DISTRICT COURT, WATER DIVISION NO. 1 STATE OF COLORADO Weld County Courthouse 901 9th Ave., P.O. Box 2038 Greeley, CO 80632 (970) 475-2400	
Plaintiff: The Jim Hutton Educational Foundation, a Colorado non-profit corporation, v. **Defendants:** Dick Wolfe, in his capacity as the Colorado State Engineer, et al.	▲COURT USE ONLY▲
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RESPONSE TO THE JIM HUTTON EDUCATIONAL FOUNDATION'S MOTION FOR SUMMARY JUDGMENT ON ITS COMPACT ADMINISTRATION CLAIM RELATED TO DESIGNATED GROUNDWATER

The Defendants named above, by and through their undersigned attorneys, hereby submit their Response to the Jim Hutton Educational Foundation's Motion for Summary Judgment on its Compact Administration Claim ("Response"), and in support thereof, state as follows:

I. INTRODUCTION

On February 29, 2016, Plaintiff, the Jim Hutton Educational Foundation ("Foundation"), filed three substantive motions with this Court, including a Motion for Summary Judgment on its assertion in Claim 1 of its Complaint that the current administration of the Foundation's water rights for Compact compliance is unlawful ("Foundation's Compact Motion"). Several defendants in this case also filed substantive motions on February 29, 2016, including a Motion for Partial Summary Judgment on Claim 1 re: State Engineer Administration of Designated Groundwater ("Defendants' Designated Groundwater Administration Motion"), seeking summary judgment under part of Claim 1 of the Foundation's Complaint.[1]

In support of its Compact Motion, the Foundation advances two arguments. First, the Foundation argues that the State Engineer's administration of the Foundation's water rights for

[1] Pursuant to this Court's Minute Order dated January 11, 2016, all jurisdictional and substantive motions were due February 29, 2016, rather than parties filing cross-motions. Many legal premises and arguments expressed in Defendants' Designated Groundwater Administration Motion are applicable here, and thus will be incorporated by reference throughout this Response.

Compact compliance is unlawful, arbitrary and capricious, and in violation of equal protection and due process because, despite groundwater pumping within the Republican River Basin, the State Engineer is only curtailing surface water rights for compliance with the Republican River Compact ("Compact"). Foundation's Compact Mot. at 7-13. Second, the Foundation argues that the State Engineer's sub-basin administration within Colorado for the Compact is inconsistent with Colorado law. Foundation's Compact Mot. at 13-15.

The Foundation's sub-basin administration argument is addressed in the State Engineer's Response to the Jim Hutton Educational Foundation's Motion for Summary Judgment on its Compact Administration Claim (filed April 8, 2016) ("State Engineer's Response"). This Response is limited to those portions of the Foundation's Compact Motion that pertain to designated groundwater in the Northern High Plains ("NHP") Basin.[2] As to those portions, the Foundation's Compact Motion must be denied because, contrary to the Foundation's underlying premise that the State Engineer must treat surface water and designated groundwater the same: (a) there is no mandatory legal requirement for the State Engineer to administer surface water and designated groundwater in the same way for Compact compliance (Section IV.A. below); (b) the State Engineer must administer compacts consistent with Colorado law, which expressly provides for surface water and designated groundwater to be treated differently (Section IV.B. below); (c) neither the Compact nor the Compact litigation and settlement require the State Engineer to administer waters in Colorado in a specific way (Section IV.C. below); and (d) the State Engineer's decisions are not arbitrary or capricious, and do not violate equal protection or due process of law (Section IV.D. below).

[2] In this Response, Defendants do not address any aspects of the first argument in the Foundation's Compact Motion that pertain to the administration of any other waters (e.g., tributary groundwater, Bonny Reservoir).

In addition to the flaws in the Foundation's legal theory, it must be underscored that in order for the Foundation to prevail on its Compact Motion, it would have to prove a number of material facts that are in dispute about whether the Foundation is actually injured by the State Engineer's discretionary Compact administration decisions, and whether the relief sought by the Foundation will remedy that injury (Section IV.E. below).

II. DISPUTED FACTS

Defendants dispute many of the facts, or characterizations of the facts, contained in the Foundation's "Undisputed Facts" section of its Compact Motion. *See* Foundation's Compact Mot. at 3-7. Because the Foundation's arguments are not supported by the applicable law, any disputes about the facts or characterizations of the facts are not material to resolution of the Compact Motion. However, if the Court determines that Colorado law supports the Foundation's arguments, there are genuine issues of material fact that prohibit summary judgment in favor of the Foundation relating to the existence, nature, and extent of any injury claimed by the Foundation.

Defendants' Response to Certain Factual Allegations Made by the Hutton Foundation (filed April 8, 2016) ("Companion Brief") contains a more detailed discussion of disputed facts and characterization of facts, and demonstrates that there are unresolved factual questions relating to any injury claimed by the Foundation. Additionally, the Foundation's listing of undisputed facts is not complete and should include the facts contained in the Amended Motion for Summary Judgment on the Constitutionality of the Ground Water Management Act of 1965, pp. 7-8 (filed Feb. 29, 2016) ("Amended Motion"), the Affidavit of Dawn Webster, Assistant Manager of the Republican River Water Conservation District (filed as Attachment 2 to

Amended Motion), the Affidavit of Willem Schreüder, Ph.D. (filed as Ex. C to State Engineer's Response), and the Companion Brief, all of which are incorporated herein.

III. LEGAL STANDARDS

A. Summary Judgment

The Foundation generally sets forth the summary judgment standard. *See* Foundation's Compact Mot. at 3. In addition to those standards, the nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts, and all doubts as to the existence of a triable issue of fact must be resolved against the moving party. *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002). Furthermore, summary judgment is only appropriate if "in addition to the absence of any genuine factual issues, the law entitles one party or the other to a judgment in its favor." *Mt. Emmons Mining Co. v. Town of Crested Butte*, 690 P.2d 231, 239 (Colo. 1984).

B. Declaratory Judgment

The Uniform Declaratory Judgments Law, C.R.S. §§ 13-51-101 *et seq.*, is a remedial statute. *See, e.g., id.* at 240. "The primary purpose of a declaratory judgment is to enable parties, in a proper case, to obtain a determination of their rights and duties in advance of the time when litigation might possibly arise or before the repudiation of obligation, the invasion of rights, or the commission of wrongs." *Cann v. Bd. of Water Comm'rs of City & Cty. of Denver*, 534 P.2d 346, 347 (Colo. App. 1975).

