

<p>DISTRICT COURT, WATER DIVISION 1 WELD COUNTY, COLORADO</p> <p>909 9th Avenue Greeley, Colorado 80631</p> <hr/> <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; the Colorado Department of Natural Resources; Colorado Division of Water Resources; and Colorado Parks and Wildlife.</p>	<p style="text-align: right; color: blue;">DATE FILED: December 16, 2015 4:39 PM</p> <p style="text-align: center;">^ COURT USE ONLY ^</p>
<p>CYNTHIA H. COFFMAN, Attorney General VIRGINIA SCIABBARRASI, Assistant Attorney General*</p> <p>Ralph L. Carr Colorado Judicial Center 1300 Broadway, 7thFloor Denver, CO 80203 Telephone: 720-508-6253 FAX: 720-508-6039 E-Mail: ginny.sciabbarrasi@coag.gov Registration Number: 39753 *Counsel of Record</p>	<p>Case No. 15CW3018</p> <p>Div.: 1</p>
<p>ANSWER OF THE STATE BOARD OF LAND COMMISSIONERS</p>	

The State of Colorado, by and through the State Board of Land Commissioners (“Land Board”), as an indispensable party, by and through the Office of the Colorado Attorney General, and by its undersigned counsel, answers the Complaint filed by Plaintiff as follows. The Land Board has been joined to this matter as an indispensable party through the Court’s order dated July 9, 2015, as an owner of nearly 100 wells within the Northern High Plains Basin that could potentially be impacted by a ruling in this case.

The Land Board is an agency and political subdivision of the State of Colorado and is governed by Colo. Const., art. IX, §§ 9 and 10 and by C.R.S. § 36-1-

101 *et seq.* The Land Board notes that, as a state agency, service of the Complaint was not completed upon it in accordance with Colo.R.Civ.P. 4(e)(10). The Court's September 25, 2015 Order, however, permitted service on joined well owners by publication as well as to mail a copy of the process to valid addresses listed on a spreadsheet prepared by the State and Division Engineers. Additionally, service was completed upon the Division of Natural Resources ("DNR"), of which the Land Board is a part, on February 27, 2015, and service was completed upon the Attorney General on the same day. Therefore, despite failure to serve the Land Board with the Complaint and Summons under Colo.R.Civ.P. 4(e)(10), the Land Board has received notice of the Complaint. Noting the procedural history with this case and that this does not serve as a waiver to allow service by publication in future litigation, the Land Board therefore waives service under Colo.R.Civ.P. 4(e)(10) for purposes of this Complaint and answers accordingly.

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

Plaintiff's introductory paragraph to the Complaint contains characterizations of its actions and requested relief, and the Land Board does not believe it requires a response. To the extent a response is required, however, the Land Board denies the introductory paragraph.

JURISDICTION

1. The Land Board 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. The Land Board admits that water matters include only those matters with Title 37, Article 92 and any other law specify to be heard by the water judge of the district courts. The Land Board denies any other characterization of the water court's jurisdiction in Paragraph 1 or elsewhere in the Complaint.

2. The Land Board 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). The Land Board denies any other characterization of the *Crystal Lakes* holding contained in Paragraph 2 or elsewhere in the Complaint.

3. The Land Board admits that some of the allegations in the Complaint may implicate water matters. The Land Board denies that there has been an

unlawful infringement upon any decreed water rights by Defendants or pursuant to Senate Bill 52 (2010) and/or the Ground Water Management Act.

4. The Land Board 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 Land Board admits that in *Gallegos v. Colorado Ground Water Comm’n*, 147 P.3d 20 (Colo. 2006), the Supreme Court held that the Commission has jurisdiction over surface water rights only for the purpose of altering the boundaries of a designated ground water basin. To the extent that paragraph 4 contains legal conclusions, no response is required. The Land Board denies the allegation in Paragraph 4 that Plaintiff is not seeking to modify the boundaries of a designated ground water basin in this action to the extent that the relief requested by the Complaint may result in Plaintiff seeking to modify the boundaries of a designated ground water basin, or to the extent that the relief requested by the Complaint would result in a de facto modification of a designated ground water basin. The Land Board admits that, on its face, the Complaint does not request that the Water Court modify the boundaries of a designated water basin in this matter.

