

<p>DISTRICT COURT, WATER DIVISION NO. 1 STATE OF COLORADO Weld County Courthouse 901 9th Ave., Greeley, CO 80631 P.O. Box 2038, Greeley, CO 80632 Telephone Number: (970) 475-2400</p>	
<p><b>Plaintiff:</b> The Jim Hutton Educational Foundation, a Colorado non-profit corporation v. <b>Defendants:</b> Dick Wolfe, in his capacity as the Colorado State Engineer; et al.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Marks Butte, Frenchman, Sandhills, Central Yuma, Plains, W-Y, and Arikaree Ground Water Management Districts: Eugene J. Riordan, Atty. Reg. #11605 Leila C. Behnampour, Atty. Reg. #42754 Vranesh and Raisch, LLP 1720 14th Street, Suite 200 Boulder, Colorado 80302 Telephone Number: (303) 443-6151 Fax Number: (303) 443-9586 E-mail: <a href="mailto:ejr@vrlaw.com">ejr@vrlaw.com</a>; <a href="mailto:lcb@vrlaw.com">lcb@vrlaw.com</a></p> <p>Co-counsel for Arikaree Ground Water Management District: David C. Taussig, Atty, Reg. #16606 White &amp; Jankowski, LLP 511 16<sup>th</sup> Street, Suite 500 Denver, Colorado 80202 Telephone Number: (303) 595-9441 Fax Number: (303) 825-5632 E-mail: <a href="mailto:DaveT@white-jankowski.com">DaveT@white-jankowski.com</a></p>	<p>Case Number: 15CW3018 Water Div: 1</p>
<p><b>REPLY IN SUPPORT OF DISTRICTS' MOTION TO INTERVENE</b></p>	

The Marks Butte, Frenchman, Sandhills, Central Yuma, Plains, W-Y and Arikaree Ground Water Management Districts (collectively "Districts," or individually, a

“District”), by and through their undersigned attorneys Vranesh and Raisch, LLP, and the Arikaree District, by and through its co-counsel White & Jankowski, LLP, hereby file this reply in support of their motion to intervene filed with this Court on December 16, 2015 (“Motion”). Plaintiff, the Jim Hutton Educational Foundation (“Foundation”), filed a response on January 6, 2016 (“Response”).

## I. INTRODUCTION

The Foundation opposes the Districts’ Motion based on the mistaken premise that this case is limited to surface water rights, Bonny Reservoir, and the Republican River Compact (“Compact”). *See Response*, at ¶4.c. This premise is fundamentally at odds with the Foundation’s requested relief in its Complaint, which, in part, seeks to enjoin the State Engineer’s administrative actions, including the lack of ground water curtailment while at the same time curtailing more senior surface water rights. *Complaint*, at ¶¶93, 92.b. The Foundation’s Complaint raises claims and requests relief that, if granted, would likely impact the administration of designated ground water. This Court has already ruled that the administration of designated ground water may be part of the property or transactions that are the subject of this case. *Order re: Yuma County Water Authority’s Motion to Intervene (“Intervention Order”)*, July 1, 2015, at p. 3. Because the Foundation’s claims raise both legal and factual questions regarding the administration of designated ground water, the entities with statutory authority to administer designated ground water need to be parties to the case. The Districts have statutory authority to administer designated ground water in the Northern High Plains Designated Ground Water Basin (“NHP Basin”), and therefore should be granted leave to intervene in this case.

## II. ARGUMENT

The Districts have satisfied the requirements for intervention of right under C.R.C.P. 24(a)(2) and permissive intervention under C.R.C.P. 24(b)(2) and the court should therefore allow intervention by the Districts.

### A. The Districts have a number of interests in the property or transactions that are the subject of this case that justify intervention of right pursuant to C.R.C.P. 24(a)(2).

1. Administration of designated ground water is part of the property or transactions that are the subject of case.

The underlying premise behind the Foundation's Response is that this case is limited to surface water rights, Bonny Reservoir, and the Compact. *Response*, at ¶¶4, 4.c. However, the Foundation seeks a declaration from this Court that, "the lack of any ground water curtailment under the Compact by the State Engineer while at the same time curtailing more senior surface water rights is contrary to Colorado and federal law, unconstitutional, in excess of authority, arbitrary and capricious, and result[s] in injury to the Foundation's water rights." *Complaint*, ¶92.B. And, importantly, the Foundation seeks injunctive relief regarding this and other administrative actions by the State Engineer. *Id.* at 92. Thus, by its own terms, the Complaint seeks an order requiring the State Engineer to curtail designated basin well pumping before curtailing more senior surface water rights. There can be little doubt that the Foundation wants the NHP Basin ground water to be administered differently.

