# COLORADO RIVER COOPERATIVE AGREEMENT

This Agreement is entered into among the following listed Signatories, to become effective upon the first business day at least seven days after the last Signatory has signed this Agreement. The Effective Date of this Agreement is the 26th day of September, 2013. The Signatories acknowledge the mutual exchange of consideration in entering into this Agreement.

City and County of Denver, acting by and through its Board of Water Commissioners (Denver Water)
Board of County Commissioners, County of Eagle
Board of County Commissioners, County of Grand
Board of County Commissioners, County of Summit
Colorado River Water Conservation District
Middle Park Water Conservancy District
Clinton Ditch and Reservoir Company
Eagle Park Reservoir Company
Eagle River Water and Sanitation District
Upper Eagle Regional Water Authority
Grand Valley Water Users Association
Orchard Mesa Irrigation District
Ute Water Conservancy District
Palisade Irrigation District
Mesa County Irrigation District
Grand Valley Irrigation Company
City of Glenwood Springs
City of Rifle

This Colorado River Cooperative Agreement consists of the 51-page agreement dated May 15, 2012 (pages 44, 45, 50, and 51 dated January 7, 2013); Attachments A through T, which have varying dates; and the CRCA Addendum dated April 5, 2012.

# COLORADO RIVER COOPERATIVE AGREEMENT

## ARTICLE I
## Limitations on Denver Water's Water Supply Obligations

A. Geographic Limit on Service Area. All water available to Denver Water under its existing absolute and conditional water rights listed in Attachment A ("Attachment A Rights") shall be used within the City and County of Denver and Denver Water's current Service Area described in Attachment B ("Service Area"), except as provided in Article I.B. The Service Area shall not be expanded beyond the boundaries depicted in Attachment B.

B. Limits on Use of Attachment A Water Rights Outside Service Area.

1. Fixed-Amount Contracts. The Attachment A Rights may be used outside the current Service Area to provide up to 67,927 acre-feet of water under the existing contracts listed in Attachment C ("2010 Contracts"). In addition, Denver Water may enter into contracts to deliver an additional 4,000 acre-feet of water annually to be used in new permanent contractual arrangement not listed in Attachment C.

   Of the 67,927 acre-feet currently obligated under 2010 Contracts, Denver Water may transfer up to 45,000 acre-feet from a pre-existing water delivery obligation under a 2010 Contract to a different recipient under a new permanent contract ("Future Contract"), subject to the following limitations.

   a. Previously Delivered Water. The amount of water transferred to a Future Contract recipient must fall within the volume of water previously delivered to the 2010 Contract holder during a prior calendar year, and Denver Water's obligation to the 2010 Contract holder must be reduced by a like amount. Some 2010 Contracts include an amount of water not previously delivered by Denver Water ("Unused 2010 Water") A 2010 Contract holder may not substitute Unused 2010 Water for transferred water. The 2010 Contract holder may access the volume of Unused 2010 Water only at a rate equivalent to growth in demand in the holder's service area after the date of the transfer.

   b. Future Contract Service Area. The service area of any Future Contract recipient must he located in Adams, Arapahoe, Broomfield, Douglas or Jefferson County.

c. Drought Reductions. All Future Contracts must provide for reductions in deliveries during such times as Denver Water imposes mandatory water use restrictions as part of a drought response program.

d. Reuse Under Future Contracts. If the 2010 Contract did not expressly grant to the recipient of the water the right of reuse or successive use, then the Future Contract may grant the right of reuse and successive use of the transferred water only if such reuse is subject to the provisions of Article I.B.2.e and Article II. Nothing in this paragraph shall prevent a recipient of a Future Contract from making an initial fully consumptive use of the transferred water that will not generate effluent or return flows.

e. Recycle Water Contracts. Any water transferred from one of the Recycle Water contracts listed on Attachment C shall retain recycled water as the source of water delivered under the Future Contract.

f. Payment of West Slope Charge. As a condition of receiving water under a Future Contract, any Future Contract holder shall enter into a West Slope Charge Agreement in substantially the form of Attachment D, and shall pay a West Slope Charge of 12.5%.

g. Prohibition on Seeking West Slope Supplies. Any recipient of water under a Future Contract must agree to comply with the Abstention Provisions.

2. Other Contractual Water Supply Obligations. Some of Denver Water's supply obligations to entities or areas outside the Service Area present unique circumstances or opportunities and are not included within the volumetric limit established in Article I.B.1. Denver Water may use the Attachment A Rights outside the Service Area to provide water under the following circumstances:

a. Obligations to Littleton under Littleton's Total Service Distributor Contract dated March 9, 2011.

b. Water to be provided to Public Service Company and to West Slope entities in the event of a relaxation of the Shoshone Call under the provisions of the 2007 Shoshone Agreement or the provisions of Article VI of this Agreement.

c. Use of Denver Water's water rights on the West Slope: (1) for beneficial use by the West Slope entities; or (2) to meet regulatory obligations required for Denver Water's operations or projects; or (3) for other purposes specifically authorized under this Agreement.

d. Water delivered from the potable water distribution system at Denver International Airport that would otherwise need to be discharged from the system to maintain the chlorine residual and avoid nitrification within the potable water system.

e. Reusable return flows in excess of Denver Water's obligations under Article II or not committed to a 2010 Contract may be used in Joint Use Projects, subject to the following limitations in this subsection. The use of reusable return flows under this section does not in any way diminish Denver Water's obligations under Article II. As a condition of such use, East Slope lessees or purchasers of Denver Water's reusable return flow for use outside the Service Area:

i. Shall enter into a West Slope Charge Agreement in substantially the form of Attachment D, and shall pay a West Slope Charge of 12.5%.

ii. Must comply with the Abstention Provisions.

iii. Will maximize using best efforts the reuse or successive use of reusable water available to them.

iv. Will adopt and implement a conservation plan that would achieve results similar or proportionately the same as Denver Water's.

3. Deliveries of Water on a Temporary Basis. Denver Water may use the Attachment A Rights to deliver water on a temporary basis outside the Service Area, as limited by the following provisions.

a. For spot sales, subject to the following limitations:

i. Definition. The definition of a spot sale for purposes of this agreement is a lease of water available to Denver Water on a sporadic basis as a result of temporary hydrologic conditions or operational constraints, which is delivered to the recipient over a period no longer than 14 consecutive days.

ii. Holiday Restrictions: Spot sales of Blue River water will not be made for use during the Memorial Day, Fourth of July and Labor Day weekends. For purposes of this paragraph 11, Memorial Day and Labor Day weekends means Friday, Saturday, Sunday and Monday of that holiday. Fourth of July weekend means (1) if the holiday falls on a Thursday then the weekend is Thursday, Friday, Saturday, and Sunday; (2) if the holiday falls on either Friday, Saturday, Sunday, or Monday, then the weekend is Friday, Saturday, Sunday, and Monday; (3)

if the holiday falls on a Tuesday then the weekend is Saturday, Sunday, Monday, and Tuesday; and (4) if the holiday falls on a Wednesday, then the weekend is only on Wednesday.

iii. Reservoir Level Restrictions: Spot sales of Blue River water will be made only when: (1) the Dillon Reservoir lake level is projected to be at or above the Frisco Marina elevation from June 18 to Labor Day weekend, and will not be reduced below that elevation as a result of the spot sales. For purposes of this paragraph 11, the Frisco Marina elevation means the elevation at which the Frisco Marina can be fully operational. At the time of execution of this agreement, the Signatories agree that the Frisco Marina elevation is 9012. However, Summit County and Denver Water may later agree that a lower elevation has become suitable as the result of physical changes to the Marina or the Reservoir.

If Denver Water makes a spot sale of Blue River water during the runoff season prior to June 18 based on projections of reservoir level, and the reservoir level fails to reach the Frisco Marina elevation by June 18 or falls below that elevation prior to Labor Day, then Denver Water will forfeit the revenue received from the spot sale and deposit an equivalent amount into the West Slope Fund for water supply and water quality projects.

iv. Dillon Outflow Restrictions. Spot sales of Blue River water will not be made:

a) From Memorial Day weekend to the end of July, if outflow from Dillon Reservoir is less than 300 cfs during any diversion and delivery of spot sale water; or

b) At other times of the year, if outflow from Dillon Reservoir is less than 100 cfs during any diversion and delivery of spot sale water.

v. Limit on Temporary Water Deliveries. The total combined volume of all spot sales and temporary leases of water resulting from the Attachment A Rights will not exceed a three-year running average of 7,300 acre feet, with an annual maximum of 12,300 acre-feet in a given year.

vi. Payment by Recipients. Purchasers of spot sale water shall enter into a West Slope Charge Agreement in substantially the form of Attachment D, and shall pay a West Slope Charge of

15%.

vii. Shoshone Call Restriction. Spot sales will not be made when the senior Shoshone call is subject to relaxation under the provisions of the 2007 Shoshone Agreement or the provisions of Article VI.E of this Agreement.

b. For temporary leases, subject to the following limitations:

i. The definition of temporary leases for purposes of this agreement is a lease of water for a duration not to exceed five consecutive years.

ii. Any lessee would be limited to no more than five years of water delivery in any ten year period under one or more temporary leases.

iii. The total volume of spot sales and temporary leases of water from west slope sources will not exceed 3,300 acre-feet in any given year.

iv. The total combined volume of all spot sales and temporary leases of water resulting from the Attachment A Rights will be limited as described in paragraph I(B)(3)(v).

v. Lessees shall enter into a West Slope Charge Agreement in substantially the form of Attachment D, and shall pay a West Slope Charge of 15%.

vi. All temporary leases must provide for reductions in deliveries during such times as Denver Water imposes mandatory water use restrictions as part of a drought response program.

4. WISE Partnership Agreement. The Attachment A Rights may be used to provide water under the WISE partnership agreement with the City of Aurora and the South Metro Water Authority, so long as the use of the rights is otherwise authorized under this Article I.B, and subject to the following limitations:

a. The recipients of WISE water shall enter into a West Slope Charge Agreement in substantially the form of Attachment D, and shall pay a West Slope Charge of 12.5% on all water provided by Denver Water, regardless of which provision of Article I.B authorizes the use.

b. The recipients of WISE water must comply with the Abstention Provisions.

c. The recipients of WISE water must maximize using best efforts the reuse or successive use of reusable water available to them.

d. The recipients of WISE water must adopt and implement a conservation plan that would achieve results similar or proportionately the same as Denver Water's.

C. Other Water Rights.

1. Joint Use Projects. Denver Water may use its existing East Slope water rights listed in Attachment E in Joint Use Projects on the Front Range, so long as such use of the water rights does not result in a decrease in the supply of water available to Denver Water under the Attachment A Rights or in an increase in diversions of water by participants in the Joint Project, including Denver Water, from the West Slope to the East Slope. Participants in these projects must agree to comply with the Abstention Provisions.

2. New East Slope Water Rights. Denver Water may use outside the Service Area any water made available: (a) as a result of East Slope water rights appropriated or acquired after execution of this Agreement or (b) by means of contractual arrangements with East Slope entities entered into after execution of this Agreement involving East Slope water rights. Such use of the water shall not result in a decrease in the supply of water available to Denver Water under the Attachment A Rights, or in an increase in diversions of water by participants in the project, including Denver Water, from the West Slope to the East Slope.

3 West Slope Water Rights. After the Effective Date of this Agreement, Denver Water will not seek to: (a) develop any of its Division 5 water rights listed in Attachment E; or (b) create any new depletion, not caused by the exercise of the Division 5 water rights listed in Attachment A, from the Colorado River and its tributaries, for diversion to the East Slope; or (c) acquire any water right on the West Slope that would increase the yield Denver Water currently calculates based on the full use of the Division 5 water rights listed in Attachment A, without the prior approval of the River District and the County Commissioners for each county in which a new facility would be located or in which a new water right would be exercised.

Denver Water will not seek to appropriate or acquire any other water right on the West Slope, without first consulting in good faith with potentially affected

West Slope Signatories in order to identify and attempt to mitigate any potential adverse effect on West Slope interests, subject to the other provisions of this Agreement. The West Slope Signatories reserve the right to oppose any such development, appropriation or acquisition of water rights in water court, permit proceedings, or other forums.

## ARTICLE II
## Denver Water's Conservation and Reuse Commitments

A. Reuse of Blue River Water. Denver agrees to reuse its Blue River water and other lawfully available reusable water through exchanges into its South Platte diversion and storage facilities and through its recycled water treatment plant that provides water for nonpotable purposes. For use within the Service Area and to provide up to 6,400 acre-feet of recycled water outside the Service Area under the Recycle Water contracts listed in Attachment C or Future Contracts resulting from the transfer of those contracts pursuant to Article I.B.1, Denver Water will fully construct its recycled water system with the capacity to provide 17,500 acre-feet annually and will maximize its exchanges within legal and water availability constraints.[1] To achieve this level of reuse, Denver Water will complete construction of at least 30,000 acre-feet of gravel pit storage or other functionally equivalent storage.[2] The fully constructed recycled water plant is scheduled to be operational in 2020. The 30,000 acre-feet of gravel pit storage is also anticipated to be completed in 2020. However, the timing of development of gravel pit storage is directly related, in part, to the need for aggregate for construction purposes in the metro area, and is not within Denver Water's control. Denver Water commits to construct sufficient infrastructure to achieve the volumes listed in this paragraph subject to the uncertainties of timing described in this paragraph.

B. Conservation Plan. Denver Water's 1996 IRP predicted that 29,000 acre-feet of water could be saved through active conservation efforts by 2045. In 2006, the Denver Water Board mandated an accelerated conservation program to accomplish that level of savings by the end of 2016. Denver Water agrees to continue to implement its existing conservation program described in Attachment F to achieve the savings of 29,000 acre-feet contemplated by the 1996 IRP, in addition to natural replacement, consistent with its goal of achieving the targeted savings by the end of 2016. (It is often not possible to measure precisely the volume of water saved as a result of a specific action, e.g., requiring soil amendment, but Denver will implement the

[1] The volume of water that can be reused is determined by legal, regulatory and hydrologic conditions that vary significantly from year to year and over time, and may be fundamentally different in the future. Over the past 20 years with an annual average demand of 285,000 acre-feet, Denver Water's reuse by exchange and replacement has averaged 16,300 acre-feet per year, with a maximum of 29,900 acre-feet and a minimum of 5,800 acre-feet. With regard to future exchanges, Denver Water's computer simulation model predicts that, with an annual average demand of 345,000 acre-feet and completion of the storage described in this Article II.A, the annual average for exchanges and replacement will be 38,000 acre-feet. These modeled predictions are based on historic hydrology, past administrative practices and numerous operational assumptions, and consequently may not be construed as any sort of mandated or targeted operational requirement.

[2] If Denver Water's water rights cannot be exercised as anticipated to operate exchanges, making a portion of the proposed 30,000 acre-feet of storage not useful in maximizing Denver Water's exchanges, then Denver Water will notify the West Slope Signatories and identify the functionally equivalent storage, other infrastructure, or other means that it proposes to utilize to maximize its exchanges and the parties shall discuss in good faith whether to modify the provisions of this Article II.A.

conservation measures necessary to result in the volume of savings described in this paragraph.) Denver Water will inform the West Slope Signatories in an annual progress report if it decides to substitute a different conservation measure than the ones listed in Attachment F. Once Denver Water determines the conservation goal has been met, it will retain a reputable and qualified third party to confirm that the methodology used to quantify savings was reasonable. If the third party determines the methodology was not reasonable, Denver Water will correct the identified defects in the methodology, and if necessary, undertake additional conservation measures to achieve the goal.

C. Commitment to Additional Efforts. In addition to taking actions necessary to achieve the results described in Articles II.A and II.B, Denver Water agrees to develop, for use within tbe Service Area and to satisfy the obligations listed in Article I.B, an additional 10,000 acre-feet on an average annual basis through reuse, including use of reusable sources of water for augmentation, and/or conservation measures not described in Articles II.A and II.B. The development of the additional 10,000 acre-feet will commence no later tban the completion of the efforts described in Articles II.A and II.B, and are anticipated to be completed by the end of calendar year 2030. Once Denver Water determines the additional 10,000 acre-feet has been attained, it will retain a reputable and qualified third party to confirm that the methodology used to quantify the attainment was reasonable. If the third party determines the methodology was not reasonable, Denver Water will correct the identified defects in the methodology, and if necessary, undertake additional reuse or conservation measures to achieve the goal.

## ARTICLE III
## Denver Water's Other Commitments

### A. General

1. Denver Water agrees to make a good faith effort to identify which of its West Slope conditional water rights might be needed and to abandon those conditional water rights that it deems are not needed.

2. As used in this Article III, "Resolution of Blue River Decree Issues" means the entry of final judgments and decrees no longer subject to appeals which make absolute 654 cfs in 06CW255, Water Division 5, and in 49-cv-2782, U.S. District Court, and 141,712 acre-feet in 03CW039, Water Division 5, in accord with the Amended Application to Make Absolute, filed with the court on February 16, 2006.

3. Use of Denver Water's Water Rights on West Slope.

   a. Denver Water will be responsible for providing substitution water and power interference charges to Green Mountain Reservoir and replacement water to other senior downstream water rights as necessary to ensure that West Slope recipients of the water provided by Denver Water under this Article III may use the water as provided in this Agreement.

   b. The signatories to this Agreement will cooperate to obtain such court decrees and approvals as are necessary to ensure that Denver Water's water that is made available to West Slope users under this Agreement, the 1985 Summit Agreement and the 1992 Clinton Agreement may be used on the West Slope for all uses, including but not limited to, fully consumptive uses, reuse and successive uses.

4. Replacement Water. Certain provisions of this Article III require recipients of water deliveries from Denver Water to make available to Denver Water "Replacement Water." Replacement Water may be made available to Denver Water from Green Mountain Reservoir, Wolford Mountain Reservoir, West Slope supplies of Windy Gap Project water, water made available to the West Slope from relaxation of the Shoshone Call pursuant to the 2007 Shoshone Agreement or the provisions of Article VI.E, water stored in Old Dillon Reservoir, water made available to West Slope water users pursuant to the 2003 Colorado Springs Substitution Agreement including return flows of such water, decreed consumptive use credits and reusable return flows, water diverted from Straight Creek into Dillon Reservoir by Summit County users, or any other substitution source reasonably acceptable to the Bureau of Reclamation and the Signatories. Where Replacement Water is required, Denver Water's delivery of water is contingent upon the Replacement Water

being on hand and physically and legally available for Denver Water's use for substitution purposes and will be provided to Denver Water for each acre foot of water delivered.

5. Escalation. The amounts of money that Denver Water is committed to pay under this Article III will be subject to escalation beginning on the fourth anniversary of the Effective Date of this Agreement, based on changes in the Consumer Price Index for All Urban Consumers ("CPI-U") for the Denver-Boulder-Greeley Metropolitan Area.

**B. Summit County – Blue River**

1. Payment by Denver Water. $11 million will be paid by Denver Water, subject to the terms set forth below.

2. Waste Water Treatment Plant Fund. $1 million of the $11 million shall be deposited into an interest-bearing fund to be administered by Summit County to offset the impacts of lower Dillon Reservoir levels or reduced outflows from Dillon Dam on permitted wastewater dischargers in Summit County.

3. Environmental Enhancement Fund. $1 million of the $11 million shall be deposited into an interest-bearing fund to be used as 50% matching funds for Environmental Enhancement projects in Summit County. The Environmental Enhancement projects shall be selected by a committee composed of one representative from each of the five entities listed in Article III.B.4 below. If these entities cannot unanimously agree on a project or projects, then each entity will be entitled to use one-fifth of the funds for a 50% match for an Environmental Enhancement project selected by that entity.

4. Payments for Projects in Summit County. $9 million of the $11 million will be distributed in five equal shares to the following entities to offset the costs of the projects listed in Attachment G:

   - Town of Dillon
   - Town of Silverthorne
   - Town of Frisco/Frisco Sanitation District
   - Town of Breckenridge
   - Summit County/other water districts listed in Attachment G

5. Reallocation of Funds. Denver Water will not object to the reallocation of the $9 million as may be agreed by these entities, and these entities will determine the allocation of these funds for the projects described in Attachment G without restrictions imposed by Denver Water. Funds can be used to reimburse the sponsoring entity for project costs incurred before the funding is to be provided by Denver Water under Article III.B.6 below.

6. Timing of Payments. The schedule for payment of the $11 million is as follows:

   a. $4.5 million of the $9 million described in Article III.B.4 above within one year of Resolution of Blue River Decree issues.

   b. $4.5 million of the $9 million described in Article III.B.4 above within six months upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project.

   c. The $1 million for Environmental Enhancements under Article III.B.3 will be deposited into the interest-bearing fund at the time of execution of the Agreement. These funds would be immediately available as matching funds whenever an Environmental Enhancement project is selected pursuant to Article III.B.3.

   d. The $1 million dedicated to assisting wastewater treatment plants under Article III.B.2 will be deposited into the interest-bearing fund at the time of execution of this Agreement.

7. 250 Acre Feet of Dillon Storage Water. Upon Resolution of Blue River Decree Issues, Denver Water will provide an additional 250 feet per year of water from Dillon Reservoir with a yield as reliable as the yield available to Denver Water at Dillon Reservoir. This water will be allocated as follows:

| | | |
|---|---|---|
| Town of Silverthorne | = | 60 acre feet |
| Summit County | = | 56 acre feet |
| Snake River Water District | = | 45 acre feet |
| Town of Dillon | = | 45 acre feet |
| Copper Mt. Metro District | = | 29 acre feet |
| Dillon Valley Metro District | = | 15 acre feet |

   There shall be no Replacement Water or other compensation for this Dillon storage water.

8. Montezuma Shaft.

   a. Denver Water is willing to consider, on a case-by-case basis, use of the Montezuma Shaft by the Snake River Water District, East Dillon Water District and Summit County Government on a space available basis when the Roberts Tunnel is operating. Any such future use will be subject to written acknowledgement by all water users that the supply is interruptible and will be subject to Denver Water's ability, in its sole discretion, to take the Roberts Tunnel out of service for maintenance, inspection and operational needs.

b. Any water resulting from use of the Montezuma Shaft as described in the preceding paragraph will come out of the users' allocations of water under the 1985 Summit Agreement, the 1992 Clinton Agreement or this Agreement.

9. Old Dillon Reservoir. Denver Water will not object to the construction and operation of Old Dillon Reservoir in accordance with permits issued by the U.S. Forest Service and U.S. Army Corps of Engineers. Nothing herein shall be construed as a subordination to the operation of this project of any of Denver Water's decreed water rights and exchanges. Upon execution of the agreement between Denver Water and Old Dillon Reservoir Water Authority, Denver Water will withdraw its statements of opposition to all pending Old Dillon Reservoir water court applications by Summit County and Towns of Dillon and Silverthorne.

10. Dillon Reservoir Levels. Denver Water agrees to use its best efforts to maintain the water level of Dillon Reservoir for recreational and aesthetic purposes at or above 9012 feet in elevation, above mean sea level, from June 18 to Labor Day of each year. This is a target elevation that may not be achieved, depending upon various factors, and is subject to Denver Water's water supply obligations. Under the Blue River Decree, Denver Water's diversions are limited to municipal purposes only. Denver Water will continue to comply with the Blue River Decree and to operate the Roberts Tunnel to meet its water supply obligations and not solely for recreational or hydropower purposes.

11. Town of Frisco. Denver Water has allowed the Town of Frisco to use its Future Dillon Water under the 1985 Summit Agreement as a source of augmentation supply for snowmaking at its winter sports area pursuant to the Future Dillon Water Agreement dated November 18, 2009 between Denver Water and Frisco. Denver Water and Frisco agree to participate in a joint study on the amount and timing of snowmaking return flows from the winter sports area and to cooperate in maximizing the amount of snowmaking return flows in any Water Court proceeding.

12. Additional Exchanges. Denver Water will allow additional exchanges through Dillon Reservoir for the benefit of Summit County users, so long as Denver Water's firm yield is kept whole, such exchanges do not interfere with Denver Water's operations, and Denver Water is afforded an opportunity to protect its interests in any legal or administrative proceeding.

13. Temporary Storage. At its sole discretion, Denver Water will allow Summit County entities to temporarily store additional water in Dillon Reservoir on a space available basis.

14. Additional 1493 Acre Feet.

a. Upon resolution of Blue River Decree issues, Denver Water will provide to the entities listed below 1493 acre feet per year from Dillon Reservoir with a yield as reliable as the yield available to Denver Water at Dillon Reservoir. This water shall be made available directly in Dillon Reservoir each year or, at the option of an individual recipient, the portion of this water to which the recipient is entitled shall be provided in Clinton Gulch Reservoir (the Clinton Bookover Water") in lieu of an equal amount of water that would be available to such recipient in Dillon Reservoir, by operating Denver Water's Blue River Diversion Project water rights to allow storage of the Clinton Bookover Water in Clinton Reservoir. In the event Denver Water does not have an account balance in Clinton Gulch Reservoir pursuant to the terms of the 1992 Clinton Agreement, the Clinton Bookover Water shall be booked over to the recipient from water in storage in Clinton Gulch Reservoir, pursuant to separate operating procedures to be agreed upon by Denver Water and the Reservoir Company. In the event Denver Water has an account balance in Clinton Reservoir pursuant to the terms of the 1992 Clinton Agreement, the Clinton Bookover Water shall be booked over to that recipient from Denver Water's account in Clinton Gulch Reservoir. Any Clinton Bookover Water may not be carried over in Clinton Gulch Reservoir from year to year. Such water will be allocated as follows:

- Vail Summit Resorts (Keystone) = 302 acre feet (1)
- Unallocated future supply pool = 175 acre feet (2)
- Copper Mountain Resort = 142 acre feet (1)
- Town of Silverthorne = 140 acre feet
- Summit County = 134 acre feet
- Vail Summit Resorts (Breckenridge) = 126 acre feet (1)
- Town of Breckenridge = 108 acre feet (3)
- Town of Dillon = 105 acre feet
- Snake River Water District = 105 acre feet
- Copper Mountain Metropolitan District = 69 acre feet
- Arapahoe Basin Ski Area = 52 acre feet (1)
- Dillon Valley Metro District = 35 acre feet

[1]This water may be used for snowmaking purposes and is entitled to a snowmaking ratio of not more than 5 to 1 (or such other ratio based on the amount of credited snowmaking return flows established by subsequent decrees.) Denver Water and each ski area agree to participate in joint studies on the amount and timing of snowmaking return flows from each ski resort using the foregoing water, and to cooperate in maximizing the amount of snowmaking return flows in any Water Court proceeding. The combined

volume of water for snowmaking amounts under this Article III, excluding snowmaking by the Town of Frisco under Article III.B.11, and the 1992 Clinton Agreement shall not exceed the 6000 acre feet limit on snowmaking water contained in the 1992 Clinton Agreement.

[2]The unallocated pool will be administered by a board consisting of one representative from the Towns of Breckenridge, Dillon, Frisco and Silverthorne and the Summit County Commissioners

[3]A portion of this water is entitled to the snowmaking ratio described in note 1 above. Denver Water and the ski area agree to participate in a joint study on the amount and timing of snowmaking return flows from the ski resort, and to cooperate in maximizing the amount of snowmaking return flows in any Water Court proceeding. The combined volume of water for snowmaking amounts under this Article III, excluding snowmaking by the Town of Frisco under Article III.B.11, and the 1992 Clinton Agreement shall not exceed the 6000 acre feet limit on snowmaking water contained in the 1992 Clinton Agreement.

b. The recipients of this water shall provide to Denver Water Replacement Water for each acre foot of the yield water. The ratio shall be 1 acre foot of Replacement Water for each acre foot of water delivered above or into Dillon Reservoir and 1.4 acre feet of Replacement Water for each acre-foot made available below Dillon Reservoir.

c. The Summit County users shall be responsible for accounting for the use of all water provided by Denver Water under this Agreement. This accounting will be coordinated by a single engineering firm with accounting under the 1985 Summit Agreement and the 1992 Clinton Agreement.

15. Place of Use. The place of use of any of the water provided under this Article III.B will be a matter of internal agreement among Summit County water users and will not be limited by Denver Water, provided that any water booked over to Denver Water under the 1992 Clinton Agreement will be retained in Clinton Reservoir.

16. Dillon Bypass Flows. Denver Water's release of water from Dillon Reservoir is subject to the terms of its 1966 right-of-way from the Department of Interior for Dillon Reservoir. Upon resolution of Blue River Decree issues, Denver Water agrees: (1) to waive its right to reduce releases under section 2 (C) of the 1966 right-of-way; and (2) to add the following new limitation upon its ability to reduce releases in addition to the conditions described in the right of way: Denver Water will not reduce releases below those required by section 2 (A) of the right of way unless an emergency

declaration banning residential lawn watering during the irrigation season is in force within its Service Area. Nothing herein shall alter or amend Denver's ability to reduce bypasses under paragraph 2(A) of the right of way during an emergency or during temporary periods of time involving maintenance or repairs on the water facilities involved. Nothing herein shall alter or amend any other obligation of Denver Water with respect to releases from Dillon Reservoir, including, without limitation, the terms of the Record of Decision for the Wolford Mountain (Muddy Creek) Reservoir; the Memorandum of Agreement among the U.S. Bureau of Reclamation, Northern Colorado Water Conservancy District, Colorado River Water Conservation District, and Denver Water dated December 30, 1991, regarding substitutions from Wolford Mountain Reservoir (MOA No. 2-AG-60-01550); the decree in Case No. 91CW252, Water Division No. 5 (also entered in Consolidated Case Nos. 2782, 5016, and 5017, U.S. District Court, District of Colorado); and the 1992 Clinton Agreement.

17. Silverthorne's Dillon Storage Water. Upon resolution of Blue River Decree issues, Denver Water and Summit County will amend the 1985 Summit Agreement to eliminate the current restrictions on the use of the 300 acre feet of Dillon Storage Water made available to the Town of Silverthorne. A form of the revisions to the 1985 Summit Agreement to accomplish this result is attached as Attachment H. The Silverthorne RICD will not be used to prevent or otherwise limit the exchange or substitution of any replacement or exchange water into Dillon Reservoir under this Agreement, the 1985 Summit Agreement or the 1992 Clinton Agreement.

18. Colorado Springs Substitution Agreement. Denver Water will agree to support extension of the Colorado Springs substitution agreement adjudicated in Case No. 03CW320, Water Division 5, as long as it is in substantially the same form as the present agreement.

**C. Clinton Reservoir Agreements.**

1. Upon the execution of this Agreement, the 1992 Clinton Agreement shall be amended to add a new whereas clause after the second whereas clause to read as follows:

Whereas, by decree of the District Court in and for Water Division No. 5, State of Colorado, in Case No. 98CW57, Clinton Reservoir was granted a Use Enlargement and Second Filling in the amount of 4,250 acre feet for domestic, municipal, industrial, snowmaking, recreation, fish and wildlife propagation and augmentation purposes, both on the eastern and western slopes of Colorado, and an application is pending in Case No. 06CW252 for Clinton Gulch Reservoir 1st Enlargement and Refill Right for an additional

210 acre feet. All references to Clinton Reservoir herein collectively refer to the storage rights decreed in Case Nos. W-2559, 98CW57 and 06CW252;

2. Upon the execution of this Agreement, paragraph 1(b) of the 1992 Clinton Agreement shall be amended to read as follows:

   (b) Clinton Reservoir will retain for the uses set forth in paragraph 1(c) below any water stored in an accounting year if an allowable fill occurs. An allowable fill occurs each year except: (i) when Green Mountain Reservoir does not fill under its own right and the Water Board is required to provide substitution water to Green Mountain Reservoir in order to retain water diverted at Dillon Reservoir; or (ii) when the contents of Dillon Reservoir are less than 100,000 acre feet on August 1 for reasons other than the Water Board's maintenance or repair of its Dillon Reservoir facilities and the total combined contents of the Water Board's Dillon, Gross, Cheesman, Eleven Mile and Antero Reservoirs are less than 51% of their total usable capacity on August 1. Subject to the provisions of Paragraph 9 below, if an allowable fill does not occur in a given accounting year, the water stored in Clinton Reservoir during that accounting year will be credited to the Water Board's account and retained in Clinton Reservoir until the contents of Dillon Reservoir as measured above the invert of the west portal of the Roberts Tunnel are 100,000 acre feet or less, in which event the water shall be released from Clinton Reservoir to Dillon Reservoir when requested by the Water Board, or until an allowable fill occurs, whereupon the Water Board's account balance of water stored in Clinton Reservoir will be reset to zero. The release of the Water Board's water stored in Clinton Reservoir shall be scheduled in such a manner as to meet the Water Board's needs in a timely manner and also to avoid the erosion of the Clinton Canal.

3. Clinton Flood Control Exchanges. At its sole discretion, Denver Water will allow the Clinton Ditch & Reservoir Company to temporarily store Clinton Reservoir water released from storage for flood control purposes in Dillon Reservoir, limited to a space available basis, and to use the stored water as an exchange supply, pursuant to operating procedures to be agreed upon at the time of the proposed exchange.

4. Clinton Reservoir Dead Storage Pool. Upon execution of this Agreement, Denver Water and the Clinton Ditch & Reservoir Company will enter into the Interim Agreement regarding the Clinton Reservoir dead storage pool attached hereto as Attachment I. 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. The interim agreement will renew on a

year-to-year basis so long as the Signatories are still engaged in efforts to achieve Resolution of Blue River Decree Issues.

5. Denver Water Opposition. Upon the execution of this Agreement, Denver Water will consent to the decree in Water Division No. 5 Case No. 06CW252 attached hereto as Attachment K for a total reservoir capacity of 4460 acre feet which includes a dead storage pool of 801 acre feet.

6. Spillway Enlargement Water. Upon Resolution of Blue River Decree Issues, Denver Water and the Clinton Ditch & Reservoir Company will modify their existing 1992 Clinton Agreement to add the spillway enlargement water (up to a maximum of 500 acre feet). The water from the total reservoir capacity, including the dead storage pool and spillway enlargement, will be allocated to existing shareholders of the Clinton Ditch & Reservoir Company on a pro rata basis as either fourth year supply, or one-third of that amount will be so allocated as an increase in the "Reservoir Yield" of Clinton Reservoir, as that term is defined in the1992 Clinton Agreement.

