

**CITY OF BURLINGTON
KIT CARSON COUNTY
CITY COUNCIL
WORK SESSION
AGENDA
17-2016
COMMUNITY BUILDING ROOM A
340 S 14TH STREET
September 12, 2016
6:30 PM**

1 Call to Order

2 Pledge of Allegiance

3 Consent Agenda Items

Any consent agenda item may be removed from the Consent Agenda and placed under Business if discussion is desired. Otherwise, one motion will pass all items.

Approval of bills.

4 Public Comment

5 Reports from City Departments

Administrator- James Bradley

Clerk- Shelly Clark

Treasurer- Veronica Boyles

6 Work Session

Unfinished Business

NONE

New Business

A. Discussion on appointing new Board of Adjustment and Appeals members.

B. Don Witzel inquiring about the Old Black Hills building at 2296 Martin Avenue.

C. Discussion of police recruitment for 2017.

7 Council Comments

A. Mayor Dale Franklin

B. Rod Murray

C. Mike Halde

D. Mark Burghart

E. Kamron Weisshaar

F. Beth Crites

G. Harold McNerney

8 Adjournment

Emergency matters that may come before Council may be discussed with decisions to be ratified at a subsequent Council meeting.

<u>PO</u>	<u>Vendor</u>	<u>Amt.</u>	<u>Depart</u>	<u>Description</u>
50586	Accutest	\$1,172.50	Water	SOC's for 5 Wells
50586	Accutest	\$1,172.50	Water	SOC's for 5 Wells
50619	Accutest	\$213.50	Water	Nitrate Water Samples
50710	Accutest	\$1,172.50	Water	SOC's for 5 Wells
50711	Accutest	\$1,172.50	Water	SOC's for 5 Wells
507112	Accutest	\$1,172.50	Water	SOC's for 5 Wells
50743	Accutest	\$38.00	Water	E-Coli Water Testing
50639	Accutest	\$176.50	Water	Biochemical Oxygen Demand-Wastewater
43246	Adamsons Police Supply	\$466.00	PD	Ammo Equipment
50733	AlSCO	\$17.00	Community Center	Dust Mops, Mop Handles
23291	AlSCO	\$17.00	Community Center	Dust Mops, Mop Handles
23271	Applebaugh, Debbie	\$41.00	Old Town	Consignment
23300	Atwell	\$320.80	Electric	Map Updates
23299	Atwell	\$7,948.76	Electric	5th St. Alley Voltage Conversion
23282	Borchert Locksmith	\$301.00	VA Clinic	Patrick Borchert Locksmith-2 Master Pad Locks, 2 Cam Locks for Desk & 7 for Cabinet
43248	Burlington Glass	\$297.25	PD	Vehicle Repairs-Tahoe Windshield W/Third Visor Frit, Solar Controlled
23261	Burlington Home Center	\$7.78	Welcome Center	Lemon Pine-Sol, Pine Pine-Sol
23302	Camp Cook Concessions	\$168.75	Administration	City Employee Picnic-Pasta Salad, Cheese Cake
23302	Camp Cook Concessions	\$554.81	Administration	City Employee Picnic-Cups, Plates, Hamburgers, Bratwurst, Buns, Tea, Lemonade
49859	CarQuest	\$14.33	Shop	Coupler for Pressure Washer
23251	CarQuest	\$55.08	Streets	Brake Cleaner
48404	CarQuest	\$5.18	Streets	Hydraulic Filter for John Deere Tractor
23290	Caselle	\$1,480.00	Administration	Contract Fee for September
23294	Cash-Wa Distributing	\$133.24	Old Town	Ice Cream
23293	Cash-Wa Distributing	\$100.43	Activities	Ice Cream for Pool
23307	Cavalier Telephone	\$47.11	Old Town	Old Town 800 Number
50025	CDW-G	\$117.79	IT	APC Back Ups for City
50026	CDW-G	\$253.06	IT	2 APC Back Ups for City Hall
23301	CEM Sales & Service	\$2,767.00	Activities	Chlorine for Pool
50717	Century Link	\$3,538.78	Various	Phone Bill
49862	City of Burlington	\$31,413.85	Various	August Utility Usage
23272	Cole, Ray	\$42.00	Old Town	Consignment
50731	Colo Dpt of Public Health	\$75.00	Water	Annual Pretreatment Billing for Permit COG589114

Account Number	Account Name	Amount	Category	Description
50735	Colo Dpt of Revenue	\$7,777.00	Electric	August Utility Taxes
50749	Colo Dpt of Revenue	\$288.00	Airport	Aviation Fuel Sales Taxes
23258	Crow, Justin	\$35.52	Water	Water Department Classes-Lunch & Dinner Reimbursement
50452	Dana Kepner	\$154.12	Parks	Repair Kit for Backflow Device at Parmer Park
23126	Dana Kepner	\$1,863.79	Water	Meters & Meter Supplies
50714	Daniel Electric	\$396.36	Water	Ch Sz 3P Contact Kit
23266	David, Merrie	\$459.00	Activities	Soccer Instructor
23265	David, Merrie	\$1,089.00	Activities	Gymnastics Instructor
23273	Drake, Patty	\$24.75	Old Town	Consignment
49858	Durham Ag Tech	\$396.64	Streets	Mower Repairs-Grind Disc, Red Paint, Labor to Repair Mower Arm & Fish Plate
50747	East Central Council of Local Governments	\$1,152.50	Administration	3rd Quarter 2016 Title III/FTA
43249	Elan Credit Card	\$411.63	PD	Fuel, K-9 Expenses
50736	Elan Credit Card	\$2,548.92	Various	Credit Card Bill
23252	Employers Unity	\$170.50	Administration	Unemployment
23297	F8 Advertising	\$375.00	Old Town	1-70 Boards Advertising
50745	Fernandez, Julia	\$449.10	Activities	Zumba Instructor
23274	Fetty, Kris	\$108.36	Old Town	Consignment
23262	Great America Financial Services	\$85.68	Administration	Mailing System
23259	Great Copier Service	\$94.76	PD	Copier Meter Billing from 5/23/16-8/22/16
48397	Herman	\$32.49	Parks	Door Cable & Cable Stops
50715	Herman	\$39.06	Community Center	Key Copies for New Maintenance Employee
48399	Herman Lumber	\$8.57	Activities	Decon & Rubber Hose at Softball Field
50734	Herman Lumber	\$4.99	Airport	Roof Cement for Airport Rental House
48400	Herman Lumber	\$14.99	Community Center	Latex Gloves for Cleaning
50746	Herman Lumber	\$22.00	Shop	Galv. Valley for Sewer Pond
49844	Herman Lumber	\$41.97	Water	Sprayer Hose & Nozzles
50742	Herman Lumber	\$9.99	Electric	Starhead Screws
49863	Herman Lumber	\$5.49	Water	2" Nipple for Well 11
49864	Herman Lumber	\$22.84	Water	Copper Tubing for Well # 4
23275	Hett, Lyndon	\$214.00	Old Town	Consignment
23283	KC Electric	\$2,260.29	Airport/Water	Electric Used in August
23276	KCC Carouse!	\$47.50	Old Town	Consignment
23292	Kit Carson County Landfill	\$58.25	Streets	Dumping Fees
507347	KNAB	\$672.00	Old Town	August Old Town Advertising