The Foundation cannot, for the purposes of its Response, disregard its allegations in the Complaint and claim that the administration of designated ground water is not part of the property or transactions that are the subject of this case. Such administration, including questions as to which entity or entities have legal authority to administer designated ground water and wells, the appropriate process for such administration, and factual issues concerning whether and how the State Engineer, the Commission, and the Districts have administered designated ground water and wells, is plainly at issue in this case, given the Foundation's requested relief as well as its multiple assertions with regard to what it believes to be an improper administration of designated ground water under Colorado law. *See e.g., Complaint*, at ¶79 ("The curtailment of decreed surface water rights for Compact compliance, without first curtailing [NHP Basin] ground water diversions that are depleting the river and which were developed after the surface water appropriations, is inconsistent with Colorado law."); ¶83 ("...State Engineer failed in his duties to take available measures to curtail [NHP Basin] well pumping or require replacement thereof..."), ¶84 ("failure to act on [NHP Basin] ground water"); ¶85 ("Curtailing only surface water rights for Compact purposes and not the [NHP Basin] wells that first caused the problem..."); and ¶86 ("There is no legitimate governmental interest or purpose for discriminating against surface water users [in favor of NHP Basin wells] in administering for Compact compliance."). Indeed, this Court has already recognized that the gravamen of the Complaint is the Foundation's argument that the State and Division Engineers "are improperly limiting curtailment to surface water diversions and instead should curtail junior [NHP Basin] groundwater diversions before curtailing senior surface water diversions." *Order re: State and Division Engineers' Motion for Joinder ("Joinder Order")*, July 8, 2015, at p. 2.

The Foundation's Response also ignores this Court's previous rulings in this case, which reject the notion that the claims and requested relief are limited to surface water rights, Bonny Reservoir, and the Compact. In its Order granting Yuma County Water Authority's ("YCWA") motion to intervene, the Court reasoned,

If the court rules in favor of the Foundation and finds the Defendants cannot curtail solely surface water diversions, the state would need to look elsewhere for water to meet its compact obligations. One likely solution would be to curtail ground water diversions in the NHP Basin. Thus, in addition to its surface water rights, YCWA has a distinct interest, by means of its representation of ground water users in the NHP Basin, in the property or transaction that is the subject of this action.

*Intervention Order*, at p. 3. In its Order granting the State Engineer's motion to join the NHP Basin well owners, the Court again confirmed that a ruling in this case may impact the administration of designated ground water:

Although the Foundation argues it is not seeking to curtail groundwater rights, such curtailment would almost certainly result if the court rules the Engineers' current water administration practices are unlawful and that SB-52 is unconstitutional.

*Joinder Order*, at p. 3.

In sum, the Foundation's argument in its Response that "[t]he scope of this case is limited to surface water rights, Bonny Reservoir, and the Compact" is not accurate, contravenes the relief requested in its Complaint, and ignores two of the Court's rulings in the case thus far. Notably, nowhere in the Response does the Foundation identify the "property or transaction that is the subject of this case." To do so would require the Foundation to admit that its assertions and requested relief directly implicate the historical and ongoing administration of NHP Basin ground water.

2. Because the Foundation's claims implicate the administration of designated ground water, entities with statutory authority to administer such ground water should be parties.

The Foundation argues that the Districts should not be entitled to intervene because this case does not involve the Districts' administrative authority under the 1965

Ground Water Management Act (“1965 Act”). *Response*, at ¶4.b. This argument relies on a false presumption that the Foundation, and this Court, can evaluate the State Engineer’s administration of designated ground water in a vacuum without considering the roles and acts of other entities with administrative authority over designated ground water. The State Engineer, acting outside of his role as the Executive Director of the Commission, is the sole entity with authority to administer tributary surface water. Administration of designated ground water is governed by the 1965 Act, which includes provisions concerning the entities with authority over such water and well pumping including the Commission, the ground water management districts, and the State Engineer. *See* C.R.S. §§ 37-90-110 (State Engineer’s authority); 37-90-111 (Commission’s authority); 37-90-111.5; and 37-90-130 (Districts’ authority); *Colo. Ground Water Com’n v. Eagle Peak Farms Ltd.*, 919 P.2d 212, 216 (Colo. 1996); *Upper Black Squirrel Creek Ground Water Management Dist. v. Goss*, 993 P.2d 1177, 1188 (Colo. 2000); *see also In Matter of Water Rights*, 361 P.3d 392, 395-96 (Colo. 2015) (designated ground water does not constitute “waters of the state” and is administered separately under the 1965 Act).