PARTIES

5. The Land Board is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5, and therefore denies the same.

6. The Land Board admits that the DNR includes the Division of Water Resources (“DWR”), headed by the Colorado State Engineer, and that the DWR includes the Division Engineers. The Land Board is also part of the DNR. The Land Board further 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, the Land Board denies the remaining allegations.

7. The Land Board admits the allegations contained in Paragraph 7 except to the extent that it alleges that the State Engineer does not have or does not 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, the Land Board 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, the Land Board denies the remaining allegations.

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

9. The Land Board states that § 37-92-202, C.R.S., speaks for itself and no response is required. To the extent a response is required, the Land Board 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. The Land Board states that “Colorado Parks and Wildlife” is a common reference for the Colorado Division of Parks and Wildlife (hereinafter “CPW”), also a division within DNR. In further response to paragraph 10, the Land Board 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. The Land Board is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11, and therefore denies the same.

12. The Land Board is without sufficient knowledge or information 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, upon information and belief, the Land Board states:

- A. It denies that the Tip Jack Ditch was decreed by the Arapahoe District Court in Civil Action No. 18172. The Land Board further 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. The Land Board further 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. The Land Board further states that the Hutton No. 1 Ditch 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. The Land Board further states that the Hutton No. 2 Ditch 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. The Land Board admits that water rights in Colorado can be vested property rights. The Land Board, however, is without sufficient knowledge or information to form a belief as to the truth of the allegations regarding Plaintiff's alleged vested property rights in the Tip Jack Ditch, the Hale Ditch, the Hutton No. 1 Ditch and the Hutton No. 2 Ditch, and therefore denies the same.

14. The Land Board admits the Bonny Dam and Reservoir was approved by the U.S. Congress for construction in 1944 on the South Fork of the Republican River ("South Fork") for flood control and irrigation purposes and construction began in about 1948. The Land Board 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, the Land Board 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 appropriation date.

15. The Land Board, upon information and belief, admits that Bonny Reservoir and Bonny Dam are located upstream of the Hutton Ranch, but is without sufficient knowledge or information to form a belief as to the truth of the allegation that Bonny Reservoir and Bonny Dam impact the Tip Jack Ditch and Hale Ditch in any way, and therefore denies the same. In response to subparagraphs A-B of Paragraph 15, upon information and belief, the Land Board states that:

A. The Land Board admits that the original diversion point for the Tip Jack Ditch was destroyed by Bonny Reservoir dam. The Land Board admits that the diversion point of the Tip Jack Ditch was moved downstream to a different location. The Land Board further 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 therefore no response is required. To the extent any response is required, the Land Board 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 the Land Board 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. The Land Board admits the allegations in Subparagraph 15.B.

16. Contract No. 2-07-70-W0556 (“Water Contract”), dated June 24, 1982, speaks for itself and therefore no response is required. To the extent any response is required, the Land Board 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, the Land Board denies the allegations to the extent they are inconsistent with the Water Contract. The Land Board is without sufficient knowledge or information to form a belief as to the remaining allegations in Paragraph 17, and therefore denies the same.

18. The Land Contract as described in Paragraph 18 of the Complaint speaks for itself, and therefore no response is required. To the extent any response is required, the Land Board is without sufficient knowledge or information to form a belief as to the remaining allegations in Paragraph 18, the Land Board denies the allegations 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. To the extent any response is required, the Land Board is without sufficient knowledge or information to form a belief as to the remaining allegations in Paragraph 19, and therefore denies the same to the extent they may be inconsistent with the Land Contract and the Bonny Reservoir operating plan.

20. The Water Contract and the Land Contract speak for themselves, and therefore no response is required. To the extent any response is required, the Land

Board is without sufficient knowledge or information to form a belief as to the remaining allegations in Paragraph 20, and therefore denies the same to the extent they may be inconsistent with the Water Contract and the Land Contract. Paragraph 20 also contains legal conclusions to which no response is required. To the extent any response is required, the Land Board 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, the Land Board 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 contained in Paragraph 21.

22. The Land Board admits the original water dates for the Tip Jack Ditch and Hale Ditch priority no. 38 have appropriation dates before the Republican River Compact, and the original water rights for the Hutton No. 1 Ditch and the Hutton No. 2 Ditch have appropriation dates after the Republican River Compact.

23. The Land Board admits that the Ground Water Management Act was enacted in 1965 and that it empowers the Ground Water Commission to establish designated ground water basins. The Land Board 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 deny the same.

