

<p>DISTRICT COURT, WATER DIVISION 1, STATE OF COLORADO 901 9th Avenue P.O. Box 2038 Greeley, Colorado 80632 (970) 351-7300</p>	<p>DATE FILED: December 16, 2015 3:30 PM</p>
<p>PLAINTIFF: The Jim Hutton Educational Foundation, a Colorado non-profit corporation</p> <p>v.</p> <p>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; Colorado Division of Water Resources; Colorado Parks and Wildlife; Yuma County Water Authority Public Improvement District; Republican River Water Conservation District; City of Holyoke; City of Wray; Harvey Colglazier; Lazier Inc.; Marjorie Colglazier Trust; Mariane U. Ortner; Timothy Ortner; East Cheyenne Ground Water Management District; North Well Owners; Protect Our Local Community Water, LLC; Saving Our Local Economy, LLC; Tri-State Generation and Transmission Association; Don Andrews; Myrna Andrews; Nathan Andrews; David L. Dirks; Julie Dirks; Dirks Farms LTD.; Happy Creek, Inc.; J&D Cattle, LLC; 4M Feeders, Inc.; May Brothers, Inc.; May Family Farms; 4M Feeders, LLC; May Acres, Inc.; Thomas R. May; James J. May; Steven D. Kramer; Kent E. Ficken; and Carlyle James as Trustee of the Chester James Trust.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><i>Attorneys For Happy Creek, Inc., J&D Cattle, LLC, 4M Feeders, Inc., May Brothers, Inc., May Family Farms, 4M Feeders, LLC, May Acres, Inc., Thomas R. May, James J. May, Steven D. Kramer, Kent E. Ficken, and Carlyle James as Trustee of the Chester James Trust.</i></p> <p>William A. Paddock, Reg. No. 9478 Johanna Hamburger, Reg. No. 45052 Carlson, Hammond & Paddock, LLC 1900 Grant Street, Suite 1200 Denver, Colorado 80203 Phone Number: (303) 861-9000 Fax Number: (303) 861-9026 Email: bpaddock@chp-law.com jhamburger@chp-law.com</p>	<p>Case Number: 15CW3018</p> <p>Div. No. 1</p>

ANSWER OF HAPPY CREEK, INC., J&D CATTLE, LLC, 4M FEEDERS, INC., MAY BROTHERS, INC., MAY FAMILY FARMS, 4M FEEDERS, LLC, MAY ACRES, INC., THOMAS R. MAY, JAMES J. MAY, STEVEN D. KRAMER, KENT E. FICKEN, AND CARLYLE JAMES AS TRUSTEE OF THE CHESTER JAMES TRUST

The Defendants Happy Creek, Inc., a Nevada corporation; J&D Cattle LLC, a Colorado limited liability company; 4M Feeders, Inc., a Colorado corporation; May Brothers, Inc., a Colorado corporation; May Family Farms, a Colorado general partnership; 4M Feeders LLC, a Colorado limited liability company; May Acres, Inc., a Colorado corporation; Thomas R. May; James J. May; Steven D. Kramer, Kent E. Ficken, and Carlyle James as Trustee of the Chester James Trust (collectively “Eastern Colorado H2O”) by their undersigned attorneys, hereby answer Plaintiff’s complaint as follows.

This answer is being filed in response to the Notice by Publication published in various newspapers as required by the Court’s orders of July 8, 2015, and September 25, 2015, concerning joinder of well owners. Eastern Colorado H2O is comprised of individuals and entities that own permitted irrigation and commercial wells in the Northern High Plains Designated Ground Water Basin. As such, they have an interest in the claims asserted in Plaintiff’s Complaint.

For the convenience of the Court and parties, in answering the Complaint Eastern Colorado H2O has repeated the titles and paragraph numbers used by Plaintiff in its Complaint.

The first paragraph of the Complaint is Plaintiff’s characterization of its claims and its requested relief, and as such does not require a response. If a response is required, the introductory paragraph is denied.

