

DISTRICT COURT, WATER DIVISION NO. 1,  
STATE OF COLORADO  
Weld County Courthouse  
901 9th Avenue, P.O. Box 2038  
Greeley, Colorado, 80632  
(970) 351-7300

**Plaintiff:** The Jim Hutton Educational Foundation, a  
Colorado non-profit corporation

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

Attorneys for Marks Butte, Frenchman, Sandhills,  
Central Yuma, Plains, W-Y, and Arikaree Ground  
Water Management Districts:

Eugene J. Riordan, Atty. Reg. #11605  
Leila C. Behnampour, Atty. Reg. #42754  
Vranesh and Raisch, LLP  
1720 14th Street, Suite 200  
Boulder, Colorado 80302  
Telephone Number: (303) 443-6151  
Fax Number: (303) 443-9586  
E-mail: [ejr@vrlaw.com](mailto:ejr@vrlaw.com); [lcb@vrlaw.com](mailto:lcb@vrlaw.com)

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Case Number: 2015CW3018

Water Div. No. 1

Co-counsel for Arikaree Ground Water Management District:	
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David C. Taussig, Atty, Reg. #16606	
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White & Jankowski, LLP	
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511 16 <sup>th</sup> Street, Suite 500	
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Denver, Colorado 80202	
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Telephone Number: (303) 595-9441	
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Fax Number: (303) 825-5632	
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E-mail: <a href="mailto:DaveT@white-jankowski.com">DaveT@white-jankowski.com</a>	
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<b>ANSWER OF THE MARKS BUTTE GROUND WATER MANAGEMENT DISTRICT, FRENCHMAN GROUND WATER MANAGEMENT DISTRICT, SANDHILLS GROUND WATER MANAGEMENT DISTRICT, CENTRAL YUMA GROUND WATER MANAGEMENT DISTRICT, W-Y GROUND WATER MANAGEMENT DISTRICT, PLAINS GROUND WATER MANAGEMENT DISTRICT, AND ARIKAREE GROUND WATER MANAGEMENT DISTRICT</b>
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The Marks Butte Ground Water Management District, Frenchman Ground Water Management District, Sandhills Ground Water Management District, Central Yuma Ground Water Management District, W-Y Ground Water Management District, Plains Ground Water Management District, and Arikaree Ground Water Management District (collectively "Districts") by and through their undersigned attorneys, Vranesh and Raisch, LLP, and the Arikaree District, by and through co-counsel, White & Jankowski, LLP, and pursuant to the Court's Order in the above captioned case dated July 9, 2015, hereby submit their Answer to Plaintiff'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, as follows.

The Districts are local ground water management districts formed pursuant to the requirements of the Ground Water Management Act of 1965, C.R.S. § 37-90-101 et seq. ("1965 Act"). Each of the Districts' respective boundaries is also located within the boundaries of the Northern High Plains Designated Ground Water Basin ("NHP Basin"). The Districts are charged by statute to regulate the use, control and conservation of designated ground water within their boundaries, which includes administering designated ground water priorities. *Upper Black Squirrel Ground Water Management Dist. v. Goss*, 993 P.2d 1177, 1186 (Colo. 2000) (citing C.R.S. 37-90-111(1)(a), 37-90-130(2)(j), and 37-90-131(1)(c)).

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 Districts admit that a Complaint has been filed to initiate this case. To the extent the introductory paragraph contains any substantive allegations beyond a summary of the claims raised by Plaintiff, such allegations are denied.

### **JURISDICTION**

1. Paragraph 1 contains legal characterizations or conclusions to which no response is required. C.R.S. § 37-92-203(1) speaks for itself. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 1.

2. Paragraph 2 contains legal characterizations or conclusions concerning ancillary jurisdiction to which no response is required. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 2.

3. Paragraph 3 contains legal characterizations or conclusions concerning "water matters" to which no response is required. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 3.

4. Paragraph 4 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 4 contains legal characterizations or conclusions, no response is required. The law and the statutes cited in Paragraph 4 speak for themselves. The Districts are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore deny the same.

### **PARTIES**

5. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 5, and therefore deny the same.

6. The Districts admit that the Colorado Department of Natural Resources includes the Division of Water Resources ("DWR"), headed by the Colorado State Engineer, and that the DWR also includes the Division Engineers. C.R.S. §§ 24-1-124(3) and (4) speak for themselves. To the extent Paragraph 6 contains legal characterizations

or conclusions, no response is required. To the extent any additional response is required, the Districts deny the remaining allegations.

