Dear Directors:

This report identifies matters for discussion at the October 16-17, 2018, joint quarterly meeting of the River District and its Enterprise. A separate Confidential Report addresses confidential matters. The information in this report is current as of October 4, 2018, and will be supplemented as necessary before or at the Board meeting.

I. EXECUTIVE SESSION.

The following is a list of matters that qualify for discussion in executive session pursuant to C.R.S. §§ 24-6-402(4)(b) and (e).

A. Colorado River Cooperative Agreement Implementation Matters.

B. Diligence Application of Colorado Springs, Case No. 15CW3019, Water Division 5.

C. Bunte Highline Ditch.

D. Colorado River District Project Development, Wolcott Project and Battlement Mesa Conditional Water Rights

E. 1975 Taylor Park Reservoir Operations and Exchange Agreement.

F. Colorado River Compact, Intra-State, Interstate, and International Negotiation Matters, including Drought Contingency Planning Negotiation Matters.

G. Eagle Park Reservoir Company Diligence Application for Pando Feeder Canal, Water Division 5. (An Enterprise Matter).
II. GENERAL MATTERS.

A. Approval of Learning By Doing (“LBD”) Partners Memorandum of Understanding regarding LBD Governance.

*We recommend that the Board authorize the General Manager to execute the Memorandum of Understanding between the Learning By Doing Management Committee Member Entities. Strategic Initiatives: 1B, 3B, 3C, 3D, 5C, 6E, 8A, 9A.*

As part of the Colorado River Cooperative Agreement (“CRCA”) and the Windy Gap Firming Project Intergovernmental Agreement (“Windy Gap IGA”), the River District, Grand County, Denver Water, Northern Water, and the Middle Park Water Conservancy District are parties to the Learning By Doing agreements (“LBD Agreements†”). The LBD Agreements commit the parties to serve on the Learning By Doing management committee (“LBD Management Committee”), which has the goal of maintaining, and where reasonably possible, restoring or enhancing, the aquatic environment in Grand County. Trout Unlimited and Colorado Parks and Wildlife are also members of the management committee.

Pursuant to the CRCA and Windy Gap IGA, the obligations under the LBD Agreements become effective upon the acceptance of permits by Denver and Northern for their respective projects. Despite the fact that not all the permits for those projects are final, the management committee has been meeting bi-monthly to identify stream enhancement opportunities and monitoring objectives, and has completed its first project - a channel restoration project on the Fraser River.

The LBD Agreements contemplate that the parties may wish to form a non-profit corporation to carry out the functions of LBD. The limitations of carrying out the functions of LBD without a corporate structure became apparent during the contracting for the Fraser River restoration project. Because the LBD Management Committee is not a legally recognized entity, the restoration project required one of the member entities to hold the contract with the contractor and another to enter into a contract and accept the grant funds that were used to partially pay for the project.

The River District has previously approved Articles of Incorporation and Bylaws for the formation of Learning By Doing, Inc. However, some of the LBD Management Committee member entities cannot participate on the Board of LBD, Inc., and for that reason wanted some additional assurances that the corporation would function to carry out the goals of LBD as set forth in the LBD Agreements. The LBD Management Committee has drafted a Memorandum of Understanding (“MOU”) to be executed by the LBD member entities. A copy of the proposed MOU is included as Attachment A. The MOU sets forth the parties’ understanding and confirms

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1 There are two nearly identical LBD Agreements, one between the West Slope entities and Denver Water, and one between the West Slope entities and Northern Water.
that the Board of Directors of LBD, Inc. will operate the corporate entity consistent with the LBD Agreements.

_We request that the Board authorize the General Manager to execute the Memorandum of Understanding between the Learning By Doing Management Committee Member Entities._

**III. RIVER DISTRICT WATER MATTERS.**

**A. Colorado River Cooperative Agreement – Implementation Issues.**

_We request that the Board approve a proposed amendment to the CRCA in order to substitute Exhibit J to the CRCA with a revised version of Exhibit J. We may request Board action on other CRCA matters depending on pending developments or following discussion in executive session. Strategic Initiatives: 5A, 5C, 8A, 9A._

We continue to work with other West Slope interests and Denver Water in implementation of several items related to the CRCA.