7. Upon the execution of this Agreement, paragraph 10(a) of the 1992 Clinton Agreement shall be amended to read as follows:

(a) Whenever water cannot be diverted from the Snake River or its tributaries because of decreed instream flows, or the operation of the instream flow memorandum of agreement between Keystone Resorts Management, Inc. ("Keystone") and the Department of Natural Resources, or the water quality of the Snake River, Keystone may pump up to 1500 acre feet of water from September 1 of each year to March 31 of the following year from the Montezuma Shaft of the Roberts Tunnel, subject to the provisions of this paragraph.

**D. Eagle County**.

1. Any development and use of Wolcott Reservoir shall be in compliance with the terms of the settlement agreement between Denver Water and the Eagle River Water & Sanitation District and Upper Eagle Regional Water Authority and the subsequent decrees in Water Division No. 5 Case Nos. 02CW125 and 07CW126.

2. Denver Water will not seek any new appropriation of water in the Eagle River basin or pursue or participate in any acquisition of water rights or any project that would result in any new depletion from the Eagle River basin without the prior approval of the Eagle County Commissioners, the River District, the Eagle Park Reservoir Company, the Eagle River Water & Sanitation District, and the Upper Eagle Regional Water Authority.

In addition, the Abstention Provisions applied in Article I of this Agreement provide that any entity receiving water from Denver Water under any Future Contract or any contract for Reusable Return Flows will not seek any new appropriation of water, or pursue or participate in any project that would result in any new depletion from the Eagle River basin.

3. Denver Water will not oppose any future interconnect between Clinton and Eagle Park Reservoirs, provided that the water in Clinton Reservoir that has been booked over to Denver Water pursuant to the terms of the 1992 Clinton Agreement remains in Clinton Reservoir.

4. Upon execution of this Agreement, Denver Water will withdraw its pending motion and statement of opposition in Water Division No. 5 Case No. 02CW403.

## E. Grand County and Fraser, Williams Fork and Upper Colorado River Basins

1. General Provisions for Article III.E.

a. Relationship to Moffat Project Permitting Process. Denver Water has applied for a permit for the Moffat Project from the Corps of Engineers ("COE") under Section 404 of the Clean Water Act. The Moffat Project involves enlargement of Gross Reservoir located in Boulder County and the diversion of additional water from the Upper Colorado, Williams Fork and Fraser River watersheds in Grand County. Grand County is a consulting agency in that permitting process and has submitted comments to COE that are a part of the regulatory record. As part of the permitting process, the COE will approve a Mitigation Plan designed to avoid, minimize, or mitigate any new impacts to the stream environment that might be caused by the Moffat Project.

i. Mitigation. The provisions of this Article III.E are not intended to define and do not substitute for the Mitigation Plan that will be required by COE. Denver Water will comply with the Mitigation Plan approved by COE in addition to fulfilling the commitments contained in this Article III.E. The funds committed by Denver Water in Articles III.E.2 and III.E.3 are subject to proportional reduction if the Mitigation Plan required in the permitting process mandates funds for the purposes described in those sections.

ii. Improvements. Denver Water's commitments in sections E.5 through E.24 include several measures designed to improve current stream conditions ("Improvements") and do not represent mitigation for the Moffat Project. The Signatories agree that they shall not represent

that the Improvements are designed or intended to avoid, minimize, or mitigate any impacts associated with the Moffat Project..

b. Water Rights Issues. The Signatories to this Agreement will cooperate to implement such legal mechanisms and to obtain such administrative and judicial approvals as Denver Water, Grand County, the River District, and Middle Park agree are necessary to ensure that the water provided under this Article III.E will be physically and legally available for the intended purposes of protecting and enhancing stream flows in the Fraser, Williams Fork, and Colorado Rivers and their tributaries. Denver Water agrees not to divert any water through the Moffat Project for storage in an enlarged Gross Reservoir until such time that the water committed by Denver Water pursuant to this Article III.E is legally available for use by Grand County.

c. Responsibility for Infrastructure. Several provisions of this Article III.E require Denver Water to deliver or make water available for various uses within Grand County. Except for the funding for water projects pursuant to Article III.E.14, Denver Water will not be responsible for the costs of any new infrastructure required to deliver or make the water available.

2. $2 million to Address Water Quality Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water will provide $2 million to pay for measures to address water quality, including but not limited to improvements to the capacity of wastewater treatment plants. If the Mitigation Plan required in the permitting process for the Moffat Project mandates funds for nutrient removal/water quality, then the direct funding to Grand County under this paragraph would be proportionately reduced. For example, if the mitigation plan requires the expenditure of $500,000 for nutrient removal/water quality, then the direct funding to Grand County would be reduced to $1.5 million. The water quality funds will be allocated and administered by a board consisting of one representative from each of the following entities: Grand County Commissioners, Town of Fraser, Grand County Water and Sanitation District No. 1, Winter Park Water and Sanitation District, Tabernash Meadows Water and Sanitation District, Granby Sanitation District, and Winter Park Ranch Water and Sanitation District.

3. $1 Million for Aquatic Habitat. Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water will provide $1 million to be used in the Cooperative Effort process described in Article III.E.6 for the purpose of improving aquatic habitat in the Upper Colorado, Fraser and Williams Fork River basins. If the Mitigation Plan required in the permitting process for the Moffat Project mandates funds for this purpose, then the direct funding to Grand County under this paragraph would be proportionately reduced.

4. Berthoud Pass Sedimentation Pond. Denver Water has entered into an agreement with CDOT to construct a sediment catch basin above Denver's diversion structure on the Fraser River. Denver Water has agreed to operate and maintain the project

and has also contributed $50,000 for this effort. Grand County agrees that Denver Water may seek mitigation credit for sediment removal in the Fraser River from COE for its participation in the sediment project.

5. Environmental Pool in Gross Enlargement. Denver Water has entered into an agreement with the Cities of Boulder and Lafayette dated February 24, 2010, to create a 5,000 acre-foot Environmental Pool within the enlargement of Gross Reservoir as part of the Moffat Project. Denver Water agrees not to store water, directly or by exchange, any of its West Slope water rights listed in Attachments A and E in the Environmental Pool in Gross Reservoir, unless the River District, Middle Park and Grand County have agreed in advance and in writing.

6. Cooperative Effort for Aquatic Environment. Denver Water, the River District, Middle Park, and Grand County agree to execute an intergovernmental agreement establishing the Learning by Doing Cooperative Effort ("Cooperative Effort") to protect, restore, and when possible enhance, the aquatic environment in the Upper Colorado, Fraser and Williams Fork River basins. Denver Water and Grand County will jointly request that the COE acknowledge the Learning by Doing IGA in the Record of Decision for the Moffat Project.

7. Additional $1 Million for Aquatic Habitat. Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water will provide $1 million to Grand County, in addition to the funds committed in Article III.E.3, to be used in the Cooperative Effort process for the purpose of improving aquatic habitat.

8. $2 Million for Future Environmental Enhancements. Denver Water will place $2 million in an interest bearing account acceptable to the Management Committee established as part of the Cooperative Effort within two years after the Moffat Project becomes operational to address potential future environmental enhancements in Grand County as part of the Cooperative Effort.

9. Funds for Windy Gap Pumps to Provide Environmental Flows. Beginning with the year the Moffat Project becomes operational, Denver Water will place $500,000 into an interest bearing fund (WG Pumping Fund) acceptable to and controlled exclusively by Grand County. Two years after the fund is established, Denver Water will place a second $500,000 into the Fund. The WG Pumping Fund shall be used by Grand County for the sole purpose of paying up to 50% of the annual costs for using the Windy Gap Pumps to pump water for environmental purposes. The WG Pumping Fund may increase over time due to interest income and lower-than-expected use of the Fund, and will be capped at $2 million dollars. Any amount in excess of $2 million at the end of a calendar year will be transferred to the Cooperative Effort established in Article III.E.6 above for environmental improvement projects identified in that process. Grand County, in its sole discretion, can elect to transfer all or a portion of the WG Pumping Fund to the Cooperative

Effort if Grand County determines that such a transfer would provide greater environmental value.

10. Annual Bypasses on Fraser River Collection System. Each calendar year beginning with the year the Moffat Project becomes operational, Denver Water agrees to make available to Grand County 1,000 acre feet of water from its Fraser Collection System ("Fraser 1,000 af") for use for environmental purposes and any incidental recreational benefit. The Fraser 1,000 af shall be in addition to bypasses of water by Denver Water required under the Amendatory Decision and existing contracts.

    a. As referenced in Article III.E.1.b, Denver Water will cooperate with Grand County and the otber Signatories to implement such legal mecbanisms, including the possibility of augmenting instream flows and making deliveries to downstream demands, and to obtain such court decrees and approvals as are necessary to protect the Fraser 1,000 af in the Fraser and Colorado Rivers so that it reaches critical stream segments and is not diverted directly or by excbange by intervening structures within Grand County.

    b. The Fraser 1,000 af shall be bypassed from Denver Water's existing facilities in coordination with the Cooperative Effort, at times, in locations and in the amounts requested by Grand County for environmental purposes. As part of the Cooperative Effort and on a case-by-case basis, Denver Water agrees to consider making available more than 1000 acre feet in a calendar year.

    c. The Fraser 1,000 af shall be measured at appropriate points of measurement for bypasses from the Fraser Collection System and shall be converted to acre feet with the standard factor, i.e.1 cfs for 24 hours = 1.983 af.

    d. Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water will undertake voluntary pilot projects using the Fraser 1,000 af for environmental purposes.

11. Annual Releases from Williams Fork. Each calendar year beginning with the year the Moffat Project becomes operational, if a portion of the Fraser 1,000 af is made available during a call on the river or when a Shoshone Outage Protocol is in effect as described in Article VI, Denver Water agrees to make available for release a like amount of water, up to 1,000 acre feet of water per year, from Williams Fork Reservoir ("Williams Fork 1,000 af") to Grand County for environmental purposes and any incidental recreational benefit. The Williams Fork 1,000 af shall be in addition to releases of water by Denver Water required under pre-existing contracts and other legal obligations.

    a. As referenced in Article III.E.1.b, Denver Water agrees to cooperate with Grand County and the other Signatories to implement such legal mechanisms, including augmenting instream flows and deliveries to downstream demands, and to obtain such court decrees and approvals as are necessary to protect the

Williams Fork 1,000 af in the Williams Fork and Colorado Rivers so that it reaches critical stream segments and is not diverted directly or by exchange by intervening structures within Grand County.

b. The Williams Fork 1,000 af releases shall be coordinated with the Cooperative Effort and shall be made available at times and in the amounts requested by Grand County for use in the stream.

c. The Williams Fork 1,000 af shall be measured at the gage immediately below Williams Fork Reservoir and converted to acre feet with the standard factor, i.e.1 cfs for 24 hours = 1.983 af.

d. All or part of the Williams Fork 1,000 af, up to 2500 acre-feet, may be carried over in Williams Fork Reservoir by Grand County into subsequent years, subject to space available, payment of pro rata evaporative loss, and so long as the carryover does not count against the Reservoir's fill or otherwise jeopardize Denver Water's decreed water rights. The Williams Fork 1,000 af and any amount carried over shall be the first to spill from Williams Fork Reservoir. Denver Water will notify Grand County as soon as it reasonably can that Williams Fork Reservoir is anticipated to spill, so that Grand County can determine whether to request a release prior to the anticipated spill.

e. In addition to carrying over all or part of the Williams Fork 1,000 af, as described in Article III.E.11.d above, Grand County may also exchange or substitute into the 2,500 acre-feet of carryover capacity in Williams Fork Reservoir, water Grand County has introduced to the river upstream of the confluence of the Colorado and the Williams Fork Rivers. The additional water stored in the carryover capacity will be subject to all the provisions of Article III.E.11.d.

f. Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water will undertake voluntary pilot projects using up to 1,000 acre-feet of releases from Williams Fork Reservoir, for environmental purposes.

12. Limits on Ability to Reduce USFS Bypass Flows. Denver Water is required by the United States Forest Service or the Bureau of Land Management to bypass the natural inflow at its points of diversion on the Fraser River, Vasquez Creek, St. Louis Creek and Ranch Creek under the stipulations 3(a), 3(b), 3(c), and 3(d) of the Amendatory Decision dated April 22, 1970, Serial No. 027914 (the "Amendatory Decision"). Beginning with the year the Moffat Project becomes operational, Denver Water agrees not to reduce bypasses of water as authorized by stipulations 3(e) and 5 of the Amendatory Decision, except when Denver Water has banned residential lawn watering during the irrigation season. However, Denver Water will not reduce the bypass flow on a particular stream to an extent that would cause a municipal water provider in Grand County to impose mandatory restrictions on

indoor water use, unless Denver Water is also imposing mandatory restrictions on indoor water use within its Service Area. Prior to the Moffat Project becoming operational, Denver Water agrees to undertake voluntary pilot projects limiting its ability to reduce bypass flows as described in this paragraph.

13. Ditch Operational Changes. Denver has acquired several irrigation water rights in Grand County and agrees to make those water rights available to enhance environmental flows.

    a. Big Lake Ditch. Upon execution of this Agreement, Denver Water will participate in a joint study of how to maintain the historic agricultural uses of the Big Lake Ditch so as to maximize the environmental benefits, while substantially preserving the yield for Denver Water that it has paid for and is counting on by retiring the Big Lake Ditch demand. If the study finds the balance described in this paragraph, then Denver Water will implement the study beginning with the year the Moffat Project becomes operational.

    b. Rich Ditch and Hammond No. 1 Ditch. Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project Denver Water and Grand County agree to fund a study to determine how best to enhance stream flows with Denver Water's rights in the Rich Ditch and Hammond No.1 Ditch. Any enhancements would be in addition to the Fraser 1,000 af and would begin with the year the Moffat Project becomes operational.

14. Financial Contribution to Infrastructure Projects in Grand County. Denver Water agrees to pay the following amounts to offset the costs of the water supply projects listed in Attachment L. The funds will be distributed by Grand County.

    a. Denver Water will place $1.95 million in the water supply project fund upon execution of an Article III Implementation Agreement in the form set forth in Attachment M by the recipients of those funds.

    b. Denver Water will place $2 million in the water supply project fund within six months after Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project or Resolution of the Blue River Decree issues, whichever occurs later.

15. Year-Round Deliveries of Clinton Bypass Water. Upon the signing of an Article III Implementation Agreement by all recipients of Clinton Bypass Water, Denver Water will provide Clinton Bypass Water under the 1992 Clinton Agreement on a year round basis if the Grand County Water Users provide replacement water in accordance with the Replacement Water criterion of 4/3 to 1 in the summer, and if that water is in-hand and usable by Denver Water. Grand County Water and Sanitation District No. 1, Winter Park Water and Sanitations District, Town of Granby and Town of Fraser have previously dedicated to Denver Water Replacement Water in Wolford Mountain Reservoir at a ratio of 2/3 to 1 for winter use. If any of

those entities opts to take their Clinton Bypass Water in the summer, that entity would be credited with the previously dedicated 2/3 acre-foot, and would only owe an additional 2/3 of an acre-foot of Replacement Water for summer releases. Denver Water agrees that the Grand County Operating Plan can be amended to add the Jim Creek diversion as a point of delivery for the Clinton Bypass Water.

16. Twenty Percent Water. Denver Water has had a policy whereby any party who purchases water rights for conveyance to the east slope through Denver Water's system will make 20% of that water available to in-basin users in the Fraser River Basin. Denver Water agrees to make the temporary 20% contracts permanent after the snowmaking return flow recapture plan described in the Grand County Operating Plan is implemented, and provided that snowmaking is within the 6,000 acre-foot limit established by the 1992 Clinton Agreement.

17. Municipal Use of Denver's Facilities. On a case-by-case basis, Denver Water may allow water treatment plants on the Fraser River to use Denver Water's Fraser River Collection System to convey water as a temporary source of supply, if a back up supply is available and the necessary infrastructure has been installed.

18. Use of Unused Capacity. Denver Water is willing to explore, on a case-by-case basis, the possibilities for using its system to benefit Grand County if Denver Water's yield and operational needs are not impacted and its costs are not materially increased.

19. Future West Slope Water Rights Development. In addition to the limitations on Denver Water provided by Article I.C.3, Denver Water further agrees that it will not undertake any future water development projects or appropriations or acquisitions of water rights located in Grand County without the prior approval of the Grand County Commissioners and the River District.

20. Grand County 375 Acre-Feet of Water. Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water agrees to make an additional 375 acre feet of water available to Grand County Water Users, to be managed in accordance with the 2012 Grand County Operating Plan with a Replacement Water ratio of 4/3 to 1 summer and 2/3 to 1 winter.

    a. One hundred acre feet of the 375 acre feet will be allocated to the Winter Park Recreational Association for use in connection with the Winter Park Ski Area and Resort. Any use of the 100 acre-feet for snowmaking will be governed by the provisions of footnote 1 in Article III.B.14; and snowmaking return flows must be above the Denver Water system.

    b. The remaining 275 acre feet will be allocated in equal shares of 68.75 acre feet to the Town of Fraser, the Town of Granby, the Grand County Water and Sanitation District No. 1, and the Winter Park Water and Sanitation District.

21. Water Supply for Grand County from Vail Ditch Shares. A group of governmental entities in Grand County has formed the Grand County Mutual Ditch and Reservoir Company (GCMD&RC), which has acquired shares in the Grand County Irrigated Land Company (Vail Ditch shares), and may acquire additional shares in the future. Upon execution of an Article III Implementation Agreement by GCMD&RC, Denver Water agrees to allow GCMD&RC's Vail Ditch shares to be traded for a like amount of water in Denver Water's Fraser Collection System and carried through that system for delivery and use in the headwaters of the Fraser River Basin, without any increase or decrease in yield to Denver Water's system, provided that GCMD&RC pays for any necessary new infrastructure and reimburses Denver Water for any additional operational costs.

Denver Water agrees not to oppose any changes of Vail Ditch shares or such other legal or administrative mechanisms that allow the GCMD&RC to use this water. Denver Water may file statements of opposition to such change applications for the limited purpose of ensuring compliance with the obligations of this agreement. Denver Water will cooperate in seeking Englewood's approval for use of its system to transport Vail Ditch shares. If GCMD&RC is able to divert the Vail Ditch shares at other locations, Denver Water agrees not to object to such alternative diversions, provided that there is no adverse impact to Denver Water's supply or operations.

22. Denver Water Lands for Habitat or Access. Denver Water and Grand County will study which of Denver Water's lands in Grand County may have potential value for wildlife habitat and public fishing access without impacting present and future operational needs. Within one year of Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water will decide which identified lands should be set aside for these purposes and what mechanism should be used.

23. Support for CWCB Filing. If information made available on the locations being considered, the impacts of the Wild and Scenic River issues, and the purpose and amounts of the filing demonstrates the lack of an impact on Denver Water's operations, Denver Water agrees not to oppose CWCB instream flow filings on those segments of the Colorado River below the confluence of the Blue River where currently there are no instream flow rights.

24. Support for RICD. If information made available on the locations being considered, the impacts to the Wild and Scenic River issues, and the purpose and amount of the filing demonstrate the lack of an impact on Denver Water's operations, Denver Water agrees not to oppose a Recreational In-Channel Diversion ("RICD") filing for the Colorado River below Gore Canyon in the Pumphouse reach above the Grand/Eagle County line.

**F. Grand Valley.**

Denver Water shall pay $1.5 million into a fund (the "Grand Valley Fund") to be designated by and controlled by the Grand Valley Signatories to this Agreement (the "Grand Valley Entities"). The following provisions shall apply to the Grand Valley Fund:

1. The Grand Valley Fund and any accruals to the Grand Valley Fund shall be used for water supply, water quality and/or water infrastructure projects in or benefiting the Grand Valley. Subject to such limitation, the projects for which the money in the Grand Valley Fund will be used shall be determined in the sole discretion of the Grand Valley Entities.

2. Denver Water shall pay the $1.5 million into the Grand Valley Fund pursuant to the following schedule:

   a. $1 million shall be paid within 2 years after resolution of Blue River Decree issues.

   b. $500,000 shall be paid within 2 years after the Effective Date of this Agreement.

G. **Middle Colorado River**.

1. Within two years after the Effective Date of this Agreement , Denver Water shall place $500,000 in an interest-bearing account to offset additional operation and maintenance costs or the costs of upgrading diversion structures of water treatment plants in Garfield County, pursuant to the provisions of Article VI.E.3.

2. Within one year of issuance of an acceptable permit for the Moffat Project, Denver Water agrees to place $1 million in a fund for flow-related projects to protect Wild & Scenic Outstandingly Remarkable Values, and to propose this contribution as an element of the Mitigation Plan described in Article III.E.1.a.

## ARTICLE IV
## Agreements Regarding Denver Water's Water Rights

A. Blue River Decree. The West Slope Signatories shall support and cooperate in any legal or administrative proceedings necessary to implement the provisions of this Agreement related to the Blue River Decree.

1. Current Water Court Proceedings. The West Slope Signatories shall not contest and the Signatories that are parties to the case will stipulate to the entry of the proposed decrees included in Attachment N in Case No. 2006CW255 (Roberts Tunnel) making 654 cfs absolute and finding diligence for the remaining conditional amount; and Case No. 2003 CW039 (Dillon Refill) making 141,712 acre-feet absolute in accord with the Amended Application to Make Absolute, filed with the court on February 16, 2006, and finding diligence for the remaining conditional amounts and uses.

2. Waiver of Claims Related to Blue River Decree. The West Slope signatories agree that claim preclusion applies to all claims and objections to Denver Water's operations under the Blue River Decrees raised or which could have reasonably been raised in Case Nos. 06CW255 and 03CW039, or which could have reasonably been raised in previous diligence proceedings for these water rights. The Signatories agree that the resolution of the current diligence proceeding constitutes an adjudication on the merits of their statements of opposition.

3. Claims Not Precluded. The West Slope signatories may file statements of opposition in future proceedings under the Blue River Decree limited to: 1) Denver Water's compliance with this Agreement, and 2) claims that were not and could not reasonably have been raised in prior proceedings.

B. East Slope Storage of Blue River Water. " Imported Blue River Water" means any water transported through the Roberts Tunnel that was diverted under the Blue River Diversion Project direct flow or Dillon Reservoir storage priorities decreed in C.A. Nos. 1805 and 1806 and Civil Nos. 2782, 5016 and 5017, including water diverted under the decrees in Case Nos. 87CW376 and 91CW252 and water exchanged pursuant to paragraph IV.C.1 below. Denver Water may store any Imported Blue River Water, whether released from Dillon Reservoir or diverted directly through the Roberts Tunnel at any existing or future storage facility on the East Slope; provided that the amount of Imported Blue River Water in storage on the East Slope does not exceed 400,000 acre feet at any point in time. This provision and limitation on the amount of Imported Blue River Water does not apply to the storage of return flows from the use or reuse of Imported Blue River Water either directly or by exchange to any existing or future storage facility.

C. Denver Water's Exchanges.

1. Decreed Exchanges. The West Slope Signatories agree that Denver Water may operate its exchanges from Williams Fork Reservoir to Dillon Reservoir decreed in the Blue River Decrees, Civil Action No. 657, and C.A. 1430, and Case No. 88CW382; and from Williams Fork Reservoir to Williams Fork Diversion Project (Jones Pass) and to the Fraser River Diversion Project decreed in Civil Action Nos. 657 and 1430).

2. Undecreed Exchanges from Dillon Reservoir. The West Slope Signatories will not object to Denver Water's continued operation of and a decree for exchanges from Dillon Reservoir to Williams Fork Reservoir with an appropriation date of April 25, 1983, and to existing points of diversion for the Fraser River and Williams Fork Diversion Projects with an appropriation date of September 20, 1966, provided that the exchanges are exercised and operated and the decree contains terms and conditions that are at least as protective as the following;

   a. An application for the exchanges was filed in Case No. 11CW21, the exchanges will be administered with a priority date of 2010, and the priority date or dates of the exchanges will not be antedated pursuant to C.R.S. § 37-92-305(10). The West Slope Signatories may file a statement of opposition but shall limit their opposition to ensuring that the protective conditions in this paragraph are part of the decree.

   b. The maximum amount of the exchange to the Williams Fork Reservoir is limited to a rate of 148 cfs (absolute) based on diversions on April 25, 1983 and an annual volume of 6,095 af (absolute) based on diversions in water year 1990. The maximum amount of the exchange to the existing points of diversion on Fraser River and Williams Fork River Diversion Projects is limited to a rate of 56 cfs (absolute) based on diversions on September 9, 1985 and an annual volume of 8,747 af (absolute) based on diversions in water year 1967.

   c. The exchanges from Dillon Reservoir to Williams Fork Reservoir or from Dillon Reservoir to the Fraser River and Williams Fork River Diversion Projects shall not be exercised or operated if the Division 5 Engineer advises Denver Water that curtailment of the exchanges is required to satisfy all senior instream flows existing in 2009, and located in the applicable stream reach affected by the diversion, including the following CWCB instream flow decrees:

      1) Colorado River (80CW448, 80CW446, 80CW447)

      2) Williams Fork River 79CW185, 79CW183, 79CW181, 79CW180, 79CW175, 79CW173, 79CW172, 79CW170, 79CW169, 79CW168, 79CW165)

(a) Bobtail Creek (79CW164, 79CW163)

(b) Steelman Creek (79CW167, 79CW166).

3) Fraser River (90CW308B, 90CW308, 90CW315, 90CW307, 90CW302, 90CW289)

(a) St. Louis Creek (90CW316, 90CW317A, 90CW317, 90CW304)
(b) Vasquez Creek (90CW318)
(c) Ranch Creek (90CW305, 90CW306A, 90CW306, 90CW314)
(d) Cabin Creek (90CW312)
(e) Hamilton Creek (90CW311)
(f) Meadow Creek (90CW310, 90CW309)

d. The provisions in this paragraph IV. C.2. shall apply irrespective of whether any of the CWCB instream flow decrees listed in Article IV.C.2.c above contain provisions that might otherwise protect Denver Water's existing exchanges through these reaches from impairment by CWCB instream flows in the reaches.

D. 1978 Judgment and Decree. The Signatories agree that operations by which Denver Water diverts under its 1946 Roberts Tunnel direct flow right prior to the completion of the annual fill of Green Mountain Reservoir are consistent with the Blue River Decree, including the Supplemental Judgment and Decree entered in the Consolidated Cases on February 9, 1978, so long as such operations are in accordance with the Green Mountain Reservoir Administrative Protocol (Attachment R-1). The Signatories will cooperate to obtain such administrative and judicial approvals as are necessary to ensure that the Protocol is made legally binding and enforceable and is implemented.

E. Substitution Agreements. The West Slope Signatories agree to support and execute, as appropriate, all future renewals of the Memorandum of Agreement among the U.S. Bureau of Reclamation, Northern Colorado Water Conservancy District, Colorado River Water Conservation District, and Denver Water dated December 30, 1991, regarding substitutions from Wolford Mountain Reservoir (MOA No. 2-AG-60-01550), provided that such renewals are consistent with this Agreement and are reasonably the same in form and substance as the existing MOA, as modified by the July 21, 1992 Agreement Amending Lease Agreement between Colorado River Water Conservation District and City and County of Denver. The West Slope Signatories reserve the right to object to the addition of new substitution, exchange or replacement sources, or amounts other than those specified in Article III.A.4 not currently decreed for such use by Denver Water

F. Straight Creek Project. Summit County agrees to extend and not challenge the validity of the 1041 permit for Denver Water's Straight Creek project dated July 17, 1985, so that a new permit will not be required for Denver Water to proceed with the project as permitted in 1985 as described in Attachment O. Consistent with its 1996 Resource Statement, Denver Water agrees that it will develop the Straight Creek project only with the prior approval of the Summit County Commissioners and the River District.

G. Wolford Mountain Reservoir.

1. Repayment Water. With regard to the 1000 acre feet of Repayment Water ("WMR 1KAF") referenced in paragraph 20(b) of the Agreement Amending Lease Agreement between the River District and Denver Water, dated July 12, 1992 ("Wolford Agreement"), the River District and Denver Water agree that the River District shall provide and account for the WMR 1KAF as follows:

a. The first 500 acre feet of the WMR 1KAF, along with the 613 acre feet of water available to Denver Water under paragraph 20(c) of the Wolford Agreement, shall be made available every year and used by Denver Water for substitution purposes.

b. The remaining 500 acre-feet of the WMR1KAF shall be stored and used for substitution purposes in the same manner as the water storage attributable to Denver Water's 40% interest in the Wolford Mountain Reservoir water right and storage space (a volume of 24,000 acre-feet), on a pro rata basis (500 acre-feet = 0.83% of 60,000 acre-feet, so water would be stored at a rate of 40.83%).

2. Second Enlargement of Wolford. Denver Water agrees to waive any right to participate in the second enlargement of Wolford Mountain Reservoir, in the same or a lesser amount as claimed in Case No. 03CW302, Water Division 5. The River District agrees that Denver Water is not obligated to pay any capital or OM&R costs associated with a second enlargement.

3. 1041 Permit for Wolford. The River District and Denver Water agree to work cooperatively as co-permittees to obtain any amendment to the Grand County 1041 permit for Wolford Mountain Reservoir that may be necessary (1) to address current operations of Wolford Mountain Reservoir under the Wolford Agreement; and (2) to effectuate the applicable provisions of this Agreement. Upon application for such a permit amendment, Grand County agrees to cooperate to process an amendment as quickly as possible.

4. Replacement Water. In addition to water in Wolford Mountain Reservoir that Denver Water is currently entitled to use for substitution and other purposes, this Agreement requires that Replacement Water be available to Denver Water as a condition of several water deliveries under Article III.

The estimated maximum volume of Replacement Water that might be required under this Agreement is 2,590 acre-feet in any single substitution year. Under the 1992 Clinton Agreement and the 1985 Summit Agreement, West Slope entities have agreed to provide Replacement Water to Denver Water in an amount estimated to be 1,249 acre-feet annually, which could be supplied from Wolford. The Signatories wish to ensure that Wolford Mountain Reservoir could be used to provide the full 3,839 acre feet of Replacement Water, even though it is anticipated that Replacement Water will be provided to Denver Water from other sources. The Signatories agree to cooperate to implement acceptable amendments or approvals as might be necessary to ensure that the 1991 MOA between the Bureau of Reclamation, Denver Water, the Colorado River Water Conservation District and the Northern Colorado Water Conservancy District; the decree in Case No. 91CW252; and the 1041 permit for Wolford Mountain Reservoir allow the use of the full 3,839 acre feet of Replacement Water, in addition to the water in Wolford the Denver Water is currently entitled to use for substitution and other purposes.

The West Slope Signatories agree that Replacement Water provided by the West Slope to Denver Water from Wolford Mountain Reservoir as Replacement Water under the 1985 Summit Agreement, the 1992 Clinton Agreement and this Agreement is a permissible use of Wolford Mountain Reservoir by Denver Water.

H. Storage in Gross and Ralston Reservoirs. The West Slope Signatories shall not contest Denver Water's storage of Williams Fork and Cabin-Meadow Creek water as decreed in Case No. 657, in Gross and Ralston Reservoirs. The agreement of the West Slope Signatories in this paragraph is premised on circumstances and consideration unique to this Agreement.

I. Deliveries of Water to the City of Golden. The West Slope Signatories shall not contest whether Denver Water's delivery of water to the City of Golden under the contract dated May 10, 2007, is consistent with Denver's water rights decrees.

J. Moffat Project Permitting. With the exception of Grand County (which is a consulting agency in the NEPA process for the Moffat Project), the West Slope Signatories agree that the concerns raised in the comment letters they submitted on the October 2009 Draft EIS for the Moffat Project will be resolved by the combination of (1) the benefits that will accrue to the West Slope pursuant to the terms of this Agreement, plus (2) the environmental mitigation requirements and conditions that will be imposed by the federal and state permitting agencies in the permits and approvals issued for the Moffat Project. Accordingly, the West Slope Signatories other than Grand County agree not to oppose the issuance of any local, state and federal approvals for the Moffat Project, including those permits listed in Attachment P. Nothing in this paragraph IV.J shall affect Grand County's continuing actions as a consulting agency in the NEPA process on the Moffat Project. Nor shall anything in this paragraph IV.J be deemed a waiver of rights a Signatory may have

upon any breach of this Agreement.

K. Water Rights in Eagle River Basin. The West Slope Signatories that are parties to the cases involving Denver Water's Eagle-Colorado water rights agree to implement the settlement of Denver Water's Eagle-Colorado diligence case and to facilitate the water court case changing the location of Denver Water's Piney River water right to State Bridge. All the West Slope Signatories agree not to oppose a water court application changing the location of Denver Water's Piney River water right to State Bridge.

L. Water Rights in Williams Fork Basin. The West Slope Signatories shall not contest and West Slope Signatories that are parties to the cases will stipulate to the entry of the proposed decrees included as Attachment Q in Case No. 2007CW031 (Jones Pass) making 245 cfs absolute and finding diligence for the remaining conditional amount; and finding diligence in Case Nos. 2007CW030 (Carr Ditch) and 2007CW029 (Darling Creek, Williams Fork Power, Moffat Tunnel.

1. Waiver of Claims. The West Slope Signatories agree that claim preclusion applies to all claims and objections to Denver Water's operations under the decrees listed in this Article IV.L raised or which could have reasonably been raised in the cases listed above, or which could have reasonably been raised in previous diligence proceedings for these water rights. The signatories agree that the resolution of the current diligence proceeding constitutes an adjudication on the merits of their statements of opposition.

2. Claims Not Precluded. The West Slope Signatories may file statements of opposition in future proceedings under the water rights listed above limited to: 1) Denver Water's compliance with this Agreement, and 2) claims that were not and could not reasonably have been raised in prior proceedings.

## ARTICLE V
## Green Mountain Reservoir Administration

A. Resolution of Disputes. The Signatories agree that resolution of long-standing disputes regarding the proper administration of water rights adjudicated in the Blue River Decree, including the water rights of Green Mountain Reservoir and the Green Mountain Powerplant, will provide significant benefits for water users on both the east and west slopes of Colorado, including maximizing beneficial use of the waters of the state, reducing litigation costs, and providing clarity as to water rights administration. Certain Signatories have negotiated with other entities a protocol to resolve the long-standing disputes, entitled the Green Mountain Reservoir Administrative Protocol ("Protocol"), a copy of which is attached to this Agreement as Attachment R-1.

