DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO Weld County Courthouse 901 9th Avenue P.O. Box 2038 Greeley, Colorado 80631 (970) 351-7300	DATE FILED: February 29, 2016 9:39 PM □ **COURT USE ONLY** □
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; Colorado Division of Water Resources; and Colorado Division of Parks and Wildlife. **Defendant-Intervenors**: Yuma County Water Authority Public Improvement District; Colorado Ground Water Commission; Marks Butte, East Cheyenne, Frenchman, Sandhills, Central Yuma, Plains, W-Y, and Arikaree Ground Water Management Districts. **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.	Case Number: **15CW3018**
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THE JIM HUTTON EDUCATIONAL FOUNDATION'S MOTION FOR SUMMARY JUDGMENT ON ITS COMPACT ADMINISTRATION CLAIM

Plaintiff, the Jim Hutton Educational Foundation, a Colorado non-profit corporation ("Foundation"), acting by and through undersigned counsel, seeks summary judgment pursuant to C.R.C.P. Rule 56 on its claim that current administration of the Foundation's water rights for Compact compliance is unlawful. As grounds therefore, the Foundation states as follows:

I. BACKGROUND.

The Foundation is a non-profit corporation that provides low interest loans to nursing students who plan to provide medical services in rural eastern Colorado. The Foundation owns the Hutton Ranch, which consists of approximately 4,000 acres located on the South Fork of the Republican River ("South Fork") near the Kansas border, and includes four surface water rights that divert water from the South Fork. The Republican River Basin, including the South Fork, is the subject of an interstate Compact among the States of Colorado, Kansas, and Nebraska (the "Compact") which was approved in 1942.

Groundwater pumping is drying up the South Fork. There were very few irrigation wells in the Republican River Basin ("Basin") at the time of the Compact. That changed dramatically beginning in the 1960s through the 1970s, especially after the creation of the Northern High Plains designated groundwater basin ("NHP Basin") in 1966. Currently, there are more than 4,000 high-capacity irrigation wells in the Basin in just Colorado. The impact of groundwater pumping on the surface flows in the Basin resulted in litigation among Colorado, Kansas, and Nebraska regarding the Compact beginning in 1998. In 2000, the United States Supreme Court ruled that groundwater pumping depletions to the surface water flows of the Republican River tributaries cannot be ignored and are part of each State's consumptive use allocated by the Compact.

To comply with the rulings in the Compact litigation, the three States agreed to develop a groundwater model to quantify the depletions to surface flows in the Basin caused by wells. That groundwater model was approved by the United States Supreme Court in 2003. As will be discussed in more detail below, the groundwater model documents that wells in Colorado are having a significant impact on surface flows in the Basin. In fact, those well pumping depletions put Colorado out-of-compliance with the Compact for the first time since the Compact was approved in 1942. Despite this information, the State and Division Engineers ("Engineers") never curtailed well pumping for Compact compliance, choosing instead to curtail only surface water rights appropriated after the 1942 Compact. Among the few surface rights curtailed on the South Fork are two of the Foundation's four surface water rights (the Hutton No. 1 and Hutton No. 2), and the storage right in Bonny Reservoir. Meanwhile, the Engineers have limited their administration of groundwater use in the Basin to requiring wells to measure water – which surface water users are also required to do.

The issue raised by this Motion is whether it is lawful for the Engineers to curtail only surface water to help comply with the Compact, without curtailing groundwater, when groundwater depletions are causing Colorado's overdraft. As described below, Colorado law is clear that where an interstate Compact does not set forth specific intrastate administration requirements, the Engineers are required to equitably curtail diversions among appropriators so as to restore lawful use conditions as existed at the time of the Compact and in a manner consistent with the constitutional prior appropriation doctrine. Under this law and the cases described below, the Engineers cannot lawfully continue to curtail only surface water for Compact purposes. Such administration has resulted in continuous curtailment of surface water

for 8 years and counting for a problem caused by groundwater pumping. The Foundation seeks a ruling that the current administration of surface water is unlawful.

II. LEGAL STANDARD UNDER C.R.C.P RULE 56.

Summary judgment "shall be rendered forthwith, if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." C.R.C.P. Rule 56(c). A material fact is one whose resolution will affect the outcome of the case. *Peterson v. Halsted*, 829 P.2d 373, 375 (Colo. 1992). "A genuine issue of material fact cannot be established simply by allegations in pleadings or argument; rather, the opposing party must set forth specific facts by affidavit or otherwise showing that there is a genuine issue for trial." *People ex rel A.C.*, 170 P.3d 844, 846 (Colo. App. 2007). "The purpose of summary judgment is to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with trial when, as a matter of law, based on undisputed facts, one party could not prevail." *Id*. An uncontradicted showing of facts probative of right to judgment leaves a trial court with no alternative but to conclude that no genuine issues of material fact exist. *Civil Service Comm'n v. Pinder*, 812 P.2d 645, 649 (Colo. 1991); *Terrell v. Walter E. Heller & Co.*, 439 P.2d 989, 991 (Colo. 1968).

III. UNDISPUTED FACTS.

For purposes of this Motion, the principal undisputed facts that frame the legal issues are (1) that the groundwater in the Basin is the subject of the Compact; (2) that pumping groundwater in the Basin is contributing to, if not causing, Colorado's Compact compliance problems; (3) that the vast majority of the wells in the Basin were developed after the Compact was approved in 1942; and (4) that the Engineers are only curtailing surface water rights appropriated after 1942 to help achieve Compact compliance, and not groundwater users. Although the following is more detailed, it supports these principal undisputed facts for purposes of this Motion:

A. The Compact was approved in 1942 by the States of Colorado, Kansas, and Nebraska and is codified at C.R.S. § 37-67-101. As stated therein, the Compact divides water in the Republican River and its tributaries among Colorado, Kansas, and Nebraska based upon beneficial consumptive use. (Compact, Art. II, Art. IV).