While "the required showing of demonstrable injury is somewhat relaxed in declaratory judgment actions," a party "must still demonstrate that the challenged statute or ordinance will likely cause tangible detriment to conduct or activities that are presently occurring or are likely to occur in the near future." *Mt. Emmons Mining Co.*, 690 P.2d at 240. A court may refuse

declaratory judgment "where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." C.R.S. § 13-51-110; C.R.C.P. 57(f).

Since courts are prohibited from rendering advisory opinions, a request for declaratory judgment must be based upon an actual controversy, not the mere possibility of a future controversy. *Three Bells Ranch Assocs. v. Cache La Poudre Water Users Ass'n*, 758 P.2d 164, 168-69 (Colo. 1988). Declaratory judgment is not appropriate "where the dispute requires an interpretation in light of extrinsic facts which are not yet determinable." *Burkett v. Amoco Prod. Co.*, 85 P.3d 576, 579 (Colo. App. 2003).

IV. ARGUMENT

The Foundation is not entitled to summary judgment as a matter of law on its Compact Motion concerning the State Engineer's administration of the Foundation's water rights, relative to designated groundwater, for Compact compliance purposes because:

1. The General Assembly's delegation of authority to the State Engineer to meet the state's obligations under interstate compacts does not impose a mandatory legal requirement that Compact administration treat surface water and designated groundwater the same. *See* C.R.S. §§ 37-80-102 and -104. Rather, the delegation of authority is broadly stated to ensure that the State Engineer has the discretion to "make the necessary <u>administrative decisions</u> regarding the necessity, timing, amount, and location of intrastate water restrictions in order to ensure that Colorado's critical interstate delivery obligations are fulfilled." *Simpson v. Bijou Irrigation Co.*, 69 P.3d 50, 69 (Colo. 2003) (emphasis added). It is beyond the power of this Court to order the State Engineer to exercise its administrative discretion in a particular manner. *See, e.g., Jones v. Colo. State Bd. of Chiropractic Exam'rs*, 874 P.2d 493, 494 (Colo. App. 1994).

2. The State Engineer must exercise its compact rule powers "to the extent possible within the existing framework of Colorado statutory priority law." *Bijou Irrigation Co.*, 69 P.3d at 69. As such, the State Engineer must give effect to the fundamentally different allocation and administration principles and mechanisms established by the General Assembly for tributary surface water in the Water Right Determination and Administration Act of 1969, C.R.S §§ 37-92-101 *et seq.* ("1969 Act"), and for designated groundwater in the Colorado Groundwater Management Act, C.R.S. §§ 37-90-101 *et seq*. Surface water is allocated and administered in accordance with the traditional prior appropriation system—first in time, first in right—and is statutorily regulated by the 1969 Act. In contrast, designated groundwater is allocated and administered in accordance with the modified prior appropriation doctrine set out in the Groundwater Management Act.

3. Neither the Compact nor the Compact litigation imposes a mandatory legal requirement for Compact administration that treats surface water and designated groundwater the same for Compact compliance. The waters allocated under the Compact are "subject to the laws of the state, for use in which the allocations are made." C.R.S. § 37-67-101, Article IV. Further, the determination made in the Compact litigation that groundwater must be "counted" for Compact purposes did not alter the terms of the Compact, and did not impose a mandatory legal requirement for the State of Colorado or the State Engineer to curtail pumping of designated groundwater for Compact compliance or administer designated groundwater using strict prior appropriation, as the Foundation asserts is required.

4. The State Engineer's administration of the Republican River Basin for Compact compliance purposes are not arbitrary or capricious, or in violation of equal protection or due process.

5. The Foundation has failed to sustain its burden of proving that it is actually injured by the State Engineer's alleged unlawful Compact administration or that the requested relief—equal curtailment of surface and designated groundwater—will remedy that injury; there is simply no evidentiary record on these elements.

A. <u>There Is No Mandatory Legal Requirement for the State Engineer to Implement an Administrative Approach for Compact Compliance That Treats Surface Water and Designated Groundwater the Same.</u>

The starting point for the Foundation's argument is the delegation of authority to the State Engineer for Compact compliance at C.R.S. §§ 37-80-102 and -104. Foundation's Compact Mot. at 7. However, the Foundation incorrectly argues that this delegation of authority *requires* the State Engineer to meet its Compact compliance responsibilities using a specific administrative approach. It does not. To the contrary, C.R.S. §§ 37-80-102 and -104 provide broad delegations of authority to the State Engineer.

Specifically, C.R.S. § 37-80-102 grants the State Engineer "executive responsibility and authority with respect to . . . [d]ischarge of the obligations of the state of Colorado imposed by compact or judicial order on the office of the state engineer." C.R.S. § 37-80-102(1)(a). Section 37-80-104 (known as the compact rule power, *see Kuiper v. Gould*, 583 P.2d 910, 913 (Colo. 1978)) provides that the State Engineer is authorized to "make and enforce such regulations with respect to deliveries of water as will enable the state of Colorado to meet its compact commitments." That section also provides, in part:

> In those cases where the compact is deficient in establishing standards for administration within Colorado to provide for meeting its terms, the state engineer shall make such regulations as will be <u>legal and equitable</u> to regulate distribution among the appropriators within Colorado obligated to curtail diversions to meet compact commitments, so as to restore lawful use conditions as they were before the effective date of the compact <u>insofar as possible</u>.

C.R.S. § 37-80-104 (emphasis added). As discussed more fully in Defendants' Designated Groundwater Administration Motion, these statutory provisions do not mandate that the State Engineer administer surface water and designated groundwater in a specific manner. *See* Defs.' Mot. at 15-16. Rather, these provisions provide a general delegation of authority for the State Engineer to administer in-state water rights so as to ensure compliance with the obligations of the state of Colorado imposed by interstate compacts. *See Bijou Irrigation Co.*, 69 P.3d at 68-69.

The Defendants' Designated Groundwater Administration Motion describes the law concerning a Court's inability to compel an action committed to agency discretion and that law is incorporated herein by reference. *See* Defs.' Mot. at 17-19. Summarized briefly, a court order compelling an agency action is only appropriate where there is a clear right to the relief sought, a clear duty by the agency to perform the act requested, and no other available remedy. *Jones*, 874 P.2d at 494. *See also Upper Black Squirrel Ground Water Mgmt. Dist. v. Goss*, 993 P.2d 1177, 1181 (Colo. 2000) (affirming Ground Water Judge's holding that "a writ of mandamus did not lie against the Management District because the statute affords discretion in its administration of wells, rather than establishing a non-discretionary duty."). The rationale for this prohibition is the separation of powers doctrine, prohibiting the judiciary from substituting its judgment for that of the agency's when the General Assembly has committed the matter to the exercise of the agency's sound discretion. *See Freedom Colo. Info. Inc. v. El Paso Cty. Sheriff's Dep't*, 196 P.3d 892, 900 (Colo. 2008); *Kort v. Hufnagel*, 729 P.2d 370, 373 (Colo. 1986).