The primary purpose of the Protocol is to clarify and implement certain provisions of the Blue River Decree by (1) setting forth a protocol for, among other things: (a) the preparation, review, and modification of a fill schedule for Green Mountain Reservoir; (b) definition and administration of the fill season for the 1935 First Fill Storage Right; (c) administration of water rights during the fill season; and (d) operation of the Green Mountain Reservoir Water Rights and the Cities' water rights in response to downstream calls senior to the Cities' water rights; (2) making as much water as possible available for upstream use, including use by the Cities, without impairment of the fill of Green Mountain Reservoir; (3) providing a clear definition of the Cities' replacement obligation operations, including Denver Water's obligations to the City Contract Beneficiaries as defined in Attachment R-1; (4) ensuring that the administration of water rights does not allow the water rights of the Cities to "hide behind" or otherwise benefit from the Green Mountain Reservoir Water Rights; (5) eliminating or reducing as much as possible, the extent to which the Green Mountain Reservoir 60 cfs bypass is accounted against the fill of the Green Mountain Reservoir Storage Rights; and (6) addressing the relative priority of the Green Mountain Water Rights, the Cities' water rights, and the Climax's C.A. 1710 rights in a manner agreed by the Blue River Decree parties and Climax; all in a manner that is consistent with the Blue River Decree.

B. Implementation of Green Mountain Administrative Protocol. The following Signatories are among the parties to an agreement entitled the Green Mountain Reservoir Administrative Protocol Agreement (the "Protocol Agreement", a copy of which is attached to this Agreement as Attachment R-2: Denver Water, the River District, Middle Park Water Conservancy District, Grand Valley Water Users Association, Orchard Mesa Irrigation District, Ute Water Conservancy District, Palisade Irrigation District, and Grand Valley Irrigation Company. The Protocol Agreement provides, among other terms and conditions, that these Signatories (and certain other parties to the Protocol Agreement) approve the Protocol and agree to its implementation. Nothing in this Agreement shall modify the obligations of the parties to the Protocol Agreement in accordance with the terms and conditions contained therein.

C. Non-opposition to Green Mountain Administrative Protocol. The following Signatories are not parties to the Protocol Agreement: the Boards of County Commissioners of Eagle, Grand, and Summit Counties, Clinton Reservoir Company, Eagle Park Reservoir Company, Eagle River Water and Sanitation District, Upper Eagle Regional Water Authority, Mesa County Irrigation District, City of Glenwood Springs, and City of Rifle. These Signatories agree not to oppose the implementation of the Protocol in any adjudication or other proceeding deemed necessary by the parties to the Protocol Agreement to make the Protocol legally binding and effective, or to confirm the consistency of the Protocol with the Blue River Decree, so long as the Protocol is substantially consistent with Attachment R-1. These Signatories may support the Protocol in any proceedings in which they have standing to participate.

## ARTICLE VI
## Shoshone Call

A. Shoshone Call.

1. The Shoshone Power Plant, which is owned and operated by Public Service Company of Colorado, d/b/a/ Xcel Energy ("Xcel"), is located on the mainstem of the Colorado River in Glenwood Canyon. The Shoshone Power Plant produces hydroelectric energy by means of two water rights, the 1902 Shoshone Senior Right in the amount of 1250 cfs and the 1929 Shoshone Junior Right in the amount of 158 cfs (together, "Shoshone Water Rights").

2. When the Shoshone Power Plant is operating, the Shoshone Water Rights command the flow in the river by exercising the Senior Shoshone Call against upstream junior water rights. When the Senior Shoshone Call is on, upstream reservoirs cannot store water and junior water rights cannot divert unless they provide an equal volume of replacement water to the stream. Over the years, many water users have come to rely on the river flow regime created by the Senior Shoshone Call ("Shoshone Call Flows").

3. Whenever the Shoshone Power Plant is subject to a shutdown for repair, maintenance, or other reasons ("Shoshone Outage"), the Shoshone Call cannot be exercised, and Shoshone Call Flows may not be present in the river.

4. The Signatories agree that a Shoshone Outage could adversely affect water users and recreation interests on the Colorado River. Accordingly, the Signatories agree to implement the operational procedures described in this section during a Shoshone Outage (the "Shoshone Outage Protocol") to mitigate such potential adverse effects. The Signatories also agree to cooperate to achieve permanent management of the flows of the Colorado River as described in Article VI.C, whether or not the Shoshone Power Plant remains operational.

B. Shoshone Outage Protocol.

1. Outage During Irrigation Season. If a Shoshone Outage occurs during the period from March 25 through November 10 (Irrigation Season) and results in a flow of the Colorado River at the Dotsero Gauge below 1,250 cfs (not including any water released for endangered fish species purposes), then the River District, Middle Park and Denver Water agree that they will operate their systems as if the Senior Shoshone Call were on the River, resulting in a flow of not more than 1250 cfs at the Dotsero Gauge (not including any water released for endangered fish species purposes). The Shoshone Outage Protocol

will not apply to Shoshone Outages that occur during certain very dry Irrigation Seasons, as described in the following subparagraphs.

a. The very dry Irrigation Seasons occur when the two conditions for a water shortage, as defined in paragraph 2 of the 2007 Shoshone Agreement, are met. Denver Water will make projections in March prior to March 25, and again in early May and late June to determine whether a water shortage is occurring.

b. If a projection made under subparagraph a above in March or May meets the conditions for a water shortage, then the Shoshone Outage Protocol will not apply during the period from that projection to the next projection. If a projection made in March or May does not meet the conditions for a water shortage, then the Shoshone Outage Protocol will apply during the period from that projection to the next projection; provided, however, that the Shoshone Outage Protocol will not apply during any period when the Shoshone Call is relaxed under the 2007 Shoshone Agreement.

c. If the projection made in June under subparagraph a above meets the conditions for a water shortage, then the Shoshone Outage Protocol will not apply during the remainder of the Irrigation Season that year. If the projection made in June does not meet the conditions for a water shortage, then the Shoshone Outage Protocol will apply during the remainder of the Irrigation Season that year.

2. Green Mountain Reservoir. The Signatories will cooperate with one another and use their best efforts to negotiate a separate agreement with the U. S. Bureau of Reclamation ("Reclamation") pursuant to which Reclamation would agree that if a Shoshone Outage occurs, it will continue to operate Green Mountain Reservoir as if the Senior Shoshone Call were on the river. Such agreement with Reclamation shall be subject to terms and conditions as to which the Signatories and Reclamation shall agree, including the following

a. Any water released from storage in Green Mountain Reservoir would be debited to the appropriate account within the reservoir's 100,000 Acre-Foot Pool to which the releases were attributed, e.g., the historic users pool identified in paragraph 2 of Reclamation's January 23, 1984 Operating Policy for Green Mountain Reservoir,

b. Water that would have been released from the 52,000 Acre-Foot Replacement Pool had the Senior Shoshone Call been on the river shall be debited as discretionary power releases from the 100,000 Acre-Foot

Pool, unless other arrangements are made with Reclamation and the Northern Colorado Water Conservancy District.

c. Reclamation will not be obligated to make releases from storage pursuant to this provision if water is not available in the 100,000 Acre-Foot Pool or if the total volume of Green Mountain Reservoir storage accounts is less than an amount to be agreed upon by the West Slope Signatories and Reclamation.

3. Outage During Winter Season. If a Shoshone Outage occurs during the period from November 11 to March 24 (Winter Season): (1) as a result of conditions other than scheduled maintenance on the Shoshone power plant facilities, and (2) if flows at the Dotsero Gauge are at or below 900 cfs, the River District and Denver Water agree that they will operate their systems as if the Senior Shoshone Call were on the river, subject to the following:

The Shoshone Outage Protocol will not apply fully to Shoshone Outages that occur during certain very dry Winter Seasons, when the overall storage in Denver Water's system is less than 79% of capacity on November 1. For purposes of this paragraph, the reservoirs that will be considered in determining overall storage are those reservoirs listed in Exhibit A to the 2007 Shoshone Agreement, but excluding any reservoirs under storage restrictions due to maintenance, repairs or orders from the Colorado State Engineer.

a. If the storage is less than 79%, but more than 63%, then the Shoshone Outage Protocol will be applied at half the normal effect during that Winter Season. For example, if Denver Water would be required to bypass or replace 60 c.f.s. under the full operation of the Shoshone Outage Protocol, Denver Water would be required to bypass or replace 30 c.f.s. if the Shoshone Outage Protocol is applied at half the normal effect.

b. If the storage is equal to or less than 63%, but more than 49%, then the Shoshone Outage Protocol will be applied at one-fourth the normal effect during that Winter Season.

c. If the storage is equal to or less than 49%, then the Shoshone Outage Protocol will not be applied during that Winter Season.

4. The Signatories will cooperate with one another and use their best efforts to:

a. Obtain the agreement of other diverters to participate in the Shoshone Outage Protocol.

b. Obtain the agreement of the State of Colorado water administration officials to shepherd water released from upstream reservoirs or

otherwise bypassed from upstream water rights under the Shoshone Outage Protocol to the Grand Valley under a donated instream flow, a municipal recreation delivery contract or other acceptable arrangement, and to refrain from accounting for releases from storage under the Shoshone Outage Protocol as storable inflow.

C. Permanency of Shoshone Call Flows.

1. It is the goal of the Signatories to achieve permanent management of the flow of the Colorado River so that the flow mimics the Shoshone Call Flows, whether or not the Senior Shoshone Call is on the river and whether or not the Shoshone Power Plant remains operational.

2. Denver Water and the River District agree to operate their systems on a permanent basis under the Shoshone Outage Protocol described in Article VI.B, even if the Shoshone Power Plant ceases operations altogether, and regardless of whether the plant is acquired under Article VI.D, subject to the following conditions:

a. The relaxation provisions described in Article VI.E below remain in full force and effect.

b. The Shoshone Outage Protocol would not apply for 17 cumulative days during the Winter Season, to duplicate the effect of the current scheduled outages for maintenance.

3. The Signatories agree to use their best efforts to work with Xcel Energy, other diverters, Reclamation and the State of Colorado water administration officials to devise and implement a mechanism or combination of mechanisms that will permanently preserve the Shoshone Call Flows. In addition to the amounts provided in Article VI.E.1.c., Denver Water agrees to pay one-third of the costs, not to exceed $100,000, incurred by West Slope Signatories to begin the process of implementing a mechanism to preserve the Shoshone Call Flows on a permanent basis. If total costs exceed $300,000, the Signatories will confer with regard to further actions.

D. West Slope Acquisition of Shoshone Assets

1. West Slope water users believe that one means to ensure the permanent maintenance of the Shoshone Call is the acquisition and operation of the Shoshone Power Plant and Shoshone Water Rights (the "Shoshone Assets") by a West Slope governmental entity that is mutually acceptable to the West Slope Signatories ("West Slope Governmental Entity").

2. Within twenty-four (24) months after the effective date of this Agreement ("Investigation Period"), any of the West Slope Signatories may agree among

themselves and at their own cost, to undertake and complete an investigation of the viability of purchasing the Shoshone Assets and operating the Shoshone Power Plant (the "Initial Investigation"). The Initial Investigation may include direct negotiations with Xcel; the hiring of consultants necessary to evaluate the Plant's physical and financial condition and the value of the Shoshone Assets; an evaluation of the legal and regulatory requirements that must be met in order to transfer the Shoshone Assets to a West Slope Governmental Entity; an evaluation of the appropriate West Slope Governmental Entity to acquire and operate the Shoshone Assets and the steps necessary to create such an entity, if a new entity is to be created; and any other matters that the West Slope Signatories believe are necessary or desirable. Denver Water shall assist the West Slope Signatories upon request in undertaking and completing the investigations during the Investigation Period. The West Slope Signatories may agree among themselves to extend the Investigation Period.

3. If the Initial Investigation determines that it is feasible for a West Slope Governmental Entity to acquire and operate the Shoshone Assets and if Xcel is willing to sell or otherwise transfer the Shoshone Assets to a West Slope Governmental Entity, the West Slope Governmental Entity may pursue the transfer of the Shoshone Assets. Denver Water agrees that it will support such acquisition and will take such reasonable actions as may be necessary to assist the West Slope Governmental Entity in completing the acquisition of the Shoshone Assets. Upon notification by any of the West Slope Governmental Entity of its intent to acquire the Shoshone Assets, Denver Water agrees not to assert its right under paragraph 13 of the 2007 Shoshone Agreement regarding the method of disposition of the Shoshone Water Rights.

4. Denver Water shall not be obligated to pay any of the purchase price for the Shoshone Assets if other mechanisms are reasonably available to preserve the Shoshone Call Flows. If other mechanisms are not reasonably available, and purchase of the Shoshone Assets is determined to be the best viable option to preserve the Shoshone Call Flows, then Denver Water agrees to contribute to the purchase price in a negotiated amount that is proportionate to its share of the overall benefits created by the purchase, and reasonable as compared to the financial contributions to the purchase price by other parties.

5. If a West Slope Governmental Entity acquires the Shoshone Assets, the Shoshone Call relaxation provisions described in Section VI.E below, shall remain permanently in effect.

E. Relaxation of Shoshone Call.

1. Existing Call Relaxation Agreement. Denver Water and Xcel are parties to the 2007 Shoshone Agreement, a copy of which is attached as Attachment S.

The 2007 Shoshone Agreement currently is set to expire on December 31, 2032. The Signatories agree that the Shoshone Call relaxation provisions of the 2007 Shoshone Agreement shall remain in effect during its term and any renewal thereof.

a. Denver Water agrees that, except as provided in Articles V and VI.E.2, it will not seek any relaxation of the Shoshone Call, other than a renewal of the specific provisions of the 2007 Shoshone Agreement beyond the year 2032.

b. The West Slope Signatories will not oppose a renewal of the 2007 Shoshone Agreement, provided that the Shoshone Outage Protocol remains in effect.

c. If the relaxation of the Shoshone Call is made permanent and Denver Water's yield is increased as a result, Denver Water agrees that 500 acre-feet of the increased yield (Relaxation Water) will be made available as potable water for use as blending water in a project using reusable return flows as described in Article I.B.2.e. The water supply created by the Relaxation Water will be added to the list of permissible fixed-amount contracts listed in Article I.B.1. In return for the availability of the Relaxation Water, the recipients must agree to pay the 2010 System Development Charge (SDC) applicable to potable water served outside the Combined Service Area. Denver Water will transmit the SDCs attributable to the Relaxation Water into a Relaxation Water Fund to be used (a) to contribute to the acquisition of the Shoshone Assets under Article VI.D; or (b) to implement a mechanism or combination of mechanisms that will permanently preserve the Shoshone Call Flows. It is anticipated that advance financing may be needed to accomplish the purposes described in this paragraph. The Signatories agree to consult with each other on an appropriate financing mechanism, should one be needed. It is also anticipated that the SDCs for the Relaxation Water may be paid pursuant to a payment schedule. If the Relaxation Water Fund is not fully expended for the purposes described in this paragraph, the money shall be used to contribute to the costs of a future cooperative project, determined by the River District and Denver Water to be beneficial to both the West Slope and the East Slope.

2. Expansion of Call Relaxation Period for Severe Drought Conditions. The 2007 Shoshone Agreement provides that the Shoshone Call may be relaxed during the period from March 14 until May 20, inclusive ("Call Relaxation Period"), under the conditions specified in the 2007 Shoshone Agreement. Denver Water desires to extend the Call Relaxation Period back into the winter months during extreme drought periods. The West Slope Signatories agree to support the amendment of the 2007 Shoshone Agreement to provide

for the relaxation of the Senior Shoshone Call down to 704 cfs (a "one-turbine call") for an expanded period during the winter months ("Expanded Call Relaxation Period"), subject to the following terms and conditions:

a. An Expanded Call Relaxation Period may occur under either of the following circumstances:

   i. The Senior Shoshone Call may be relaxed to a one-turbine call beginning on November 11 if Denver Water has banned outdoor residential lawn watering beginning no later than August 1, and the ban has remained in effect continuously from its inception through November 11.

   ii. The Senior Shoshone Call may also be relaxed to a one-turbine call beginning three (3) days after the date that the Denver Water Board formally adopts a drought declaration requiring that outdoor residential lawn watering be prohibited during the following irrigation season. The call relaxation under this section only applies to the period from November 11 until March 14 of the following year.

b. Denver Water will pay for power replacement costs as provided for in the 2007 Shoshone Agreement.

c. Denver Water will provide ten percent (10%) of the net water savings as defined in the 2007 Shoshone Agreement for use by West Slope Signatories. The West Slope Signatories will allocate the 10% as they may determine pursuant to any future agreement among them.

d. The Expanded Call Relaxation Period will end the earlier of:

   i. The date Denver Water rescinds its ban on outdoor residential lawn watering; or

   ii. The date a Cameo Call is placed on the river; or

   iii. March 14 of the year following implementation of the Extended Call Relaxation Period if implementation occurs on or prior to December 31; or March 14 of the year in which the Expanded Call Relaxation Period was implemented if implementation occurs on or after January 1.

e. Any relaxation of the Shoshone Call after March 14 of any given year shall occur only as provided in the 2007 Shoshone Agreement.

3. Call Relaxation Mitigation. The $500,000 to be placed in a special fund by Denver Water pursuant to Article III.G of this Agreement shall be managed and utilized as follows:

a. The proceeds of this fund will be used to help offset the impacts of, or prepare for, a call relaxation pursuant to the 2007 Shoshone Agreement or during the Expanded Call Relaxation Period, or a Shoshone Outage during the Winter Season pursuant to Section VI.B.3, above.

b. In order for a municipal water provider to access the funds described in this subsection, the provider must either be a signatory to this Agreement or must be located in Garfield County and agree to be bound by the terms and conditions of this Agreement.

c. The West Slope Signatories at their discretion may utilize funds available to any of them pursuant to Article III of this Agreement or the West Slope Fund to either replace or increase the funding for this special fund as may be necessary or desirable from time to time.

F. Environmental and Recreational Pilot Project. The Signatories agree to evaluate a pilot project to determine the feasibility of implementing a partial Shoshone Call relaxation in non-critical winter months and dedicating the saved water to environmental and recreation purposes.

G. Support for Glenwood Springs RICD. The City of Glenwood Springs currently has whitewater features located below the confluence of the Colorado River and the Roaring Fork River near Glenwood Springs, Colorado. Glenwood Springs currently does not have an adjudicated water right for these white water features but anticipates filing for one at some point in the future. In addition, Glenwood Springs anticipates creating additional white water features on the reach of the Colorado River between the Shoshone Power Plant and South Canyon on the main stem of the Colorado River. Denver Water will not oppose the filing of a water rights application for a Recreational In-Channel Diversion ("RICD") for the existing and proposed structures by Glenwood Springs; provided that any such application filed for any proposed structure above the confluence of the Roaring Fork and Colorado Rivers does not: (1) Claim a flow rate that exceeds the amount of water needed to satisfy the senior Shoshone Call for 1,250 cfs at the Dotsero gage; (2) Seek an amount of water in excess of that needed to replicate historic operations under the Senior Shoshone Call; or (3) Impair Denver's ability to divert under Article VI.

As to structures located below the confluence of the Roaring Fork and Colorado Rivers, Denver and Glenwood Springs recognize that the contributing flows of the two rivers make it difficult to predict the exact effect of a RICD on flows above the confluence. Glenwood Springs agrees to consult with Denver regarding such application prior to filing.

## ARTICLE VII
## Bilateral Commitments

A. Water Rights Peace Pact. With regard to all conditional water rights presently owned by the Signatories to this Agreement, and listed in Attachment T, the Signatories agree to withdraw any statements of opposition in each others' pending diligence filings and not to oppose each other's pending or future diligence applications, including applications to make the listed conditional rights absolute, provided, however, that the parties may file statements of opposition to such applications for the limited purpose of ensuring compliance with the obligations of this agreement.

B. Water Conservation. The Signatories to this Agreement will cooperate to develop and promote best management practices for water conservation appropriate for the various types of water use and regional geographic locations within the state. The Signatories agree to adopt any best management practices developed under this paragraph for their own water uses.

C. Compact Curtailment Plan. The Signatories agree to cooperate in good faith toward the development of a plan to avoid a potential curtailment of existing Colorado water rights under the provisions of the 1922 Colorado River Compact and the 1948 Upper Colorado River Compact, and to mitigate the impacts of any unavoidable curtailment. If joint efforts do not result in agreement on such a plan, each Signatory will take such actions as it may deem necessary to protect its water rights from curtailment.

D. Freedom to Operate. So long as the Signatories meet all of their obligations under this Agreement, their independent legal obligations and any contemporaneous implementing agreements, the Signatories agree that they do not have an obligation to operate their system or to conduct their decision-making in any particular way.

E. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Signatories, and nothing contained in this Agreement shall give or allow any such claim to a right of action by any third person. It is the expressed intention of the Signatories that any person other than a signatory receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

F. No Precedent. The various commitments and agreements of the Signatories to this agreement are premised on circumstances and considerations unique to this Agreement. Nothing in this Agreement shall be construed as establishing any legal precedent regarding any matters not expressly addressed in this Agreement. The Signatories agree that they do not intend this Agreement to have the effect of precedent or preclusion on any factual or legal issues in any matter not expressly addressed in this Agreement.

G. Risk Sharing. A fundamental premise of this Agreement is that the Signatories will not actively seek to undermine, or encourage others to undermine, the Signatories' respective interests and resources that have been committed, compromised, dedicated, or otherwise addressed in this Agreement. For purposes of this paragraph, "Adverse Action" means an action of a legislature, court, administrative agency, regulatory body or other governmental

entity that would cause a material adverse impact to a Signatory's interests or resources that have been committed, compromised or otherwise addressed in this Agreement. In the event that an Adverse Action is proposed or is likely to occur, the Signatory whose interests or resources would suffer a material adverse impact will notify the other Signatories. The Signatories will meet and discuss in good faith the potential detrimental effect of such Adverse Action, with the goal of determining whether any action by one or more Signatories could avoid the Adverse Action or mitigate its impact on the affected Signatory. Each party agrees to evaluate in good faith whether it can implement changes in its operations or undertake other efforts that would achieve this goal, and to implement any such efforts as may be agreed to by the Signatories.

H. Preservation of Governmental Powers. Except as specifically provided herein, nothing in this Agreement shall be construed as a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action taken thereunder, by any governmental or quasi-municipal entity including, without limitation, the legislative or quasi-judicial power or authority of Eagle, Grand and Summit Counties and the City and County of Denver, acting by and through its Board of Water Commissioners.

I. No Property Interest Created. Any rights created by this Agreement are contractual rights. This Agreement does not create and shall not be construed to create or convey any property interest, including any covenant, easement or servitude, in the real property of any Signatory.

J. Implementation of this Agreement.

1. In Article IV.A.1, the West Slope Signatories agree not to contest or to stipulate to the entry of the two proposed decrees included in Attachment N, in Case No. 2006CW255 (Roberts Tunnel – N1) and Case No. 2003 CW039 (Dillon Refill – N2), and to support and cooperate in any proceedings necessary to implement the provisions of this Agreement related to the Blue River Decree. The Signatories agree that, upon execution of this Agreement, Denver Water will file an amended application in 2006CW255 (Roberts Tunnel) for approval of the proposed Roberts Tunnel decree in Attachment N1 and publish supplemeutal notice thereof in the Division 5 Water Court. The Signatories agree that the amended application in Case No. 2006CW255 and the proposed Roberts Tunnel decree in Attachment N1 are among the mechanisms that will be used to implement Article III.A.3. If statements of opposition are filed as a result of the supplemental notice, the Signatories agree to cooperate to resolve any issues raised by such statements and to finalize the proposed Robert Tunnel decree in 2006 CW255.

2. The Signatories agree that the proposed Roberts Tunnel decree in Attachment N1 will not be presented to the federal court for entry of final judgment until the earlier of the following:

   a. The U. S. Bureau of Reclamation has executed the "separate agreement" described in Article VI.B.2, pursuant to which it agrees "that if a Shoshone

Outage occurs, it will continue to operate Green Mountain Reservoir as if the Senior Shoshone Call were on the river."

b. The Signatories agree that the goal of Article VI.C.3 has been achieved, such that the Signatories, other water users, and the State of Colorado water administration officials have devised and implemented "a mechanism or combination of mechanisms that will permanently preserve the Shoshone Call Flows." If the agreed-upon mechanism requires a water court application, achievement of the goal for purposes of this paragraph 2.b is defined as tbe entry of a final decree approving the mechanism by the water court, which is no longer subject to appeals.

3. Several provisions of this Agreement are contingent upon the Resolution of Blue River Decree Issues, which is defined in Article III.A.2 and the Definitions as the entry of final judgments and decrees no longer subject to appeals in 06CW255 and 03CW039. The Signatories acknowledge that any delay required by Article VII.J.2 above in the entry of a final judgment will cause an equivalent delay in implementing the various provisions of this Agreement that are contingent upon Resolution of Blue River Decree Issues.

4. The Signatories acknowledge that they are contractually bound upon the Effective Date of this Agreement, regardless of any delay in the entry of a final judgment in Case No. 06CW255 required by Article VII.J.2 above.

5. The Signatories agree to coordinate and provide reasonable assistance to each other in obtaining any necessary license, permit or approval to carry out this Agreement, including those described in this Article VII.J. The Signatories agree that not every issue and problem can be foreseen and dealt with in advance, and that cooperation will be needed to handle future events that might impair implementation of particular provisions of this Agreement. If such an impairment of a particular provision occurs, the Signatories agree to cooperate in good faith in a reasonable manner to develop alternative means to accomplish as nearly as possible the desired outcome of the provision in question.

K. Severability or Reform of Invalid Provisions. Wherever possible each provision of this Agreement shall be interpreted and implemented in such manner as to be effective and valid under applicable law. If any provision or portion of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect unless the remaining provision's effectiveness is explicitly dependent upon the invalid or unenforceable provision. The Signatories agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision. The provisions of this Agreement shall be reasonably and liberally construed to achieve the intent of the Signatories.

L. Venue. Venue for resolution of any dispute of water matters under this Agreement resulting in litigation sball be the District Court, Colorado, for the appropriate Water Division or federal district court, as appropriate under the Blue River Decree. Venue for all other matters under this Agreement resulting in litigation shall be the Colorado District Court for the county in which any defendant resides.

M. Conflict Resolution. The Signatories agree that if a dispute arises between Denver Water and a West Slope Signatory, the affected Signatories will confer in good faith and endeavor to resolve the concern. If the affected Signatories reach an impasse, they will select a neutral third party mediator who would seek an acceptable voluntary solution to the conflict. For conflicts that involve a technical or scientific matter, the neutral third party mediator may select an independent technical or scientific expert, acceptable to the Signatories involved in the mediation, to review and make a recommendation on the matter. If the conflict cannot be resolved through the efforts of the mediator, then the affected Signatories may pursue any available legal or administrative recourse.

N. Information Sharing. The Signatories shall maintain records in accordance with their normal procedures with regard to their respective obligations under this Agreement, and shall make such records available to each other upon reasonable request.

**Article VIII**
**Definitions**

| TERM | DEFINITION |
|---|---|
| 1985 Summit Agreement | Agreement between Summit County Board of Commissioners and Denver Water, dated September 19, 1985 |
| 1992 Clinton Agreement | Clinton Reservoir - Fraser River Water Agreement, dated July 21, 1992 |
| 2007 Shoshone Agreement | Agreement between Denver Water and Public Service Company of Colorado d/b/a Xcel Energy, effective January 1, 2007, concerning reduction of the Shoshone Call |
| Abstention Provisions | a. Abstain permanently from pursuing or participating in any project that would result in any new depletion from the Colorado River and its tributaries above the confluence with the Gunnison River, including without limitation the Eagle River (with the exception of the Eagle River MOU for Aurora and the Upper Colorado Cooperative Project). Pursuing or participating in a project means seeking formal approval of any aspect of a project in a regulatory or judicial forum, but does not include conducting various planning activities such as feasibility studies.<br><br>b. Abstain from pursuing or participating in any project that would result in diversions from the Colorado River Basin within Water Divisions Nos. 4 and 6, or downstream from the confluence of the Gunnison and Colorado Rivers in Water Division No. 5 for a period of 25 years. Pursuing or participating in a project means seeking formal approval of any aspect of a project in a regulatory or judicial forum, but does not include conducting various planning activities such as feasibility studies. This abstention period would be reduced to 15 years if, within the first 10 years following execution of this agreement, the NEPA permitting process for the Upper Colorado Cooperative Project has not been initiated. If construction of a cooperative project commences within 20 years from the date of this agreement, then the abstention period under this paragraph would be extended for an additional 10 years (a total of 35 years). |
| Blue River Decree | The stipulations, judgments, decrees and orders entered in Consolidated Civil Nos. 2782, 5016 and 5017, United States District Court, District of Colorado including determinations of diligence and to make absolute. |
| Cameo Call | A request to the state water officials to curtail diversions of junior water rights to satisfy any or all of the water rights legally divertible for irrigation and power purposes at the headgates of the Grand Valley Project's Government Highline Canal near Cameo and the Grand Valley |

| | |
|---|---|
| | Irrigation Company's Grand Valley Canal near Palisade. The water rights divertible at these headgates are owned and/or operated by Grand Valley Irrigation Company, Grand Valley Water Users Association, Mesa County Irrigation District, Palisade Irrigation District and Orchard Mesa Irrigation District and are listed on Exhibits A and B to the Stipulation and Agreement dated as of September 4, 1996, in the "Orchard Mesa Check Case," Case No. 91CW247. |
| Eagle River MOU | The agreement effective December 1, 1997 among the Cities of Aurora and Colorado Springs, Colorado River Water Conservation District, Cyprus Climax Metals Company, and the Vail Consortium consisting of the Eagle River Water and Sanitation District, Upper Eagle Regional Water Authority and Vail Associates, Inc. |
| Effective Date | The first business day at least seven days after the last Signatory has signed this Agreement. |
| Environmental Enhancement Project | A project that involves aquatic and riparian species habitat protection or enhancement; wetland creation or enhancement for (1) mined land reclamation or (2) other water quality protection; or watershed protection, including, without limitation, fuel reduction, erosion control or revegetation. |
| Fraser Collection System | Denver's Water system of diversions, canals, tunnels and other infrastructure located in the headwaters of the Fraser River Basin in Grand County |
| Grand County Operating Plan | Exhibit B to the 1992 Clinton Agreement |
| Grand County Water Users | Those entities listed in paragraph 4(c) of the Clinton Agreement |
| IRP | Denver Water's Integrated Resource Plan, prepared pursuant to the Denver Water Board's October 15, 1996 water resource statement, published in 1997 and updated in 2002 |
| Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project | The permits necessary for the Moffat Project are defined to be the 404 permit by the Corps of Engineers; the license amendment by FERC; the section 4(e) conditions and special use permit by the U. S. Forest Service; the 401 certification from the Colorado Water Quality Control Division; and the Boulder County 1041 permit, if one is required. The Denver Water Board must decide, in its sole discretion, whether to accept the permits within 6 months after the last final agency action regarding the permits on this list. If a permit is appealed during the six-month approval period, the deadline for Denver Water to decide whether to accept the permits will be extended until 30 days after the final resolution of the appeal. |
| Joint Use Project | A water supply project located on the East Slope agreed to by Denver Water and one or more East Slope water suppliers |

| | |
|---|---|
| Moffat Project | Denver Water's Moffat Collection System Project, which is the subject of permit application NWO-2002-80762-DEN, filed with the U. S. Army Corps of Engineers |
| Moffat Project becomes operational | The capacity of Gross Reservoir has been enlarged, and water has been diverted and stored in the enlarged portion of Gross Reservoir |
| Resolution of Blue River Decree Issues | The entry of final judgments and decrees in 06CW255, Water Division 5, and in 49-cv-2782, U.S. District Court, and in 03CW039, Water Division 5, that are no longer subject to appeals, in the form of the proposed decrees set forth as Attachment N to this Agreement. |
| Reusable Return Flows | Flows that return to the river system after the initial beneficial use of water, including reusable effluent, which may be reused or successively used, either directly or by exchange. |
| Reuse | Use of return flows or effluent directly or by exchange for the same or a different purpose as the initial use. |
| Senior Shoshone Call | A request to the state water officials to curtail diversions of junior water rights to produce a flow at the Dotsero Gauge of 1250 cfs for power purposes at the Shoshone Power Plant |
| Service Area | Denver Water's 2010 Service Area as depicted in the map in Attachment B. |
| Shoshone Call | A request to the state water officials to curtail diversions of junior water rights to produce a flow at the Dotsero Gauge of 1408 cfs for power purposes at the Shoshone Power Plant. |
| Shoshone Junior Rights | The water rights decreed for and associated with the Shoshone Power Plant (aka the Glenwood Power Canal), adjudicated for 158 cfs on February 7, 1956, with an appropriation date of May 15, 1929. |
| Shoshone Senior Right | The water right decreed for and associated with the Shoshone Power Plant (aka the Glenwood Power canal), adjudicated for 1,250 cfs on December 9, 1907 with and appropriation date of January 7, 1902. |
| Signatories | Denver Water, Colorado River Water Conservation District, Middle Park Water Conservancy District, Boards of County Commissioners of Eagle, Grand, and Summit Counties, Clinton Reservoir Company, Eagle Park Reservoir Company, Eagle River Water and Sanitation District, Upper Eagle Regional Water Authority, Grand Valley Water Users Association, Orchard Mesa Irrigation District, Ute Water Conservancy District, Palisade Irrigation District, Mesa County Irrigation District, Grand Valley Irrigation Company, City of Glenwood Springs, and City of Rifle. |
| Upper Colorado Cooperative Project | A water supply project located on the West Slope, agreed to by Denver Water and the West Slope Signatories to this Agreement, and designed to |

| | |
|---|---|
| | produce water for use on the East and West Slopes, including at least 20,000 acre-feet of average annual diversions for use on the East Slope. |
| West Slope Charge | A per-acre-foot charge that East Slope recipients of water under Articles I.B.1, I.B.2.e, I.B.3, and I.B.4 agree to pay into the West Slope Fund, to be collected by Denver Water pursuant to a West Slope Charge Agreement, in substantially the form of Attachment D. The payment will be equivalent to the stated percentage of the then-current standard rate for nonpotable or potable water, as applicable, charged by Denver Water to customers outside its Service Area. |
| West Slope Fund | A fund to be established within six months of the Effective Date of this Agreement to serve as the depository of payments of the West Slope Charge. The West Slope Fund will be managed by the Colorado River Water Conservation District, or other manager acceptable to the parties, and will be used solely for water supply, watershed and water quality projects that benefit the West Slope. No money from the West Slope Fund may be used for litigation costs.<br><br>a. One-fifth of the West Slope Charge imposed under Articles I.B.1, I.B.2.e, and I.B.4, or 2.5% of the 12.5% (Forest Restoration Funds) will he dedicated to accomplishing the following activities in the watersheds in which Denver Water's facilities in Grand and Summit counties are located:<br>Forest thinning, prescribed fire, tree planting, riparian vegetation improvements, road decommissioning, road improvements, mine reclamation, and other forest and watershed health treatments that benefit water flows or water quality within and below the watershed; and<br>Aquatic restoration or improvement activities that address sediment loading or other water flow or water quality issues caused directly or indirectly by the pine beetle infestation or other forest health issues.<br><br>b. The Forest Restoration Funds shall be split equally into two interest-bearing accounts, one for Summit County and one for Grand County, to be managed by the River District. The River District shall distribute Forest Restoration Funds from the accounts as directed by the counties.<br><br>c. During the term of the Memorandum of Understanding between Denver Water and the USDA, Forest Service Rocky Mountain Region (USFS) dated July 29, 2010 (MOU), the Forest Restoration Funds shall be used for projects consistent with USFS activities in the Sulphur and Dillon Ranger Districts that are included in the August 19, 2010 5-Year Operating Plan that supports the MOU, as determined by agreement between Denver Water and the Board of |

| | |
|---|---|
| | County Commissioners of each county for projects located in that county. This use of Forest Restoration Funds will be in addition to, and will not reduce the total amount of planned contributions of Denver Water and USFS under the MOU and the Operating Plan. The Forest Restoration Funds may be used on non-USFS lands.<br><br>d. Following termination of the MOU, Forest Restoration Funds from Grand County's account will be added to the resources available for use in the Learning by Doing Cooperative Effort established in Article III.E.6. Decisions on how best to use the funds will follow the decision process outlined in the Learning by Doing IGA. The use of Forest Restoration Funds from Summit County's account will be determined by agreement between Summit County and Denver Water. |

Colorado River Cooperative Agreement
Counterpart Signature Page

ATTEST:

Secretary

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

President

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

By:

APPROVED AS TO FORM:

General Counsel

**BOARD OF COUNTY COMMISSIONERS, COUNTY OF SUMMIT**

By:
Chairman

ATTEST:

By:
Gary Martinez, Summit County Manager

**BOARD OF COUNTY COMMISSIONERS, COUNTY OF GRAND**

By:
Chairman

ATTEST:

By:
Grand County Clerk and Recorder

**CLINTON DITCH & RESERVOIR COMPANY**

By:
Chairman

AND ITS ATTORNEYS

By:
General Counsel

**MIDDLE PARK WATER CONSERVANCY DISTRICT**

By:
President

AND ITS ATTORNEYS

By:
Cozier, McGowan & Walker

5/15/2012

**Colorado River Cooperative Agreement**
**Counterpart Signature Page**

**BOARD OF COMMISSIONERS OF EAGLE COUNTY**

By: _____
Chairman Pro Tem

AND ITS ATTORNEYS

By: _____

**EAGLE RIVER WATER AND SANITATION DISTRICT**

By: _____
Chairman of the Board of Directors

AND ITS ATTORNEYS

By: _____
Glenn E. Porzak
Porzak Browning & Bushong LLP

**UPPER EAGLE REGIONAL WATER AUTHORITY**

By: _____
Chairman of the Board of Directors

AND ITS ATTORNEYS

By: _____
Glenn E. Porzak
Porzak Browning & Bushong LLP

**EAGLE PARK RESERVOIR COMPANY**

By: _____
President

AND ITS ATTORNEYS

By: _____
Glenn E. Porzak
General Counsel

Colorado River Cooperative Agreement
Counterpart Signature Page

**COLORADO RIVER WATER CONSERVATION DISTRICT**

By: _____
President

AND ITS ATTORNEYS

By: _____
General Counsel

**CITY OF GLENWOOD SPRINGS**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Karp Neu Hanlon PC

**CITY OF RIFLE**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Karp Neu Hanlon PC

**GRAND VALLEY IRRIGATION COMPANY**

By: Robert Rugel 9-18-13
President Date

AND ITS ATTORNEYS

By:
Frederick G. Aldrich
Aldrich Law Firm, LLC

**GRAND VALLEY WATER USERS ASSOCIATION**

By: D. Kim Albertson 8/28/2013
President Date

AND ITS ATTORNEYS

By: Mark A Hermundstad 9/6/2013
Mark A. Hermundstad
Williams, Turner & Holmes, P.C.

