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**
Porzak Browning & Bushong LLP Steven J. Bushong (#21782) Karen L. Henderson (#39137) 2120 13th Street Boulder, CO 80302 Tel: 303-443-6800 Fax: 303-443-6864 Email: sjbushong@pbblaw.com; khenderson@pbblaw.com	Water Div. No. 1

THE JIM HUTTON EDUCATIONAL FOUNDATION'S MOTION FOR SUMMARY JUDGMENT ON ITS SENATE BILL 52 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 Senate Bill 52 is unconstitutional. As grounds therefore, the Foundation states as follows:

I. BACKGROUND.

1. The Foundation is a non-profit corporation that provides low interest loans to nursing students who will stay and provide medical services in rural eastern Colorado. The Foundation owns the Hutton Ranch, which consists of approximately 4,000 acres on the South Fork of the Republican River and includes four surface water rights. One reason Jim Hutton created the Foundation shortly before his death was to ensure the Hutton Ranch was kept intact as a working ranch, which requires the use of the water rights. In fact, one of the principal income streams for the Foundation is through leasing the Hutton Ranch and its water rights.

2. The Foundation was put in the position of defending its water rights when the State and Division Engineers ("Engineers") placed the Foundation's Hale Ditch water right under a curtailment order and placed the Tip Jack, Hutton No. 1, and Hutton No. 2 water rights on the preliminary abandonment list. The Foundation succeeded in defending its water rights in court from those challenges, but that did not resolve the underlying problems described in the Complaint filed in this matter.

3. The South Fork of the Republican River is literally drying up. The principal culprit is groundwater pumping in the Northern High Plains Designated Ground Water Basin ("NHP Basin"). Making matters worse for the Foundation, its Hutton No. 1 and Hutton No. 2 water rights remain under an administrative call by the Engineers for Compact compliance, and Bonny Reservoir, which must physically deliver water to the Hale Ditch, was drained for Compact compliance and allowed to become overgrown with phreatophytes. The Complaint seeks to address many of these issues. This Motion, however, focuses on just the claim that Senate Bill 52 (2010) ("SB-52") is unconstitutional with regard to the NHP Basin.

4. To understand the SB-52 issue, it is important to recognize that designated groundwater should not have more than a *de minimis* impact on surface flows. As explained below, this legal definition does not match hydrologic reality in the NHP Basin. Despite new factual data that justifies altering the NHP Basin boundaries, removing improperly designated groundwater from the basin boundaries is currently precluded as a result of the retroactive application of SB-52.

5. More specifically, "designated groundwater" is defined as "groundwater which in its natural course would not be available to and required for the fulfillment of decreed surface rights, or groundwater in areas not adjacent to a continuously flowing natural stream wherein groundwater withdrawals constituted the principal water usage for at least fifteen years preceding the date of the first hearing on designation of the basin ...." C.R.S. § 37-90-103(6)(a). "[G]round water which has more than a *de minimis* impact on surface waters cannot properly be classified as designated ground water." *Gallegos v. Colo. Ground Water Comm'n*, 147 P.3d 20, 31 (Colo. 2006).

6. As the Colorado Supreme Court has recognized, "the creation of a designated groundwater basin does not establish conclusively that all ground water in the basin is designated ground water." *Danielson v. Vickroy*, 627 P.2d 752, 759 (Colo. 1981); *see also, Gallegos*, 147 P.3d at 29 (boundaries of designated basins are created as "essentially legal-political boundaries,

and not necessarily coincident with hydrologic boundaries") *(quoting Outline of Colorado Ground Water Law,* 1 U. Denv. Water L. Rev., 275, 278 (1998)).

7. In allowing designated groundwater basins to be created, the 1965 Groundwater Act, as originally drafted and as existed when the NHP Basin was formed, provided that the boundaries of a designated ground water basin shall be altered by the Commission as future conditions require and factual data justify. *See* C.R.S. § 37-90-106(1)(a)(2009) (previously § 148-18-5). This plain language understanding of C.R.S. § 37-90-106(1)(a) was confirmed by the Colorado Supreme Court in *Gallegos*, 147 P.3d at 32. In fact, *Gallegos* determined that the 1965 Groundwater Act "specifically called for the boundaries of a designated basin to be revisited." *Id*. It also recognized that there is no "cut-off" date for changes to basin boundaries in these situations. *Id*. at 32, fn. 8. This is not surprising given the little that was known about the groundwater within the NHP Basin during the mid-1960's. *See, e.g., Fundingsland v. Colorado Ground Water Com'n*, 468 P.29 835, 839 (Colo. 1970) (in a case involving a 1966 application for a permit to drill a well in the NHP Basin "it was admitted on both sides that the commission is dealing in a complex area about which little is known").

8. Accordingly, prior to the enactment of SB-52 in 2010, if the designated groundwater basin included tributary groundwater the depletion of which was causing injury to surface water rights, "the Commission must redraw the boundaries of the basin to exclude the improperly designated ground water." *Gallegos*, 147 P.3d at 32. In fact, the statute imposed a non-discretionary duty by using the word "shall" in regards to the Commission's duties to modify the basin boundaries based on future conditions and factual data. C.R.S. §37-90-106(1)(a)(2009). The excluded groundwater would then be administered pursuant to the 1969 Water Rights Act, along with other tributary groundwater and surface water rights consistent with legislative intent. *Gallegos*, 147 P.3d at 32. In other words, designated groundwater wells would then need to develop an augmentation plan to keep pumping – just like wells everywhere else in the State that injure senior water rights.