In summary, the State Engineer has no mandatory, non-discretionary legal duty to curtail designated groundwater pumping in the NHP Basin for Compact compliance. Rather, the State Engineer makes discretionary decisions concerning the administration of in-state waters to

comply with interstate compacts.[3] This Court cannot order the State Engineer to take the specific administrative actions requested by the Foundation to curtail pumping from designated groundwater wells.

B. The State Engineer Must Administer In-State Water Rights for Compact Compliance Purposes Consistent With Colorado Law, Which Expressly Provides for Surface Water and Designated Groundwater to Be Treated Differently.

1. Under the compact rule power the State Engineer has to give effect to the different allocation and administration systems for surface water and designated groundwater.

The Foundation next argues that designated groundwater must be curtailed in the same manner as surface water under the Compact, and that "there is no lawful basis under Colorado law" to treat surface water diversions differently than pumping of "currently designated groundwater" for purposes of Compact administration. Foundation's Compact Mot. at 8, 10-12. This argument is wrong, as it ignores (a) the direction from the Colorado Supreme Court that the State Engineer must exercise its compact rule powers within the existing framework of Colorado law, and (b) the differences between tributary surface water and designated groundwater, and the statutorily mandated administrative approaches for these different waters.

a. The State Engineer's compact rule powers must be exercised within the framework of Colorado law.

The State Engineer "can and should enforce compact delivery requirements with regard to Colorado water rights, adhering to the terms of the Compact and consistent, insofar as possible, with Colorado constitutional and statutory provisions for priority administration." *People ex rel. Simpson v. Highland Irrigation Co.*, 917 P.2d 1242, 1248 (Colo. 1996) (emphasis

[3] In fact, in the exercise of its discretion, the State Engineer is supporting efforts to address the effects of groundwater pumping in the Republican River Basin to ensure compliance with the Compact. *See* Affidavit of Dawn Webster (Amended Motion, Attach. 2).

added). This case, which did not involve designated groundwater, emphasizes that the State Engineer must take Colorado law into account in administering water under an interstate compact. *Id.*; *see also Bijou Irrigation Co.*, 69 P.3d at 69 (noting that the State Engineer is to exercise compact compliance authority "to the extent possible within the existing framework of Colorado statutory priority law."). The Colorado Supreme Court has further held that, for compact compliance administration purposes, "simple priority administration" is inadequate with respect to tributary groundwater pumping. *Bijou Irrigation Co.*, 69 P.3d at 55, 70. Thus, even in a situation where both the surface water and the groundwater are allocated and administered under the same statutory provisions (the 1969 Act), the Court has recognized that the complexities of groundwater pumping, including the amount and timing of depletions, weigh against a pure priority administrative approach. *See id.*

b. Colorado has established separate administrative systems for surface water and designated groundwater.

Colorado law expressly separates administration of surface water and designated groundwater through the 1969 Act and the Groundwater Management Act. Notwithstanding, the Foundation still maintains there is no lawful basis to administer the water separately under the Compact. *See* Foundation's Compact Mot. at 8-13.

In arguing there is no lawful basis to treat surface water and designated groundwater differently, the Foundation ignores the statutory differences between these two waters, and the administrative systems established for those different waters. *See* Foundation's Compact Mot. at 8, 11-12. These differences are discussed in Defendants' Designated Groundwater Administration Motion (*see* Defs.' Mot. at 6-7, 19-22), and are incorporated into this response. Summarized, surface water and tributary groundwater are allocated and administered in

accordance with the traditional prior appropriation system—first in time, first in right—under the 1969 Act. In defining waters subject to the 1969 Act, C.R.S. § 37-92-103(13) excludes "waters referred to in section 37-90-103(6)" from the 1969 Act's framework. Section 37-90-103(6) is a provision from the Groundwater Management Act that defines designated groundwater. Thus, the 1969 Act explicitly excludes designated groundwater from its administration scheme.

Designated groundwater is administered under the Groundwater Management Act, and is allocated and administered in accordance with a modified prior appropriation system. *See, e.g.*, *N. Kiowa-Bijou Mgmt. Dist. v. Ground Water Comm'n*, 505 P.2d 377, 379-80 (Colo. 1973). The separate system for designated groundwater was enacted in recognition of the unique character of that water in order to "permit[] the full development of [these designated] ground water sources while protecting against depletion of the underground aquifer, which is not subject to the same ready recharge enjoyed by surface streams and tributary ground water." *Danielson v. Kerbs Ag., Inc.*, 646 P.2d 363, 370 (Colo. 1982).

There are no provisions in either the 1969 Act or the Groundwater Management Act that require or describe a specific approach for Compact compliance applicable to all in-state waters. Instead, these two Acts provide separate systems for managing tributary water and designated groundwater, based on different physical and legal characteristics of tributary water and designated groundwater and independent use and management goals. *Compare* C.R.S. § 37-90-102 (legislative declaration for Groundwater Management Act), *with* C.R.S. § 37-92-102 (legislative declaration for 1969 Act).[4]

[4] This separate system has been applied elsewhere in Colorado on the Arkansas River for compliance with the Arkansas River Compact, where administration expressly does not apply to wells in a designated groundwater basin. *See* Rule 1. Scope., *Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water*

The Final Order creating the NHP Basin in 1966 confirmed the differences in administration of these waters: "The vested surface water rights within the designated ground water basin are recognized and are specifically noted as being without the jurisdiction of the Ground Water Commission ["Commission"] and are wholly governed by the provisions of the Republican River compact where applicable or by the surface water laws concerning tributary waters." In the Matter of the Proposed Designated Ground Water Basin of the Northern High Plains of the State of Colorado, Findings of Fact, Conclusions of Law, Final Order, p. 4, ¶ 2 (1966) (previously filed as Defs.' Mot. Ex. A).

Colorado does not administer designated groundwater on the basis of strict prior appropriation. *See Gallegos v. Colo. Ground Water Comm'n*, 147 P.3d 20, 30-31 (Colo. 2006) ("[W]e have repeatedly and consistently stated that the administration of waters under the 1969 Act is inapplicable to the Commission's administration of designated ground water under the [Groundwater] Management Act."). As detailed in Defendants' Designated Groundwater Administration Motion, the Commission determines vested rights to withdraw designated groundwater and their associated priorities, which are described in final permits issued after an extensive public process. *See* Defs.' Mot. at 21-22. The process includes notice of designation of the basin, application for and notice of conditional and final permits, and issuance of permits. *See* C.R.S. §§ 37-90-106, 107, 108, 112. These final permits have been recognized as being tantamount to final water court decrees. *See, e.g., Thompson v. Colo. Ground Water Comm'n*, 575 P.2d 372, 377-78 (Colo. 1978).