**MESA COUNTY IRRIGATION DISTRICT**

By: Dave Voorhees 9/9/13
President Date

AND ITS ATTORNEYS

By: Nathan A. Keever 9/5/13
Nathan A. Keever
Dufford, Waldeck, Milburn & Krohn, LLP

**PALISADE IRRIGATION DISTRICT**

By: John Kryman 9/9/13
President Date

AND ITS ATTORNEYS

By: Nathan A. Keever 9/5/13
Nathan A. Keever
Dufford, Waldeck, Milburn & Krohn, LLP

**ORCHARD MESA IRRIGATION DISTRICT**

By: Terry Fuller 8-29-13
President Date

AND ITS ATTORNEYS

By: Mark A Hermundstad 9/6/2013
Mark A. Hermundstad
Williams, Turner & Holmes, P.C.

**UTE WATER CONSERVANCY DISTRICT**

By: [illegible] 8/30/13
President Date

AND ITS ATTORNEYS

By: Mark A Hermundstad 9/6/2013
Mark A. Hermundstad
Williams, Turner & Holmes, P.C.

# Attachment A

| Division/District and Name of Structure or Water Right Name | Source | Appropriation Date | Decree Date | Amount | Case No. |
|---|---|---|---|---|---|
| **Water Division No. 1** | | | | | |
| Lawn Irrigation Return Flow Project | Reusable return flow | N/A | Pending | 200 cfs | 2004CW121 |
| District No. 2 Storage Rights | | | | | |
| Denver Water/South Adams County | | | | | |
| Reservoir Water Supply Project | | | | | |
| North Reservoir Complex - Fill and refill | South Platte River | 10/15/1996 | 8/8/2011 | 17,747 AF | 2001CW286 |
| South Reservoir Complex - Fill and refill | South Platte River | 10/15/1996 | 8/8/2011 | 2,400 AF | 2001CW286 |
| South Reservoir Complex - Enlargement | South Platte River | 10/15/1996 | Pending | 1,129 AF | 2009CW264 |
| Lupton Lakes Storage Complex - Fill and refill | South Platte River | 7/12/2006 | Pending | 11,400 AF | 2007CW322 |
| District No. 2 Direct Flow Rights | | | | | |
| DIA Wetlands | South Platte River trib flow | 4/1/2000 | 12/27/2006 | 22.16 AF | 2003CW129 |
| DIA Wetlands | Box Elder Creek | 7/1/2000 | 1/14/2004 | 16.32 AF | 2002CW386 |
| Gravel Pit Exchange | South Platte River | 10/15/1996 | Pending | 80 cfs | 2009CW123 |
| Recycling Plant Intake | South Platte River | 10/15/1996 | 12/6/2011 | 70.0 cfs | 2001CW287 |
| Recycling Plant Intake exch. and subs. | South Platte River | 10/15/1996 | 12/6/2011 | 70.0 cfs | 2001CW287 |
| 5K Direct Flow Right | South Platte River | 10/31/1999 | 10/25/2011 | 150 cfs | 2001CW285 |
| Farmers and Gardeners Ditch | South Platte River | 03/15/1863 | 04/28/1883 | 13.72 cfs [K] | 2009CW84 |
| 1st Enlargement | South Platte River | 04/01/1874 | 04/28/1883 | 10.28 cfs [K] | 2009CW84 |
| District No. 6 Storage Rights | | | | | |
| Gross Reservoir | | | | | |
| Storage Right | South Boulder Creek | 05/10/1945 | 09/28/1953 | 113,078 AF [D] | C.A.12111 |
| Refill Right | South Boulder Creek | 05/10/1945 | 09/28/1953 | 113,078 AF [D] | C.A.12111 |
| Ralston Creek Reservoir | | | | | |
| Priority 31 Storage Right | South Boulder Creek | 01/01/1930 | 09/28/1953 | 11,000 AF | C.A.12111 |
| Priority 31 Storage Right | South Boulder Creek | 10/31/1932 | 09/28/1953 | 1,758 AF | C.A.12111 |
| District No. 6 Direct Flow Rights | | | | | |
| South Boulder Diversion Conduit | South Boulder Creek | 01/01/1930 | 09/28/1953 | 461 cfs | C.A.12111 |
| District No. 7 Storage Rights | | | | | |
| Ralston Creek Reservoir | Ralston Creek | 01/01/1930 | 10/18/1978 | 7,394 AF | W-7561 |
| Ralston Creek Reservoir | Ralston Creek | 01/01/1930 | 10/18/1978 | 3,382 AF [H] | W-7561 |
| Long Lake No. 1 (Upper) | Ralston Creek | 05/29/1873 | 10/04/1884 | 890 AF | Not given |
| Long Lake No. 1 (Upper) | Ralston Creek | 06/06/1909 | 05/13/1936 | 557 AF | C.A. 60052 |
| Long Lake No. 1 (Upper) | Ralston Creek | 06/06/1909 | 05/13/1936 | 72 AF [H] | C.A. 60052 |
| Long Lake No. 2 (Lower) | Ralston Creek | 06/06/1909 | 05/13/1936 | 292 AF | C.A. 60052 |
| District No. 7 Direct Flow Rights | | | | | |
| Ralston Creek Intake | Ralston Creek | 01/01/1930 | 10/18/1978 | 212 cfs | W-7561 |
| Ralston Creek Intake | Ralston Creek | 01/01/1930 | 10/18/1978 | 148 cfs [H] | W-7561 |
| District No. 8 Storage Rights | | | | | |
| Chatfield Reservoir | | | | | |
| Storage | South Platte River | 12/28/1977 | 08/29/1994 | 27,428 AF [D] | W-8783-77 |
| Exchange | South Platte River | 12/28/1977 | 08/29/1994 | 27,428 AF [D] | W-8783-77 |
| Marston Reservoir | South Platte River | 04/01/1911 | 06/16/1930 | 19,795 AF | C.A. 807 |

# Attachment A

| Division/District and Name of Structure or Water Right Name | Source | Appropriation Date | Decree Date | Amount | Case No. |
|---|---|---|---|---|---|
| Platte Canyon Reservoir | South Platte River | 09/05/1902 | 06/16/1930 | 905 AF | C.A. 807 |
| | | | | | |
| Strontia Springs Reservoir | South Platte River | 03/21/1962 | 12/19/1983 | 7,700 AF | 80CW406 |
| Refill Right | South Platte River | 03/21/1962 | 02/28/1990 | 7,864 AF | 87CW116 |
| | | | | | |
| District No. 8 Direct Flow Rights | | | | | |
| Brown Ditch | South Platte River | 11/30/1862 | 04/17/1990 | 8.75 cfs | 86CW014 |
| | | | | | |
| Cherry Creek Park Well No. 1 | Cherry Creek Alluvium | 07/25/1989 | 10/24/2006 | 98 gpm | 89CW198 |
| | | | | | |
| Cherry Creek Galleries (Well O) | Cherry Creek | 05/01/1887 | 06/16/1930 | 14.02 cfs | C.A. 807 |
| Cherry Creek Galleries (Well O) Aug. Plan | Cherry Creek | 05/01/1887 | 10/5/2007 | 2.45 cfs | 2003CW234 |
| | | | | | |
| Exchange within Denver Water System | South Platte River | 07/04/1921 | 05/18/1972 | 3,000 cfs [D,E,I] | C.A. 3635 |
| | | | | | |
| Four Mile House Well No. 1 | Cherry Creek Alluvium | 8/31/1948 | 8/29/1983 | 0.44 cfs | 83CW095 |
| Snell Ditch | Cherry Creek Alluvium | 9/30/1871 | 10/30/1991 | 31 gpm | 85CW325 |
| Success Ditch | Cherry Creek Alluvium | 4/30/1872 | 10/30/1991 | 169 gpm | 85CW325 |
| | | | | | |
| Garland Park Well No. 1 | Cherry Creek Alluvium | 9/20/1991 | 3/7/2007 | 525 gpm | 93CW110 |
| Success Ditch | Cherry Creek Alluvium | 4/30/1872 | 3/7/2007 | 525 gpm | 85CW325 |
| | | | | | |
| Intake Rights - Divertible at Conduit No. 20 Intake and Strontia Springs Reservoir/Conduit No. 26 (Foothills Tunnel) and other points | | | | | |
| Transfer from Platte Canyon Ditch | South Platte River | 07/30/1861 | 01/16/1984 | 4.70 cfs | 80CW039 |
| Transfer from Platte Canyon Ditch | South Platte River | 12/30/1863 | 01/16/1984 | 24.50 cfs | 80CW039 |
| Transfer from Platte Canyon Ditch | South Platte River | 12/30/1864 | 01/16/1984 | 17.30 cfs | 80CW039 |
| Transfer from Borden Ditch | South Platte River | 05/01/1866 | 01/16/1984 | 8.70 cfs | 80CW039 |
| City Right | South Platte River | 12/20/1870 | 01/16/1984 | 3.00 cfs | 80CW039 |
| City Right | South Platte River | 12/31/1874 | 01/16/1984 | 3.78 cfs | 80CW039 |
| Transfer from Weed Ditch | South Platte River | 05/01/1875 | 01/16/1984 | 2.31 cfs | 80CW039 |
| City Right | South Platte River | 09/10/1878 | 01/16/1984 | 13.22 cfs | 80CW039 |
| Transfer from Weed Ditch | South Platte River | 06/01/1879 | 01/16/1984 | 3.65 cfs | 80CW039 |
| City Right | South Platte River | 06/30/1880 | 01/16/1984 | 10.00 cfs | 80CW039 |
| Transfer from Love and Raynor Ditch | South Platte River | 05/08/1881 | 01/16/1984 | 1.71 cfs | 80CW039 |
| Transfer from Little Channel Ditch | South Platte River | 05/01/1882 | 01/16/1984 | 0.48 cfs | 80CW039 |
| Transfer from Island Ditch | South Platte River | 05/20/1885 | 01/16/1984 | 2.04 cfs | 80CW039 |
| City Right | South Platte River | 10/01/1889 | 01/16/1984 | 12.38 cfs | 80CW039 |
| City Right | South Platte River | 09/01/1892 | 01/16/1984 | 25.33 cfs | 80CW039 |
| City Right | South Platte River | 05/01/1899 | 01/16/1984 | 38.08 cfs | 80CW039 |
| City Right | South Platte River | 12/06/1910 | 01/16/1984 | 42.72 cfs | 80CW039 |
| | | | | | |
| Foothills Tunnel and Conduit No. 26 | South Platte River | 03/21/1962 | 12/19/1983 | 774 cfs [D,I] | 80CW408 |
| | | | | | |
| John F. Kennedy Golf Course Wells and Plan for Augmentation | | | | | |
| John F. Kennedy Well 1 (51765-F) | Cherry Creek | 01/13/1961 | 06/24/1985 | 1.23 cfs | 81CW404 |
| John F. Kennedy Well 2 (51764-F) | Cherry Creek | 02/13/1961 | 06/24/1985 | 1.53 cfs | 81CW404 |
| John F. Kennedy Well 3 (42580-F) | Cherry Creek | 03/27/1990 | 12/04/2006 | 700 gpm | 93CW033 |
| JFK Augmentation Plan | Cherry Creek | 01/13/1961 | 06/20/1986 | 535 AF | 81CW405 |
| JFK Golf Course Expansion | Cherry Creek | 03/27/1990 | 12/04/2006 | 571 AF | 93CW033 |
| | | | | | |
| Last Chance Ditch No. 2 | | | | | |
| Priority No. 14 | South Platte River | 12/30/1863 | 02/24/1993 | 1.74 cfs | 92CW014 |
| Priority No. 19 | South Platte River | 12/30/1865 | 02/24/1993 | 0.2 cfs | 92CW014 |
| Priority No. 39 | South Platte River | 03/03/1868 | 02/24/1993 | 6.54 cfs | 92CW014 |
| | | | | | |
| Nevada Ditch (Excludes amounts diverted at Farnell Lane Wells) | | | | | |
| Priority No. 4 | South Platte River | 08/30/1861 | 08/17/1992 | 13.06 cfs | 90CW172 |
| Priority No. 19 | South Platte River | 12/30/1865 | 08/17/1992 | 16.0 cfs | 90CW172 |

# Attachment A

| Division/District and Name of Structure or Water Right Name | Source | Appropriation Date | Decree Date | Amount | Case No. |
|---|---|---|---|---|---|
| Overland Golf Course Pumping Plant and Plan for Augmentation | | | | | |
| Epperson Ditch | South Platte River | 05/01/1860 | 04/26/1993 | 0.34 cfs | 91CW030 |
| Overland Golf Course Pumping Plant | South Platte River | 05/09/1958 | 02/17/1993 | 2.25 cfs | 91CW029 |
| Plan for Augmentation | South Platte River | | 05/24/1993 | 2.25 cfs | 91CW028 |
| | | | | | |
| District No. 9 Storage Rights | | | | | |
| Harriman Reservoir Priority No 1 Original Cons. | Bear & Turkey Creeks | 05/01/1873 | 02/04/1884 | 18.09 cfs | C.A. 6832 |
| Harriman Reservoir Priority No 2 1st Enlargement | Bear & Turkey Creeks | 04/01/1875 | 02/04/1884 | 37.58 cfs | C.A. 6832 |
| | | | | | |
| Marston Reservoir | Bear Creek | 08/15/1892 | 09/24/1935 | 19,795 AF | C.A. 91471 |
| | | | | | |
| Soda Lakes Reservoirs | | | | | |
| Priority No. 5 (Domestic) | Bear Creek | 02/11/1893 | 09/24/1935 | 598 AF | C.A. 91471 |
| | | | | | |
| District No. 9 Direct Flow Rights | | | | | |
| Harriman (Arnett) Ditch | | | | | |
| Priority No. 21 | Turkey Creek | 04/15/1868 | 05/13/1998 | 5.7 cfs | 91CW103 |
| Priority No. 23 | Bear Creek | 03/16/1869 | 05/13/1998 | 4.21 cfs | 91CW103 |
| Priority No. 25 | Bear Creek | 05/01/1871 | 05/13/1998 | 13.54 cfs | 91CW103 |
| Priority No. 30 | Bear Creek | 03/01/1882 | 05/13/1998 | 6.82 cfs | 91CW103 |
| Priority No. 67 Domestic (irrigation season) | Bear Creek | 12/05/1889 | 09/24/1935 | 25.50 cfs | C.A. 91471 |
| Priority No. 68 Domestic (non-irrigation season) | Bear Creek | 12/05/1889 | 09/24/1935 | 148.35 cfs | C.A. 91471 |
| Priority No. 69 Domestic (irrigation season) | Turkey Creek | 02/01/1890 | 09/24/1935 | 4.805 cfs | C.A. 91471 |
| Priority No. 70 Domestic (non-irrigation season) | Turkey Creek | 02/01/1890 | 09/24/1935 | 29.97 cfs | C.A. 91471 |
| Priority No. 77 Domestic (irrigation season) | Bear Creek | 08/15/1892 | 09/24/1935 | 19.16 cfs | C.A. 91471 |
| Priority No. 78 Domestic (irrigation season) | Turkey Creek | 08/15/1892 | 09/24/1935 | 4.50 cfs | C.A. 91471 |
| Priority No. 79 Domestic (non-irrigation season) | Bear Creek | 08/15/1892 | 09/24/1935 | 76.65 cfs | C.A. 91471 |
| Priority No. 80 Domestic (non-irrigation season) | Turkey Creek | 08/15/1892 | 09/24/1935 | 18.03 cfs | C.A. 91471 |
| | | | | | |
| Hodgson Ditch | | | | | |
| Priority No. 3 | Bear Creek | 06/01/1861 | 05/13/1998 | 1.55 cfs | 91CW102 |
| Priority No. 9 | Bear Creek | 05/31/1862 | 05/13/1998 | 0.39 cfs | 91CW102 |
| | | | | | |
| Pioneer-Union Ditch | | | | | |
| Priority No. 5 | Bear Creek | 12/10/1861 | 05/13/1998 | 4.98 cfs | 91CW100 |
| Priority No. 11 | Bear Creek | 09/01/1862 | 05/13/1998 | 3.26 cfs | 91CW100 |
| Priority No. 15 | Bear Creek | 03/15/1865 | 05/13/1998 | 10.09 cfs | 91CW100 |
| | | | | | |
| Robert Lewis Ditch | Bear Creek | 10/01/1865 | 05/13/1998 | 6.96 cfs | 91CW105 |
| | | | | | |
| Simonton Ditch | Bear Creek | 12/25/1860 | 05/13/1998 | 19.67 cfs | 91CW106 |
| | | | | | |
| Warrior Ditch | | | | | |
| Priority No. 4 | Bear Creek | 12/01/1861 | 05/13/1998 | 4.46 cfs | 91CW109 |
| Priority No. 8 | Turkey Creek | 04/16/1862 | 05/13/1998 | 1.03 cfs | 91CW109 |
| Priority No. 14 | Bear Creek | 10/31/1864 | 05/13/1998 | 9.21 cfs | 91CW109 |
| Priority No. 16 | Bear Creek | 04/01/1865 | 05/13/1998 | 4.16 cfs | 91CW109 |
| | | | | | |
| District No. 23 Storage Rights | | | | | |
| Antero Reservoir | South Fork South Platte River | 10/08/1907 | 05/31/1913 | 85,564 AF | C.A. 1678 |
| Antero Reservoir Refill Right | South Fork South Platte River | 12/31/1929 | 03/24/1953 | 20,046 AF | C.A. 3286 |
| Antero Reservoir Exchange Right | South Fork South Platte River | 04/01/1935 | 03/24/1953 | 20,046 AF | C.A. 3286 |
| | | | | | |
| Eleven Mile Canon Reservoir | South Fork South Platte River | 07/10/1926 | 03/24/1953 | 81,917 AF | C.A. 3286 |
| 1st Enlargement | South Fork South Platte River | 10/07/1957 | 04/27/1972 | 15,862 AF | C.A. 3701 |
| Refill Right | South Fork South Platte River | 12/31/1929 | 03/24/1953 | 81,917 AF | C.A .3286 |
| Exchange Right | South Fork South Platte River | 04/01/1935 | 03/24/1953 | 81,917 AF | C.A. 3286 |

# Attachment A

| Division/District and Name of Structure or Water Right Name | Source | Appropriation Date | Decree Date | Amount | Case No. |
|---|---|---|---|---|---|
| Cheesman Reservoir | South Fork South Platte River | 06/27/1889 | 05/22/1913 | 30,691 AF | C.A. 1636 |
| 1st Enlargement | South Fork South Platte River | 09/24/1893 | 05/22/1913 | 48,373 AF | C.A. 1636 |
| Refill Right | South Fork South Platte River | 12/31/1929 | 03/24/1953 | 79,064 AF | C.A. 3286 |
| Exchange Right | South Fork South Platte River | 04/01/1935 | 03/24/1953 | 79,064 AF | C.A. 3286 |
| | | | | | |
| District No. 23 Direct Flow Rights | | | | | |
| Beery Ditch | Four Mile Creek, South Platte R | 06/15/1861 | 07/14/1976 | 13.0 cfs | W-7739-74 |
| | | | | | |
| Four Mile No. 9 Ditch | Four Mile Creek, South Platte R. | 06/01/1868 | 11/12/1982 | 7.00 cfs | 80CW313 |
| | | | | | |
| **Water Division No. 5** | | | | | |
| Exchange Rights from Williams Fork Reservoir to: | | | | | |
| Dillon Reservoir and Roberts Tunnel | Blue R, Snake R, Ten Mile Cr | 06/24/1946 | 03/10/1952 | 252,678 AF | Cons. 2782, 5016, 5017 |
| Dillon Reservoir and Roberts Tunnel | Blue R, Snake R, Ten Mile Cr | 06/24/1946 | 05/30/1972 | 93,637 AF | C.A. 1430 |
| Dillon Reservoir and Roberts Tunnel | Blue R, Snake R, Ten Mile Cr | 06/24/1946 | 11/10/1992 | 96,822 AF | 88CW382 |
| Fraser River Diversion Project [C] | Fraser River and tributaries | 11/10/1935 | 11/05/1937 | 93,637 AF | C.A. 657 |
| Williams Fork Diversion Project [C] | Williams Fork River & tributaries | 11/10/1935 | 11/05/1937 | 93,637 AF | C.A. 657 |
| Cabin- Meadow Creek System [L] | Cabin-Meadow Creek and tribs. | 07/02/1932 | 10/12/1955 | 70 cfs/5,100 AF | Cons. 2782, 5016, 5017 |
| | | | | | |
| District No. 36 Storage Rights | | | | | |
| Dillon Reservoir [J] | Blue R, Snake R, Ten Mile Cr | 06/24/1946 | 03/10/1952 | 252,678 AF | C.A. 1806 |
| Refill Right [J] | Blue R, Snake R, Ten Mile Cr | 01/01/1985 | 08/23/1999 | 15,000 AF [D,F] | 87CW376 |
| | | | | | |
| District No. 36 Direct Flow Rights | | | | | |
| Blue River Diversion Project [J] | Blue R, Snake R, Ten Mile Cr | 06/24/1946 | 03/10/1952 | 788 cfs [A,D] | Cons. 2782, 5016, 5017 |
| | | | | | |
| District No. 51 Storage Rights | | | | | |
| Williams Fork Reservoir [C] | Williams Fork River | 11/10/1935 | 11/05/1937 | 93,637 AF | C.A. 657 |
| Williams Fork Reservoir | Williams Fork River | 10/09/1956 | 05/30/1972 | 93,637 AF | C.A. 1430 |
| | | | | | |
| Meadow Creek Reservoir [L] | Meadow Creek | 07/02/1932 | 11/05/1937 | 5,100 AF | C.A.657 |
| Meadow Cr Res - Moffat Tunnel Collection Sys. | Meadow Creek | 08/30/1963 | 05/30/1972 | 5,100 AF | C.A.1430 |
| | | | | | |
| Wolford Mountain Reservoir [G] | Muddy Creek | 12/14/1987 | 12/20/1989 | 23,997 AF | 87CW283 |
| Enlargement | Muddy Creek | 01/16/1995 | 12/31/1995 | 2,400 AF | 95CW281 |
| Substitution | Muddy Creek | | 03/05/1996 | 200 cfs | 91CW252 |
| Emergency Exchange | Muddy Creek | 03/03/1987 | 03/05/1996 | 200 cfs | 91CW252 |
| | | | | | |
| District No. 51 Direct Flow Rights | | | | | |
| Fraser River Diversion Project [C] | Fraser River & Tributaries | 07/04/1921 | 11/05/1937 | 1280 cfs [D] | C.A.657 |
| | | | | | |
| Cabin - Meadow Creek System | | | | | |
| Hamilton- Cabin Creek Ditch [L] | Fraser River Tributaries | 07/02/1932 | 11/05/1937 | 70 cfs | C.A.657 |
| Extension and Enlargement Hamilton Ditch [L] | Fraser River Tributaries | 07/02/1932 | 11/05/1937 | 25 cfs | C.A.657 |
| | | | | | |
| Moffat Tunnel Collection System | Fraser River & Tributaries | 08/30/1963 | 05/30/1972 | 100.0 cfs | C.A.1430 |
| | | | | | |
| Williams Fork Diversion Project [C] | Williams Fork River & Tribs | 07/04/1921 | 11/05/1937 | 245 cfs [B] | C.A.657 |
| | | | | | |
| Grand County CRCA Enivonmental Flow | Fraser and Williams Fork Rivers | 09/23/2010 | Pending | 1,375 a.f. | 2011CW152 |
| | | | | | |
| Dillon Reverse Exchanges | Fraser and Williams Fork Rivers | Varies | Pending | 56 cfs/ 148 cfs | 2011CW021 |

**NOTE: The information contained in this Attachment A is for descriptive purposes only, and is not intended to represent an interpretation, admission or modification of any of the water right decrees.**

A. Pending claim in Case No. 2006CW255 to make 654 cfs absolute.

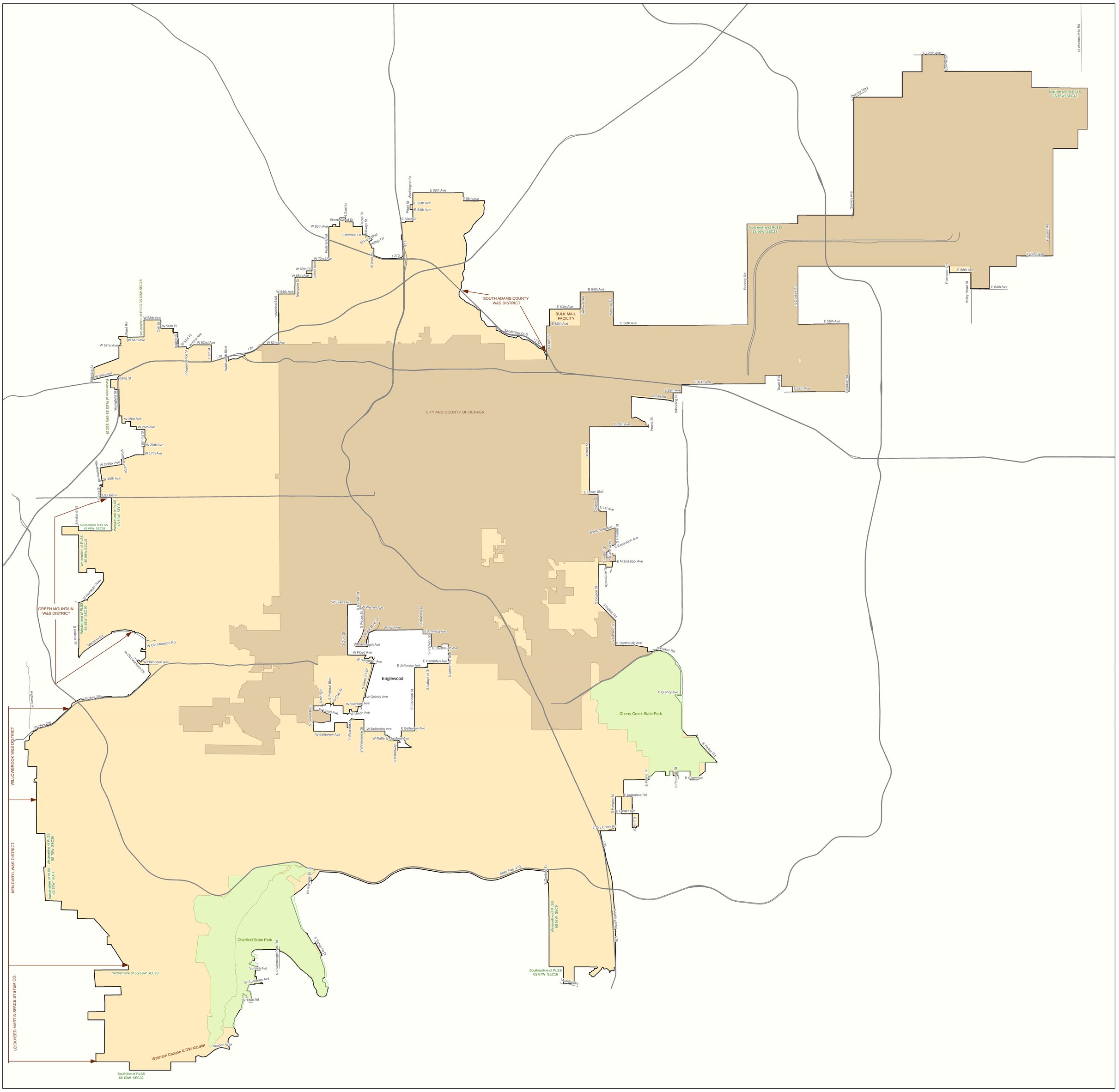
B. Pending claim in Case No. 2007CW031 to make 245 cfs absolute. Conditional water rights associated with the enlargement and extension of the Williams Fork Diversion Project will be developed cooperatively with West Slope Entities pursuant to Articles I.C.3 and III.E.19.

## Attachment A

| Division/District and Name of Structure or Water Right Name | Source | Appropriation Date | Decree Date | Amount | Case No. |
|---|---|---|---|---|---|
| C. Reuse of return flows generated by diversion and importation through the Moffat and Jones Pass Tunnels of this water right are subject to the ruling in Case No. 81CW405, Water Division No. I. If the agreement or ruling is modified such that Denver Water is able to reuse these return flows, such return flows shall be subject to Articles I and II. | | | | | |
| D. Water right is partially absolute and partially conditional. | | | | | |
| E. Pending application in Case No. 2008CW159 to make 672 cfs absolute. | | | | | |
| F. Pending application in Case No. 2003CW039 to make 141,712 acre feet absolute. Under the decree in 87CW376, Denver may import through the Roberts Tunnel 150,000 af over any consecutive 10 year period. | | | | | |
| G. By agreement dated July 21, 1992, Denver Water has 40% interest in Wolford Mountain Reservoir capacity and water right. Although Wolford Mountain Reservoir water is not physically used on the east slope, Denver Water operates an intergrated system and Wolford Mountain enables it to more fully use its Colorado River basin supplies. | | | | | |
| H. Amount is for portion of conditional right, which when added to the amount absolute, equals the physical capacity of the facility. | | | | | |
| I. Applies to only that portion of the water right needed to satisfy Denver Water's obligations under Articles I.A and I.B. | | | | | |
| J. Water provided to Denver Water pursuant to the terms of paragraph 9 of the May 15, 2003 Memorandum of Agreement Regarding | | | | | |
| Colorado Springs Substitution Operations shall be used for the same uses and locations as the rights listed on this Attachment A. | | | | | |
| K. May be used to satisfy Denver Water's obligations stemming from the ruling in Case No. 81CW405 in addition to use under | | | | | |
| Articles I.A and I.B. | | | | | |
| L. Denver Water's interests in this water right are the setforth in an agreement dated August 11, 1995 between Denver Water, | | | | | |
| City of Englewood and Climax Metals Company. | | | | | |

City and County of Denver Board of Water Commissioners

# Denver Water Service Area




## Attachment B

- Service Area
- City and County of Denver
- State Parks
- Primary Interstate

N

S

0 2 4 8

Miles

Service Area boundaries were produced from GIS shapefiles, which can be accessed through a GIS data request to Denver Water.