23277	Kreative Stitches			Old Town				Consignment
23263	Kriz-Davis		\$35.50	Electric				58 Blackburn Insulated Aluminum Entrance Compression Splice for Wire Range
50732	Leaf		\$31.42	PD				PD Copy System Lease
48396	Library Store		\$295.54	Library				Supplies-Plastic Razor Blade, Label Protectors, Due Date Slips, Laminate, Label Remover
50201	Library Store		\$300.51	Library				Poly Shield Label Protectors
49843	McCormick Paving		\$187.94	Streets				Hot Mix Asphalt-General Street Repairs
48398	McCormick Paving		\$1,302.48	Streets				Hot Mix Asphalt-General Street Repairs
23128	McKinley, Karen		\$725.04	Administration				Mileage for personal car around town
50748	Melaine Aviation		\$53.20	Airport				10 % of Fuel & Rental
23278	Muirhead, Sara		\$655.35	Old Town				Consignment
23279	North 40 Alpacas		\$80.00	Old Town				Consignment
48395	Northern Safety & Industrial		\$66.00	Shop				Safety Glasses-Electric/Water/Streets/Parks
50750	Permits & Papers		\$87.97	Activities/Old Town				Non-Dot Pre-Employment Collection
23257	Permits & Papers		\$80.00	Administration				Non Dot Random Collection
23287	Prairie Mountain Publishing		\$40.00	Various				Newspaper Advertising/Office Supplies
23255	Quill		\$3,315.77	Water				Commercial Scotch Tape
23254	Quill		\$29.99	Activities				Business Cards
23253	Quill		\$28.99	Administration				Dum Dum Pops
23284	Quill		\$47.99	Administration				Qb 1 RR Binder w/o Label Holder
23286	Quill		\$30.42	Administration				Coffee Creamer
23295	Safeway		\$46.97	Administration				Bottled Water & Kleenex
23306	Safeway		\$16.25	Administration				Foil-Employee Picnic
23305	Safeway		\$13.47	Administration				Ketchup, Mustard, Pickles-Employee Picnic
23296	Scheopner's Water Conditioning		\$27.53	Administration				Water Cooler at VA Clinic
48405	Schlosser Ready Mix Concrete		\$7.50	Misc				1/2 Yard Concrete for Radius at Industrial Park
48406	Schlosser Ready Mix Concrete		\$58.50	Streets				9 yds. for Street Repair by Bank of the West
23256	Steven Rabe		\$360.00	Streets				Admin. Support
50741	Stratton CO-OP		\$112.50	Administration				Bearings & Oil Seal for Street Sweeper
43250	Stratton CO-OP		\$93.58	Streets				Vehicle Repairs-Vista Beam, Lucas Gun Oil
23289	Stratton CO-OP		\$47.41	PD				Wheel Bearing for Dixie Chopper
23264	Stratton CO-OP		\$2.04	Parks				Propane Refill from City Employee Picnic
23280	Stroup, Judy		\$45.00	Administration				Consignment
23130	Town of Stratton		\$75.00	Old Town				2016 CML District 5 Meeting
50655	TransUnion Risk & Alternative		\$120.00	Admin/IT				Supplies-Alternative Data Risk Assessment
23285	Tri-State Exterminating		\$25.00	PD				August Monthly Extermination
50740	Utility Notification Center of Colorado		\$585.40	Various				RTL Transmissions
50716	Verizon		\$51.48	Water				August Cell Phone Bill
			\$1,433.21	Various				

23281	Wall, Nikki		\$260.23	Old Town	Consignment
23108	Western United Electric Supply		\$1,720.90	Electric	10 ft. 140 Pieces PVC Conduit Pipe, 10 ft. 57 Pieces Pipe
23109	Western United Electric Supply		\$33.80	Electric	Glove Testing
50730	Witzel Construction		\$1,600.00	Community Center	Concrete at Burlington Community Building as a Bid-Labor for Schlosser Concrete
50744	Wrico Environmental		\$213.40	Water	Drinking Water Consultation
50739	Yersin, Della		\$41.90	Library	Norwex Reimbursement Basic Package
50738	Yersin, Della		\$14.99	Library	Safeway Reimbursement-Fruit Tray w/Dip
			\$92,208.73		

BOARD OF APPEALS & ADJUSTMENTS

David Murphy (Chairman)

Cliff Crites

Ronna Cornella

Lucky Gipe

Gary Mulch

Dennis Orth

17.16.010 - Created.

There is created and established a board of adjustment and appeals consisting of the number of members from time to time specified by the council. Such members shall be appointed by the council for overlapping terms of three years. Each member shall be a taxpaying elector and in addition shall reside in the area comprising the city at the time of his appointment (see Charter Section 8.2).

(Ord. 535 §12.901, 1978)

ADMINISTRATOR'S UPDATE REPORT

TO: Mayor & Council
From: James Bradley, City Administrator
Date: 9/12/16

Council Update Report:

We are currently awaiting a closing date from the Power Authority. As soon as the documents are executed, the City of Burlington will begin bids on the project and start dates will be negotiated. Update, the construction schedule should be completed by Ron McLaughlin in the next week, and DOLA has the contract for the grant currently at the review board.

Currently CIRSA and I are evaluating and building a policy for the payroll changes for the Police Department. We should have a policy to bring to council by the end of this month or 1st meeting in October.

Currently we are evaluating the rates from all utilities to determine if we have adequate rates to sustain the budget for 2017. We have received a refund from Excel, but the City has been undercharged in 2015. We met with the Excel rep and he has stated that the refund will be around \$212,000.00, but the City will have to pay back the \$105,000.00 that we were undercharged in 2015.

Hutton Foundation Update in packet, please do not have open discussion on this topic without executive session.

I have received the 5 year Capital Outlay documents from the department heads, I will compile these documents for the work session on September 19.

We continue to wait for follow up questions on our IRS Audit. Bruce has not given us a time line on the completion of the audit, and we have not had contact with him since the actual on site audit. I will keep you updated as this matter closes.

