

DISTRICT COURT, WATER DIVISION 1
STATE OF COLORADO
Weld County Courthouse
901 9th Avenue, P.O. Box 2038
Greeley, CO 80631
(970) 351-7300

DATE FILED: January 4, 2016 10:32 AM

Plaintiff: THE JIM HUTTON EDUCATIONAL
FOUNDATION, a Colorado non-profit corporation,

v.

Defendants: DICK WOLFE, in his capacity as the Colorado
State Engineer; DAVID NETTLES, in his capacity as the
Division Engineer in and for Water Division 1, State of
Colorado; COLORADO DIVISION OF WATER
RESOURCES; COLORADO DIVISION OF PARKS AND
WILDLIFE; YUMA COUNTY WATER AUTHORITY;
REPUBLICAN RIVER WATER CONSERVATION
DISTRICT; CITY OF BURLINGTON; CITY OF
HOLYOKE; CITY OF WRAY; HARVEY COLGLAZIER;
LAZIER, INC.; MARJORIE COLGLAZIER TRUST;
TIMOTHY E. ORTNER; MARIANE U. ORTNER;
PROTECT OUR LOCAL COMMUNITY'S WATER, LLC;
SAVING OUR LOCAL ECONOMY, LLC; EAST
CHEYENNE GROUND WATER MANAGEMENT
DISTRICT; INDIVIDUALS AND ENTITIES IDENTIFIED
AS THE NORTH WELLS OWNERS; TRI-STATE
GENERATION AND TRANSMISSION ASSOCIATION,
INC.; DAVID L. DIRKS; JULIE DIRKS; DIRKS FARMS,
LTD.; DON ANDREWS; MYRNA ANDREWS; and
NATHAN ANDREWS.

Attorneys for Defendant City of Burlington, Colorado

Alix L. Joseph (#33345)
Steven M. Nagy (#38955)
BURNS, FIGA & WILL, P.C.
6400 South Fiddler's Green Circle, Suite 1000
Greenwood Village, CO 80111
Phone: (303) 796-2626
Fax: (303) 796-2777
Email: ajoseph@bfiwlaw.com
snagy@bfiwlaw.com

▲ COURT USE ONLY ▲

Case No. 15CW3018

Div. 1

AMENDED ANSWER OF CITY OF BURLINGTON

The City of Burlington, Colorado ("Burlington"), by and through its undersigned counsel, hereby answers the Complaint for Declaratory Judgment ("Complaint") filed by The Jim Hutton Educational Foundation ("Plaintiff"). This Amended Answer is filed in response to notice received by Burlington, which, according to the Certificate of Mailing filed by the Plaintiff on October 9, 2015, was mailed to Burlington pursuant to the Court's Order dated September 25, 2015 and C.R.C.P 15(a).

Burlington is a Home Rule City established in accordance with Article XX of the Constitution of the State of Colorado and the Municipal Home Rule Act of 1971. Burlington owns groundwater permits within the High Plains Designated Ground Water Basin.

For the convenience of the Court, Burlington has repeated the titles and paragraph numbers used by Plaintiff in providing this Answer to the allegations set forth in the Complaint.

Plaintiff's introductory paragraph to the Complaint contains Plaintiff's characterization of this action and its requested relief and does not require a response. To the extent any response is required, Burlington denies the introductory paragraph.

JURISDICTION

1. Burlington admits that water judges of the district courts of all counties situated entirely or partly within a water division have exclusive jurisdiction of water matters within the division. Burlington admits that water matters include only those matters that Title 37, Article 92 and any other law specify to be heard by the water judge of the district courts. Beyond these admissions, Burlington denies the Plaintiff's characterization of the Water Court's jurisdiction.

2. Burlington admits that the Water Court has jurisdiction over issues ancillary to water matters as held in *Crystal Lakes Water and Sewer Ass'n. v. Blacklund*, 908 P.2d 534 (Colo. 1995). Beyond this admission, Burlington denies Plaintiff's characterization of the Supreme Court's holding in *Crystal Lakes*.

3. Burlington admits that at least some allegations contained in the Complaint could implicate water matters. However, Burlington denies that there has been an unlawful infringement upon any decreed water rights by Defendants, pursuant to Senate Bill 52 (2010) and/or the Colorado Ground Water Management Act.

