

<p>DISTRICT COURT, WATER DIVISION NO. 1 COLORADO</p> <p>Weld County Courthouse 901 9th Avenue P. O. Box 2038 Greeley, Colorado 80632 (970) 351-7300</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><b>Plaintiff:</b> The Jim Hutton Educational Foundation, a Colorado non-profit corporation</p> <p>v.</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; Colorado Parks and Wildlife; and Yuma County Water Authority.</p>	
<p>David W. Robbins, # 6112 Peter J. Ampe, # 23452 Hill &amp; Robbins, P.C. 1660 Lincoln St., Suite 2720 Denver, CO 80264 Phone: (303) 296-8100 Fax: (303) 296-2388 E-mail: davidrobbins@hillandrobbins.com peterampe@hillandrobbins.com</p>	<p>Case Number: 2015CW3018</p> <p>Ctrm/Div: _____</p>
<p><b>ANSWER OF THE REPUBLICAN RIVER WATER CONSERVATION DISTRICT</b></p>	

The Republican River Water Conservation District (“RRWCD”), by and through undersigned counsel, hereby answers the Complaint in this matter as follows:

The RRWCD is a body corporate under the laws of Colorado and was formed by the Colorado General Assembly for the purpose of cooperating with and assisting the State of Colorado in carrying out its duty to comply with the limitations and duties imposed upon the state by the Republican River Compact. *See* §§ 37-50-101 *et seq.*, C.R.S. The RRWCD owns numerous ground water permits within the High Plains Designated Ground Water Basin. The RRWCD also owns and leases surface water rights within the Republican River Basin.

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

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

## **JURISDICTION**

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

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

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

4. RRWCD admits that the Colorado Ground Water Commission ("CGWC") has jurisdiction over designated ground water pursuant to the Colorado Ground Water Management Act, §§ 37-90-101 *et seq.*, C.R.S. RRWCD admits that in *Gallegos v. Colorado Ground Water Comm'n*, 147 P.3d 20 (Colo. 2006), the Supreme Court held that the Commission has jurisdiction over surface water rights only for the purpose of altering the boundaries of a designated ground water basin. To the extent paragraph 4 states Plaintiff's legal conclusion, no response is required. RRWCD denies Plaintiff's allegation that it is not seeking to modify the boundaries of a designated ground water basin in the action to the extent the relief requested by the Complaint may aid the Plaintiff in seeking to modify the boundaries of a designated ground water basin. RRWCD admits that, on the face of the Complaint, Plaintiff is not requesting that the Water Court modify the boundaries of a designated water basin in this matter.

## **PARTIES**

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

6. RRWCD admits that the Colorado Department of Natural Resources includes the Division of Water Resources ("DWR"), headed by the Colorado State Engineer, and that DWR

includes the Division Engineers. In further response to paragraph 6, RRWCD states that sections 24-1-124(3) and (4), C.R.S., speak for themselves and no response is required. To the extent any response is required, RRWCD denies the remaining allegations.

7. RRWCD admits the allegations contained in paragraph 7 except to the extent that it alleges that the State Engineer does not have or utilize discretion in the administration and distribution of water of the State of Colorado or in complying with interstate compact obligations. In further response to paragraph 7, RRWCD states that section 37-80-102(1)(a), C.R.S., speaks for itself and no response is required. To the extent any response is required, RRWCD denies the remaining allegations.

8. RRWCD admits that the State Engineer is also the Executive Director of the CGWC and a Commissioner on the Republican River Compact Administration.

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

10. RRWCD states that “Colorado Parks and Wildlife” is a commonly used reference for the Colorado Division of Parks and Wildlife (“CPW”), a division within the Colorado Department of Natural Resources. In further response to paragraph 10, RRWCD states that CPW is responsible for the management of state park and wildlife resources, including some interest in land and water in and around Bonny Reservoir, but denies any allegation that CPW is responsible for the administration of water in, or the operation of, Bonny Dam or Bonny Reservoir.