I have no further information on the annual audit; the City is approaching the end of the extension given by the State. September 30th is the final day for the extension and presentation of the audit to the board. I continue to contact and discuss this situation with our auditors.

I have included updated information on the Resolution by the Republican River Compact Administration as the State of Kansas, Nebraska, and Colorado continue to work out the water issues.

James Bradley

From: Alix Joseph <ajoseph@bfwlaw.com>
Sent: Tuesday, September 06, 2016 11:22 AM
To: James Bradley
Cc: Steve Nagy
Subject: Hutton, Case No. 15CW3018
Attachments: Odr granting mtn to dismiss.pdf

James,

We have some good news to report. Last week, the Court issued the attached order dismissing the Foundation's Second Claim and part of its Third Claim for relief.

The Foundation's Second and Third Claims alleged that the 1965 Ground Water Management Act ("Ground Water Act") and SB-52, which modified the Ground Water Act, are unconstitutional if they prevent the Foundation from having the boundaries of the NHP Basin re-drawn to exclude wells that are pumping non-designated groundwater. The Foundation asserts that the Republican River Compact Administration ("RRCA") Model demonstrates that NHP Basin wells are withdrawing non-designated ground water, but has not offered any direct evidence to that effect. The Court found that it had no jurisdiction to consider the constitutionality of the Ground Water Act or SB 52 until the Commission makes a determination on whether wells within the NHP Basin are withdrawing designated groundwater. Order, p. 17. The Court's decision is important for two reasons. First and foremost, it eliminates the two claims that are most likely to impact Burlington. Second, by finding that the Foundation's "claim of injury is speculative," the Court implicitly rejected the Foundation's argument that RRCA Groundwater Model is sufficient to prove that the wells in the NHP Basin are withdrawing non-designated groundwater. Order, p. 3.

The Foundation may attempt to immediately appeal this Order. There is no guarantee that the Foundation will be able to appeal the Order without seeing the lawsuit through to a final determination on its remaining claims. If the Foundation succeeds in pursuing an immediate appeal, then we believe it in Burlington's interest to participate in the appeal to defend this Order. If the Foundation either chooses to or is required to wait until after proceeding to trial on the remaining claims to appeal this Order, then we recommend that Burlington pursue a way of limiting its participation in the remaining claims while preserving its right to participate in any appeal. The most efficient way of limiting participation in trial is probably to stipulate with the Foundation. We will be following up with a memo for you to share with City Council explaining the implications of this week's developments and explaining Burlington's options in greater detail. Looking at the City's website, it appears as if Council meets on the 19th and the 26th. When do you send out materials for the meeting on the 26th? We will work to get you a memo well in advance of that meeting. Thanks.

Alix

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Attorney / Shareholder

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DISTRICT COURT, WATER DIVISION NO. 1,
STATE OF COLORADO

Weld County Courthouse
901 9th Avenue
P.O. Box 2038
Greeley, Colorado 80631
(970) 475-2400

DATE FILED: August 29, 2016 7:24 AM
CASE NUMBER: 2015CW3018

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; and the Marks Butte, 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

Div. No. 1

**ORDER GRANTING THE COLORADO GROUND WATER COMMISSION'S
MOTION TO DISMISS PLAINTIFF'S SECOND CLAIM FOR RELIEF AND A
PORTION OF PLAINTIFF'S THIRD CLAIM FOR RELIEF**

This matter comes before the court for ruling on the Colorado Ground Water Commission's (Commission) motion to dismiss claims two and three of Jim Hutton Educational Foundation's (Plaintiff) complaint for declaratory relief for lack of subject matter jurisdiction. Plaintiff filed a response and the Commission filed a reply.

Plaintiff's second claim for relief seeks a ruling from this court that a portion of C.R.S. § 37-90-106(1)(a), as amended by the General Assembly in 2010 through enactment of Senate Bill 10-52 (SB-52), is unconstitutional as applied to Plaintiff's surface water rights. Plaintiff's constitutional challenge focuses on a provision found in the current version of the statute that prohibits the Commission from removing permitted wells from the boundaries of a designated ground water basin, even when a surface water right holder establishes that the ground water within the basin is tributary to surface water. This provision, according to Plaintiff, unconstitutionally removes a statutory remedy, i.e. the authority of the Commission to remove wells from a basin proven to be pumping tributary ground water, which was previously available to surface water users to protect their decreed rights.

Plaintiff's third claim for relief involves the interaction between the Colorado Groundwater Management Act of 1965 (Management Act) and Colorado's obligations under the Republican River Compact (Compact). Plaintiff asserts that the Management Act is unconstitutional if the State and Division Engineers (Engineers) decide, during the litigation of Plaintiff's first claim for relief, that the Engineers are prevented by the Management Act from administering designated

ground water to satisfy Colorado's obligations under the Compact. In addition, Plaintiff contends the Management Act is unconstitutional if the Commission later determines that it lacks authority to redraw the boundaries of a designated ground water basin to exclude wells depleting tributary ground water, which Plaintiff believes would cause Colorado to be non-compliant with its responsibilities under the Compact.

The court finds that Plaintiff's second claim is not ripe for ruling because Plaintiff's claim of injury is speculative. Plaintiff seeks to have the boundaries of the Northern High Plains Designated Ground Water Basin (NHP Basin) redrawn to exclude permitted wells operating within the Basin, which would then require those wells to operate within the priority system in place for surface water rights. However, Plaintiff has yet to prove that the water at issue is not designated ground water. To meet this burden, Plaintiff must prove to the satisfaction of the Commission, not this court, that water presently classified as designated ground water is hydraulically connected to surface water and that well pumping within the NHP Basin is having more than a *de minimis* impact on Plaintiff's surface water rights. See *Gallegos v. Colo. Ground Water Comm'n*, 147 P.3d 20, 31–32 (Colo. 2006). Under the Management Act, the Commission is vested with exclusive jurisdiction to decide whether the water involved in this controversy is designated ground water. *Meridian Serv. Metro. Dist. v. Colo. Ground Water Comm'n*, 361 P.3d 392, 396 (Colo. 2015). If the Commission determines that the water at issue is not designated ground water, but instead is ground water tributary to surface water,

then jurisdiction over the water would transfer to the water court. *Id.* If, however, the Commission concludes that the water is designated ground water, which it is currently presumed to be, Plaintiff's claim that C.R.S. § 37-90-106(1)(a) is unconstitutional is moot.