JURISDICTION

1. Eastern Colorado H2O 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 water division, and that water matters include only those matters which Title 37, Article 92 and any other law specify to be heard by the water judge. The remaining averments of paragraph 1 are denied.
2. Eastern Colorado H2O admits that the water judge has jurisdiction over issues ancillary to water matters. *See e.g. Crystal Lakes Water and Sewer Ass’n v. Blacklund*, 980 P.2d 534 (Colo. 1995). The remaining averments of paragraph 2 are denied.

3. Eastern Colorado H2O admits that some averments in the Complaint may implicate water matters. Eastern Colorado H2O denies that there has been an unlawful infringement of any decreed water rights in the Republican River Basin by these Defendants or by either S.B. 10-052 or the Colorado Ground Water Management Act, § 37-90-101 *et. seq.*, C.R.S.

4. Eastern Colorado H2O admits that the Colorado Ground Water Commission (“Commission”) has jurisdiction over designated ground water pursuant to the Colorado Ground Water Management Act. Eastern Colorado H2O admits that under the decision in *Gallegos v. Colorado Ground Water Comm’n*, 147 P.3d 20 (Colo. 2006), the Commission has jurisdiction over surface water rights to the extent that a holder of those rights seeks a change to the boundaries of a designated ground water basin. Plaintiff’s legal conclusions stated in paragraph 4 require no response. Eastern Colorado H2O admits that the complaint does not expressly request modification of the boundaries of a designated water basin.

PARTIES

5. Eastern Colorado H2O admits that Plaintiff is a nonprofit corporation and the corporate purposes stated in its Articles of Incorporation (on file with the Colorado Secretary of State) are to “find and recognize high school and college students from Kit Carson and Yuma Counties, Colorado who are committed to careers in nursing; and providing them with student education grants and/or loan funds for vocational, under-graduate, and/or graduate study and fellowship with other students who are committed to making a difference through careers in nursing.” Eastern Colorado H2O denies any averments concerning the purpose for which Plaintiff is organized and operates that conflict with the Articles of Incorporation. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 5.¹

6. Eastern Colorado H2O admits that the Colorado Department of Natural Resources (“CDNR”) includes the Division of Water Resources (“DWR”), the State Engineer, and the Division Engineers; and that the State Engineer is the head of the DWR. Sections 24-1-124(3) and (4), C.R.S., speak for themselves and no response is required. If a response is required, Eastern Colorado H2O denies the remaining averments of paragraph 6.

7. Eastern Colorado H2O admits the averments of paragraph 7 except the averment that the State Engineer lacks discretion in the administration and distribution of waters of the State of Colorado or in complying with interstate compact obligations. Section 37-80-

¹ Pursuant to CRCP 8(b), a statement by Eastern Colorado H2O that it is without knowledge or information sufficient to form a belief as to the truth of the averments has the effect of a denial.

102(1)(a), C.R.S., speaks for itself and no response is required. If a response is required, Eastern Colorado H2O denies the remaining averments of paragraph 7.

8. Admitted.

9. Eastern Colorado H2O states that section 37-92-202, C.R.S. speaks for itself and no response is required. If a response is required, Eastern Colorado H2O 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 of 1969.

10. Eastern Colorado H2O admits that the Colorado Division of Parks and Wildlife (“CPW”) is a division of the CDNR and CPW’s responsibilities include, among other things, the matters stated in paragraph 10. Eastern Colorado H2O denies that CPW is responsible for the administration of water in, or the operation of, Bonny Dam and/or Bonny Reservoir.

WATER RIGHTS

11. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 11.

12. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments that Plaintiff owns four decreed surface water rights on the South Fork of the Republican River. In response to subparagraphs A-D of paragraph 12, Eastern Colorado H2O states that the decrees referenced therein speak for themselves and no response is required. If a response is required, then Eastern Colorado H2O:

A. Admits subparagraph 12.A except that the Tip Jack Ditch was decreed in Civil Action 18162 on December 28, 1893, not Civil Action 18172.

B. Admitted.

C. Admitted.

D. Admitted.

13. Eastern Colorado H2O admits that water rights in Colorado can be vested property rights, but is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 13.

14. Eastern Colorado H2O admits the averments in the first sentence of paragraph 14. While the decree entered in Case No. W-9135-77 speaks for itself and requires no response, Eastern Colorado H2O admits 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, and fish and wildlife propagation with a December 3, 1948, date of appropriation and priority date.