Litigation of the Foundation’s claims regarding the administration of designated ground water and the Court’s evaluation of such claims, the legal issues concerning the interaction between Compact compliance and curtailment of designated ground water and wells, and the facts related to such claims and legal issues needs to, and should, include participation and input from the entities with statutory authority to administer such ground water. It is appropriate for a court to consider and defer to an agency’s interpretation of its governing statutes, and such interpretation is entitled to great deference. *See, e.g., Board of County Com’rs of County of San Miguel v. Colorado Public Utilities Com’n*, 157 P.3d 1083, 1088-89 (Colo. 2007); *Table Services LTD v. Hickenlooper*, 257 P.3d 1210, 1217 (Colo. App. 2011). Although an action or rule of the Districts is not being specifically challenged in this case, this principle should be incorporated into the Court’s determination of whether the Districts are allowed to participate in this case.

As further explained in Section 3, the Districts are in a unique position to provide relevant information to the Court that will assist it in its evaluation of, and ruling on, the significant issues with regard to administration of designated ground water raised in this case. For example, in ruling on the Foundation’s claims concerning the lawfulness of the State Engineer’s current administrative practices for Compact administration and the constitutionality of both Senate Bill 52 and the 1965 Act, the Court will almost certainly be required to hear and evaluate both evidence and legal argument concerning the creation of designated basins, the historical use and

administration of designated ground water in the NHP Basin, and the interaction between the state engineer's Compact compliance actions and the statutory authority and process for administration of designated ground water and wells set forth in the 1965 Act. This is also consistent with the clear legislative intent expressed in the 1965 Act that the Districts have the ability and right to be involved in proceedings that will, actually or potentially, involve or impact designated ground water and the Districts' statutory authority over such water. *See e.g.*, CRS § 37-90-130(2)(i). Although this is not a proceeding conducted or authorized by the Commission, this proceeding involves designated ground water.

3. The Districts have discretionary duties with respect to the administration of designated ground water.

The Foundation claims that the Districts were formed to assist the Commission, enforce the law, and carry out the will of the state. *Response*, at ¶4.d. This argument ignores the separate roles of the Commission and Districts. The Commission orders the State Engineer to issue final well permits. C.R.S. §37-90-108(3)(a)(I). After well permits are issued, the 1965 Act empowers the Districts to issue well curtailment orders in the administration of priorities. However, such curtailment is based on a discretionary duty that ties to the unique nature of designated ground water and its administration. *Goss*, 993 P.2d at 1188 (citing C.R.S. §§ 37-90-111(1), (2), - 130(2), (2)(j)) ("The regime established by the [1965] Act provides for discretionary exercise of administrative and regulatory authority. The [1965] Act empowers the Commission, or the Management District where one exists, to issue well withdrawal curtailment orders in the administration of priorities, but does not impose a non-discretionary duty to do so."). This differs from the 1969 Water Rights Determination and Administration Act ("1969 Act"), which establishes a "non-discretionary duty to administer rights to waters subject to the 1969 Act according to the prior appropriation system." *Gallegos v. Ground Water Commission*, 147 P.3d 20, 28 (Colo. 2006) (citing C.R.S. §§ 37-90-501 – 502 and *Goss*, 993 P.2d at 1188).

