



Family Farms, Republican River Water Conservation District, Thomas R. May, Steven D. Kramer, Tri-State Generation and Transmission Assoc., Inc., the State Board of Land Commissioners, Arikaree Ground Water Management District, Central Yuma Ground Water Management District, Frenchman Ground Water Management District, Marks Butte Ground Water Management District, Plains Ground Water Management District, Sandhills Ground Water Management District, W-Y Ground Water Management District, City of Holyoke, City of Wray, David L. Dirks, Dirks Farms Ltd., Harvey Colglazier, Julie Dirks, Lazier, Inc., Mariane U. Ortner, Marjorie Colglazier Trust, and Timothy E. Ortner (collectively “Defendants”). For the reasons stated below and in Defendants’ Joint Motion for Stay Pending Appeal, if Plaintiff’s September 28, 2016 Motion for Certification of Final Judgment Pursuant to C.R.C.P. 54(b) is granted, the trial on Plaintiff’s remaining claims should be stayed until resolution of the appeal on Plaintiff’s Second Claim for Relief (“Claim 2”).

#### REPLY

The trial court has discretion to stay proceedings pending an interlocutory appeal. *Christel v. E.B. Engineering*, 116 P.3d 1267 (Colo. Ct. App. 2005). Generally, a stay is appropriate when the moving party demonstrates that, if the stay is not granted, it will suffer prejudice that exceeds potential harm to the parties if the stay is granted. *See United States v. Colo. State Eng’r et al.*, 101 P.3d 1072 (Colo. 2004).

With respect to both the Plaintiff’s Motion for Certification and Defendant’s Motion for Stay, the Court must make discretionary determinations about how the proceedings move forward. As argued in their Response to Plaintiff’s Motion for Certification, certain defendants do not believe that it makes sense to certify Claim 2 for appeal prior to or concurrent with the

trial set in this case on the remaining claims. However, based on the current posture of this case and the issues before the Court, if the Court determines that Plaintiff should be allowed to pursue an interlocutory appeal of the Court's ruling on Plaintiff's Claim 2, the course of action that will be most efficient for the Court and the parties – and which will result in the least chance for prejudice – is to stay the proceedings in this case pending resolution of that appeal.

In its combined 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 (“Response/Reply”), Plaintiff acknowledges that scenarios exist in which the appeal of Claim 2 could impact the claims that are pending before the Court in this case and that will be the subject of a trial. Plaintiff's Response/Reply at 7-8. Plaintiff also admits that certification may result in additional and duplicative trials before this Court, because: (1) Plaintiff acknowledges that the Supreme Court might evaluate the merits of Claim 2 in addition to the jurisdictional issues on which Claim 2 was dismissed; and (2) Plaintiff acknowledges that even if the Supreme Court rules on Claim 2 only on jurisdictional grounds, additional trials would result if it is determined on appeal that this Court lacks jurisdiction to fully evaluate Claim 1. Plaintiff's Response/Reply at 7-8, 11-12.

In Claim 1, Plaintiff asserts that its surface water rights and Bonny Reservoir have been improperly administered for Compact compliance purposes because the surface water rights were curtailed rather than groundwater wells in the Northern High Plains (“NHP”) Designated Groundwater Basin (“NHP Basin”). *See* Plaintiff's Response/Reply at 6; Complaint at ¶¶76-93. In its Response/Reply, Plaintiff reiterates the assertion that its surface water rights and the NHP wells must be administered together, but offers no response to Defendants' arguments that there

is no statutory or other legal procedure for the State Engineer to integrate designated basin wells into 1969 Act priority administration when performing Compact enforcement duties under C.R.S. § 37-80-104. *Compare* Plaintiff's Response/Reply at 5-6 *with* Defendants' Motion for Stay at 5-6. The Court's evaluation of whether the Engineer's Compact administration was arbitrary and capricious requires an evaluation of the different administrative frameworks for tributary water rights and wells and water rights diverting designated ground water in the NHP Basin. If the Plaintiff pursues an appeal of this Court's Claim 2 ruling now, the Supreme Court's ruling on that appeal, including any evaluation of the merits, could impact a decision on the claims pending before this Court because such decision may provide guidance on whether the surface water and designated ground water resources are administered separately or together, and the extent of this Court's jurisdiction to resolve the Plaintiff's claims.

Unfortunately, neither the parties nor the Court can know at this time how an appeal of Claim 2 will actually be resolved by the Supreme Court. Under these circumstances, and in light of the possibility of either a remand of Claim 2 or some guidance by the Supreme Court that is relevant to the remaining claims, if the Court decides to grant Plaintiff's Motion for Certification, it should also grant Defendants' Motion for Stay.

Further, in its Response/Reply, Plaintiff does not raise any arguments for why it would be prejudiced by a relatively brief stay pending its requested appeal of Claim 2. *See* Response/Reply at 13-14. Indeed, granting the stay will not prejudice any party and it will allow the Plaintiff, Defendants, and the Court to conserve resources that would otherwise be expended on additional and duplicative trials. In contrast, allowing the Plaintiff to both appeal this Court's Claim 2 ruling and move forward at the same time with trial on the remaining claims could result

in multiple appeals of the claims contained in the single complaint filed in this case, additional and duplicative trials before this Court (and the associated extra trial preparation), and possible inconsistent rulings.