15. Eastern Colorado H2O admits that Bonny Reservoir and Bonny Dam are located upstream of lands described in paragraph 11 of the Complaint, but is without knowledge or information sufficient to form a belief as to the truth of the remaining averment in paragraph 15. In response to subparagraphs 15.A and 15.B, Eastern Colorado H2O states:

A. Eastern Colorado H2O admits that the original diversion point for the Tip Jack Ditch was rendered unusable by the construction of Bonny Dam and Reservoir, and that the diversion point of the Tip Jack Ditch was moved downstream to a different location. Eastern Colorado H2O 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 all speak for themselves and no response is required. If a response is required, Eastern Colorado H2O states that the decree entered in Case No. W-8667-77 granted a change in diversion point for the Tip Jack Ditch consistent with the point described in the Amended Map of the Tip Jack Ditch. Eastern Colorado H2O denies that the current decreed location of the Tip Jack Ditch point of diversion was described on the Map of the Roscoe Hutton Irrigation System and denies that such point was recognized by the Water Court in Case No. 12CW111.

B. Admitted.

16. The Water Contract speaks for itself and therefore no response is required. If a response is required, Eastern Colorado H2O denies the averments in paragraph 16 to the extent they are inconsistent with the Water Contract.

17. The Water Contract speaks for itself, and therefore no response is required. If a response is required, Eastern Colorado H2O denies the averments to the extent they are inconsistent with the Water Contract. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the remaining averments in paragraph 17.

18. The Land Contract speaks for itself, and therefore no response is required. If a response is required, Eastern Colorado H2O denies the averments to the extent they are inconsistent with the Land Contract.

19. The Land Contract and the Bonny Reservoir operating plan speak for themselves, and therefore no response is required. If a response is required, Eastern Colorado H2O denies the averments to the extent they are 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. If a response is required, Eastern Colorado H2O denies the averments to the extent they are inconsistent with the Water Contract and Land Contract. Plaintiff's legal conclusions in paragraph 20 require no response. If a response is required, Eastern Colorado H2O denies the averments in paragraph 20.

COMPACT COMPLIANCE AND GROUND WATER DEPLETIONS

21. The Republican River Compact of 1942 ("Compact") speaks for itself and therefore no response is required. If a response is required, Eastern Colorado H2O admits that the Compact is codified at section 37-67-101, C.R.S., and is among the states of Colorado, Kansas, and Nebraska, and divides the waters of the Republican River Basin among them. The remaining averments of paragraph 21 are denied.

22. Admitted

23. Eastern Colorado H2O admits that the Ground Water Management Act was enacted in 1965 and that it empowers the Commission to establish designated ground water basins; that the appropriation dates for the Hutton No. 1, Hutton No. 2, Tip Jack Ditch, and Hale Ditch Priority No. 38 water rights pre-date the Ground Water Management Act; and that the dates of appropriation of these water rights are as set forth in subparagraph 12A-D of the Complaint. Eastern Colorado H2O points out that the adjudication date and, therefore, the priority dates for the Hutton No. 1 and Hutton No. 2 water rights, post-date the formation of the NHP Basin. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the remaining averments of paragraph 23.

24. Eastern Colorado H2O admits that the Ground Water Commission created the Northern High Plains Designated Ground Water Basin ("NHP Basin") in 1966. The NHP Basin designation order speaks for itself and therefore no response is required. If a response is required, Eastern Colorado H2O admits that the order establishing the NHP Basin states that the hearing began at 10:00 a.m. and concluded at 12:50 p.m. on April 16, 1966.

25. In response to the first sentence of paragraph 25, Eastern Colorado H2O admits that Rule 5.2.2.1 of the Rules and Regulations for Management and Control of Designated Ground Water, 2 C.C.R. 410-1, states that the areal extent of the Ogallala and White River Aquifers are considered to coincide with the areal extent of the NHP Basin. Eastern Colorado H2O admits the averments in the second sentence of paragraph 25.

26. Eastern Colorado H2O admits that the number of wells and the amount of ground water pumped within the NHP Basin increased in the 1960s and 1970s, and admits that there are currently approximately 3,461 permitted and active high capacity wells in the NHP Basin. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of remaining averments of paragraph 26.