## **WATER RIGHTS**

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

12. RRWCD is without knowledge or information sufficient to form a belief as to whether or not Plaintiff owns four decreed surface water frights on the South Fork of the Republican River and therefore denies the same. RRWCD does admit that Plaintiff has claimed ownership of said rights in the past. In response to subparagraphs A-D of paragraph 12, RRWCD states:

A. RRWCD denies that the Tip Jack Ditch was decreed by the Arapahoe District Court in Civil Action No. 18172. In further response to subparagraph 12.A, RRWCD states that the Tip Jack Ditch was decreed 2 c.f.s. for irrigation purposes with a priority date of February 8, 1889 by a decree entered by the Arapahoe District Court in Civil Action 18162 on December 28, 1893.

B. The decree dated September 8, 1939 in Civil Action No. 2985 speaks for itself and no response is required. In further response to subparagraph 12.B, RRWCD states that the Hale Ditch was decreed Priority No. 38 for 23 c.f.s. for irrigation purposes with priority date of January 17, 1908 by the decree entered in Kit Carson County District Court Civil Action No. 2985, dated January 17, 1908.

C. The decree dated May 24, 1978 in Case No. W-8667-77 speaks for itself and no response is required. In further response to subparagraph 12.C, RRWCD states that the Hutton No. 1 was decreed 12.9 c.f.s. for irrigation with an appropriation date of July 5, 1954 by the Water Court in and for Water Division 1 in the decree entered in Case No. W-8667-77 dated May 24, 1978 and that the priorities awarded therein awarded were filed in the Water Court in the year 1977 and are administered as having been filed in that year; and shall be junior to all priorities filed in previous years.

D. The decree dated May 24, 1978 in Case No. W-8667-77 speaks for itself and no response is required. In further response to subparagraph 12.D, RRWCD states that the Hutton No. 2 was decreed 4.92 c.f.s. for irrigation with an appropriation date of July 5, 1954 by the Water Court in and for Water Division 1 in the decree entered in Case No. W-8667-77 dated May 24, 1978 and that the priorities awarded therein awarded were filed in the Water Court in the year 1977 and are administered as having been filed in that year; and shall be junior to all priorities filed in previous years.

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

14. RRWCD admits the allegations contained in the first sentence of paragraph 14. RRWCD states that the decree entered in Case No. W-9135-77 speaks for itself and no response is required. To the extent any response is required, RRWCD states that the decree dated October 1, 1984 in Case No. W-9135-77 confirmed a water right claimed by the United States for Bonny Reservoir for flood control, irrigation, recreation, fish and wildlife propagation with a date of appropriation of December 3, 1948.

15. RRWCD admits that Bonny Reservoir and Bonny Dam are located upstream of the location of the Hutton Ranch, but is without knowledge or information sufficient to form a belief as to the truth of the allegations that Bonny Reservoir and Dam impact the Foundation's claimed Tip Jack Ditch and Hale Ditch in various ways, and therefore denies the same. In response to subparagraphs A-B of paragraph 15, RRWCD states:

A. RRWCD admits that the original diversion point for the Tip Jack Ditch was destroyed by the construction of Bonny Dam and Reservoir. RRWCD admits that the point of diversion of the Tip Jack Ditch was moved downstream to a different location. In further response to subparagraph 15.A, RRWCD states that the amended

map of the Tip Jack Ditch dated February 5, 1950, the decree entered in Case No. W-8667-77, the Map of the Roscoe Hutton Irrigation System dated January 3, 1955, and the order of the Water Court, Division No. 1, Case No. 12CW111 speak for themselves and no response is required. To the extent any response is required, RRWCD states that the decree entered in Case No. W-8667-77 decreed an amended diversion point of the Tip Jack Ditch consistent with the point described in the Amended Map of the Tip Jack Ditch and RRWCD denies that the current location of the Tip Jack Ditch point of diversion was described on the Map of the Roscoe Hutton Irrigation System and that such point was recognized by the Water Court in Case No. 12CW111.