9. The enactment of SB-52 in 2010, however, changed C.R.S. §37-90-106(1)(a)(2009). After SB-52, even if future conditions require and factual data justify that groundwater within a designated groundwater basin is tributary and impacting surface flows, such water could no longer be removed from a designated basin if a well permit has been issued.

10. Turning to the NHP Basin, the Republican River Compact Administration ("RRCA") Ground Water Model adopted and approved by Colorado, Nebraska, Kansas, and ultimately the United States Supreme Court, clearly documents that designated groundwater wells in the NHP Basin are having far more than a *de minimis* impact on surface waters. (*See* Foundation's Motion for Summary Judgment on Compact Administration filed herewith, hereinafter "Foundation's Compact Motion"). The impacts from Colorado well pumping to just the South Fork of the Republican River alone (not including depletions to Bonny Reservoir) have increased from an average of 9,595 acre-feet of depletions a year between 1981-2000, to 11,240 acre-feet in 2007, and 15,907 acre-feet in 2009. (*See* Foundation's Compact Motion, Exhibits 7 (Appendix U attached to the First Report of Special Master), 12, and 13; Complaint, ¶¶ 35-39).

The impacts are greater when looking at groundwater depletions to all rivers in the Republican River basin in Colorado.

11. In addition, the District Court in Yuma County, entered a ruling in 2007 on appeal from the Commission that recognized the applicability of C.R.S. § 37-90-106(1)(a) to the NHP Basin, so that the NHP Basin boundaries could be redrawn to exclude improperly designated groundwater consistent with *Gallegos*. This ruling also held that the RRCA Ground Water "Model serve as binding admissions by the State of Colorado and . . . is a binding recognition of the extent to which groundwater pumping is depleting surface flows." (*Order Granting Summary Judgment Motions in Part and Denying Summary Judgment Motions in Part*, ¶ 41, *Case No. 06CV31, Pioneer Irrigation District v. Colo. Ground Water Comm'n*, a copy of which is attached as **Exhibit 1**). On remand to the Commission to hold a hearing to redraw the NHP Basin boundaries, the case settled.

12. If SB-52 applies retroactively to the NHP Basin, it is unconstitutional and deprives surface water right owners of the protections that existed at the time the NHP Basin was created. Making matters worse, both the State Engineer and the Colorado Ground Water Commission ("Commission") have been aware of the impact groundwater pumping in the NHP Basin is having on surface flows since at least 2003. Yet, despite this knowledge and despite the Commission's non-discretionary duty prior to SB-52 to alter a designated groundwater basin's boundaries when future conditions and factual data justify, neither the Commission nor the State Engineer took any action to address the problem. Instead, the Commission testified in support of SB-52 in 2010 in an effort to relieve itself of its non-discretionary obligation to revisit its prior designations and remove groundwater from the NHP Basin that has more than a *de minimis* impact on surface waters.

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

13. 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. 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.

14. The following facts are or should be undisputed in this case and frame the legal issues for this Motion:

a. The Colorado Groundwater Management Act, C.R.S. §§ 37-90-101, et. seq. ("Groundwater Act"), was adopted in 1965 by the Colorado General Assembly.

b. The NHP Basin was created in 1966 pursuant to the Groundwater Act as it then existed. The NHP Basin designation order indicates that the hearing creating the NHP Basin lasted less than three hours. (*See* **Exhibit 2**).

c. The Foundation's Tip Jack Ditch water right was adjudicated in 1893 with an appropriation date of February 8, 1889. The Foundation's Hale Ditch water right, priority no. 38, was adjudicated in 1938 with an appropriation date of January 17, 1908. The Foundation's Hutton No. 1 and Hutton No. 2 water rights were adjudicated in 1977, both with an appropriation date of July 5, 1954.

d. In 2006, the Colorado Supreme Court interpreted the plain language of then Section 37-90-106(1)(a) in the Groundwater Act as described in *Gallegos v. Colorado Ground Water Comm'n*, 147 P.3d 20 (Colo. 2006). That version of Section 37-90-106(1)(a) had been substantially unchanged since the Groundwater Act was adopted and was in place when the NHP Basin was formed, and provided as follows:

> The commission shall, from time to time as adequate factual data becomes available, determine designated ground water basins and subdivisions thereof by geographic description and, as future conditions require and factual data justify, shall alter the boundaries or description thereof.

emphasis added. (*See* **Exhibit 3**, § 148–18–5).[1]

e. In 2010, with the encouragement and support of groundwater users and entities in the NHP Basin, the General Assembly enacted SB-52, which modified Section 37-90-106(1)(a) to read as follows:

> The commission shall, from time to time as adequate factual data become available, determine designated groundwater basins and subdivisions thereof by geographic description. If factual data obtained after the

[1] "The original section 37–90–106(1)(a) [then § 148–18–5] stated: 'The commission shall, from time to time as adequate factual data becomes available, determine designated ground water basins and subdivisions thereof by *both geologic and geographic description*, and as future conditions require and factual data justify, shall alter the boundaries or description thereof.' § 148–18–5, 9 C.R.S. (1963 & Perm. Cum.Supp.1965) (emphasis added). We do not find the 1971 change from 'by both geologic and geographic description" to "by geographic description" significant to today's holding." *Gallegos*, 147 P.3d fn. 6.

