

<p>DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO</p> <p>Weld County Courthouse 901 9<sup>th</sup> Avenue P.O. Box 2038 Greeley, Colorado 80631 (970) 351-7300</p>	<p>DATE FILED: November 16, 2016 10:22 PM</p> <p><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p>
<p><b>Plaintiff:</b> The Jim Hutton Educational Foundation, a Colorado non-profit corporation,</p> <p><b>v.</b></p> <p><b>Defendants:</b> Dick Wolfe, in his capacity as the Colorado State Engineer; David Nettles, in his capacity as Division Engineer in and for Water Division No. 1, State of Colorado; Colorado Division of Water Resources; and Colorado Division of Parks and Wildlife.</p> <p><b>Defendant-Intervenors:</b> Yuma County Water Authority Public Improvement District; Colorado Ground Water Commission; Marks Butte, East Cheyenne, Frenchman, Sandhills, Central Yuma, Plains, W-Y, and Arikaree Ground Water Management Districts.</p> <p><b>Defendant – Well Owners:</b> Republican River Water Conservation District; City of Wray; City of Holyoke; Harvey Colglazier; Lazier, Inc.; Marjorie Colglazier Trust; Mariane U. Ortner; Timothy E. Ortner; Protect Our Local Community’s Water, LLC; Saving Our Local Economy, LLC; the “North Well Owners”; Tri-State Generation and Transmission Association, Inc.; Dirks Farms Ltd; Julie Dirks; David L Dirks; Don Andrews; Myrna Andrews; Nathan Andrews; Happy Creek, Inc.; J&amp;D Cattle, LLC; 4M Feeders, Inc.; May Brothers, Inc.; May Family Farms; 4M Feeders, LLC; May Acres, Inc.; Thomas R. May; James J. May; Steven D. Kramer; Kent E. Ficken; Carlyle James as Trustee of the Chester James Trust; Colorado Agriculture Preservation Association; Colorado State Board of Land Commissioners; and the City of Burlington.</p>	<p>Case Number: <b>15CW3018</b></p> <p>Div. No. 1</p>
<p align="center"><b>JIM HUTTON EDUCATIONAL FOUNDATION’S REPLY IN SUPPORT OF MOTION FOR CERTIFICATION OF FINAL JUDGMENT PURSUANT TO C.R.C.P. 54(b) AND RESPONSE TO JOINT MOTION FOR STAY PENDING APPEAL</b></p>	

Plaintiff, the Jim Hutton Educational Foundation (“Foundation”), acting by and through undersigned counsel, hereby submits this Reply in support of its Motion for Certification of Final Judgment Pursuant to C.R.C.P. 54(b) (“Motion for Certification”) and this Response to Defendants’ Joint Motion for Stay Pending Appeal (“Motion for Stay”).

## INTRODUCTION

By the Motion for Certification, the Foundation seeks to appeal the dismissal of Claim 2, which was part of the Order Granting the Colorado Ground Water Commission's Motion to Dismiss Plaintiff's Second Claim for Relief and a Portion of Plaintiff's Third Claim ("Dismissal Order"). Certain Defendant-Intervenors and Defendant-Well Owners oppose the Motion for Certification. The State and Division Engineers do not object to the Motion for Certification and the other original Defendants were silent. The Motion for Stay was supported by numerous parties, including the original Defendants. For simplicity, the Defendants, Defendant-Intervenors, and Defendant-Well Owners are often referred to collectively herein as Defendants.

The Foundation combines its Reply in support of its Motion for Certification and Response to the Motion for Stay because the issues are interrelated. Defendants link the two issues together in their briefing and through their characterization of the requested relief. For example, the stay is requested "[i]n the event that the Court grants Plaintiff's Motion [for Certification]." *Motion for Stay*, p.1; see also *10/14/16 Minute Order* ("Defendants would only agree to certify if the trial on the remaining issues [in] the case was stayed"). Further, the Motion for Stay is predicated largely upon the argument that certification will result in the inefficiency of two trials. The Response to Motion for Certification also repeatedly raises the specter of potential "multiple trials" if certification is granted. *Response to Motion for Certification*, pp. 5, 6, 7.

