

DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO Weld County Courthouse 901 9 th Avenue P.O. Box 2038 Greeley, Colorado 80631 (970) 475-2400	DATE FILED: January 29, 2016 2:38 PM <input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
<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; Colorado Ground Water Commission; and the Marks Butte, Frenchman, Sandhills, Central Yuma, Plains, W-Y, and Arikaree Ground Water Management Districts.</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>	Case Number: 15CW3018 Div. No. 1
ORDER RE: MOTION TO STRIKE THE EAST CHEYENNE GROUND WATER MANAGEMENT DISTRICT’S ANSWER	

The court, having considered the Jim Hutton Educational Foundation’s Motion to Strike the East Cheyenne Ground Water Management District’s Answer, and being fully advised in the premises thereof, hereby denies the motion. Though the East Cheyenne Ground Water Management District (“District”) is not an indispensable party in this case, the court finds that the District may permissively intervene and has satisfied the procedural requirements for intervention. Accordingly, the court will not strike the District’s answer from the record. In addition, the court finds that this case is at issue as of the date of this order.

The District is not an indispensable party in this case. A party is indispensable under C.R.C.P. 19(a) if it “claims an interest relating to the subject of the action and is so situated that the disposition of the action in [its] absence may . . . [a]s a practical matter impair or impede [its]

ability to protect that interest.” A party is indispensable in an action for declaratory judgment if it has or claims “any interest which would be affected by the declaration.” C.R.C.P. 57(j). The court previously held that well owners within the Northern High Plains Designated Ground Water Basin (“NHP Basin”) are indispensable parties because the outcome of this case could impede their ability to protect their groundwater use. *Order RE: State and Division Engineers’ Motion for Joinder* at 4 (July 9, 2015). The District does not represent the interests of well owners, and does not itself use groundwater. See C.R.S. §§ 37-90-118 to -135 (laying out responsibilities and powers of designated ground water management districts). Instead, the District conserves and regulates the use of designated ground water in accordance with the Groundwater Management Act. See *id.* Because the outcome of this litigation will not affect the District’s interest in regulating water use in accordance with Colorado law, the District is not an indispensable party in this case.

Although the District is not an indispensable party, it may permissively intervene. A court may permit a party to intervene “upon timely application” when the party’s “claim or defense and the main action have a question of law or fact in common.” C.R.C.P. 24(b). Permissive intervention “rest[s] within the discretion of the trial court.” *Denver Chapter of Colo. Motel Ass’n v. City & Cnty. of Denver*, 374 P.2d 494, 495 (Colo. 1962); see also *Grijalva v. Elkins*, 287 P.2d 970, 972 (Colo. 1955). “In exercising its discretion,” however, “the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” C.R.C.P. 24(b).

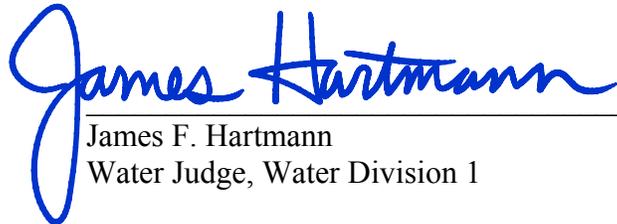
The District filed its answer on December 11, 2015, five days before the deadline for NHP Basin well owners to file answers, and five days before the Colorado Ground Water Commission and a group of other designated ground water management districts filed motions to intervene. The District thus attempted to intervene at a time when many parties were joining the case, and its intervention was timely. In addition, the District seeks determination of the same questions of law raised by the Jim Hutton Educational Foundation (“Foundation”). Finally, allowing the District to intervene will not unduly delay or prejudice the adjudication of the rights of the original parties to this case. Adding one additional defendant to the large number of defendants already participating in this case will not substantially increase the burden of adjudication on the court or the parties, particularly where many of the defendants likely will advance similar arguments. Accordingly, the District may permissively intervene.

The Foundation argues that the District may not intervene because the District failed to file a motion to intervene. While C.R.C.P. 24(c) requires a party seeking intervention to file a motion, the court may allow intervention without a motion if the opposing party is not prejudiced. *Weston v. T & T, LLC*, 271 P.3d 552, 555–56 (Colo. App. 2011). The District’s answer put the Foundation on notice that the District sought to participate in this case as a defendant to oppose the declaratory judgment the Foundation seeks. The court thus finds that the District’s failure to file a motion to intervene does not prejudice the Foundation, and does not preclude the District’s permissive intervention.

Because the court holds that the District may permissively intervene, the court denies the Foundation's motion to strike the District's answer. Pursuant to C.R.C.P. 16(b)(1), the court directs that the case is at issue as of the date of this order.

Dated: January 29, 2016.

BY THE COURT:


James F. Hartmann
Water Judge, Water Division 1