> designation of a groundwater basin justify, the commission may alter the boundaries or description of that designated groundwater basin by adding lands to the basin. After a determination of a designated groundwater basin becomes final, the commission may alter the boundaries to exclude lands from that basin only if factual data justify the alteration and the alteration would not exclude from the designated groundwater basin any well for which a conditional or final permit to use designated groundwater has been issued. The general assembly hereby finds, determines, and declares that allowing alterations to exclude lands from a designated groundwater basin only under such circumstances as set forth in this paragraph (a) reaffirms, rather than alters, the general assembly's original intent that there be a cut-off date beyond which the legal status of groundwater included in a designated groundwater basin cannot be challenged, and that such cut-off date was intended to be the date of finality for the original designation of the basin. After this cut-off date has passed, any request to exclude wells that are permitted to use designated groundwater from an existing groundwater basin shall constitute an impermissible collateral attack on the original decision to designate the basin.
>
> (a.5) Nothing in Senate Bill 10-052, enacted in 2010, shall affect litigation brought under this section that is pending on January 1, 2010.

A copy of SB-52 is attached as **Exhibit 4**.

IV. LEGAL ANALYSIS IN SUPPORT OF SUMMARY JUDGMENT THAT SB-52 IS UNCONSTITUTIONAL.

15. SB-52 is unconstitutional retrospective legislation regarding the NHP Basin because it changes the legal consequences of acts completed before its effective date. *See Weaver v. Graham,* 450 U.S. 24, 31 (1981).

16. The effect of SB-52 is that improperly designated groundwater can no longer be removed from the NHP Basin boundaries, which injures senior surface water rights. In other words, despite new scientific data proving that groundwater is having more than a *de minimis* impact to surface flows, such groundwater cannot be removed from a designated basin and properly administered as tributary groundwater. Contrast this result with the version of the statute in effect when the NHP Basin was designated that required the Commission to alter the basin boundaries as "future conditions and factual data justify" to exclude improperly designated groundwater. C.R.S. §37-90-106(1)(a)(1966) (emphasis added). In short, SB-52 operates retroactively with regard to the NHP Basin because it "ascribes to certain transactions that occurred before the effective date of the Act different legal effects from that which they had under the law when they occurred." *See Ficarra v. Dep't of Regulatory Agencies,* 849 P.2d 6, 12 (Colo. 1993). SB-52's impact on vested water rights violates the constitutional prohibition against retrospective legislation.

17. Since the NHP Basin was created in 1966—44 years before the enactment of SB-52—the changes to C.R.S. § 37-90-106(1)(a) in 2010 cannot apply to the NHP Basin unless SB-52 operates retroactively. A statute is retroactive if it "operates on transactions that have already occurred or rights and obligations that existed before its effective date." *See Ficarra*, 849 P.2d at 11. Here, the NHP Basin was established, the water rights were decreed, the right of surface water users to protect their rights from injury existed, and the Commission's non-discretionary obligation to alter the basin boundaries as future conditions and data justify were all in existence prior to the August 11, 2010 effective date of SB-52.

A. The Colorado Constitution Prohibits Retrospective Legislation.

18. Colorado's constitution explicitly prohibits the General Assembly from passing retrospective legislation. Colo. Const. Art. II, §11 ("No … law impairing the obligation of contracts, or retrospective in its operation ... shall be passed by the general assembly."). While used interchangeably in other jurisdictions, in Colorado the terms retroactive and retrospective are distinct with the term retrospective applying to "legislation whose retroactive effect violates the constitutional prohibition." *See Ficarra*, 849 P.2d at 12.

19. Courts utilize a two-step inquiry into whether a statute is retrospective. *See In re Estate of DeWitt*, 54 P.3d 849, 854 (Colo. 2002). First, whether the "General Assembly intended the challenged statute to operate retroactively." *City of Colorado Springs v. Powell*, 156 P.3d 461, 465 (Colo. 2007). If so, the second inquiry is "whether the challenged statute is unconstitutionally retrospective." *Id.*

I. <u>The General Assembly's intent was for SB-52 to apply retroactively.</u>

20. Regarding the first inquiry of the retrospective analysis, it is clear that SB-52 was intended to apply retroactively to all existing designated groundwater basins. This is evidenced by the legislative history and the express language of the bill. Further, SB-52 was unquestionably a change in the law and should not be applied retroactively to the injury of vested water rights.

21. Absent legislative intent to the contrary, a statute is presumed to operate prospectively. *DeWitt*, 54 P.3d at 854; *see also* C.R.S. §2-4-202. "This presumption is rooted in policy considerations, namely the notion of fair play and the desire to promote stability in the law." *DeWitt*, 54 P.3d at 854. To rebut this presumption, courts "require a clear legislative intent that the law apply retroactively" though "express language of retroactive application is not necessary." *City of Golden v. Parker*, 138 P.3d 285, 290 (Colo. 2006); *but see Z.J. Gifts D–2, L.L.C. v. City of Aurora*, 93 P.3d 633, 641–42 (Colo.App. 2004) (declining to attribute intent of retroactive application because statutory language did not state the amendment was to be applied retroactively).