DENVER WATER

# Attachment C
# Fixed Amount Contracts
## Article I.B.1

| **Raw Water** | ***Maximum Annual Demand (acre feet)*** | ***Contract/ Stipulation Date*** |
|---|---|---|
| 5K Agreement | 5,000 | 08/31/1999 |
| Agricultural Ditch | 200 | 04/02/1936 |
| Antero Contracts (delivered through High Line Canal) | 354.82 | |
| Unassigned contracts | 59.18 | various dates |
| Arvada | 19,000 | 05/25/1965 |
| Arvada | 3,000 | 12/07/1999 |
| Arvada | 531 | 09/01/2004 |
| Arvada/Long Lakes Ranch (Sports Complex) | 400 | 12/16/1997 |
| Aurora | 300 | 04/18/1995 |
| Centennial W&S District | 1,000 | 12/20/1994 |
| Consolidated Mutual | 1,853 | 05/02/2000 |
| Englewood | 700 | 08/11/1995 |
| Englewood/Cabin Meadow Creek | 3,200 | 08/11/1995 |
| Englewood (Replacement for 1953 Agreement) | 750 | 08/05/1991 |
| Englewood - stipulation in Case No. 80CW039 | 60 | 02/24/1992 |
| Girls Scouts | 1.46 | 10/11/1988 |
| Golden/Vidler | 360 | 05/10/2007 |
| Inverness | 568 | 08/05/1997 |
| Lockheed Martin (Ridge Riders) | 6 | 06/07/1994 |
| North Table Mountain | 6,000 | 01/19/1988 |
| Rocky Mountain Arsenal | 300 | 04/09/2008 |
| U.S. Department of Energy (Rocky Flats-Dow Chemical) | 1,396 | 04/09/1985 |
| Westminster | 3,500 | 01/24/1984 |
| Westminster | 1,000 | 09/21/1993 |
| **Total Raw Water** | 49,539 | |

| **Treated Water - Outside Service Area** (Excludes Emergency Interconnect Agreements and miscellaneous Connector Agreements.) [B] | | |
|---|---|---|
| Broomfield | 6,500 | 11/01/1994 |
| East Cherry Creek Valley | 771 | 05/15/2002 |
| Inverness | 598 | 08/05/1997 |
| South Adams County W&S District | 4,000 | 11/30/1998 |
| Rocky Mountain Arsenal | 50 | 11/30/1998 |
| Chatfield South | 69 | 03/23/1999 |
| **Total Treated Water** | 11,988 | |

# Attachment C
# Fixed Amount Contracts
## Article I.B.1

| Recycle Water | | *Maximum Annual Demand (acre feet)* | *Contract/ Stipulation Date* |
|---|---|---|---|
| Rocky Mountain Arsenal | | 700 | 04/09/2008 |
| Xcel Energy (Cherokee Plant) | | 5,200 | 12/16/1997 |
| Recycle Water Unassigned | | 500 | |
| | **Total Recycle Water** | 6,400 | |
| | **Grand Total** | 67,927 | |

[A] Significant effort was made to assure this is a complete list of all of Denver's water delivery obligations under Fixed Contracts outside the Service Area in the South Platte River Basin. It does not include various delivery obligations Denver has in the Colorado River Basin, including:

- Grand County Water and Sanitation District dated October 6, 1960 and November 24, 1986
- Winter Park Water and Sanitation District dated January 23, 1980
- Summit County dated September 18, 1985
- Clinton Reservoir - Fraser River Water Agreement dated July 21, 1992
- Colorado Division of Wildlife dated May 27, 1993
- Cyprus Climax Metals dated August 11, 1995
- Taussig Ranch (Big Lake Ditch) dated March 30, 1998

[B] Connector Agreements provide for water service to single premises outside Denver through metered taps without specifying a fixed limit. Water supplied under Emergency Interconnect Agreements and Connector Agreements is permissible under Article I.A.

[C] Water formerly under contract to Rocky Mountain Arsenal and available for use under Article II.A.

**ATTACHMENT D**

WEST SLOPE CHARGE AGREEMENT

Agreement between Recipient, River District and Denver Water.

1. Recipient agrees to pay into the West Slope Fund the West Slope Charge for each acre-foot of water provided by Denver Water, as provided in Recipient's water supply contract with Denver Water.

- The West Slope Charge will be 12.5% or 15% of the standard nonpotable or potable water rate, as applicable, charged by Denver Water to customers outside its Service Area.
- The appropriate percentage will be determined by provision of the CRCA that authorizes the source of water [Future Contract (Article I.B.1); reusable return flows (Article I.B.2.e); spot sale (Article I.B.3.a); or temporary lease (Article I.B.3.b)].
- Recipient agrees that payment of the West Slope Charge is a contractual obligation to the River District, established at the defined percentage. Parties agree that the West Slope Charge is not a cost-based rate, but a contractual obligation, and is not governed by rate provisions in Denver Water's water supply contracts and leases.
- Recipient agrees that nonpayment of the West Slope Charge may constitute breach of this contract and may result in suspension of water deliveries.

2. Billing and payment

- Denver Water agrees to be responsible for billing and collection of the West Slope Charge on behalf of the River District.
- Whenever Denver Water adjusts the rates charged to customers outside the service area [usually annually], it will notify the River District in the same manner as it notifies its customers. The River District will respond in writing, requesting that Denver Water be responsible for billing and collection of the West Slope Charge based on the adjusted rate.
- Recipient will pay the West Slope Charge as part of its payment for water provided.
- Denver Water will follow its normal procedures for providing notice of nonpayment.
- Denver Water will transmit the collected West Slope Charge payments to the River District on a regular schedule determined by the payment schedule.

3. Default for nonpayment

- If Recipient fails to pay the West Slope Charge within the period allowed by Denver Water's normal collection procedures, Denver Water will send a written notice to the River District.
- The River District will send written notice to Recipient, with a copy to Denver Water, of breach of contract for failure to pay the West Slope Charge. The notice of breach shall include a reasonable period during which the Recipient may cure the breach.

- The River District will undertake such measures as it deems necessary to collect the unpaid West Slope Charge.
- If other efforts fail and the River District deems it necessary, the River District will send a notice of proposed suspension of water delivery to the Recipient and a notice of default to Denver Water requesting that Denver Water suspend delivery of water on a proposed date of suspension, which shall be no less than 10 days following the date of the notice. [For spot sales, the notice to Denver Water will request that the recipient be disqualified from future spot sales until the default is cured.]
- If payment is not received prior to the end of the noticed period, Denver Water agrees to suspend deliveries of water [or disqualify Recipient from future spot sales] as requested by the River District, until such time as the West Slope Charge is paid and the River District requests Denver Water to resume deliveries.
- Denver Water will not suspend deliveries of water to a Recipient unless the written notice of default includes a certification from the River District that it will take full responsibility for any damages to Recipient resulting from suspension of service requested by River District that is later determined to be unlawful or to be invalid by reason of an error committed by the River District, and to hold Denver Water harmless for any such damages and costs incurred by Denver Water, if any, in defending itself. The River District will assume no responsibility for an error committed by Denver Water.

4. For Recipients who receive water from reusable return flows and Future Contracts

- Agree to Abstention Provisions.

**ATTACHMENT D**

WEST SLOPE CHARGE AGREEMENT
For WISE project – Article I.B.4

Agreement between Authority, River District and Denver Water.

1. Authority agrees to pay into the West Slope Fund the West Slope Charge for each acre-foot of water provided by Denver Water, as provided in Authority's water supply contract with Denver Water.

- The West Slope Charge will be 12.5% of the standard nonpotable or potable water rate, as applicable, charged by Denver Water to customers outside its Service Area.
- Authority agrees that payment of the West Slope Charge is a contractual obligation to the River District, established at the defined percentage. Parties agree that the West Slope Charge is not a cost-based rate, but a contractual obligation, and is not governed by rate provisions in Denver Water's water supply contracts and leases.
- Authority agrees that nonpayment of the West Slope Charge may constitute breach of this contract and may result in suspension of water deliveries.

2. Billing and payment

- Denver Water agrees to be responsible for collection of the West Slope Charge on behalf of the River District.
- Whenever Denver Water adjusts the rates charged to Authority [usually annually], it will notify the River District in the same manner as it notifies its customers. The River District will respond in writing, requesting that Denver Water be responsible for billing and collection of the specified revised West Slope Charge based on the adjusted rate.
- Authority will pay the West Slope Charge as part of its payment for water provided.
- Denver Water will follow its normal procedures for providing notice of nonpayment.
- Denver Water will transmit the collected West Slope Charge payments to the River District on a regular schedule determined by the payment schedule.

3. Default for nonpayment

- If Authority fails to pay the West Slope Charge within the period allowed by Denver Water's normal collection procedures, Denver Water will send a written notice to the River District.
- The River District will send written notice to Authority, with a copy to Denver Water, of breach of contract for failure to pay the West Slope Charge. The notice of breach shall include a reasonable period during which the Authority may cure the breach.
- The River District will undertake such measures as it deems necessary to collect the unpaid West Slope Charge.

- If other efforts fail and the River District deems it necessary, the River District will send a notice of proposed suspension of water delivery to the Authority and a notice of default to Denver Water requesting that Denver Water suspend delivery of water on a proposed date of suspension, which shall be no less than 10 days following the date of the notice.
- If payment is not received prior to the end of the noticed period, Denver Water agrees to suspend deliveries of water as requested by the River District, until such time as the West Slope Charge is paid and the River District requests Denver Water to resume deliveries.
- Denver Water will not suspend deliveries of water to the Authority unless the written notice of default includes a certification from the River District that it will take full responsibility for any damages to the Authority resulting from suspension of service requested by River District that is later determined to be unlawful or to be invalid by reason of an error committed by the River District, and to hold Denver Water harmless for any such damages and costs incurred by Denver Water, if any, in defending itself. The River District will assume no responsibility for an error committed by Denver Water.

4. Agree to Abstention Provisions and agree to enforce Abstention Provisions against WISE Participants, as required in the Participation Agreement between the Authority and the WISE Participants, relevant portions of which are attached.

# Attachment E

| Division/District and Name of Structure or Water Right Name | Source | Appropriation Date | Decree Date | Amount | Case No. |
|---|---|---|---|---|---|
| Water Division No. 1 | | | | | |
| 33 Tributary Wells located in W.D. 1 | South Platte River | 1910 - 1965 | 5/17/1983 | 0.067 - 3.33 cfs | W-5406 |
| Non-tributary and Not Non-tributary | Not Non-trib. Upper Arapahoe Aquifer | N/A | 3/25/2010 | 1,972 AF | 2003CW186 |
| Underground Water | Non-trib. Upper Araphaoe Aquifer | N/A | 3/25/2010 | 4,187 AF | 2003CW186 |
| | Non-trib. Lower Araphaoe Aquifer | N/A | 3/25/2010 | 6,213 AF | 2003CW186 |
| | Non-trib. Laramie Fox-Hills Aquifer | N/A | 3/25/2010 | 16,723 AF | 2003CW186 |
| District No. 6 Storage Rights | | | | | |
| Ralston Creek Reservoir | | | | | |
| Priority 33C Storage Right | South Boulder Creek | 10/31/1932 | 09/28/1953 | 3,210 AF [C] | C.A.12111 |
| District No. 6 Direct Flow Rights | | | | | |
| South Boulder Diversion Conduit | South Boulder Creek | 01/01/1930 | 09/28/1953 | 789 cfs [C] | C.A.12111 |
| Denver Power Conduit No. 1 | South Boulder Creek | 05/10/1945 | 09/28/1953 | 350 cfs [E] | C.A.12111 |
| Denver Power Conduit No. 1 | South Boulder Creek | 05/10/1945 | 09/22/2010 | 350 cfs [E] | 2009CW124 |
| District No. 7 Storage Rights | | | | | |
| Ralston Creek Reservoir | Ralston Creek | 01/01/1930 | 10/18/1978 | 673 AF [C] | W-7561 |
| Long Lake No. 1 (Upper) | Ralston Creek | 06/06/1909 | 05/13/1936 | 503.8 [C] | C.A. 60052 |
| Long Lake No. 2 (Lower) | Ralston Creek | 06/06/1909 | 05/13/1936 | 716.3 [C] | C.A. 60052 |
| District No. 8 Storage Rights | | | | | |
| Chatfield Reservoir | | | | | |
| Storage (Recreational Uses) | South Platte River | 05/29/1975 | 12/31/1975 | 24,000 AF | W-7997-75 |
| Storage | South Platte River | 12/28/1977 | 08/29/1994 | 27,572 AF [C] | W-8783-77 |
| Storage | South Platte River | 12/28/1977 | 08/29/1994 | 156,200 AF [C] | W-8783-77 |
| Exchange | South Platte River | 12/28/1977 | 08/29/1994 | 27,572 AF [C] | W-8783-77 |
| Exchange | South Platte River | 12/28/1977 | 08/29/1994 | 156,200 AF [C] | W-8783-77 |
| Two Forks Reservoir | South Platte River | 01/18/1905 | 03/24/1953 | 145,133 AF [C] | C.A. 3286 |
| Two Forks Reservoir | South Platte River | 05/01/1926 | 03/24/1953 | 191,235 AF [C] | C.A. 3286 |
| Two Forks Reservoir Exchange | South Platte River | 04/01/1935 | 03/24/1953 | 336,369 AF [C] | C.A. 3286 |
| Two Forks Reservoir Refill Right | South Platte River | 12/31/1929 | 03/24/1953 | 336,369 AF [C] | C.A .3286 |
| District No. 8 Direct Flow Rights | | | | | |
| City Ditch [H] | | | | | |
| Priority No. 1 | South Platte River | 11/28/1860 | 12/10/1883 | 30.0 cfs | Not Given |
| Exchange w/in Denver Water System | South Platte River | 07/04/1921 | 05/18/1972 | 3,000 cfs [D,F,G] | C.A. 3635 |
| Foothills Tunnel and Conduit No. 26 [G] | South Platte River | 03/21/1962 | 12/19/1983 | 774 cfs [D,G] | 80CW408 |
| High Line Canal [H] | South Platte River | 01/18/1879 | 12/10/1883 | 600 cfs | C.A. 61540 |
| Nevada Ditch - Farnell Lane Wells - C.A. 1029 | | | | | |
| Priority No. 4 | South Platte River | 08/30/1861 | 08/17/1992 | 1.23 cfs | 90CW172 |
| Priority No. 19 | South Platte River | 12/30/1865 | 08/17/1992 | 1.50 cfs | 90CW172 |
| Strontia Springs Power Conduit | South Platte River | 03/21/1962 | 12/19/1983 | 72.0 cfs | 80CW407 |
| Waterton Canyon Management | South Platte River | 8/16/1978 | Pending | 7,864 AF | 2005CW316 |
| District No. 23 Storage Rights | | | | | |
| Antero Reservoir Refill Right | South Fork South Platte River | 12/31/1929 | 03/24/1953 | 65,483 AF | C.A. 3286 |
| Antero Reservoir Exchange Right | South Fork South Platte River | 04/01/1935 | 03/24/1953 | 65,483 AF | C.A. 3286 |
| Eleven Mile Canon Reservoir | | | | | |

# Attachment E

| Division/District and Name of Structure or Water Right Name | Source | Appropriation Date | Decree Date | Amount | Case No. |
|---|---|---|---|---|---|
| 2nd Enlargement | South Fork South Platte River | 12/09/1957 | 04/27/1972 | 17,810 AF [C] | C.A. 3701 |
| | | | | | |
| Water Division No. 5 | | | | | |
| District No. 36 Direct Flow Rights | | | | | |
| Straight Creek Unit Roberts Tunnel [I] | Straight Creek | 1/21/1957 | 1/21/1987 | 115 cfs [C] | C.A. 2371 |
| | | | | | |
| District No. 37 Storage Rights | | | | | |
| Eagle-Colorado Project [I] | | | | | |
| Eagle River Unit [I] | Eagle River | 12/31/2007 | 9/17/2010 | 500 cfs [C] | 2007CW214 |
| Colorado River Unit [I] | Colorado River | 12/31/2007 | 9/17/2010 | 600 cfs [C] | 2007CW214 |
| Eagle - Colorado Reservoir [I] | Eagle and Colorado Rivers and Alkali Cr. | 12/31/2007 | 9/17/2010 | 350,000 AF [C] | C.A. 1529 & 1548 |
| | | | | | |
| District No. 51 | | | | | |
| Fraser River Diversion Project | | | | | |
| Vasquez Reservoir [A,I] | Fraser River & Tributaries | 07/04/1921 | 11/05/1937 | 275 AF [C] | C.A. 657 |
| Vasquez Reservoir Enlargement [A,I] | Fraser River & Tributaries | 07/07/1936 | 11/05/1937 | 6,341 AF [C] | C.A. 657 |
| St. Louis Reservoir [A,I] | Fraser River & Tributaries | 07/04/1921 | 11/05/1937 | 1,150 AF [C] | C.A. 657 |
| | | | | | |
| Williams Fork Power Conduit | Williams Fork River & Tribs | 10/09/1956 | 05/30/1972 | 400 cfs [D] | C.A.1430 |
| Williams Fork Diversion Project [A,I] | Williams Fork River & Tribs | 07/04/1921 | 11/05/1937 | 355 cfs [B,C] | C.A.657 |
| Darling Creek Enlargement [I] | Darling Creek & Williams Fork River Tribs | 08/26/1953 | 05/30/1972 | 90 cfs [C] | C.A. 1430 |
| | | | | | |
| District No. 70 Storage Rights | | | | | |
| Sulphur Gulch Reservoir | Colorado River | 12/10/1999 | 10/8/2007 | 16.000 AF [C] | 99CW279 |
| | | | | | |

**NOTE: The information contained in this table is for descriptive purposes only, and is not intended to represent an interpretation, admission or modification of any of the water right decrees.**

A. Reuse of return flows generated by diversion and importation through the Moffat and Jones Pass Tunnels of this water right are subject to the ruling in Case No. 81CW405, Water Division No. I. If the agreement or ruling is modified such that Denver Water is able to reuse these return flows, such return flows shall be subject to Articles I and II.

B. Pending claim in Case No. 2007CW031 to make 245 cfs absolute. Only existing portion of Williams Fork Diversion Project, which includes Bobtail, Steelman, McQueary and Jones Creeks, is included in Attachment A. Conditional water rights associated with the enlargement and extension of the Williams Fork Diversion Project is not limited to use within the Service Area, but is subject to Article I.C.3.

C. Water right is conditional for the amount shown and exceeds Denver Water's existing ability to divert.

D. Water right is partially conditional and partially absolute.

E. Application to make 260 cfs absolute pending in Case No. 2008CW290

F. Pending application in Case No. 2008CW159 to make 672 of the 3,000 cfs absolute.

G. Applies to only that portion of the water right not needed to satisfy existing obligations under Articles I.A and I.B. This water right shall not be used to displace capacity that can be used to meet exisitng obligations under Articles I.A and I.B.

H. The City Ditch and High Line Canal are both currently used to meet demands outside the Service Area. Should the use of these rights ever be changed, they will be used in the same way as water rights on Attachment A.

I. This water right will only be developed cooperatively with West Slope Entities pursuant to Articles I C.3 and III.E.19.

## DENVER WATER'S CONSERVATION PLAN

As the Denver metropolitan area continues to grow, it's important that Denver Water plans for a sustainable water supply for the future. Successful stewardship of this resource is critical to our community's welfare and is a vital component of the state's economy.

No single water resource is sufficient to meet this challenge. Denver's Board of Water Commissioners recognizes the need to invest in and manage a diverse portfolio of resources to meet its future needs. That is why Denver Water is increasing water supply through recycled water and the development of new water supplies and decreasing demand through conservation.

**10-year Conservation Goal**

In September 2005, a Board resolution stated its 10-year conservation goal, which was to develop a conservation plan "capable of achieving consumption that is less than or equivalent on a per capita basis to the long-term water conservation goals in the current Integrated Resources Plan."

Denver Water's conservation goal is to reduce water use from 211 gallons per person per day (pre-drought average) to 165 gallons per person per day, which is a 22 percent reduction of treated water use from pre-2002 drought levels by the end of 2016. Gallons per person per day is a calculation of the sum of all treated water delivered from the treatment plants in one year divided by the population served in the combined service area and the number of days in the year.

The goal has several components to it:

- Accelerated Natural replacement – In 1994, federal plumbing codes were changed to set minimum standards for toilets, showerheads and faucet aerators. Over time, older, inefficient water fixtures will be replaced with new ones that meet the new federal standards.
- Active conservation – Denver Water's Integrated Resource Plan targets a conservation goal that could be achieved with direct measures by Denver Water. These measures are described in this conservation plan.
- Higher density – In the future, experts predict residential lot sizes will decrease as a result of a growing population. Half of residential water use is outdoors; therefore, smaller yards and less landscape will mean households use less water.
- Cultural and behavior change – encouraging customers to change how they value water to make long-lasting behavior changes that decrease water waste

The conservation plan seeks to achieve 29,000 acre-feet of savings, plus an amount from the natural replacement of fixtures, from each of the four areas mentioned above, but its primary goal is to fully achieve the conservation goal with measures described in this plan. The various components of the plan mirror much of Colorado's Guidebook of Best Practices for Water Conservation. Those components are as follows:

| Best Practice | Denver Water Programs |
|---|---|
| Metering, conservation-oriented rates | Denver Water has a fully metered system, provides monthly water bills that include a consumption graph showing demand over the last year so that customers can compare water use and set goals for reductions.<br>A steeply increasing block rate structure for residential customers provides incentive to use less to avoid higher per unit costs. Commercial and industrial customers are charged via a seasonal rate structure that rises steeply during the six-month irrigation season and sends a strong price signal to irrigate only when necessary. |
| Integrated resources planning, goal setting, and demand monitoring | Denver Water uses a comprehensive integrated resources planning method that encompasses least-cost analysis of demand and supply options that compares supply-side and demand-side measures (water conservation) on a level playing field and results in meeting essential planning objectives. Conservation goals are a significant portion of the integrated resources planning efforts. |
| System water loss control | Denver Water has a leak detection unit and regularly exceeds the American Water Works Association standards for leak detection and remediation. Water loss control involves system auditing, loss tracking, infrastructure maintenance, leak detection and leak repair for the water system. In addition, Denver Water monitors its own use of water for irrigation at its properties to ensure that efficiency standards are met. |
| Conservation coordinator | Denver Water has assigned an entire section of the Public Affairs Division to be responsible for the successful implementation of its water conservation programs. |
| Water waste ordinance | Denver Water has adopted regulations to prohibit water waste by its customers. Operating rules prohibiting water waste are in effect, and a structure of fines for water waste is used to enforce the rule. Among other provisions, the rule states that from May 1 to September 30 Denver Water customers may not water more than three days per week, and may not water between the hours of 10 a.m. and 6 p.m. |
| Public information and education | A cornerstone of Denver Water's conservation plan is outreach to the public about the value of water and the importance of wise stewardship and efficiency. This effort includes an extensive advertising campaign, publications, community involvement, education materials, marketing program, and information specific to different types of customers and water use. |
| Water efficient design, installation and maintenance practices for new and existing landscapes | Denver Water requires the incorporation of soil amendment for new development. New development is inspected to ensure that the proper amount of compost is added to the soil so that installed landscaping will have a good start and will need approximately 20 percent less water. |
| Landscape water budgets, information and customer feedback | Irrigation customers are provided with an opportunity to receive an irrigation system audit. As a follow-up Denver Water provides annual report cards on how efficient the customer is compared a baseline efficiency number. Customers can access an online tool to develop their own landscape water budgets, and can access their water use online to develop goals and receive feedback on their water use. |
| Irrigation efficiency evaluations | Customers may request an irrigation system evaluation at no cost. Trained technicians will audit the system, making note of problems and make |

| | |
|---|---|
| | suggestions on proper irrigation scheduling. This is available as requested by all customers, but large irrigators are targeted for these evaluations and must receive them in order to take advantage of incentive programs. |
| High-efficiency fixture and appliance replacement for residential and non-residential sectors | The goal of this program is to increase the installation rate of water efficiency fixtures and appliances and to remove inefficient and wasteful devices from the service area. There are two programs in use. The first involves a direct rebate to the customer for a fixture, such as a high efficiency toilet. These rebate programs are available to both residential and non-residential customers. The second is a direct installation, such as in Denver Water's program to retrofit low income housing with high efficiency toilets, faucet aerators and showerheads. |
| Residential water surveys and evaluations, targeted at high demand customers | Denver Water offers its high demand customers a free audit of their water use to determine whether fixture and appliance retrofits and/or process changes can help lower their water use. Following this process, these customers are eligible for a financial incentive if they invest in water saving practices that lower their water demand by a set minimum amount. In addition, customers who deem their water use to be above the norm can request a free high bill audit to determine whether there are leaks occurring that are driving their water use up. |

ATTACHMENT G

**SUMMIT COUNTY PROJECTS**
**Article III.B.4**

| Entity | Project |
|---|---|
| **Town of Dillon** | Pipeline/siphon into the Town of Dillon through Dillon Reservoir or alternative facilities for access to Salt Lick Gulch flow rights and storage capacity in Old Dillon Reservoir. |
| | Dillon Marina improvements - shoreline stabilization and wharf structure |
| | Improvements to wastewater treatment plant operated by Silverthorne/Dillon Joint Sewer Authority |
| **Town of Frisco** | Frisco Bay Marina pier redevelopment |
| | Dredging and excavation of Frisco Marina boat mooring and dock areas |
| **Frisco Sanitation District** | Installation of ultra-violet disinfection system and dome enclosures over equalization basins at the Frisco wastewater treatment plant |
| | Upgrade WWTP to meet standards to discharge to Miners Creek or relocate effluent outfall to discharge into Dillon Reservoir at a location that satisfies discharge permit conditions |
| **Town of Silverthorne** | Blue River improvements for fish habitat at low flows and recreation |
| | Straight Creek Watershed Protection |
| | Staged release structure for Dillon Dam |
| | Blue River erosion protection |
| | Improvements to wastewater treatment plant operated by Silverthorne/Dillon Joint Sewer Authority |
| **Town of Breckenridge** | Upper Blue River pumpback project and/or storage facilities, including Upper Blue River treatment plant |
| | Watershed protection plan for Blue River and Goose Pasture Tarn |
| **Summit County** | Lower and Upper Blue River stream habitat improvements and wetlands mitigation projects |
| | Improvements to Snake River wastewater treatment plant |
| | Mitigation of mine discharge in Upper Blue River basin |
| | Winterization of Upper Blue Reservoir |
| **Buffalo Mountain Metropolitan District** | Deepen existing wells |
| **East Dillon Water District** | Construct direct intake in Dillon Reservoir |
| | Study of surface water treatment options |
| **Hamilton Creek Metropolitan District** | Interconnection between Hamilton Creek system and Silverthorne system at Angler Mountain Ranch |
| **Mesa Cortina Water and Sanitation District** | Facilities to transfer water to Mesa Cortina through Buffalo Mountain Metro District or Silverthorne water system |

6. Dillon Reservoir Storage. (a) The Town of Silverthorne has contracted with the Middle Park Water Conservancy District for 250 acre feet of water per year from Granby/Windy Gap Reservoir derived by virtue of the Northern Colorado Agreement. Additionally, the Town of Silverthorne has 125 acre feet of water available to it in Wolford Mountain Reservoir, and has contracted with the Bureau of Reclamation for 250 acre feet in Green Mountain Reservoir. Denver agrees to release up to 300 acre feet per year to the Blue River from Dillon Reservoir for Silverthorne's benefit at Silverthorne's written request. Such water may be used for any beneficial use including augmentation of depletions attributable to other beneficial uses. In consideration of Denver's agreement to release such water, Silverthorne will provide for Denver's use by exchange from either Granby, Wolford Mountain, or Green Mountain Reservoirs, or another source acceptable to Denver if the foregoing sources are not available, 1.4 acre feet of water for each acre foot of water released from Dillon for Silverthorne's benefit.

Attachment I

# INTERIM AGREEMENT

This Agreement dated _____, 2010, 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.

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. 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 1200 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.

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.

4. The term of this Agreement shall be for one year from the date of this Agreement.

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

Executed as of the date first set forth above.

CLINTON DITCH AND RESERVOIR COMPANY

ATTEST:

_____
Secretary

_____
President

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

_____
Manager

Attachment J

# AGREEMENT

This Agreement dated _____, 2010, 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.

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. 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 1200 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.

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.

4. The term of this Agreement shall be perpetual.

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

Executed as of the date first set forth above.

CLINTON DITCH AND RESERVOIR COMPANY

ATTEST:

_____
Secretary

_____
President

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

_____
Manager

Attachment K

| | |
|---|---|
| DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO<br><br>109 8th Street, Suite 104<br>Glenwood Springs, CO 81601 | |
| CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CLINTON DITCH & RESERVOIR COMPANY<br><br>IN THE BLUE RIVER AND ITS TRIBUTARIES,<br><br>IN SUMMIT COUNTY, COLORADO | ▲ COURT USE ONLY ▲ |
| Porzak Browning & Bushong LLP<br>Glenn E. Porzak (#2793)<br>Thomas W. Korver (#36924)<br>929 Pearl Street, Suite 300<br>Boulder, CO 80302<br>Tel: 303-443-6800<br>Fax: 303-443-6864<br>Email: gporzak@pbblaw.com | Case Number: 06CW252 |
| **DECREE OF THE WATER COURT** | |

The application in this case was filed on December 22, 2006, and was referred by the Water Judge for the District Court in and for Water Division No. 5, State of Colorado (the "Water Court") to the Referee of the Water Court in accordance with Article 92 of Chapter 37, Colorado Revised Statutes, known as the Water Right Determination and Administration Act of 1969. This matter was rereferred to the Water Judge by Order dated September 8, 2009.

The Water Judge, having made such investigations as are necessary to determine whether or not the statements in the application are true, and having become fully advised with respect to the subject matter of the application, does hereby enter the following as the Decree of the Water Court.

1. Application. This matter involves the Application for Water Rights filed by Clinton Ditch & Reservoir Company, whose address is P.O. Box 68, Breckenridge, Colorado 80424.

2. Jurisdiction. All notices required by law have been duly given, including publication in the Resume for Water Division No. 5. The Water Court has jurisdiction over the application and all parties affected thereby, whether or not they have chosen to appear.

3. Opposition. Statements of opposition to the application have been timely filed by the City of Colorado Springs, acting through Colorado Springs Utilities, the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water Board"), the Town of Frisco, Climax Molybdenum Company, and the Town of Silverthorne. All parties have consented to entry of this Ruling and Decree by way of Stipulations with the Applicant, approved and on file with the Water Court. The time for filing additional statements of opposition has now expired.

4. Name of Structures and Description of Water Right:

a. Name of Reservoir: Clinton Gulch Reservoir 1st Enlargement and Refill Right.

b. Legal Description of the Reservoir: The dam is located in Summit County in the SW ¼, NW ¼, Section 25, T. 7 S., R. 79 W., 6th P.M. at a point 2,358.6 feet from the North line and 1,057.2 feet from the West line of said Section 25.

c. Source: Clinton Creek, tributary to Ten Mile Creek, tributary to the Blue River.

d. Date of Appropriation: May 20, 2005.

e. Amount: 210 acre-feet, absolute, together with the right to refill this amount when water is available in priority.

f. Use: Domestic, municipal, irrigation, industrial, snowmaking, recreation, fish and wildlife propagation, and augmentation purposes, both on the eastern and western slopes of Colorado.

g. Surface Area at Normal High Water Line: 91.4 acres

(i) Maximum Height of Dam: 170 feet

(ii) Length of Dam: 1,550 feet

h. Total Capacity of the Reservoir: 4,460 acre-feet

(i) Active Capacity: 3,659 acre-feet

(ii) Dead Storage: 801 acre-feet

5. Findings of the Water Judge. On October 14, 1979, the Water Court entered a decree in Case No. 79CW49 granting the absolute right to 4,250 acre-feet to be stored Clinton Gulch Reservoir for industrial, domestic, irrigation, recreation, and fish and wildlife propagation purposes. On September 17, 1998, the Water Court entered a decree in Case No. 98CW57 approving the Clinton Gulch Reservoir Use Enlargement and Second Filling for 4,250 acre-feet,

absolute, for the uses described in paragraph 4(f) above. Applicant seeks to conform the decreed capacity of the Reservoir to the surveyed, as-built capacity of the Reservoir.

By way of high resolution reservoir capacity surveys prepared by Applicant's engineers and by engineers of the Denver Water Board, the Water Judge finds the total Reservoir capacity to be 4,460 acre-feet at the spillway crest elevation of 11,058.0 feet. The Water Judge further finds that the Reservoir has filled and spilled and has been used for the claimed beneficial uses since the Reservoir was purchased by the Applicant in 1992.

6. Decree of the Water Court. The foregoing paragraphs are incorporated into and made a part of this Decree. The Water Judge, having examined the information submitted by the Applicant, and having completed the investigations necessary to make a determination in this matter, rules that the Applicant is entitled to an absolute water right in the amount of 210 acre-feet for the Clinton Gulch Reservoir 1st Enlargement and Refill Right for all decreed purposes described in paragraphs 4(f) above, which amount shall be in addition to the 4,250 acre-feet previously decreed absolute in Case Nos. 79CW49 and 98CW57. Accordingly, the Water Judge hereby rules that the Application should be, and hereby is approved.