B. The Compact was ratified by the respective State legislatures of Colorado, Kansas, and Nebraska, and approved by the United States Congress and President of the United States. (*See, First Report of the Special Master (Subject: Nebraska's Motion to Dismiss), United States Supreme Court, dated January 28, 2000*; hereinafter "First Report of Special Master", pp. 10-11). A copy of the First Report of Special Master is attached as **Exhibit 7**.[1]

[1] Exhibit numbering takes into account Exhibits filed with the Foundation's other C.R.C.P. Rule 56 Motions filed herewith so there is one set of exhibits for the Foundation's Motions without any duplicate exhibit numbers.

C. Two of the Foundation's four surface water rights were appropriated after the Compact. Specifically, the Hutton No. 1 and Hutton No. 2 Ditches were the subject of a 1955 map and filing statement made by Roscoe Hutton documenting that construction commenced on July 5, 1954, attached hereto as **Exhibit 8**. The Hutton No. 1 and Hutton No. 2 Ditches were thereafter decreed for 12.9 cfs and 4.92 cfs, respectively for irrigation purposes by the District Court in and for Water Division No. 1 in Case No. W-8667-77, with appropriation dates of July 5, 1954. The Hale Ditch and Tip Jack Ditch water rights owned by the Foundation were appropriated before the Compact and are not being curtailed to meet the Compact.[2] The historical use of all four water rights owned by the Foundation documented by aerial photographs and other information is the subject of this Court's orders in Case Nos. 11CW86 and 12CW111.

D. In 1966, the Colorado Ground Water Commission created the Northern High Plains Basin ("NHP Basin"). The NHP Basin designation order filed herewith as **Exhibit 2** includes the Ogallala-Alluvium aquifer in Colorado. The alluvial aquifers and Ogallala aquifer are the groundwater sources in the Basin. (*First Report of Special Master*, Exh. 7, p.5, n.6). Further, the areal extent of the Ogallala Aquifer in Colorado coincides with the areal extent of the NHP Basin boundaries. *Rules and Regulations for the Management and Control of Designated Ground Water,* 2 CCR 410-1 § 5.2.2.1.

E. In 1998, Kansas initiated litigation against Nebraska in the United States Supreme Court claiming excessive pumping of groundwater was causing Nebraska to exceed its allocation of water under the Compact. (*First Report of Special Master*, Exh. 7, pp. 1-4). Kansas included Colorado as a defendant in the litigation. (*Id.*, p. 4, n. 4 and 5).

F. In support of a motion to dismiss the lawsuit, Nebraska argued groundwater was not the subject of the Compact, while Colorado argued that the Compact allocated alluvial groundwater, but not groundwater in the Ogallala Aquifer. (*First Report of Special Master*, Exh. 7, pp. 4-5).

G. The Special Master appointed by the United States Supreme Court ruled against Colorado and Nebraska on the motion to dismiss, holding that "the Compact restricts groundwater consumption to whatever extent it depletes stream flow in the Republican River Basin" (*First Report of Special Master*, Exh. 7, pp. 2-3). *See also Id.* at p.34 ("as a matter of law, the Compact restricts, and allocates . . . *any* ground water that would become part of the stream flow in the Basin if not previously depleted through an activity of man such as pumping") (emphasis added). The United States Supreme Court affirmed the Special Master's denial of the motion to dismiss. *Kansas v. Nebraska and Colorado*, 530 U.S. 1271 (2000).

H. The Special Master specifically rejected Colorado's argument to treat Ogallala ground-water different from alluvial groundwater. (*First Report of Special Master*, Exh. 7, pp. 41-44, and p. 5, n. 6). Groundwater in the Ogallala Aquifer is subject to the Compact. (*Id.*, pp. 41-44).

[2] Although not curtailed for Compact compliance, the Hale Ditch water right is impacted by curtailment of storage in Bonny Reservoir for Compact compliance, as Bonny Dam has an outlet constructed to deliver the Hale Ditch water rights. This issue is discussed in more detail in the Foundation's Rule 56 Motion regarding Bonny Reservoir.

I. After the Special Master's rulings in his First Report, Colorado, Kansas, and Nebraska entered into a final settlement stipulation dated December 15, 2002 (hereinafter "2002 Stipulation"), which was approved by the Governors and Attorney Generals of each State. A copy of the 2002 Stipulation is attached hereto as **Exhibit 9**. Pursuant to the 2002 Stipulation, the States agreed to jointly construct a groundwater model (referred to as the "RRCA Groundwater Model" or "Model"), largely to determine "stream flow depletions caused by Well pumping" so that groundwater usage could be administered under the Compact. (*2002 Stipulation*, pp. 18-20). *See also, Kansas v. Nebraska*, 135 S. Ct. 1042, 1050 (2015) (The 2002 Stipulation "provided, in line with this Court's decision, that groundwater pumping would count as part of a State's consumption to the extent it depleted the Basin's stream flow").

