

<p>DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO</p> <p>Weld County Courthouse 901 9th Avenue P.O. Box 2038 Greeley, Colorado 80631 (970) 351-7300</p>	<p style="text-align: right;">DATE FILED: January 4, 2016 8:28 PM</p> <p style="text-align: center;"><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p>
<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; Colorado Division of Water Resources; and Colorado Division of Parks and Wildlife.</p> <p>Defendant-Intervenor: Yuma County Water Authority Public Improvement District.</p> <p>Defendant – Well Owners: Republican River Water Conservation District; City of Wray; City of Holyoke; Harvey Colglazier; Lazier, Inc.; Marjorie Colglazier Trust; Mariane U. Ortner; Timothy E. Ortner; Protect Our Local Community’s Water, LLC; Saving Our Local Economy, LLC; the “North Well Owners”; Tri-State Generation and Transmission Association, Inc.; Dirks Farms Ltd; Julie Dirks; David L Dirks; Don Andrews; Myrna Andrews; Nathan Andrews; Happy Creek, Inc.; J&D Cattle, LLC; 4M Feeders, Inc.; May Brothers, Inc.; May Family Farms; 4M Feeders, LLC; May Acres, Inc.; Thomas R. May; James J. May; Steven D. Kramer; Kent E. Ficken; Carlyle James as Trustee of the Chester James Trust; Colorado Agriculture Preservation Association; Colorado State Board of Land Commissioners; and the City of Burlington.</p>	<p>Case Number: 15CW3018</p> <p>Div. No. 1</p>
<p>Porzak Browning & Bushong LLP Steven J. Bushong (#21782) Karen L. Henderson (#39137) 2120 13th Street Boulder, CO 80302 Tel: 303-443-6800 Fax: 303-443-6864 Email: sjbushong@pbblaw.com; khenderson@pbblaw.com</p>	
<p>THE JIM HUTTON EDUCATIONAL FOUNDATION’S MOTION TO STRIKE THE EAST CHEYENNE GROUND WATER MANAGEMENT DISTRICT’S ANSWER</p>	

Plaintiff, the Jim Hutton Educational Foundation, a Colorado non-profit corporation (“Foundation”), acting by and through undersigned counsel, respectfully moves the Court to strike the Answer filed by the East Cheyenne Ground Water Management District (“District”) dated December 11, 2015. In support of this motion, the Foundation states as follows:

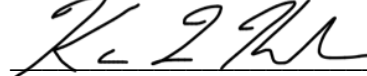
1. Conferral pursuant to C.R.C.P. 121 § 1-15(8). It is undersigned counsels' understanding that the duty to confer extends only to parties properly in the case and is not required in this situation.
2. The Foundation filed its Complaint in the above-captioned matter on February 23, 2015 against the State Engineer, the Division Engineer for Water Division No. 1, the Colorado Division of Water Resources, the Colorado Division of Parks and Wildlife, and the Colorado Department of Natural Resources. The Colorado Department of Natural Resources was dismissed by Order of the Court dated July 21, 2015.
3. The State and Division Engineers filed a Motion for Joinder on April 17, 2015, seeking to join well owners in the Northern High Plains Designated Groundwater Basin ("NHP Basin") and the Colorado Ground Water Commission pursuant to C.R.C.P. 19(a) and 57(j). The Court ruled that the Colorado Ground Water Commission did not need to be joined, but ordered the Foundation to provide notice to owners of wells in the Northern High Plains Designated Groundwater Basin (the "NHP Basin Well Owners") through a combination of mailings and newspaper publication. *See* the Court's Orders dated July 8, 2015 and September 25, 2015 (collectively the "Court Orders"). The NHP Basin Well Owners had until December 16, 2015 to file an Answer if they wanted to participate in the above-captioned matter.
4. While the District claims it "represents well owners and operators" in its Answer, as a political subdivision it is limited to the authority granted by statute, which does not include representing well owners in litigation. *See* C.R.S. § 37-90-118 *et. seq*; *Bd. of Cty. Comm'rs of Douglas Cty., Colo. v. Bainbridge, Inc.*, 929 P.2d 691, 699 (Colo. 1996), *as modified on denial of reh'g* (Jan. 13, 1997) ("political subdivisions of the state . . . have only those powers that are expressly granted to them by the Colorado Constitution or by the General Assembly."). The District develops and enforces regulations that apply to well owners and operators; it does not represent well owners and operators. The District has the authority to represent *itself* in proceedings conducted or authorized by the Colorado Ground Water Commission, C.R.S. § 37-90-130(2)(i), however the current litigation is neither conducted nor authorized by the Commission, so this provision does not apply. Even if it did, the District's interests would not be the same as the NHP Basin Well Owners' interests.
5. Since the District cannot legally represent well owners in litigation and because it does not own any wells, it is not entitled to participate in this case pursuant to the Court Orders and the publication notices allowing the NHP Basin Well Owners to participate at their discretion. Despite this fact, the District filed an Answer on December 11, 2015.
6. The Foundation moves to have the District's Answer stricken from the record on the grounds that it is not a NHP Basin Well Owner and it cannot legally represent NHP Basin Well Owners and therefore, was not entitled to file an Answer pursuant to the Court Orders.
7. Since the District does not own any wells, it would have been required to file a motion to intervene in order to participate in this case. Since the District has not sought or been granted