24. The Land Board admits that the 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, the Land Board denies the allegations to the extent they may be inconsistent with the NHP Basin designation order.

25. Upon information and belief, the Land Board denies that the NHP Basin covers the areal extent of the Ogallala aquifer in Colorado. The Land Board 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 Land Board is without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 26, and therefore denies the

same. Upon information and belief, the Land Board admits there are currently approximately 3,461 permitted active high capacity wells in the NHP Basin.

27. The Land Board is without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 27, and therefore denies the same.

28. The Land Board is without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 28, and therefore denies the same.

29. The Land Board is without sufficient information or knowledge to form a belief as to 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, the Land Board denies all of the allegations in Paragraph 30 to the extent they may be inconsistent with Kansas' complaint. The Land Board admits that the state of Colorado was formally joined as a party to this Republican River Compact litigation.

31. The Land Board 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 Republican River Compact allocations of the virgin water supply. In response to the second sentence in Paragraph 31, the Land Board states that the Special Master's ruling speaks for itself and no response is required. To the extent any response is required, the Land Board 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, the Land Board 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, the Land Board denies the allegations contained in Paragraph 33 to the extent they may be inconsistent with the settlement stipulation or the United States Supreme Court decision.

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, The Land Board 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, the Land Board 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. To the extent any further response is required, the Land Board denies the allegations contained in Paragraph 36.

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, the Land Board denies the allegation.

38. The Land Board 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, the Land Board 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, the Land Board denies the remaining allegations contained in Paragraph 38.

39. The Land Board 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, the Land Board denies the remaining allegations contained in Paragraph 39.

40. The Land Board is without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 40, and therefore denies the same.

41. The Land Board is without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 41, and therefore denies the same.

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

42. The Land Board 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. The Land Board denies any other allegation contained in Paragraph 42.

43. In response to the first sentence of Paragraph 43, upon information and belief, the Land Board 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 Republican River Compact compliance. In response to the second sentence of Paragraph 43, the Land Board denies that the only regulation of wells within the NHP Basin pertains to measurement and enforcing permit limits.

44. Upon information and belief, the Land Board admits that a ground water pipeline that was approved by the Republican River Water Conservation District in 2009 is intended 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, upon information and belief, the Land Board states that the administrative call remained in effect during 2014.

45. The Land Board is without sufficient information and knowledge to form a belief as to the truth of the allegations contained in the first two sentences of Paragraph 45, and therefore denies the same. In further response to the third sentence of Paragraph 45, upon information and belief, the Land Board admits that full active storage in Bonny Reservoir was drained in 2011.

46. Paragraph 46 calls for a legal conclusion, and no response is required. To the extent that a response is required, the Land Board admits that the Bureau of Reclamation approved the construction of Bonny Reservoir principally for flood control purposes and that the decree for the Bonny Reservoir water right states the uses of the water right as flood control and irrigation, recreation, fish and wildlife propagation.

47. Paragraph 47 calls for a legal conclusion, and no response is required. To the extent a response is required, the Land Board denies the allegations contained in Paragraph 47. In further response to the allegations of Paragraph 47, upon information and belief, the Land Board denies that any water lawfully stored in Bonny Reservoir was ordered released for Republican River Compact compliance purposes.

48. The Land Board is without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 48, and therefore denies the same.

49. Upon information and belief, the Land Board admits an administrative call is being administered against Hutton Ditch No. 1, Hutton Ditch No. 2, and Bonny Reservoir.

50. Upon information and belief, the Land Board 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, upon information and belief the Land Board admits that Plaintiff successfully protested the inclusion of the Hutton Ditch No. 1 and Hutton Ditch No. 2 water rights but denies that 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, Defendants state 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, the Land Board denies the allegations in the first sentence of Paragraph 51. In response to the allegations in the second sentence of Paragraph 51, the Land Board states that it is 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. Upon information and belief, the allegations contained in Paragraph 52 are misleading and incomplete and therefore the Land Board denies the same. To the extent a response is required, upon information and belief, the Land Board admits that 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, the Land Board 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, the Land Board denies the allegations in Paragraph 53.