The Foundation strongly disagrees that certification would lead to more than one trial as described below. That is, however, an issue this Court should rule upon. Because, if this Court agrees with Defendants' underlying argument that the remaining issues before the Court cannot be fully addressed until after the Supreme Court rules on an appeal of the Dismissal Order, that is

both further justification on why certification is necessary, and a reason why the Foundation would, under those circumstances, consent to the Motion for Stay. The remainder of the Defendants arguments on why certification should be denied are also addressed below.

## **ARGUMENT**

### **1. Certification of the Dismissal Order Will Not Result in Two Trials.**

The Foundation alleged in Claim 2 that SB-52 was unlawful because, among other things, it was unconstitutionally retrospective legislation that injured vested rights and eliminated remedies in existence for surface water rights when the NHP Basin was originally designated. If the Foundation is correct that SB-52 is unlawful, then as stated in the Complaint ¶ 75, and in its SB-52 briefing, the Foundation would proceed to file the type of petition with the Ground Water Commission that SB-52 currently prohibits – namely – a petition seeking a determination that the NHP Basin includes improperly designated ground water, the withdraw of which is impacting surface water rights. This is precisely what C.R.S. § 37-90-106(1)(a) allowed prior to SB-52. *See Gallegos v. Colo. Ground Water Comm’n*, 147 P.3d 20, 31 (Colo. 2006). Indeed, SB-52 was an effort to un-do *Gallegos* and the rights previously afforded to surface right owners under § 37-90-106(1)(a).

If this Court grants certification, the Colorado Supreme Court’s ruling on the Dismissal Order would not change the remainder of the pending matters. Claim 2 is a legal challenge on the lawfulness of SB-52 and is a stand-alone claim. In briefing the merits of Claim 2, the parties agreed that it raised only legal issues and there were no genuine issues of material fact.<sup>1</sup> If the

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<sup>1</sup>*Defendants’ Motion for Summary Judgment on Constitutionality of Senate Bill 10-52*, p.5 (“The interpretation of SB-52 is a question of law and thus there are no genuine issues of material fact relating to the Foundation’s claim that SB-52 is unconstitutional”); *Foundation’s Response to the Motion for Summary Judgment on the Constitutionality of Senate Bill 10-52*, p.2 (“The Foundation agrees with Defendants that the interpretation of SB-52 is a question of law and that there are no genuine issues of material fact relating to the Foundation’s claim that SB-52 is unconstitutional”); *Foundation’s Motion for Summary Judgment on its Senate Bill 52 Claim*, pp. 5-6 (setting forth undisputed facts that help frame the issue). Defendants subsequently claimed “there are unresolved factual

Colorado Supreme Court overrules the Dismissal Order without addressing the underlying merits, then the claim would return to the Water Court and is already fully briefed for disposition without trial. If the Colorado Supreme Court agrees with the Water Court, then Claim 2 is dismissed. In either event, however, the other claims would proceed to trial before the Water Court. Similarly, if certification of Claim 2 is denied, the remaining claims would proceed to trial. All that denial of certification would do is delay a resolution of Claim 2 – which is the apparent goal of the Intervenor and Well-Owner Defendants.

The need for only one trial is further evident when examining Claim 1. Claim 1 challenges the lawfulness of current administration of surface water. This includes, “whether it is lawful for the Engineers to curtail only surface water to help comply with the Compact, without curtailing groundwater, when groundwater depletions are causing Colorado’s overdraft” and whether such administration satisfies the legal requirement to “equitably curtail diversions among appropriators so as to restore lawful use conditions as existed as the time of the Compact and in a manner consistent with the constitutional prior appropriation doctrine.” *The Jim Hutton Educational Foundation’s Motion for Summary Judgment on its Compact Administration Claim* (“Compact Motion”), p. 2. Claim 1 also challenges how certain Defendants unlawfully operate Bonny Reservoir to the injury of the Foundation. Nowhere does Claim 1 purport to rely upon the constitutional challenge of SB-52, and nowhere in the volumes of briefing do any parties contend that a resolution of the SB-52 challenge is a prerequisite to determining Claim 1.<sup>2</sup>