B. RRWCD admits the allegations in subparagraph 15.B.

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

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

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

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

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

### **COMPACT COMPLIANCE AND GROUND WATER DEPLETIONS**

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

22. RRWCD admits the original water rights for the Tip Jack Ditch and Hale Ditch Priority No. 38 have appropriation dates before the Compact and the original water rights for the Hutton No. 1 Ditch and the Hutton No. 2 Ditch have appropriation dates after the Compact.

23. RRWCD admits that the Ground Water Management Act was enacted in 1965 and that it empowers the CGWC to establish designated ground water basins. RRWCD admits that the appropriation dates for the Hutton No. 1, Hutton No. 2, Tip Jack Ditch, and Hale Ditch Priority No. 38 water rights are prior to the Ground Water Management Act, but is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 23 and, therefore, denies the same.

24. RRWCD admits that the CGWC created the Northern High Plains Designated Ground Water Basin (“NHP Basin”) in 1965. The NHP Basin designation order speaks for itself and, therefore, no response is required. To the extent any response is required, RRWCD denies the allegations to the extent they may be inconsistent with the NHP designation order.

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

26. The allegations contained in paragraph 26 are vague and, therefore, RRWCD denies the same. To the extent RRWCD can respond to any of the allegations in paragraph 26, RRWCD admits that the number of wells and the amount of water withdrawn within the NHP Basin increased in the 1960s and 1970s. RRWCD admits that there are currently approximately 3,461 permitted active high capacity wells in the NHP Basin.

27. The allegations contained in paragraph 27 are vague and, therefore, RRWCD denies the same. However, RRWCD admits that some high capacity irrigation wells within the NHP Basin have been retired, but other wells within the NHP Basin continue to withdraw ground water.

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

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

30. The complaint filed by the state of Kansas in 1998 against Nebraska speaks for itself, and, therefore, no response is required. To the extent any response is required, RRWCD denies all of the allegations in paragraph 30 to the extent they may be inconsistent with the complaint filed by the state of Kansas. RRWCD admits that the state of Colorado was formally joined as a party to this Compact litigation.

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

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

33. The settlement stipulation between the states of Colorado, Kansas and Nebraska speaks for itself and no response is required, RRWCD denies the allegations contained in paragraph 32 to the extent they may be inconsistent with the Special Master’s ruling.

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

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

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

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

38. RRWCD admits that RRCA Ground Water Model runs have continued since 2003 and that the RRCA approved the RRCA Ground Water Model Runs annually through the year 2007. In further response to paragraph 38, RRWCD states that the results of the 2007 run of

the Model speak for itself and no response is required. RRWCD further states that the 2007 annual run shows that ground water previously pumped in the NHP Basin in Colorado caused delayed depletions to surface water in the Republican River and its tributaries by an average annual amount of 26,847 acre-feet and approximately 11,240 acre-feet of those delayed depletions occurred to the South Fork of the Republican River. To the extent any further response is required, RRWCD denies the remaining allegations.

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

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

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

#### **ACTIONS TAKEN BY DEFENDANTS TO ADDRESS THE COMPACT SHORTFALL**

42. RRWCD admits that in 2007 the State Engineer began drafting rules and regulations which could control well curtailment in the NHP Basin and that such rules and regulations were not adopted and are not currently being pursued.

43. In response to the first sentence of paragraph 43, RRWCD states that while numerous wells have been voluntarily retired for Compact compliance purposes, wells within the NHP Basin are not currently being curtailed for the purpose of Colorado's Compact compliance. In response to the second sentence of paragraph 43, RRWCD denies that the only regulation of wells within the NHP Basin pertains to measurement and enforcing permit limits.

44. RRWCD admits that it approved a ground water pipeline in 2009 that is intended to supply designated ground water to the North Fork of the Republican River near the Colorado-Nebraska state line, and that the pipeline operated in in 2014 based on a temporary approval by the RRCA but has not been permanently approved by the RRCA. In response to the third sentence of paragraph 44, RRWCD states that the administrative call remained in effect during 2014.

