

<p>DISTRICT COURT, WATER DIVISION NO.1  WELD COUNTY, COLORADO  901 9<sup>th</sup> Avenue / P.O. Box 2038  Greeley, Colorado 80631  (970) 351-7300</p>	
<p>PLAINTIFF, The Jim Hutton Educational  Foundation,    v.    DEFENDANTS, 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; the Colorado  Department of Natural Resources; Colorado Division  of Water Resources; and Colorado Parks and  Wildlife.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><b>Attorneys For Intervenor-Defendant  Colorado Ground Water Commission</b>  CYNTHIA H. COFFMAN, Attorney General  CHAD M. WALLACE, #30022*  PATRICK E. KOWALESKI, #09598*  Senior Assistant Attorneys General  Ralph L. Carr Colorado Judicial Center  1300 Broadway, 7<sup>th</sup> Floor  Denver, CO 80203  Telephone: (720) 508-6281 (Wallace): (720) 508-6297  (Kowaleski)  Fax: (720) 508-6039  <a href="mailto:chad.wallace@coag.gov">chad.wallace@coag.gov</a>; <a href="mailto:patrick.kowaleski@coag.gov">patrick.kowaleski@coag.gov</a>  *Counsel of Record</p>	<p>Case No. 2015CW3018    Div.: 1</p>
<p style="text-align: center;"><b>ANSWER OF COLORADO GROUND WATER COMMISSION</b></p>	

The Colorado Ground Water Commission (“Commission”), Intervenor - Defendant, by and through the Attorney General, hereby submits its Answer to the Jim Hutton Educational Foundation’s Complaint for Declaratory Judgment

Regarding Administration of Water Rights in the Republican River Basin and the Constitutionality of Senate Bill 52 (2010), and the Ground Water Management Act.

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

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

### **JURISDICTION**

1. Defendant 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. Defendant admits that water matters include only those matters which Title 37, Article 92 and any other law specified to be heard by the water judge of the district courts. Beyond these admissions, Defendant denies the Plaintiff's characterization of the water court's jurisdiction.
2. Defendant 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*, 980 P.2d 534 (Colo. 1995). Beyond this admission, Defendant denies the Plaintiff's characterization of the holding in *Crystal Lakes*.
3. Defendant admits that at least some allegations contained in the Complaint might implicate water matters, but denies that Plaintiff has alleged a present controversy that is a water matter. However, Defendant denies that there has been an unlawful infringement upon any decreed water rights by Defendant or pursuant to Senate Bill 52 (2010) and/or the Colorado Ground Water Management Act.
4. Defendant admits that the Colorado Ground Water Commission ("Commission") has jurisdiction over designated ground water pursuant to the Colorado Ground Water Management Act, § 37-90-101 et. seq., C.R.S. The Supreme Court's opinion in *Gallegos v. Colorado Ground Water Comm'n*, 147 P.3d 20 (Colo. 2006), speaks for itself. To the extent paragraph 4 states Plaintiff's legal conclusions, no response is required. Defendant denies the Plaintiff's allegation that it is not seeking to modify the boundaries of a designated ground water basin in this 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.

Defendant admits that, on the face of the complaint, the Plaintiff is not requesting that the Water Court modify the boundaries of a designated water basin in this action.

## **PARTIES**

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

7. Defendant 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 waters of the State of Colorado or in complying with interstate compact obligations. In further response to paragraph 7, Defendant states that § 37-80-102(1)(a), C.R.S., speaks for itself and no response is required. To the extent a response is required, Defendant denies the remaining allegations.

8. Defendant admits that the State Engineer is also the Executive Director of the Commission and a Republican River Compact Commissioner.

9. Defendant states that § 37-92-202, C.R.S., speaks for itself and no response is required. To the extent a response is required, Defendant 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 Rights Determination and Administration Act.

10. Defendant states that “Colorado Parks and Wildlife” is a commonly used reference for the Colorado Division of Parks and Wildlife (hereinafter “CPW”), a division within the Colorado Department of Natural Resources. In further response to paragraph 10, Defendant states that CPW is responsible for the management of state park and wildlife resources, including some interests 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 and Reservoir.