Pursuant to C.R.S. § 37-90-130(2), the Districts are the entities authorized by statute with the primary authority to "regulate the use, control, and conservation of the ground water of the district," the pumping of which has been approved by final permits issued by the Commission through the State Engineer. Such authority also includes the right and power to develop comprehensive plans for the most efficient use of the water of the ground water aquifer or subdivision thereof. C.R.S. § 37-90-130(2)(c). These plans would specify "the acts, procedure, performance, and avoidance which are or may be

necessary to effect such plans, . . . and “determine limitations, if any, which should be made on the withdrawal of water from the ground water aquifer or subdivisions thereof. *Id.* At this time, it is not clear what issues will be litigated concerning the administration of designated ground water for Compact compliance purposes, or what the scope of the Court’s orders in this matter will be concerning such administration based on the Foundation’s claims as described in its Complaint. However, it is clear from the proceedings in this case to this point, including the discussions held between the parties and the Court at the January 11, 2016, telephone status conference, that the Court’s resolution of all of the issues may involve questions concerning the administration of designated ground water and well pumping, which entities are involved in that administration, the process for such curtailment (if required), and factual issues concerning the historical and future administration of wells and ground water within the boundaries of the NHP Basin.

In light of the Districts’ authority and obligations under the 1965 Act, the Districts’ prior administrative decisions and any interactions with the State Engineer on the issue of Compact administration are relevant to a full adjudication of this case and the Foundation’s claims. The Districts are in the best position to provide input to the Court concerning the Districts’ discretionary duties to administer and regulate designated ground water within their respective boundaries, and clearly have an interest in the outcome of these proceedings that supports their intervention in this case.

4. The Districts’ interests are not identical to those of the Commission.

The Foundation analogizes the Districts to the Commission and claims that the Court has already determined that the Commission does not have a substantial interest in the outcome of this case. *Response*, at ¶4.b. As a procedural matter, the Court’s determination about the Commission’s interest was made in the context of the Commission’s participation in this case as an indispensable party under C.R.C.P. 19(a), which contains a different, more stringent, standard than intervention under C.R.C.P. 24. “[A] party permitted to intervene pursuant to C.R.C.P. 24 is not necessarily indispensable pursuant to C.R.C.P. 19.” *Hicks v. Joondeph*, 232 P.3d 248, 253 (Colo. App. 2009).

Substantively, although the Districts and the Commission may have similar interests with respect to the administration of designated ground water and the constitutionality of the 1965 Act, including Senate Bill 52, they are not the same. The Legislature created two separate entities, demonstrating that their interests are not

identical. *See* C.R.S. §§ 37-90-111, 37-90-118 –135; *Eagle Peak Farms Ltd.*, 919 P.2d at 216; *Goss*, 993 P.2d at 1186. Further, unlike the Commission, which was created by statute, C.R.S. § 37-90-104, the Legislature set forth a process to create ground water management districts through petitions of taxpaying electors and by majority vote of the residents within the proposed boundaries at local elections. C.R.S. §§ 37-90-118–135. “By statute, the relationship between the Commission and Management District is consultative and cooperative in nature.” *Goss*, 993 P.2d at 1188. And, the Commission is required to consult with the Districts before promulgating any orders or regulations that would affect the Districts. C.R.S. § 37-90-111(1)(d). The Districts are the most local form of government with respect to designated ground water. Thus, the Districts’ interests are not identical to those of the Commission and, as a result, the Commission (if its request to intervene is granted) would not be able to adequately represent all of the interests of the Districts.

5. The Districts’ rules are implicated when addressing administration of designated ground water.

The Foundation argues that the Districts’ rulemaking authority is not at issue in this case, and that the outcome of the litigation would not impact the Districts’ rulemaking powers. *Response*, at ¶4.a. As explained in the Districts’ motion, “the Districts are authorized to promulgate rules and regulations to preserve and protect designated ground water within their respective boundaries.” *Motion*, at p.7 (citing C.R.S. § 37-90-130(2)(e)). The Districts’ rules are implicated when addressing questions of designated ground water administration. *See Goss*, 993 P.2d at 1189 (citing C.R.S. §§ 37-90-111(3), - 130(2); Rule 9.1, Designated Basin Rules, 2 C.C.R. 410–1 (1997)) (“The Management District’s rules, its control and conservation measures, and its well spacing criteria, apply ... when the Management District addresses questions of administration and enforcement.”). This is because designated ground water is administered under a modified form of prior appropriation, in which “conservation and reasonable depletion of the aquifer are paired with economic development objectives, making the administration of priorities more complicated.” *Goss*, 993 P.2d at 1189. Because one of the Districts’ roles is administration of designated basin well priorities, it is possible that one of the Districts’ current or future rules may be impacted by the outcome of this litigation.

