

DISTRICT COURT, WATER DIVISION 1, STATE OF COLORADO 901 9th Avenue P.O. Box 2038 Greeley, Colorado 80632	DATE FILED: April 30, 2015 4:19 PM
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.	▲ COURT USE ONLY ▲
ATTORNEYS FOR YUMA COUNTY WATER AUTHORITY: BROWNSTEIN HYATT FARBER SCHRECK, LLP Steven O. Sims, #9961 John A. Helfrich, #34539 Dulcinea Z. Hanuschak, #44342 410 17th Street, Suite 2200 Denver, CO 80202 Phone Number: (303) 223-1100 Fax Number: (303) 223-1111 Email: ssims@bhfs.com jhelfrich@bhfs.com, dhanuschak@bhfs.com	Case Number: 15CW3018
<p style="text-align: center;">MOTION TO INTERVENE OF YUMA COUNTY WATER AUTHORITY PUBLIC IMPROVEMENT DISTRICT</p>	

Yuma County Water Authority Public Improvement District (“YCWA”), by and through its undersigned attorneys, hereby files this motion to intervene and respectfully requests the Court to allow its intervention as a party defendant in the above captioned case.

Pursuant to C.R.C.P. 121-1-15(8), counsel for YCWA has conferred with counsel of plaintiff, The Jim Hutton Educational Foundation (“Hutton Foundation”), concerning this motion and the requested intervention and has been informed that plaintiff opposes YCWA’s intervention.

As grounds for its requested intervention, YCWA states as follows:

1. YCWA is made up of the Yuma County Board of County Commissioners and representatives of the Towns of Wray, Yuma and Eckley. The Towns of Wray, Yuma and Eckley rely on designated basin wells that Plaintiff seeks to curtail for some or all of their municipal water supplies. YCWA owns most of the senior surface water rights on the North Fork of the Republican River and leases those water rights to the Republican River Water Conservation District for use in a Compact augmentation plan that benefits all Republican River water users. Following a county-wide public election approving the purchase, YCWA acquired most of the senior surface water rights on the North Fork of the Republican River for \$20 million in part to resolve a nearly identical legal challenge to the validity of the Northern High Plains (“NHP”) designated ground water basin that threatened the economic vitality of Yuma County. YCWA represents all of the ground water users in Yuma County who have wells withdrawing water from the NHP.

2. Plaintiff challenges the administration and management of surface water rights in the Republican River Basin, and the constitutionality of Senate Bill 52 (2010) (“SB 52”) and the Ground Water Management Act of 1965 (“Ground Water Act”). Plaintiff seeks to curtail all ground water rights in the NHP, which would dramatically affect the economic vitality of Yuma County.

3. YCWA files this motion to intervene as a matter of right under C.R.C.P. Rule 24(a)(2). Pursuant to Rule 7 of the Uniform Local Rules for All State Water Court Divisions, a motion to intervene must be filed in accordance with C.R.S. § 37-92-304(3) in water court proceedings in which there has been a referee ruling and in matters which have been rereferred to the water judge by the referee. However, section 37-92-304(3), C.R.S., may not apply to this Water Court action because, as noted above, Plaintiff has not filed an application for determination of water rights under section 37-92-302, C.R.S., but instead invokes the jurisdiction of the Water Court to contest the administration of water rights in the Republican River Basin and the constitutionality of SB 52 and the Ground Water Act.

4. Under C.R.C.P. 24(a)(2), anyone shall be permitted to intervene in an action, upon timely application, when the party seeking intervention claims an interest relating to the property or transaction that is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede their ability to protect that interest, unless the movant’s interest is adequately represented by existing parties. All three elements of the rule, i.e., an interest related to the property or transaction, an impairment in its ability to protect the interest, and inadequate representation, must be present in order to intervene. In addition, timeliness, as a threshold question, must be determined. See *Diamond Lumber, Inc. v. H.C.M.C., Ltd.*, 746 P.2d 76, 78 (Colo.App. 1987). As discussed below, YCWA meets all of the requirements for intervention as a matter of right under C.R.C.P. 24(a)(2).