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in the Arkansas River Basin, Colorado, as approved by the Division 2 Water Court July 8, 1994, *nunc pro tunc* July 5, 1994 ("Arkansas River Rules"), *available at* http://water.state.co.us/DWRIPub/Documents/arkuserule.pdf.

2. There is no legal basis for the Foundation's assertion that surface water and designated groundwater must be treated the same for Compact compliance purposes.

a. Equal treatment is not supported by case law.

As noted above, the statutory provisions for the administration of tributary water are different than those for administration of designated groundwater, and both systems must be incorporated into any administrative decisions made by the State Engineer for Compact compliance. Indeed, if the State Engineer is authorized to consider factors such as the distance of the well from the stream, the transmissibility of the aquifer, the depth of the well, the time and volume of pumping, and the return flow characteristics, when administering tributary groundwater differently than surface water, *see Bijou Irrigation Co.*, 69 P.3d at 70, then the State Engineer is certainly also authorized to take into account the unique characteristics of designated basin groundwater in administering the Compact.

The Foundation cites a number of cases where groundwater was curtailed in an attempt to show that designated groundwater must be curtailed here, but the argument fails because the cases cited involve tributary groundwater, and do not provide insight on administration of designated groundwater or administration for Republican River Compact purposes. *See Simpson v. Cotton Creek Circles LLC*, 181 P.3d 252 (Colo. 2008) (affirming water court's approval of State Engineer's rules related to new withdrawals of non-designated groundwater from a confined aquifer in Water Division No. 3); *Bijou Irrigation Co.*, 69 P.3d 50 (affirming trial court's ruling voiding State Engineer's proposed rules regarding administration of tributary, non-designated groundwater in the South Platte River Basin); *Alamosa-La Jara Water Users Prot. Ass'n v. Gould*, 674 P.2d 914 (Colo. 1983) (considering State Engineer's rules for the Rio Grande Compact with respect to allocation and curtailment of surface water and tributary, non-

designated groundwater); *Kuiper*, 583 P.2d 910 (involving State Engineer rules providing for administration of surface water and tributary, non-designated groundwater for purposes of the Rio Grande Compact); *Fellhauer v. People*, 447 P.2d 986 (Colo. 1968) (discussing the validity of a statutory provision passed in 1965 with respect to tributary groundwater and not designated groundwater).

While these cases do not address designated groundwater, they do provide support for the argument in Section IV.B.1. above, that in administering in-state water rights for compact compliance purposes, the entity responsible for such administration should, to the extent possible, operate in accordance with Colorado law. *See, e.g., Bijou Irrigation Co.*, 69 P.3d at 69 (recognizing that groundwater was different than surface water, the Court held that the State Engineer is to exercise its compact compliance authority "to the extent possible within the existing framework of Colorado statutory priority law."). *See also Highland Irrigation Co.*, 917 P.2d at 1248 (the State Engineer "can and should enforce compact delivery requirements with regard to Colorado water rights, adhering to the terms of the Compact and consistent, insofar as possible, with Colorado constitutional and statutory provisions for priority administration.").

It is also noteworthy that the Foundation has not alleged or demonstrated that the State is failing to meet its compact obligations under its current administration practices. This is not surprising. Through a number of efforts and programs, including the Republican River Compact Compliance Pipeline and retirement of acreage irrigated by designated groundwater, the State is complying with the Compact. *See* Amended Motion at 7-8; Affidavit of Dawn Webster (Amended Motion, Attach. 2). Thus, the Foundation has provided no legal or factual support for its assertion that the State Engineer can ignore state law requiring separate administration of

surface water and designated basin groundwater when administering the Republican River for Compact purposes.

b. There is no legal basis to ignore the statutory differences between surface water and designated groundwater.

The Foundation offers six reasons why the statutory differences between surface water and designated groundwater should be ignored. Foundation's Compact Mot. at 11-12. As explained below, none of the reasons are persuasive.

a. The Foundation first asserts that the United States Supreme Court in the Compact litigation has determined that groundwater use "without exception" is part of the Compact, and the inclusion of groundwater depletions caused Colorado to be out of compliance with the Compact. *See* Foundation's Compact Mot. at 11. It is unclear what the Foundation means by the statement that "groundwater use was determined . . . as being part of the Compact." Foundation's Compact Mot. at 11. However, as described more fully in Section IV.C. below, the Compact litigation only concluded that groundwater depletions had to be "counted" under the Compact. Neither the Compact litigation nor the RRCA Groundwater Model ("RRCA Model") requires Colorado to curtail pumping of designated groundwater from permitted wells in the NHP Basin. *See* Affidavit of Willem Schreüder, Ph.D. (State Engineer's Response, Ex. C).

Thus, the Foundation's assertion is based on an unsupported leap of logic that groundwater being "counted" under the Compact dictates that designated groundwater be treated the same as surface water for purposes of Colorado's Compact administration. As described above, surface water and designated groundwater are legally and factually distinct, and the General Assembly has already determined they should be subject to separate administrative systems. Ironically, the Foundation actually acknowledges the legislative distinction between

designated groundwater and tributary groundwater in its Motion for Summary Judgment on its Senate Bill 52 Claim (filed Feb. 29, 2016) at p. 13, ¶ 45 (there is a "clear legislative intent to keep designated groundwater and groundwater subject to the 1969 Act separate and distinct") (emphasis added), but appears to ignore that distinction in its Compact Motion. In any event, the State Engineer must honor this clear legislative intent in exercising its discretionary authority under the compact rule power.

b. The Foundation next argues that the Compact is federal law, it preempts conflicting state law on the same subject, and the State Engineer is ignoring federal law by curtailing only surface water to meet Compact allocations. *See* Foundation's Compact Mot. at 11. Contrary to the Foundation's assertions, there is no conflict between the Compact and state law, which is not surprising since the Compact is also state law. *See* C.R.S. § 37-67-101. And, the State Engineer is not ignoring the Compact "by curtailing only surface water in Colorado to help make up the Compact shortfall." *See* Foundation's Compact Mot. at 11. The Compact does not prohibit these administrative practices. Instead, the Compact makes allocation of water "subject to the laws of the state, for use in which the allocations are made," C.R.S. § 37-67-101, Article IV, which is what the State Engineer is doing; it is giving effect to the different allocation and administration systems for surface water and designated groundwater. Importantly, the requirement that RRCA Model-predicted depletions from designated basin groundwater pumping have to be "counted" for Compact compliance purposes does not change the Compact or require any different administration than what the State Engineer is doing.