J. The United States Supreme Court approved the 2002 Stipulation, noting its binding effect in developing the RRCA Groundwater Model. *Kansas v. Nebraska and Colorado*, 538 U.S. 720 (2003). All claims were dismissed with prejudice, effective upon the filing of the Special Master's Final Report certifying adoption of the RRCA Groundwater Model. *Id.*

K. The States of Colorado, Kansas, and Nebraska thereafter developed "a comprehensive ground water model to represent the ground water flow in the Republican River Basin" with a "primary purpose to determine the amount, location, and timing of streamflow depletions to the Republican River caused by well pumping . . . ." (*Republican River Compact Administration Ground Water Model, dated June 30, 2003*, p.1, attached hereto as **Exhibit 10**) (hereinafter "Model Report").

L. The Special Master thereafter filed his Final Report with the Supreme Court on September 17, 2003, in which he certified adoption of the RRCA Groundwater Model by Colorado, Kansas, and Nebraska. (*Final Report of the Special Master with Certificate of Adoption of RRCA Groundwater Model, dated September 17, 2003, United States Supreme Court*, attached hereto as **Exhibit 11**), (hereinafter "Final Report of Special Master").

M. The United States Supreme Court accepted the Final Report of Special Master on October 20, 2003. *See Kansas v. Nebraska and Colorado*, 540 U.S. 964 (2003).

N. Consistent with the Model Report, the Final Report of Special Master held that the "Model construction and calibration represent the physical and hydrogeological characteristics of the Republican River Basin to a reasonable degree." (*Final Report of Special Master*, Exh. 11, p.8; *see also, Model Report*, Exh. 10, pp. 1, 2).

O. The Final Report of Special Master documents that hardly any irrigation wells existed in the Republican River basin within Colorado at the time of the Compact, and there were still very few wells by1960. (*Final Report of Special Master*, Exh. 11, pp. 17-18). The number of such irrigation wells in the Basin within Colorado started increasing dramatically in the mid-1960s and 1970s to just over 4,000 wells. (*Id.*)

P. Stream flow depletions in 1981 through 2000 caused by well pumping in each State as documented by the RRCA Groundwater Model are included in Appendix U of the Final Report

of Special Master. (Exh. 11). The average impact of Colorado well pumping on stream flows from 1981 – 2000 was 21,330 acre-feet, with the impact generally increasing during that time.
Q. Model runs have continued since the Model was approved by the United States Supreme Court for administration of the Compact, but only Model runs through 2007 have been approved by the Republican River Compact Administration ("RRCA") and are publically available at the RRCA website. http://www.republicanrivercompact.org/2007/html/1998-2007.html. A copy of well pumping impacts available from the RRCA website through 2007 is attached hereto as **Exhibit 12**. In 2007, the Model documents that surface water depletions caused by Colorado ground water pumping totaled 26,847 acre-feet.

R. Model runs have continued since 2007 even though they have not been approved by the RRCA. In 2009, the only year after 2007 in which the Foundation has obtained Model results, Colorado ground water pumping resulted in 38,238 acre-feet of depletions to surface flows in the Basin. A copy of the 2009 Model results is attached hereto as **Exhibit 13.**

S. The Division Engineer, David Nettles, testified under oath that the Model shows that groundwater pumping depletions from wells in the NHP Basin are the single biggest source of depletions under Colorado's Compact entitlement. (*See* Excerpt of David Nettles deposition testimony dated March 5, 2013, in Case No. 12CW111, Water Division No. 1, attached as **Exhibit 14**, 68:13-17). A comparison of the different sources of consumptive use under the Compact further verifies this point. (*See, Informational Document*, attached hereto as **Exhibit 15**, pp. 12-13; *see also*, Excerpt of David Nettles testimony dated April 22, 2013, at trial in Case No. 11CW186, attached as **Exhibit 16**, pp. 10:16-11:8, confirming that the Informational Document was a hand-out from public meetings held by members of the State Engineer's staff).

T. Compact compliance only became a problem for Colorado once groundwater depletions were determined to be part of Colorado's Compact entitlement. (David Nettles testimony in Case No. 11CW186, Water Division No. 1, dated April 17, 2013, excerpt attached as **Exhibit 17**, p.158:11-19).

U. In 2008, the Engineers first began curtailing diversions of surface water rights with priorities junior to 1942, the date the Compact was signed. (Exh. 17, 159:9-11; Exh. 14, 64:22 – 65:14; 67:8 – 68:8; David Nettles testimony in Case No. 11CW186, Water Division No. 1, dated April 19, 2013, excerpt attached as **Exhibit 18**, 219:16-23). That was the first time there had ever been a "Compact call" on the Republican River with the possible exception of 2007 when the Engineers first ordered the release of water from Bonny Reservoir for Compact compliance. (Exh. 14, pp. 65:13-66:9; Exh. 18, 219:20-220:4). The Engineers decided to begin "administering the Republican River Basin under a surface water Compact call because we are currently out of compliance with the compact." (2010 e-mail amongst Engineers and staff, attached as **Exhibit 19**).

V. Bonny Reservoir is one of just a few water rights being curtailed for Compact compliance on the South Fork because it is a post-1942 water right. (Exh. 14, 67:8 – 68:8). Bonny Reservoir was decreed 351,460 acre-feet to the United States for flood control, irrigation, recreation, fish and wildlife propagation with a December 3, 1948 appropriation in Case No. W-

9135-77. More details on the draining of Bonny Reservoir are provided in the Foundation's Motion filed herewith regarding Bonny Reservoir administration.