22. In this instance, it is clear from the legislative history that SB-52 was intended to apply to the existing NHP Basin. Indeed, virtually every witness during legislative hearings testified about why SB-52 was important for the NHP Basin. (*See* **Exhibits 5** and **6**, 2010 legislative

proceedings regarding SB-52).[2] Testimony in support of SB-52 was even provided by Dennis Coryell (Chairman of the Colorado Ground Water Commission and then President of the Republican River Water Conservation District), who specifically explained the need for SB-52 in the NHP Basin to protect existing well permits. (*See* Exh. 5, Disc 3 at 26:17-42:35, testimony dated March 3, 2010).

23. Further, while the legislature did not expressly indicate that SB-52 is to be applied retroactively, the bill states that it "reaffirms, rather than alters, the general assembly's original intent." Such language is evidence that the General Assembly in 2010 intended to apply SB-52 to existing designated groundwater basins by claiming it only "reaffirms" the General Assembly's intent back in 1965. In fact, the language suggests the drafters of SB-52 were trying to avoid the retrospective problem by suggesting the bill clarified rather than changed the law, as discussed below.

24. In conclusion, if SB-52 applies prospectively then it is not an impediment to the Foundation redrawing the NHP Basin boundaries because it doesn't apply to any designated groundwater basin in existence prior to 2010. However, if SB-52 is applied retroactively as intended by the General Assembly, then it is unconstitutional as explained below.

II. SB-52 is a Change in the Law and Subject to the Prohibition on Retrospective Legislation.

25. An additional inquiry that can arise in determining whether amended legislation applies retroactively is whether it was intended to change or clarify the existing law. Mere clarification of existing law is not subject to the prohibition against retrospective legislation. *See Powell*, 156 P.3d at 465. In this instance, there is no question that SB-52 changed the law because the Colorado Supreme Court had already interpreted the statutory provision in *Gallegos*, and SB-52, enacted in response to *Gallegos*, completely changed that prior judicial interpretation.

26. As a legislative amendment, the presumption is that SB-52 constitutes a change in the law. *Powell*, 156 P.3d at 465 ("A legislative amendment either clarifies or changes existing law, and we presume that by amending the law the legislature has intended to change it.). The only way to rebut this presumption is to show that the "legislature meant only to *clarify an ambiguity* in the statute by amending it." *Id.* (emphasis added).

27. The Generally Assembly in 2010 is not the arbiter of what the General Assembly intended in 1965 when the Groundwater Act was enacted. The statement about "the general assembly's original intent" offered in SB-52 was provided 45 years after the fact and by a

[2] The following entities with ties to the NHP Basin all officially lobbied in support of SB-52: Yuma County Water Authority; Republican River Water Conservation District; Colorado Agriculture Preservation Association; Rocky Mountain Farmers Union; Political Action Trust and Committee; and the Colorado Farm Bureau. *See* https://www.sos.state.co.us/lobby/SearchSubject.do (last visited Feb. 25, 2016). In addition, seven of the Ground Water Management Districts in the NHP Basin (Marks Butte, Frenchman, Sand Hills, W-Y, Central Yuma, Plains, and East Cheyenne) and the Commission testified in support of SB-52. *See* Exh. 5, Disc 1.3 at 18:08-20:08, Mike Shimmin testimony dated March 3, 2010; *see also* Exh. 5, Disc 3 at 26:17-42:35, Dennis Coryell testimony dated March 3, 2010).

different legislature. The prevailing rule is that "[t]he views of a subsequent general assembly cannot establish the intent of an earlier general assembly." *A.C. Excavating v. Yacht Club II Homeowners Ass'n, Inc.*, 114 P.3d 862, 872 (Colo. 2005); *see also United States v. Price*, 361 U.S. 304, 313 (1960) ("... the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one."). In fact, "even a clear indication of intent to clarify cannot dispositively establish the meaning of previous legislation." *Union Pac. R. Co. v. Martin*, 209 P.3d 185, 188 (Colo. 2009); *see also Dep't of Transp. v. Gypsum Ranch Co., LLC*, 244 P.3d 127, 131 (Colo. 2010); *O'Gilvie v. United States*, 519 U.S. 79, 90 (1996) ("the view of a later Congress cannot control the interpretation of an earlier enacted statute"). This only makes sense because otherwise, the drafters of a bill could always insert language claiming to clarify the law so as to avoid the prohibition against unconstitutional retrospective legislation.

28. Instead, it "is the function of the courts and not the Legislature ... to say what an enacted statute means." *See Pierce v. Underwood*, 487 U.S. 552, 566-67 (1988). In making this determination, courts look at the plain language of the law, legislative history surrounding the amendment, and whether the law was ambiguous before it was amended. *See, e.g., Powell*, 156 P.3d at 465.