4. To the extent paragraph 4 states Plaintiff's legal conclusion, no response is required. Burlington admits that the Colorado Ground Water Commission ("CGWC") has jurisdiction over designated ground water pursuant to the Colorado Ground Water Management Act, C.R.S. §§ 37-90-101 *et seq.* Burlington admits that in *Gallegos v. Colorado Ground Water Comm'n*, 147 P.3d 20 (Colo. 2006), the Supreme Court held that the Commission has jurisdiction over surface water rights only for the purpose of altering the boundaries of a designated ground

water basin. Burlington denies Plaintiff's allegation that it is not seeking to modify the boundaries of a designated ground water basin in the action to the extent the relief requested by the Complaint may aid Plaintiff in seeking to modify the boundaries of a designated ground water basin. Burlington admits that, on the face of the Complaint, Plaintiff is not requesting that the Water Court modify the boundaries of a designated water basin in this matter.

PARTIES

5. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 and therefore denies the same.

6. Burlington admits that the Colorado Department of Natural Resources includes the Division of Water Resources ("DWR"), headed by the Colorado State Engineer, and that DWR includes the Division Engineers. In further response to paragraph 6, Burlington states that C.R.S. §§ 24-1-124(3) and (4) speak for themselves and no response is required. To the extent any response is required, Burlington denies the remaining allegations.

7. Burlington states that C.R.S. § 37-80-102(1)(a) speaks for itself and no response is required. To the extent a response is required, Burlington denies the remaining allegations to the extent they are inconsistent with C.R.S. §37-80-102(1)(a).

8. Upon information and belief, Burlington admits that the State Engineer is also the Executive Director of the CGWC and a Commissioner on the Republican River Compact Administration.

9. Burlington states that C.R.S. § 37-92-202 speaks for itself and no response is required. To the extent any response is required, Burlington admits that the Division Engineer assists in matters pertaining to the administration of water rights in Water Division No. 1, and that the Division Engineer performs administrative functions under the Water Right Determination and Administration Act.

10. Burlington states that "Colorado Parks and Wildlife" is a commonly used reference for the Colorado Division of Parks and Wildlife ("CPW"), a division within the Colorado Department of Natural Resources. In further response to paragraph 10, Burlington states that, upon information and belief, CPW is responsible for the management of state park and wildlife resources, including some interest in land and water in and around Bonny Reservoir, but is without knowledge of the extent to which CPW is responsible for the administration of water in, or the operation of, Bonny Dam or Bonny Reservoir, and therefore denies the same.

WATER RIGHTS

11. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 and therefore denies the same.

12. Burlington is without knowledge or information sufficient to form a belief as to whether or not Plaintiff owns four decreed surface water rights on the South Fork of the Republican River, and specifically is without knowledge or information sufficient to form a belief as to Plaintiff's allegation that it owns water rights in the Tip Jack Ditch, Hale Ditch, Hutton Ditch No. 1, and Hutton Ditch No. 2, and therefore denies the same. In response to subparagraphs A-D of paragraph 12, Burlington states:

A. The decree entered by the Arapahoe District Court in Civil Action 18162 on December 28, 1893 speaks for itself and no response is required. To the extent the allegations in paragraph 12.A are inconsistent with the Decree in CA 18162, Burlington denies the same.

B. The decree dated September 8, 1939 in Civil Action No. 2985 speaks for itself and no response is required. To the extent the allegations in paragraph 12.B are inconsistent with the Decree in CA 2985, Burlington denies the same.

C. The decree dated May 24, 1978 in Case No. W-8667-77 speaks for itself and no response is required. To the extent the allegations in paragraph 12.C are inconsistent with the Decree in Case No. W-8667-77, Burlington denies the same.

D. The decree dated May 24, 1978 in Case No. W-8667-77 speaks for itself and no response is required. To the extent the allegations in paragraph 12.D are inconsistent with the Decree in Case No. W-8667-77, Burlington denies the same.

13. Burlington admits that water rights in Colorado can be vested property rights. However, Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations that the Plaintiff owns a vested property right in the Tip Jack Ditch, Hale Ditch, Hutton No. 1 Ditch and Hutton No. 2 Ditch and therefore denies the same.