5. Regarding the first element for intervention as a matter of right, an interest relating to the property or transaction at issue in this matter. YCWA owns most of the surface water rights on the North Fork of the Republican River and leases those water rights to the Republican River Water Conservation District for Compact compliance purposes. In addition, YCWA represents all of the ground water users in Yuma County that are threatened with curtailment by Plaintiff’s complaint.. Therefore, YCWA has an interest in the property and the transaction at issue in this matter.

6. As to the second and third elements for intervention, impaired ability to protect its interests and inadequate representation by the defendant. The Defendants State Engineer, Division Engineer, Department of Natural Resources and Division of Water Resources are State Officials that do not live in or own water rights in the Republican River Basin (“State Administrators”). Colorado Parks and Wildlife (“CPW”) owns surface water rights in the Republican River, but does not own designated basin wells, nor rely on the continued use of designated basin wells. Owners of vested designated basin ground water and senior surface water rights have an interest in continuing their use of vested rights in a manner that supports the Yuma County economy. The State Administrators may be more interested in resolving a controversy and/or enforcing Compact entitlements without the same concerns for continuing historical uses or the economic vitality of Yuma County. CPW may be able to resolve the claims in a way that would protect its rights without protecting the rights of designated basin water users or the Yuma County economy. Consequently, the State Defendants will not adequately represent YCWA’s interests in this matter. If YCWA is not a party it will be unable to protect its interests. Therefore, YCWA must be allowed to intervene in this matter.

7. YCWA’s motion to intervene is timely. This matter was published in the February 2015 Water Resume for Division 1. The deadline for filing statements of opposition is April 30, 2015. This motion to intervene is filed prior to the deadline for filing statements of opposition and is timely.

8. Finally, Plaintiff has requested a declaratory judgment pursuant to §§ 13-51-101 et seq., C.R.S., finding among other things that SB 52 and the Ground Water Act are unconstitutional. Under § 13-51-115, C.R.S., all persons who have or claim any interest that would be affected by the declaration shall be made a party. Plaintiff has requested a declaratory judgment pursuant to C.R.C.P. 57. Under C.R.C.P. 57(j), all persons who have or claim any interest which would be affected by the declaration shall be made parties.

9. YCWA represents ground water users in Yuma County who have wells withdrawing water from the NHP designated ground water basin. Plaintiff threatens to curtail the NHP wells, which would adversely affect the Yuma County economy. Thus, YCWA meets the criteria as a party that has an interest that will be affected by the declaration and should be a party to this matter.

WHEREFORE, YCWA respectfully requests that the Court allow it to intervene as a right pursuant to C.R.C.P. 24(a)(2) and as a party that has an interest that would be affected by the declaration pursuant to C.R.S. § 13-51-115 and C.R.C.P 57(j), and be made a party defendant to this case. An order granting intervention and answer are filed herewith in the event the motion is granted.

Dated April 30, 2015.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ John A Helfrich
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SPECIAL COUNSEL FOR YUMA COUNTY
WATER AUTHORITY PUBLIC
IMPROVEMENT DISTRICT

CERTIFICATE OF SERVICE
Case Number 2015CW3018

I hereby certify that on April 30, 2015, a true and correct copy of the foregoing document, titled **MOTION TO INTERVENE OF YUMA COUNTY WATER AUTHORITY PUBLIC IMPROVEMENT DISTRICT**, was served via ICCES to the following recipients:

Party Name	Party Type	Attorney Name
Jim Hutton Educational Foundation	Plaintiff Applicant	Karen Leigh Henderson Steven J. Bushong (Porzak Browning & Bushong LLP)
Colorado Parks and Wildlife	Defendant Opposer	Katie L. Wiktor Timothy J. Monahan
Colorado Department of Natural Resources	Defendant Opposer	Preston V. Hartman Ema I. G. Schultz
Division of Water Resources	Defendant Opposer	Preston V. Hartman Ema I. G. Schultz
David Nettles	Defendant Opposer	Preston V. Hartman Ema I. G. Schultz
Dick Wolfe	Defendant Opposer	Preston V. Hartman Ema I. G. Schultz
State Engineer	State Engineer	State Engineer
Division 1 Engineer	Division Engineer	Division 1 Water Engineer

/s/ Shirley Newman
Paralegal