INJURY TO FOUNDATION FROM DEFENDANTS' ACTIONS AND INACTIONS

54. The Land Board is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 54 and therefore denies the same.

55. The Land Board is without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 55, and therefore denies the same.

56. The Land Board is without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 56, and therefore denies the same.

57. Upon information and belief, the Land Board 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. The Land Board is without sufficient information and knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 57, and therefore denies the same.

58. The Land Board is without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 58, and therefore denies the same.

59. The Land Board is without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 59, and therefore denies the same.

60. The Land Board is without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 60, and therefore denies the same.

61. Paragraph 61 calls for a legal conclusion, and therefore no response is required. To the extent any response is required, the Land Board denies the allegations contained in Paragraph 61.

62. Paragraph 62 calls for a legal conclusion, and therefore no response is required. To the extent any response is required, the Land Board denies the allegations contained in Paragraph 62.

SENATE BILL 52 (2010)

63. Section 37-90-103(6)(a), C.R.S. and the *Gallegos v. Colo. Ground Water Comm'n* opinion speak for themselves, and therefore no response is required. To the extent any response is required, the Land Board denies the allegations contained in Paragraph 63.

64. Paragraph 64 calls for a legal conclusion, and therefore no response is required. The opinions and law review publication cited in Paragraph 64 speak for themselves, and therefore no response is required. To the extent any response is required, the Land Board denies the allegations contained in Paragraph 64.

65. Paragraph 65 calls for a legal conclusion, and therefore no response is required. Section 37-90-106(1)(a), C.R.S. speaks for itself, and therefore no response is required. To the extent that any response is required, the Land Board denies the allegations contained in Paragraph 65.

66. The *Gallegos* opinion speaks for itself, and therefore no response is required. To the extent any response is required, the Land Board denies the allegations contained in Paragraph 66.

67. Paragraph 67 calls for a legal conclusion, and therefore no response is required. The *Gallegos* opinion speaks for itself. To the extent any response is required, the Land Board denies the allegations contained in Paragraph 67.

68. The order in Case No. 06CV31 speaks for itself, and therefore no response is required. To the extent any response is required, the Land Board denies the same. The Land Board admits upon information and belief that Case No. 06CV31 settled on remand.

69. Paragraph 69 calls for a legal conclusion, and therefore no response is required. The *Powell* opinion speaks for itself, and therefore no response is

required. To the extent any response is required, the Land Board denies the allegations contained in Paragraph 69.

70. Paragraph 70 calls for a legal conclusion, and therefore no response is required. To the extent any response is required, the Land Board denies the same.

71. The Land Board, upon information and belief, admits that Dennis Coryell and other witnesses testified about SB-52. Any testimony and legislative history for SB-52 speak for themselves, and therefore no response is required. Additionally, the second sentence in Paragraph 71 calls for a legal conclusion, and therefore no response is required. To the extent any response is required, the Land Board is without sufficient information and knowledge to form a belief as to the truth of the allegations contained in Paragraph 71, and therefore denies the same.

72. Paragraph 72 calls for a legal conclusion, and therefore no response is required. To the extent any response is required, the Land Board denies the allegations contained in Paragraph 72.

73. Paragraph 73 calls for a legal conclusion, and therefore no response is required. To the extent any response is required, the Land Board denies the allegations contained in Paragraph 73.

74. Paragraph 74 calls for a legal conclusion, and therefore no response is required. To the extent any response is required, the Land Board denies the allegations contained in Paragraph 74.

75. The Land Board is without sufficient information and knowledge to form a belief as to the truth of 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 Defendants are Unlawful.

76. The Land Board 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, the Land Board 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, the Land Board 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, the Land Board 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, section 37-80-102(1)(a), C.R.S., speaks for itself and no response is required. To the extent any response is required, the Land Board denies the allegations contained in paragraph 80.

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

82. Paragraph 82 states the Plaintiff's legal conclusions and no response is required. To the extent any response is required, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board denies the allegations contained in paragraph 91.

92. Paragraph 92 and its subparagraphs state Plaintiff's request for relief, and therefore no response is required. To the extent any response is required, the Land Board denies that Plaintiff is entitled to any such relief.

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

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

94. The Land Board incorporates all answers above as though fully set forth below.

95. Paragraph 95 states Plaintiff's legal conclusions and no response is required. Further, section 37-90-106(1)(a), C.R.S., speaks for itself and no response is required. To the extent any response is required, the Land Board 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, the Land Board denies the allegations contained in paragraph 96.