14. Upon information and belief, Burlington admits the allegations contained in the first sentence of paragraph 14. Burlington states that the decree entered in Case No. W-9135-77 speaks for itself and no response is required. To the extent the allegations in paragraph 14 are inconsistent with the Decree in Case No. W-9135-77, Burlington denies the same.

15. Burlington admits that Bonny Reservoir and Bonny Dam are located upstream of the location of the Hutton Ranch, but is without knowledge or information sufficient to form a belief as to the truth of the allegations that Bonny Reservoir and Dam impact the Foundation's

claimed rights in Tip Jack Ditch and Hale Ditch in various ways, and therefore denies the same. In response to subparagraphs A-B of paragraph 15, Burlington states:

A. The amended map of the Tip Jack Ditch dated February 5, 1950, the decree entered in Case No. W-8667-77, the Map of the Roscoe Hutton Irrigation System dated January 3, 1955, and the Order of the Water Court, Division No. 1, Case No. 12CW111 speak for themselves and no response is required. To the extent the allegations in paragraph 15.A are inconsistent with the map of the Tip Jack Ditch and the Decrees in Case Nos. W-8667-77 and 12CW111, Burlington denies the same.

B. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations in subparagraph 15.B, and therefore denies the same.

16. The Water Contract speaks for itself and therefore no response is required. To the extent any response is required, Burlington denies the allegations in paragraph 16 to the extent they may be inconsistent with the Water Contract.

17. The Water Contract speaks for itself, and therefore no response is required. To the extent any response is required, Burlington denies the allegations to the extent they may be inconsistent with the Water Contract. Burlington is without knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 17 and, therefore, denies the same.

18. The Land Contract speaks for itself, and therefore no response is required. To the extent any response is required, Burlington denies the allegations to the extent they may be inconsistent with the Land Contract.

19. The Land Contract and the Bonny Reservoir operating plan speak for themselves and, therefore, no response is required. To the extent any response is required, Burlington denies the allegations to the extent they may be inconsistent with the Land Contract and the Bonny Reservoir operating plan.

20. The Water Contract and Land Contract speak for themselves and, therefore, no response is required. To the extent any response is required, Burlington denies the allegations to the extent they may be inconsistent with the Water Contract and Land Contract. Paragraph 20 also states Plaintiff's legal conclusions to which no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 20.

COMPACT COMPLIANCE AND GROUND WATER DEPLETIONS

21. The Republican River Compact of 1942 speaks for itself and therefore no response is required. To the extent any response is required, Burlington admits that the Republican River Compact is codified at C.R.S. § 37-67-101, and is among the states of Colorado, Kansas and Nebraska, but denies the remaining allegations of paragraph 21.

22. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22, and therefore denies the same.

23. Burlington admits that the Ground Water Management Act was enacted in 1965 and that it empowers the CGWC to establish designated ground water basins. Burlington is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 23 and, therefore, denies the same.

24. Upon information and belief, Burlington admits that the CGWC created the Northern High Plains Designated Ground Water Basin ("NHP Basin") in 1966. The NHP Basin designation order speaks for itself and, therefore, no response is required. To the extent any response is required, Burlington denies the allegations to the extent they may be inconsistent with the NHP designation order.

25. Burlington denies that the NHP Basin covers the areal extent of the Ogallala aquifer in Colorado. Burlington admits that the NHP Basin includes the entirety of the Republican River Basin and its tributaries in Colorado, including the South Fork of the Republican River.

26. The allegations contained in paragraph 26 are vague and Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26. Therefore, Burlington denies the same.

27. The allegations contained in paragraph 27 are vague and Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27. Therefore, Burlington denies the same.

28. The allegations contained in paragraph 28 are vague and Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28. Therefore, Burlington denies the same.

29. The allegations contained in paragraph 29 are vague and Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29. Therefore, Burlington denies the same.

30. The complaint filed by the state of Kansas in 1998 against Nebraska speaks for itself, and, therefore, no response is required. To the extent any response is required, Burlington denies all of the allegations in paragraph 30 to the extent they may be inconsistent with the complaint filed by the state of Kansas.

31. Burlington admits that the Special Master for the United States Supreme Court ("Special Master") heard arguments regarding whether stream depletions due to ground water withdrawals were intended to be included in the Compact allocations of the virgin water supply. In response to the second sentence of paragraph 31, Burlington states that the Special Masters' ruling speaks for itself and no response is required. To the extent any response is required, Burlington denies the allegations to the extent they may be inconsistent with the Special Master's ruling.