7. Paragraph 7 contains legal characterizations or conclusions to which no response is required. C.R.S. § 37-80-102(1)(a) speaks for itself. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 7.

8. The Districts admit that the State Engineer is the Executive Director of the Commission and a Republican River Compact Commissioner.

9. Paragraph 9 contains legal characterizations or conclusions to which no response is required. C.R.S. § 37-92-202 speaks for itself. To the extent any additional response is required, the Districts deny the allegations.

10. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 10, and therefore deny the same.

### **WATER RIGHTS**

11. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 11, and therefore deny the same.

12. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 12 and its subparagraphs A-D, and therefore deny the same. The Districts admit only that the water court decrees, if they exist, speak for themselves.

13. Paragraph 13 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 13 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 13, and therefore deny them.

14. Paragraph 14 contains a mixture of legal conclusions and factual allegations. To the extent Paragraph 14 contains legal characterizations or conclusions, no response is required. The Districts admit only that the water court decree, if it exists, speaks for itself. The Districts are without knowledge or information sufficient to form a

belief as to the truth of the factual allegations in Paragraph 14, and therefore deny the same.

15. Paragraph 15 and its subparagraphs A and B contain a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 15 contains legal characterizations or conclusions, no response is required. The Districts referenced documents, if they exist, speak for themselves. As to any factual allegations, The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 15 and its subparagraphs A and B, and therefore deny the same.

16. Paragraph 16 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 16 contains legal characterizations or conclusions, no response is required. The referenced Water Contract, if it exists, speaks for itself. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 16, and therefore deny the same.

17. Paragraph 17 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 17 contains legal characterizations or conclusions, no response is required. The referenced Water Contract, if it exists, speaks for itself. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 17, and therefore deny the same.

18. Paragraph 18 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 18 contains legal characterizations or conclusions, no response is required. The referenced Land Contract, if it exists, speaks for itself. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 18, and therefore deny the same.

19. Paragraph 19 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 19 contains legal characterizations or conclusions, no response is required. The referenced documents, if they exist, speak for themselves. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 19, and therefore deny the same.

20. Paragraph 20 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 20 contains legal characterizations or conclusions, no response is required. The referenced contracts, if they exist, speak for

themselves. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 20 and therefore deny them.

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

21. Paragraph 21 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 21 contains legal characterizations or conclusions, no response is required. The Republican River Compact of 1942 and C.R.S. § 37-67-101 speak for themselves. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 21, and therefore deny them.

22. The Districts are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22, and therefore deny the same.

23. Paragraph 23 contains a mixture of factual allegations and legal conclusions. To the extent Paragraph 23 contains legal characterizations or conclusions, no response is required. The Ground Water Management Act speaks for itself. The Districts are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 23, and therefore deny the same.

24. Paragraph 24 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 24 contains legal characterizations or conclusions, no response is required. The NHP Basin designation order speaks for itself. The Districts are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 24, and therefore deny the same.

25. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 25, and therefore deny the same.

26. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 26, and therefore deny the same.

27. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 27, and therefore deny the same.

28. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 28, and therefore deny the same.

29. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 29, and therefore deny the same.

30. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 30, and therefore deny the same.

31. Paragraph 31 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 31 contains legal characterizations or conclusions, no response is required. The Special Master's ruling speaks for itself. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 31, and therefore deny the same.

32. Paragraph 32 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 32 contains legal characterizations or conclusions, no response is required. The Special Master's ruling speaks for itself. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations of Paragraph 32, and therefore deny the same.

33. Paragraph 33 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 33 contains legal characterizations or conclusions, no response is required. The settlement stipulation between Colorado, Kansas, and Nebraska and the United States Supreme Court decision regarding said settlement stipulation speak for themselves. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations of Paragraph 33, and therefore deny the same.

34. Paragraph 34 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 34 contains legal characterizations or conclusions, no response is required. The Special Master's final report and the United States Supreme Court's ruling and order dated October 20, 2003, speak for themselves. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 34, and therefore deny the same.

35. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 35, and therefore deny the same.

36. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 36, and therefore deny the same.

37. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 37, and therefore deny the same.

38. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 38, and therefore deny the same.

39. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 39, and therefore deny the same.

40. Paragraph 40 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 40 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 40, and therefore deny them.

41. The Districts are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41, and therefore deny the same.

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

42. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 42, and therefore deny the same.