The court also concludes that the portion of Plaintiff's third claim relating to the Commission's lack of statutory authority to redraw the boundaries of the Basin, if Plaintiff subsequently proves that the ground water is hydraulically connected to surface water and that well pumping is causing injury, involves speculative injury to Plaintiff, too, for the same reasons articulated in the previous paragraph. The court finds that Plaintiff must first petition the Commission for a determination as to whether the water at issue is designated ground water before it may litigate this component of the third claim for relief in the district court.

As to Plaintiff's assertion that the Management Act is unconstitutional if the Engineers are precluded under the Act from administering ground water to meet Colorado's Compact obligations, the court concludes that this part of claim three is entwined with Plaintiff's first claim for relief and it does not require a determination by the Commission as to whether the water is designated ground water. Therefore, that portion of claim three is properly before this court and will remain part of this action.

I. BACKGROUND

Plaintiff, a non-profit corporation, owns the Hutton Ranch, a sprawling four thousand acre ranch located in close proximity to the South Fork of the Republican

River in Yuma County, Colorado. Plaintiff holds decrees to four water rights to divert surface flow from the South Fork of the Republican River for irrigation use on the ranch:

- (1) Two cubic feet per second (cfs) of water to the Tip Jack Ditch with an appropriation date of February 8, 1889, and a decree date of December 28, 1893;
- (2) Twenty-three cfs diverted to the Hale Ditch with an appropriation date of January 17, 1908, and a decree date of September 8, 1939; and
- (3) The Hutton No. 1 Ditch for 12.9 cfs and the Hutton No. 2 Ditch for 4.92 cfs of water with an appropriation date of July 5, 1954, and a decree date of May 24, 1978.

The water rights described above were historically used to flood irrigate native pasture grasses for cattle grazing on the ranch. Plaintiff presently leases its land and corresponding water rights to generate revenue to provide low interest loans to students pursuing nursing degrees.

In 1942,¹ the states of Colorado, Kansas, and Nebraska entered into the Compact to create mechanisms for the most efficient use of the waters in the Republican River basin and to establish an equitable division of said waters between the three states. C.R.S. §§ 37-67-101, -102. Pursuant to Article IV of the Compact, Colorado is allotted a total of 54,100 acre-feet of water annually from the

¹ The Republican River Compact became effective in 1943 when its provisions were consented to by the United States Congress. *See* C.R.S. § 37-67-102.

following four sources: (1) the North Fork of the Republican River drainage basin (10,000 acre-feet); (2) the Arikaree River drainage basin (15,400 acre-feet); (3) the South Fork of the Republican River drainage basin (25,400 acre-feet); and (4) the Beaver Creek drainage basin (3,300 acre-feet). C.R.S. § 37-67-101. In addition, Colorado is entitled to use the entire water supply of the portions of the Frenchman Creek and Red Willow Creek drainage basins located within Colorado. *Id.*

Very few ground water wells operated in the area surrounding the Hutton Ranch prior to 1965, and those then in existence involved withdrawals of relatively small quantities of water. In an attempt to maximize development and beneficial use of Colorado's water resources, and in recognition of the availability of potentially non-tributary ground water in certain areas of the state, the General Assembly enacted the Management Act in 1965.² The Management Act provides the mechanism for designating ground water basins, as well as establishing the policies and procedures for the use and permitting of wells and the preservation of ground water. C.R.S. §§ 37-90-102 to -111. The legislature created the Commission to facilitate the provisions of the Management Act. C.R.S. §§ 37-90-103(8), -104. The Commission consists of twelve members, comprised of ten voting members—nine persons appointed by the Governor, consisting of a mix of agriculturalists and persons representing municipal or industrial interests, and the Executive Director of the Colorado Department of Natural Resources—and the State Engineer and the

² The Management Act was originally found in article 18 of chapter 148, C.R.S., but is now located at C.R.S. §§ 37-90-101 to -143.

Director of the Colorado Water Conservation Board as two non-voting members. C.R.S. § 37-90-104(1), -(3), -(4).

In 1966, a petition was filed with the Commission to establish the NHP Basin. Notice of the petition was published in several newspapers serving the counties encompassing the area of the proposed basin, and a single entity—Pioneer Irrigation District—filed a protest. Eight individuals filed written statements in support of the petition. A hearing was held before the Commission on April 14, 1966, in Wray, Colorado, after which the Commission issued written findings of fact, conclusions of law, and a final order designating the NHP Basin. In its findings, the Commission determined that six geological formations holding water existed within the proposed boundaries of the NHP Basin: (1) the Ogallala-Alluvium formation; (2) the Chadron formation; (3) the Niobrara formation; (4) the Benton formation; (5) the Dakota formation; and (6) the Morrison formation. At the time of the designation hearing, the Commission estimated that 96,688,000 acre-feet of water was stored in the Ogallala-Alluvium formation. No estimates were made for the other five geological formations because the Commission determined that those formations did not produce sufficient quantities of water to be significant sources of ground water. The Commission concluded that the water in the Ogallala-Alluvium formation was ground water that in its natural course would not be available to and required for the fulfillment of decreed surface water rights, and therefore the water met the definition of designated ground water under C.R.S. §

148-18-2(3) (1963). The Commission established the NHP Basin boundaries to correspond with the boundaries of the six underlying geological formations.

As required by C.R.S. § 148-18-5(1)(g), the Commission projected the yearly ground water usage in the NHP Basin for the fifty-year period following designation using ten-year increments. The Commission projected that water use in the NHP Basin would steadily increase over time, with 1,035,000 acre-feet of water usage estimated for year ten (1975) and 3,706,000 acre-feet for year fifty (2015).

Plaintiff estimates that there are now more than four thousand wells removing ground water within the boundaries of the NHP Basin, which Plaintiff asserts has caused surface flows in the South Fork of the Republican River to decline considerably over time. This, in turn, has resulted in the State Engineer curtailing surface water usage in the Basin, including Plaintiff's water rights, to ensure that Colorado does not exceed the annual amount of water it is allocated under the Compact. Although the State Engineer curtails surface water use to meet Compact obligations, Plaintiff contends that no such restrictions are placed on designated ground water use within the NHP Basin.

Plaintiff filed a complaint for declaratory and injunctive relief in this action on the premise that certain actions and inactions by the named defendants have caused injury to Plaintiff's surface water rights. Within the complaint are three claims for declaratory relief: (1) a request for a finding by this court that the administration of water in the Republican River basin by the defendants, in electing to curtail only surface water use and not designated ground water withdrawals by

NHP Basin well users to meet Colorado's Compact obligations, is improper; (2) that SB-52 is unconstitutional as applied to the NHP Basin because surface water users no longer have the ability to petition the Commission to redraw the NHP Basin boundaries to exclude permitted well users from the NHP Basin upon a showing that ground water was improperly designated when the Basin was designated; and (3) the Management Act is unconstitutional if designated ground water cannot be administered by the State Engineer under the same framework as surface water to ensure Colorado's compliance with the Compact or, in the alternative, if the Commission is precluded by statute from redrawing the NHP Basin boundaries to remove well users that are withdrawing tributary ground water and injuring surface water rights.