32. The Special Master's ruling speaks for itself and no response is required. To the extent any response is required, Burlington denies the allegations contained paragraph 32 to the extent they may be inconsistent with the Special Master's ruling.

33. The settlement stipulation between the states of Colorado, Kansas and Nebraska, and the Order of the United States Supreme Court speak for themselves and no response is required. Burlington denies the allegations contained in paragraph 32 to the extent they may be inconsistent with the Stipulation and Order of the United States Supreme Court.

34. The Republican River Compact Administration ("RRCA") Ground Water Model speaks for itself and no response is required. The Special Master's Final Report speaks for itself and no response is required. The United States Supreme Court ruling dated October 20, 2003 speaks for itself and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 34 to the extent they may be inconsistent with the RRCA Ground Water Model, Special Master's Final Report or the United States Supreme Court ruling.

35. The results of the annual runs of the RRCA Ground Water Model speak for themselves and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 35 to the extent they may be inconsistent with the RRCA Ground Water Model and the results of annual runs.

36. The results of the 1981-2000 annual runs of the RRCA Ground Water Model are Appendix U to the Special Master's final report and speak for themselves and no response is required. In further response to paragraph 36, Burlington states that the RRCA Ground Water Model was "received and ordered filed" by the United States Supreme Court. Burlington further states that the Special Master's final report shows that ground water previously withdrawn in the NHP Basin in Colorado caused delayed depletions to surface water in the Republican River and its tributaries by an average annual amount of 21,330 acre-feet and approximately 9,595 acre- feet

of those delayed depletions occurred to the South Fork of the Republican River. To the extent any further response is required, Burlington denies the remaining allegations.

37. The results of the annual runs of the RRCA Ground Water Model speak for themselves and no response is required. To the extent any response is required, Burlington denies the allegations.

38. Burlington admits that RRCA Ground Water Model runs have continued since 2003 and that the RRCA approved the RRCA Ground Water Model Runs annually through the year 2007. In further response to paragraph 38, Burlington states that the results of the 2007 run of the Model speak for itself and no response is required. To the extent any further response is required, Burlington denies the remaining allegations.

39. Burlington admits that RRCA Ground Water Model runs have continued since 2007 and that the RRCA has not approved said runs. To the extent any further response is required, Burlington denies the remaining allegations.

40. The allegations contained in paragraph 40 are vague and Burlington is without information and knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 40 and, therefore, denies the same.

41. The allegations in paragraph 41 are vague as to the 2007 report used as the source for the allegations; therefore Burlington is without sufficient information to admit or deny the allegations and, therefore, denies the same.

ACTIONS TAKEN BY DEFENDANTS TO ADDRESS THE COMPACT SHORTFALL

42. Burlington is without sufficient information to admit or deny the allegations in paragraph 42, and, therefore, denies the same.

43. Burlington is without sufficient information to admit or deny the allegations in paragraph 43, and, therefore, denies the same.

44. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44, and therefore denies the same.

45. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45, and therefore denies the same.

46. Paragraph 46 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington states that the laws and decrees governing Bonny Reservoir speak for themselves. To the extent the allegations contained in paragraph 46 are inconsistent with those governing documents, Burlington denies the same.

47. Paragraph 47 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 47.

48. Burlington is without sufficient information to admit or deny the allegations in paragraph 48 and, therefore, denies the same.

49. Burlington is without sufficient information to admit or deny the allegations in paragraph 49 and, therefore, denies the same.

50. Burlington states that the 2010 preliminary abandonment list for Water Division No. 1 and the Decree in Case No. 12CW111 speak for themselves. To the extent the allegations in paragraph 50 are inconsistent with the preliminary abandonment list and the Decree in Case No. 12CW111, Burlington denies the same. Burlington is without sufficient information to admit or deny the remaining allegations and, therefore, denies the same.

51. In response to the allegation in the first sentence of paragraph 51, Burlington states that the Water Court's Order dated December 16, 2013 in Case No. 12CW111 speaks for itself and no response is required. To the extent any response is required, Burlington states that it is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 51 and, therefore, denies the same.