The priorities awarded herein were filed in the Water Court in 2006 and shall be administered as having been filed in that year, and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical dates of appropriation and not affected by the date of entry of decree.

It is accordingly ORDERED that this Decree shall be filed with the Water Clerk subject to Judicial review.

It is further ORDERED that a copy of this Decree shall be filed with the appropriate Division Engineer and the State Engineer.

Dated this ____ day of _____, 2010.

_____
James B. Boyd, Water Judge
Water Division No. 5

## ATTACHMENT L

## WATER PROJECTS IN GRAND COUNTY

## ARTICLE III. E. 14

**JIM CREEK BYPASS AND PIPELINE.** Bypass structure and pipeline from the Jim Creek Canal to the Fraser River above the diversion for Winter Park Water and Sanitation District's water treatment plant.

**FRASER RIVER PUMP STATION AND PIPELINE AND DISCOVERY PARK POND.** Diversion structure and pump station on the Fraser River, a pipeline from the diversion structure to the Vasquez Canal, a new primary pump house and pipeline to an approximate 40 acre-foot Discovery Park Storage Pond.

**SMALL FRASER RIVER PUMPBACK AND PIPELINE.** Diversion structure and pump station on the Fraser River above Winter Park Water and Sanitation District's wastewater treatment plant discharge point. Pipeline would carry water to point upstream of the District's water treatment plant diversion.

ATTACHMENT M

**ARTICLE III IMPLEMENTATION AGREEMENT**
SUMMIT COUNTY

This Agreement is entered into between the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (Denver Water); BOARD OF COMMISSIONERS OF THE COUNTY OF SUMMIT (County) and the TOWN OF DILLON [or Silverthorne, Frisco, Breckenridge] (Town) [or Frisco Sanitation District, Silverthorne-Dillon Joint Sewer Authority, Buffalo Mountain Metropolitan District, East Dillon Water District, Hamilton Creek Metropolitan District, Mesa Cortina Water and Sanitation District.(District)]

**RECITALS**

1. Denver Water has entered into the Colorado River Cooperative Agreement, dated _____, 2012 (Cooperative Agreement) with numerous West Slope entities (West Slope *Signatories*), including the County, that resolved longstanding issues between the parties.

2. In Article III of the Cooperative Agreement, the County negotiated for Denver Water to provide certain monetary and water supply benefits to entities located in Summit County, including Town/District, who are not West Slope *Signatories*.

3. This Agreement is intended to afford to Denver Water the consideration negotiated in the Cooperative Agreement in return for the benefits provided to Town/District.

4. Italicized terms in this Agreement shall have the same meaning as the corresponding term in the Cooperative Agreement.

NOW THEREFORE, Denver Water, County and Town/District agree as follows:

1. Pursuant to Article III of the Cooperative Agreement, Town/District will receive the following benefits:

    a. Within one year of *Resolution of Blue River Decree Issues,* Denver Water will pay $900,000 to Town/District to offset the costs of the projects listed in Attachment A **[list appropriate projects for Town/District from Attachment G to Cooperative Agreement]**.

    b. Within six months of *issuance and acceptance by Denver Water of permits necessary for the Moffat Project* Denver will pay $900,000 to Town/District to offset the costs of the projects listed in Attachment A.

    c. Upon *Resolution of Blue River Decree Issues*, Denver Water will provide to Town/District [45] acre-feet of "Dillon Storage Water" annually pursuant to Article III(B)(7) of the Cooperative Agreement.

d. Upon *Resolution of Blue River Decree Issues*, Denver Water will provide to Town/District [105] acre-feet of water annually from the "Additional 1493 Acre Feet", pursuant to Article III(B)(14) of the Cooperative Agreement. Town/District shall provide *Replacement Water* to Denver Water in accordance with Article III(B)(14)(b).

e. Accounting for the water provided to Town/District will be the collective responsibility of the water users listed in Article III(B)(14)(a) of the Cooperative Agreement, in accordance with the terms of Article III(B)(14)(c).

2. The Town/District agrees that the funds provided under paragraph 1 will be used only for the projects listed in Attachment A, including reimbursement of costs paid or incurred prior to the date of this Agreement, and agrees to provide to Denver Water and County upon request a written statement of the total cost of each project and the amount of Denver Water funds expended on each project.

3. In consideration for the benefits described in paragraph 1, Town/District agrees to comply with all the provisions of Articles IV and VII of the Cooperative Agreement that are applicable to West Slope *Signatories*. With regard to all conditional water rights presently owned by Town/District, which are listed in Attachment B, Denver Water agrees to withdraw any statements of opposition to Town/District's pending diligence filings and not to oppose Town/District's pending or future diligence applications, including applications to make the listed conditional rights absolute, provided, however, that Denver Water may file statements of opposition to such applications for the limited purpose of ensuring compliance with the obligations of this Agreement.

4. [Specific provisions applicable to certain West Slope parties, i.e., Town of Frisco under Article III.B.11, Town of Silverthorne under Article III.B.17]

5. In consideration for terms of this Agreement, the Town/District agrees that: it is not a third party beneficiary of or under the Cooperative Agreement; that it will not assert a claim to be a third party beneficiary of or under the Cooperative Agreement; any references to the Cooperative Agreement are strictly for the purposes set forth herein; and, that by all appropriate action it has ratified and approved this Agreement.

6. Venue for resolution of any dispute of water matters under this Agreement resulting in litigation shall be the District Court, Colorado, for the appropriate Water Division or federal district court, as appropriate under the Blue River Decree. Venue for all other matters under this Agreement resulting in litigation shall be the Colorado District Court for the county in which any defendant resides. This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado.

7. For the purposes of this Agreement, any notice shall be deemed received on the day the written notice is placed in the U.S. Mail, first class postage prepaid, addressed as follows:

To Denver Water:

Denver Water Board
Attention: Manager
1600 West 12th Avenue
Denver, CO 80204

To Town/District:

8. This Implementation Agreement may be executed in two or more counterparts, each of which shall be deemed an original, all of which shall constitute one and the same. Such counterparts may be transmitted by facsimile, the facsimile to have full force and effect as if it were an original.

9. Nothing contained herein shall be construed to be a waiver or partial waiver of the Parties governmental immunity.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective the ____ day of _____, 2012.

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

ATTEST:

_____
Secretary

_____
President

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

APPROVED AS TO FORM:

By: _____

_____
Legal Division

**TOWN/DISTRICT**

_____

Title:_____

# ARTICLE III IMPLEMENTATION AGREEMENT
# GRAND COUNTY

This Agreement is entered into between the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (Denver Water); BOARD OF COMMISSIONERS OF THE COUNTY OF GRAND (County) and the TOWN OF FRASER [or Granby] (Town) [or Winter Park Water and Sanitation District, Grand County Water and Sanitation District No. 1, Tabernash Meadows Water and Sanitation District, Granby Sanitation District, Winter Park Ranch Water and Sanitation District(District)] [or Grand County Mutual Ditch and Reservoir Company (Company)] [or Winter Park Recreational Association (Association)]

RECITALS

1. Denver Water has entered into the Colorado River Cooperative Agreement, dated _____, 2012 (Cooperative Agreement) with numerous West Slope entities (West Slope *Signatories*), including the County, that resolved longstanding issues between the parties.

2. In Article III of the Cooperative Agreement, the County negotiated for Denver Water to provide certain monetary and water supply benefits to entities located in Grand County, including Town/District/Company/Association, who are not West Slope *Signatories*.

3. This Agreement is intended to afford to Denver Water the consideration negotiated in the Cooperative Agreement in return for the benefits provided to Town/District/ Company/Association.

4. Italicized terms in this Agreement shall have the same meaning as the corresponding term in the Cooperative Agreement.

NOW THEREFORE, Denver Water, County and Town/District/Company/Association agree as follows:

1. Pursuant to Article III of the Cooperative Agreement, Town/District/Company /Association will receive the following benefits:

   a. A representative of [Town of Fraser and each of the Districts] will serve on the board established under Article III(E)(2) of the Cooperative Agreement, which will allocate and administer the water quality funds that Denver Water will provide *upon issuance and acceptance by Denver Water of permits necessary for the Moffat Project.* [Town of Fraser and each of the Districts] will be eligible to receive such funds.

   b. As a project sponsor of one of the water supply projects described in Attachment L of the Cooperative Agreement, [only Association and Winter Park Water and Sanitation District??] will be eligible to receive funding for its project from the

following amounts to be paid into a fund by Denver Water under Article III(E)(14):

i. $1.95 million upon execution of this Article III Implementation Agreement.

ii. $2 million within six months after *Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project* or *Resolution of the Blue River Decree issues*, whichever occurs later.

c. Upon execution of this Article III Implementation Agreement, Denver Water will provide Clinton Bypass Water to [Towns, Grand County W&S District No. 1, and Winter Park W&S District] on a year round basis, subject to the provisions of Article III(E)(15) of the Cooperative Agreement.

d. Upon *Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project*, Denver Water will provide to [Towns, Grand County W&S District No. 1, and Winter Park W&S District 68.5 acre-feet][or Association 100 acre-feet] of water annually pursuant to Article III(E)(20) of the Cooperative Agreement. Town/District/Association shall provide *Replacement Water* to Denver Water in accordance with Article III(E)(20).

e. Upon execution of this Article III Implementation Agreement, Denver Water will allow Company's Vail Ditch shares to be traded for a like amount of water in Denver Water's Fraser Collection System and carried through that system for delivery and use in the headwaters of the Fraser River Basin, subject to the provisions of Article III(E)(21) of the Cooperative Agreement.

2. The Town/District/Association agrees that the funds provided under paragraph 1 will be used only for the projects approved by the board described in paragraph 1(a) or listed in Attachment L to the Cooperative Agreement.

3. In consideration for the benefits described in paragraph 1, Town/District/Company /Association agrees to comply with all the provisions of Articles IV and VII of the Cooperative Agreement that are applicable to West Slope *Signatories*. With regard to all conditional water rights presently owned by Town/District/Company/Association, which are listed in Attachment A, Denver Water agrees to withdraw any statements of opposition to pending diligence filings and not to oppose pending or future diligence applications, including applications to make the listed conditional rights absolute, provided, however, that Denver Water may file statements of opposition to such applications for the limited purpose of ensuring compliance with the obligations of this Agreement.

4. In consideration for terms of this Agreement, the Town/District/Company/Association agrees that: it is not a third party beneficiary of or under the Cooperative Agreement; that it will not assert a claim to be a third party beneficiary of or under the Cooperative Agreement; any references to the Cooperative Agreement are strictly for the purposes set forth herein; and, that by all appropriate action it has ratified and approved this Agreement.

5. Venue for resolution of any dispute of water matters under this Agreement resulting in litigation shall be the District Court, Colorado, for the appropriate Water Division or federal district court, as appropriate under the Blue River Decree. Venue for all other matters under this Agreement resulting in litigation shall be the Colorado District Court for the county in which any defendant resides. This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado.

6. For the purposes of this Agreement, any notice shall be deemed received on the day the written notice is placed in the U.S. Mail, first class postage prepaid, addressed as follows:

To Denver Water:

Denver Water Board
Attention: Manager
1600 West 12th Avenue
Denver, CO 80204

To Town/District/Company/Association:

8. This Implementation Agreement may be executed in two or more counterparts, each of which shall be deemed an original, all of which shall constitute one and the same. Such counterparts may be transmitted by facsimile, the facsimile to have full force and effect as if it were an original.

9. Nothing contained herein shall be construed to be a waiver or partial waiver of the any Party's governmental immunity.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective the ____ day of _____, 2012.

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

ATTEST:

_____
President

_____
Secretary

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

APPROVED AS TO FORM:

By: _____

_____

Legal Division

TOWN/DISTRICT/COMPANY
/ASSOCIATION

_____

Title:_____

ATTACHMENT N
Blue River Decree

04/05/2012

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 49-cv-02782-MSK-CBS

Consolidated Civil Case Nos. 2782, 5016 and 5017 and

DISTRICT COURT, WATER DIVISION NO. 5 STATE OF COLORADO
Case No. 2006CW255

---

**FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT and DECREE**

---

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS, IN SUMMIT COUNTY

---

THIS MATTER comes before the court upon the December 26, 2006 application of the City and County of Denver, acting by and through its Board of Water Commissioners (the "Applicant") for finding of reasonable diligence and to make absolute a conditional water right ("Application"). Having reviewed and considered the pleadings, documentary and other evidence, the stipulation of the Parties, and the Parties' proposed consent decree, the court finds, determines and declares the following:

## I. FINDINGS OF FACT

### A. GENERAL MATTERS

1. Applicant:

City and County of Denver, acting by and through its Board of Water Commissioners

1600 W. 12th Avenue

Denver, Colorado 80204

303-628-6460

The Applicant is a home rule municipal corporation of the State of Colorado. The Applicant derives its authority and power to operate a water supply system under the state constitution, the Denver City Charter and provisions of state law. Pursuant to the Denver City Charter, the Applicant provides all treated and raw water necessary for the full development of land within the City and County of Denver. Pursuant to perpetual water service agreements, the Applicant serves as the water utility for other governmental entities outside the City and County of Denver, but within Applicant's Service Area depicted in Exhibit A ("Applicant's Service Area" or "Service Area"), providing all treated and raw water necessary to serve the full development of all land within the Service Area. The Applicant also has commitments to provide nearly 68,000 acre-feet of treated and raw water to customers outside its Service Area under perpetual fixed amount contracts listed in Exhibit B ("Applicant's Fixed Contractual Commitments"). The entities receiving water under fixed amount contracts are all located within the Counties of Adams, Arapahoe, Douglas and Jefferson and the City and County of Broomfield. From time to time, the Applicant provides treated and raw water to customers under temporary arrangements.

The Applicant operates an extensive raw water collection system including the South Platte Collection System, the Roberts Tunnel Collection System[1] and the Moffat Tunnel Collection System. On the South Platte, the Applicant typically stores water at Antero, Eleven Mile, Cheesman, and Chatfield reservoirs for delivery or exchange of water to either the Strontia Springs Diversion Facility or Conduit 20 intakes in Waterton Canyon. In the future, Applicant

[1] As decreed in Civil Action Nos. 1805 and 1806, Summit County District Court, the Blue River Diversion Project includes direct use and storage in Dillon Reservoir.

has plans to divert South Platte water and reusable return flows at its downstream storage facilities currently in place and under development for exchange and use to meet its water supply obligations; and to provide reusable return flows for use by others outside the Service Area in accordance with Article I and Article II of an agreement between Denver and a number of West Slope entities dated _____, 2012 (the "2012 Agreement"). The Applicant stores and diverts water from the Blue River, Ten Mile Creek and the Snake River and their tributaries at Dillon Reservoir and delivers this water through the Roberts Tunnel to the North Fork of the South Platte River above Strontia Springs for immediate use and storage, including storage by exchange in Antero, Eleven Mile and Cheesman Reservoirs, and through direct delivery for storage in downstream storage facilities such as Chatfield Reservoir and the Applicant's downstream storage facilities. The Applicant also collects water from the Fraser and Williams Fork Rivers and South Boulder Creek for storage in Gross and Ralston Reservoirs. This water is delivered from Ralston Reservoir to the Moffat Treatment Plant for treatment and distribution or delivered to raw water customers.

Applicant also provides water stored under the Blue River Diversion Project water rights to users on the West Slope under the agreements described in this paragraph (collectively, "West Slope Agreements"), some of which have been incorporated into or are referenced in subsequent water court decrees. Under an Agreement between Summit County Board of Commissioners and the Applicant, dated September 19, 1985, Applicant provides 400 acre feet per year of water from Dillon Reservoir and allows up to 3,100 acre feet to be exchanged through Dillon Reservoir. Under the Clinton Reservoir - Fraser River Water Agreement, dated July 21, 1992, as amended, Applicant provides 351 acre feet per year of Future Dillon water from Dillon

Reservoir; bypasses annually from its Fraser River Diversion Project 920 acre feet of water converted from 1985 Summit County Agreement water; operates its Blue River Diversion Project water rights to allow Clinton Reservoir to store up to 3,650 acre feet per year; and augments by exchange from Williams Fork Reservoir snowmaking diversions up to 6,000 acre feet. In the 2012 Agreement, Applicant has agreed to provide an additional 1,743 acre feet/year of water from the Blue River Diversion Project, and its tributaries to users in Summit County; and has also agreed to operate its Blue River Diversion Project water rights to allow Clinton Reservoir to store up to 1,301 acre-feet per year of additional water associated with the dead storage pool and a spillway enlargement. Under the proposed Green Mountain Reservoir Administration Protocol, Applicant has also acknowledged that up to 80 acre feet of annual depletions may occur above Dillon Reservoir by beneficiaries of Senate Document 80 that do not benefit from the 1985 Summit County agreement or 1992 Clinton Reservoir - Fraser River Water Agreement. The West Slope Agreements include agreements between the Applicant and individual water users that implement the foregoing expressly identified agreements.

2. Previous Proceedings. The conditional water rights to the Blue River Diversion Project and Dillon Reservoir were originally decreed in Civil Action Nos. 1805 and 1806, Summit County District Court, on March 10, 1952. After appeal to the Colorado Supreme Court, Case Nos. 1805 and 1806 were remanded for further proceedings. In 1955, Case Nos. 1805 and 1806 were removed to the United States District Court for the District of Colorado where they were consolidated with Case No. 2782, and renumbered Case Nos. 5016 and 5017. On October 5, 1955, the parties to C.A. 2782, 5016 and 5017 entered into a stipulation which formed the basis for the Final Decree, which was entered by the court on October 12, 1955 (the 1955 Stipulation

and Final Decree are referred to jointly herein as the "Blue River Stipulation and Decree"). Since 1955, the United States District Court has entered various orders, judgments and decrees including determinations on the Applicant's previous applications for diligence and to make absolute, which have been adopted and incorporated into the Blue River Decree.

3. The Application and Amended Applications. On December 26, 2006, the Applicant filed an application for finding of reasonable diligence and to make absolute in Case No. 2006CW255 and in the Consolidated Cases C.A. Nos. 2782, 5016 and 5017. On January 26, 2009, the Applicant filed a motion for leave to file an amended application for finding of reasonable diligence and to make absolute a conditional water right and Applicant's initial statement of affirmative defenses. The Applicant's motion to amend was granted on May 5, 2009. On _____, 2012, the parties filed a joint motion for leave to file a second amended application, with a proposed stipulated decree, and a supplemental resume notice. That motion was granted on _____, 2012.

4. Jurisdiction. The court has subject matter jurisdiction over the Application and this proceeding, and personal jurisdiction over all persons who would have standing to appear as parties, regardless of whether they have appeared. When the Blue River Decree was entered on October 12, 1955, this court retained jurisdiction to effectuate the objectives of the Blue River Decree and over matters that could modify or interfere with the terms of the Blue River Decree. Final Decree, C.A. Nos. 2782, 5016 and 5017 at 17 (Oct. 12, 1955), as amended by Supplemental Order Dismissing Reserved Question and Amending Decree dated October 29, 1957; *City of Grand Junction v. Denver*, 960 P.2d 675, 682-685 (Colo. 1998). On August 4, 1977, the court further ordered that it "will act as the Water Judge provided for by the [Water

Right Determination and Administration Act of 1969] for Water Division No. 5 insofar as proceedings in connection with cases numbered 5016 and 5017 are concerned." Order Regarding Further Proceedings Consonant with the Colorado Water Right Determination and Administration Act of 1969, C.A. Nos. 2782, 5016 and 5017 at ¶1 (D. Colo. August 4, 1977) ("1977 Order"). In addition, the court has jurisdiction in this matter under the court's December 4, 2000 Findings of Fact, Conclusions of Law, Judgment and Decree, which provides that "[p]ursuant to § 37-92-301(4), 10 C.R.S. (1999), the Applicant shall file an Application for Finding of Reasonable Diligence on or before the last day of December, 2006 so long as the Applicant desires to maintain these conditionally decreed water rights, or until a determination has been made that these conditionally decreed water rights have become absolute water rights by reason of the completion of the appropriation." Decree, Case No. 99CW044 at 18 (Dec. 14, 2000).

5. Notice. Notice of the Application was provided in the January, 2007 water resume, the Summit County Journal on January 26, 2007, the Glenwood Springs Post Independent on January 30, 2007, and the Grand Junction Daily Sentinel on January 27, 2007. The application was adequate to provide the inquiry notice required by law, C.R.S. § 37-92-302 (2006). Supplemental notice of the amended application was provided in the ____ water resume, the Summit County Journal on ____, and the Grand Junction Daily Sentinel on _____. Supplemental notice of the second amended application was provided in the _____ water resume, the Summit County Journal on _____, and the Grand Junction Daily Sentinel on _____. Timely and adequate notice of the application, the

amended application, and the second amended application was given in the manner required by law.

6. Summary of Consultation. The Division Engineer for Water Division No. 5 prepared a summary of consultation dated May 10, 2007 regarding the original Application. Applicant served the Summary of Consultation on all parties on June 11, 2007.

7. Not within a Designated Ground Water Basin. The water rights that are the subject of this Decree are not included within the boundaries of a designated groundwater basin.

8. Opposers. The following Opposers filed timely statements of opposition: Colorado River Water Conservation District ("River District"); Town of Frisco ("Frisco"); Grand Valley Water Users Association ("GVWUA"); Palisade Irrigation District ("Palisade"); Ute Water Conservancy District ("Ute Water"); Orchard Mesa Irrigation District ("OMID"); Grand Valley Irrigation Company ("GVIC"); Middle Park Water Conservancy District ("Middle Park") and Climax Molybdenum Company ("Climax"). Northern Colorado Water Conservancy District filed a late statement of opposition pursuant to a motion to intervene which was granted on February 22, 2010. On ___, the United States Bureau of Reclamation and the Colorado State Engineer filed statements of opposition. The time for filing statements of opposition to the Applicant's application, as amended, has expired.

9. Withdrawals of Statements of Opposition. The Town of Frisco withdrew its Statement of Opposition on February 21, 2008.

10. Stipulations.

(a) The Colorado River Water Conservation District, Grand Valley Water Users Association, Orchard Mesa Irrigation District, Grand Valley Irrigation Company, Palisade

Irrigation District, Ute Water Conservancy District, and the Middle Park Water Conservancy District ("West Slope Objectors") have entered into a stipulation with the Applicant, dated _____ (the "West Slope Stipulation"). The 2012 Agreement is the basis upon which the West Slope Objectors have entered the West Slope Stipulation and provided their consent to these Findings of Fact, Conclusions of Law, and Judgment and Decree.

(b) Any others?

### B. THE BLUE RIVER DIVERSION PROJECT

11. Description of Underlying Decrees. The Blue River Diversion Project was decreed in Case Nos. 1805 and 1806 in the District Court in the County of Summit on March 10, 1952, with a priority date of June 24, 1946. After appeal to the Colorado Supreme Court, Case Nos. 1805 and 1806 were remanded for further proceedings. Thereafter the cases were removed to this court and given Civil Action Nos. 5016 and 5017 to correspond to Summit County District Court Nos. 1805 and 1806. In this court, the cases were consolidated with already pending Civil Case No. 2782. On October 12, 1955, the Summit County District Court Decrees of March 10, 1952, in Case Nos. 1805 and 1806 were incorporated in and confirmed by Findings of Fact, Conclusions of Law and the Judgment and Decree entered by this court in the consolidated cases, Civil Action Nos. 2782, 5016 and 5017, insofar as those decrees described the rights to the use of water adjudicated to Applicant.

12. Court. District Court for the County of Summit and the United States District Court in and for the District of Colorado.

13. Location. The Blue River Diversion Project stores water in Dillon Reservoir and diverts water from the Blue River, the Snake River, and Ten Mile Creek and their tributaries

through the Harold D. Roberts Tunnel, the west portal of which is located at a point whence the East quarter corner of Section 18, Township 5 South, Range 77 West of the 6th P.M. bears South 81°07' East 941.6 feet.

14. Source. The sources of water for the Blue River Diversion Project are the Blue River, the Snake River, and Ten Mile Creek, all of which are tributaries of the Colorado River; and the waters naturally tributary thereto.

15. Appropriation Date: June 24, 1946. The Blue River Diversion Project was decreed conditional priorities 139(c) and 366(c) for 788 cubic feet per second from the Blue River; conditional priorities 140(c) and 367(c) for 788 cubic feet per second from the Ten Mile Creek; and conditional priorities 141(c) and 368(c) for 788 cubic feet per second from the Snake River providing no more than 788 cubic feet per second shall be taken through any combination of the above described sources. In addition, Dillon Reservoir was decreed conditional reservoir priorities 80(c) and 8(c) for 252,678 acre feet.

16. Physical Works. This court has previously determined in 1978 that the physical works necessary for diversion and storage pursuant to the water rights referred to above have been completed by the Applicant. The as-constructed capacity of Dillon Reservoir is 254,036 acre feet of water and the as-constructed capacity of the Blue River Diversion Project (Roberts Tunnel) is in excess of 1000 cubic feet of water per second of time. Decree and Determination, Case No. W-741-77 at 2, ¶ 6 (Sept. 15, 1978).

17. Amounts Made Absolute in Prior Proceedings and Amounts Remaining Conditional. This court has previously made absolute amounts of water stored in Dillon Reservoir and diverted through the Roberts Tunnel and therefore has as a matter of law

determined that such amounts were placed to lawful beneficial use in accordance with the requirements of the Blue River Decree.

(a) Dillon Reservoir. In 1978, the Dillon Reservoir storage right was made absolute for all beneficial uses authorized in the decrees entered in Case Nos. 1805 and 1806 in the amount of 252,678 acre feet pursuant to this court's September 15, 1978 Decree and Determination. Decree and Determination, Consolidated Civil Nos. 2782, 5016 and 5017 and Case No. W-741-77, Water Division No. 5 at ¶ 8 (D. Colo. Sept. 15, 1978).

(b) Roberts (Montezuma) Tunnel. In 1993, this court ordered and decreed that 520 cfs of the Roberts Tunnel direct flow right had been made absolute and placed to beneficial use in the Denver Municipal Water System in the court's March 11, 1993 Findings of Fact, Conclusions of Law, Decree and Order. Consolidated Civil Nos. 2782, 5016 and 5017 and Case No. 1990CW112, Water Division No. 5. As of the court's March 11, 1993 Decree, 268 cfs of the Roberts Tunnel direct flow water right remained conditional:

| | |
|---|---|
| 520 cfs | absolute |
| 268 cfs | conditional |
| 788 cfs | total |

18. Use. All municipal uses including domestic use, mechanical use, manufacturing use, fire protection, street sprinkling, watering of parks, lawns and grounds. The water rights which are the subject of this Application are those direct flow water rights appropriated for immediate use through the Roberts Tunnel with an appropriation date of June 24, 1946, for a total rate of flow of 788 cfs. The Roberts Tunnel has been completed so as to be able to carry

Water to its decreed capacity of 788 cfs, provided that improvements are made to the tunnel's outlet works as described subsequently in this decree. The water provided by Applicant under the West Slope Agreements, in the volumes described in paragraph 1, is fully consumable water from the Blue River and its tributaries that may be used by West Slope water users on the West Slope pursuant to those Agreements for municipal, domestic, irrigation, industrial, recreation, piscatorial, snowmaking, wastewater treatment, augmentation, and exchange uses, including reuse and successive use to extinction in Summit County; provided that prior to the reuse or successive use of such water, the plan for such reuse and/or successive use shall be incorporated into an approved water court decree or substitute supply plan.

### C. CLAIM TO MAKE ABSOLUTE

The court finds that on June 23, 2006, the Applicant legally diverted and put to beneficial use 654 cfs of water under the Roberts Tunnel direct flow right, in compliance with the Water Rights Determination and Administration Act of 1969, C.R.S. §§ 37-92-101 – 37-92-602 (the "1969 Act") and the Blue River Stipulation and Decree.

19. 654 cfs Made Absolute. On June 23, 2006, the Applicant diverted 654 cfs through the Roberts Tunnel and subsequently placed the water to beneficial use to customers within the geographic area depicted in Exhibit A and to fixed amount customers set forth in Exhibit B. On June 23, 2006 at approximately 12:30 p.m. a peak discharge of 654 cfs was recorded at the gage located at the East Portal of the Roberts Tunnel. The water conveyed through the Roberts Tunnel on June 23, less stream carriage losses of 5 percent assessed by the Division Engineer, was delivered to Strontia Springs Reservoir. From Strontia Springs Reservoir a portion of the water was conveyed to the Foothills Water Treatment Plant where the water

underwent treatment for distribution. The remaining portion of Roberts Tunnel water was delivered to Marston Reservoir where it was temporarily stored and eventually treated at the Applicant's Marston Treatment Plant for distribution to and beneficial use by the Applicant's customers. The water diverted through the Roberts Tunnel was used in Applicant's Service Area and to supply Applicant's Fixed Contractual Commitments for municipal purposes either directly or by augmentation, exchange and replacement.

20. Point of Diversion.

(a) On June 23, 2006, the Applicant diverted the Roberts Tunnel direct flow right through the West Portal of the Roberts Tunnel. The Applicant accomplished this diversion by means of the West Portal of the Roberts Tunnel. Although the decree entered by the Summit County District Court in C.A. 1805 and 1806 ("Summit County Decree") lists specific points of direct flow diversion on the Snake, Blue and Ten Mile Rivers, the Summit County Decree also contemplates that Dillon Reservoir would inundate the listed points of diversion and that the West Portal would eventually become the point of diversion for the Dillon Reservoir storage right and the Roberts Tunnel direct flow right.

(b) The Applicant's original plan and intent in 1927 was to divert the Roberts Tunnel direct flow right by means of the three listed points of diversion on the streams, but only until Dillon Reservoir could be constructed, at which point the Applicant intended to utilize the West Portal as the primary point of diversion for the Blue River Diversion Project. When the Applicant filed its Statement of Claim for the Blue River Diversion Project in 1942, the Applicant intended to construct the Blue River Diversion

Project in two stages. The first stage involved the construction of a system of feeder ditches and canals that would allow the Applicant to divert its direct flow right into Roberts Tunnel until Dillon Reservoir could be completed. The second stage involved the construction of Dillon Reservoir, which upon its construction, would inundate the feeder ditches and canals. Statement of Claim, C.A. 1805 and 1806 at ¶4 (County of Summit Nov. 16, 1942). When the Applicant solicited bids for the construction of the Blue River Diversion Project in 1959, the Applicant received a bid that allowed for the construction of Dillon Reservoir in a single stage, eliminating the need to construct the system of feeder ditches and canals. Thus, when the Applicant built Dillon Reservoir, the West Portal of the Roberts Tunnel became the controlling point of diversion for the Roberts Tunnel direct flow right.

(c) The three described points of diversion were based upon the Applicant's Exhibit B in C.A. 1805 and 1806 which was offered in support of a 1927 priority.

(d) The trial court rejected the Applicant's claim for a 1927 priority. Rather the trial court awarded the Applicant a 1946 priority based upon work commenced in 1946 for Dillon Reservoir and the single point of diversion depicted on a 1942 filing map offered as Exhibit D and a report dated February 16, 1946 (Denver Exhibit T).

(e) The 1946 priority confirmed by the Supreme Court contemplated the Dillon Reservoir configuration and the single point of diversion at the West Portal. No mandate was issued to conform the decree to the configuration based upon the 1946 priority.

(f) The Applicant has engaged in a course of conduct whereby it has diverted its direct right through the West Portal of the Roberts Tunnel under a 1946 priority since the tunnel went into operation on July 17, 1964.

(g) This court has previously decreed the West Portal of the Roberts Tunnel as the primary point of diversion for the Roberts Tunnel direct flow right in the Blue River Decree itself and in the subsequent decrees entering amounts made absolute. Findings of Fact and Conclusions of Law and Final Decree, Civil Action Nos. 2782, 5016, and 5017 at 43, ¶ 19 (D. Colo. Oct. 12, 1955); Finding and Order Concerning Due Diligence of the City and County of Denver, Civil Action Nos. 2782, 5016 and 5017 at 2 (D. Colo. Apr. 6, 1964); Supplemental Finding and Decree of 1966 for the City and County of Denver, Civil Action Nos. 2782, 5016 and 5017 at 2 (D. Colo. Feb. 6, 1966); Decree and Determination, Civil Action Nos. 2782, 5016 and 5017 (W-741-77) at 2, ¶4 (D. Colo. Sept. 15, 1978); Findings of Fact, Conclusions of Law, Decree and Order, Civil Action Nos. 2782, 5016 and 5017 (82CW129 WD5) at ¶ 6(b) (D. Colo. Oct. 3, 1985); Findings of Fact, Conclusions of Law, Decree and Order, Civil Action Nos. 2782, 5016 and 5017 (86CW132 WD5) at ¶ 6(b) (D. Colo. June 2, 1987); Findings of Fact, Conclusions of Law, Decree and Order, Civil Action Nos. 2782, 5016 and 5017 (90CW112 WD5) at ¶ 5(b) (D. Colo. Mar. 11, 1993).

(h) For the above stated reasons, the court finds that the West Portal of the Roberts Tunnel is the primary point of diversion for the Roberts Tunnel direct flow right under the 1946 priority.

21. Green Mountain Reservoir Not Impaired. The Applicant complied with Paragraphs 4(a) of the Blue River Stipulation and Decree, Paragraph 4 of the April 16, 1964 Stipulation, and Paragraphs 2, 3 and 4 of the Supplemental Judgment and Decree of February 9, 1978, when the Applicant diverted 654 cfs under the Roberts Tunnel direct flow right on June 23, 2006. Green Mountain Reservoir had already achieved its annual fill prior to the Applicant's diversions under its Roberts Tunnel direct flow right on June 23, 2006. The Applicant's diversions on June 23, 2006 therefore did not impair the ability of Green Mountain Reservoir to fulfill its function as set forth in the Manner of Operation of Project Facilities and Auxiliary Features, contained in Senate Document No. 80, 75th Congress, 1st Session.

22. Payment for Power Interference.

(a) Paragraph 4(b) of the Blue River Stipulation and Decree requires that the Applicant deliver electric energy to the United States in substantially the same amounts, at approximately the same hours and at substantially the same rates of delivery that would have been generated by the Green Mountain Power Plant had it not been for the diversions of the waters by the Applicant and under the West Slope Agreements.