W. Even though groundwater pumping constitutes what the Engineers recognize is the biggest source of consumption for Colorado under the Compact, the Engineers have not sought to curtail groundwater use to meet the Compact. (Exh. 14, p.68:4-19; Exh. 17, p. 159:12-14). Rules to curtail designated groundwater wells to help achieve Compact compliance were drafted by the Engineers, but never pursued. (Exh. 14, 48:24-49:13). The State Engineer did recently adopt Rules and Regulations Governing the Measurement of Ground Water Diversions Affecting the Republican River Compact, Within Water Division No. 1, 2 CCR 402-16, but limited administration to requirements for measuring groundwater use.

IV. LEGAL ANALYSIS IN SUPPORT OF SUMMARY JUDGMENT ON CLAIM THAT SURFACE WATER ADMINISTRATION IS UNLAWFUL.

As described above, the issue raised by this Motion is that it is unlawful to curtail surface water use and not groundwater use within Colorado in order to help comply with an interstate compact. This is especially true in an instance such as this – where the Compact does not require such administration, the groundwater has been determined to be the subject of the Compact, the groundwater use was largely developed after the Compact, a Model was developed by Colorado and approved by the United States Supreme Court specifically to quantify groundwater depletions, and when such groundwater depletions were in fact included in Colorado's Compact allocation and caused Colorado to exceed its Compact allocation. The Foundation seeks a determination that such intrastate administration of surface water use is unlawful for the reasons set forth herein.

A. The State Engineer is Responsible for Compact Compliance.

The State Engineer is delegated the "executive responsibility and authority with respect to . . . [the] [d]ischarge of the obligations of the state of Colorado imposed by compact or judicial order on the office of the state engineer." C.R.S. § 37-80-102(a). In complying with this obligation, "[t]he state engineer shall make and enforce such regulations with respect to deliveries of water as will enable the state of Colorado to meet its compact commitments." C.R.S. § 37-80-104. *See also, Simpson v. Bijou Irrigation Co.*, 69 P.3d 50, 68 (Colo. 2003) ("In addition to the State Engineer's enforcement power pursuant to the compact itself, section 37–80–104, 10 C.R.S. (2002), more broadly outlines the State Engineer's duties to ensure compliance with all of Colorado's interstate river compacts"). "It is the State Engineer, as the chief state water administrative official, who must make the necessary administrative decisions regarding the necessity, timing, amount, and location of intrastate water restrictions in order to ensure that Colorado's critical interstate delivery obligations are fulfilled." *Simpson*, 69 P.3d at 69 (*citing Alamosa–La Jara Water Users Prot. Ass'n v. Gould*, 674 P.2d 914, 923 (Colo.1983)). Thus, not surprisingly, the State Engineer is the Commissioner for Colorado with regard to administering water under the Republican River Compact. (*See State Engineer's Answer to Complaint, ¶ 8*; s*ee also,* C.R.S. § 37-67-101, Art. IX). This Motion refers sometimes to the Engineers, because the Division Engineer assists in administration of water in the Basin.

B. Any Curtailment of Water for Compact Compliance Must Apply Equally to Surface and Ground Water Diverters – or Not at All.

Although groundwater depletions are the biggest source of Colorado's consumptive use under the Compact – only surface water is currently being curtailed for the Compact. Not only is such administration unfairly placing the burden of Compact compliance on surface water users, it is contrary to Colorado law as described below. In short, there is no lawful basis under Colorado law to treat water users differently for purposes of Compact administration based upon the method of diversion (i.e. ground water pumping vs surface water diversion).

1. Interstate Compacts Preempt Conflicting State Law.

It is without question that an interstate compact can control the administration of waters within Colorado. The rule of equitable apportionment does not allow a state to "divert and use, as she may choose, the waters flowing within her boundaries in this interstate stream, regardless of any prejudice that this may work to others having rights in the stream below her boundary. . . ." *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 102 (1938) (*quoting Wyoming v. Colorado*, 259 U.S. 419 (1922)). "Equitable apportionment, a federal doctrine, can determine times of delivery and sources of supply to satisfy that delivery without conflicting with state law, for state law applies only to the water which has not been committed to other states by the equitable apportionment." *Alamosa-La Jara Water Users*, 674 P.2d 914, 922 (Colo. 1983) (*citing Hinderlider*, 304 U.S. 92). In other words, "the Compact here is not only part of our state statutory law, but is also part of federal law, . . . and is thus preemptive of any conflicting state law on the same subject." *Frontier Ditch v. Southeastern Colorado Water Conservancy District*, 761 P.2d 1117, 1123 (Colo. 1988).

2. Colorado Law Establishes Standards for Lawful Intrastate Compact Administration to be Applied if Not Inconsistent with the Compact.

Where the Compact does not direct how intrastate administration of water must be accomplished to satisfy the Compact, then it is the State Engineer's obligation to curtail diversions to meet the Compact so as to restore lawful use conditions as they were before the Compact. Specifically, C.R.S. § 37-80-104 states in its entirety as follows:

> The state engineer shall make and enforce such regulations with respect to deliveries of water as will enable the state of Colorado to meet its compact commitments. In those cases where the compact is deficient in establishing standards for administering within Colorado to provide for meeting its terms, the state engineer shall make such regulations as will be legal and equitable to regulate distribution among the appropriators within Colorado obligated to curtail diversions to meet compact commitments, so as to restore lawful use conditions as they were before the effective date of the compact insofar as possible.