27. Eastern Colorado H2O admits that some high capacity irrigation wells within the NHP Basin are no longer in use and other such wells in the NHP Basin continue to pump ground water. Eastern Colorado H2O is without sufficient information to form a belief as to the truth of the remaining averments of paragraph 27.

28. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 28.

29. Eastern Colorado H2O admits that the Republican River Compact Administration (“RRCA”) Ground Water Model indicates that groundwater consumption contributes to declines in stream flow in the Republican River Basin. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 29.

30. The Bill of Complaint filed by the State of Kansas in 1998 against Nebraska speaks for itself, and therefore no response is required. If a response is required, Eastern Colorado H2O states that a correct summary of the Bill of Complaint filed by Kansas is set forth on pages 3 and 4 of the First Report of the Special Master in *Kansas v. Nebraska and Colorado*, dated January 28, 2000. Eastern Colorado H2O admits that the State of Colorado was joined as a party to this lawsuit.

31. Eastern Colorado H2O admits that the Special Master heard argument on the question “Does the Republican River Compact restrict a compacting State’s consumption of groundwater?” Eastern Colorado H2O further states that the First Report of the Special Master speaks for itself and no response is required. If a response is required, Eastern Colorado H2O states that the Special Master’s conclusions and recommendation are as set

forth on pages 44 and 45 of the First Report of the Special Master. The remaining averments of paragraph 31 are denied.

32. The Special Master's ruling speaks for itself and no response is required. If a response is required, Eastern Colorado H2O denies that Plaintiff has correctly summarized the conclusions and recommendation in the First Report of the Special Master.

33. Both the settlement stipulation between Colorado, Kansas, and Nebraska, and the United States Supreme Court decision regarding that settlement stipulation speak for themselves and no response is required. If a response is required, Eastern Colorado H2O admits that in the December 15, 2002 Final Settlement Stipulation between Kansas, Nebraska, and Colorado, the states agreed, *inter alia*, that "Determination of stream flow depletions caused by Well pumping and determination of Imported Water Supply Credit will be accomplished by the RRCA Ground Water Model as used in the RRCA Accounting Procedures." Eastern Colorado H2O denies the remaining averments of paragraph 33.

34. The RRCA Ground Water Model, the Special Master's final report, and the United States Supreme Court ruling dated October 20, 2003, all speak for themselves and no response is required. If a response is required, Eastern Colorado H2O admits that: RRCA Ground Water Model was adopted in 2003 and submitted to the Special Master; the Special Master filed his final report with the United States Supreme Court; and the United States Supreme Court received and ordered filed the Final Report and dismissed the lawsuit. The remainder of paragraph 34 is denied.

35. The results of the annual runs of the RRCA Ground Water Model speak for themselves and no response is required. If a response is required, Eastern Colorado H2O denies the averments in paragraph 35 to the extent they are inconsistent with the RRCA Ground Water Model and the results of annual runs.

36. Eastern Colorado H2O admits that the Final Report of the Special Master contained as an attachment the documentation of the RRCA Ground Water Model adopted by the states. The results of the 1981-2000 annual runs of the RRCA Ground Water Model are Appendix U of the documentation, and Appendix U speaks itself, so no response is required. Eastern Colorado H2O further states that the Final Report of the Special Master describing the RRCA Ground Water Model was simply "received and ordered filed" by the United States Supreme Court. Eastern Colorado H2O also states that Appendix U shows that ground water pumped between 1981 and 2000 in the Republican River 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. Appendix U does not state where on the Republican River and its tributaries those depletions occurred. If any further response is required, Eastern Colorado H2O denies the remaining averments of paragraph 36.

37. The results of the annual runs of the RRCA Ground Water Model speak for themselves and no response is required. If any response is required, Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 37.

38. Eastern Colorado H2O admits that RRCA Ground Water Model Runs have continued since 2003 and that the RRCA approved RRCA Ground Water Model Runs annually through the year 2007. The 2007 Model Runs speak for themselves and no further response is required. Eastern Colorado H2O, however, admits that the 2007 Model Runs show 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 that approximately 11,240 acre-feet of those delayed depletions occurred to the South Fork of the Republican River, but the Model Runs do not specify where those depletions occurred. Eastern Colorado H2O denies the remaining averments of paragraph 38.