(b) The power loss to Green Mountain Reservoir caused when the Applicant and users under the West Slope Agreements divert water from the Blue River is termed power interference. The Applicant currently repays this power interference through two agreements with the Western Area Power Administration ("WAPA"), an agency of the United States Department of Energy.

(c) Under a September 30, 1987 contract with WAPA, the Applicant purchases firm electric service generated by WAPA (Contract No. 87-LAO-110) in order

to offset power interference caused to Green Mountain Reservoir by storage at Dillon Reservoir. Under this agreement, the Applicant purchases approximately 7 gigawatt hours of energy per year.

(d) The Applicant also entered into a September 21, 1990 Interchange Agreement with WAPA to bank surplus power with WAPA until the power is required by the Applicant to pay off its interference obligations (89-LAO-512). The Interchange Agreement allows the Applicant to deposit and withdraw power in order to pay back its power interference. Excess power can be banked for later use and any deficit in the account can be paid off by the Applicant in cash at WAPA's "average value of seasonal purchases."

(e) The United States Bureau of Reclamation and the Applicant account for the power interference on a monthly basis. In order to determine the amount of potential power interference, the Applicant accounts for depletions to the Blue River caused by the Applicant and by deliveries to water users under the West Slope Agreements. Such depletions to the Blue River are accounted for by calculating the change in storage at Dillon Reservoir, plus amounts of water diverted through the Roberts Tunnel, plus net evaporation, plus depletions made in accordance with the West Slope Agreements that are not reflected in Dillon Reservoir change in storage. The Applicant and the Bureau currently assume that the power interference amount is the equivalent of 210 kilowatt hours per acre-foot diverted. Thus, for example, assuming Dillon Reservoir diverts 100 acre feet, the Applicant owes interference of 21,000 kilowatt hours (100 acre-feet x 210 kilowatt hours per acre-foot). The computed interference is also distributed into on-peak

and off-peak hours. Current interference accounting allocates about 56% of the power interference to on-peak demand hours, and 44% to off-peak hours.

(f) Since the Blue River Decree was entered, the Applicant has acquired numerous electrical credits through its Agreements with WAPA and other entities, including Public Service Company of Colorado. The Applicant has also supplied electrical power generated by its own hydroelectric facilities. During the most recent diligence period, the Applicant paid for its power interference through the energy credits purchased from WAPA that were banked through the Interchange Agreement.

(g) The court therefore finds, the Applicant has accounted and paid for all power interference owed to the Bureau of Reclamation under paragraph 4(b) of the Blue River Stipulation and Decree for power interference that occurred during the month of June 2006, when the Applicant diverted 654 cfs.

23. Place of Use.

All water provided by Applicant on the East Slope from the Blue River Diversion Project is used within the six counties of Denver, Arapahoe, Jefferson, Adams, Broomfield and Douglas. In the 2012 Agreement, the Applicant agreed to limit the volumes of water it provides and the geographic area in which recipients of the water are located. Under the West Slope Agreements, Applicant has also agreed to provide water under the Blue River Diversion Project to water users located in Summit County.

(a) Article I of the 2012 Agreement defines the areas in which the Applicant may provide water on the East Slope as the Service Area depicted in Exhibit A and the areas served by the entities listed in Exhibit B under fixed amount contracts. Article I.B

of the 2012 Agreement also provides for the use of water outside of the Service Area under specified contracts or other defined limitations. Water provided by Applicant to customers on the East Slope in accordance with the limitations of Article I and Article II.A of the 2012 Agreement is used in the City and County of Denver and areas adjacent to and reasonably integrated with the development of the City and County of Denver, which is defined in the Blue River Decree as the Denver Metropolitan Area. The Blue River Decree does not require that the Applicant own all the pipes or facilities that convey water to individual customers.

(b) In order to address some of the impacts of its diversions on the West Slope, the Applicant has also agreed to provide water either directly or from storage under the Blue River Diversion Project to water users in Summit County as described in paragraph 1 pursuant to the West Slope Agreements and any decrees that may incorporate or rely on one or more of the West Slope Agreements.

For these reasons, the court finds that the Applicant placed the water diverted under the Roberts Tunnel direct flow right in June 2006, to beneficial use within the Denver Metropolitan Area as required by Paragraph 4(g) of the Blue River Stipulation. Based on the unique circumstances described above, the Applicant's use of water derived from the Blue River Diversion Project pursuant to the West Slope Agreements to address impacts of its diversion on the West Slope is a lawful beneficial use that is not contrary to the terms of the Blue River Stipulation and Decree.

24. Type of Use. The court finds that the Applicant complied with Paragraph 4(g) of the Blue River Stipulation and Decree by placing the water diverted on June 23, 2006 under the Roberts Tunnel direct flow right only to municipal uses. The 654 cfs diverted by the Applicant

through the Roberts Tunnel was put to beneficial use and all uses for which the water was beneficially used constituted municipal uses, including augmentation, exchange and replacement. The water was treated at the Foothills and Marston Water Treatment Plants, and distributed through its system for potable water use by the Applicant's customers within the Service Area and under potable contracts listed in Exhibit B. The Applicant also supplies nonpotable water for municipal use to customers located within the Service Area pursuant to the nonpotable water contracts listed in Exhibit B. In addition, water is delivered to the Applicant's customers by augmentation, exchange and replacement and used by them for municipal purposes. None of the water was delivered for agricultural purposes. The court finds that uses of the water rights decreed for the Blue River Diversion Project under the West Slope Agreements for fully consumable municipal, domestic, irrigation, industrial, recreation, piscatorial, snowmaking, wastewater treatment, augmentation, and exchange uses, including reuse and successive use to extinction in Summit County do not violate paragraph 4(g) of the Blue River Stipulation and Decree.

25. Reuse. The court finds that in diverting the 654 cfs, which the Applicant seeks to make absolute, the Applicant complied with the Paragraph 4(e) and (f) of the Blue River Stipulation and Decree:

(a) The Applicant does not need to show that specific molecules of Colorado River water were reused to meet its obligations to utilize return flows from the Colorado River System by exchange or otherwise under ¶¶ 4(e) and (f) of the Blue River Stipulation and Decree. The Applicant has shown that it has complied with the terms and conditions in ¶¶ 4 (e) and (f) of the Blue River Stipulation and Decree.

(b) The Applicant has constructed, and is in the process of constructing, a number of facilities to increase its ability to reuse water from the Colorado River System. The Applicant is constructing an estimated total of 30,000 acre feet of gravel pit storage to capture additional return flows from the Colorado River System which it is currently unable to utilize. The Applicant has constructed a water recycling plant which, at build out, will be able to treat 45 million gallons per day of water diverted directly from the effluent returning to the South Platte, for non-potable industrial and landscape irrigation uses within the Denver Metropolitan Area. In addition, Applicant is in the process of adjudicating an application in Water Division 1 to reuse and exchange lawn irrigation return flows resulting from reusable water applied to lawns and landscaping. Certain obligations regarding Denver's reuse of water are specified in Articles II(A) and II(C) of the 2012 Agreement in furtherance of the implementation of the Blue River Decree.

(c) During the diligence period and pursuant to paragraph 4(f) of the Blue River Stipulation and Decree, the Applicant submitted to the Secretary of the Interior annual reports showing by month for the respective water years, the quantities of water diverted from the Colorado River System, the extent such water was used directly or placed in storage, the quantities of return flow from municipal uses of such Colorado River water accruing to the South Platte River, and the steps, by legal action or otherwise, taken during the period covered by the report to utilize such return flow by exchange or otherwise. The Secretary accepted the Applicant's annual reports without any expression of disapproval.

(d) During the diligence period, the United States did not apply to the court for injunctive or other remedial orders pursuant to paragraph 4(f) of the Blue River Stipulation and Decree, and the court finds the Applicant made reasonable efforts, in view of legal limitations and economic feasibility, in establishing, enforcing, utilizing or operating a plan designed to accomplish reduction of its Blue River water use.

(e) Further, the Applicant's plan to provide water derived from Colorado River return flows to entities outside the Service Area in accordance with the limitations of Article I and Article II of the 2012 Agreement comports with paragraphs 4(e) and (f), and paragraph 4(g) of the Blue River Stipulation and Decree.

26. Reasonable Number of Gauging Stations. The Applicant has developed a procedure by which it measures and accounts for its return flows attributable to Colorado River sources. These measurements are reported annually to the Secretary of the Interior. The Applicant utilizes a reasonable number of gauging stations for the purposes of measuring (1) the quantities of water actually diverted from the Blue River; and (2) the increased return flow water into the South Platte River and other streams by reason of the diversion of its Colorado River System. For these reasons, the court finds that the Applicant has complied with paragraph 4(h) of the Blue River Stipulation and Decree.

27. Roberts Tunnel Seepage. When diverting water on June 23, 2006 through the Roberts Tunnel, the Applicant accounted for ground water seepage in the Roberts Tunnel. Ground water seepage in the Roberts Tunnel is administered by the State Engineer as 100 percent tributary to the Colorado River. Accordingly, when the Applicant diverts water under the 1946 priority for the Roberts Tunnel direct flow right, and the right is in priority, the

Applicant is diverting the ground water in accordance with the prior appropriation system, as was the case on June 23, 2006. When the Applicant's Dillon Reservoir storage right or Roberts Tunnel direct flow water right is not in priority, the Applicant accounts for the Roberts Tunnel seepage as water depleting the Colorado River. Whether in or out of priority, the Applicant pays power interference for all seepage into the Roberts Tunnel pursuant to Paragraph 4(b) of the Blue River Stipulation and Decree and provides that water to Green Mountain Reservoir in substitution years.

### D. CLAIM FOR FINDING OF REASONABLE DILIGENCE

The court finds that the Applicant has been reasonably diligent in developing the conditional portion of the Roberts Tunnel direct flow right.

28. Physical Works. As the court has previously determined, the physical works necessary for diversion of the Roberts Tunnel direct flow rights have been completed and the facilities necessary to bring about the application of the water appropriated to beneficial use are in a continuous pattern of development and construction. Decree and Determination, Case No. W-741-77 at ¶9 (September 15, 1978). Since 1978, the physical works of the Roberts Tunnel direct flow right have been continuously maintained and the Applicant is currently capable of diverting up to 684 cfs.

29. Diligence Activities. The Blue River Diversion Project is an integral part of the entire water collection, distribution, treatment and delivery system, designed and constructed to provide water for municipal use within the Denver Metropolitan Area. The activities listed in the amended application are incorporated herein by this reference. The court finds that the activities listed in the amended application are evidence of the Applicant's continued reasonable diligence

in developing the conditional portion of the Roberts Tunnel direct flow right. These activities evidence the continuous efforts of development and construction of the facilities necessary to divert, store and use waters from the Blue River, Snake River and Ten Mile Creek including the diversion, storage and use of these waters by water users in Summit County to help mitigate the impacts of its diversions on the West Slope.

30. Capability. The Applicant is capable of developing the conditional portion of the Roberts Tunnel direct flow right.

(a) Existing Structure. The Blue River Diversion Project is an existing facility consisting of Dillon Reservoir and the Roberts Tunnel.

(b) Water Availability. The Applicant presented a water availability analysis showing that water is available in sufficient amounts and frequency so as to allow it to divert the remaining conditional portion of its Roberts Tunnel direct flow right. In most years during the Applicant's 1988-2007 study period, water is available for diversion in the amount of 788 cfs by the Roberts Tunnel direct flow right. On average there were approximately 13 days per year that an amount equal to or greater than 788 cfs was available to the Roberts Tunnel direct flow water right, with 788 cfs of water available a maximum of 34 days in 2006. Water was available for diversion at the 788 cfs threshold in 17 out of the 20 years during the Applicant's 1988-2007 study period.

(c) Roberts Tunnel Capacity. The tunnel is concrete lined with a diameter of 10' 3" with a capacity of 1,000 cfs when the water level in Dillon Reservoir is 9017 feet. The outlet works consists of a 90" wye branch off the tunnel. The 90" outlet pipe continues approximately 243 feet to a 66" x 42" x 66" trifurcation. The center of the

trifurcation consists of a 42" butterfly valve with a 36" hollow-jet valve to release the water. In 1975, the Applicant installed a 20" cone valve, a 12" Howell-Bunger discharge valve and a 20" Howell-Bunger discharge valve. The calculated discharge through the current outlet works is approximately 684 cfs. On June 23, 2006, 654 cfs was measured discharging from the outlet works. The outlet works are physically capable of accommodating a 78" butterfly valve, 66" piping and a 66" hollow-jet valve in addition to the 42" butterfly valve for a potential calculated discharge capacity of approximately 944 cfs.

(d) Power Interference. The Applicant currently holds agreements with the Western Area Power Administration ("WAPA"), an agency of the United States Department of Energy, to purchase electrical energy from WAPA to pay power interference to the Bureau of Reclamation. The Applicant's agreement to purchase electrical energy does not expire until September 30, 2024. The Applicant also has an Interchange Agreement with WAPA to "bank" electrical power to use to repay the Bureau for power interference. This agreement also is set to expire on September 30, 2024. Based on these contractual arrangements, the court finds that the Applicant is capable of meeting its power interference obligations under the Blue River Decree.

(e) North Fork Capacity. The North Fork of the South Platte River below the outlet works of the Roberts Tunnel is currently capable of carrying 680 cubic feet per second on a sustained basis and 1020 cubic feet per second for short periods of time. The Applicant has established design flows, design criteria for channel improvement, completed construction of improvements, and continued maintenance of the channel

which has increased the carrying capacity of the North Fork of the South Platte River to an amount in excess of 788 cubic feet per second, in addition to the natural flow, from the Roberts Tunnel at Grant downstream to its South Platte River intake.

(f) Capacity of South Platte Facilities. The Applicant's evidence shows that it will have the capacity to directly divert and put to beneficial use up to 967 cfs through the Foothills Tunnel and Conduit 26 for use at the Foothills Water Treatment Plant and through Conduit 20, which diverts water from the South Platte to Marston Reservoir. The Applicant is also able to store Blue River water by exchange in Cheesman Reservoir under its decree entered into C.A. 3635. Roberts Tunnel water can also be stored directly in Strontia Springs Reservoir, Chatfield Reservoir, and the Applicant's South Platte gravel pit reservoirs. In addition, Roberts Tunnel Water can be delivered directly via the South Platte River to holders of temporary and long-term contract users.

(g) Financial ability. The Applicant is the largest municipal water supplier in the state, serving nearly one quarter of the state's population. The Applicant is authorized to issue municipal bonds and generally issues approximately $50 million in bonds each year. As of end of the year 2006, its capital assets were valued at $1.6 billion and its total operating revenues were over $200 million. The Applicant annually maintains a cash reserve of $150-200 million. Unless some catastrophe occurs in the future, the Applicant has and will continue to have the financial ability to store, divert and use the water under the Blue River Stipulation and Decree.

(h) Two Forks.

i. To date, Two Forks Reservoir has not been constructed. The Applicant can fully utilize its importations from the Blue River with or without Two Forks Reservoir by storing the same water in other east slope facilities or by direct delivery to Conduit 26 Intake, Conduit 20 Intake, Last Chance Ditch Intake and Chatfield Reservoir manifold or pump.

ii. Further, the Applicant currently holds a right of way for Two Forks Reservoir. The 1989 veto of Two Forks by EPA did not foreclose the Applicant from applying for permits of different size or location. In June 2003, t he Applicant entered into the South Platte Protection Plan as an alternative to the proposed Wild and Scenic designation. Pursuant to Attachment F of this plan, the Applicant agreed to a 20 year moratorium on permit applications to construct Two Forks to allow it to pursue alternative projects to develop Two Forks water. The Applicant further agreed to relinquish its right of way when development of the Right of Way becomes impractical because alternative development of the Two Forks waters has reduced the economic value of the Right of Way below meaningful value. To date, alternative projects have not been developed that have reduced the economic value of the right of way below meaningful value. Further, the Applicant secured a finding of reasonable diligence on September 2, 2005 in Case No. 2003CW357 Water Division 1 for the Two Forks Reservoir South Platte storage right. The court finds, for purposes of this diligence proceeding, that the Applicant has not abandoned the development of Two Forks Reservoir.

(i) East Slope Place of Storage. The Applicant is currently physically able to store water in Antero, Eleven Mile, Cheesman, Strontia Springs, Chatfield, Platte Canyon, Marston, Gross, and Ralston Reservoirs and will in the future be able to store water in the downstream gravel lake complexes, which are under construction or will be constructed. All of these facilities are part of the Denver Municipal Water System. The Applicant is or will be capable of placing Blue River water into all of these structures either directly or by exchange. In accordance with Article IV(B) of the 2012 Agreement and the Blue River Decree and Stipulation, the Applicant may store any imported Blue River water, whether released from Dillon Reservoir or diverted directly through the Roberts Tunnel at any existing or future storage facility on the East Slope; provided that the amount of imported Blue River Water in storage on the East Slope does not exceed 400,000 acre feet at any point in time. This provision and limitation on the amount of imported Blue River water does not apply to the storage of return flows from the use or reuse of imported Blue River water either directly or by exchange to any existing or future storage facility.

31. Need. Based on the evidence considered by the court in connection with the following factors, the court finds that the Applicant continues to have a non-speculative need for the conditional portion of the Roberts Tunnel direct flow right that is the subject of this Decree.

(a) The Applicant performs regular water supply planning. The Applicant's Integrated Resources Plan prepared in 2002 identifies that the Applicant has not developed enough water to serve the projected future growth of Applicant's Service Area, depicted in Exhibit A. Further in 2006, the Applicant identified various events and

developments that make the Applicant's ability to meet projected future water demands and supply even more difficult. The Applicant reasonably anticipates that it will rely more and more upon this water right to fulfill the future needs of its customers.

(b) The Applicant has a Reasonable Water Supply Planning Period. The Applicant's current water supply planning period extends to 2050. The court finds that this is a reasonable water supply planning period, particularly considering the size of the Applicant's Service Area, both in population and geography, and the extent of the Applicant's contractual commitments outside of its Service Area.

(c) The Applicant's Substantiated Population/Rate of Growth Projections. The Applicant bases its demand projections on an econometric model that relies on numerous factors, including population growth within the Denver Metropolitan Area as predicted by the Denver Regional Council of Governments ("DRCOG") in 2030, and the U.S. Census Bureau as projected in 2050. The court finds that Applicant reasonably relied on the rate of population growth used by DRCOG and the U.S. Census Bureau. Population growth factor is one of several factors considered by the Applicant's model. The Applicant relies on a model that interrelates water usage with demographics and various other socio-economic factors. This includes the rate of usage for single-family households in the future, so that total single-family usage can be determined by multiplying that usage rate by the future number of single-family households. The model uses a projected growth rate of 1.0 percent per year for the years 2005 through 2050, and a population of 1.74 million residents in 2050. In addition, the model projects employment in the service area to increase to a total of 1.25 million jobs by 2050,

reflecting an average annual job growth rate of just under 0.9 percent from 2005 through 2050. The court finds that the model assumes a water demand projection based on a reasonable rate of population and employment growth.

(d) Water Required to Meet the Applicant's Reasonably Anticipated Needs. The Applicant demonstrated that the remaining amounts conditionally decreed for the direct flow right in the Roberts Tunnel are reasonably necessary to serve the reasonably anticipated needs of the Applicant for the planning period, above its current water supply.

i. Implementation of Reasonable Water Conservation Measures During Planning Period. The Applicant has adopted an accelerated conservation plan intended to achieve by 2016 the 29,000 acre-feet of savings targeted in the 1996 IRP for 2045. To achieve these goals, the Applicant has instituted a new customer information system that provides customers with access to monthly consumption information rather than the bi-monthly consumption data historically provided by the Applicant to its customers. The Applicant offers rebates and incentives to encourage customers to convert to low water use appliances, plumbing fixtures, irrigation systems and more efficient landscapes. The Applicant has developed an increasing block rate structure that encourages conservation through price signals, and allows for more effective demand management during peak summer irrigation use and severe droughts. In addition, the Applicant is engaged in educational outreach to provide customers with information to reduce their consumption through best-practices for irrigation and other water use. During the period 2002-2006, the Applicant spent approximately

$16,600,000 on conservation programs. Since 2007, the Applicant has spent over $31,000,000 on these conservation activities. Article II(B) and II(C) of the 2012 Agreement describe additional obligations regarding Denver's water conservation efforts. The court finds that these conservation measures are reasonable.

ii. Reasonably Expected Land Use Mixes during the Planning Period. The Applicant's demand model considers three types of customers, which could be characterized as land use mixes. These uses include (1) single-family residences; (2) commercial, multi-family and industrial users; (3) and government and institutional users. The court finds that these are reasonable land use mixes to consider for the planning period.

iii. Reasonably Attainable Per Capita Usage Projections for Indoor and Outdoor Use Based on the Land Use Mixes During the Planning Period. In year 2000, the Applicant's system-wide metered water use was 220 gallons per capita per day. The Applicant's forecast projects that system-wide metered use will decline to 181 gallons per capita per day by 2050. Along with other economic and demographic factors, this decline reflects the impact of natural replacement of older, less efficient fixtures. Traditionally, 60 percent of the Applicant's use is for indoor purposes and 40 percent is for outdoor purposes. The Applicant's projections represent the exercise of informed judgment.

iv. Amount of Consumptive Use Reasonably Necessary to Serve the Increased Population. The court finds that the Applicant's past and planned

future demands account for a reasonable amount of consumptive use to serve its customers.

(e) The Applicant's Current Water Supply. The Applicant's projected future demands are in excess of the water supply currently available from its Municipal Water System. The Applicant generally uses its direct flow water rights first before using its reservoir storage to meet its water supply needs. During the period of 1998-2003, the Applicant's storage declined to a point where the Applicant's storage reserves were drawn down to less than its annual demand. The Blue River Diversion Project water rights are a key part in meeting future demand and as the population increases in the future or as hydrologic conditions change, Applicant will increase its draw on Dillon Reservoir storage right and Roberts Tunnel direct flow right to meet its future demands, subject to various regulatory requirements, the 2012 Agreement, and other contractual commitments.

(f) The Applicant's Future Demand Projections. The Applicant presented an econometric demand model and projections of future water demands for the Applicant's Service Area and Fixed Contractual Commitments. The model, which projects unconstrained water demand, meaning water demand without emergency water restrictions, forecasts the Applicant's water demands through 2050 by utilizing socioeconomic forecasts, historical data, and U.S. Census data. Specifically, the model relies on socioeconomic projections made by DRCOG, which projects future population as far as 2030, and then extends the socioeconomic forecasts through 2050 based on national projections from the U.S. Census Bureau and other sources, such as historic

relationships between service area growth and national trends. To determine, the Applicant's 2050 demand, the DRCOG data is extended forward to 2050 using U.S. Census Bureau data and projections. In order to accurately forecast the Applicant's demand, the model uses separate equations to measure (1) single family water use per household customers; (2) multi-family, commercial and industrial customers; and (3) institutional (governmental) customers. The data for these three types of customers is based on annual water use data collected by the Applicant and its distributors from 1973 to 1999. The Applicant's model projects that its 2050 treated water demand at the customers' meters would be 370,000 acre feet, including a five percent calibration adjustment. To estimate the Applicant's total system-wide demand water requirements a number of adjustments must be made. First, system losses and unaccounted for water use, which is estimated to average six percent, must be added (22,000 acre feet). Second, 39,000 acre feet must be subtracted to account for improved efficiency of water using fixtures. Third, 67,000 acre feet for Applicant's Fixed Contractual Commitments must be added. Fourth, pursuant to the Applicant's policy of maintaining a 30,000 acre foot safety factor, 30,000 acre feet was added. With these adjustments the Applicant's total system-wide demand in 2050 is 450,000 acre feet. Applicant has analyzed these demand forecast results. Such analysis included evaluation of overall usage and demographic metrics of the forecast in comparison to historical statistics. The court concludes that the Applicant has engaged in a thoughtful planning process and has properly taken into account both its own experience and expertise, and analysis by outside experts.

(g) Safety Factor. The court finds that the Applicant's current 30,000 acre foot safety factor (30,000 acre feet/year of a four year drought) is a reasonable and prudent amount of water to store in reserve in light of the large number of customers who rely on the Applicant's system and the importance of the Applicant to the economic development of the State.

## II. CONCLUSIONS OF LAW

Based upon and fully incorporating the Findings of Fact set forth above, this court concludes as a matter of law that:

32. Application was Timely. The Application for a Finding of Diligence and to Make Absolute was timely filed with the Water Clerk pursuant to C.R.S. §37-92-301(4) (2006).

33. Notice. The Applicant satisfied all requirements for notice under C.R.S. §37-92-302(3) (2006).

34. Perfection of Water Rights. T he court concludes and determines that the Applicant perfected 654 c.f.s. of the Roberts Tunnel direct flow right by lawfully: (1) capturing, possessing, and controlling water; and (2) applying the water to a beneficial use. *City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961-962 (Colo.1998) (citing *City & County of Denver v. Northern Colo. Water Conservancy Dist.,* 276 P.2d 992, 998-99 (Colo. 1954)). The Applicant has petitioned the court to declare the right absolute in the amount of 654 c.f.s. for purposes of fixing the appropriator's place in the priority system in relation to all other appropriators in a manner consistent with the 1969 Act. *New Anderson Ditch Co.*, 962 P.2d 962; C.R.S. § 37-92-306.

35. Points of Diversion.

(a) Only those diversions at the decreed point of diversion or at decreed alternate points of diversion may be utilized to make absolute a decreed conditional water right. *Broyles v. Fort Lyon Canal Co.*, 638 P.2d 244, 251 (Colo. 1981).

(b) As it has continuously since inundation in 1964, the Applicant diverted the Roberts Tunnel direct flow right by means of the West Portal, which the court determines is an acceptable point of diversion under the decrees entered in C.A. 1805 and 1806, and in Consolidated Case Nos. 2782, 5016 and 5017.

(c) The Decrees entered in C.A. 1805 and 1806 found and decreed that the Blue River Diversion Project would divert through a system of intakes, feeder ditches and canals located at three distinct points of diversion on the Snake, Blue, and Ten Mile Rivers. Judgment and Decree, C.A. 1805/1806 at p.2 ¶6(a)-(c); p. 5 ¶1(a)-(c) (Summit County Mar. 10, 1952). The Summit County District Court decrees also decreed that the Applicant would construct Dillon Reservoir, in an area defined under the decrees, which would inundate the three points of diversion. Judgment and Decree, C.A. 1805/1806 at p. 4 ¶7(a); p. 6 ¶1(d) (Summit County Mar. 10, 1952). Further, the Summit County District Court decree in C.A. 1806 includes a finding that "[i]n its final form, the [Blue River Diversion] Project will provide the means of diverting water at the points of diversion hereinabove mentioned at the maximum rate of 788 cubic feet per second of time, transmitting the same to the North Fork of the South Platte River through a tunnel approximately twenty-three miles in length known as the Montezuma Tunnel, which has a maximum carrying capacity of 788 cubic feet of water per second of time and the West

Portal of which is located at a point whence the East quarter corner of Section 18, Township 5 South, Range 77 West of the 6th Principal Meridian bears South 81º 07' East, 941.6 feet." Judgment and Decree, CA 1806 at p. 2, ¶ 4 (Mar. 10, 1952). As determined in *City and County of Denver v. Northern Colorado Water Conservancy Dist.*, 276 P.2d 992, 1003 (Colo. 1955), the June 24, 1946 priority date for the Blue River Diversion Project was fixed based on the selection of a project involving "a large reservoir at Dillon near the confluence of the Blue with the Ten Mile and the Snake, and with a new single point of diversion in the reservoir which captured waters more than a mile below the former proposed points of diversion." In addition, this court has historically recognized the West Portal of the Roberts Tunnel as the primary point of diversion for the Roberts Tunnel direct flow right in the Final Decree entered by this court on October 12, 1955 and in subsequent diligence proceedings. Final Decree and Stipulation, CA 2782, 5016 and 5017 at ¶19 (D. Colo. Oct. 12, 1955); Finding and Order Concerning Due Diligence of the City and County of Denver at 2 (D. Colo. Apr. 6, 1964); Decree and Determination, CA 2782, 5016 and 5017 (Case No. W-741-77) at 2 ¶ 4 (D. Colo. Sept. 15, 1978).

(d) Because the Summit County District Court decrees award the Applicant a June 24, 1946 priority date based on the use of a single point of diversion at the Roberts Tunnel, and because this court's decree entered in 1955 and in later diligence matters referred to the Roberts (Montezuma) Tunnel as the point of diversion for the direct flow right, the court concludes that Applicant's diversion under a 1946 priority can legally be made at the point of diversion described as the West Portal of the Roberts Tunnel. Based

on the court's findings in this regard, the court concludes that the West Portal of the Roberts Tunnel was intended to become the primary point of diversion for the Blue River Diversion Project upon the construction of Dillon Reservoir and is therefore the appropriate point of diversion for the Blue River Diversion Project.

(e) All previous findings of amounts made absolute also affirm the West Portal of the Roberts Tunnel as the point of diversion for the direct flow right. Under *Taussig v. Moffat Tunnel Water & Development Company*, 106 P.2d 363 (Colo. 1940), the precise location of the point of diversion of a conditional water right is not essential until the water is placed to beneficial use. When the conditional water right is made absolute then the decree must take on the elements of definiteness and certainty.

(f) Based on the foregoing, the court concludes and determines that the Applicant diverted the 654 cfs at the decreed point of diversion for the Roberts Tunnel direct flow right.

36. Place of Use.

(a) Municipal appropriations are made to serve a growing population. *City and County of Denver v. Sheriff*, 96 P.2d 836, 841 (Colo.1939) (stating that a specified tract of land does not increase in size, but populations do, and in short periods of time).

(b) Unlike agricultural water rights, which are appropriated for a fixed area of land, *In re Water Rights of Central Colorado Water Conservancy Dist.*, 147 P.3d 9, 14 (Colo. 2006), municipal water rights must serve a growing population, which can expand and increase in size. *Sheriff*, 96 P.2d at 841.

(c) The geographic area where the Applicant serves and provides water, including water diverted on June 23, 2006, is the area within and adjacent to the City and County of Denver, and is within Denver Metropolitan Area, that being the area reasonably integrated with the development of the City and County of Denver (as defined by the Blue River Decree), subject to the limitations of Article I and Article II of the 2012 Agreement.

(d) Because Applicant diverts water from the West Slope to the East Slope it has voluntarily agreed through the West Slope Agreements to supply water for beneficial use by water users in Summit County to help address the impacts of its diversions on the West Slope. The court therefore finds that the amounts and uses of water deliveries from the Blue River Diversion Project made available voluntarily by the Applicant under the West Slope Agreements effectuate the objectives of the Blue River Decree and Stipulation and, under these unique circumstances, are lawful municipal uses of such water under the Blue River Decree and Stipulation. The water provided by Applicant under the West Slope Agreements is fully consumable water from the Blue River and its tributaries that may be used by West Slope water users on the West Slope pursuant to those Agreements for municipal, domestic, irrigation, industrial, recreation, piscatorial, snowmaking, wastewater treatment, augmentation, and exchange uses, including reuse and successive use to extinction in Summit County; provided that prior to the reuse or successive use of such water, the plan for such reuse and/or successive use shall be incorporated into an approved water court decree or substitute supply plan. No additional amount of water from the Blue River Diversion Project under the decrees entered in CA

1805 and 1806 and Consolidated Case Nos. 2782, 5016 and 5017 shall be used for these West Slope purposes. This decree shall not be considered precedent or persuasive authority with regard to any other water right or any other matter unrelated either to the operation of the Blue River Diversion Project water rights as contemplated under this decree or enforcement of this decree.

(e) The Applicant's plans to provide water derived from Colorado River return flows to entities located outside the Applicant's Service Area, but within the six counties listed in paragraph 23 of this decree in accordance with Article I and Article II of the 2012 Agreement are lawful and effectuate the objectives of the Blue River Stipulation and Decree.

37. Diligence. The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system. C.R.S. § 37-92-301(4)(b) (2010).

(a) A water court makes a case-by-case consideration of several factors to determine whether the applicant has made the required effort. *See City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961 (Colo.1998) (citing *Dallas Creek v. Huey*, 933 P.2d 27, 36 (Colo.1997)).

(b) These factors include but are not limited to: (1) economic feasibility; (2) the status of requisite permit applications and other required governmental approvals; (3)

expenditures made to develop the appropriation; (4) the ongoing conduct of engineering and environmental studies; ( 5) the design and construction of facilities; and (6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Dallas Creek*, 933 P.2d at 36.

(c) All acts necessary to complete the appropriation need not be accomplished in the same diligence period. What must be demonstrated is continued intent and progress toward finalizing the conditionally decreed appropriation. The existence of a plan, capability, and need for the water is examined periodically by the water court, at the close of each diligence period, to determine whether the applicant is entitled to retain the antedated priority. Monitoring of use and need for the conditional appropriation is a proper role of the water court in a diligence proceeding. *Dallas Creek*, 933 P.2d at 36.

(d) Based on the foregoing diligence activities, the court determines that the Applicant has demonstrated reasonable diligence in the development of the conditional portion of the Roberts Tunnel direct flow right.

38. Economic Conditions and Governmental Permits. Applicant has obtained all necessary governmental permits to construct facilities necessary to date to divert the Roberts Tunnel direct flow right and put water diverted under the right to beneficial use. Neither current economic conditions beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right or the proposed use of water from a conditional water right nor the fact that one or more governmental permits or approvals have not been obtained shall be

considered sufficient to deny a diligence application, so long as other facts and circumstances which show diligence are present. C.R.S. § 37-92-301(4)(c).

39. Can and Will.

(a) To show reasonable diligence in the development of a conditional right, an applicant must demonstrate that the waters "can and will" be stored and beneficially used and that the project "can and will" be completed with diligence and within a reasonable time. See C.R.S. § 37-92-305(9)(b). *Municipal Subdistrict, Northern Colorado Water Conservancy District v. OXY, Inc.* 990 P.2d 701 (Colo. 1999).

(b) C.R.S. § 37-92-305(9)(b) (2010) provides: "No claim for a conditional water right may be recognized or a decree therefore granted except to the extent that it is established that the water can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time."