## **WATER RIGHTS**

11. Defendant 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. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations as to whether or not the Plaintiff owns four decreed surface water rights on the South Fork of the Republican River and therefore denies the same. In response to subparagraphs A-D of paragraph 12, Defendant states:

- A. Defendant 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, Defendant 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, Defendant states that 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.
- 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, Defendant 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.
- 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, Defendant 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.

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

14. Defendant admits the allegations contained in the first sentence of paragraph 14. Defendant states that the decree entered in Case No. W-9135-77 speaks for itself and no response is required. To the extent a response is required, Defendant 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 December 3, 1948 date of appropriation.

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

A. Defendant admits that the original diversion point for the Tip Jack Ditch was destroyed by Bonny Reservoir dam. Defendant admits that the diversion point of the Tip Jack Ditch was moved downstream to one different location. In further response to subparagraph 15.A, Defendant 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, in Case No. 12CW111 speak for themselves and no response is required. To the extent any response is required, Defendant states that the decree entered in Case No. W-8667-77 decreed an amended diversion point for the Tip Jack Ditch consistent with the point described in the Amended Map of the Tip Jack Ditch and Defendant 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. Defendant 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, Defendant 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, Defendant denies the allegations to the extent they may be inconsistent with the Water Contract. Defendant 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, Defendant 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, Defendant 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, Defendant 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, Defendant 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, Defendant admits that the Republican River Compact is codified at § 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. Defendant 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. Defendant admits that the Ground Water Management Act was enacted in 1965 and that it empowers the Commission to establish designated ground water

basins. Defendant 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 are without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 23 and therefore denies the same.

24. Defendant admits that the Ground Water Commission 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 a response is required, Defendant denies the allegations to the extent they may be inconsistent with the NHP Basin designation order.

25. Defendant denies that the NHP Basin covers the areal extent of the Ogallala aquifer in Colorado. Defendant 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 Defendant denies the same. Defendant 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 Defendant denies the same. However, Defendant admits that some high capacity irrigation wells within the NHP Basin have been retired, but other wells in the NHP Basin continue to pump ground water.

28. The allegations contained in paragraph 28 are vague and Defendant 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 Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 and therefore denies the same.

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

31. Defendant admits that the Special Master for the United States Supreme Court (“Special Master”) heard argument regarding whether stream depletions due to groundwater use were intended to be included in the Compact allocations of the virgin water supply. In response to the second sentence of 31, Defendant states that the Special Master’s ruling speaks for itself and no response is required. To the extent any response is required, Defendant 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, Defendant denies the allegations contained in paragraph 32 to the extent they may be inconsistent with the Special Master’s ruling.

33. The settlement stipulation between Colorado, Kansas, and Nebraska speaks for itself and no response is required. The United States Supreme Court decision regarding said settlement stipulation speaks for itself and no response is required. To the extent any response is required, Defendant denies the allegations contained in paragraph 33.

34. The RRCA Ground Water Model speaks for itself and no response is required. The Special Master’s final report speaks for itself and no response is required. The United States Supreme Court ruling dated October 20, 2003 speaks for itself and no response is required. To the extent any response is required, Defendant 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, Defendant 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, Defendant state that the RRCA Ground Water Model was “received and ordered filed” by the United States Supreme Court. Defendant further state that the Special Master’s final report 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 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, Defendant 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, Defendant denies the allegation.

38. Defendant admits that RRCA Ground Water Model runs have continued since 2003 and that the Republican River Compact Administration (“RRCA”) approved RRCA Ground Water Model Runs annually through the year 2007. In further response to paragraph 38, Defendant states that the results of the 2007 run of the Model speak for themselves and no response is required. To the extent any further response is required, Defendant denies the remaining allegations.

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

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

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

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

42. Defendant admits that in 2007 the State Engineer prepared draft rules and regulations which would 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, Defendant 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, Defendant denies that the only regulation of wells within the NHP Basin pertains to measurement and enforcing permit limits.