This so-called compact rule power has been given a plain reading by the Colorado Supreme Court. For example, in *Alamosa-La Jara Water Users*, 674 P.2d at 923 (Colo. 1983), the Court held that "section 37-80-104 . . . mandates that compacts which are deficient in provision for intrastate administration be implemented so as to 'restore lawful use conditions as they were before the effective date of the compact insofar as possible.'"[3]

Moreover, the Colorado Supreme Court has further instructed the State Engineer that it must, to the extent possible, administer water in Colorado to meet compact commitments in a way that remains consistent with Colorado's constitutional prior appropriation doctrine. It is "manifested that the [State] Engineer can and should enforce compact delivery requirements with regard to Colorado water rights, adhering to the terms of the Compact and consistent, insofar as possible, with Colorado constitutional and statutory provisions for priority administration." *Simpson v. Highland Irrigation Co.*, 917 P.2d 1242, 1248 (Colo. 1996). "Thus, although the compact rule power is broad in scope, it still must be exercised to the extent possible within the existing framework of Colorado statutory priority law." *Bijou Irrigation*, 69 P.3d at 69. Thus, unless inconsistent with the express terms of the interstate compact, waters must be administered in Colorado so as to protect the constitutional prior appropriation doctrine upon which water users have justifiably relied in acquiring vested water rights.

3. <u>The Republican River Compact Does Not Require Curtailment of Surface Water Users without Curtailing Groundwater Users</u>.

The Compact allocates water within the Basin by beneficial consumptive use. (Compact Art. II, IV), *see* C.R.S. § 37-67-101. The three States are each provided an allocation of consumptive use for specific sub-basins, which includes a specific allocation to Colorado for the South Fork. (Compact, Art. IV). "The specific allocations in acre-feet . . . made to each state are derived from the computed average annual virgin water supply originating" in each such basin, (Compact, Art. III), which is the water supply that would be present if "undepleted by the activities of man." (Compact, Art. II). The allocations are subject to change if the virgin water supply varies by more than 10% from what was used for the allocations. (Compact, Art. III). With limited exceptions, the Compact does not instruct the individual States how to manage their consumptive use allocation. Instead, the Compact states that "[t[he use of the waters hereinabove allocated shall be subject to the laws of the state, for use in which the allocations are made." (Compact, Art. IV).

As discussed above in the undisputed facts, the United States Supreme Court has already determined that the Compact restricts groundwater consumption to whatever extent it depletes stream flow in the Basin. Indeed, the Special Master concluded that "as a matter of law, a State can violate the Compact through excessive pumping of groundwater . . . ." (*First Report of Special Master*, Exh. 7, p. 22). Consistent with the United States Supreme Court's rulings, the three States agreed to include stream flow depletions caused by groundwater pumping in their allocations, and developed the RRCA Groundwater Model to quantify the timing, amount, and

[3] Notwithstanding the authority to implement rules and regulations, "rules and regulations shall not be a prerequisite to . . . the performance of [the State Engineer's] duties under the constitution or laws of Colorado or any compact . . . which does not, by its specific terms, require implementation of such rule or regulation." C.R.S. § 37-80-102(k).

location of groundwater depletions. (*See, e.g., 2002 Stipulation, Model Report, and Final Report of Special Master*, which are Exh. 9, 10 and 11, respectively).

Accordingly, the Compact does not require surface water curtailment without curtailment of groundwater. To the contrary, groundwater was confirmed as being part of the Compact. Faced with the dilemma of how to achieve Compact compliance, the Engineers drafted rules to begin curtailing groundwater use but did not implement them. Instead, the Engineers decided in 2008 to implement an administrative call and curtail surface water rights appropriated after the Compact, including the Hutton No. 1 and No. 2 ditches, and Bonny Reservoir, without curtailing groundwater use. Such administration is not a requirement of the Compact – but a choice made by the Engineers who placed political expediency above Colorado water law.

4. Curtailment of Only Surface Water Users for Compact Compliance is Unlawful.

Applying the undisputed facts to the law set forth above, the Engineers administrative practice of only curtailing surface water users for Compact compliance cannot stand. Pursuant to C.R.S. § 37-80-104, the Engineers must administer water to comply with the Compact "so as to restore lawful use conditions as they were before the effective date of the compact insofar as possible." The lawful use conditions that existed at that time was principally surface water use. There were very few wells that predated the 1942 Compact and the NHP Basin was not even created until 1966. An example of how current administration is not restoring lawful uses as existed at the time of the Compact is illustrated by the graphs of the South Fork flow data and Bonny Reservoir contents (before it was drained), showing both drying up over time. (Exh. 15, pp. 5, 18; *see also* Exh. 16, 10:21-12:12, in which Mr. Nettles confirms those trends). If it is, in fact, necessary to curtail new diversions of water that were appropriated after the Compact was approved in 1942, then that applies to all water users whether they divert surface water or groundwater. Curtailing only surface water is in violation of C.R.S. § 37-80-104.

Further, the Colorado Supreme Court has instructed the Engineers to perform intrastate Compact administration "consistent, insofar as possible, with Colorado constitutional and statutory provisions for priority administration." *Simpson v. Highland Irrigation Co.*, 917 P.2d at 1248; *see also Bijou Irrigation*, 69 P.3d at 69 (The compact rule power "must be exercised to the extent possible within the existing framework of Colorado statutory priority law"). The current method of administration, however, ignores the prior appropriation system by curtailing surface water rights appropriated in the 1950s (e.g. Hutton No. 1 and No. 2 Ditches) and 1940s (e.g. Bonny Reservoir), while allowing all wells to continue pumping, even though they were largely drilled in the 1960s and later. Accordingly, the current practice of curtailing only surface water use is unlawful.