II. ANALYSIS

In its motion to dismiss Plaintiff's second and third claims, the Commission argues that this court lacks subject matter jurisdiction because this court cannot grant the relief Plaintiff requests until the Commission first decides whether designated ground water is involved in this controversy. With regard to its second claim, Plaintiff counters that it is not seeking a determination from this court regarding the legal character of the water involved, i.e. whether the water removed by well operators within the NHP Basin is or is not designated ground water; instead, Plaintiff asserts that it is merely requesting a finding that if Plaintiff later pursues an action with the Commission to de-designate portions of the NHP Basin and establishes that the ground water is hydraulically connected to surface water

and well pumping is causing injury to Plaintiff's surface water rights, then the Commission must apply the pre-SB-52 statutory language and exclude any well found to be withdrawing tributary ground water from the boundaries of the NHP Basin. Plaintiff further argues that the Commission, as an administrative agency, lacks authority to decide constitutional challenges to SB-52 and the Management Act; therefore, jurisdiction over these claims is vested with the water court under either its exclusive jurisdiction or ancillary jurisdiction over water matters.

To resolve the subject matter jurisdiction question raised by the Commission, the court must decide whether Plaintiff's constitutional challenges are ripe for ruling in this declaratory judgment action. This analysis necessarily includes consideration of the statutory authority delegated to the Commission under the Management Act and that which is assigned to the water courts under the Water Right Determination and Administrative Act of 1969 (1969 Act).

Plaintiff acknowledges that the Commission determined in 1966 that the water within the boundaries of the NHP Basin is designated ground water. Plaintiff also concedes that the decision as to whether the water in question continues to meet the definition of designated ground water must be made by the Commission, based on factual data obtained after designation of the Basin, and not the water court. *See* C.R.S. § 37-90-106(1)(a). Nevertheless, Plaintiff believes its claim that SB-52 is unconstitutional is a "water matter" under the 1969 Act, regardless of whether the water at issue is designated ground water, and thus falls under the water court's jurisdiction. The court disagrees.

The General Assembly, in the 1969 Act, assigned to the water court exclusive jurisdiction over water matters arising within its division. C.R.S. § 37-92-203(1). A “water matter” under the 1969 Act includes not only all water in or tributary to a natural stream, C.R.S. § 37-92-102(1)(b), but also all non-tributary ground water located outside of a designated ground water basin. C.R.S. § 37-92-203(1). Designated ground water, however, is excluded from the definition of “waters of the state” in the 1969 Act, C.R.S. § 37-92-103(13), and therefore must be administered through the Management Act. The General Assembly, when enacting the Management Act, conferred exclusive authority to the Commission to “supervise and control the exercise and administration of all rights acquired to the use of designated groundwater.” C.R.S. § 37-90-111(1)(a). Thus, the legislature has clearly established one procedural framework for the appropriation and administration of designated ground water under the Management Act, with authority delegated to the Commission, while creating a separate system in the water courts for the appropriation and administration of all other types of waters of the state under the 1969 Act. *State ex rel. Danielson v. Vickroy*, 627 P.2d 752, 757–58 (Colo. 1981).

Pursuant to the Management Act, the Commission, and not the water court, is tasked with the authority to make the initial determination as to whether the controversy involves designated ground water. *Meridian*, 361 P.3d at 396; *Pioneer Irrigation Dists. v. Danielson*, 658 P.2d 842, 846 (Colo. 1983) (interpreting *Vickroy* to hold that the Commission must make the initial factual determination whether wells operating within the boundaries of a designated ground water basin are

pumping designated ground water or waters of the state). Jurisdiction only shifts to the water court if the Commission determines that designated ground water is not involved in the controversy. *Id.* Because the Commission established the NHP Basin in 1966, a presumption exists that the ground water within the boundaries of the Basin is designated ground water, and Plaintiff has the burden of overcoming this presumption. *See Vickroy*, 627 P.2d at 759 (“[A]fter creation of a designated ground water basin[,] the proponent of the proposition that certain ground water within the basin is not designated ground water has the burden of proving that proposition.”).

With the clear understanding in place that the Commission, and not this court, must decide whether the water at issue is designated ground water or water subject to the 1969 Act, the court now turns to the question of whether Plaintiff’s constitutional challenges to SB-52 are ripe for ruling.

As the backdrop to Plaintiff’s claims, prior to the passage of SB-52 in 2010, C.R.S. § 37-90-106(1)(a) provided that the boundaries of a designated ground water basin could be altered, after initial designation, “as future conditions require and factual data justify.” The Colorado Supreme Court, when interpreting the pre-SB-52 version of C.R.S. § 37-90-106(1)(a), determined that 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. The Supreme Court further held that to obtain relief from the Commission, the surface water right holder “must prove that the pumping of then-

designated ground water has more than a *de minimis* impact on their surface water rights and is causing injury to those rights.” *Id.* If the surface water user made such a showing, the Supreme Court ruled that the Commission was required to redraw the basin boundaries to exclude the surface water rights and wells removing designated ground water that was shown to more properly fall within the definition of ground water under the 1969 Act. *Id.* The Court stressed, however, that it was improper for the Commission and the plaintiff in *Gallegos* to “jump[] straight to the issue of what the relief would be if the asserted injury were true” prior to the plaintiff making a factual showing to the Commission that ground water within the designated basin was hydrologically connected and causing injury to the plaintiff’s surface rights. *Id.* at 32.

In response to the *Gallegos* decision, the General Assembly enacted SB-52 and, when doing so, stated that the legislature was merely clarifying and reaffirming the General Assembly’s original intent that the boundaries of a designated ground water basin may only be altered upon a showing of sufficient factual data justifying the redrawing of the basin’s boundaries, but that the boundaries may not be altered in such a way as to exclude any existing permitted well operating within the basin. Plaintiff argues that the 2010 revisions to the statute, whereby surface water users no longer have the ability to seek exclusion of permitted wells from the designated basin boundaries, is unconstitutional when applied to designated ground water basins created prior to the enactment of SB-52.