44. Defendant admits that a ground water pipeline that was approved by the Republican River Water Conservation District in 2009 to supply pumped designated ground water to the North Fork of the Republican River near the Colorado-Nebraska state line, and that the pipeline operated 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, Defendant states that the administrative call remained in effect during 2014.

45. In response to paragraph 45, Defendant states that the State Engineer ordered the Bureau of Reclamation to drain Bonny Reservoir by written order in 2011 for water stored out of priority. In further response to the allegations contained in paragraph 45, Defendant states that in 2007 the State Engineer coordinated releases of water stored out of priority from Bonny Reservoir. In further response to the third sentence of paragraph 45, Defendant admits that full active storage in Bonny Reservoir was drained in 2011 or after.

46. Paragraph 46 states Plaintiff's legal conclusions and no response is required. To the extent a response is required, Defendant admits that the Bureau of Reclamation approved the construction of Bonny Reservoir and that the decree for the Bonny Reservoir water right speaks for itself.

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

48. Defendant denies that beginning in 2010, the State Engineer began to implement a 1942 administrative call in order to help achieve Compact compliance. In further response to paragraph 48, Defendant state that, beginning in 2008, the Division Engineer began to implement a 1942 administrative call on the Republican River and its tributaries to help achieve Compact compliance. Defendant 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. Defendant 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. Defendant admits the allegations contained in paragraph 49.

50. Defendant 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 No. 1. In response to the second sentence of paragraph 50, Defendant admits that the Plaintiff successfully protested the inclusion of the Hutton Ditch No. 1 and Hutton Ditch No. 2 water rights but denies that the Plaintiff successfully protested the inclusion of the Tip Jack Ditch water right.

51. In response to the allegation in the first sentence of paragraph 51, Defendant 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 a response is required, Defendant denies the allegations in the first sentence of paragraph 51. In response to the allegations in the second sentence of paragraph 51, Defendant 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.

52. The allegations contained in paragraph 52 are misleading and incomplete and therefore Defendant denies the same. To the extent a response is required, Defendant 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, Defendant 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, Defendant denies the allegations in paragraph 53.

### **INJURY TO FOUNDATION**

54. Defendant admits that the 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, Defendant is without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies the same.

55. Defendant 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, Defendant states that the canal gate to the Hale Ditch was opened on April 8, 2014 and closed on

November 7, 2014. Defendant further states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 56 and therefore denies the same.

57. Defendant 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. Defendant 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 denies the same.

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

59. Defendant 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. Defendant 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, Defendant 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, Defendant denies the allegations contained in paragraph 62.

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

63. Section 37-90-103(6)(a) C.R.S. and the *Gallegos* opinion speak for themselves and no response is required. To the extent any response is required, Defendant 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, Defendant denies the allegations.

65. Paragraph 65 states Plaintiff's legal conclusions and no response is required. Further, § 37-90-106(1)(a), C.R.S., speaks for itself and no response is required. To the extent any response is required, Defendant denies the allegations.

66. The *Gallegos* opinion speaks for itself and no response is required. To the extent any response is required, Defendant 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, Defendant 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, Defendant denies the same. Defendant admits that Case No. 06CV31 settled on remand.

69. Paragraph 69 states Plaintiff's legal conclusions and no response is required. Further, the *Powell* opinion speaks for itself and no response is required. To the extent any response is required, Defendant denies the same

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

71. Defendant admits that testimony in support of Senate Bill 52 was provided by Dennis Coryell and other witnesses. Defendant is without sufficient information to admit or deny his professional titles at the time and therefore denies the same. The second sentence of paragraph 71 states the Plaintiff's legal conclusions and no response is required. To the extent any response is required, Defendant denies the allegations contained in the second sentence of paragraph 71.

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

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

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

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

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

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

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

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

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

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

80. Paragraph 80 states the Plaintiff's legal conclusions and no response is required. Further, § 37-80-102(1)(a), C.R.S., speaks for itself and no response is required. To the extent any response is required, Defendant denies the allegations contained in paragraph 80.