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questions relating to the existence, nature and extent of any injury the Foundation has or may sustain from the alleged unconstitutionality of SB-52,” but do not specifically contest any background fact cited by the Foundation except for the Commission’s support for SB-52. *Defendants’ Response to Plaintiff’s Motion for Summary Judgment on its Senate Bill 52 Claim*, p. 4; *Foundation’s Reply in Support of its Motion for Summary Judgment on its Senate Bill 52 Claim*, pp. 2-3.

<sup>2</sup>In addition to the Foundation’s Compact Motion, responses thereto, and the Foundation’s related reply, there was also full briefing on a Motion for Partial Summary Judgment on Claim 1 Re: State Engineer Administration of Designated Groundwater; the Foundation’s Motion for Summary Judgment, or in the Alternative a Motion for

A. Defendants' Arguments that Certification May Cause Two Trials Are without Merit.

Defendants do not contend in their Motion for Stay and Response to Motion for Certification that a final resolution of Claim 2 will require a trial. Instead, Defendants' argument that multiple trials may be required if certification is approved is derived from its misinterpretation of both Claim 1 and the Dismissal Order, as explained below.

The Motion for Stay argues that “[b]ased upon its ruling dismissing Claim 2, the Water Court initially must assume that the surface water rights and designated groundwater rights are in different administrative systems” for purposes of Compact administration. (*Motion to Stay*, p.6). “But if the Supreme Court in some manner finds that both surface and designated groundwater rights should be administered and evaluated in the same system, the Water Court would have to hold a second trial to infer priority dates for the designated groundwater rights . . . .” (*Id.*). Similarly, the Motion to Stay states that “administration and operation of Bonny Reservoir are also affected by the decision as to whether designated groundwater and surface water rights are administered separately or together.” (*Id.*).

A ruling on appeal of the Dismissal Order does not even raise the issues argued in the Motion for Stay. Further, this Court has already resolved certain relevant legal issues in its Order Re: Claim 1. As this Court ruled, “it cannot be questioned that Colorado water appropriators, regardless of whether the water is derived through surface water diversions or designated groundwater withdrawals, are subject to Colorado’s Compact obligations.” *Order Re: Claim 1*, p.12. Not only is that ruling well-founded in law, but it is the only practical result given the determinations of the Special Master of the United States Supreme Court and the results of the RRCA groundwater model approved by the United States Supreme Court, which

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Determination of Question of Law, Regarding Its Bonny Reservoir Claim; and Colorado Parks and Wildlife’s Motion for Summary Judgment.

documents over 38,000 acre-feet of river depletions caused by designated groundwater wells in a single year. *Compact Motion*, pp.4—6. Indeed, the Special Master ruled that “as a matter of law, the Compact restricts, and allocated . . . any ground water that would become part of the stream flow in the Basin if not previously depleted through the activity of man such as pumping”). *First Report of the Special Master*, p. 34, *Exh. 7*.

Claim 1 does not somehow presuppose that surface water and designated groundwater must be administered in the same system. Instead, as already briefed in detail by the Foundation, both designated groundwater wells and surface water rights deplete the flows of the river, are subject to the Compact, and subject to administration by the State Engineer. The question is whether that ongoing administration of surface water rights is unlawful given that only surface water rights are curtailed – even though designated groundwater wells caused Colorado’s Compact compliance problem. *See Compact Motion*, pp. 6 – 12.