52. Burlington is without sufficient information to admit or deny the allegations in paragraph 52, and, therefore, denies the same.

53. In response to the allegations of paragraph 53, Burlington states that the Order of the Water Court in Case No. 11CW186 dated December 16, 2013 speaks for itself and no response is required. To the extent any response is required, Burlington is without knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 53, and therefore denies the allegations in paragraph 53.

INJURY TO FOUNDATION FROM DEFENDANTS' ACTIONS AND INACTIONS

54. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54, and, therefore, denies the same.

55. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55, and, therefore, denies the same.

56. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 and, therefore, denies the same.

57. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations in 57 and therefore denies the same.

58. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58, and therefore denies the same.

59. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 and, therefore, denies the same.

60. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60, and therefore, denies the allegations contained in paragraph 60.

61. Paragraph 61 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 61.

62. Paragraph 62 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 62.

SENATE BILL 52 (2010)

63. C.R.S. § 37-90-103(6)(a) and the *Gallegos v. Colo. Ground Water Comm'n*, 147 P.3d 20 (Colo. 2006) opinion speak for themselves and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 63.

64. Paragraph 64 states Plaintiff's legal conclusions and no response is required. Further, the opinions and publication cited by the Plaintiff in paragraph 64 speak for themselves and no response is required. To the extent any response is required, Burlington denies the allegations.

65. C.R.S. § 37-90-106(1)(a) and the *Gallegos v. Colo. Ground Water Comm'n*, 147 P.3d 20 (Colo. 2006) opinion speak for themselves and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 65.

66. The *Gallegos* opinion speaks for itself and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 66.

67. Paragraph 67 states Plaintiff's legal conclusions and no response is required. Further, the *Gallegos* opinion speaks for itself and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 67.

68. The order in Case No. 06CV31 speaks for itself and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 68.

69. Paragraph 69 states Plaintiff's legal conclusions and no response is required. Further, the *City of Colorado Springs v. Powell*, 156 P.3d 461 (Colo. 2007) opinion speaks for

itself and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 69.

70. Paragraph 70 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 70 and, therefore, denies the allegations contained in paragraph 70.

71. Burlington is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 71, and therefore denies the same. The second sentence of paragraph 71 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in the second sentence of paragraph 71.

72. Paragraph 72 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 72.

73. Paragraph 73 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 73.

74. Paragraph 74 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 74.

75. Burlington is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 75 and, therefore, denies the same.

CLAIMS FOR RELIEF
(Declaratory Judgment, Injunction)

Claim 1: The Administration of Water in the Republican River Basin and Related Actions and Omissions by Defendants are Unlawful.

76. Burlington incorporates all answers above as if fully set forth below.

77. Paragraph 77 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 77.

78. Paragraph 78 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 78.

79. Paragraph 79 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 79.

80. Paragraph 80 states Plaintiff's legal conclusions and no response is required. Further, C.R.S. § 37-80-104 speaks for itself and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 80.

81. Paragraph 81 states Plaintiff's legal conclusions and no response is required. Further, C.R.S. § 37-80-102(1)(a), 37-80-104 and 37-92-501 speak for themselves and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 81.

82. Paragraph 82 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 82.

83. Paragraph 83 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 83.

84. Paragraph 84 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 84.

85. Paragraph 85 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 85.

86. Paragraph 86 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 86.

87. Paragraph 87 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 87.

88. Paragraph 88 states Plaintiff's legal conclusions and no response is required. Further, Colorado and federal law, the Bonny Reservoir Decree, the Water Contract and Land contract speak for themselves, so no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 88.

89. Paragraph 89 states Plaintiff's legal conclusions and no response is required. Further, the Republican River Compact speaks for itself and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 89.

90. Paragraph 90 states Plaintiff's legal conclusions and no response is required. Further, 43 U.S.C. § 390(b)(e) speaks for itself and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 90.

91. Paragraph 91 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 91.

92. Paragraph 92 and its subparagraphs A, B, C and D state Plaintiff's requests for relief and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 92.

93. Paragraph 93 states Plaintiff's request for relief and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 93.

Claim 2: Senate Bill 52 is Unconstitutional When Applied to the NHP Basin.