6. The Districts have interests with regard to Compact administration.

The Foundation claims that the Districts do not have authority to administer the Compact, and thus have no interest in the Foundation's Compact administration claims. *Response*, at ¶4. Contrary to the Foundation's assertions, the Districts do have interests with regard to Compact administration that justifies their participation in this case. First, the Districts have an interest in how designated ground water withdrawals are managed for Compact compliance because they are the entities (along with the Commission) that have the statutory responsibility to administer this designated ground water "separate" from the administration under the 1969 Act of "waters of the state." See *In Matter of Water Rights*, 361 P.3d at 395-96. Additionally, the Compact Compliance Pipeline described in paragraph 44 of the Complaint transports ground water pumped from one of the Districts, and that District has approved the export of that water. Finally, pursuant to statute, if there is a violation of a District rule or order that results in the violation of an interstate compact, that violator is liable for all expenses necessary to remedy the violation. See C.R.S. § 37-90-111.5(6). This enforcement authority is consistent with the role of the Districts to administer well permits after they have been issued. C.R.S. § 37-90-130(2); *Goss*, 993 P.2d at 1187-88.

7. The Districts' financial interest in preserving the existing boundaries of the NHP Basin justifies intervention.

The Foundation argues that the Districts' interests in preserving the existing boundaries of the NHP Basin are too attenuated to form a basis for intervention. *Response*, at ¶4.e. The Foundation asserts it does not seek to redraw the boundary of the NHP Basin in this case. However, the outcome of this case may result in proceedings to redraw the basin boundaries, and at that point, the Districts may not be able to challenge that decision under the doctrines of claim or issue preclusion. The Court has confirmed this point. In granting YCWA's motion to intervene, the Court concluded:

Furthermore, a hearing before the Commission would only concern redrawing the basin's boundaries, while the action currently before this court seeks a much broader determination that current administration in the basin is unlawful. If the court finds the Defendants are required to curtail ground water diversions, the NHP Basin boundaries may need to be redrawn to permit the Defendants to properly administer those ground water rights. Consequently, preventing YCWA from intervening at this point will limit YCWA to participating after the court has already

determined the basin's boundaries must be withdrawn to permit lawful administration.

*Intervention Order*, at p. 3. The Districts would be subject to the same prejudice as the Court has recognized for YCWA.

The Foundation further argues that because financial considerations are not part of the evaluation when the boundaries of a district are formed, such considerations cannot provide an interest to support intervention. *Response*, at ¶4.e. This is a non sequitur. That fact that financial considerations are not a factor when the boundaries of a district are formed actually supports intervention because this would be the only case in which the financial interests of the Districts could be addressed. That is, the sole funding of Districts' activities to preserve and protect designated groundwater is through levying property taxes and issuing special assessments on water wells within their boundaries. C.R.S. § 37-90-132. If the Foundation's claims are successful and lands are excluded and wells are withdrawn from the Districts, such withdrawal will cause a direct financial impact on the Districts. But, as the Foundation recognizes, that financial impact could not be addressed during any proceeding to exclude lands or withdraw wells.

**B. Disposition of this case may, as a practical matter, impair or impede the Districts' abilities to protect their interests.**

The Foundation argues that the Districts' abilities to protect their interests will not be impaired or impeded by disposition of this case because a ruling in this case would not diminish the Districts' powers and authority under the 1965 Act. *Response*, at ¶5. This argument misses the point. The relevant questions are whether the outcome of this case would affect the Districts' abilities to protect their interests in preserving and protecting the designated ground water within their respective boundaries, and whether the Districts are in a unique position to protect those interests and their statutorily prescribed role in the administration of designated ground water. Because the Foundation seeks declaratory and injunctive relief to curtail designated ground water, this case certainly could affect the Districts' abilities to protect its interests. If the Districts are not made parties to this case, the Districts will not be able ensure that any rulings and orders entered by the Court in this case do not impermissibly impact or alter the Districts' discretionary duties to administer and regulate designated ground water within their respective boundaries. Moreover, as the Court has concluded, although well owners may, in a future proceeding before the Commission, have the

opportunity to contest the redrawing of the NHP Basin's boundaries, "the constitutionality of SB-52 will have already been determined." *Joinder Order*, at p.3. This reasoning applies equally to the Districts and justifies intervention. Such reasoning may also apply to the legal and factual determinations that will necessarily be required to address the Foundation's Compact administration claim.