Defendants offered a jurisdictional argument during the October 14, 2016 status conference for why two trials might be needed. As summarized by this Court in its October 14 Minute Order, Defendants argued as follows:

The Defendants believe the remaining issues concern whether the Engineers acted in an arbitrary and capricious manner in the curtailment of surface water rights without ground water well curtailment. Defendants feel that unless the Court has jurisdiction over the appropriateness of the Engineer’s administrative actions with respect to the wells, alongside jurisdiction it already holds over administration of the surface water rights, it cannot fully answer the questions presented. Defendants feel that with only jurisdiction over surface water rights at the moment, two trials would ultimately be necessary, which would not promote judicial efficiency or provide the full picture of the greater issues.

In other words, Defendants apparently claim that given the Dismissal Order, the Court has no jurisdiction to consider ground water depletions in the context of Compact administration.

This is a new argument that Defendants chose not to flesh out in their Motion for Stay or in their Response to Motion for Certification. As previously briefed, the State Engineer is responsible for administration of waters to achieve Compact compliance, and in this instance, both designated groundwater and surface water are subject to the Compact. *See, e.g., Compact Motion; Order Re: Claim 1.* Under Claim 1, “the Foundation seeks a determination that the current ‘intrastate administration of surface water is unlawful.’ ‘[G]iven that the unlawful Compact administration being asserted is the curtailment of only surface water, the ultimate result may very well be the curtailment of designated groundwater for Compact purposes. However, the Complaint does not seek to compel such curtailment. Nor is it the only possible solution.” *Foundation’s Reply in Support of its Motion for Summary Judgment on Compact Administration Claim, p. 5 (Citations omitted) (emphasis in original).* The Water Court’s jurisdiction to consider the lawfulness of such Compact administration is not constrained by the fact that designated groundwater pumping is at issue under the Compact. To the extent Defendants brief this issue, the Foundation reserves the right to respond if needed.

**B. If the Water Court Determines that Two Trials Will be Necessary if Certification is Granted, or that its Jurisdiction to Fully Consider Claim 1 is Limited, then the Foundation Would Consent to the Motion for Stay under those Circumstances.**

For the reasons set forth above, the Foundation does not believe that certification of Claim 2 will result in multiple trials or otherwise have any bearing on its other claims. If the Court agrees, there is no just cause for delaying the certification and no basis for staying the trial.

If this Court disagrees with the Foundation and finds either that an appeal of Claim 2 would result in multiple trials, or that it does not have the jurisdiction to fully consider Claim 1, then the Foundation would consent to the Motion for Stay under those limited circumstances. It would not make sense, for example, to proceed to trial on Claim 1 if, as Defendants argued at the

status conference, this Court would not have jurisdiction to consider the groundwater pumping depletions that caused the Compact compliance problems and resulted in a curtailment of the Foundation's surface water rights and the draining of Bonny Reservoir. In such an instance, it would make more sense to first appeal the Dismissal Order and include in that appeal any related jurisdictional determination that limits the scope of evidence that may be presented for Claim 1.<sup>3</sup> Indeed, if the Foundation's remaining claims cannot be fully litigated until these jurisdictional questions are resolved on appeal, that would be further justification on why an immediate appeal is necessary.

## **2. Defendants Remaining Arguments to Deny Certification Are Without Merit**

"Defendants do not dispute the first two requirements [for certification] are satisfied," but challenge whether there is "just reason for delay." *Response to the Motion for Certification*, p.6. Turning to the other arguments not addressed above, Defendants argue (A) the merits of the Dismissal Order and any appeal justify delay; (B) that it would be inappropriate and an advisory opinion if the Colorado Supreme Court addressed the underlying merits; (C) that there is no factual record; and (D) other reasons why delay is appropriate in this instance. Each of these is addressed in turn.