94. Burlington incorporates all responses above as though fully set forth below.

95. Paragraph 95 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington is without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 95 and, therefore, denies the allegations contained in paragraph 95.

96. Paragraph 96 states Plaintiff's legal conclusions and no response is required. Furthermore, S.B. 52 and C.R.S. § 37-90-106(1)(a) speak for themselves and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 96.

97. The RRCA Ground Water Model and the Order of the United States Supreme Court speak for themselves, and therefore no response is required. To the extent the allegations in the first sentence of paragraph 97 are inconsistent with the RRCA Ground Water Model or the Order of the United States Supreme Court, Burlington denies the same. The remaining allegations of paragraph 97 state Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the remaining allegations contained in paragraph 97.

98. Paragraph 98 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 98.

99. Paragraph 99 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 99.

100. Paragraph 100 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 100.

101. Paragraph 101 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 101.

102. Paragraph 102 states Plaintiff's legal conclusions and no response is required. Further, Senate Bill 52 speaks for itself and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 102.

103. Paragraph 103 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 103.

104. Paragraph 104 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 104.

105. Paragraph 105 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 105.

106. Paragraph 106 states Plaintiff's requests for relief and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 106.

107. Burlington is without knowledge from which to form a belief as to the allegations of paragraph 107 and, therefore, denies the same.

Claim 3: The Ground Water Act is Unconstitutional if Designated Ground Water that is Subject to the Compact Cannot be Administered Pursuant to the Compact.

108. Burlington incorporates all responses above as though fully set forth below.

109. Paragraph 109 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 109.

110. Paragraph 110 states Plaintiff's legal conclusions and no response is required. Further, C.R.S. § 37-67-101 and the *Green v. Biddle*, 21 U.S. 1 (1823) opinion speak for themselves and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 110.

111. Paragraph 111 states Plaintiff's legal conclusions and no response is required. Further, the United States Constitution speaks for itself and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 111.

112. Burlington admits the allegations contained in paragraph 112.

113. Paragraph 113 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, denies the allegations contained in paragraph 113.

114. Paragraph 114 states Plaintiff's legal conclusions and no response is required. The Opinion of the United States Supreme Court, the RRCA Groundwater Model and Colorado's

2002 Stipulation with Kansas and Nebraska all speak for themselves, so no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 114.

115. Paragraph 115, including its subparagraphs A and B, states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 115.

116. Paragraph 116 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 116.

117. Paragraph 117 and its subparagraphs A and B states Plaintiff's request for relief and no response is required. To the extent any response is required, Burlington denies the allegations contained in paragraph 117.

118. Burlington is without sufficient information to form a belief as to the allegations in paragraph 118, so denies the same.

Burlington denies any and all allegations that are not specifically admitted herein.

DEFENSES

1. Plaintiff failed to state a claim upon which relief can be granted pursuant to C.R.C.P. 12(b)(5).

2. Plaintiff failed to challenge the actions of the State Engineer and Division Engineer within the time prescribed under the Colorado Administrative Procedure Act and/or C.R.S. §37-90-115.

3. This Court may not have subject matter jurisdiction to hear claims related to the Ground Water Management Act of 1965.

4. Plaintiff's claims are barred in whole or in part for failing to exhaust administrative remedies.

5. Plaintiff's claims are not ripe for adjudication.

6. Plaintiff is estopped from asserting the injury claimed by the claims for relief in this matter.


7. Burlington reserves the right to supplement or modify its Defenses and to assert any defense in law or fact to the stated claims for relief.

WHEREFORE, City of Burlington, Colorado requests that this Court deny The Jim Hutton Educational Foundation the requested relief in its Complaint for Declaratory Judgment.

Respectfully submitted this 4th of January, 2016.

BURNS, FIGA & WILL, P.C.

*Original Signature on File
at BURNS, FIGA & WILL, P.C.*

By: 
Alix L. Joseph
Steven M. Nagy

**Attorneys for Defendant
City of Burlington, Colorado**

VERIFICATION

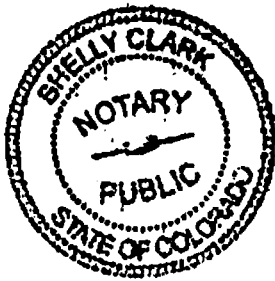
I, James Bradley, as City Administrator of the City of Burlington, Colorado, state under oath that I have read the foregoing ANSWER OF INTERVENOR CITY OF BURLINGTON, COLORADO and verify its contents.