1. Amendment of CRCA to substitute a new version of Exhibit J.

Article III.C.4 of the CRCA provides in relevant part that Denver and the Clinton Ditch & Reservoir Company (“Clinton”) will enter into an agreement to allow Clinton to use the dead storage pool of Clinton Reservoir. The proposed agreement is included as Exhibit J to the CRCA. The current version of Exhibit J states that the dead pool may be used only when a pumping system is installed and is operational. However, because some of the shareholders of Clinton are not currently using all of their respective yield, it is possible for other shareholders that are using their full entitlement to access their respective yield in the dead pool without actually having to access the dead pool itself with a pump system. Thus, Clinton and Denver have negotiated a revised version of Exhibit J that would allow use of dead pool space by some of the shareholders without going through the expense of installing a pump.

The Exhibits to the CRCA are incorporated into the CRCA, so Clinton has requested that the CRCA signatories execute an amendment in order to replace the existing version of Exhibit J with the new version. A copy of the proposed amendment and the proposed replacement Exhibit J are included as Attachment B to this memo. Some of the CRCA parties have requested a few minor tweaks to the proposed amendment to clarify its subject matter and specify it as Amendment 1 to the CRCA. We agree with those proposed changes. We support the new Exhibit J because it is a practical solution to increase access to stored water by Clinton’s West Slope shareholders.

_We therefore recommend that the Board approve the proposed amendment to the CRCA regarding use of the Clinton Reservoir dead pool._

2. 1940 Consolidated Ditches Agreement.

The Board has previously discussed staff’s concerns and comments on the package of agreements that Denver has proposed to essentially terminate its 1940 Agreement with the
Consolidated Ditches. The package of agreements would allow Denver to reuse substantially more of the return flow from its Moffat System diversions – a result the River District supports, provided it is accomplished consistent with the terms of the CRCA. We provided our comments to Denver in June and have made some progress on one of the three documents but are still waiting for substantive comment from Denver and the other Front Range entities on the other two documents. We have a meeting with Denver on October 15th (the day before the River District’s October Board meeting), so we likely will have more to report at the meeting.

3. Environmental Groups’ Notice to Sue regarding Denver’s Moffat System Project.

A significant element of the CRCA is that the West Slope signatories agreed not to oppose permits necessary for Denver’s Moffat System Project (which is sometimes referred to as the Gross Reservoir enlargement project). A number of important West Slope benefits from the CRCA are triggered upon Denver’s acceptance of all of the necessary permits for its Moffat System Project.

In late August, a coalition of environmental organizations issued a 60-day notice of intent to sue the U.S. Fish and Wildlife Service, the Army Corps of Engineers, and Denver Water for an alleged violation of the Endangered Species Act (ESA) concerning the Moffat System Project’s potential impacts to the green lineage cutthroat trout. The green lineage cutthroat trout is protected pursuant to the ESA under an “interim status”, because it has not been formally identified as a separate species and, therefore, has not been formally listed as endangered or threatened under the ESA. It is genetically similar to, but not the same as, the greenback cutthroat trout, which has been listed as threatened throughout Colorado since 1978 (though the greenback is native only to the South Platte River basin). The primary populations of the green lineage cutthroat trout are found in the headwaters of the Colorado, Gunnison, and Dolores Rivers. In conducting the necessary environmental reviews for Denver’s Moffat System Project, the Army Corps of Engineers (Corps) initiated an ESA consultation with the U.S. Fish and Wildlife Service regarding the potential impacts of the Moffat System Project on the fish.

The environmental groups allege that the 2016 Biological Opinion regarding the Moffat Project’s impacts on the protected green lineage cutthroat trout fails to satisfy the requirements of the ESA because it did not properly evaluate the potential for Denver’s project to entrain (i.e., trap) and take (i.e., kill) the protected fish in diversion structures. We will monitor this matter and update the Board as necessary.

_The Board may wish to discuss these issues and other CRCA Implementation matters in executive session._

B. Application for Finding of Reasonable Diligence of Colorado Springs Utilities, Case No. 15CW3019, Water Division 5.

_Update only. Strategic Initiatives: 3A, 3D, 4A, 5A, 5C._

The River District and a number of other West Slope entities are objectors in Colorado Springs’ pending Blue River Decree diligence application for its Continental-Hoosier Transmountain Diversion Project. We continue to meet regularly with representatives of Colorado
Springs and the other West Slope parties on the settlement goals that we previously discussed with the Board.