45. In response to paragraph 45, RRWCD states that the State Engineer ordered the Bureau of Reclamation to release water from Bonny Reservoir by written order in 2011 because the water stored therein was stored out-of-priority. In further response to the allegations contained in paragraph 45, RRWCD states that in 2007 the State Engineer coordinated release of water stored out-of-priority from Bonny Reservoir. RRWCD further states that releases of out-of-priority water stored in Bonny Reservoir between 2007 and 2011 had the added effect of potentially benefitting Colorado's rights and obligations to the Republican River Basin. In



further response to the third sentence of paragraph 45, RRWCD admits that full active storage in Bonny Reservoir was released from the reservoir in 2011.

46. Paragraph 46 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, RRWCD admits that the Bureau of Reclamation approved the construction of Bonny Reservoir principally for flood control purposes and that the decree for the Bonny Reservoir water right states the uses of the water right as flood control and irrigation, recreation, fish and wildlife propagation.

47. Paragraph 47 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, RRWCD denies the allegations contained in paragraph 47. In further response to the allegations of paragraph 47 RRWCD denies that any water lawfully stored in Bonny Reservoir was ordered released for Compact compliance purposes.

48. RRWCD denies that beginning in 2010, the Engineers began to restrict diversions of surface water rights with an administrative priority after 1942 in order to help achieve Compact compliance. In further response to paragraph 48, RRWCD states that, beginning in 2008, the Division Engineer of Water Division 1 began to restrict diversions of surface water rights with an administrative priority after 1942 on the tributaries to the Republican River within Colorado to help achieve Compact compliance. RRWCD further states that such administration affected surface water rights and not NHP Basin ground water rights and that the majority of wells within the NHP Basin were constructed after 1942, but denies the remaining allegations in the second sentence of paragraph 48. RRWCD denies the allegation of the third sentence of paragraph 48 that the Engineers maintain they have no authority to administer wells within the NHP Basin for Compact compliance due to the Ground Water Management Act.

49. RRWCD admits the allegations contained in paragraph 49.

50. RRWCD admits that the Tip Jack Ditch, Hutton Ditch No. 1 and Hutton Ditch No. 2 water rights were included on the 2010 abandonment list for Water Division 1. In response to the second sentence of paragraph 50, RRWCD admits that Plaintiff successfully protested the inclusion of the Hutton Ditch No. 1, Hutton Ditch No. 2 and Tip Jack Ditch water right.

51. In response to the allegation in the first sentence of paragraph 51, RRWCD states that the Water Court's Order dated December 16, 2013 in Case No. 12CW111 speaks for itself and no response is required. To the extent any response is required, RRWCD denies the allegations in the first sentence of paragraph 51. In response to the allegations in the second sentence of paragraph 51, RRWCD states that they are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 51 and, therefore, denies the same. The RRWCD further responds that the appeal and remand of the Tip Jack Ditch decision is complete and that Plaintiff has not filed to change the point of diversion of the Tip Jack Ditch.

52. The allegations contained in paragraph 52 are misleading and incomplete and therefore RRWCD denies the same. To the extent any response is required, RRWCD admits that the DWR issued an order in 2011 prohibiting the Foundation from irrigating some lands under the Hale Ditch, but denies that DWR claimed in that order that irrigation of historically irrigated lands was unlawful.

53. In response to the allegations of paragraph 53, RRWCD states that the Order of the Water Court in Case No. 11CW186 dated December 16, 2013 speaks for itself and no response is required. To the extent any response is required, RRWCD denies the allegations in paragraph 53.

### **INJURY TO FOUNDATION FROM DEFENDANTS' ACTIONS AND INACTIONS**

54. RRWCD admits that Plaintiff's lessee, John Cure, placed a call for Plaintiff's Hale Ditch water rights on March 27, 2014. In response to the remaining allegations of paragraph 54, RRWCD is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

55. RRWCD denies that to achieve some elevation in the water level in Bonny Reservoir as needed to deliver water to the Hale Ditch, the 72-hour temporary storage rule was invoked by the Engineers to allow a fluctuating level of storage in Bonny Reservoir to deliver some water to the Hale Ditch.