There have been numerous instances in the past in which the need to curtail or augment groundwater use was recognized as being needed to help achieve compact compliance and/or to help protect surface water rights. This has included conflicts in the Rio Grande River, South Platte River, and Arkansas River basins. *See, e.g., Fellhauer v. People*, 447 P.2d 986 (Colo. 1968) (early case involving dispute over curtailing groundwater wells impacting surface flows in the Arkansas River drainage); *Kuiper v. Gould*, 583 P.2d 910, 912 (Colo. 1978) (describing the

original impetus of groundwater rules as being the unsuccessful prior efforts to satisfy the Rio Grande Compact by curtailing only surface water diversions); *Alamosa-La Jara Water Users*, 674 P.2d at 919 (explaining that one of the rules for compliance with the Rio Grande compact was "phasing out of underground water diversions unless the underground water user submits proof that the user's well is operating under a decreed plan of augmentation . . . or can occur without impairing the right of a senior appropriator"); *Simpson v. Bijou Irrigation Co.,* 69 P.3d 50 (Colo. 2003) (dispute regarding rules and regulations regarding the replacement of groundwater depletions to prevent injury to senior water rights and compliance with the South Platte River Compact); *Simpson v. Cotton Creek Circles,* 181 P.3d 252 (Colo. 2008) (dispute regarding more recent groundwater rules and regulations in Rio Grande basin requiring replacement plans to prevent injury to senior water rights and for compact compliance).

The fact that the groundwater within the Republican River Basin includes what is currently designated groundwater does not change lawful administration of groundwater for purposes of the Compact for the reasons set forth below, which rely principally upon the undisputed facts and law cited above.

a. First, groundwater use was determined by the United States Supreme Court as being part of the Compact, without exception, and that included the aquifers designated for the NHP Basin. It was the inclusion of such groundwater depletions that caused Colorado to be out-of-compliance with the Compact for the first time in the Compact's history.

b. Second, the Compact is federal law and preempts conflicting state law on the same subject. *Frontier Ditch*, 761 P.2d at 1123. The Engineers cannot count Colorado's groundwater depletions towards Colorado's allocations under the Compact as required under federal law, while simultaneously ignoring this federal law by curtailing only surface water in Colorado to help make up the Compact shortfall, and not the groundwater depletions that caused the shortfall.

c. Third, the State Engineer's express statutory obligations to administer water to meet Compact commitments are unequivocal – and apply to all waters that are the subject of the Compact. C.R.S. § 37-80-102(a). There is no exception for designated groundwater. Indeed, the State Engineer is also the Executive Director of the Colorado Ground Water Commission and Colorado's Compact Commissioner.

d. Further, the State Engineer recently adopted the "Rules and Regulations Governing the Measurement of Ground Water Diversions Affecting the Republican River Compact, within Water Division No. 1" on September 16, 2015. (2 CCR 402-16). These Rules pertain only to the required measurement of groundwater use – rather than curtailment. However, given that these Rules were expressly adopted pursuant to the Compact rule powers under C.R.S. § 37-80-104, they are a clear recognition of the State Engineer's legal authority over designated groundwater for purposes of the Compact, and further recognize that wells throughout virtually the entire Basin within Water Division No. 1 are included in the RRCA Ground Water Model and considered to be "Affecting the Republican River Compact." (2 CCR 402-16, §§ 16.1 – 16.3, 16.4(A)(1) and App'x A).

e. Moreover, the Engineers also recognized their authority to regulate designated groundwater for Compact compliance in the Basin by expressly denying the Foundation's allegation in the Complaint that "the Engineers maintain they have no authority to administer ground water in the Basin for Compact compliance due to the Ground Water Act." (*See State Engineer's Answer to Complaint*, ¶48).

f. Lastly, the Engineers have been aware of the groundwater impacts on surface water in the Basin since at least 2003 when the Special Master approved the Model that Colorado helped developed. The Engineers had plenty of time to address the groundwater depletions so as to avoid curtailing surface water rights such as the Hutton No. 1, Hutton No. 2 and Bonny Reservoir, all of which were appropriated before the NHP Basin was created and before most of the groundwater wells were drilled. Having failed to take such actions, the Engineers should not now be curtailing only one class of water users (surface water rights) while ignoring the lion's share of Colorado's consumptive use caused by groundwater pumping.

C. The Curtailment of Only Surface Water Under the Compact is Arbitrary and Capricious, and in Violation of Equal Protection and Due Process.

In addition to violating Colorado law for the reasons explained above, the Engineers' decision to curtail only surface water rights and not groundwater is arbitrary and capricious, and in violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution and the due process clause or Article II, section 25 of the Colorado constitution.

In an analogous situation to this case, wells in the Arkansas River drainage had greatly increased over time and were impacting surface flows. By 1966, there were 1,600 to 1,900 wells pumping in excess of 100 gpm. *Fellhauer v. People*, 447 P.2d 986, 991 (Colo. 1968). Although the Division Engineer recognized that all of the 1,600 – 1,900 wells were affecting the surface flows, only 39 of the wells were curtailed based largely on the rationale that curtailing more wells would harm the local economy. *Id.* at 992 – 993. The Colorado Supreme Court ruled that by such a method of "attempted enforcement . . . [the Division Engineer] proceeded discriminatorily in violation of the equal protection clause of the fourteenth amendment of the United States Constitution and of the due process clause in article II, section 25 of the Colorado constitution." *Id.* at 993. In short, there was no rationale for curtailing only some of the similarly situated water users and not others. Such selective administration of water users was determined to be "arbitrary and capricious." *Id.* at 997.