The constitutionality of legislation may be challenged in two ways. A plaintiff may make an “as-applied” challenge, as raised by Plaintiff here, which alleges the statute is unconstitutional under specific circumstances in which the plaintiff has acted or proposes to act in the future, but does not render the statute completely inoperable, or a plaintiff may raise a facial challenge to the statute, meaning that there are no circumstances under which the statute can be applied constitutionally. *Sanger v. Dennis*, 148 P.3d 404, 410–11 (Colo. App. 2006). A statute found to be facially unconstitutional renders the statute utterly inoperable.

A complaint for declaratory judgment is remedial in nature and by design is intended to “settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations” C.R.S. § 13-51-102; *see also* C.R.C.P. 57(a) (District courts have the power to declare rights, status, and other legal relations.). Although courts are to liberally construe the provisions of the Uniform Declaratory Judgments Law, C.R.S. § 13-51-102, a plaintiff must nevertheless assert “present and cognizable rights” to satisfy the ripeness doctrine. *Cacioppo v. Eagle Cnty. Sch. Dist. Re-50J*, 92 P.3d 453, 467 (Colo. 2004). The existence of cognizable rights is necessary because a declaratory judgment action “calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts.” *Farmers Ins. Exch. v. Dist. Court*, 862 P.2d 944, 947 (Colo. 1993) (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 242, 57 S. Ct. 461, 465, 81 L. Ed. 617 (1937)). A complaint for declaratory relief asserting a constitutional challenge to a statute must present a justiciable issue and be ripe for

ruling. *Cacioppo*, 92 P.3d at 467; see also *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445, 108 S. Ct. 1319, 1323, 99 L. Ed 2d 534 (1988) (“A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.”).

Plaintiff discusses extensively in its response to the motion to dismiss the reasons why it believes the constitutionality of SB-52 must be decided by the water court before Plaintiff files a petition to de-designate the NHP Basin with the Commission. However, all of Plaintiff’s arguments are premised on its supposition that when it eventually files a petition for de-designation of portions of the Basin with the Commission, it will successfully prove that the water withdrawn by well users in the NHP Basin is not designated ground water and that the withdrawals are causing injury to Plaintiff’s surface water rights. The possibility of a future claim does not suffice. *Metro Wastewater Reclamation Dist. v. Nat’l Union Fire Ins. Co.*, 105 P.3d 653, 656 (Colo. 2005) (“The mere possibility of a future claim is not an appropriate predicate for the exercise of judicial power.”). Even if this court were to assume that the question will be presented to the Commission at a later time, it is not appropriate for this court to enter declaratory judgment on what presently is a non-existent issue. *Am. Civil Liberties Union of Colo. v. Whitman*, 159 P.3d 707, 709 (Colo. App. 2006) (“Declaratory judgment proceedings may not be invoked to obtain advisory opinions or resolve nonexistent questions, even where it may be assumed that the question may arise at some future time.”).

Plaintiff, through its second claim for relief, attempts to jump to the question of what relief it would be entitled to receive from the Commission before it makes a factual showing to the Commission of hydrological connection and injury to its surface water rights. This is the same procedural path attempted by the parties in *Gallegos*, and it was made clear by the Supreme Court that the question of whether designated ground water is involved in the controversy must be decided prior to litigating the form of relief.

The court concludes that Plaintiff's constitutional challenge to SB-52 is not presently ripe for ruling and will only present an actual controversy in this action if Plaintiff successfully proves to the Commission that water within the NHP Basin is not designated ground water. If Plaintiff fails to carry its burden before the Commission, the legal character of the water remains as designated ground water, which this court has no jurisdiction over, and Plaintiff's constitutional challenge to SB-52 is moot.

Plaintiff's third claim for relief raises, in part, a constitutional challenge to the provisions of the Management Act prohibiting the Commission from redrawing the boundaries of the designated ground water basin to exclude permitted well users from the boundaries of the basin should it later be proven that the well operators are withdrawing tributary ground water and causing injury to surface water users. Once again, Plaintiff's standing to raise this constitutionality claim arises only if the Commission first determines that designated ground water is not involved in this controversy.

III. CONCLUSION AND ORDER OF THE COURT

The Commission, and not the water court, has exclusive jurisdiction over the question of whether designated ground water is involved in this controversy. Thus, Plaintiff's ability to challenge the constitutionality of the current version of C.R.S. § 37-90-106(1)(a), as amended by SB-52, depends entirely on a decision by the Commission that water removed by permitted well owners in the NHP Basin is not designated ground water and that the withdrawals are injuring Plaintiff's water rights. If the Commission finds that the water within the boundaries of the Basin continues to meet the definition of designated ground water, Plaintiff's constitutional challenges to SB-52 become moot. The same rationale applies to the portion of Plaintiff's third claim for relief raising a constitutional challenge to the provisions of the Management Act that prevent the Commission from redrawing the NHP Basin boundaries.

Based on the forgoing, the court grants the Commission's motion to dismiss Plaintiff's second claim for relief raising a constitutional challenge to SB-52. The court also dismisses the portion of Plaintiff's third claim for relief asserting a constitutional challenge to the provisions of the Management Act that prohibit the Commission from redrawing the boundaries of a designated ground water basin to exclude permitted wells.

Dated: August 29, 2016.

BY THE COURT:


James F. Hartmann
Water Judge, Water Division 1

RESOLUTION BY THE REPUBLICAN RIVER COMPACT ADMINISTRATION
APPROVING OPERATION AND ACCOUNTING FOR THE COLORADO COMPACT
COMPLIANCE PIPELINE AND COLORADO'S COMPLIANCE EFFORTS IN THE SOUTH
FORK REPUBLICAN RIVER BASIN

RECITALS

Whereas, the States of Kansas, Nebraska, and Colorado (each, a "State", and collectively, the "States") entered into a Final Settlement Stipulation ("FSS") as of December 15, 2002, to resolve pending litigation in the United States Supreme Court regarding the Republican River Compact ("Compact") in the case of *Kansas v. Nebraska and Colorado*, No. 126 Original;

Whereas, the FSS was approved by the United States Supreme Court on May 19, 2003;

Whereas, the State of Colorado's Computed Beneficial Consumptive Use of the waters of the Republican River Basin exceeded Colorado's Compact Allocation using the five-year running average to determine Compact compliance from 2003 through 2012, as provided in Subsection IV.D of the FSS;

Whereas, the Republican River Water Conservation District is a water conservation district created by Colorado statute to assist the State of Colorado to comply with the Compact;

Whereas, the Republican River Water Conservation District, acting by and through its Water Activity Enterprise ("RRWCD WAE"), has acquired fifteen wells ("Compact Compliance Wells") in the Republican River Basin in Colorado and has constructed collector pipelines, a storage tank, a main transmission pipeline, and an outlet structure capable of delivering groundwater to the North Fork of the Republican River for the sole purpose of offsetting stream depletions in order to comply with the State of Colorado's Compact Allocations;