### **A. Defendants' Arguments on the Merits of the Dismissal Order and Appeal Do Not Justify Denial of Certification.**

Defendants argue the merits of the Court's Dismissal Order and why it is "unlikely the Colorado Supreme Court would reverse the Dismissal Order." *Response to Motion for Certification*, p. 7; *see also Id. at 9, 11*. Defendants also argue the "Foundation can remedy any

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<sup>3</sup> If this Court interprets its Dismissal Order more broadly so as to effectively prevent a full adjudication of Claim 1, then the Foundation will seek to include such a determination as part of the certification, because a broad ruling that designated groundwater is outside the Court's jurisdiction in the Compact administration arena, would effectively terminate the Foundation's Compact Administration Claim, making an appeal to the Supreme Court appropriate before moving forward with the Water Court case. *See Widefield Water and Sanitation Dist. v. Witte*, 340 P.3d 1118, 1120 (Colo. 2014) (considering an interlocutory appeal); *see also Exhibit 43*, hereto, on the certification that led to the interlocutory appeal considered in *Widefield Water*.



‘ongoing injury’ by going straight to the Commission.” *Id.* at 10. In making these arguments, Defendants do not respond to the jurisdictional dilemma created by the Dismissal Order set forth in the *Motion for Certification*, p.4.

The Dismissal Order requires the Foundation to take the very action that SB-52 prohibits before being able to challenge SB-52 in Court. Specifically, as modified by SB-52, § 37-90-106(1)(a) states that **“the legal status of groundwater included in a designated groundwater basin cannot be challenged”** and **“any request to exclude wells** that are permitted to use designated groundwater from an existing ground water basin **shall constitute an impermissible collateral attack on the original decision to designate the basin.”** C.R.S. § 37-90-106(1)(a) (emphasis added). Since SB-52 precludes a legal challenge of already designated groundwater, requiring a successful challenge of designated groundwater before the lawfulness of SB-52 can be challenged means the Foundation has no remedy at all. *See Dismissal Order*, p. 3 (The Foundation must “prove to the satisfaction of the Commission . . . that water presently classified as designated ground water is hydraulically connected to surface water and that well pumping within the NHP Basin is having more than a *de minimis* impact on Plaintiff’s surface water rights.”) (citing *Gallegos*, 147 P.3d at 31-32); *see also Id.* at 16.<sup>4</sup> There is no just cause for delay in resolving this type of conflict in the law to allow the protection of valuable water rights.

The cases cited by Defendants to support their position are all pre-SB-52 cases, with the exception of *Meridian Serv. Metro Dist. v. Colo. Ground Water Comm’n*, 361 P.3d 392 (Colo. 2015). In *Meridian*, the jurisdictional question was whether the surface water that an entity sought to appropriate was actually recharge for designated groundwater. *Id.* at 394-395.

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<sup>4</sup> The Court further held in *Gallegos*, 147 P.3d at 32, that “before jurisdiction vests in the water court, the Commission must redraw the boundaries of the basin to exclude the improperly designated ground water.” As noted above, SB-52 was intended to render *Gallegos* inapplicable by rewriting § 37-90-106(1)(a) to take away the rights and remedies of surface water right owners that *Gallegos* confirmed.

*Meridian* did not involve an existing surface water right owner challenging the legal status of existing designated ground water, which is the relief that SB-52 took away.

Lastly, Defendants argue “that the Court did not have jurisdiction to remedy the ripeness defect by proceeding to hear facts necessary for a determination on the status of designated groundwater.” *Response to Motion for Certification*, p.11; see also *Id.* at 12. To be clear, the Foundation did not seek a judicial determination on the status of the groundwater in the NHP Basin. There is no dispute that groundwater within the NHP Basin is currently designated and the Foundation owns surface water rights within the NHP Basin. *Foundation’s Motion for Summary Judgment on its Senate Bill 52 Claim*, p.5. The Foundation sought a ruling that SB-52 was unconstitutional so that it would be able to proceed before the Commission and present evidence consistent with *Gallegos*, 147 P.3d at 31-32. Namely, without the prohibitions of SB-52, the Foundation would seek to prove that portions of the NHP Basin contain ground water that should be excluded because it is hydraulically connected to surface water and the pumping of that ground water is having more than a *de minimis* impact on Plaintiff’s surface water rights.

B. Defendants’ Concerns that the Colorado Supreme Court May Opine on the Constitutionality of SB-52 is Not a Basis to Deny Certification.