Fellhauer stands for the principle, in part, that the Engineers cannot impose the burden of curtailment on a few, when the problem was created by the many. The circumstances of the present case are similar to *Fellhauer*, in that all depletions under the Compact are treated alike no matter if they are caused by a well or a headgate. Thus, the Engineers cannot lawfully enforce Compact obligations by picking a small group of water users to curtail (surface water rights), while allowing roughly 4,000 high capacity irrigation wells to operate without curtailment.

Although the *Fellhauer* decision did not flesh out its equal protection analysis – it is readily apparent when considering the legal standard for discriminatory enforcement. "A claim of discriminatory enforcement must be supported by evidence which will permit a factfinder to reasonably conclude that the enforcement not only proceeded from an unjust and illegal discrimination between persons in similar circumstances but also that the discriminatory enforcement was intentional or purposefully carried out." *Orsinger Outdoor Advertising, Inc. v. Dep't of Highways*, 752 P.2d 55, 62 (Colo. 1988) (*citing Yick Wo v. Hopkins,* 118 U.S. 356, 373-374 (1886), *May v. People*, 636 P.2d 672, 681-82 (Colo. 1981), and *Lloyd A. Fry Roofing Co. v. State Dep't of Health Air Pollution Variance Bd.*, 553 P.2d 800, 809 (Colo. 1976)).[4] In this instance, as in *Fellhauer*, all water users causing depletions are similarly situated and the discriminatory curtailment of a small subset of water users is intentional.

In conclusion, the Engineers cannot lawfully impose the burden of curtailment to meet the Compact on a handful of surface water rights, while ignoring the very ground water depletions that are causing Colorado to violate the Compact in the first place. On the South Fork, for example, the Division Engineer was only able to recall five post-1942 water rights actually being curtailed to meet the Compact, including the Foundation's Hutton No. 1 and Hutton No. 2 water rights and Bonny Reservoir. (Exh. 14, 67:8 – 68:8). By contrast, there are over 4,000 high capacity irrigation wells in Colorado within the Basin as a whole resulting in more than 38,000 acre-feet of depletions in 2009, of which nearly 16,000 acre-feet was in the South Fork. (*See* Exh. 13).

D. The State Engineer's Sub-Basin Administration Within Colorado for the Compact Is Inconsistent with Colorado Law.

The State Engineer has at times administered the North Fork of the Republic River ("North Fork") and the South Fork together for purposes of Compact compliance. Since such administration is not required by the Compact, it is only allowed to the extent consistent with Colorado law. As explained below, the State Engineer's administration of the North Fork and South Fork together for purposes of Compact compliance is inconsistent with Colorado law and only makes matters worse for water users on the South Fork.

The Compact allocates consumptive use to the States on an individual sub-basin approach. (Compact Art. IV). For example, the South Fork is allocated 25,400 acre-feet of consumptive use and the North Fork 10,000 acre-feet of consumptive use. (*Id.*). The sum total of all the sub-basins which are allocated consumptive use by the Compact equals Colorado's total allocation of consumptive use in the Basin (54,100 acre-feet), based upon the average annual virgin water supply. (*Id.*). It is noteworthy that the 2002 Stipulation could not and did not alter the "respective rights and obligations under the Compact" of the three States. *Kansas v. Nebraska*, 135 S.Ct. at 1050 (*citing* the settlement among the States which is referred to in this Motion as the 2002 Stipulation).

[4] There is a rebuttable presumption that "that state officials perform their tasks in a regular manner, and the party asserting an equal protection claim of discriminatory enforcement bears the burden of rebutting that presumption." *Orsinger Outdoor Advertising*, 752 P.2d at 62 (Colo. 1988) (*citing Lloyd A. Fry Roofing Co.*, 553 P.2d at 809).

In *Alamosa-La Jara Water Users*, 674 P.2d 921, one aspect of the compact rules that were being challenged was separate delivery schedules for two tributaries, the Rio Grande and Conejos Rivers. In that case, the Rio Grande compact on its face required separate delivery schedules for each tributary and thus the State Engineer was required to administer each sub-basin separately under the Compact, even though the impact on water users could be severe. *Id.* at 925. By comparison, the only sub-basin requirement spelled out in the Compact in this instance pertains to the individual sub-basin allocations of consumptive use. Accordingly, so long as the State Engineer complies with that obligation, the remaining intrastate administration among sub-basins is subject to the general rule described elsewhere in this Motion. Namely, that if the Compact is not specific on the terms of intrastate administration, the State Engineer is required to administer water rights in a manner that restores lawful use conditions as they were before the effective date of the Compact and in a manner consistent with Colorado's constitutional prior appropriation doctrine. *See Highland Irrigation Co.*, 917 P.2d at 1248; *Bijou Irrigation*, 69 P.3d at 69; C.R.S. § 37-80-104.

Under Colorado's prior appropriation doctrine, individual sub-basins or tributaries are administered separately except for instances where the calling water right is below the confluence of the two tributaries. For example, under Colorado water law, an administrative call on one tributary does not impact water rights on another tributary when the calling right is located upstream of the confluence of the two tributaries. Similarly, under Colorado water law, augmentation water introduced to one tributary does not satisfy injurious depletions on another tributary that does not receive the replacement water. In this instance, the South Fork does not join the North Fork until the South Fork exits Colorado, travels across Kansas, and enters Nebraska. Accordingly, the North Fork and the South Fork are two separate tributaries that would not have been historically administered together under Colorado water law.