43. Paragraph 43 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 43 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or



information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 43, and therefore deny them.

44. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 44, and therefore deny the same.

45. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 45, and therefore deny the same.

46. Paragraph 46 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 46 contains legal characterizations or conclusions, no response is required. The United States congressional dedication and approval of Bonny Reservoir, and the referenced Bonny Reservoir water right decree, if they exist, speak for themselves. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 46, and therefore deny the same.

47. Paragraph 47 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 47 contains legal characterizations or conclusions, no response is required. The referenced Compact and the Bonny Reservoir water right decree, if they exist, speak for themselves. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 47, and therefore deny the same.

48. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 48, and therefore deny the same.

49. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 49, and therefore deny the same.

50. The Engineer's abandonment list and the materials in the court file in Case No. 12CW111 speak for themselves. The Districts are without further knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50, and therefore deny the same.

51. Paragraph 51 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 51 contains legal characterizations or conclusions, no response is required. The Water Court's Order dated December 16, 2013, in Case No. 12CW111, if it exists, speaks for itself. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 51, and therefore deny the same.

52. The materials in the court file in Case No. 11CW186 speak for themselves. The Districts are without further knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 52, and therefore deny the same.

53. Paragraph 53 contains legal characterizations or conclusions to which no response is required. The Order of the Water Court in Case No. 11CW186 dated December 16, 2013, if it exists, speaks for itself. To the extent any additional response is required, the Districts deny the allegations in Paragraph 53.

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

54. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 54, and therefore deny the same.

55. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 55, and therefore deny the same.

56. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 56, and therefore deny the same.

57. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 57, and therefore deny the same.

58. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 58, and therefore deny the same.

59. Paragraph 59 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 59 contains legal characterizations or

conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 59 and therefore deny them.

60. Paragraph 60 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 60 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 60 and therefore deny them.

61. Paragraph 61 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 61 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 61, and therefore deny them.

62. Paragraph 62 contains legal characterizations or conclusions to which no response is required. To the extent any response is required, the Districts deny the allegations contained in Paragraph 62.

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

63. Paragraph 63 contains legal characterizations or conclusions to which no response is required. C.R.S. § 37-90-103(6)(a) and the Colorado Supreme Court's opinion in *Gallegos v. Colo. Ground Water Comm'n*, 147 P.3d 20, 31 (Colo. 2006) ("*Gallegos*") and language from that opinion speak for themselves. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 63.

64. Paragraph 64 contains legal characterizations or conclusions to which no response is required. The Colorado Supreme Court opinions and publication cited by Plaintiff speak for themselves, and must be read both in context and in their entirety. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 64.

65. Paragraph 65 contains legal characterizations or conclusions to which no response is required. C.R.S. § 37-90-106(1)(a) and the *Gallegos* opinion speak for themselves. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 65.

66. Paragraph 66 contains legal characterizations or conclusions to which no response is required. The *Gallegos* opinion speaks for itself. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 66.

67. Paragraph 67 contains legal characterizations or conclusions to which no response is required. The *Gallegos* opinion speaks for itself. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 67.

68. Paragraph 68 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 68 contains legal characterizations or conclusions, no response is required. The court's order in Case No. 06CV31 speaks for itself. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 68, and therefore deny them.

69. Paragraph 69 contains legal characterizations or conclusions to which no response is required. The cited opinion speaks for itself. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 69.

70. Paragraph 70 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 70 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 70, and therefore deny them.

71. Paragraph 71 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 71 contains legal characterizations or conclusions, no response is required. Senate Bill 52 ("SB-52") speaks for itself. The Districts are without sufficient information to form a belief as to the truth of the factual allegations in Paragraph 71, and therefore deny the same.

72. Paragraph 72 contains legal characterizations or conclusions to which no response is required. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 72.

73. Paragraph 73 contains legal characterizations or conclusions to which no response is required. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 73.

74. Paragraph 74 contains legal characterizations or conclusions to which no response is required. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 74.

75. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 75, and therefore deny 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 Defendants are Unlawful.**

76. The Districts incorporate all answers included above as if fully set forth below.

77. Paragraph 77 contains legal characterizations or conclusions to which no response is required. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 77.

78. Paragraph 78 contains legal characterizations or conclusions to which no response is required. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 78.

79. Paragraph 79 contains legal characterizations or conclusions to which no response is required. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 79.

80. Paragraph 80 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 80 contains legal characterizations or conclusions, no response is required. C.R.S. § 37-80-104 speaks for itself. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 80, and therefore deny the same.