This Water Court dismissed Claim 2 on ripeness grounds. In doing so, the Court did not address the underlying substance of the constitutional challenge. As stated in the Motion for Certification, p.4, “the Foundation seeks certification in order to proceed with an appeal of the Dismissal Order.” This point was also verbally clarified at the status conference. Any order granting certification should pertain to just the Dismissal Order, unless as described above, this Court finds related jurisdictional issues that would prohibit it from hearing the entirety of the Foundation’s remaining claims.

Although the Foundation seeks certification of the Dismissal Order, it also noted at the status conference that there have been instances where underlying legal issues were addressed on appeal, even though the issues were not resolved by the lower court. That has occurred on a case-by-case basis. *See, e.g., Tull v. Gundersons*, 709 P.2d 940, 945 n.5 (Colo. 1985); *People ex rel. A.M.D.*, 648 P.2d 625 (Colo. 1982); *In re Estate of Beren*, 321 P.3d 615, 617 (Colo. App. 2013); *Raptor Education Foundation, Inc. v. State*, 296 P.3d 352, 356 (Colo. App. 2012); *Quist v. Specialties Supply Co.*, 12 P.3d 863, 867-868 (Colo. App. 2000); *People ex. rel. C.E.*, 923 P.2d 383 (Colo. App. 1996). The possibility that the Supreme Court would not only consider the Dismissal Order, but also drill down into constitutionality of SB-52, is not a reason to avoid certification.

Much of the Response to the Motion for Certification and even the Motion for Stay raise concerns on whether it would be appropriate for the Colorado Supreme Court to consider the underlying constitutional validity of SB-52. On a purely legal issue of constitutional importance, the Colorado Supreme Court may choose, in its discretion, to decide some or all of the underlying constitutional issues. However, the Supreme Court may decline to do so as Defendants argue. In any event, such arguments are more properly for the Colorado Supreme Court. For example, Defendants argue that a substantive ruling by the Supreme Court would be advisory. *Response to Motion for Certification*, p. 9. That would be an argument to make to the Supreme Court and may depend upon whether or not the Supreme Court overturns the Dismissal Order. Likewise, Defendants effort to distinguish some cases where appellate courts have elected to decide substantive issues not resolved below is more properly presented on appeal.

On purely efficiency grounds, it would be much more efficient if the Supreme Court resolved the issue once and for all. *See Raptor Education Foundation*, 296 P.3d at 356

(“because the constitutionality of a statute is a legal question, and because consideration of judicial efficiency and economy militate in favor of our disposing of it, rather than remanding it to the trial court, we will address [Plaintiff’s] constitutional claim”). The arguments by Intervenor and Well Owner Defendants on this issue are enlightening. It is a recipe for delay – not efficiency. If Defendants are successful in both denying certification and in convincing the Supreme Court to avoid the underlying constitutional issues, then it could be many years before the Foundation will have clarity on the jurisdictional issues needed to proceed before the Commission to exercise its rights under § 37-90-106(1)(a), as that statutory provision existed when the NHP Basin was created and as confirmed in the *Gallegos* decision.

C. The “Lack of a Factual Record” is Not Germane to Certification.

In arguing that the Colorado Supreme Court should not consider the substance of Claim 2, Defendants further argue there is no factual record. *Response to Motion for Clarification*, pp. 8, 13. That argument is not germane to the certification question before this Court. First, the Foundation seeks certification of the Dismissal Order. Defendants are free to raise any arguments to the Supreme Court on why they believe the Court should not look at the underlying constitutional issues. Second, Defendants previously argued that “[t]he interpretation of SB-52 is a question of law and thus there are no genuine issues of material fact relating to the Foundation’s claim that SB-52 is unconstitutional” *Defendants’ Motion for Summary Judgment on Constitutionality of Senate Bill 10-52*, p.5. Third, given that Claim 2 is dismissed, it is not clear what evidence specific to Claim 2 could be developed at trial if it was necessary. Fourth, the only undisputed facts regarding the SB-52 claim that the Foundation identified in briefing the constitutionality of SB-52 (other than legislative history), were the NHP Basin Order and the existence of the Foundation’s water rights, both of which are already described in the Dismissal

Order, pp. 5, 7. Lastly, "[f]indings of fact . . . are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in Rule 41(b)." 4 Colo. Prac., Civil Rules Annotated R 52 (4th ed.)