This case is discussed in the Confidential Report. The Board may wish to discuss this matter in executive session.

C. Bunte Highline Ditch.

Informational only. Strategic Initiatives: 4A and 4B.

As we reported in July representatives of Aspen Shorefox, LLC contacted us regarding some water right matters. The water rights in question are associated with the Bunte Highline Ditch, pre-compact rights that divert from Willow Creek, downstream of Willow Creek Reservoir, a component of the Colorado-Big Thompson Project. Historically, the water rights have been used to irrigate approximately 500 acres near the Town of Granby. We are continuing to discuss this matter with Shorefox’s representatives and other interested parties.

This matter is discussed further in the Confidential Report. The Board may wish to discuss this matter in executive session.

D. Colorado River District Project Development, Wolcott Project and Battlement Mesa Conditional Water Rights.

We anticipate Board direction or action pending discussion of this matter in executive session. Strategic Initiatives: 2A, 3A, 4A, 8B, 8C.

The River District owns, or has a significant interest in, the following two projects and associated conditional water rights, which are due for findings of reasonable diligence: Wolcott Project, in October of 2018, and Battlement Mesa Project, in November of 2018. Failure to file timely diligence applications will result in cancellation of these water rights.

These issues are discussed in the Confidential Report. We request that the Board discuss this matter in executive session.

E. 1975 Taylor Park Reservoir Operations and Exchange Agreement.

Update only. Strategic Initiatives: 2A, 2B, 7C, 8A, 9A.

In July, we discussed that the River District is a signatory to the 1975 Taylor Park Reservoir Operations and Exchange Agreement. The other signatories are the United States Bureau of Reclamation, the Uncompahgre Valley Water Users Association, and the Upper Gunnison River Water Conservancy District. The Board provided direction at its July meeting for the River District to support and participate in negotiations with Reclamation to extend the term or otherwise renew the agreement. Peter Fleming and Dave Kanzer attended a meeting last week in Montrose with the Upper Gunnison District and the Uncompahgre Water Users to begin those discussions. We anticipate initiating negotiations with Reclamation soon.
At this time, we do not anticipate the need for discussion of this matter in executive session. However, the Board may wish to discuss any sensitive legal or negotiation questions or developments in Executive Session.

F. Colorado River Compact, Intra-State, Interstate, and International Negotiation Matters, including Drought Contingency Planning Negotiation Matters.

We request that the Board authorize an extension of the Grand Valley Water Users Association Common Interest-Cost Share Agreement. We also will provide an update and seek further Board direction on other matters discussed below. Strategic Initiatives: 4A, 4B, 4C, 4D, 6A, 6C, 6D, 8B, 8D, 8E.

There are four separate matters to discuss under this broad topic.

1. Lake Powell Pipeline.

In January, we reported that the Federal Energy Regulatory Commission’s environmental review process for the proposed Lake Powell Pipeline had been delayed while FERC considered a motion filed by the Utah Board of Water Resources (the project proponent) about the extent of FERC’s licensing authority for the project. The UBWR argued that FERC should assert jurisdiction to review the environmental impacts over the entire project, not just the hydropower facilities that are proposed as a relatively small part of the overall pipeline project.

On September 20th, FERC issued an order denying the motion and ruling that FERC’s licensing jurisdiction (and thus, the scope of its environmental review) would be limited to the hydropower facilities. This means that other federal agencies will take the primary role in the environmental review process. The most likely agency will be the Bureau of Land Management because the proposed pipeline would cross long distances over BLM land. However, it is possible that Reclamation or the National Park Service will also play a major role.

The River District previously directed staff and counsel to file a motion to intervene or otherwise submit comment in the FERC review process. A new deadline has not been set for parties to file motions to intervene in the review proceeding.

2. Water Horse Resources Utah Water Rights Permit Application.

At the River District’s September Special Board Meeting, we discussed that the Utah State Engineer set a hearing for November 7th in Aaron Million’s Water Horse Resources application for a Utah water right from the Green River to be used on Colorado’s Front Range. The Board authorized the retention of special counsel to assist the River District. Pursuant to the Board’s direction we will enter a joint representation agreement with the Upper Yampa Water Conservancy District with the firm of Snell and Wilmer. We are appreciative of Upper Yampa’s agreement to work together in this matter.