**C. The Districts' interests are not adequately represented by an existing party.**

The Foundation argues that the Districts are adequately represented by the Defendant-well owners on the basis that the well owners and the Districts share the goal of upholding the constitutionality of Senate Bill 52. *Response*, at ¶6. The Foundation's argument appears to be an admission that the Districts have an interest in upholding the constitutionality of Senate Bill 52. Moreover, this argument ignores the fact that the Court may have to consider and rule on complex legal and factual issues concerning the administration of designated ground water in ruling on the Foundation's claims. As described in the Districts' Motion, the Districts' interests are much broader and different than that of any well owner. Unlike any well owner, the Districts have the authority to manage, preserve, and protect all of the designated ground water within their respective boundaries for use by all, adopt plans for the management of the designated ground water, and make discretionary decisions about the curtailment of such ground water. C.R.S. § 37-90-130. Moreover, their interest in preserving the financial stability of the Districts is unique to the Districts.

**D. The Districts' motion is timely.**

The Foundation asserts that this case was at issue on December 16, 2015, and criticizes the District for not providing a justification or explanation for waiting nearly eight months after the Complaint was filed to file their motion. The Foundation's assertion about the at issue date is incorrect. At the telephone status conference in this case on January 11, 2016, the Court clarified that the case is not at issue yet because the Court needs to first rule on the pending motions to intervene and motion to strike the Answer of East Cheyenne Ground Water Management District. Further, the Court has not yet set the case for trial.

With regard to the timing of the Motion, the *Joinder Order* helped further clarify, beyond the assertions in the Complaint, that the administration of designated ground water may be at issue in this case. Following the *Joinder Order*, there was additional

briefing concerning a motion to reconsider and a request for alternate service. On September 25, 2015, the Court denied the motion to reconsider and ruled regarding the proper method of service. Following the September 25 Order, the Districts determined that they needed to become parties to the case and evaluated their options. Publication was complete by November 11, 2015. Responsive pleadings were due by December 16, 2015, and the motion to intervene was filed on that day. On these facts, the Districts' motion is timely.

**E. In the alternative, the Districts should be permitted to intervene pursuant to C.R.C.P. 24(b)(2).**

The Foundation opposes permissive intervention on the basis that the Districts have no authority to administer a compact and because of the substance of their Answer. To support this opposition, the Foundation again ignores the allegations and relief requested in their Complaint, as well as the Court's Orders in the case thus far regarding proper parties and the issues that may be considered by the Court in resolving the Foundation's claims. The Foundation further argues that the Districts' participation would confuse the issues, making it more difficult for the Court to issue a judgment. *Response*, at ¶12. The Districts' participation will actually clarify the issues and ensure that the Court is fully apprised of the consequences and legal arguments pertaining to the requested relief. The Supreme Court case that the Foundation relies on, *Grijalva v. Elkins*, 287 P.2d 970 (Colo. 1955), is distinguishable because the Districts are not attempting to inject different questions of law and fact. The affirmative defenses in the Districts' Answer are no broader than the affirmative defenses asserted by the well owners or other Defendants. Moreover, the concerns about confusing a jury are inapplicable here. This will be a trial to the judge, who is more than capable of comprehending the law and facts to render a just decision, and can ensure that the issues in the case do not stray beyond those raised in the Complaint and in the pleadings of the parties.

The Foundation also asserts that the Districts' participation would result in cumulative and duplicative briefing. *Response*, at ¶12. These concerns are routinely controlled by the rules of evidence, the case management order, and the trial management order. Moreover, the Court has already determined a briefing schedule for all parties to the case that would include the Districts if they are granted leave to intervene.

Finally, the Foundation requests that if the Court grants permissive intervention, that the Court limit the Districts' participation to the constitutionality of Senate Bill 52, and, if applicable, the 1965 Act. Again, the premise for this concession is the Foundation's assertion that this case is limited to surface water rights, Bonny Reservoir, and the Compact. As explained above, this assertion is based on a faulty and misleading characterization of Foundation's own Complaint and it ignores this Court's prior rulings. Given the actual relief sought by the Foundation, the Districts have demonstrated that they meet the requirements for intervention by right and permissive intervention. As such, they should be granted leave to intervene on all issues.