29. In this instance, the Colorado Supreme Court already opined on what 37-90-106(1)(a) meant. In *Gallegos*, 147 P.3d at 28, the Colorado Supreme Court sought to "discern the intent of the General Assembly" in interpreting the meaning of C.R.S. § 37-90-106(1)(a). In doing so, the Court held that "the General Assembly anticipated that a designated groundwater basin could include groundwater that does not properly fall within the definition of designated groundwater. When future conditions and factual data reveal this to be the case, the [Groundwater] Act requires that the Commission redraw the boundaries of the designated basin" to exclude such groundwater. 147 P.3d at 31. The *Gallegos* decision was based upon the plain language of C.R.S. § 37-90-106(1)(a) and long-standing Colorado law regarding the policy differences underlying the Groundwater Management Act and the constitutional prior appropriation doctrine as codified in the 1969 Act. *Gallegos*, 147 P.3d at 30, 32.

30. Once the Colorado Supreme Court interprets a statutory provision, any legislative effort to undo that interpretation is not a clarification, but a change in that law subject to the constitutional prohibition against retrospective legislation. *Powell*, 156 P.3d at 468 ("there can be no doubt that [the bill], directed at responding to our decisions in [prior cases] affirmatively changed, rather than clarified, the settled definition established in those decisions."); *see also Martin*, 209 P.3d 185, 188-89. Thus, when the Colorado Supreme Court interpreted C.R.S. § 37-90-106(1)(a), that interpretation became the "authoritative statement" on what was always meant by that statute. *See Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 312–13 (1994) ("A judicial construction of a statute is an authoritative statement of what the statute meant *before as well as after* the decision of the case giving rise to that construction.") (emphasis added).

31. Even if there had been an ambiguity in C.R.S. § 37-90-106(1)(a) before *Gallegos*, the Colorado Supreme Court's construction of this statute "rendered it unambiguous, because the decision lent the phrase a defined, plain meaning not reasonably susceptible to different interpretation." *Powell*, 156 P.3d at 468 (citations omitted). "Thus, while the General Assembly

was and is free to disagree with and correct our interpretation of this legislative phrase, there can be no doubt that [the bill], directed at responding to our decisions . . . affirmatively changed, rather than clarified, the settled definition established in those decisions" and is subject to the constitutional prohibition against retrospective legislation. *Id.*

32. In addition, SB-52 is directly contrary the originally enacted statute. SB-52 rewrote C.R.S. § 37-90-106(1)(a) so that any alterations to a designated groundwater basin could only increase the land area in that designated basin or, if land was excluded, it could not be land on which any designated well had been permitted. This contradicts the original language, rather than clarifies it, and takes away the protections that surface water rights previously enjoyed as confirmed in *Gallegos*. SB-52 also changed the Commission's non-discretionary duty to alter the basin boundaries when future conditions and factual data justify to a discretionary one.

33. In short, SB-52 prevents improperly designated groundwater from being administered under the correct regulatory scheme, changes the duties of the Commission, and takes away the protection in place for vested water rights. As such, SB-52 constitutes a substantive change in the law. *See People v. D.K.B.*, 843 P.2d 1326, 1331 (Colo. 1993) ("substantive statutes create, eliminate or modify vested rights or liabilities"). Given the foregoing, SB-52 constitutes a change, not a clarification, to the law and is subject to the constitutional prohibition against retrospective legislation. *See Martin*, 209 P.3d at 188-89. While the legislature can amend or repeal prior legislation, it is unconstitutional to apply such changes retrospectively to the existing NHP Basin.

III. SB-52 is unconstitutionally retrospective with regard to the NHP Basin.

34. As for the final inquiry of the retrospective analysis, the law has long been clear that "[u]pon principle, every statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective." *Denver, S.P. & P.R. Co. v. Woodward*, 4 Colo. 162, 167 (Colo. 1878); *see also Powell*, 156 P.3d at 465; *DeWitt*, 54 P.3d. at 855; *Miller v. Florida*, 482 U.S. 423, 430 (1987) ("A law is retrospective if it 'changes the legal consequences of acts completed before its effective date'") (quoting *Weaver v. Graham*, 450 U.S. 24, 31 (1981)); *Union Pacific R. Co. v. Laramie Stock Yards Co.*, 231 U.S. 190, 199 (1913) (retroactive statute gives "a quality or effect to acts or conduct which they did not have or did not contemplate when they were performed"). "The general prohibition against retrospective legislation is intended to prevent any unfairness that might result from the application of new law to rights already in existence." *Parker*, 138 P.3d at 289.

35. SB-52 is unconstitutionally retrospective with regard to the NHP Basin because it takes away and impairs vested water rights and creates a new disability by taking away the protection for surface water rights that was built into the Groundwater Act and existed when the NHP Basin was created. It also improperly creates a new obligation and imposes a new duty on the Commission to regulate groundwater that has more than a *de minimis* impact on surface water contrary to the General Assembly's clear intent that such water be subject to the 1969 Act and

under the jurisdiction of the Water Court and State Engineer, as opposed to the Commission. *See Gallegos,* 147 P.3d at 32.

a. SB-52 takes away and impairs vested rights.

36. SB-52 cannot operate retroactively because it interferes with, impairs, and divests vested water rights and the right to protect such water rights from injury.