The River District is a party to a common interest-cost share agreement with the Grand Valley Water Users Association and The Nature Conservancy to help the GVWUA study how it might participate in a potential water bank or demand management program. The agreement has been in place for several years and has been extended a number of times – sometimes with additional fund authorizations. The agreement is set to terminate on December 31, 2018. We believe the agreement has worked well and has helped an important River District constituent to study the pros and cons of demand management. At this time, we request authority only to extend the agreement to December 31, 2019. We do not request any additional fund authorization as there are sufficient funds remaining from the last authorization.

*We request that the Board authorize an amendment of the GVWUA common interest-cost share agreement to December 31, 2019.*

4. Drought Contingency Planning and Demand Management.

Andy Mueller’s memo provides a good update on the interstate and intrastate discussions and presentations regarding demand management. We anticipate a detailed discussion of the issues during the public portion of the River District meeting. The Board may wish to discuss any sensitive legal issues or negotiation matters in executive session.

*These matters are discussed in the Confidential Report. The Board may wish to discuss them and other sensitive negotiation and legal issues related to other compact and interstate matters in executive session.*

G. Eagle Park Reservoir Company Diligence Application for Pando Feeder Canal, Water Division 5. (An Enterprise Matter).

*We request potential Board action after discussion in executive session. Strategic Initiatives: 3A and 4A.*

In 1998, the River District conveyed 80 cfs of its Pando Feeder Canal water right to the Eagle Park Reservoir Company (EPRCo.). The 80 cfs was changed by the EPRCo. for diversion into and storage at Eagle Park Reservoir. An application for reasonable diligence is due for the portion of the water right owned by the EPRCo. at the end of October.

*This matter is discussed further in the Confidential Report. We request that Board discuss this matter in executive session.*


*We may seek Board action following potential discussion in executive session. Strategic Initiatives: 5C, 7A, 7B, 7C, 7D, 8A, 9A, 12A.*
At the September Special Board Meeting, the River District discussed the ERMOU 90-Day notice letter sent by the Homestake Partners on July 20th. We have included a summary of the pertinent discussion points in this memo to help guide further discussion in advance of the October 18th deadline for the River District’s (and other parties’) response to the Homestake Partners’ letter.

The River District is a party to the 1998 Eagle River MOU, which, among other items, contemplates development of water projects in the Eagle River basin by the West Slope parties and the Homestake Partners in three phases. The first phase yield was effectively developed with the construction/remediation of the Eagle Park Reservoir. The ERMOU contemplates that the remaining Phase II and Phase III yields would be developed jointly by all of the ERMOU parties, or subject to certain conditions, separately by one or more of the ERMOU parties.

In April, we discussed with the Board that on February 13th, the Eagle River Water and Sanitation District and the Upper Eagle Regional Water Authority (the “Eagle Entities”) provided written notice pursuant to the ERMOU that they wish to proceed with an enlargement of Eagle Park Reservoir (from its existing approximate 3,300 acre feet capacity to a volume between 6,500 and 7,950 acre feet) as a Phase II ERMOU Project. The notice provided by the Eagle Entities triggered a 90-day period within which the other ERMOU partners had to respond with their position on whether they desired to participate in the project. As directed by the Board in April, our response stated that the River District does not intend to participate in the proposed enlargement of Eagle Park Reservoir at the currently estimated cost per acre foot (approximately $30,000 - 40,000).

The Homestake Partners (Aurora and Colorado Springs) issued their own 90-Day Notice letter on July 20th. The notice proposes a full ERMOU project that could involve all of the water project yield contemplated by the ERMOU (an average annual yield of 20,000 acre feet for transmountain diversion by the Homestake Partners, and the remaining portion of the West Slope’s 10,000 acre feet of firm yield). The proposed project would involve an on-channel reservoir on Homestake Creek ranging from 6,500-20,000 acre feet in capacity. The Homestake 90-Day Notice raises a number of questions for the River District to consider in forming its response.

This matter is discussed further in the Confidential Report. The Board may wish to discuss it further in executive session.