Whereas, the RRWCD WAE has purchased groundwater rights in the Republican River Basin within Colorado and proposes to pump the historical consumptive use of some or all of these groundwater rights from the Compact Compliance Wells into the pipeline it has constructed and deliver that water into the North Fork of the Republican River near the Colorado/Nebraska state line to offset stream depletions in order to comply with Colorado's Compact Allocations (the "Colorado Compact Compliance Pipeline" or the "Pipeline");

Whereas, the States agreed to operate the Pipeline during 2014, 2015, and 2016 on certain terms. This Resolution does not affect accounting for those years;

Whereas, the States have now agreed to a long-term plan to operate the Pipeline on different terms, which are described below;

Whereas, Colorado, Kansas, and Nebraska wish to comply with their obligations under the Republican River Compact and believe the action described herein will assist the States in their continued efforts to meet those obligations while maximizing the beneficial use of the basin's water for their constituents;

Whereas, Kansas' water users in the South Fork sub-basin depend on stream flows for their livelihoods, and remain concerned about diminishing flows at the Colorado-Kansas state line;

Whereas, in addition to numerous other efforts to reduce consumption, Colorado has already removed from irrigation in the South Fork Republican River basin 23,838 acres;

Whereas, Colorado and Kansas share a belief that, by removing additional acres in the South Fork Republican River basin or otherwise reducing consumption as set forth herein, Colorado's consumption of water in the South Fork Republican River averaged over five years will be less than or equal to its sub-basin allocation plus half of the unallocated waters of the South Fork Republican River.

Now, therefore, it is hereby resolved that the RRCA approves operation and the related accounting procedures for the Colorado Compact Compliance Pipeline subject to the terms and conditions set forth herein, including in the Recitals set forth above, which are fully incorporated as part of the agreement between the States.

A. Colorado Compact Compliance Pipeline.

The operation of the Colorado Compact Compliance Pipeline is described below. The related changes to the RRCA Accounting Procedures and Reporting Requirements ("revised RRCA Accounting Procedures") are attached hereto as Exhibit 1. The Compact accounting will follow the terms and conditions described in this resolution and its exhibits. Beginning January 1, 2017, operation of the Pipeline and the related changes to the accounting procedures for the Pipeline is subject to the following terms and conditions:

1. The average annual historical consumptive use of the groundwater rights that will be diverted at the Compact Compliance Wells shall be the amounts determined by the Colorado Ground Water Commission pursuant to its rules and regulations, as shown on Exhibit 2.
2. Diversions from any individual Compact Compliance Well shall not exceed 2,500 acre-feet during any calendar year.
3. Diversions during any calendar year under the groundwater rights listed on Exhibit 2 and any additional groundwater rights approved for diversion through the Compact Compliance Wells shall not exceed the total average annual historical consumptive use of the rights, except that banking of groundwater shall be permitted in accordance with the rules and regulations of the Colorado Ground Water Commission, subject to the terms and conditions of this resolution.
4. Diversions from the Compact Compliance Wells shall be measured by totalizing flow meters in compliance with the Colorado State Engineer's rules and regulations for the measurement of groundwater diversions in the Republican River basin, and the measured groundwater pumping from such wells shall be included in the "base" run of the RRCA Groundwater Model in accordance with paragraph III.D.1 of the revised RRCA Accounting Procedures. Net depletions from the Colorado Compact Compliance Wells shall be computed by the RRCA Groundwater Model and included in Colorado's

Computed Beneficial Consumptive Use of groundwater pursuant to paragraph III.D.1 of the revised RRCA Accounting Procedures (See Exhibit 1).

5. Deliveries from the Colorado Compact Compliance Pipeline to the North Fork of the Republican River shall be measured by a Parshall flume or other measuring device located at the outlet structure. Authorized representatives of Kansas and Nebraska shall have the right to inspect the Parshall flume and other measurement devices for the Pipeline at any reasonable time upon notice to the RRWCD WAE.
6. The measured deliveries from the Colorado Compact Compliance Pipeline, to the extent they are in compliance with this resolution, shall offset stream depletions to the North Fork of the Republican River sub-basin on an acre-foot for acre-foot basis in accordance with the revised RRCA Accounting Procedures.
7. Unlike previous temporary approvals, under the plan described herein, the measured deliveries from the Colorado Compact Compliance Pipeline will not be added to the RRCA Groundwater Model. Instead, the Accounting would be performed as shown in the attached Exhibit 1. The measured outflow from the CCP will be called the Colorado North Fork Augmentation Water Supply (CCPAWS). The CCPAWS will be subtracted from the gaged flow at the North Fork Republican River at Colorado-Nebraska state line (USGS Gage 06823000) for purposes of calculating the Virgin Water Supply of the North Fork of Republican River in Colorado sub-basin.
8. The CCPAWS will then be added as a credit to Column 3 (Credits for Imported Water Supply) in Table 3A, 4A, and Table 5A to provide Colorado with a credit against Colorado's CBCU. The column headers in Tables 3A, 4A, and 5A will be modified to reflect that the Augmentation Water Supply is accounted for analogous to Imported Water Supply.
9. Colorado shall determine the Projected Augmentation Water Supply Delivery ("Projected Delivery") to estimate the volume of augmentation water that will be delivered from the Pipeline as provided below, and the RRWCD WAE shall make deliveries from the Pipeline as provided below:
 - A. Colorado will initially estimate the Projected Delivery required for each year based on the largest stream depletions to the North Fork of the Republican River sub-basin during the previous five years without Pipeline deliveries. The RRWCD WAE will begin deliveries from the Colorado Compact Compliance Pipeline each year based on the Projected Delivery and shall make a minimum delivery of 4,000 acre-feet per year as provided below.
 - B. Accounting for deliveries will start January 1.
 - C. The RRWCD WAE will begin deliveries from the Pipeline on or after January 1 and will make the minimum annual delivery of 4,000 acre-feet during the months of January, February, and March, unless such deliveries cannot be made due to operational conditions beyond the control of the RRWCD WAE. If the minimum annual delivery of 4,000 acre-feet cannot be made during the months of January, February and March due to such operational conditions, Colorado will consult with Nebraska and Kansas to schedule such deliveries later in the year.
 - D. Colorado will calculate and provide notice to the Kansas and Nebraska RRCA Members, by April 10, of the Projected Delivery as provided in paragraph 8.A of this resolution. Unless Colorado determines by April 10 that it will not be able to deliver additional required augmentation water in October through December,

Colorado shall stop deliveries at the end of March. If Colorado anticipates that deliveries in the months of November and December will not be sufficient to replace stream depletions to the North Fork of the Republican River for Compact compliance, Colorado will maximize deliveries first in January, then sequentially in the months of February, March, and April. Deliveries will be made in May only if there is reason to believe that additional deliveries in the months of October through December will not be sufficient to replace stream depletions to the North Fork of the Republican River for Compact compliance.