97. Defendants admit 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, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board denies the allegations contained in paragraph 105.

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

107. The Land Board admits 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. The Land Board incorporates all answers 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, the Land Board denies the allegations contained in paragraph 109.

110. Paragraph 110 states the 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. To the extent any response is required, the Land Board 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, the Land Board denies the allegations contained in paragraph 111.

112. The Land Board 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, the Land Board 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, the Land Board 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, the Land Board 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, the Land Board denies the allegations contained in paragraph 116.

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

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

The Land Board denies that Plaintiff is entitled to any of the relief requested in its Prayer for Relief.

The Land Board denies all allegations of the Complaint not expressly admitted in the foregoing paragraphs.

AFFIRMATIVE DEFENSES

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

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

3. Plaintiff failed to challenge the actions of the Colorado Ground Water Commission within the time prescribed under the Colorado Administrative Procedure Act.

4. Plaintiff's claims are barred, in whole or in part, by the statutes of limitations applicable to Plaintiff's various claims.

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

6. This Court may not have subject matter jurisdiction over Plaintiff's claims, in whole or in part.

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

8. Plaintiff's claims are barred under the doctrines of estoppel, waiver and laches.

9. The Land Board reserves the right to supplement or modify its Affirmative Defenses and to assert any defense in law or fact to the stated claims for relief.

WHEREFORE, the Land Board requests that the Court enter judgment against Plaintiff and enter all such other relief as the Court deems just and appropriate.

Respectfully submitted this 16th day of December, 2015.

CYNTHIA H. COFFMAN
Attorney General

/s/Virginia Sciabbarrasi

VIRGINIA SCIABBARRASI, 39753*

Assistant Attorneys General

State Trust Lands

Attorney for Defendant Land Board

*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **ANSWER OF THE STATE BOARD OF LAND COMMISSIONERS** upon all parties herein by ICCES or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 16th day of December, 2015 addressed as follows:

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

Party Name	Party Type	Party Status	Attorney Name
Colorado Parks And Wildlife	Opposer	Active	Katie Laurette Wiktor (CO Attorney General) Timothy John Monahan (CO Attorney General)
David L Dirks	Defendant	Active	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
David Nettles	Defendant	Active	Daniel E Steuer (CO Attorney General) Ema I.g. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)
David Nettles	Opposer	Active	Daniel E Steuer (CO Attorney General) Ema I.g. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)
Dick Wolfe	Defendant	Active	Daniel E Steuer (CO Attorney General) Ema I.g. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)
Dick Wolfe	Opposer	Active	Daniel E Steuer (CO Attorney General) Ema I.g. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)
Dirks Farms Ltd	Defendant	Active	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Division 1 Engineer	Division Engineer	Active	Division 1 Water Engineer (State of Colorado DWR Division 1)
Division 1 Water Engineer	Opposer	Active	Ema I.g. Schultz (CO Attorney General) Preston Vincent Hartman (CO Attorney General)

Party Name	Party Type	Party Status	Attorney Name
Don Myrna And Nathan Andrews	Defendant	Active	Geoffrey M Williamson (Vranesh and Raisch) Stuart B Corbridge (Vranesh and Raisch)
East Cheyenne Ground Water Mgmnt Dist	Defendant	Active	John David Buchanan (Buchanan and Sperling, P.C.) Timothy Ray Buchanan (Buchanan and Sperling, P.C.)
Harvey Colglazier	Defendant	Active	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Julie Dirks	Defendant	Active	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Lazier Inc	Defendant	Active	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Mariane U Ortner	Defendant	Active	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Marjorie Colglazier Trust	Defendant	Active	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
North Well Owners	Defendant	Active	Kimbra L. Killin (Colver Killin and Sprague LLP) Russell Jennings Sprague (Colver Killin and Sprague LLP)
Protect Our Local Communitys Water Llc	Defendant	Active	John David Buchanan (Buchanan and Sperling, P.C.) Timothy Ray Buchanan (Buchanan and Sperling, P.C.)
Republican River Water Conservation Dist	Defendant	Active	David W Robbins (Hill and Robbins PC) Peter J Ampe (Hill and Robbins PC)
Saving Our Local Economy Llc	Defendant	Active	John David Buchanan (Buchanan and Sperling, P.C.) Timothy Ray Buchanan (Buchanan and Sperling, P.C.)

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

/s/ Linda Miller