The Engineers are ignoring Colorado water law in their joint administration of the North Fork and South Fork for the Compact and this places an undue burden on the South Fork. For example, the Engineers sought approval to use an augmentation pipeline (also referred to as the Colorado Compact Compliance Pipeline) located in Colorado on the North Fork to replace excessive depletions that exceed Colorado's allocation on both the North Fork and the South Fork. The proposal was originally rejected based upon the concerns expressed by Kansas regarding the impact it would have on the South Fork. (*See, In Re; Non-Binding Arbitration to the Final Settlement Stipulation, Kansas v. Nebraska and Colorado, No. 126, Colorado, dated October 7, 2010, regarding the Colorado Compact Compliance Pipeline Dispute*, attached as **Exhibit 20**, pp. 11-13). Although Colorado ultimately agreed it could not use the augmentation pipeline to specifically offset depletions in the South Fork, the proposal was still rejected because, by creating an artificial surplus in the North Fork, it could still allow increased consumption by Colorado in the South Fork when looking at state-wide Compact compliance. (*Id.*).[5] Notwithstanding these concerns, Colorado was subsequently able to get a one-year approval of its pipeline for 2015, which was then renewed for 2016. (*See Resolution by the Republican River Compact Administration Approving a Temporary Augmentation Plan and*

[5] Under the Compact, decisions on proposals such as the augmentation pipeline must be unanimous. (*See* Exh. 20, p.4; Compact Art. IX). Thus, the Arbitrator's decision focused on whether Kansas was making good faith objections to the pipeline proposal under the terms of the Compact. (Exh. 20, pp. 4, 11 – 13).

Related Accounting Procedures for the Colorado Compact Compliance Pipeline, attached as **Exhibit 21.**

The Foundation maintains that any intrastate administration that allows Colorado to increase its depletions on the South Fork through augmentation of the North Fork is directly contrary to Colorado law. Regardless of whether Kansas approved such administration on a year-to-year basis, it is not required by the Compact. So the question is whether such intrastate administration is consistent with restoring lawful use conditions as they were before the Compact and consistent with the prior appropriation doctrine in Colorado. Rather than restoring the lawful use conditions on the South Fork – such administration allows conditions to get worse on the South Fork and ignores the fact that the two sub-basins are separate under the prior appropriation doctrine. One river cannot be augmented to allow increased consumption in another river that is already water-short and under call.

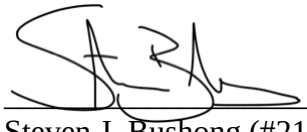
Similarly, imposition of a continuous curtailment order since 2008 against surface water rights appropriated after 1942 on the South Fork is arbitrary and capricious and contrary to Colorado law, because in at least one year Colorado was in compliance with its South Fork allocation under the Compact. It is the Foundation's understanding that the Engineers continued to curtail surface water rights on the South Fork even when Colorado was in compliance with the South Fork consumptive use allocation because Colorado was still exceeding its total statewide Compact allocation. In such years the call must be lifted on the South Fork. Otherwise, surface water rights are being curtailed on the South Fork to make up for Colorado's excessive depletions on other tributaries in the Basin in a manner directly contrary to Colorado water law.

V. CONCLUSION

For the reasons set forth herein, the current administration of surface water for Compact compliance is contrary to well established Colorado law, arbitrary and capricious, and in violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution and the due process clause or Article II, section 25 of the Colorado constitution. The Engineers are not allowed to implement intrastate administration measures for Compact compliance that are not required by the Compact and that are inconsistent with the tenets of Colorado water law.

Respectfully submitted this 29th day of February, 2016.

PORZAK BROWNING & BUSHONG LLP



Steven J. Bushong (#21782)
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Attorneys for the Jim Hutton Educational Foundation

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of February, 2016, a true and correct copy of the foregoing **THE JIM HUTTON EDUCATIONAL FOUNDATION'S MOTION FOR SUMMARY JUDGMENT ON ITS COMPACT ADMINISTRATION CLAIM** 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
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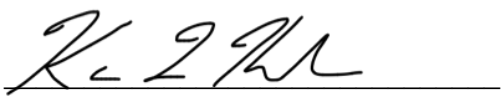
Thomas R May	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Timothy E Ortner	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Tri State Generation and Transmission Assn.	Defendant-Well Owner	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)
Colorado Ground Water Commission	Defendant-Intervenor	Chad Matthew Wallace (CO Attorney General) Patrick E Kowaleski (CO Attorney General)
Arikaree Ground Water Mgmt Dist	Defendant-Intervenor	David C Taussig (White & Jankowski, LLP) Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
Central Yuma Ground Water Mgmt Dist	Defendant-Intervenor	Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
Frenchman Ground Water Mgmt Dist	Defendant-Intervenor	Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
Marks Butte Ground Water Mgmt Dist	Defendant-Intervenor	Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
Plains Ground Water Mgmt Dist	Defendant-Intervenor	Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
Sandhills Ground Water Mgmt Dist	Defendant-Intervenor	Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
Wy Ground Water Mgmt Dist	Defendant-Intervenor	Eugene J Riordan (Vranesh and Raisch) Leila Christine Behnampour (Vranesh and Raisch)
East Cheyenne Ground Water Mgmt Dist	Defendant-Intervenor	John David Buchanan (Buchanan and Sperling, P.C.) Timothy Ray Buchanan (Buchanan and Sperling, P.C.)



Karen L. Henderson