39. Eastern Colorado H2O admits that RRCA Ground Water Model Runs have continued since 2007 and that the RRCA has not approved said runs. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the remaining averments of paragraph 39.

40. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 40.

41. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph 41.

ACTIONS TAKEN BY DEFENDANTS TO ADDRESS THE COMPACT SHORTFALL

42. Eastern Colorado H2O admits that in 2007 the State Engineer began preparing draft rules and regulations concerning administration of groundwater in the NHP Basin and that such rules and regulations have not been promulgated. Eastern Colorado H2O is without information sufficient to form a belief as to the remaining averments of paragraph 42.

43. In response to the first sentence of paragraph 43, Eastern Colorado H2O admits that no state administrative agency has issued orders requiring wells in the NHP Basin to cease pumping for the express purpose of compliance with the Compact. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 43.

44. Eastern Colorado H2O admits the first two sentences of paragraph 44. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 44.

45. Eastern Colorado H2O admits that water stored in Bonny Reservoir was drained in 2011. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the remaining averments of paragraph 45.

46. Paragraph 46 states Plaintiff's legal conclusions and no response is required. If a response is required, Eastern Colorado H2O admits that the Bonny Reservoir was constructed for flood control and other purposes and that the decree for the Bonny Reservoir water storage right states the uses of the stored water as flood control, irrigation of approximately 750 acres, recreation, and fish and wildlife propagation. The remaining averments of paragraph 46 are denied.

47. Paragraph 47 states Plaintiff's legal conclusions and no response is required. If a response is required, Eastern Colorado H2O denies the averments in the first sentence of paragraph 47, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 47.

48. Eastern Colorado H2O admits that the State and Division Engineer have not sought to curtail their wells in the NHP Basin based upon their date of appropriation or priority. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the remaining averments of paragraph 48.

49. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 49.

50. Eastern Colorado H2O 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, and that Plaintiff successfully protested their inclusion on the 2010 abandonment list.

51. With respect to the first sentence of paragraph 51, Eastern Colorado H2O states that the Water Court's Order dated December 16, 2013, in Case No. 12CW111, speaks for itself and no response is required. If a response is required, Eastern Colorado H2O admits that the decree in Case No. 12CW111 does not effect a change in point of diversion of the Tip Jack Ditch water right. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 51.

52. In response to the averments in paragraph 52, Eastern Colorado H2O states that Findings of Fact and Conclusions of Law entered on December 16, 2013, speaks for itself and no response is required. If a response is required, Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments in the first sentence of paragraph 52, and denies that paragraph 52 is an accurate characterization of the December 13, 2013 order.

53. Admitted.

INJURY TO FOUNDATION FROM DEFENDANTS' ACTIONS AND INACTIONS

54. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 54.

55. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 55.

56. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 56.

57. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 57.

58. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 58.

59. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 59.

60. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 60.

61. The first sentence of paragraph 61 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in the

first sentence of paragraph 61. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 61.

62. Paragraph 62 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 62.

SENATE BILL 52 (2010)

63. Section 37-90-103(6)(a), C.R.S. (2015) and the *Gallegos* opinion speak for themselves and no response is required. If any response is required, Eastern Colorado H2O points out that Plaintiff's description of § 37-90-103(6)(a), C.R.S. (2015) is not a complete quotation of that section.

64. Paragraph 64 appears to state Plaintiff's legal conclusions and therefore no response is required. If any response is required, Eastern Colorado H2O admits that the quotations are accurate representations of the text in the cited sources but denies their applicability to Plaintiff's claim.

65. Eastern Colorado H2O admits that as of April 14, 1966, Section 148-18-6(1)(a), C.R.S. (1963) stated, in relevant part: "The commission shall, from time to time as adequate factual data becomes available, determine designated ground water basins and subdivisions thereof by both geologic and geographic description, and as future conditions require and factual data justify, shall alter the boundaries or description thereof" and admits that the meaning of this provision was interpreted in *Gallegos v. Colorado Ground Water Commission*, 147 P.3d 20 (Colo. 2006). Eastern Colorado H2O denies the remaining averments of paragraph 65.