c. The Foundation's third argument is that the State Engineer's "express statutory obligations to administer water to meet Compact commitments are unequivocal – and apply to all waters that are the subject of the Compact." Foundation's Compact Mot. at 11. However, the

Foundation has failed to consider all relevant legal direction to the State Engineer. Section 37-80-102(1)(a) provides that the State Engineer has authority with respect to the "[d]ischarge of the obligations of the state of Colorado imposed by compact." The State Engineer "must make the necessary administrative decisions regarding necessity, timing, amount, and location of intrastate water restrictions in order to ensure that Colorado's critical interstate delivery obligations are fulfilled." *Bijou Irrigation Co.*, 69 P.3d at 69. Thus, the State Engineer must make decisions regarding the administration of the waters, consistent with Colorado law, and there is no "express statutory obligation[]" that the State Engineer administer water in a specific way. *See* Foundation's Compact Mot. at 11. Groundwater that has been designated under the Groundwater Management Act is a different class of groundwater subject to rules that are distinct from the allocation and administration of surface water and tributary groundwater. The State Engineer must recognize this difference in exercising its compact rule powers under C.R.S. § 37-80-104. *Bijou Irrigation Co.*, 69 P.3d at 69.

Further, it is of no consequence that the State Engineer is also the Executive Director of the Commission and Colorado's Compact Commissioner. *See* Foundation's Compact Mot. at 11. As the Executive Director of the Commission, the State Engineer may execute the will of the Commission, but may not direct what the Commission can do. *See* C.R.S. § 37-90-104(6). Similarly, as the "Compact Commissioner," the State Engineer operates under authority delegated by the General Assembly and must give effect to the will of the General Assembly, including the General Assembly's decision to treat designated groundwater differently than surface water as expressed in the Groundwater Management Act. *See* C.R.S. §§ 37-67-101, 37-90-103(6), 37-92-103(13).

d. The Foundation argues that in adopting measurement rules for the Republican River Compact, the State Engineer expressly recognized its legal authority over designated groundwater for purposes of the Compact by referring to the compact rule power. *See* Foundation's Compact Mot. at 11. However, any such recognition would not: 1) create a legal requirement that the State Engineer administer in-state waters in a particular manner; 2) modify any delegation of authority to the State Engineer by the General Assembly; 3) undo any legal rights, including rights to use water, created under Colorado law; or 4) otherwise require the State Engineer to ignore Colorado law and the inherent discretion associated with Compact compliance administration and curtail designated groundwater pumping in the manner the Foundation requests.

e. Next, the Foundation argues that the State Engineer has recognized its authority to regulate designated groundwater by denying an allegation in the Foundation's Complaint. *See* Foundation's Compact Mot. at 12. However, denial of the Foundation's allegation in its Complaint that the "Engineers maintain they have no authority to administer groundwater in the Basin for Compact compliance due to the Ground Water Act" does not and cannot mean that the State Engineer is legally required to curtail designated groundwater pumping in the manner that the Foundation requests.

f. For its final argument, the Foundation asserts that the State and Division Engineers have been aware of the groundwater impacts on surface water, have had "plenty of time to address groundwater depletions so as to avoid curtailing surface water rights," and having failed to take actions to curtail groundwater, the Engineers should not curtail only surface water rights and ignore groundwater pumping. *See* Foundation's Compact Mot. at 12. "Awareness," however, does not an obligation make. The State Engineer's awareness of

groundwater impacts does not create a legal requirement to curtail designated groundwater. Rather, regardless of the potential impact of designated groundwater pumping, the State Engineer has to give effect to the different administration systems for surface water and designated groundwater. Additionally, in the exercise of his discretion, the State Engineer has supported programs within the NHP Basin to assist in Compact compliance, as more fully described in the Amended Motion at 7-8, and the Affidavit of Dawn Webster (Amended Motion, Attach. 2).

c. The State Engineer cannot simply administer surface water and designated groundwater under a single administrative system to "restore pre-Compact use conditions."

As additional support for its argument that the State Engineer is required to curtail designated groundwater pumping from permitted wells in the NHP Basin, the Foundation highlights the increase in groundwater pumping and use since the Compact was signed. The Foundation then asserts that if it is necessary for Compact compliance "to curtail new diversions of water that were appropriated after the Compact was approved in 1942, then that applies to all water users whether they divert surface water or groundwater." Foundation's Compact Mot. at 10. That is, if the State Engineer must curtail surface diversions with priorities junior to 1942, then it must also curtail groundwater diversions (including diversions of designated groundwater) with priorities junior to 1942. According to the Foundation, such "equal curtailment" is required in order for the State Engineer to comply with its compact rule power "to restore lawful use conditions as they were before the effective date of the compact." Foundation's Compact Mot. at 10.

The Foundation's equal curtailment argument fails because it overlooks two critical qualifiers that guide the State Engineer's discretion in the exercise of its compact rule power.

Specifically, in exercising that power, the State Engineer's administration must be "legal" as well as equitable, and restoration of prior lawful use conditions is required only "insofar as possible." C.R.S. § 37-80-104.

Given these qualifiers, the State Engineer has to give effect to the current legal landscape including the General Assembly's enactment of the Groundwater Management Act in 1965—23 years after the Compact was signed—which created a separate allocation and administration system for designated groundwater as explained in Section IV.B. above. Importantly, once the NHP Basin was designated, the water court was divested of jurisdiction to award water right priorities to groundwater pumpers in that Basin which would be comparable to surface water right priorities under the 1969 Act. Thus, any attempt at the Foundation's proposed "equal curtailment" administration would unfairly prejudice designated groundwater pumpers who fully complied with the provisions of the Groundwater Management Act to perfect their designated groundwater rights because they do not have a priority date under the 1969 Act.

Similarly, the State Engineer cannot ignore the legal status of designated groundwater being pumped from wells in the NHP Basin for which final permits have been issued through the process set out in the Groundwater Management Act. Despite what the RRCA Model may or may not show today, the groundwater being pumped from those permitted wells was finally determined by the Commission to be "ground water which in its natural course would not be available to and required for the fulfillment of decreed surface rights." *See* C.R.S. § 37-90-103(6)(a). The time for appealing that determination has long expired. *See* C.R.S. § 37-90-115.