Attachments:
A. DRAFT Learning By Doing Memorandum of Understanding
B. DRAFT Amendment to Colorado River Cooperative Agreement (CRCA) & Agreement regarding Use of Clinton Reservoir Dead Pool Storage (Exhibit J)
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into this __________ day of ___________________, 2018, between City and County of Denver, acting by and through its Board of Water Commissioners (Denver Water), Northern Colorado Water Conservancy District (Northern Water), the Municipal Subdistrict of the Northern Colorado Water Conservancy District (Subdistrict), Grand County Board of County Commissioners (Grand County), Middle Park Water Conservancy District (Middle Park), Colorado River Water Conservation District (River District), Colorado Parks and Wildlife (CPW) and Trout Unlimited (TU) (collectively the “Parties”).

RECITALS

WHEREAS, Learning By Doing (LBD) is a cooperative effort created by two intergovernmental agreements (IGAs), as follows:

a. IGA for the Learning By Doing Cooperative Effort entered into between Northern Water, the Municipal Subdistrict, Grand County, Middle Park and the River District on July 12, 2016.

b. IGA for the Learning By Doing Cooperative Effort between Denver Water, Grand County, Middle Park and the River District, which was signed by Denver Water on May 15, 2012.

WHEREAS, to implement LBD, the Parties created LBD Inc., however, current law precludes CPW from joining LBD Inc. and both TU and Middle Park may be unable to maintain a Director on the Board of LBD Inc. due to staffing and financial limitations.

THEREFORE, this MOU commits the Parties to use LBD Inc. solely to carry out the work as directed by the LBD Management Committee. Through this commitment CPW, TU and Middle Park will be full participants in the activities of LBD as intended by the Parties.

UNDERSTANDING

1. The Parties recognize and agree that, in the event of any conflict between this MOU and the IGAs, the IGAs, as amended from time to time, shall control.

2. The Parties recognize that, pursuant to the IGAs, the LBD Management Committee is solely responsible for making decisions with respect to the implementation of LBD as set forth in the IGAs, and LBD, Inc. will not undertake any actions that are inconsistent with the decisions and written directives of the LBD Management Committee.

3. The Parties agree that LBD, Inc. will be required to report its activities to the LBD Management Committee at LBD Management Committee’s regular meetings or as otherwise requested by the LBD Management Committee. Any changes to LBD, Inc.’s articles of incorporation, bylaws or other operating documents will be subject to the approval of the LBD Management Committee.
4. This MOU shall be effective at the date of signature by all of the Parties and shall continue for five years thereafter. At the termination of this MOU the Parties may reconsider the purpose for this MOU and if alternative mechanisms are preferable to meeting the intention of LBD implementation.

5. In the event that either IGA listed above terminates prior to termination of this MOU, the parties to that IGA may elect to withdraw from this MOU by providing written notice of withdrawal to the LBD Management Committee.

6. This MOU may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same MOU.

[Signatures on following pages]
AMENDMENT TO
THE COLORADO RIVER COOPERATIVE AGREEMENT

This Amendment dated September 30, 2018, is among the undersigned entities that are parties to the Colorado River Cooperative Agreement dated September 26, 2013 (the “CRCA”).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the CRCA to substitute the attached Agreement Regarding Use of Clinton Reservoir Dead Storage Pool as Exhibit J to the CRCA.

This Amendment may be executed in counterparts and is executed as of the date set forth above.

CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

ATTEST:

________________________________________
President

REGISTERED AND COUNTERSIGNED:
Dennis J. Gallagher, Auditor
CITY AND COUNTY OF DENVER

By: ________________________________

General Counsel

BOARD OF COUNTY COMMISSIONERS,
COUNTY OF SUMMIT

By: ________________________________
Chairman

ATTEST:

By: ________________________________
Summit County Manager

BOARD OF COUNTY COMMISSIONERS,
COUNTY OF GRAND

By: ________________________________
Chairman

ATTEST:

By: ________________________________
Grand County Clerk and Recorder
Amendment to
Colorado River Cooperative Agreement
Counterpart Signature Page

CLINTON DITCH & RESERVOIR COMPANY

By: __________________________
    Chairman

BOARD OF COMMISSIONERS OF EAGLE COUNTY

By: __________________________
    Chairman

UPPER EAGLE REIONAL WATER AUTHORITY

By: __________________________
    Chairman

COLORADO RIVER WATER CONSERVATION DISTRICT

By: __________________________
    President

CITY OF RIFLE

By: __________________________
    Mayor

ATTEST:

By: __________________________
    City Clerk

MIDDLE PARK WATER CONSERVANCY DISTRICT

By: __________________________
    President

EAGLE RIVER WATER & SANITATION DISTRICT

By: __________________________
    Chairman

EAGLE PARK RESERVOIR COMPANY

By: __________________________
    President

CITY OF GLENWOOD SPRINGS

By: __________________________
    Mayor

ATTEST:

By: __________________________
    City Clerk
Amendment to
Colorado River Cooperative Agreement
Counterpart Signature Page

GRAND VALLEY IRRIGATION
COMPANY

By: ____________________________
President

GRAND VALLEY WATER USERS
ASSOCIATION

By: ____________________________
President

MESA COUNTY IRRIGATION
DISTRICT

By: ____________________________
President

PALISADE IRRIGATION DISTRICT

By: ____________________________
President

ORCHARD MESA IRRIGATION
DISTRICT

By: ____________________________
President

UTE WATER CONSERVANCY DISTRICT

By: ____________________________
President
AGREEMENT REGARDING USE OF CLINTON RESERVOIR
DEAD POOL STORAGE

This Agreement dated September 30, 2018, is between the City and County of Denver acting by and through its Board of Water Commissioners ("Denver") and the Clinton Ditch and Reservoir Company (the "Reservoir Company").

Recitals

A. Denver and the predecessors of the Reservoir Company have previously entered into the Clinton Reservoir - Fraser River Water Agreement dated July 21, 1992 (the "Clinton Agreement"), which among other matters governs the "Reservoir Yield" of Clinton Gulch Reservoir as defined in paragraph 1(a) of the Clinton Agreement.

B. The Reservoir Company desires to utilize the dead storage pool of Clinton Gulch Reservoir under the Clinton Agreement to increase the Reservoir Yield.

C. The Colorado River Cooperative Agreement ("CRCA") states that "Upon Resolution of Blue River Decree Issues, Denver Water and the Clinton Ditch & Reservoir Company will enter into the permanent Agreement regarding the Clinton Reservoir dead storage pool attached hereto as Attachment J." Resolution of the Blue River Decree Issues occurred on March 9, 2018.

D. Paragraph 3 of Exhibit J to the CRCA states that "To effectively provide water from the dead storage pool, the Reservoir Company will be responsible for the installation and operation of a pumping system sufficient to deliver up to 801 acre feet to Ten Mile Creek. The Reservoir Company may only utilize water from the dead storage pool as Reservoir Yield during periods when the pumping system is operational."

E. Since the effective date of the CRCA, the probability that the Reservoir Company would be required to physically pump from the dead pool storage is projected to remain lower than expected for approximately the next 20 to 25 years. This is in part due to the Reservoir Company’s shareholders’ current use of water, which is at 50% of total shares.

F. The Reservoir Company has issued "Class A" shares, which is associated with the original shares of stock that were issued per the 1992 Clinton-Fraser Agreement. There are 12,000 Class A shares in total. The Reservoir Company has also issued "Class B" shares, which represent storage that more recently became available in Clinton Reservoir’s "dead pool". There are 2,670 Class B shares in total.

G. Because there remains capacity in the Clinton Reservoir for certain Reservoir Company shareholders to utilize a portion of their Class B shares in addition to Class A
shares for approximately the next 20 to 25 years, Denver and the Reservoir Company are willing to include terms in this Agreement providing for alternatives to use the Clinton Reservoir dead pool in lieu of first installing a pumping system.

H. With the Resolution of the Blue River Decree Issues, Denver and the Reservoir Company are now ready to execute this modified version of Exhibit J to the CRCA.

Agreement

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Denver agrees to allow the Reservoir Company to utilize the dead storage pool of Clinton Gulch Reservoir to increase the Reservoir Yield under the terms herein. The capacity of the dead storage pool of Clinton Gulch Reservoir that can be accessed by pumping is 801 acre feet.