37. In assessing whether a statute takes away or impairs a vested right, courts often have to first assess whether a vested right is at issue. Accordingly, courts have described a vested right as a "contract right, a property right, or a right arising from a transaction in the nature of a contract which has become perfected to the degree that it is not dependent on the continued existence of the statute' or common law." *Parker*, 138 P.3d at 293 (internal citations omitted). Or, to qualify as a vested right it "must have become a title, legal or equitable, to the present or future enjoyment of property or to the present or future enjoyment of the demand, or a legal exemption from a demand made by another." *Ficarra,* 849 P.2d at 16; *see also Black's Law Dictionary* p. 1402 (5th ed. 1979) (vested rights are those that "have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or canceled by the act of any other private person, and which it is right and equitable that the government should recognize and protect."). Some courts have also used a three-part test to analyze whether a vested right is at issue, *see e.g., Ficarra,* 849 P.2d at 16, but such an inquiry is unnecessary here because Colorado courts have already recognized that water rights are vested rights.

38. In fact, there should be no question that water rights are vested rights under Colorado law. *See Armstrong v. Larimer Cty. Ditch Co.*, 27 P. 235, 238 (Colo. 1891) ("The right to the use of water is property; the title accrues by legal appropriation, and becomes vested as of the date of such appropriation."); *see also Farmers Irr. Co. v. Game & Fish Comm'n*, 369 P.2d 557, 559-60 (Colo. 1962) ("A priority to the use of water for irrigation or domestic purposes is a property right and as such is fully protected by the constitutional guaranties relating to property in general."); *see also Town of Sterling v. Pawnee Ditch Extension Co.,* 42 Colo. 421, 426, 94 P. 339, 340 (1908) ("Rights to the use of water for a beneficial purpose, whatever the use may be, are property in the full sense of that term, and are protected by section 15, art. 2, Const. …"). All of the Foundation's water rights and the other surface water rights on the South Fork of the Republican River vested prior to the enactment of SB-52, and are entitled to constitutional guaranties and protection against legislative interference.

39. SB-52 impairs vested surface rights by prohibiting the exclusion of tributary groundwater from a designated groundwater basin when it becomes apparent that the use of such water is having more than a *de minimis* impact on surface water rights. Such a change is unconstitutional. In fact, in *Gallegos* the Colorado Supreme Court determined that, as originally enacted, the "General Assembly … specifically called for the boundaries of a designated basin to be revisited." *Gallegos*, 147 P.3d at 32. Since SB-52 now precludes the Commission from correcting the basin boundaries to exclude improperly designated groundwater it imposes "new legal consequences [on] events completed before its enactment" and therefore, cannot be applied

retroactively. *See Landgraf v. USI Film Products*, 511 U.S. 244, 270 (1994). A once modifiable boundary is now fixed.

40. Such a substantive change injures the Foundation's senior surface water rights by allowing wells to pump tributary groundwater outside of the prior appropriation system and without augmentation plans. Not only does this allow wells to improperly deplete the flows in the river without regard to whether senior rights are satisfied, but it also eliminates the Foundation's right to protect its surface water rights by eliminating the right to "de-designate" such groundwater. Ultimately, SB-52 protects junior well owners that are pumping improperly designated groundwater to the detriment of senior, surface water right owners. "To divest such [a] right and confer it upon another without compensation would be clearly an infraction of constitutional guaranties, and the inequitable character of the decree becomes at once apparent." *Armstrong v. Larimer Cty. Ditch Co.*, 27 P. 235, 238 (Colo. 1891) (finding that the constitutional provision giving domestic use priority over irrigation rights in times of shortage did not apply retrospectively to irrigation rights that vested before the adoption of the constitution because it would impair, if not destroy, those property rights).

41. By eliminating the ability to "de-designate" groundwater based on new scientific data, SB-52 has authorized a legislative taking by leaving the owner of surface water rights without any redress to protect its water rights from injury. "For practical purposes, the existence of a right depends on the availability of an effective remedy to enforce it." 2 *Sutherland Statutory Construction* § 41:9 (7th ed.). *Gallegos* found that surface water users "… must have the opportunity to prove that 'future conditions require and factual data justify' modification to the Basin's boundaries under the [Groundwater] Act." 147 P.3d at 33. SB-52 interfered with and impaired the protections and assurances built into the original statute to ensure that designated groundwater basin boundaries would be modified to exclude any improperly designated groundwater

42. Without a means to enforce a senior priority over those using water from a common source of supply divests a senior water right of its value and violates the constitutional prior appropriation doctrine upon which users have justifiably relied. "The objective of the water law system is to guarantee security [and] assure reliability" of a "scarce and valuable resource. Security resides in the system's ability to identify and obtain protection for the right of water use. Reliability springs from the system's assurance that the right of water use will continue to be recognized and enforced over time." *Empire Lodge Homeowners' Ass'n v. Moyer*, 39 P.3d 1139, 1146 (Colo. 2001). Yet, SB-52 gives the improperly designated groundwater users the better right to the tributary supply that had already been appropriated by senior, surface water rights. This constitutes a violation of the constitutional protections afforded water rights and also violates the prior appropriation doctrine. *See Town of Sterling*, 94 P. at 341 ("That a city or town cannot take water for domestic purposes which has been previously appropriated for some other beneficial purpose, without fully compensating the owner, is so clear that further discussion seems almost unnecessary. Any other conclusion would violate the most fundamental principles of justice, and result in destroying most valuable rights. It would violate that right protected by our Constitution, that property shall not be taken from the owner either for the benefit of the public or for private use without compensation to the owner.") (emphasis added). It also ignores

the "longstanding principle that senior water rights must be protected." *See Kobobel v. State, Dep't of Nat. Res.*, 249 P.3d 1127, 1138 (Colo. 2011).

