

<p>DISTRICT COURT, WATER DIVISION NO.1 WELD COUNTY, COLORADO 901 9th Avenue / P.O. Box 2038 Greeley, Colorado 80631 (970) 351-7300</p>	<p>DATE FILED: December 16, 2015 3:46 PM</p>
<p>PLAINTIFF, The Jim Hutton Educational Foundation, v. DEFENDANTS, Dick Wolfe, in his capacity as the Colorado State Engineer; David Nettles, in his capacity as Division Engineer in and for Water Division No. 1, State of Colorado; the Colorado Department of Natural Resources; Colorado Division of Water Resources; and Colorado Parks and Wildlife.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys For Intervenor-Defendant Colorado Ground Water Commission CYNTHIA H. COFFMAN, Attorney General CHAD M. WALLACE, #30022* PATRICK E. KOWALESKI, #09598* Senior Assistant Attorneys General Ralph L. Carr Colorado Judicial Center 1300 Broadway, 7th Floor Denver, CO 80203 Telephone: (720) 508-6281 (Wallace): (720) 508-6297 (Kowaleski) Fax: (720) 508-6039 chad.wallace@coag.gov; patrick.kowaleski@coag.gov *Counsel of Record</p>	<p>Case No. 2015CW3018 Div.: 1</p>
<p>MOTION TO INTERVENE</p>	

The Colorado Ground Water Commission (“Commission”), by and through the Attorney General, and pursuant to C.R.C.P. 24 and §37-92-304(3), C.R.S., hereby moves this Court for an order allowing the Commission to intervene in this matter. The Commission states as follows:

1. Pursuant to C.R.C.P. 121 § 1-15(8), counsel for the Commission has discussed this motion with counsel for the Plaintiff; however, Plaintiff did not provide a final position by the time this motion was filed.

2. The complaint herein was filed with the Court on or about February 23, 2015. On July 8, 2015 this Court ordered Plaintiff to join well owners within the Northern High Plains Designated Ground Water Basin. The date for those well owners to file an answer or responsive pleading is December 16, 2015. This matter is not yet at issue and no trial is set.

3. The Court held that well owners in the Northern High Plains Designated Ground Water Basin were indispensable parties under C.R.C.P. 19(a) in its order of July 8, 2015. While that order held that the Commission was not an indispensable party that must be joined pursuant to Rule 19(a), it did not address the question of intervention by the Commission under Rule 24.

4. The Commission's Motion to Intervene should be granted as an intervention as of right pursuant to C.R.C.P. 24(a). C.R.C.P. 24(a) provides in pertinent part:

Upon timely application anyone shall be permitted to intervene in an action . . . [w]hen a statute confers an unconditional right to intervene;

Section 37-92-304(3), C.R.S. provides in pertinent part:

Any person may move to intervene in proceedings before the water court upon payment of a fee, equal to that for filing an answer to a civil action in district court, except for the state engineer who shall pay no fee, and upon a showing of mistake, inadvertence, surprise, or excusable neglect or to support a referee's ruling. The water court shall grant the motion to intervene only if intervention is sought no less than thirty days before any pretrial conference or due date for trial data certificates and if intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

Plaintiff has pleaded jurisdiction pursuant to §37-92-203(1), C.R.S. Assuming this is correct, if such jurisdiction is founded upon the Water Right Determination and Administration Act of 1969, §37-92-101, C.R.S., et seq., then the act would also confer on the Commission a statutory right of intervention. The Commission's request for intervention is based on mistake, inadvertence, surprise, or excusable neglect based on the procedural history of this case. Plaintiffs had originally filed this action against only the named defendants. Further the Court ruled that resume publication was insufficient for Plaintiff's action and ordered service by publication on well owners in its Order of July 8, 2015. Likewise, the State Engineer also moved for a determination that the Commission was an indispensable party. The Court held the

Commission was not an indispensable party on July 8, 2015. Until that time, it was unclear to the Commission what its potential role in and the scope of the litigation might be. The Commission is now tendering its proposed answer within the time for filing an answer or response by well owners to the complaint if served by publication.