the right to intervene, the District should be dismissed from this case to the extent it is even a party in this case.

8. Moreover, if the District now seeks to intervene in response to this Motion it will further delay the above-captioned matter, and it is the Foundation's position that the District does not meet the necessary elements for intervention.

Respectfully submitted this 4th day of January, 2016.

PORZAK BROWNING & BUSHONG LLP



Steven J. Bushong (#21782)

Karen L. Henderson (#39137)

Attorneys for the Jim Hutton Educational Foundation

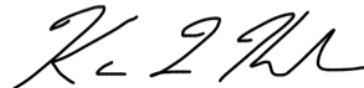
CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2016, a true and correct copy of the foregoing **THE JIM HUTTON EDUCATIONAL FOUNDATION’S MOTION TO STRIKE THE EAST CHEYENNE GROUND WATER MANAGEMENT DISTRICT’S ANSWER** was filed and served by the Integrated Colorado Courts E-Filing System (“ICCES”) addressed to counsel for each of the parties in the above-captioned matter, as follows:

Party Name	Party Type	Attorney Name
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 Parks And Wildlife	Defendant	Katie Laurette Wiktor (CO Attorney General) Timothy John Monahan (CO Attorney General)
David Nettles	Defendant	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)
4m Feeders Inc	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
4m Feeders LLC	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Carlyle James As Trustee of the Chester James Trust	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
City of Burlington	Defendant-Well Owner	Alix L Joseph (Burns Figa and Will P C) Steven M. Nagy (Burns Figa and Will P C)
City of Holyoke	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
City of Wray Colorado	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Colorado Agriculture Preservation Assoc	Defendant-Well Owner	Bradley Charles Grasmick (Lawrence Jones Custer Grasmick LLP)
Colorado State Board Land Commissioners	Defendant-Well Owner	Virginia Marie Sciabbarrasi (CO Attorney General)
David L Dirks	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Dirks Farms Ltd	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Don Myrna And Nathan Andrews	Defendant-Well Owner	Geoffrey M Williamson (Vranesh and Raisch) Stuart B Corbridge (Vranesh and Raisch)

Party Name	Party Type	Attorney Name
Happy Creek Inc	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Harvey Colglazier	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
J And D Cattle LLC	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
James J May	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Julie Dirks	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Kent E Ficken	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Lazier Inc	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Mariane U Ortner	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Marjorie Colglazier Trust	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
May Acres Inc	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
May Brothers Inc	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
May Family Farms	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
North Well Owners	Defendant-Well Owner	Kimbra L. Killin (Colver Killin and Sprague LLP) Russell Jennings Sprague (Colver Killin and Sprague LLP)
Protect Our Local Community's Water LLC	Defendant-Well Owner	John David Buchanan (Buchanan and Sperling, P.C.) Timothy Ray Buchanan (Buchanan and Sperling, P.C.)
Republican River Water Conservation Dist	Defendant-Well Owner	David W Robbins (Hill and Robbins PC) Peter J Ampe (Hill and Robbins PC)
Saving Our Local Economy LLC	Defendant-Well Owner	John David Buchanan (Buchanan and Sperling, P.C.)

Party Name	Party Type	Attorney Name
		Timothy Ray Buchanan (Buchanan and Sperling, P.C.)
Steven D Kramer	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Thomas R May	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Timothy E Ortner	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Tri State Generation And Transmission As	Defendant-Well Owner	Aaron S. Ladd (Vranesh and Raisch) Justine Catherine Shepherd (Vranesh and Raisch)
Yuma Cnty Water Authority Public Improv	Defendant-Intervenor	Dulcinea Zdunska Hanuschak (Brownstein Hyatt Farber Schreck LLP) John A Helfrich (Brownstein Hyatt Farber Schreck LLP) Steven Owen Sims (Brownstein Hyatt Farber Schreck LLP)



Karen L. Henderson