43. Accordingly, SB-52 is unconstitutionally retrospective because it takes away or impairs vested rights, and would effect a surprise on surface water right owners that relied on the original language of the statute when the NHP Basin was created.

b. SB-52 creates a new obligation, imposes a new duty, and creates a new disability.

44. For all the same reasons set forth above, SB-52 creates a new disability by injuring the Foundation's vested surface water rights and leaving them without any redress to protect their rights from injury. Ultimately, under SB-52, the Commission is no longer obligated to ensure that the groundwater within a designated basin is truly "designated groundwater" when future conditions and new factual data clearly show to the contrary. Before SB-52, this obligation of the Commission had no "cut-off" date. *Gallegos*, 147 P.3d at 32, fn. 8. Surface water right owners have the right to rely on the statutory protections that were in place when the NHP Basin was created, and taking away such protections creates a disability.

45. SB-52 also creates a new obligation and imposes a new duty on the Commission to regulate groundwater that has more than a *de minimis* impact on surface water — contrary to the clear legislative intent of the General Assembly that such water should be under the jurisdiction of the Water Court and State Engineer, not the Commission. *See Gallegos*, 147 P.3d at 32. Similarly, it also runs counter to the clear legislative intent to keep designated groundwater and groundwater subject to the 1969 Act separate and distinct. *Id.* (legislative intent to keep "designated groundwater and groundwater subject to the 1969 Act separate and distinct."); *see also State, Dep't of Nat. Res., Div. of Water Res., State Eng'r v. Sw. Colorado Water Conservation Dist.*, 671 P.2d 1294, 1313 (Colo. 1983) ("The legislature adopted a modified rather than a pure form of prior appropriation [for designated groundwater basins] in recognition of the hydrologic differences between tributary and nontributary water. *See* Colorado Legislative Council, *Water Problems in Colorado,* Research Publ. No. 93 (November 1964).").

c. Surface water users have reasonably and substantially relied on the fact that designated groundwater basins would be modified to exclude tributary groundwater.

46. In limited situations, courts have balanced a finding that a law impairs a vested right against "public health and safety concerns, the state's police powers to regulate certain practices, as well as other public policy considerations." *Parker*, 138 P.3d at 290 (internal citations omitted). In such an instance, a court may weigh the "public interest and statutory objectives against reasonable expectations and substantial reliance." *Id.* This, however, is not one of those limited situations.

47. The interests of the designated groundwater users cannot be prioritized in the name of the "public interest" to justify the impairment of vested surface water rights. Such a decision would cause the long-standing prior appropriation doctrine — a doctrine "founded in equity" — to crumble. *See Armstrong*, 27 P. at 237. In fact, an analogous claim was rejected in 1891 when the Colorado Supreme Court refused to allow a constitutional preference for domestic use to apply retroactively to the injury of irrigation rights that vested prior to the Constitution. *Id*. at 238. Specifically, the court held that a junior water right could not continue to divert water for domestic purposes when senior irrigation rights were being injured. *Id*. In fact, the Supreme Court stated that the case "should have been at once dismissed for want of equity" despite also finding that the junior right supplied an estimated 200 settlers and their families with domestic water – some of which were "wholly dependent" on it. *Id*. at 238, 236. Nevertheless, the senior irrigation rights could not be impaired retroactively because the "right itself and the obligation to protect it existed prior to the legislation …" *Id*. at 238.

48. Even in situations where the balancing test is applied, the Colorado Supreme Court has prohibited the retroactive application of a statute where "the reasonable expectations and substantial reliance of a party vested prior to the enactment of the statute." *Parker*, 138 P.3d at 290 (*citing Kuhn v. State*, 924 P.2d 1053, 1060 (Colo. 1996). Here, surface water users substantially relied on the fact that designated groundwater basins would be modified when future conditions and factual data justified the exclusion of improperly designated groundwater. Such reliance vested prior to the enactment of SB-52. Moreover, surface water users have a reasonable expectation that all tributary groundwater that impacts surface flows more than a *de minimis* amount will be administered pursuant to the priority system in a manner that would protect them from injury. "A party's settled expectations honestly arrived at with respect to the substantive interest ought not be defeated." *Kuhn*, 924 P.2d at 1060; *see also Landgraf*, 511 U.S. at 265 ("Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.").

B. SB-52 also violates the constitutional protections afforded water rights.

49. Imbedded in the foregoing is the recognition that protection from unconstitutional retrospective legislation is part and parcel with the due process guarantees of the Constitution. Therefore, for the reasons set forth above, the retroactive application of SB-52 is an unconstitutional taking of vested water rights without just compensation or due process of law in violation of Colorado Constitution Article II, §§ 14, 15, 25. "Rights to the use of water for a beneficial purpose, whatever the use may be, are property in the full sense of that term, and are protected by section 15, art. 2, Const., which says that 'private property shall not be taken or damaged for public or private use without just compensation.'" *Town of Sterling*, 94 P. at 340 (emphasis added).