5. Intervention of right is also available based on the Commission's interest in this proceeding. C.R.C.P. 24(a) provides in part:

Upon timely application anyone shall be permitted to intervene in an action . . . [w]hen the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicants' interest is adequately represented by existing parties.

The Plaintiff has made a challenge to the application of §37-90-106(1)(a), C.R.S. as a violation of the Colorado constitution. "SB-52 is unconstitutional as applied to a designated ground water basin . . ." Complaint at 16. "The Ground Water Act is unconstitutional as applied to the NHP Basin . . ." Complaint at 17. The Commission was created by the Colorado Ground Water Management Act, §37-90-104, C.R.S., and is the entity charged with the administration of §37-90-106(1)(a), C.R.S. Therefore, because it appears that Plaintiff is challenging the application of §37-90-106(1)(a), C.R.S., the Commission's actions in its administration of that statute are under review. This gives the Commission an interest in the transaction which is the subject matter of the action. The Commission has a clear interest in defending its actions. Further a ruling by this Court may be intended to subject the Commission to declaratory or other relief regarding its application of §37-90-106(1)(a), C.R.S. Indeed, it is unclear how a declaration that §37-90-106(1)(a), C.R.S. is unconstitutional would have any impact on the Commission unless it was a party. *Constitution Assocs. v. New Hampshire Ins. Co.*, 930 P.2d 556, 562 (Colo. 1996) (declaratory judgment cannot bind non-parties). Because the Commission is the only entity charged with administration of 37-90-106(1)(a), C.R.S., it is not adequately represented by any existing party. Therefore, the Commission should be allowed to intervene as of right.

6. Alternatively, if the Court does not grant the Commission intervention as of right, it should be granted permissive intervention pursuant to C.R.C.P. 24(b). Rule C.R.C.P. 24(b) provides in pertinent part:

When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency . . . the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

7. Here, the Commission may be granted permissive intervention upon timely application as the state agency responsible for administration of the statutes at issue in the complaint. The Plaintiff challenges the administration of wells within the Northern High Plains Designated Ground Water Basin. The Plaintiff also challenges the application of the Ground Water Management Act, specifically §37-90-106(1)(a), C.R.S. The Commission is the agency responsible for administering this statute.

8. Granting the Commission's motion to intervene is timely and will not unduly delay or prejudice the adjudication of the rights of the original parties. The Colorado Supreme Court has equated "prejudice" with actions that cause undue surprise or prevent a party from preparing its case adequately. *See, e.g., Public Service Co. v. Blue River Irr. Co.*, 753 P.2d 737, 740-41 (Colo. 1988) (Water Court did not err in allowing party to participate in hearing as *de facto* intervenor where, among other factors, there was no surprise on part of applicant); *see also J.P. v. District Court*, 873 P.2d 745, 751 (Colo. 1994) (in discovery context, "[p]rejudice may occur if a party is unduly surprised or if the party does not have adequate time to prepare"). Here, Plaintiff cannot demonstrate that allowing the Commission to intervene would result in undue surprise or prevent Plaintiff from preparing its case. Many well owners in the Northern High Plains Designated Ground Water Basin have yet to file an answer and no trial is yet set. Likewise there has been no pre-trial conference, or trial data certificate filed. Thus the Commission's motion is timely and will not cause prejudice.

9. The Commission has filed its Answer herewith, as well as a proposed order granting the Commission's intervention.

WHEREFORE, the Commission moves this Court for issuance of an order allowing it to intervene in this matter and accepting the attached Answer for filing with the Clerk of the Court.

Respectfully submitted this 16th day of December 2015,

CYNTHIA H. COFFMAN
Attorney General

/s/ Chad M. Wallace

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

CERTIFICATE OF SERVICE

This is to certify that on this 16th day of December, 2015, I caused a true and correct copy of the foregoing **MOTION TO INTERVENE** to be served electronically via ICCES upon the following:

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

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

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

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

/s/ Pauline Wilber