It is not possible under the applicable legal framework for the State Engineer to administer pumping of designated groundwater from permitted wells in the NHP Basin as if that groundwater was tributary groundwater with 1969 Act priorities. In turn, it is not possible for the

State Engineer to administer surface water and designated groundwater "equally" so as to restore pre-Compact use conditions.

As well, the State Engineer's compact rule power does not even require "equal curtailment" administration of surface water and tributary groundwater. As mentioned, in *Bijou Irrigation Co.*, 69 P.3d 50, the Court addressed how surface water and tributary groundwater should be administered for compliance with the South Platte River Compact. Unlike the Republican River Compact, the South Platte River Compact actually requires the State Engineer to curtail diversions using simple priority administration—to curtail diversions "with priority dates junior to June 14, 1897." *Id.* at 69. Despite this plain language, the Court rejected an "equal curtailment" administration of surface water and tributary groundwater for compact compliance given the complexity of determining when and to what extent curtailment of tributary groundwater pumping must occur to ensure adequate delivery at the state line. *Id.* at 69-70. Instead, the Court held that the State Engineer had discretion under its compact rule power to promulgate rules for "additional intrastate water administration beyond the simple priority administration" to ensure compact compliance. *Id.* at 70.

Thus, the Foundation's assertion in its Section IV.B., that "Any Curtailment of Water for Compact Compliance Must Apply Equally to Surface and Ground Water Diverters – or Not at All," Foundation's Compact Mot. at 8, is wrong even in the context of surface and tributary groundwater that are both regulated under the 1969 Act. The *Bijou Irrigation* Court's conclusion that curtailment does not have to be "equal" applies with even greater weight in the present context where the groundwater at issue is, as a matter of law, designated groundwater that is separately administered under the Groundwater Management Act.

C. Neither the Compact nor the Compact Litigation and Settlement Require the State Engineer to Administer Surface Water and Designated Groundwater in the Same Manner for Compact Compliance Purposes.

The Foundation appears to argue that equal curtailment of surface water and designated groundwater is required because "the Compact does not require surface water curtailment without curtailment of groundwater," and "the United States Supreme Court has already determined that the Compact restricts groundwater consumption to whatever extent it depletes stream flow in the Basin." Foundation's Compact Mot. at 9-10. There are two fatal flaws with this argument.

First, the Compact does not require surface water and groundwater (tributary or designated) to be curtailed "equally" as the Foundation is proposing. Indeed, as the Foundation later concedes, the Compact does not specify how administration of waters allocated to the state is to occur. *See* Foundation's Compact Mot. at 14. The provision in the Compact that actually controls is the one that leaves allocation decisions to the states—Article IV which provides that "[t]he use of the waters hereinabove allocated shall be subject to the laws of the State, for use in which the allocations are made." C.R.S. § 37-67-101. The fact that the Compact does not require surface water curtailment without curtailment of groundwater is inconsequential.

Second, the Foundation has mischaracterized the outcome of the Compact litigation. In its report to the Supreme Court, the Special Master held that allocation of waters under the Compact did include groundwater, but recognized the State's discretion in managing the waters allocated to it:

> To whatever extent groundwater pumping depletes the stream flow in the Basin, such depletion constitutes consumption of a part of the virgin water supply and must be counted against the allocated share of the pumping State. The use of a State's allocation through groundwater pumping is permissible, but such pumping is subject to the restrictions imposed by the Compact allocations.

See First Report of the Special Master (Subject: Nebraska's Motion to Dismiss), State of Kansas v. State of Nebraska, No. 126, at 2-3 (Jan. 28, 2000) ("First Report") (emphasis added) (previously filed as the Foundation's Ex. 7, also available at 2000 WL 35789995).

In support of this determination, the Special Master explained that "[b]y its plain terms," Article IV's directive that "[t]he use of the waters hereinabove allocated shall be subject to the laws of the State, for use in which the allocations are made," merely states "it is up to each State to decide how to use the water it is allocated; it says nothing about *which* water is allocated under the Compact." First Report at 29 (first emphasis added). Thus, although the Special Master concluded that groundwater would be counted for purposes of the allocation under the Compact, the Special Master also concluded that a state could take its allocation through groundwater or surface water use. Similarly, in approving the Special Master's report, the United States Supreme Court simply approved the requirement that the depletions caused by groundwater pumping be counted against the allocated share of the State where the pumping was occurring. The Foundation is wrong to characterize this holding as a determination that the Compact restricts groundwater consumption to whatever extent it depletes stream flow in the Basin.

The Final Settlement Stipulation entered into by the states did not change this outcome. *See* Final Settlement Stipulation, Kansas v. Nebraska, No. 126 (Dec. 15, 2002) (approved in *Kansas v. Nebraska*, 538 U.S. 720 (2003)) (previously filed as Foundation's Ex. 9). As discussed in the Defendants' Designated Groundwater Administration Motion at pages 14-15, the Settlement Stipulation did not mandate a specific method, process, or in-state administrative approach by which Colorado must satisfy its obligations under the Compact. *See generally* Final Settlement Stipulation.

In sum, neither the Compact nor the Compact litigation and settlement require the State Engineer to administer surface water and designated groundwater in the same manner for Compact compliance purposes. A requirement for "counting" depletions does not rise to the level of a legal mandate to curtail designated groundwater wells. This is especially true when there are other means by which the groundwater component of Colorado's Compact obligation can be administered, such as, *inter alia*, the Compact Compliance pipeline, described in the Foundation's Complaint at ¶ 44. *See also*, Amended Motion at 7-8; Affidavit of Dawn Webster (Amended Motion, Attach. 2); Affidavit of Willem Schreüder, Ph.D. (State Engineer's Response, Ex. C).

Finally, the compact cases cited by the Foundation which it asserts exemplify "numerous instances in the past in which the need to curtail or augment groundwater was recognized as being needed to help achieve compact compliance and/or to help protect surface water rights," are inapposite because they involve administration of compacts other than the Republican River Compact (or, in the case of *Fellhauer*, do not even involve administration of a compact, and as noted above at Footnote 4 the Arkansas River Rules expressly do not apply to wells in designated basins). *See* Foundation's Compact Mot. at 10-11. Which interstate compact applies is significant, because Colorado's various interstate compacts all have different provisions, and analysis of one compact is not necessarily applicable to another compact. As discussed in the Defendants' Designated Groundwater Administration Motion, some interstate compacts have provisions specifying how obligations must be satisfied. *See* C.R.S. § 37-65-101, South Platte River Compact, Art. IV, § 2 (provision specifying how and when particular water right priorities will be curtailed for compact compliance); C.R.S. § 37-63-101, La Plata River Compact, Art. II. *See also* Defs.' Mot. at 14. However, by its plain language, and as acknowledged by the

Foundation, there is no such specification in the Republican River Compact, except for the Pioneer Ditch.