By: James Bradley
James Bradley

The foregoing instrument was subscribed and affirmed before me by James Bradley on this 31st day of December, 2015.

Witness my hand and official seal.

My commission expires: 8-25-2019



*Original Signature on File at the
City of Burlington Offices*

By: Shelly Clark
Notary Public

415 15th Street
Address

Burlington, CO 80807

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2016, a true and correct copy of the foregoing ANSWER OF INTERVENOR CITY OF BURLINGTON, COLORADO was filed and served by ICCES to the following:

Steven J. Bushong, Esq.
Karen L. Henderson, Esq.
BROWNING & BUSHONG, LLP
Attorneys for The Jim Hutton Educational Foundation

Bradley C. Grasmick, Esq.
LAWRENCE, JONES, CUSTER,
GRASMICK, LLP
Attorneys for Colorado Agriculture Preservation Assoc.

John D. Buchanan, Esq.
Timothy R. Buchanan, Esq.
BUCHANAN AND SPERLING, P.C.
Attorneys for East Cheyenne Ground Water Management District; Protect Our Local Community's Water, LLC; Saving Our Local Economy, LLC

Alvin R. Wall, Esq.
ALVIN R. WALL ATTORNEY AT LAW
Attorneys for City of Holyoke; City of Wray, Colorado; Harvey Colglazier; Lazier, Inc.; Timothy E. Ortner; Mariane U. Ortner; Marjorie Colglazier Trust; David L. Dirks; Julie Dirks; Dirks Farms, Ltd.

Stuart B. Corbridge, Esq.
Geoffrey M. Williamson, Esq.
Aaron S. Ladd, Esq.
Justine C. Shepherd, Esq.
Eugene J. Riordan, Esq.
Leila C. Behnampour, Esq.
VRANESH AND RAISCH
Attorneys for Don Myrna and Nathan Andrews; Tri-State Generation and Transmission Assoc.; Arikaree Ground Water Management District; Central Yuma Ground Water Management District; Frenchman Ground Water Management District; Marks Butte Ground Water Management District; WY Ground Water Management District; Plains Ground Water Management District; Sandhills Ground Water Management District

David W. Robbins, Esq.
Peter J. Ampe, Esq.
HILL AND ROBBINS, P.C.
Attorneys for Republican River Water Conservation District

Dulcinea Z. Hanuschak, Esq.
John A. Helfrich, Esq.
Steven O. Sims, Esq.
BROWNSTEIN, HYATT, FARBER,
SCHRECK, LLP
*Attorneys for Yuma County Water Authority
Public Improvement*

Ema I. G. Schultz, Esq.
Preston V. Hartman, Esq.
Daniel E. Steuer, Esq.
Chad M. Wallace, Esq.
Patrick E. Kowaleski, Esq.
Katie L. Wiktor, Esq.
Timothy J. Monahan, Esq.
Virginia M. Sciabbarrasi, Esq.
COLORADO ATTORNEY GENERAL'S
OFFICE
*Attorneys for Colorado Dept. of Natural
Resources; Colorado Division of Water
Resources; Colorado Ground Water
Commission; Colorado Parks and Wildlife;
David Nettles; Dick Wolfe; Colorado State
Board Land Commissioners*

David C. Taussig
WHITE & JANKOWSKI, LLP
*Attorneys for Arikaree Ground Water
Management District*

William A. Paddock, Esq.
Johanna Hamburger, Esq.
CARLSON, HAMMOND & PADDOCK, LLC
*Attorneys for 4m Feeders, Inc.; 4m Feeders,
LLC; Happy Creek, Inc.; J and D Cattle, LLC;
James J. May; Kent E. Ficken; May Acres; May
Brothers, Inc.; May Family Farms; Steven D.
Kramer; Thomas R. May; Carlyle James as
Trustee of the Chester James Trust*

Russell J. Sprague, Esq.
Kimbra L. Killin, Esq.
COLVER, KILLIN AND SPRAGUE, LLP
Attorneys for North Well Owners

*Original Signature on File at
BURNS, FIGA & WILL, P.C.*



/s/ Nichole Parsons