

DISTRICT COURT, WATER DIVISION NO. 1
STATE OF COLORADO
Weld County Courthouse
901 9th Ave., P.O. Box 2038
Greeley, CO 80632
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DATE FILED: September 21, 2016 4:54 PM

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

v.

Defendants: Dick Wolfe, in his capacity as the Colorado State Engineer, et al.

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Case Number: 2015CW3018

Water Div. No. 1

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CERTAIN DEFENDANTS' NOTICE OF SUPPLEMENTAL INFORMATION	

The Defendants named above, by and through their undersigned attorneys, hereby submit this Notice of Supplemental Information pursuant to C.R.E. 201(d). The supplemental information is a Resolution adopted by the Republican River Compact Administration (“RRCA”) that was signed on August 24, 2016 by Dick Wolfe, the Colorado State Engineer, Colorado’s Commissioner to the RRCA, and the Chairman of the RRCA; David Barfield, the Kansas Commissioner to the RRCA; and Gordon W. Fassett, the Nebraska Commissioner to the RRCA (“Resolution”). A copy of the Resolution is attached as Exhibit A.

C.R.E. 201(d) provides that “[a] court shall take judicial notice if requested by a party and supplied with the necessary information.” C.R.E. 201 applies to a fact “not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose

accuracy cannot reasonably be questioned.” C.R.E. 201(b). The Resolution meets these criteria. There can be no dispute about the existence of the Resolution. Additionally, its subject matter includes items related to the Republican River Compact (“Compact”) and its administration, which river and Compact are a subject of the complaint filed in Case No. 15CW3018 (“Complaint”)¹, and are thus within the Court’s territorial jurisdiction. Finally, Colorado’s Governor announced the Resolution, and local newspapers in Water Division 1 have reported on its existence.²

During the spring of 2016, the parties in Case No. 15CW3018 submitted multiple C.R.C.P. 56 motions to the Court concerning the claims raised in the Complaint. The Court has not yet ruled on any of the motions concerning Claim 1 in the Complaint, which claim relates primarily to the State Engineer’s administration of water rights in the area of the Republican River for Compact compliance purposes.³ The Resolution was signed after the May 6, 2016, deadline for the filing of briefs concerning the C.R.C.P. 56 motions, and thus could not have been provided as an attachment to those briefs or otherwise been brought to the Court’s attention at or before the completion of briefing.

There are two “action” items described in the Resolution that are relevant to the pending legal motions concerning Claim 1 in the Complaint. First, the Resolution describes a long-term plan to operate the Colorado Compact Compliance Pipeline (“Pipeline”) in accordance with

¹ ICCES Transaction ID 11EA01DB3962A.

² *Colorado, Kansas and Nebraska Reach Consensus on Republican River Compact*, Official Site of Gov. John Hickenlooper, State of Colo. (Aug. 26, 2016), <https://www.colorado.gov/governor/news/colorado-kansas-and-nebraska-reach-consensus-republican-river-compact>; Tony Rayl, *Republican River Compact Resolution Signed*, The Yuma Pioneer (Sept. 1, 2016), http://www.yumapioneer.com/index.php?option=com_content&task=view&id=7516&Itemid=99999999; Associated Press, *Nebraska, Kansas, Colorado Reach Republican River Agreement*, The Denver Post (Aug. 29, 2016, 9:01 AM), <http://www.denverpost.com/2016/08/29/republican-river-agreement-nebraska-kansas-colorado/>.

³ ICCES Transaction ID 11EA01DB3962A; paras. 76-93.

terms to which all three states have agreed. *See* Resolution, paras. A, G (pp. 2-5).⁴ Second, the Resolution describes the use of various voluntary programs to reduce water consumption in the South Fork of the Republican River Basin through existing programs or other means. *See* Resolution, para. C, at p. 5. Defendants think that the subject matter of the Resolution is relevant to issues before the Court in the C.R.C.P. 56 briefs concerning Claim 1 of the Complaint because it concerns steps that Colorado and the State Engineer are taking with respect to Colorado's Compact compliance, including use of the Pipeline and other alternatives that have been referenced and discussed in the parties' C.R.C.P. 56 briefs concerning Claim 1. *See, e.g.*, The Jim Hutton Educational Foundation's Resp. to Mot. for Partial Summ. J. on Claim 1 Re: State Engineer Administration of Designated Groundwater, at 6, ICCES Transaction ID 77A9A6622FE77, (describing various Compact solutions, including the Pipeline, and retirement of surface water rights); State Engineer's Resp. to the Jim Hutton Educational Foundation's Mot. for Summ. J. on its Compact Administration Claim, at 34, ICCES Transaction ID 5EE8194D3F45D, (referencing the Pipeline and other programs that contribute to Compact compliance); Resp. to the Jim Hutton Education Foundation's Mot. for Summ. J. on its Compact Administration Claim Related to Designated Groundwater, at 16, ICCES Transaction ID 1F5DC56F66819, (explanation that the State is complying with the Compact through a number of efforts and programs, including the Pipeline and retirement of wells).

Defendants respectfully request that the Court take judicial notice of the Resolution pursuant to C.R.E. 201(d).

⁴ The Pipeline referred to has already been constructed by the Republican River Water Conservation District ("RRWCD"), a water conservation district created by Colorado statute to assist the state in meeting its obligations under the Republican River Compact. *See* C.R.S. § 37-50-101.

Respectfully submitted this 21st day of September, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2016, I served a true and correct copy of the foregoing **CERTAIN DEFENDANTS' NOTICE OF SUPPLEMENTAL INFORMATION** by ICCES e-filing addressed to the following:

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Jacinta J. David
/s/ signature on file
Pursuant to C.R.C.P. 121, §1-26(7)

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