2. The 801 acre feet of water associated with the dead storage pool shall be considered an additional 267 acre feet of Reservoir Yield under paragraph 1(a) of the Clinton Agreement. Alternately, at the election of the Reservoir Company, all or a portion of the 801 acre feet of the dead storage pool can be used to produce up to 67% of the existing 1,200 acre feet of Reservoir Yield in the fourth year of four consecutive years that are not allowable fill years. Under either alternative, such water will be available for use in the same manner, and may be used for the same purposes and in the same manner, as are established in the Clinton Agreement, including repayment water owed to Denver and the snowmaking ratio of not more than 5 to 1 (or such other ratio based on the amount of credited snowmaking return flow established by subsequent decrees); provided, however, that the combined annual volume of water for snowmaking amounts under the Clinton Agreement and this Agreement shall not exceed 6,000 acre feet.

3. To effectively provide water from the dead storage pool, the Reservoir Company will be responsible for the installation and operation of a pumping system sufficient to deliver up to 801 acre feet to Ten Mile Creek. The Reservoir Company may only utilize water from the dead storage pool as Reservoir Yield during periods when the pumping system is operational, subject to the provisions of paragraph 4, below.

4. If the pumping system is not yet operational at the time the Reservoir Company’s shareholders desire to use water from the dead storage pool, the following terms will apply to the Reservoir Company’s use of the dead pool storage:
a. The Reservoir Company shareholders may use water stored in the dead pool attributable to their Class B dead pool shares prior to the pumping system becoming fully operational until such time when the cumulative amount of storage in Clinton Gulch Reservoir that has been credited to Denver by the Reservoir Company’s shareholders, including both Class A and Class B shares, totals 1,000 acre feet on or before August 1st of any Clinton Reservoir accounting year.

b. At such time that the volume of water credited to Denver in any one accounting year totals 1,000 acre feet, the Reservoir Company will construct infrastructure necessary for deploying and removing a submersible pump ("Removable Pump Infrastructure"), which includes, but is not limited to: the submersible pump sled (without pump) and pump discharge pipeline. Construction of these components will be deemed complete when the submersible pump sled (without pump), and submersible pipeline, connected to the outlet pipeline are in position at the bottom of the reservoir. The Reservoir Company will be solely responsible for the design and construction of the Removable Pump Infrastructure.

c. At such time when the cumulative amount of storage in Clinton Gulch Reservoir credited to Denver’s account, including both Class A shares and Class B shares, totals at least 2,400 acre feet on or before August 1st of any Clinton Gulch Reservoir accounting year, the Reservoir Company shall limit its use of Clinton Gulch Reservoir during the ensuing accounting years. Such use shall be limited to the volume of water in Clinton Reservoir, excluding the dead pool less the total volume of water credited to Denver’s account.

5. Alternatively, the shareholders may increase their use of Clinton Reservoir water in the ensuing accounting years, over and above the amount described in paragraph 4 above, through utilization of unused portions of the dead pool if the Reservoir Company has installed a pump on the submersible pump sled, connected the pump to the pump discharge pipeline, deployed the dead pool pumping system to the location in the reservoir from which it can pump the full 801 acre feet of dead pool volume, and demonstrated the dead pool pumping system is capable of delivering the full dead pool volume of water through the outlet pipeline to Ten Mile Creek over a period of not more than 70 days by the start of the accounting year (August 1st). For determining the capability of the dead pool pump station to deliver 801 acre feet in 70 days, the pumping system should be tested for a period of not less than six hours at a capacity of not less than 5.8 cubic feet per second ("cfs") before the system is deemed to satisfy the conditions set forth in this paragraph. The Reservoir Company will be solely responsible for completing the tasks identified above.

6. The Reservoir Company will notify Denver in writing when any of the conditions described in paragraphs 4.a-c, or 5 occur.
7. The term of this Agreement shall be perpetual. Nothing in this Agreement is deemed to modify or amend the Clinton Agreement, as amended by the CRCA. Denver and the Reservoir Company may modify this Agreement by written amendment of this Agreement.

8. Except as expressly modified by this Agreement, the CRCA shall remain in full force and effect.

Executed as of the date first set forth above.

ATTEST:

By: _____________________________
Secretary

By: _____________________________
President

Date: ______________

ATTEST:

CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS

By: _____________________________
Secretary

By: _____________________________
President

Date: ______________

Approved as to Form:

______________________________
Office of General Counsel