D. Other Grounds Argued by Defendants on Why the Court Should Delay any Appeal of the Dismissal Order Are Without Merits.

Finally, Defendants argue that certification “would lead to piecemeal appeals” and that the Foundation has created a “false sense of urgency” given the prior inaction by the Foundation and its predecessors regarding the NHP Basin. *Response to Motion for Certification*, pp. 5, 6, 10). First, given that the constitutionality of SB-52 is a stand-alone claim, it is not a just cause for delay to postpone a determination on the validity of the Dismissal Order so that briefing can be consolidated with briefing on other claims, which may or may not be appealed.

Secondly, as to the claimed false sense of urgency, nothing could be further from the truth. First, a pre-SB-52 challenge under § 37-90-106(1)(a) required evidence of the “future conditions and factual data” to justify the claim. *Gallegos*, 147 P.3d at 31. The full extent of the depletions caused by designated groundwater pumping was not recognized by the State of Colorado nor quantified until about 2003. *Compact Motion*, pp. 4-7.<sup>5</sup> Groundwater pumping depletions continued to increase after that time, exceeding 38,000 acre-feet by 2009. *Id.* In light of that modeling information, designated ground water users supported and were able to pass SB-52 in 2010, over the Foundation’s objections. Since 2010, the Foundation has been in nearly continuous litigation in the exercise of its fiduciary duty to protect its surface water rights, including successfully opposing a curtailment order on the Hale Ditch in 11CW186, successfully opposing abandonment claims in 12CW111, followed by an appeal and successful remand on the

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<sup>5</sup> As this Court knows, Jim Hutton died in 2002 and his Foundation acquired the water rights in 2004. See *Findings of Fact, Conclusions of Law and Order of the Water Court in Case No. 2012CW111, Exhibit 37.*

Tip Jack Ditch portion of 12CW111, and in this lawsuit. The Foundation seeks the most efficient and expeditious way of resolving these issues.

WHEREFORE, the Foundation respectfully requests that this Court enter an order pursuant to C.R.C.P. 54(b) that expressly directs entry of judgment, certifying that its Dismissal Order constitutes a final judgment of the Foundation's Second Claim for relief in its entirety, and that expressly finds there is no just reason for delay. The Foundation further seeks denial of the Motion for Stay.

Respectfully submitted this 16<sup>th</sup> day of November, 2016.

PORZAK BROWNING & BUSHONG LLP

A handwritten signature in black ink, appearing to read 'SJB', is written over a horizontal line.

Steven J. Bushong (#21782)

Karen L. Henderson (#39137)

*Attorneys for the Jim Hutton Educational Foundation*

**CERTIFICATE OF SERVICE**

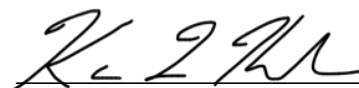
I hereby certify that on this 16<sup>th</sup> day of November, 2016, a true and correct copy of the foregoing **JIM HUTTON EDUCATIONAL FOUNDATION’S REPLY IN SUPPORT OF MOTION FOR CERTIFICATION OF FINAL JUDGMENT PURSUANT TO C.R.C.P. 54(b) AND RESPONSE TO JOINT MOTION FOR STAY PENDING APPEAL** was filed and served by the Integrated Colorado Courts E-Filing System (“ICCES”) addressed to counsel for each of the parties in the above-captioned matter, as follows:

<b>Party Name</b>	<b>Party Type</b>	<b>Attorney Name</b>
Colorado Division of Water Resources	Defendant	Daniel E Steuer (CO Attorney General) Ema I.G. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)
Colorado Parks and Wildlife	Defendant	Katie Laurette Wiktor (CO Attorney General) Timothy John Monahan (CO Attorney General)
David Nettles	Defendant	Daniel E Steuer (CO Attorney General) Ema I.G. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)
Dick Wolfe	Defendant	Daniel E Steuer (CO Attorney General) Ema I.G. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)
4m Feeders Inc	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
4m Feeders LLC	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Carlyle James as Trustee of the Chester James Trust	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
City of Burlington	Defendant-Well Owner	Alix L Joseph (Burns Figa and Will P C) Steven M. Nagy (Burns Figa and Will P C)
City of Holyoke	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
City of Wray Colorado	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Colorado Agriculture Preservation Assoc	Defendant-Well Owner	Bradley Charles Grasmick (Lawrence Jones Custer Grasmick LLP)
Colorado State Board Land Commissioners	Defendant-Well Owner	Virginia Marie Sciabarrasi (CO Attorney General)
David L Dirks	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Dirks Farms Ltd	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Don Myrna and Nathan Andrews	Defendant-Well Owner	Geoffrey M Williamson (Vranesh and Raisch)

<b>Party Name</b>	<b>Party Type</b>	<b>Attorney Name</b>
		Stuart B Corbridge (Vranesh and Raisch)
Happy Creek Inc	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Harvey Colglazier	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
J and D Cattle LLC	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
James J May	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Julie Dirks	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Kent E Ficken	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Lazier Inc	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Mariane U Ortner	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Marjorie Colglazier Trust	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
May Acres Inc	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
May Brothers Inc	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
May Family Farms	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
North Well Owners	Defendant-Well Owner	Kimbra L. Killin (Colver Killin and Sprague LLP) Russell Jennings Sprague (Colver Killin and Sprague LLP)
Protect Our Local Community's Water LLC	Defendant-Well Owner	John David Buchanan (Buchanan and Sperling, P.C.) Timothy Ray Buchanan (Buchanan and Sperling, P.C.)
Republican River Water Conservation Dist	Defendant-Well Owner	David W Robbins (Hill and Robbins PC) Peter J Ampe (Hill and Robbins PC)



Party Name	Party Type	Attorney Name
Saving Our Local Economy LLC	Defendant-Well Owner	John David Buchanan (Buchanan and Sperling, P.C.) Timothy Ray Buchanan (Buchanan and Sperling, P.C.)
Steven D Kramer	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Thomas R May	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Timothy E Ortner	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Tri State Generation and Transmission Assn.	Defendant-Well Owner	Aaron S. Ladd (Vranesh and Raisch) Justine Catherine Shepherd (Vranesh and Raisch)
Yuma Cnty Water Authority Public Improv	Defendant-Intervenor	Dulcinea Zdunska Hanuschak (Brownstein Hyatt Farber Schreck LLP) John A Helfrich (Brownstein Hyatt Farber Schreck LLP) Steven Owen Sims (Brownstein Hyatt Farber Schreck LLP)
Colorado Ground Water Commission	Defendant-Intervenor	Chad Matthew Wallace (CO Attorney General) Patrick E Kowaleski (CO Attorney General)
Arikaree Ground Water Mgmt Dist	Defendant-Intervenor	Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
Central Yuma Ground Water Mgmt Dist	Defendant-Intervenor	Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
Frenchman Ground Water Mgmt Dist	Defendant-Intervenor	Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
Marks Butte Ground Water Mgmt Dist	Defendant-Intervenor	Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
Plains Ground Water Mgmt Dist	Defendant-Intervenor	Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
Sandhills Ground Water Mgmt Dist	Defendant-Intervenor	Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
Wy Ground Water Mgmt Dist	Defendant-Intervenor	Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
East Cheyenne Ground Water Mgmt Dist	Defendant-Intervenor	John David Buchanan (Buchanan and Sperling, P.C.) Timothy Ray Buchanan (Buchanan and Sperling, P.C.)



Karen L. Henderson