81. Paragraph 81 contains legal characterizations or conclusions to which no response is required. The referenced statutes speak for themselves. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 81.

82. Paragraph 82 contains legal characterizations or conclusions to which no response is required. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 82.

83. Paragraph 83 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 83 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 83, and therefore deny the same.

84. Paragraph 84 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 84 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 84, and therefore deny the same.

85. Paragraph 85 contains legal characterizations or conclusions to which no response is required. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 85.

86. Paragraph 86 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 86 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 86, and therefore deny them.

87. Paragraph 87 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 87 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 87, and therefore deny them.

88. Paragraph 88 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 88 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 88, and therefore deny them.

89. Paragraph 89 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 89 contains legal characterizations or conclusions, no response is required. The provisions of the Republican River Compact speak for themselves. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 89, and therefore deny them.

90. Paragraph 90 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 90 contains legal characterizations or conclusions, no response is required. 43 U.S.C. § 390b(e) speaks for itself. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 90, and therefore deny them.

91. Paragraph 91 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 91 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 91, and therefore deny them.

92. Paragraph 92 and its subparagraphs A, B, and C contain a mixture of legal characterizations or conclusions and factual allegations. Subparagraph D does not contain any allegations, and merely requests unspecified relief. To the extent Paragraph 92 and its subparagraphs A-D contain legal characterizations or conclusions and claims for relief, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 92 and its subparagraphs, and therefore deny them.

93. Paragraph 93 contains a mixture of legal characterizations or conclusions and factual allegations and claims for relief. To the extent Paragraph 93 contains legal characterizations or conclusions and claims for relief, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 93, and therefore deny the same. The Districts deny that Plaintiff is entitled to the requested injunctive relief.

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

94. The Districts incorporate all responses included above as though fully set forth below.

95. Paragraph 95 contains legal characterizations or conclusions to which no response is required. C.R.S. § 37-90-106(1)(a) and the 1965 Act speak for themselves. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 95.

96. Paragraph 96 contains legal characterizations or conclusions to which no response is required. SB-52 speaks for itself. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 96.

97. Paragraph 97 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 97 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 97, and therefore the Districts deny the same.

98. Paragraph 98 contains legal characterizations or conclusions to which no response is required. The *Gallegos* opinion speaks for itself. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 98.

99. Paragraph 99 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 99 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 99, and therefore deny them.

100. Paragraph 100 contains legal characterizations or conclusions to which no response is required. The Colorado Constitution speaks for itself. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 100.

101. Paragraph 101 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 101 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 101, and therefore deny them.

102. Paragraph 102 contains legal characterizations or conclusions to which no response is required. SB-52, C.R.S. § 37-90-106(1)(a), the 1965 Act, and the *Gallegos*



opinion speak for themselves. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 102.

103. Paragraph 103 contains legal characterizations or conclusions to which no response is required. To the extent any additional response is required, The Districts denies the allegations contained in Paragraph 103.

104. Paragraph 104 contains legal characterizations or conclusions to which no response is required. To the extent any additional response is required, The Districts denies the allegations contained in Paragraph 104.

105. Paragraph 105 contains legal characterizations or conclusions to which no response is required. To the extent any additional response is required, The Districts denies the allegations contained in Paragraph 105.

106. Paragraph 106 and its subparagraph A contain a mixture of legal characterizations or conclusions and factual allegations and requests for relief. Subparagraph B does not contain any allegations, and merely requests unspecified relief. To the extent Paragraph 106 and its subparagraphs A and B contain legal characterizations or conclusions and requests for relief, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 106 and its subparagraphs, and therefore deny the same.

107. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 107, and therefore deny 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. The Districts incorporate all responses included above as though fully set forth below.

109. Paragraph 109 contains legal characterizations or conclusions to which no response is required. To the extent any response is required, the Districts deny the allegations contained in Paragraph 109.

110. Paragraph 110 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 110 contains legal characterizations or conclusions, no response is required. C.R.S. § 37-67-101 and the referenced opinion speak for themselves. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 110, and therefore deny the same.

111. Paragraph 111 contains legal characterizations or conclusions to which no response is required. The United States Constitution speaks for itself. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 111.

112. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 112, and therefore deny the same.

113. Paragraph 113 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 113 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 113, and therefore deny the same.

114. Paragraph 114 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 114 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 114, and therefore deny them.

