to review the order: N/A.
4. Specify the time limit for filing the petition (cite specific statutory section or other authority): N/A.

C. APPEAL OF TAX COURT DECISION

1. Date of entry of decision appealed: N/A.
2. Date notice of appeal was filed: N/A.
(If notice was filed by mail, attach proof of postmark.)
3. State the time limit for filing notice of appeal (cite specific statutory section or other authority): N/A.
4. Was a timely motion to vacate or revise a decision made under the Tax Court's Rules of Practice, and if so, when? *See* Fed. R. App. P. 13(a) N/A.

II. ADDITIONAL INFORMATION IN CRIMINAL APPEALS.

- A. Does this appeal involve review under 18 U.S.C. ' 3742(a) or (b) of the sentence imposed? No.
- B. If the answer to A (immediately above) is yes, does the defendant also challenge the judgment of conviction? _____
- C. Describe the sentence imposed. _____

- D. Was the sentence imposed after a plea of guilty? _____
- E. If the answer to D (immediately above) is yes, did the plea agreement include a waiver of appeal and/or collateral challenges? _____
- F. Is the defendant on probation or at liberty pending appeal? _____
- G. If the defendant is incarcerated, what is the anticipated release date if the judgment of conviction is fully executed? _____

NOTE: In the event expedited review is requested and a motion to that effect is filed, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the appeal. Necessary transcripts must be ordered by completing and delivering the transcript order form to the Clerk of the district court with a copy filed in the court of appeals.

III. GIVE A BRIEF DESCRIPTION OF THE NATURE OF THE UNDERLYING CASE AND RESULT BELOW.

Appellant alleges that Respondents Warsewa and Joseph have illegally barred him from fishing on a stretch of the Arkansas River, which those Respondents claim to own, through threats of violence, violence, and threats of prosecution for trespass. Appellant believes the riverbed in the disputed location is in fact owned by the State of Colorado by virtue of the doctrine of navigability for title and that the State of Colorado's title is encumbered by an easement that gives Appellant a right to access the disputed stretch of river to fish. In order to vindicate his right of access, Appellant filed a declaratory judgment claim and a quiet title claim in Colorado state court, which was subsequently removed to federal court. The State of Colorado, also a Respondent, had previously indicated its position that it was an indispensable party, and thus it was also named as a defendant to the quiet title action.

Respondents all filed motions to dismiss. Appellant filed a motion to remand to state court for lack of subject matter jurisdiction and a motion to certify the question of the nature of the State of Colorado's title in navigable riverbeds to the Colorado Supreme Court. The District Court granted the motions to dismiss because it found Appellant (1) lacked third party standing and (2) had asserted a generalized grievance. Appellants motions were denied as moot.

IV. IDENTIFY TO THE BEST OF YOUR ABILITY AT THIS STAGE OF THE PROCEEDINGS, THE ISSUES TO BE RAISED IN THIS APPEAL. You must attempt to identify the issues even if you were not counsel below. See 10th Cir. R. 3.4(B).

At this early stage, Appellant believes that the District Court erred by:

- (1) Dismissing the case rather than remanding the case to state court because the District Court lacked subject matter jurisdiction because the Court found that it lacked subject matter jurisdiction and, regardless, should have made that inquiry before all others.
- (2) Finding a lack of third party standing because Appellant was asserting his own right, not the State of Colorado's.
- (3) Finding that Appellant asserted a generalized grievance because Appellant experienced a harm distinct from the general public.
- (4) Not granting Appellant's motion for remand for lack of subject matter jurisdiction.
- (5) Not granting Appellant's motion to certify the nature of the State of Colorado's

titled in navigable riverbeds to the Colorado Supreme Court.

(6) Though the District Court never reached the remaining issues in Respondent's motions to dismiss, it should have also denied the motions for the reasons articulated in Plaintiff's combined response to the motions, including finding that Appellant has Article III standing.

V. ATTORNEY FILING DOCKETING STATEMENT:

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s/Alexander Hood

Signature

February 6, 2019

Date

NOTE: The Docketing Statement must be filed with the Clerk via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF can be found on the court's website, www.ca10.uscourts.gov.

The Docketing Statement must be accompanied by proof of service. The following Certificate of Service may be used.

CERTIFICATE OF SERVICE

I hereby certify that February 6, 2019 I electronically filed the foregoing using the court's CM/ECF system which will send notification of such filing to all counsel of record.

s/Alexander Hood