WHEREFORE, for the reasons stated in Defendants' Motion for Stay and in this reply, in the event that the Court grants Plaintiff's request for Rule 54(b) certification, Defendants request that the Court stay all pending proceedings in this case while Plaintiff's appeal is pending.

Respectfully submitted November 30, 2016.

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 30, 2016, a true and correct copy of the foregoing document, titled Defendants’ Joint Reply in Support of Motion for Stay Pending Appeal, was filed via ICCES who will send notification of such filing to the following recipients:

Party Name	Party Type	Attorney Name
4m Feeders Inc.	Defendant	Johanna Hamburger William A. Paddock Carlson, Hammond & Paddock, LLC
4m Feeders LLC	Defendant	Johanna Hamburger William A. Paddock Carlson, Hammond & Paddock, LLC
Arikaree Ground Water Mgmt. District	Defendant	Eugene J. Riordan Leila C. Behnampour Vranesh and Raisch
Carlyle James as Trustee of the Chester James Trust	Defendant	Johanna Hamburger William A. Paddock Carlson, Hammond & Paddock, LLC
Central Yuma Ground Water Mgmt. District	Defendant	Eugene J. Riordan Leila C. Behnampour Vranesh and Raisch
City of Burlington, Colorado	Defendant	Alix L. Joseph Michael Y. Ley Burns Figa and Will, PC
City of Holyoke	Defendant	Alvin R. Wall
City of Wray, Colorado	Defendant	Alvin R. Wall
Colorado Agricultural Preservation Assoc.	Defendant	Bradley C. Grasmick Curran A. Trick Lawrence Jones Custer Grasmick, LLP
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Colorado Division of Water Resources	Defendant, Opposer	Daniel E. Steuer Ema Schultz Preston V. Hartman

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Colorado Parks and Wildlife	Defendant, Opposer	Katie L. Wiktor Timothy J. Monahan Colorado Attorney General's Office
Colorado State Board of Land Commissioners	Defendant	Virginia M. Sciabbarrasi Colorado Attorney General's Office
David L. Dirks	Defendant	Alvin R. Wall
David Nettles	Defendant, Opposer	Daniel E. Steuer Ema Schultz Preston V. Hartman Colorado Attorney General's Office
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Dirks Farms Ltd.	Defendant	Alvin R. Wall
Division 1 Engineer	Division Engineer	Division 1 Water Engineer
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Don Myrna and Nathan Andrews	Defendant	Geoffrey M. Williamson Stuart B. Corbridge Vranesh and Raisch
East Cheyenne Ground Water Mgmt. District	Defendant	John D. Buchanan Timothy R. Buchanan Buchanan Sperling and Holleman, PC
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<b>Party Name</b>	<b>Party Type</b>	<b>Attorney Name</b>
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Harvey Colglazier	Defendant	Alvin R. Wall
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James J. May	Defendant	Johanna Hamburger William A. Paddock Carlson, Hammond & Paddock, LLC
Julie Dirks	Defendant	Alvin R. Wall
Kent E. Ficken	Defendant	Johanna Hamburger William A. Paddock Carlson, Hammond & Paddock, LLC
Lazier, Inc.	Defendant	Alvin R. Wall
Mariane U. Ortner	Defendant	Alvin R. Wall
Marjorie Colglazier Trust	Defendant	Alvin R. Wall
Marks Butte Ground Water Mgmt. District	Defendant	Eugene J. Riordan Leila C. Behnampour Vranesh and Raisch
May Acres, Inc.	Defendant	Johanna Hamburger William A. Paddock Carlson, Hammond & Paddock, LLC
May Brothers Inc.	Defendant	Johanna Hamburger William A. Paddock Carlson, Hammond & Paddock, LLC
May Family Farms	Defendant	Johanna Hamburger William A. Paddock Carlson, Hammond & Paddock, LLC
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Plains Ground Water Mgmt. District	Defendant	Eugene J. Riordan Leila C. Behnampour Vranesh and Raisch
Protect Our Local Community's Water, LLC	Defendant	John D. Buchanan Timothy R. Buchanan Buchanan Sperling and Holleman, PC
Republican River Water Conservation	Defendant	David W. Robbins Peter J. Ampe Hill and Robbins, PC
Sandhills Ground Water Mgmt. District	Defendant	Eugene J. Riordan Leila C. Behnampour Vranesh and Raisch
Saving Our Local Economy, LLC	Defendant	John D. Buchanan Timothy R. Buchanan Buchanan Sperling and Holleman, PC
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Thomas R. May	Defendant	Johanna Hamburger William A. Paddock Carlson, Hammond & Paddock, LLC
Timothy E. Ortner	Defendant	Alvin R. Wall
Tri State Generation and Transmission Assoc., Inc.	Defendant	Aaron S. Ladd Justine C. Shepherd Vranesh and Raisch Roger T. Williams Tri State Generation and Transmission Assoc., Inc.

<b>Party Name</b>	<b>Party Type</b>	<b>Attorney Name</b>
W-Y Ground Water Mgmt. District	Defendant	Eugene J. Riordan Leila C. Behnampour Vranesh and Raisch

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*s/ Shirley M. Newman, Paralegal*