50. Moreover, "[d]ue process always implies a hearing, or trial, and judgment. It secures the individual 'from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.' *La Plata River & Cherry Creek Ditch Co. v. Hinderlider*, 25 P.2d 187, 188 (Colo. 1933), *rev'd. on other grounds*, 304 U.S. 92

(1938). Here, the retroactive application of SB-52 to the NHP Basin allows the well owners pumping improperly designated groundwater to take the Foundation's water for their own gain and without just compensation. The legislature is not entitled to take the vested property right of one private individual and give it to another through legislation. *See Armstrong*, 27 P. at 238.

51. The Foundation is entitled to a right to redress the ongoing injury to its water rights. *See State By & Through Colorado State Claims Bd. of Div. of Risk Mgmt. v. DeFoor*, 824 P.2d 783, 792 (Colo. 1992) ("… [they are] guaranteed by the Fourteenth Amendment … the preservation of [their] substantial right to redress by some effective procedure.'" *Gibbes v. Zimmerman*, 290 U.S. 326, 332 (1933)). In fact, William "Blackstone considered the primary absolute rights--personal security, personal liberty, and property--to be protected by the subordinate absolute rights, such as the right to a remedy." *See* Thomas R. Phillips, *The Constitutional Right to A Remedy*, 78 N.Y.U. L. Rev. 1309, 1344-45 (2003) (citing 1 William Blackstone, Commentaries 140-41).

52. The value of a usufructuary right depends on the ability to have that water right recognized and enforced over time, as well as the ability to protect that right from injury. *See Empire Lodge Homeowners' Ass'n v. Moyer*, 39 P.3d 1139, 1146 (Colo. 2001); *see also* Gregory J. Hobbs, Jr., *Reviving the Public Ownership, Antispeculation, and Beneficial Use Moorings of Prior Appropriation Water Law*, 84 U. Colo. L. Rev. 97, 110-11 (2013) ("The value of any water right … depends on its ranking in order of decreed priority system in times of short supply. Without enforcement of the priority system, the value of a water right diminishes or disappears…").

V. CONCLUSION.

53. SB-52 disrupts settled expectations, impairs vested rights, imposes new obligations, imposes new disabilities, and generally conflicts with Colorado water law by retroactively preventing the modification of established designated groundwater basin boundaries to exclude improperly designated groundwater. *See General Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992) ("Retroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions").

54. When enacting the 1965 Groundwater Act, "the General Assembly anticipated that a designated ground water basin could include ground water that does not properly fall within the definition of designated ground water." *Gallegos*, 147 P. 3d at 31. Therefore, the Groundwater Act required that the Commission redraw the boundaries of the designated basin when future conditions and factual data reveal that groundwater was improperly included within the designated basin. *Id*. SB-52 eliminates this recognition and legislates injury against senior water rights for the benefit of junior groundwater wells in violation of the Constitution. *See, e.g.*, Colo. Const. Art. II § 14 ("Private property shall not be taken for private use unless by consent of the owner …"). "Such cannot be its construction. It must be construed to be declaratory of, and not destructive of, the rights and powers enjoyed by the people before its adoption." *See Armstrong v. Larimer Cty. Ditch Co*., 27 P. 235, 238 (Colo. 1891).

55. SB-52 was an effort supported by NHP Basin users and related entities, who were aware of the groundwater depletions and the RRCA Ground Water Model, to take away the statutory right to redress injury to surface water rights and apply it retrospectively to the existing NHP Basin. Therefore, "if a legislature, perhaps buckling to inordinate pressure from a well-organized and highly vocal special-interest group, sought to deny all recovery for a well-recognized action that did implicate absolute rights, the remedy guarantee would come into play." Thomas R. Phillips, *The Constitutional Right to A Remedy*, 78 N.Y.U. L. Rev. 1309, 1345 (2003). James Madison was correct when he "argued that retroactive legislation also offered special opportunities for the powerful to obtain special and improper legislative benefits." *Landgraf*, 511 U.S. at 267, fn. 20 (referencing The Federalist No. 44, p. 301 (J. Cooke ed. 1961)).

56. Wherefore, the Foundation respectfully requests that this Court find that SB-52 does not apply to the NHP Basin because it is unconstitutionally retrospective, and that the Foundation retains the legal right to petition the Commission to modify the boundaries of the NHP Basin to exclude improperly designated groundwater. In addition to or in the alternative, the Foundation requests a finding that SB-52 violates the prior appropriation doctrine and/or is an unconstitutional taking of vested surface water rights without just compensation or due process of law in violation of Colorado Constitution Article II, §§ 14, 15, 25.

Respectfully submitted this 29th day of February, 2016.

PORZAK BROWNING & BUSHONG LLP

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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 SENATE BILL 52 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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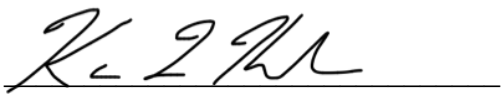
Steven D Kramer	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Thomas R May	Defendant-Well Owner	Johanna Hamburger (Carlson, Hammond & Paddock, L.L.C.) William Arthur Paddock (Carlson, Hammond & Paddock, L.L.C.)
Timothy E Ortner	Defendant-Well Owner	Alvin Raymond Wall (Alvin R Wall Attorney at Law)
Tri State Generation and Transmission 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