**F. C.R.C.P. 57(j) and C.R.S. 13-51-115**

The Foundation again argues that the Districts do not have an interest that would be affected by a ruling in this case, and a ruling in this case would not prejudice the Districts' statutory authority. *Response*, at ¶14. A ruling in this case will likely involve the Court's evaluation of legal issues and factual evidence concerning the historical administration of designated ground water in the NHP Basin, and could fundamentally impact the Districts' abilities to carry out their statutory functions, including their ability to administer, preserve, and protect the designated ground water resource within their respective boundaries within the NHP Basin. As such, they should be granted leave to intervene.

**III. CONCLUSION**

For the reasons set forth above and in their Motion, the Districts respectfully request the Court to allow their intervention as party defendants in the above-captioned case.

Respectfully submitted this 13th day of January, 2016.

VRANESH and RAISCH, LLP

*Signature* on file pursuant to C.R.C.P. 121 § 1-26(7)

By: *s/ Leila C. Behnampour*

Eugene J. Riordan (#11605)

Leila C. Behnampour (#42754)

Attorneys for the Districts

WHITE & JANKOWSKI, LLP

*Signature on file pursuant to C.R.C.P. 121 § 1-26(7)*

By: *s/ Leila C. Behnampour for DCT*  
David C. Taussig, # 16606

Co-Counsel for Arikaree District

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of January, 2016, I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF DISTRICTS' MOTION TO INTERVENE** by ICCES e-filing addressed to the following:

4m Feeders Inc	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
4m Feeders Inc	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
4m Feeders Llc	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
4m Feeders Llc	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
Arikaree Ground Water Mgmt Dist	David C Taussig	White & Jankowski, LLP
Carlyle James As Trustee of the Chester James Trust	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
Carlyle James As Trustee of the Chester James Trust	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
City of Burlington Colorado	Alix L Joseph	Burns Figa and Will P C
City of Burlington Colorado	Steven M. Nagy	Burns Figa and Will P C
City of Holyoke	Alvin Raymond Wall	Alvin R Wall Attorney at Law
City of Wray Colorado	Alvin Raymond Wall	Alvin R Wall Attorney at Law
Colorado Agriculture Preservation Assoc	Bradley Charles Grasmick	Lawrence Jones Custer Grasmick LLP
Colorado Department of Natural Resourc	Ema I.g. Schultz	CO Attorney General
Colorado Department of Natural Resourc	Preston Vincent Hartman	CO Attorney General
Colorado Department of Natural Resourc	Daniel E Steuer	CO Attorney General
Colorado Department of Natural Resources	Ema I.g. Schultz	CO Attorney General
Colorado Department of Natural Resources	Preston Vincent Hartman	CO Attorney General
Colorado Division of Water Resources	Ema I.g. Schultz	CO Attorney General
Colorado Division of Water Resources	Preston Vincent Hartman	CO Attorney General
Colorado Division of Water Resources	Daniel E Steuer	CO Attorney General

Colorado Division of Water Resources	Ema I.g. Schultz	CO Attorney General
Colorado Division of Water Resources	Preston Vincent Hartman	CO Attorney General
Colorado Division of Water Resources	Daniel E Steuer	CO Attorney General
Colorado Ground Water Commission	Chad Matthew Wallace	CO Attorney General
Colorado Ground Water Commission	Patrick E Kowaleski	CO Attorney General
Colorado Parks And Wildlife	Katie Laurette Wiktor	CO Attorney General
Colorado Parks And Wildlife	Timothy John Monahan	CO Attorney General
Colorado Parks And Wildlife	Katie Laurette Wiktor	CO Attorney General
Colorado Parks And Wildlife	Timothy John Monahan	CO Attorney General
Colorado State Board Land Commissioners	Virginia Marie Sciabbarrasi	CO Attorney General
David L Dirks	Alvin Raymond Wall	Alvin R Wall Attorney at Law
David Nettles	Ema I.g. Schultz	CO Attorney General
David Nettles	Preston Vincent Hartman	CO Attorney General
David Nettles	Daniel E Steuer	CO Attorney General
David Nettles	Ema I.g. Schultz	CO Attorney General
David Nettles	Preston Vincent Hartman	CO Attorney General
David Nettles	Daniel E Steuer	CO Attorney General
Dick Wolfe	Ema I.g. Schultz	CO Attorney General
Dick Wolfe	Preston Vincent Hartman	CO Attorney General
Dick Wolfe	Daniel E Steuer	CO Attorney General
Dick Wolfe	Ema I.g. Schultz	CO Attorney General
Dick Wolfe	Preston Vincent Hartman	CO Attorney General
Dick Wolfe	Daniel E Steuer	CO Attorney General
Dirks Farms Ltd	Alvin Raymond Wall	Alvin R Wall Attorney at Law
Division 1 Engineer	Division 1 Water Engineer	State of Colorado DWR Division 1
Division 1 Water Engineer	Preston Vincent Hartman	CO Attorney General
Division 1 Water Engineer	Ema I.g. Schultz	CO Attorney General
Don, Myrna and Nathan Andrews	Stuart B. Corbridge Geoffrey M. Williamson	Vranesh and Raisch, LLP