56. In response to the allegations contained in paragraph 56, RRWCD states that the canal gate to the Hale Ditch was opened on April 8, 2014 and closed on November 7, 2014. RRWCD further states that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 56 and, therefore, deny the same.

57. RRWCD admits that on November 3, 2014 the Division Engineer for Water Division 1 ordered the Hale Ditch outlet within Bonny Dam to be closed based on hard freezes in the area of the Hale Ditch. RRWCD is without knowledge or information sufficient to form a belief as to the truth of the allegation in the second sentence of paragraph 57 that wells within the NHP Basin were typically pumping on November 3 for any reason and therefore deny the same.

58. RRWCD denies all of the allegations contained in paragraph 58.

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

60. RRWCD denies the allegations contained in paragraph 60.

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

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

### **SENATE BILL 52 (2010)**

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

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

65. RRWCD denies the allegations contained in Paragraph 65.

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

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

68. The order in Case No. 06CV31 speaks for itself and no response is required. To the extent any response is required, RRWCD denies the same.

69. Paragraph 69 states Plaintiff's legal conclusions and nor response is required. Further, the *City of Colorado Springs v. Powell*, 156 P.3d 461 (Colo. 2007) opinion speaks for itself and no response is required. To the extent any response is required, RRWCD denies the same.

70. Paragraph 70 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, RRWCD denies the allegations contained in paragraph 70.

71. RRWCD admits that some of the testimony in support of Senate Bill 52 was provided by Dennis Coryell and other witnesses, specifically explaining the need for Senate Bill 52 in the NHP Basin. Representatives of Plaintiff provided testimony in opposition to Senate Bill 52. The second sentence of paragraph 71 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, RRWCD denies the allegations contained in the second sentence of paragraph 71.

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

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

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

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

**CLAIMS FOR RELIEF  
(Declaratory Judgement, Injunction)**

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

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

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

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

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

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

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

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

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

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

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

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

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

88. Paragraph 88 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, RRWCD denies the allegations contained in paragraph 88.

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

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

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

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

93. Paragraph 93 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, RRWCD denies the allegations contained in paragraph 93.

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

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

95. Paragraph 95 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, RRWCD denies the allegations contained in paragraph 95.

96. Paragraph 96 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, RRWCD denies the allegations contained in paragraph 96.

97. RRWCD admits that the State of Colorado stipulated to the RRCA Ground Water Model and that the RRCA Ground Water Model was received and ordered filed by the United States Supreme Court. The remaining allegations of paragraph 97 state Plaintiff's legal conclusions and no response is required. To the extent any response is required, RRWCD denies the remaining allegations contained in paragraph 97.

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

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

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

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

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

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

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

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

106. Paragraph 106 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, RRWCD denies the allegations contained in paragraph 106.

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

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

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

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

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

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

112. RRWCD admits the allegations contained in paragraph 112.

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

114. Paragraph 114 states Plaintiff's legal conclusions and no response is required. To the extent any response is required, RRWCD denies the allegations contained in paragraph 114.

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

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

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

118. RRWCD admits that the Colorado Attorney General's Office was served with a copy of the Complaint.

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

### **DEFENSES**

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

2. Plaintiff failed to challenge the actions of the State Engineer and Division Engineer within the time prescribed under the Colorado Administrative Procedure Act.

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

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

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

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

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

WHEREFORE, RRWCD requests that this Court deny Plaintiff's requested relief.

Dated this 8<sup>th</sup> day of December, 2015.

Respectfully submitted,

*signed original on file at Hill & Robbins, P.C.*

s/ Peter J. Ampe

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Peter J. Ampe

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 8<sup>th</sup> day of December, 2015, service of the foregoing ANSWER was made via ICCES, on all parties of record:

*signed original on file at Hill & Robbins, P.C.*

s/Holly Rogers

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Holly Rogers