66. The *Gallegos* decision speaks for itself and no response is required. If any response is required, Eastern Colorado H2O admits that paragraph 66 is an accurate quotation of a portion of the *Gallegos* decision.

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. If any response is required, Eastern Colorado H2O admits that groundwater located outside of the boundaries of a designated groundwater basin is not subject to the jurisdiction of the Ground Water Commission, may fall within the jurisdiction of the water judge, and denies the remaining averments of paragraph 67.

68. The order in Case No. 06CV31 speaks for itself and no response is required. If any response is required, Eastern Colorado H2O admits that the first two sentences are a generally correct description of the content of part of that order. Eastern Colorado H2O is

without knowledge or information sufficient to form a belief as to the remaining averments of paragraph 68.

69. Paragraph 69 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 69.

70. Paragraph 70 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O admits that S.B. 10-052 was adopted in 2010, and that it changed section 37-90-106(1)(a) to limit the Commission's authority to change the boundaries of Designated Ground Water Basins to either increasing the area included in the basin or excluding land on which no well permitted to use designated groundwater is located. Eastern Colorado H2O denies the remaining averments in paragraph 70.

71. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of averments in paragraph 71.

72. Paragraph 72 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 72.

73. Paragraph 73 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 73.

74. Paragraph 74 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 74.

75. Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the averments in paragraph 75.

CLAIMS FOR RELIEF

(Declaratory Judgment, Injunction)

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

76. Eastern Colorado H2O incorporates all of its answers to the paragraphs above as if fully set forth herein.

77. Paragraph 77 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 77.

78. Paragraph 78 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 78.

79. Paragraph 79 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in the second sentence of 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. If any response is required, Eastern Colorado H2O denies the averments 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. If any response is required, Eastern Colorado H2O admits that the State Engineer has executive authority and responsibility to discharge the obligations of the State of Colorado imposed by compacts, and may make and enforce such regulations with respect to deliveries of water as will enable Colorado to meet its compact commitments. Eastern Colorado H2O denies the remaining averments of paragraph 81.

82. Paragraph 82 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 82.

83. Paragraph 83 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O refers Plaintiff to its answers to paragraphs 42 and 43 of the Complaint, and denies the remaining averments in paragraph 83.

84. Paragraph 84 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 84.

85. Paragraph 85 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 85.

86. Paragraph 86 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 86.

87. Paragraph 87 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O refers Plaintiff to its answer to paragraph 13 of the Complaint and denies the remaining averments in paragraph 87.

88. Paragraph 88 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the averments in the first sentence of paragraph 88, and denies the remaining averments 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. If any response is required, Eastern Colorado H2O admits that the United States obtained confirmation of a water storage right for Bonny Reservoir, and denies the remaining averments of 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. If any response is required, Eastern Colorado H2O denies the averments in paragraph 90.

91. Paragraph 91 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 91.

92. Paragraph 92 and its subparagraphs A, B, C and D state Plaintiff's request for relief and no response is required. If any response is required, Eastern Colorado H2O denies that Plaintiff is entitled to any such relief.

93. Paragraph 93 states Plaintiff's request for relief and no response is required. If any response is required, Eastern Colorado H2O denies that Plaintiff is entitled to any such relief.

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

94. Eastern Colorado H2O incorporates all of its answers to the paragraphs above as though fully set forth herein.

95. Paragraph 95 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 95.

96. Paragraph 96 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O refers Plaintiff to its answer to paragraph 70 of the Complaint and denies the remaining averments in paragraph 96.

97. Eastern Colorado H2O 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, and that the RRCA Ground Water Model was

approved by Colorado, Kansas and Nebraska in 2003. The remaining averments of paragraph 97 state Plaintiff's legal conclusions and require no response. If any response is required, Eastern Colorado H2O denies the remaining averments in paragraph 97.

98. Paragraph 98 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O refers Plaintiff to its answer to paragraph 65 of the Complaint, and denies the averments in paragraph 98.

99. Paragraph 99 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O refers Plaintiff to its answer to paragraph 13 of the Complaint, and denies the averments in paragraph 99.