D. For the Reasons Described Above, the State Engineer's Decisions Are Not Arbitrary or Capricious, in Violation of the Equal Protection Clause, or in Violation of the Due Process Clause.

The Foundation argues that the State Engineer's decisions are arbitrary and capricious, and in violation of the equal protection clause and the due process clause of the U.S. and Colorado constitutions. *See* Foundation's Compact Mot. at 12-13. The Foundation has failed to meet its burden under any of these premises.[5]

For an action to be arbitrary and capricious, the decision must be unsupported by any competent evidence. *See Bd. of Cty. Comm'rs v. Colo. Bd. of Assessment Appeals*, 628 P.2d 156, 158 (Colo. App. 1981). As described above and in Defendants' Designated Groundwater Administration Motion, the State Engineer must administer compacts in accordance with state law, and the State Engineer's administrative decisions are grounded in Colorado's differing systems for surface water and designated groundwater. *See* Defs.' Mot. at 27.

The Foundation's argument that "the Engineers cannot impose the burden of curtailment on a few, when the problem was created by the many" does not result in a finding of unconstitutionality under the equal protection clause. Foundation's Compact Mot. at 12. The Foundation has failed to meet its burden of showing that the decision is not reasonable and does not bear a rational relationship to a legitimate state objective. *See Cent. Colo. Water*

[5] For purposes of this Response, the Defendants assume that the Foundation has the ability to challenge the State Engineer's actions on the aforementioned grounds. While the Foundation generally disagrees with certain actions or inactions, it has not identified any order or determination that it is appealing, and has not clarified whether it is acting under the State Administrative Procedure Act, C.R.S. § 24-4-101 *et seq.* Furthermore, the Foundation has failed to identify any applicable legal standards to support its claims that the curtailment of surface water under the Compact is arbitrary or capricious and in violation of due process, and these challenges should be denied on this basis alone. *See* C.R.C.P. 121, § 1-15(3) ("If the moving party fails to incorporate legal authority into the motion . . . the court may deem the motion abandoned and may enter an order denying the motion.").

Conservancy Dist. v. Simpson, 877 P.2d 335, 341 (Colo. 1994); *Scholz v. Metro. Pathologists, P.C.*, 851 P.2d 901, 906 (Colo. 1993); *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1016 (Colo. 1982). *See also* Defs.' Mot. at 24-25. Constitutionality is presumed under rational relationship standard of review, and the Foundation has failed to demonstrate that the decision is unconstitutional beyond a reasonable doubt. *See Scholz*, 851 P.2d at 906. As discussed above and in Defendants' Designated Groundwater Administration Motion, the General Assembly imposed different administrative schemes on surface water rights and designated groundwater rights to advance legitimate government purposes of promoting full economic development of designated groundwater. *See* Defs.' Mot. at 20-22.

Further, the Foundation has not demonstrated that the State Engineer's discretionary administration decisions violate the due process clauses of the U.S. Constitution or Colorado Constitution. A person may not be deprived by the state of life, liberty, or property without due process of law. U.S. Const. amend XIV, § 1; Colo. Const. art. II, § 25. The Foundation's Compact Motion does not provide legal or factual analysis as to why the State Engineer's administration decisions violate due process. *See generally* Foundation's Compact Mot.; *see* Defs.' Mot. at 25-26. Under either substantive or procedural due process, the decisions are constitutional. The challenged action does not infringe upon a fundamental constitutional right, and passes the rational basis test, as described above. Thus, the decision does not violate substantive due process. *See City & Cty. of Broomfield v. Farmers Reservoir & Irrigation Co.*, 239 P.3d 1270, 1277 (Colo. 2010). Furthermore, the action passes the procedural due process tests, because there have been adequate advance notice and opportunity provided to challenge the designation of the basin, and issuance of the well permits, among other opportunities. *See Meridian Ranch Metro. Dist. v. Colo. Ground Water Comm'n*, 240 P.3d 382, 391 (Colo. App.

2009). For the reasons discussed herein, as well as in Defendants' Designated Groundwater Administration Motion, the Foundation has failed to satisfy its burden to demonstrate the actions are unconstitutional.

E. Even If the State Engineer's Compact Administration Was Unlawful, the Foundation Is Not Entitled to Summary Judgment Because It Has Not Demonstrated Injury or That the Relief Requested Will Remedy That Injury.

As the foregoing demonstrates, the State Engineer's administration of the Compact is consistent with Colorado law, and is not unconstitutional as a matter of law, and on that basis alone the Foundation's Compact Motion should be denied. There is a separate and independent basis upon which the Court could also deny the Foundation's Compact Motion.

The Foundation is seeking a declaratory judgment that the current administration of water in the Republican River Basin under the Compact is unlawful, "resulting in injury to the Foundation's water rights." *See* Compl. ¶¶ 92.A-B. Thus, the underlying premise for the Foundation's Compact Motion is that the alleged unlawful administration of the Compact is causing injury to the Foundation's surface water rights.

The Uniform Declaratory Judgments Law, C.R.S. §§ 13-51-101 *et seq.*, is a remedial statute. *See, e.g., Mt. Emmons Mining Co.*, 690 P.2d at 240. "The primary purpose of a declaratory judgment is to enable parties, in a proper case, to obtain a determination of their rights and duties in advance of the time when litigation might possibly arise or before the repudiation of obligation, the invasion of rights, or the commission of wrongs." *Cann*, 534 P.2d at 347.

While "the required showing of demonstrable injury is somewhat relaxed in declaratory judgment actions," a party "must still demonstrate that the challenged statute or ordinance will likely cause tangible detriment to conduct or activities that are presently occurring or are likely

to occur in the near future." *Mt. Emmons Mining Co.*, 690 P.2d at 240. Importantly, the requirements for granting summary judgment are not any less stringent simply because a party has brought an action for declaratory judgment. *Cf. id.* (addressing a declaratory judgment action with constitutional claims).

Legal injury to the Foundation's surface water rights would be governed by the 1969 Act, which requires distinct factual findings, as the injury determination is a factual inquiry. *See, e.g., City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1, 88 (Colo. 1996). "The issue of injurious effect is inherently fact specific and one for which [the courts] have always required factual findings." *State Eng'r v. Castle Meadows, Inc.*, 856 P.2d 496, 508 (Colo. 1993). The Foundation has asserted numerous historical facts pertaining to its alleged injury but these historical facts, even if undisputed, do not demonstrate actual injury to the Foundation's surface water rights that are actually caused by the non-curtailment of designated groundwater well pumping. Significantly, the Foundation cannot rely on the RRCA Model to meet its factual burden. *See* Affidavit of Willem Schreüder, Ph.D. (State Engineer's Response, Ex. C). Nor do these historical facts prove that the relief requested by the Foundation—equal curtailment of surface water and designated groundwater—will remedy the alleged injury.