115. Paragraph 115 and its subparagraphs A and B contain legal characterizations or conclusions to which no response is required. To the extent any additional response is required, the Districts deny the allegations contained in Paragraph 115.

116. Paragraph 116 contains a mixture of legal characterizations or conclusions and factual allegations. To the extent Paragraph 116 contains legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 116, and therefore deny the same.

117. Paragraph 117 and its subparagraph A contain a mixture of legal characterizations or conclusions and factual allegations. Subparagraph B does not contain any allegations, and merely requests unspecified relief. To the extent Paragraph 117 and its subparagraphs A and B contain legal characterizations or conclusions, no response is required. The Districts are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 117 and its subparagraphs, and therefore deny the same.

118. The Districts are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 118, and therefore deny the same.

Any allegation not otherwise responded to is denied.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff's Complaint includes claims upon which relief cannot be granted. *See* C.R.C.P. 12(b)(5).
2. Plaintiff failed to challenge the alleged actions and/or omissions of the State Engineer and Division Engineer in accordance with, and within the time prescribed under, Colorado law.
3. Plaintiff failed to challenge the actions of the Colorado Ground Water Commission in accordance with, and within the time prescribed under, Colorado law.
4. This Court does not have subject matter jurisdiction to hear Plaintiff's claims, in whole or in part.
5. Plaintiff's claims are barred, in whole or in part, for failure to exhaust administrative remedies.
6. Plaintiff's claims are not ripe for adjudication.
7. Plaintiff is estopped from asserting the claims for relief in this matter.
8. Plaintiff's claims are barred, in whole or in part, by issue preclusion and/or claim preclusion.
9. Plaintiff's claims are barred by laches.

10. Plaintiff has failed to mitigate any damages.
11. Plaintiff's claims may be barred, in whole or in part, by its actions that may contribute to the alleged injury.
12. Plaintiff's claims are barred by the reasonable means of diversion doctrine.
13. Plaintiff's claims are barred by the futile call doctrine.
14. The Districts reserves the right to supplement or modify their Answer, including the identified Affirmative Defenses, and to assert any defense in law or fact to the stated claims for relief.

WHEREFORE, Marks Butte Ground Water Management District, Frenchman Ground Water Management District, Sandhills Ground Water Management District, Central Yuma Ground Water Management District, W-Y Ground Water Management District, Plains Ground Water Management District, and Arikaree Ground Water Management District, request that this Court deny the Plaintiff's claims and requested relief.

Respectfully submitted this 16th day of December, 2015.

VRANESH and RAISCH, LLP

*Signature on file pursuant to C.R.C.P. 121 § 1-26(7)*



By: s/ Leila C. Behnampour

Eugene J. Riordan, Atty. Reg. #11605

Leila C. Behnampour, Atty. Reg. #42754

ATTORNEYS FOR MARKS BUTTE GROUND  
WATER MANAGEMENT DISTRICT,  
FRENCHMAN GROUND WATER  
MANAGEMENT DISTRICT, SANDHILLS  
GROUND WATER MANAGEMENT  
DISTRICT, CENTRAL YUMA GROUND  
WATER MANAGEMENT DISTRICT, W-Y  
GROUND WATER MANAGEMENT  
DISTRICT, PLAINS GROUND WATER

MANAGEMENT DISTRICT, AND ARIKAREE  
GROUND WATER MANAGEMENT  
DISTRICT

WHITE & JANKOWSKI, LLP

*Signature on file pursuant to C.R.C.P. 121 § 1-26(7)*

A handwritten signature in blue ink, appearing to read "D.C. Taussig", with a stylized flourish at the end.

By: s/ Leila C. Behnampour for DCT

David C. Taussig, Atty. Reg. #16606

CO-COUNSEL FOR ARIKAREE GROUND  
WATER MANAGEMENT DISTRICT


**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of December, 2015, I served a true and correct copy of the foregoing **ANSWER OF THE MARKS BUTTE GROUND WATER MANAGEMENT DISTRICT, FRENCHMAN GROUND WATER MANAGEMENT DISTRICT, SANDHILLS GROUND WATER MANAGEMENT DISTRICT, CENTRAL YUMA GROUND WATER MANAGEMENT DISTRICT, W-Y GROUND WATER MANAGEMENT DISTRICT, PLAINS GROUND WATER MANAGEMENT DISTRICT, AND ARIKAREE GROUND WATER MANAGEMENT DISTRICT** by ICCES e-filing addressed to the following:

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

David Nettles	Preston Vincent Hartman	CO Attorney General
David Nettles	Daniel E Steuer	CO Attorney General
David Nettles	Ema I.g. Schultz	CO Attorney General
David Nettles	Preston Vincent Hartman	CO Attorney General
David Nettles	Daniel E Steuer	CO Attorney General
Dick Wolfe	Ema I.g. Schultz	CO Attorney General
Dick Wolfe	Preston Vincent Hartman	CO Attorney General
Dick Wolfe	Daniel E Steuer	CO Attorney General
Dick Wolfe	Ema I.g. Schultz	CO Attorney General
Dick Wolfe	Preston Vincent Hartman	CO Attorney General
Dick Wolfe	Daniel E Steuer	CO Attorney General
Dirks Farms Ltd	Alvin Raymond Wall	Alvin R Wall Attorney at Law
Division 1 Engineer	Division 1 Water Engineer	State of Colorado DWR Division 1
Division 1 Water Engineer	Preston Vincent Hartman	CO Attorney General
Division 1 Water Engineer	Ema I.g. Schultz	CO Attorney General
Don Myrna And Nathan Andrews	Stuart B Corbridge	Vranesh and Raisch
Don Myrna And Nathan Andrews	Geoffrey M Williamson	Vranesh and Raisch
East Cheyenne Ground Water Mgmnt Dist	John David Buchanan	Buchanan and Sperling, P.C.
East Cheyenne Ground Water Mgmnt Dist	Timothy Ray Buchanan	Buchanan and Sperling, P.C.
Harvey Colglazier	Alvin Raymond Wall	Alvin R Wall Attorney at Law
Julie Dirks	Alvin Raymond Wall	Alvin R Wall Attorney at Law
Lazier Inc	Alvin Raymond Wall	Alvin R Wall Attorney at Law
Mariane U Ortner	Alvin Raymond Wall	Alvin R Wall Attorney at Law
Marjorie Colglazier Trust	Alvin Raymond Wall	Alvin R Wall Attorney at Law
North Well Owners	Russell Jennings Sprague	Colver Killin and Sprague LLP
North Well Owners	Kimbra L. Killin	Colver Killin and Sprague LLP
Protect Our Local Communitys Water Llc	John David Buchanan	Buchanan and Sperling, P.C.
Protect Our Local Communitys Water Llc	Timothy Ray Buchanan	Buchanan and Sperling, P.C.
Republican River Water Conservation Dist	Peter J Ampe	Hill and Robbins PC
Republican River Water Conservation Dist	David W Robbins	Hill and Robbins PC
Saving Our Local Economy Llc	John David Buchanan	Buchanan and Sperling, P.C.
Saving Our Local Economy Llc	Timothy Ray Buchanan	Buchanan and Sperling, P.C.
State Engineer	Colorado Division of Water Resources	State of Colorado - Division of Water Resources
State Engineer	Ema I.g. Schultz	CO Attorney General

State Engineer	Preston Vincent Hartman	CO Attorney General
The Jim Hutton Educational Foundation	Steven J Bushong	Porzak Browning & Bushong LLP
The Jim Hutton Educational Foundation	Karen Leigh Henderson	Porzak Browning & Bushong LLP
The Jim Hutton Educational Foundation	Steven J Bushong	Porzak Browning & Bushong LLP
The Jim Hutton Educational Foundation	Karen Leigh Henderson	Porzak Browning & Bushong LLP
Timothy E Ortner	Alvin Raymond Wall	Alvin R Wall Attorney at Law
Tri State Generation And Transmission As	Aaron S. Ladd	Vranesh and Raisch
Tri State Generation And Transmission As	Justine Catherine Shepherd	Vranesh and Raisch
Yuma Cnty Water Authority Public Improv	Steven Owen Sims	Brownstein Hyatt Farber Schreck LLP
Yuma Cnty Water Authority Public Improv	John A Helfrich	Brownstein Hyatt Farber Schreck LLP
Yuma Cnty Water Authority Public Improv	Dulcinea Zdunska Hanuschak	Brownstein Hyatt Farber Schreck LLP

By:  s/ Erich S. Fowler  
Erich S. Fowler,  
Paralegal/Litigation Case Manager  
/s/ signature on file  
Pursuant to C.R.C.P. 121, §1-26(7)

SIGNED DOCUMENT BEING RETAINED AT THE OFFICE OF VRANESH AND RAISCH, LLP