100. Paragraph 100 states Plaintiff's legal conclusions and no response is required. Further, the Colorado Constitution speaks for itself and no response is required. If any response is required, Eastern Colorado H2O admits that Article II, § 11 of the Colo. Const. prohibits laws that are retrospective in operation and denies that S.B. 10-052 violates Art. II § 11 of the Colo. Const.

101. Paragraph 101 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 101.

102. Paragraph 102 states Plaintiff's legal conclusions and no response is required. Further, S.B. 10-052 speaks for itself and no response is required. If any response is required, Eastern Colorado H2O is without knowledge or information sufficient to form a belief as to the truth of the averments in the first sentence of paragraph 102. Eastern Colorado H2O admits that section 37-90-106(1)(a) was interpreted in the *Gallegos* case, and denies the remaining averments in paragraph 102.

103. Paragraph 103 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O admits that the *Gallegos* decision interpreted section 37-90-106(1)(a) and predates S.B. 10-052 and denies the remaining averments in paragraph 103.

104. Paragraph 104 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 104.

105. Paragraph 105 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 105.

106. Paragraph 106 and its subparagraphs A and B state Plaintiff's request for relief and no response is required. If any response is required, Eastern Colorado H2O denies that Plaintiff is entitled to any such relief.

107. Admitted.

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. Eastern Colorado H2O incorporates its answers to the paragraphs above as though fully set forth below.

109. Paragraph 109 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments 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* opinion speak for themselves and no response is required. If any response is required, Eastern Colorado H2O admits that the State of Colorado entered into the Compact in 1942 and denies the remaining averments 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. If any response is required, Eastern Colorado H2O denies that S.B. 10-052 is unlawful.

112. Admitted.

113. Paragraph 113 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O is without knowledge or information to form a belief as to the truth of the averments in paragraph 113.

114. Paragraph 114 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O is without knowledge or information to form a belief as to the truth of the averments in paragraph 114.

115. Paragraph 115, including its subparagraphs A and B, states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 115.

116. Paragraph 116 states Plaintiff's legal conclusions and no response is required. If any response is required, Eastern Colorado H2O denies the averments in paragraph 116.

117. Paragraph 117 and its subparagraphs A and B state Plaintiff's request for relief and no response is required. If any response is required, Eastern Colorado H2O denies that Plaintiff is entitled to any such relief.

118. Admitted.

Any and all averments in the Complaint that were not admitted or denied in the preceding paragraphs are hereby denied.

DEFENSES

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

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

C. This Court may lack subject matter jurisdiction to hear claims related to the Ground Water Management Act of 1965.

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

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

F. Plaintiff is estopped from asserting the injury asserted in its claims for relief in this matter.

G. Eastern Colorado H2O 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, Eastern Colorado H2O requests that this Court deny Plaintiff's requests for relief, award Eastern Colorado H2O its costs in this action, and grants such other relief as justice may require.

Dated: December 16, 2015.

CARLSON, HAMMOND & PADDOCK, LLC

By: s/William A. Paddock

William A. Paddock

Johanna Hamburger

Attorneys for Happy Creek, Inc.; J&D Cattle LLC; 4M Feeders, Inc.; May Brothers, Inc.; May Family Farms; 4M Feeders LLC; May Acres, Inc.; Thomas R. May; James J. May; Steven D. Kramer; Kent E. Ficken; and Carlyle James as Trustee of the Chester James Trust.

(Signed original on file at the offices of Carlson, Hammond and Paddock, LLC.)

CERTIFICATE OF SERVICE

Case Number 2015CW3018

I hereby certify that on December 16, 2015, a true and correct copy of the foregoing document, titled **ANSWER OF HAPPY CREEK, INC., J&D CATTLE, LLC, 4M FEEDERS, INC., MAY BROTHERS, INC., MAY FAMILY FARMS, 4M FEEDERS, LLC, MAY ACRES, INC., THOMAS R. MAY, JAMES J. MAY, STEVEN D. KRAMER, KENT E. FICKEN, AND CARLYLE JAMES AS TRUSTEE OF THE CHESTER JAMES TRUST**, was served via ICCES to the following recipients:

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