- E. Because the final accounting for determining Compact compliance is not done until after the compact year is completed and because Colorado's allocations and computed beneficial consumptive use are dependent upon such factors as runoff, the amount of pumping, precipitation and crop evapotranspiration, Colorado cannot know the precise amount of augmentation water that will be needed at the beginning of a calendar year. After the initial minimum delivery of 4,000 acre-feet, Colorado will collect preliminary data for Compact accounting for that year and, no later than September 10 of that year, will update the Projected Delivery required for the remainder of the year, less the initial minimum delivery of the 4,000 acre-feet that has already been delivered; but not to exceed the average annual historical consumptive use of the groundwater rights as shown on Exhibit 2.
 - F. After updating the Projected Delivery, as described above, if additional deliveries in excess of the initial delivery of 4,000 acre-feet are necessary to offset projected stream depletions to the North Fork of the Republican River, Colorado and the RRWCD WAE will maximize such additional deliveries first in the month of December, then November and October of that same year. If the total necessary additional deliveries cannot be made within those three months, Colorado will attempt to schedule those deliveries in April and May of the same year, or at such time so as to avoid, to the extent practicable, deliveries during the subject accounting year's irrigation season.
 - G. Colorado's shortage and Projected Delivery will be calculated in accordance with the FSS.
10. Augmentation credit for deliveries from the Pipeline to the North Fork of the Republican River shall be limited to offsetting stream depletions to the North Fork of the Republican River Colorado sub-basin for the purpose of determining Colorado's compliance with the sub-basin non-impairment requirement (Table 4A) and for calculating Colorado's five-year running average allocation and computed beneficial use for determining Compact compliance (Tables 3A and 5A).
 11. The approval of operation of the Pipeline and the related accounting procedures for the Pipeline shall not govern the approval of any future proposed augmentation plan and related accounting procedures submitted by the State of Colorado or any other State under Subsection III.B.1.k of the FSS.
 12. Colorado agrees to collect data related to pumping of Pipeline wells and delivery of water through the outfall structure of the Pipeline on at least a daily basis and provide such data to Kansas and Nebraska on a monthly basis; and by January 30 of each calendar year, will provide all spreadsheets and calculations related to the initial "Projected Delivery" of

augmentation water. Colorado will provide to Kansas and Nebraska all updates to that projection within one week of the completion of any update.

B. Bonny Reservoir

1. The States agree to collaborate between now and December 31, 2017 to develop options to maximize the use of Bonny Reservoir. Any proposed change to the accounting or modeling of Bonny Reservoir will require approval by the RRCA under the terms of the Final Settlement Stipulation.
2. Colorado agrees to work in good faith with the Bureau of Reclamation, Colorado Parks and Wildlife, and Republican River Water Conservation District to maintain the flow of water through Bonny Reservoir during the term of this Resolution.

C. Irrigation in South Fork Republican River basin

1. Utilizing the Conservation Reserve Enhancement Program or other voluntary programs, Colorado agrees to retire up to an additional 25,000 acres from irrigation in the South Fork Republican River basin. Of that amount, Colorado will retire at least 10,000 acres by 2022 and will retire the remaining 15,000 acres by December 31, 2027.
2. In the event Colorado cannot or will not retire 25,000 acres by December 31, 2027, it may submit to the other States for their approval a plan to reduce consumption within Colorado by other means.

D. Water Short Year Accounting

The States agree to collaborate between now and December 31, 2017 on how to resolve the Beaver Creek issue for all water-short years in which accounting has not been finally approved by the RRCA.

E. Use of the Unallocated Supply of the South Fork

The States agree that this Resolution does not affect any State's right to use the Unallocated Supply of the South Fork Republican River or any other sub-basin. Nor should this Resolution be used as evidence of any State's legal position regarding use of the Unallocated Supply and each State hereby reserves all legal arguments concerning their rights to the Unallocated Supply or pertaining to its use.

F. Disputes under this Agreement

The States agree to work in good faith to resolve any disputes over implementation or interpretation of this Agreement, prior to submitting those disputes to arbitration under the terms of the FSS.

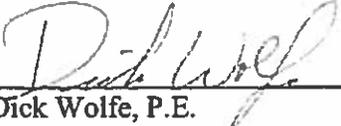
G. Term of Agreement

1. The terms of this Resolution remain in full force and effect until terminated by election of one or more States, which termination occurs on the following conditions:

- a. The terminating State must provide a written Notice of Intent to Terminate to the RRCA not later than October 1st of the year in which a State desires to issue a Notice;
 - b. The terms of the agreement remain in full force and effect through December 31st of the second full year following the RRCA's receipt of a Notice of Intent to Terminate.
2. The States agree in 2024 to review the terms of this Resolution and progress made under its terms.

H. Compliance Measure

The RRCA Commissioners hereby agree that compliance with this Resolution constitutes compliance with the Final Settlement Stipulation and Republican River Compact.



Dick Wolfe, P.E.
Colorado Commissioner
Chairman, RRCA

8/24/16

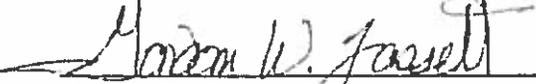
Date



David Barfield, P.E.
Kansas Commissioner

8/24/16

Date



Gordon W. Fassett, P.E.
Nebraska Commissioner

8/24/16

Date



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**CITY CLERK REPORT
9-8-2016**

Currently I am helping Veronica get the reconciliation on the bank accounts up to-date.

Still working on closing several claims with CIRSA.

The annual CGFOA/CMCA conference is being held in Grand Junction on November 15-18. I would like to attend this conference. The cost will be \$325.00 for the conference and around \$300.00 for a hotel. This would be a great conference for Veronica to attend as well.

There is a CML district meeting in Stratton on September 20th, RSVP's are due on September 13th. If you would like to attend let me know ASAP!

Treasurer Report

9/12/16

First and foremost I want to thank Shelly for her patience and guidance with me in this learning process. She is nothing but helpful when I go to her with a question, directing me to the right source for an answer. Her help with the payroll process and researching the GL has been very welcome. Thank you Shelly!

The IRS auditor was here and that will be ongoing possibly through November.

Ashley is working out very well in her position as Accounts Payable Clerk. She takes direction very well.

We continue to work on getting things set in place.