81. Paragraph 81 states the Plaintiff's legal conclusions and no response is required. Further, §§ 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, Defendant denies the allegations.

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

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

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

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

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

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

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

89. Paragraph 89 states the 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, Defendant denies the allegations of paragraph 89.

90. Paragraph 90 states the 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, Defendant denies the allegations contained in paragraph 90.

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

92. Paragraph 92 and its subparagraphs A, B and C state Plaintiff's request for relief and no response is required. To the extent any response is required, Defendant denies that Plaintiff is entitled to any such relief.

93. Paragraph 93 states Plaintiff's request for relief and no response is required. To the extent any response is required, Defendant denies that Plaintiff is entitled to any such relief.

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

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

95. Paragraph 95 states Plaintiff's legal conclusions and no response is required. Further, § 37-90-106(1)(a), C.R.S., speaks for itself and no response is required. To the extent any response is required, Defendant denies the allegations contained in paragraph 95.

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

97. Defendant admits that 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 State 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, Defendant denies the remaining allegations contained in paragraph 97.

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

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

100. Paragraph 100 states the Plaintiff's legal conclusions and no response is required. Further, the Colorado Constitution speaks for itself and no response is required. To the extent any response is required, Defendant denies the allegations contained in paragraph 100.

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

102. Paragraph 102 states the 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, Defendant denies the allegations contained in paragraph 102.

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

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

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

106. Paragraph 106 and its subparagraphs A and B state Plaintiff's request for relief and no response is required. To the extent any response is required, Defendant denies that Plaintiff is entitled to any such relief.

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

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. Defendant incorporates all responses above as though fully set forth below.

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

110. Paragraph 110 states the Plaintiff's legal conclusions and no response is required. Further, § 37-67-101, C.R.S., and the *Green* opinion speak for themselves and no response is required. To the extent any response is required, Defendant denies the allegations contained in paragraph 110.

111. Paragraph 111 states the 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, Defendant denies the allegations contained in paragraph 111.

112. Defendant admits the allegations contained in paragraph 112.

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

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

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

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

117. Paragraph 117 and its subparagraphs A and B state Plaintiff's request for relief and no response is required. To the extent any response is required, Defendant denies that Plaintiff is entitled to any such relief.

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

Any and all allegations that are not specifically admitted are denied.

## **DEFENSES**

1. Plaintiff failed to state a claim upon which relief can be granted pursuant to C.R.C.P. 12(b)(5).
2. Plaintiff failed to join all necessary parties pursuant to C.R.C.P. 12(b)(6) and C.R.C.P. 19.

3. Plaintiff failed to challenge the actions of the State Engineer and Division Engineer within the time prescribed under the Colorado Administrative Procedure Act.
4. This Court may not have subject matter jurisdiction to hear claims related to the Ground Water Management Act of 1965.
5. Plaintiff is barred from asserting the injury claimed by the claims for relief in this matter by estoppel and res judicata.
6. Plaintiff's claims are barred by laches and the statute of limitations.
7. Plaintiff has failed to exhaust any administrative remedies.
8. Defendant reserves its right to supplement or modify its defenses and to assert any defense in law or fact to the stated claims for relief.

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

Dated this 16<sup>th</sup> day of December 2015,

CYNTHIA H. COFFMAN  
Attorney General

*/s/ Chad M. Wallace*

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Chad M. Wallace\*  
Patrick E. Kowaleski\*  
Senior Assistant Attorneys General  
Natural Resources & Environment Section  
Attorneys for Intervenor-Defendant  
Colorado Ground Water Commission  
\*Counsel of Record

## CERTIFICATE OF SERVICE

This is to certify that on this 16<sup>th</sup> day of December, 2015, I caused a true and correct copy of the foregoing **ANSWER OF THE COLORADO GROUND WATER COMMISSION** to be served electronically via ICCES upon the following:

Party Name	Party Type	Attorney Name
City of Holyoke	Defendant	Alvin Raymond Wall (Alvin R Wall Attorney at Law )
City of Wray Colorado	Defendant	Alvin Raymond Wall (Alvin R Wall Attorney at Law )
Colorado Department of Natural Resourc	Opposer	Daniel E Steuer (CO Attorney General) Ema I.g. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)
Colorado Department of Natural Resources	Defendant	Ema I.g. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)
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 Division of Water Resources	Opposer	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)
Colorado Parks And Wildlife	Opposer	Katie Laurette Wiktor (CO Attorney General) Timothy John Monahan (CO Attorney General)
David L Dirks	Defendant	Alvin Raymond Wall (Alvin R Wall Attorney at Law )
David Nettles	Defendant	Daniel E Steuer (CO Attorney General) Ema I.g. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)

Party Name	Party Type	Attorney Name
David Nettles	Opposer	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)
Dick Wolfe	Opposer	Daniel E Steuer (CO Attorney General) Ema I.g. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)
Dirks Farms Ltd	Defendant	Alvin Raymond Wall (Alvin R Wall Attorney at Law )
Division 1 Engineer	Division Engineer	Division 1 Water Engineer (State of Colorado DWR Division 1)
Division 1 Water Engineer	Opposer	Ema I.g. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)
Don Myrna And Nathan Andrews	Defendant	Geoffrey M Williamson (Vranesh and Raisch) Stuart B Corbridge (Vranesh and Raisch)
East Cheyenne Ground Water Mgmnt Dist	Defendant	John David Buchanan (Buchanan and Sperling, P.C.) Timothy Ray Buchanan (Buchanan and Sperling, P.C.)
Harvey Colglazier	Defendant	Alvin Raymond Wall (Alvin R Wall Attorney at Law )
Julie Dirks	Defendant	Alvin Raymond Wall (Alvin R Wall Attorney at Law )
Lazier Inc	Defendant	Alvin Raymond Wall (Alvin R Wall Attorney at Law )
Mariane U Ortner	Defendant	Alvin Raymond Wall (Alvin R Wall Attorney at Law )

Party Name	Party Type	Attorney Name
		)
Marjorie Colglazier Trust	Defendant	Alvin Raymond Wall (Alvin R Wall Attorney at Law )
North Well Owners	Defendant	Kimbra L. Killin (Colver Killin and Sprague LLP) Russell Jennings Sprague (Colver Killin and Sprague LLP)
Protect Our Local Communitys Water Llc	Defendant	John David Buchanan (Buchanan and Sperling, P.C.) Timothy Ray Buchanan (Buchanan and Sperling, P.C.)
Republican River Water Conservation Dist	Defendant	David W Robbins (Hill and Robbins PC) Peter J Ampe (Hill and Robbins PC)
Saving Our Local Economy Llc	Defendant	John David Buchanan (Buchanan and Sperling, P.C.) Timothy Ray Buchanan (Buchanan and Sperling, P.C.)
State Engineer	State Engineer	Colorado Division Of Water Resources (State of Colorado - Division of Water Resources) Ema I.g. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)
The Jim Hutton Educational Foundation	Plaintiff	Karen Leigh Henderson (Porzak Browning & Bushong LLP) Steven J Bushong (Porzak Browning & Bushong LLP)
The Jim Hutton Educational Foundation	Applicant	Karen Leigh Henderson (Porzak Browning & Bushong LLP) Steven J Bushong (Porzak Browning & Bushong LLP)
Timothy E Ortner	Defendant	Alvin Raymond Wall (Alvin R Wall Attorney at Law )
Tri State Generation And Transmission As	Defendant	Aaron S. Ladd (Vranesh and Raisch) Justine Catherine Shepherd (Vranesh and Raisch)

Party Name	Party Type	Attorney Name
Yuma Cnty Water Authority Public Improv	Defendant	Dulcinea Zdunska Hanuschak (Brownstein Hyatt Farber Schreck LLP) John A Helfrich (Brownstein Hyatt Farber Schreck LLP) Steven Owen Sims (Brownstein Hyatt Farber Schreck LLP)

*Filed pursuant to C.R.C.P. Rule 121 § 1-26.  
A duly signed original is on file with the  
Office of the Attorney General for the State of Colorado.*

*/s/ Pauline Wilber*