East Cheyenne Ground Water Mgmt Dist	John David Buchanan	Buchanan Sperling and Holleman PC
East Cheyenne Ground Water Mgmt Dist	Timothy Ray Buchanan	Buchanan Sperling and Holleman PC
Happy Creek Inc	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
Happy Creek Inc	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
Harvey Colglazier	Alvin Raymond Wall	Alvin R Wall Attorney at Law
J And D Cattle Llc	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
J And D Cattle Llc	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
James J May	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
James J May	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
Julie Dirks	Alvin Raymond Wall	Alvin R Wall Attorney at Law
Kent E Ficken	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
Kent E Ficken	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
Lazier Inc	Alvin Raymond Wall	Alvin R Wall Attorney at Law
Mariane U Ortner	Alvin Raymond Wall	Alvin R Wall Attorney at Law
Marjorie Colglazier Trust	Alvin Raymond Wall	Alvin R Wall Attorney at Law
May Acres Inc	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
May Acres Inc	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
May Brothers Inc	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
May Brothers Inc	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
May Family Farms	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
May Family Farms	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
North Well Owners	Russell Jennings Sprague	Colver Killin and Sprague LLP
North Well Owners	Kimbra L. Killin	Colver Killin and Sprague LLP
Protect Our Local Communitys Water Llc	John David Buchanan	Buchanan Sperling and Holleman PC
Protect Our Local Communitys Water Llc	Timothy Ray Buchanan	Buchanan Sperling and Holleman PC
Republican River Water Conservation Dist	Peter J Ampe	Hill and Robbins PC
Republican River Water Conservation Dist	David W Robbins	Hill and Robbins PC
Saving Our Local Economy Llc	John David Buchanan	Buchanan Sperling and Holleman PC

Saving Our Local Economy Llc	Timothy Ray Buchanan	Buchanan Sperling and Holleman PC
State Engineer	Colorado Division of Water Resources	State of Colorado – Division of Water Resources
State Engineer	Ema I.g. Schultz	CO Attorney General
State Engineer	Preston Vincent Hartman	CO Attorney General
Steven D Kramer	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
Steven D Kramer	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
The Jim Hutton Educational Foundation	Steven J Bushong	Porzak Browning & Bushong LLP
The Jim Hutton Educational Foundation	Karen Leigh Henderson	Porzak Browning & Bushong LLP
The Jim Hutton Educational Foundation	Steven J Bushong	Porzak Browning & Bushong LLP
The Jim Hutton Educational Foundation	Karen Leigh Henderson	Porzak Browning & Bushong LLP
Thomas R May	William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
Thomas R May	Johanna Hamburger	Carlson, Hammond & Paddock, L.L.C.
Timothy E Ortner	Alvin Raymond Wall	Alvin R Wall Attorney at Law
Tri State Transmission and Generation	Aaron S. Ladd Justine C. Shepherd	Vranesh and Raisch, LLP
Yuma Cnty Water Authority Public Improv	Steven Owen Sims	Brownstein Hyatt Farber Schreck LLP
Yuma Cnty Water Authority Public Improv	John A Helfrich	Brownstein Hyatt Farber Schreck LLP
Yuma Cnty Water Authority Public Improv	Dulcinea Zdunska Hanuschak	Brownstein Hyatt Farber Schreck LLP

*s/ Leila C. Behnampour*

*/s/ signature on file*

Pursuant to C.R.C.P. 121, §1-26(7)

SIGNED DOCUMENT BEING RETAINED AT THE OFFICE OF VRANESH AND RAISCH, LLP