The Foundation's alleged injury is similar to the situation in *Mt. Emmons Mining Co.*, 690 P.2d 231. In that case, the Court found there were unresolved factual questions relating to the existence, nature, and extent of any injury the plaintiffs might sustain. *Id.* at 241. In granting summary judgment in favor of the plaintiffs, the district court had reached a "summary adjudication of issues based on a series of assumed facts." *Id.* at 242. The Colorado Supreme Court, in reversing the entry of summary judgment, stated: "these assumptions are mere hypothetical possibilities and nothing more [which] serves only to point up once again the broad

array of questions that must yet be resolved before . . . [plaintiffs'] claims can be appropriately resolved by summary judgment." *Id.* According to the *Mt. Emmons Mining* Court, sound jurisprudence suggests that a decision be withheld "until such time as the issues are solidly fixed by an evidentiary record that will permit a final resolution of the controversy." *Id*. at 240-41.

Similarly here, the Foundation's Compact Motion involves hypothetical possibilities, as the Foundation has not yet developed an evidentiary record that demonstrates actual injury to the Foundation or relief for that injury by the requested relief. The Declaratory Judgment Law is a remedial statute, and a court may refuse to enter declaratory judgment where such judgment "would not terminate the uncertainty or controversy." C.R.S. § 13-51-110; C.R.C.P. 57(f). Even if the Court determines that Colorado law supports the Foundation's administration claims, the Court should decline to enter summary judgment in favor of the Foundation absent a full evidentiary record demonstrating that the Foundation has been injured and will be afforded some relief under its requested ruling.

As an example, it is difficult to imagine how equal administration of surface water and designated groundwater (if even possible under Colorado's existing legal framework) would provide any relief for the Foundation's claimed injury. Under such an administration scheme, the Foundation's junior water rights would still be subject to a curtailment order. Further, given the "lag time" characteristics pertaining to groundwater withdrawals, it is not at all clear that curtailing designated groundwater wells would make any more surface water available to the Foundation's water rights. Thus, a grant of summary judgment on this request for declaratory judgment, without any actual findings of injury or relief for that the injury, would result in no more than an advisory opinion, a result which this Court should avoid. *See Three Bells Ranch Assocs.*, 758 P.2d at 168-69.

V. CONCLUSION

For the reasons discussed in this Response and in the Defendants' Designated Groundwater Administration Motion, this Court should deny the Foundation's Motion for Summary Judgment on its Compact Administration Claim.

Respectfully submitted this 8th day of April, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April, 2016, I served a true and correct copy of the foregoing **RESPONSE TO THE JIM HUTTON EDUCATIONAL FOUNDATION'S MOTION FOR SUMMARY JUDGMENT ON ITS COMPACT ADMINISTRATION CLAIM RELATED TO DESIGNATED GROUNDWATER** by ICCES e-filing addressed to the following:

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Marks Butte Ground Water Mgmt Dist	Leila Christine Behnampour	Vranesh and Raisch
May Acres Inc	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
May Acres Inc	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
May Brothers Inc	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
May Brothers Inc	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
May Family Farms	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
May Family Farms	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
North Well Owners	Russell Jennings Sprague	Colver Killin and Sprague LLP
North Well Owners	Kimbra L. Killin	Colver Killin and Sprague LLP
Plains Ground Water Mgmt Dist	Eugene J Riordan	Vranesh and Raisch
Plains Ground Water Mgmt Dist	Leila Christine Behnampour	Vranesh and Raisch
Protect Our Local Communitys Water Llc	John David Buchanan	Buchanan Sperling and Holleman PC
Protect Our Local Communitys Water Llc	Timothy Ray Buchanan	Buchanan Sperling and Holleman PC
Republican River Water Conservation Dist	Peter J Ampe	Hill and Robbins PC
Republican River Water Conservation Dist	David W Robbins	Hill and Robbins PC
Sandhills Ground Water Mgmt Dist	Eugene J Riordan	Vranesh and Raisch
Sandhills Ground Water Mgmt Dist	Leila Christine Behnampour	Vranesh and Raisch
Saving Our Local Economy Llc	John David Buchanan	Buchanan Sperling and Holleman PC
Saving Our Local Economy Llc	Timothy Ray Buchanan	Buchanan Sperling and Holleman PC
State Engineer	Colorado Division of Water Resources	State of Colorado - Division of Water Resources
State Engineer	Ema I.g. Schultz	CO Attorney General
State Engineer	Preston Vincent Hartman	CO Attorney General
Steven D Kramer	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
Steven D Kramer	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
The Jim Hutton Educational Foundation	Steven J Bushong	Porzak Browning & Bushong LLP
The Jim Hutton Educational Foundation	Karen Leigh Henderson	Porzak Browning & Bushong LLP
The Jim Hutton Educational Foundation	Steven J Bushong	Porzak Browning & Bushong LLP
The Jim Hutton Educational Foundation	Karen Leigh Henderson	Porzak Browning & Bushong LLP
Thomas R May	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
Thomas R May	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
Timothy E Ortner	Alvin Raymond Wall	Alvin R Wall Attorney at Law
Tri State Generation And Transmission As	Aaron S. Ladd	Vranesh and Raisch
Tri State Generation And Transmission As	Justine Catherine Shepherd	Vranesh and Raisch
Tri State Generation And Transmission As	Roger T Williams JR.	TriState Generation and Transmission Assoc Inc
Wy Ground Water Mgmt Dist	Eugene J Riordan	Vranesh and Raisch
Wy Ground Water Mgmt Dist	Leila Christine Behnampour	Vranesh and Raisch
Yuma Cnty Water Authority Public Improv	Steven Owen Sims	Brownstein Hyatt Farber Schreck LLP

Yuma Cnty Water Authority Public Improv	John A Helfrich	Brownstein Hyatt Farber Schreck LLP
Yuma Cnty Water Authority Public Improv	Dulcinea Zdunska Hanuschak	Brownstein Hyatt Farber Schreck LLP

*/s/ Justine C. Shepherd*_____
/s/ signature on file
Pursuant to C.R.C.P. 121, §1-26(7)

SIGNED DOCUMENT BEING RETAINED AT THE OFFICE OF
VRANESH AND RAISCH, LLP