(c) The Can and Will doctrine requires that a conditional water right applicant show a "substantial probability that within a reasonable time the facilities necessary to affect the appropriation can and will be completed with diligence, and that as a result water will be applied to a beneficial use." *Board of County Comm'rs of County of Arapahoe v. United States*, 891 P.2d 952, 961 (Colo.1995). Proof of such a substantial probability necessarily involves imperfect predictions of future events and conditions. *City of Black Hawk v. City of Central*, 97 P.3d 951 (Colo. 2004).

(d) The can and will requirement should not be applied rigidly to prevent beneficial uses where an applicant otherwise satisfies the legal standard of establishing a

non-speculative intent to appropriate for a beneficial use. *City of Black Hawk v. City of Central,* 97 P.3d 951, 957 (Colo. 2004). Further, the existence of contingencies does not prevent the can and will test from being satisfied. *Id.*; *City of Thornton v. Bijou Irr. Co.*, 926 P.2d 1, 43-45 (Colo. 1996).

(e) The Applicant has demonstrated satisfaction of C.R.S. §37-92-305(9) (2010) based on its showing that water remains available to be developed, physically and legally, under the conditional portion of the Roberts Tunnel direct flow right. The court further determines that the North Fork of the South Platte River is currently capable of conveying the full amount of the Roberts Tunnel direct flow right, and that the Applicant is capable of enlarging facilities necessary to divert the full amount of the Roberts Tunnel direct flow right, including the Roberts Tunnel valves and the Foothills Treatment Plant. In addition, there is no evidence that the Applicant is not capable of continuing to meet its obligations under the Blue River Decree, including payment of power interference.

40. Anti-Speculation.

(a) An appropriator must have a legally vested interest in the lands or facilities to be served "*unless such appropriator is a governmental agency* or an agent in fact for the persons proposed to be benefited by such appropriation." C.R.S. § 37-92-103(3)(a)(I) (2010).

(b) Because a conditional right may become speculative over time, the anti-speculation doctrine continues to apply in later diligence proceedings. *Municipal Subdistrict, Northern Colorado Water Conservancy District v. OXY, Inc.* 990 P.2d 701 (Colo. 1999).

(c) The test for determining need with regard to a municipality was stated in *Pagosa Area Water & Sanitation District v. Trout Unlimited*, 170 P.3d 307, 309-310, 312 (Colo. 2007): A governmental agency must demonstrate that its intent to make a non-speculative conditional appropriation of unappropriated water is based on (1) a reasonable water supply planning period; (2) that its substantiated population projections are based on a normal rate of growth for that period; and (3) the amount of available unappropriated water is reasonably necessary to serve the reasonably anticipated needs of the governmental agency for the planning period, above its current water supply.

(d) The Applicant is a governmental entity and has satisfied the anti-speculation test. The Applicant is a municipal corporation and a political subdivision of the state, under the control of a Board appointed by the Mayor of Denver. Charter of the City and County of Denver, Article X. *Bennett Bear Creek Farm Water and Sanitation District v. Denver Board of Water Commissioners*, 928 P.2d 1254, 1265, 1273 (Colo. 1996). As such, it is governed by the Denver Charter and other laws applicable to governmental entities. As dictated by the Denver Charter, all revenues received by the Board are placed in the Water Works Fund. The Board must "deposit all receipts into a bank account. . . . Monies shall be paid out of the account only upon the authority of the Board." Denver Charter, § 10.1.7. Article XX of the Colorado Constitution grants the City and County of Denver home rule power to legislate on local and municipal matters and to operate water works "within or without its territorial limits." *Colo. Const. Art. XX, §§ 1 and 6.* The Denver Charter grants the Board "all the powers of the City and County of Denver including those granted by the Constitution and by the law of the State of

Colorado and by the Charter[.]" *Exhibit 3, Denver Charter, § 10.1.5*. Specifically, the Charter gives the Applicant "complete charge and control of a water works system and plant for supplying the City and County of Denver and its inhabitants with water for all uses and purposes." *Id., § 10.1.1.* The Applicant, when providing contractually based water service, has been determined by the Supreme Court to be "a governmental entity acting pursuant to a legislative grant of authority." *Bennett Bear Creek*, 928 P.2d at 1274 n. 17, citing *Board of County Comm'rs of Arapahoe County v. Denver Board of Water Comm'rs*, 718 P.2d 235, 245 (Colo. 1986). The court determines that because of the Applicant's status as a governmental entity, it is entitled to the anti-speculation exception afforded to governmental entities. C.R.S. § 37-92-103(3)(a)(I) (2010).

(e) The Applicant does not have speculative intent with regard to the Roberts Tunnel direct flow right. Applicant is a governmental agency which will serve persons proposed to be benefited by the Roberts Tunnel direct flow right, and therefore does not need to demonstrate a legally vested interest in the lands or facilities to be served. C.R.S. § 37-92-103(3)(a)(I) (2010). Applicant also demonstrated its intent to make a non-speculative conditional appropriation of unappropriated water based on (1) a reasonable water supply planning period; (2) that its substantiated population projections are based on a normal rate of growth for that period; and (3) the amount of available unappropriated water is reasonably necessary to serve the reasonably anticipated needs of the governmental agency for the planning period, above its current water supply. C.R.S. § 37-92-103(3)(a) (2010). *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 219 P.3d 774, 780 (Colo. 2009); *Pagosa Area Water & Sanitation District v. Trout*

*Unlimited*, 170 P.3d 307, 309-310, 312 (Colo. 2007). The court determines that the Applicant has a specific plan and intent to divert, store, or otherwise capture, possesses, and control the full amount of 788 cfs under the Roberts Tunnel direct flow right for specific decreed beneficial uses.

## III. JUDGMENT AND DECREE

41. The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

42. The Applicant has been reasonably diligent in the development of the conditional water rights for the Blue River Diversion Project described above for the diligence period December 14, 2000 to December 26, 2006 and the conditionally decreed water right and priorities are hereby continued in full force and effect and no order or decree is direct or entered for the cancellation of them in whole or in part.

43. The Applicant lawfully diverted 654 cfs of the Roberts Tunnel direct flow right in compliance with the Judgments and Decrees entered in CA 1805 and 1806 and Consolidated Case Nos. 2782, 5016 and 5017, and under the Water Right and Administration Act of 1969, and put the water to beneficial use by customers in areas in and adjacent to the City and County of Denver and reasonably integrated with the development of the City and County of Denver. Further, Applicant's voluntary provision of water from the Blue River Diversion Project for use in Summit County under the West Slope Agreements is lawful and effectuates the objectives of the Final Decree and Stipulation in Civil Case Nos. 2782, 5016 and 5017. The amount remaining conditional under the Roberts Tunnel direct flow right is 134 cfs.

44. Pursuant to C.R.S. § 37-92-301(4), the Applicant shall file an Application for Finding of Reasonable Diligence on or before the last day of _____ 201_, so long

as the Applicant desires to maintain these conditionally decreed water rights, or until a determination has been made that these conditionally decreed water rights have become absolute water rights by reason of the completion of the appropriation.

DATED this ___ day of _____.

**BY THE COURT:**

_____
Marcia S. Krieger
United States District Judge

Attachment N
Dillon Reservoir Refill Right

04/04/2012

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO
Consolidated Civil Case Nos. 2782, 5016 and 5017
and

| | |
|---|---|
| District Court<br>Water Division No. 5, Colorado<br>Garfield County Courthouse<br>109 8th Street, #104<br>Glenwood Springs, Co 81601-3303 | April 4, 2012 DRAFT<br><br>▲COURT USE ONLY▲ |
| CONCERNING THE APPLICATION FOR WATER RIGHTS OF:<br><br>**THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS**<br><br>IN SUMMIT COUNTY. | Case Number: 2003CW039<br>(Part 2 of 2)<br><br>(1987CW376; 2003CW39 (Part 1 of 2) WD5)<br><br>Division 5 Courtroom |
| **FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE TO MAKE ABSOLUTE** | |

THIS ACTION comes before the Court upon an application for Finding of Reasonable Diligence and to Make Absolute filed by the City and County of Denver, acting by and through its Board of Water Commissioners for Dillon Reservoir refill right. This conditional water right was originally adjudicated in Case No. 87CW376, Water Court Water Division 5 on February 13, 1997 and confirmed and approved by the United States District Court, District of Colorado on September 23, 1999.

## I. FINDINGS OF FACT

The Court has made such investigations as are necessary to determine whether the statements in the application are true and is fully advised with respect to the subject matter of this application. The Court, under the standards codified at §§ 37-92-301(4) and 37-92-305(9), 10 C.R.S. finds, determines, and rules as follows:

### GENERAL INFORMATION

1. Name, address, telephone number of Applicant:

City and County of Denver, acting by and through its Board of Water Commissioners
("Applicant" or "Denver")
1600 West 12th Avenue,
Denver, Colorado 80204-3412
(303) 628-6460

2. Application. The Applicant filed an Application for a Finding of Diligence and to Make Absolute with the Water Clerk on February 28, 2003 pursuant to § 37-92-302, 10 C.R.S. and this Court's decree in Case No. 87CW376 dated February 13, 1997. The Applicant also filed the Application with the United States District Court, District of Colorado for confirmation and approval that this decree does not adversely affect the objectives of the Final Decree in Consolidated Case Nos. 2782, 5016 and 5017. Applicant filed an amended application to make an amount absolute on February 16, 2006.

3. Notice and Jurisdiction. Notice of the Application was given in the manner required by 37-92-302(3), 10 C.R.S. The Water Court has jurisdiction over the subject matter of this proceeding and over all persons and property affected by this application, regardless of whether those persons or owners of property have appeared. The United States District Court has jurisdiction under its continuing jurisdiction in Consolidated Case Nos. 2783, 5016 and 5017.

4. Statements of Opposition. The following parties filed timely statements of opposition: Middle Park Water Conservancy District ("Middle Park"), Colorado River Water Conservation District ("River District"), Board of County Commissioners of the County of Summit ("Summit County"), Orchard Mesa Irrigation District ("Orchard Mesa"), Grand Valley Water Users Association ("GVWUA") and Ute Water Conservancy District ("Ute Water").

5. Summary of Consultation. The Division Engineer, Water Division No. 5 consulted on the Application and issued a report on November 13, 2003. On November 18, 2003 and February 27, 2004, the Applicant served copies of the Division Engineer's Report/Summary of Consultation on all parties.

6. Stipulation. By stipulation dated August 1, 2003, Summit County and the River District consented to an entry of a decree for diligence and Denver agreed, if not otherwise settled by separate stipulation, to not seek a final determination on the amount made absolute until after March 1, 2005. Denver further agreed to bifurcate its claim to make absolute. On or about November 2, 2003, the water court granted the motion to bifurcate. The water court entered a diligence decree (Part 1 of 2) on October 29, 2004 and the United States District Court subsequently approved the diligence decree on November 15, 2004.

## DESCRIPTION OF DILLON RESERVOIR REFILL RIGHT

7. Name of structure. Dillon Reservoir (Refill).

8. Description of the conditional water right ("Original Decree").

A. Date of Original Decree and Case Number. February 13, 1997, by the District Court for Water Division No. 5, Case No. 87CW376.

B. Legal description. The reservoir is located in Sections 7, 8, 17, 18, 19, 20, 21, 30, 31, T5S, R77W of the 6th P.M., and Sections 13, 23, 24, 25, 26, 35 and 36, T5S, R78W of the 76th P.M. The dam is located across the channel of the Blue River, with the easterly end located at a point whence the E 1/4 corner of Section 18, T5S, R77W of the 6th P.M. bears South 59º 00' East 5507.7 feet.

C. Sources. The sources of water supply for storage in Dillon Reservoir are the Blue River, the Snake River, and Ten Mile Creek, all of which are tributaries of the Colorado River and the waters which would naturally become a part of said streams.

D. Date of appropriation. January 1, 1985.

E. Amount. 141,712 acre feet, ABSOLUTE
33,288 acre feet, conditional
175,000 acre feet, total

F. Uses. All municipal uses, including domestic use, mechanical use, manufacturing use, fire protection, street sprinkling, watering of parks, lawns and grounds. This water right may also be used for flood control. Denver's use of waters stored under this refill priority shall comply with and be subject to the Blue River Decree and any stipulations, orders or judicial decisions entered in Consolidated Case Nos. 2782, 5016 and 5017.

## CLAIM TO MAKE ABSOLUTE

9. Date. April 1, 1996- March 31, 1997.

10. Amount. 141,712 acre feet.

11. Use. During the period April 1, 1996 through March 31, 1997, 141,712 acre feet of water was used to: (1) replenish and recover water originally stored under Denver's June 24, 1946 storage right, from which water was released to the Blue River for flood control under

paragraphs 11(A) and (B) of the Original Decree; (2) bypass refill water for flood control under paragraph 11(C) of the Original Decree; and (3) store water and replace evaporation losses after the first fill under paragraph 11(D) of the Original Decree. Pursuant to paragraph 17(D) water in storage under the refill right on April 1 of any administrative year was considered and accounted for as water stored under the first fill decree in that administrative year.

12. Place of use where water is applied to beneficial use. The Applicant subsequently delivered through the Roberts Tunnel the water stored in Dillon Reservoir under the refill water right to areas served by the Denver Municipal Water System as depicted in the map attached and incorporated hereto as Exhibit A.

## II. CONCLUSIONS OF LAW

Based upon and fully incorporating the Findings of Fact set forth above, this Court concludes as a matter of law that:

13. Application was Timely. The Application for a Finding of Diligence and to Make Absolute was timely filed with the Water Clerk pursuant to C.R.S. § 37-92-301(4) (2010).

14. Notice. Denver Water satisfied all requirements for notice under C.R.S. § 37-92-302(3) (2010).

15. Can and Will. No claim for a water right may be recognized or a decree therefor granted except to the extent that the waters have been diverted, stored, or otherwise captured, possessed, and controlled and have been applied to a beneficial use. C.R.S. § 37-92-305(9)(a) (2010).

16. Perfection of Water Rights. In order to perfect the conditional right, the applicant must satisfy the following criteria: (1) capturing, possessing, and controlling water; and (2) the application of the water to a beneficial use. *City of Lafayette v. New Anderson Ditch Co*., 962 P.2d 955, 961-962 (Colo.1998) (citing *City & County of Denver v. Northern Colo. Water Conservancy Dist.*, 276 P.2d 992, 998-99 (Colo. 1954)). The applicant may then petition the water court to declare the right absolute for purposes of fixing the appropriator's place in the priority system in relation to all other appropriators. *New Anderson Ditch Co*., 962 P.2d 962; C.R.S. § 37-92-306 (2010).

17. Application is lawful. The Applicant has satisfied all statutory and legal requirements to make absolute a portion of the conditional water right adjudicated in Case No. 87CW376, Water Division 5.

## III. JUDGMENT AND DECREE

The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

18. THIS COURT DETERMINES AND RULES that the Applicant placed to beneficial use 141,712 acre feet in accordance with the Original Decree and is entitled to that amount being made absolute.

19. THE COURT FURTHER DETERMINES AND RULES that pursuant to the terms of the decree entered in Case No. 03CW039 (Part 1 of 2) the remaining conditionally decreed water rights and priorities are hereby continued in full force and effect and no order or decree is directed or entered for the cancellation of them in whole or in part.

DATED this ___ day of ____, 2010.

_____
Holly K. Strabilzky
Water Referee
Water Division No. 1

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: _____

_____
James Boyd
Water Judge
Water Division No. 5
State of Colorado

THE WITHIN FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE DO NOT ADVERSELY AFFECT THE OBJECTIVES OF THE FINAL DECREE ENTERED BY THIS COURT IN CONSOLIDATED CASE NOS. 2782, 5016 AND 5017; AND THE DECREE IS APPROVED AND CONFIRMED.

**DATED: _____**

**BY THE COURT**

_____

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Attachment O

RESOLUTION NO. 85-56

Before the Board of County Commissioners of the

County of Summit

State of Colorado

GRANTING THE DENVER WATER BOARD A "1041" PERMIT FOR STRAIGHT CREEK

WHEREAS, the Denver Water Board wishes to construct a connection to an existing diversion structure to divert certain flows from Straight Creek above Dillon Valley and wishes to construct a pipeline to carry the water into Dillon Reservoir, and

WHEREAS, the County's land use regulations require a "1041" permit for the expansion of a water collection and delivery system, and

WHEREAS, the Denver Water Board has submitted the necessary information to secure a "1041" permit, and

WHEREAS, the Board of County Commissioners has given proper public notice and held a public hearing on granting the Denver Water Board a "1041" permit, and

WHEREAS, the Board of County Commissioners has considered the recommendations of the Snake River Planning Commission, and the Planning Department staff as well as all comments submitted at the public hearing.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO, that:

1) The application complies with the criteria for permit issuance in section 4-306 of the County's "Guidelines and Regulations for Activities of State Interest" adopted May 4, 1982, and amended August 3, 1982.
2) The Board of County Commissioners is authorized to sign and issue the attached "1041" permit for Straight Creek along with the "conditions" and mutual "understandings" of the permit.

ADOPTED this 17th day of July, 1985

BOARD OF COUNTY COMMISSIONERS
OF SUMMIT COUNTY, COLORADO

BY Don Peterson
Don Peterson, Chairman

ATTEST:

Colleen Richmond
Colleen Richmond, Clerk and Recorder

EXHIBIT B

RECEIVED

Attachment O

SUMMIT COUNTY
COLORADO
PERMIT FOR AN ACTIVITY OF STATE INTEREST

SUMMIT COUNTY
Board of County Commissioners

A PERMIT FOR THE EXPANSION OF A WATER COLLECTION AND DELIVERY SYSTEM

Is hereby issued to the Denver Water Board for the construction of a connection to an existing diversion structure to divert certain flows from Straight Creek above Dillon Valley, and for the construction of a pipeline to carry the water into Dillon Reservoir, and to construct outlet works in the Reservoir below the intersection of Tenderfoot Street and Highway 6. The pipeline will be approximately 1.8 miles long. The required right-of-way is about 30 feet in width. The majority of the pipeline will be located within the Oro Grande No. 2 canal.

This permit is granted with the following conditions which must be met:

1) The Denver Water Board shall mitigate the phosphorus and sediment loading of Dillon Reservoir above normal background levels resulting from the Straight Creek Diversion. For the purposes of this condition "mitigation" shall mean the removal of phosphorus on a pound for pound basis. "Background level" is defined as the 1982 phosphorus concentration in Dillon Reservoir. It is understood that "background" for other water years can be computed by comparing the water yield and phosphorus loading rate to the 1982 water yield and phosphorus loading rate. Before construction begins the Denver Water Board shall submit and receive County approval for a phosphorus mitigation plan. The mitigation plan may be approved and implemented in more than one phase. Denver will participate with the County in a program to monitor phosphorus loading from Straight Creek.

2) The Denver Water Board recognizes the need for minimum streamflows in the Blue River below Dillon Dam. The Denver Water Board will not divert water out of Straight Creek at any time that the inflow to Dillon Reservoir falls below 50 cubic feet per second (cfs), or when the flow in Straight Creek falls below agreed-upon minimum flows necessary for that stream. Denver shall provide for a minimum stream flow of either:

   i) 2 cfs or
   ii) the minimum flow required by the Army Corps of Engineers, whichever is greater, to be measured immediately below the existing structure on Straight Creek.

3) Adverse impacts due to soil disturbance and erosion, as a result of construction shall be mitigated. Before commencing construction the Denver Water Board will prepare and submit an erosion control and revegetation plan for review and approval by the County. Mitigation shall include successful revegetation of all disturbed areas. The County planning staff will have access to all disturbed areas for the purpose of monitoring erosion control and revegetation.

4) This permit is effective upon the date of execution of the agreement between the City and County of Denver and Summit County concerning water quantity and water quality matters and the operation of Dillon Reservoir, a draft copy of which has been made a part of the public hearing record.

4) If further reviews or more detailed data developed before commencement of construction should require changes through the project plans or disclose impacts not previously anticipated, the Denver Water Board agrees to cooperate with Summit County in modifying the understandings and conditions contained herein.

This permit is granted based on the following understandings:

1) The Board of County Commissioners has considered the following: information provided by the Denver Water Board describing the project; the recommendations of the Snake River Planning Commission; the recommendation from the Planning and Engineering Department, and information presented at the public hearing held July 17, 1985, including, inter alia:

   a) "Modeling the Effects of Proposed Diversions from Straight Creek into Lake Dillon", prepared by Dr. William Lewis and James Saunders, June 1985, and

   b) "Fishery Impacts of the Proposed Straight Creek Water Collection System", prepared by Chadwick & Associates, June 1985.

2) Any documents evaluating environmental impacts of the Straight Creek Diversion, which may be prepared pursuant to the National Environmental Policy Act, will be forwarded by the Denver Water Board to Summit County for review.

3) The Denver Water Board will submit the construction drawings for the diversion pipeline and improvements to Summit County for review by the County prior to the commencement of construction.

4) The Denver Water Board recognizes the need to mitigate the loss and degradation of wetlands along Straight Creek below the diversion point that could result from the proposed diversion. Special attention will be paid to water quality and wildlife values of the existing wetlands. Construction of sedimentation ponds or infiltration galleries in the Straight Creek Basin below Dillon Valley, and vegetation enhancement in the existing wetland area should be considered as means of mitigation.

5) The Straight Creek fishery will be maintained and, if possible, enhanced. The Denver Water Board will cooperate with the Colorado Division of Wildlife to solicit ideas and advice regarding enhancement of the fishery.

6) The Denver Water Board and its contractor will pay special attention to dust, noise control and hours of operation during construction. The Denver Board will develop plans to meet those concerns and submit them to the County prior to construction.

7) The Denver Water Board will pay special attention to the loss of access to Straight Creek for emergency fire flow, and will submit a plan to the County to address concerns about fire flows prior to construction. The review of these plans conducted by the County shall involve second alarm fire districts who depend on Straight Creek.

8) An emergency response plan will be developed in cooperation with the Towns of Dillon and Silverthorne, Dillon Valley, and the Buffalo Mountain Metro District, for handling adverse impacts from hazardous materials which may be spilt from I-70 into Straight Creek above the Denver diversion. This plan will include information on how the diversion will be shut down to prevent contamination of the reservoir and the Town of Dillon water supply, notification of appropriate agencies, and containment and clean-up activities. The plan shall be submitted to the County prior to commencement of construction.

9) The Denver Water Board will participate with the County in keeping the flood channel of Straight Creek clear of brush and debris which would have been deterred from growing or debris which would have been flushed out if the diversion had not been built. The Denver Water Board will construct the diversion so it does not increase any flood hazards. Flood hazard maps shall be updated by the Denver Water Board as appropriate, and supplied to the County.

10) Recreational values in the immediate area of the diversion right-of-way will be maintained and enhanced. The Denver Water Board will cooperate in establishing public access to the Tenderfoot Trail, a bicycle path easement along that section of shoreline of Dillon Reservoir between the Town of Dillon and the Summerwood Subdivision, and public fishing access to the reservoir.

11) It is anticipated that construction of the pipeline will occur by 1995.

Executed this 17th day of July 1985.

By: _____
Don Peterson, Chairman

_____
Dan Ulmer

_____
Rich Levengood

ATTEST:

_____
Colleen Richmond, Clerk & Recorder

SEAL

Recommended for approval by:

_____
Bruce Baumgartner, County Manager

_____
Pam Sheldon, Planning Director

Approved as to form & legality:

By: _____
Bob Golten, County Attorney

ATTACHMENT P

**List of Possible Federal and State Permits and Approvals for the Moffat Project**

**U.S. Army Corps of Engineers**

-Permit to Discharge Dredged or Fill Material (Section 404 Permit)

**Federal Energy Regulatory Commission (FERC)**

-Amendment to FERC hydropower license

**U.S. Forest Service**

-Federal Power Act – Section 4e Conditions

-Federal Land Policy and Management Act of 1976 – Special Use Permit

**U.S. Fish and Wildlife Service**

-Endangered Species Act (Section 7) Compliance

**U.S. Department of the Interior – Advisory Council on Historic Preservation and Office of Archaeology and Historic Preservation, Colorado State Historic Preservation Officer (SHPO)**

-Cultural Resource Compliance (Section 106 of the National Historic Preservation Act)

**Colorado State Engineer's Office, Division of Water Resources**

- Dam Safety Permit
- Permit to Construct Facility (Dam)
- Reservoir Storage Permit

**Department of Public Health and Environment, Air Pollution Control Division**

- Land Development Permit (Fugitive Dust Control Plan)

**Department of Public Health and Environment, Water Quality Control Division**

-General Permit for Stormwater Discharges Associated with Construction Activity

-Section 401 Water Quality Certification

-Construction Dewatering Permit

**Colorado Wildlife Commission/Colorado Water Conservation Board**

- Fish and Wildlife Mitigation Plan pursuant to CRS 37-60-122.2

ATTACHMENT Q

| | |
|---|---|
| DISTRICT COURT, WATER DIVISION 5, COLORADO<br>Garfield County Courthouse<br>109 8th Street, Suite 104<br>Glenwood Springs, CO 81601 | **DRAFT**<br>**April 5, 2012**<br><br>CRE 408: FOR PURPOSES OF COMPROMISE AND SETTLEMENT<br><br>▲ COURT USE ONLY ▲ |
| CONCERNING THE APPLICATION FOR WATER RIGHTS OF<br><br>THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS IN<br><br>GRAND COUNTY, COLORADO | Case No: 2007CW029<br><br>(C.A. No. 1430; W-3757; Case Nos. 82CW127; 86CW129; 90CW116; 98CW189 WD5)<br><br>Div.: Water Division No. 5 |
| **FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT** | |

THIS MATTER comes before the Court concerning the Application for Finding of Reasonable Diligence for the Darling Creek Enlargement and Extension of the Williams Fork Diversion project, Williams Fork Power Conduit, and the Moffat Tunnel Collection System by the Applicant, City and County of Denver, acting by and through its Board of Water Commissioners (hereinafter "Denver Water"). Having reviewed and considered the pleadings, documentary and other evidence, the stipulations of several parties, and the arguments of counsel, the Court finds, determines and decrees that:

## I. FINDINGS OF FACT

The Court having received and considered all evidence offered, pleadings, and arguments by counsel, hereby makes the following findings:

### GENERAL MATTERS

1. Applicant.

City and County of Denver,
acting by and through its
Board of Water Commissioners
("Applicant" or "Denver")
1600 West 12th Avenue,
Denver, Colorado 80204
(303) 628-6000

Denver Water is a home rule municipal corporation of the State of Colorado. Denver Water derives its authority and power to operate a water supply system under the state constitution, the Denver City Charter and provisions of state law. Pursuant to the Denver City Charter, Denver Water provides all treated and raw water necessary for the full development of land within the City and County of Denver. Pursuant to perpetual water service agreements, Denver Water serves as the water utility for other governmental entities outside the City and County of Denver, but within Denver Water's Service Area, providing all treated and raw water necessary to serve the full development of all land within the Service Area depicted in Exhibit ___. Denver Water also has commitments to provide nearly 68,000 acre-feet of treated and raw water to customers outside its Service Area under perpetual fixed amount contracts listed on Exhibit ___. The entities receiving water under fixed amount contracts are all located within the Counties of Adams, Arapahoe, Douglas and Jefferson and the City and County of Broomfield. From time to time, Denver Water provides treated and raw water to customers under temporary arrangements.

Denver Water operates extensive raw water collection systems including the South Platte Collection System, the Roberts Tunnel Collection System, the Moffat Tunnel Collection System and the Williams Fork Diversion System. On the South Platte River, Denver Water typically stores water at Antero, Eleven Mile, Cheesman and Chatfield reservoirs for delivery or exchange of water to either Strontia Springs Reservoir or Conduit 20 intakes in Waterton Canyon. Denver Water stores and diverts Colorado River water at Dillon Reservoir and delivers this water through the Roberts Tunnel to the North Fork of the South Platte River above Strontia Springs Reservoir. Denver Water also collects water from the Fraser and Williams Fork Rivers for delivery through the Moffat Tunnel for storage in Gross Reservoir and delivery to Ralston Reservoir via the South Boulder Diversion Canal.

Raw water diverted from these systems is treated at Foothills, Marston and Moffat treatment plants and delivered to Denver Water's customers in the metropolitan area. Denver Water also delivers raw water to a number of customers. After indoor use by customers, the water is discharged back to the South Platte River as treated effluent from the

Littleton-Englewood or the Metropolitan Reclamation District Wastewater Treatment Plant. Water used outdoors returns to the South Platte River by means of lawn irrigation return flows. Denver Water possesses and controls water from the various streams and rivers by diversion, storage, treatment and delivery and also through contractual provisions in its treated and raw water leases with various water suppliers.

Denver Water operates exchanges of its water to and from various facilities in its system including Strontia Springs Diversion facility (a/k/a Roxborough Diversion facility), Cheesman Reservoir and Chatfield Reservoir. Denver Water diverts by exchange water otherwise out of priority, replacing an equivalent amount of water to the river to satisfy the calling senior water right. Denver Water has various types of replacement water available in its system, including releases from storage, Colorado River sources, reusable wastewater return flows and lawn irrigation return flows.

2. Water Rights at Issue. The water rights at issue in this matter are the water rights decreed in Civil Action No. 1430, Grand County District Court, November 7, 1974 (collectively referred to as the "Subject Water Rights").

3. Application. The Application at issue in this matter is the Application filed by Denver Water on February 27, 2007, for finding of reasonable diligence in Case No. 2007CW029.

4. Jurisdiction. The Court has subject matter jurisdiction over the Application and this proceeding, and personal jurisdiction over all persons who would have standing to appear as parties, regardless of whether they have appeared.

5. Notice. Timely and adequate notice of the pendency of this proceeding in rem has been given in the manner required by law. The Application was published in the March 2007 resume. Newspaper notice of the Application was also provided in the Grand Junction Daily Sentinel, the Glenwood Springs Post Independent, and the Granby Sky-High News during the month of March 2007. Denver Water also provided notice to owners or reputed owners of land upon which any new diversion or storage structures, including the City of Englewood, Bureau of Land Management, the United States of America, and Climax Molybdenum Company.

6. Statements of Opposition. The following Objectors filed timely statements of opposition: Trout Unlimited; Climax Molybdenum Company; Grand Valley Water Users Association; Orchard Mesa Irrigation District; Middle Park Water Conservancy District; City of Englewood; Intrawest-Winter Park Operations Corporation; and the Colorado River Water Conservation District.

7. Withdrawals of Statements of Opposition. On May 7, 2007, Intrawest-Winter Park Operations Corporation withdrew its statement of opposition in this matter.

8. Stipulations. The following Objectors have stipulated to a form of this Decree under stipulations entered into with Denver Water: Grand Valley Water Users Association; Orchard Mesa Irrigation District; Middle Park Water Conservancy District; and the Colorado River Water Conservation District. These Objectors and other West Slope entities entered into an agreement with Denver Water dated _____, 2012, which is the basis upon which the Objectors have entered the stipulations and provided their consent to these Findings of Fact, Conclusions of Law, and Judgment and Decree.

9. Summary of Consultation. A Summary of Consultation by the Division Engineer for Water Division 5 was entered on May 11, 2007. Denver Water served the Summary of Consultation on all parties to this matter on June 8, 2007.

10. Re-referral. On October 5, 2007, Climax Molybdenum Company moved to re-refer this matter to the Water Court. An order of re-referral was entered October 23, 2007.

## DESCRIPTION OF SUBJECT WATER RIGHTS

11. Name of Structures and Systems. The following structures and systems are at issue in this matter: (1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project; (2) Williams Fork Power Conduit; (3) Moffat Tunnel Collection System.

12. Locations of Points of Diversion and Places of Storage.

(1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project. Locations of the several points of diversion of the canals of the Darling Creek Enlargement and Extension of the Williams Fork Diversion Project are as follows:

(a) West Branch of Darling Creek – a point on the South bank of the West branch of Darling Creek whence the southeast corner of Section 8, Township 3 South, Range 77 West, of the 6th P.M., bears South 39º27' West a distance of 11,939 feet.

(b) The North Fork of Darling Creek – a point on the North bank of the North Fork of Darling Creek whence the southeast corner of Section 8,

Township 3 South, Range 77 West, of the 6th P.M., bears South 49º53' West a distance of 16,640 feet.

(c) The South Fork of Darling Creek – a point on the South bank of the South Fork of Darling Creek whence the southeast corner of Section 8, Township 3 South, Range 77 West, of the 6th P.M. bears South 59º39' West a distance of 15,368 feet.

(d) Eleventh Creek – a point on the South bank of Eleventh Creek, whence the southeast corner of Section 8, Township 3 South, Range 77 West, of the 6th P.M. bears South 67º16' West a distance of 12,705 feet.

(e) Those points along the unnamed streams described under sources where the project facilities intersect said streams.

The places of storage in Water Division 1 are as follows:

(f) Gross Reservoir – a dam constructed across the bed of South Boulder Creek in Boulder County, Colorado located in Tracts 48 and 49, Township 1 South, Range 71 West, 6th P.M. (where the North one-half (N1/2) of the Southeast quarter of Section 20, Township 1 South, Range 71 West, the 6th P.M. would be located by ordinary survey practices), and will create a reservoir covering parts of Tracts 47, 48, 49, 44, 45 , 63, 107 , 108, 109, 110, the South half (S1/2) of the South half (S1/2) of Section 18, Section 19, Section 30, the South half (S1/2) of the Northeast quarter (NE1/4) of Section 25, and the East half (E1/2) of the Southeast quarter (SE1/4) of Section 24, all in Township 1 South, Range 71 West, of the 6th P.M. in Boulder County, Colorado.

(g) Ralston Reservoir – the dam for which is located on or near the East side of the Northeast quarter (NE1/4) of the Southeast quarter (SE1/4) of Section 32, Township 2 South, Range 70 West, of the 6th P.M. and creates a reservoir which covers parts of Section 32, Township 2 South, Range 70 West, of the 6th P.M., and Sections 5 and 6 , Township 3 South, Range 70 West of the 6th P.M., in Jefferson County, Colorado.

(h) Marston Reservoir – a dam for which is located in Jefferson County, Colorado in Township 5 South, Range 69 West, of the 6th P.M..

(i) Two Forks Reservoir – a dam to be constructed across the South Platte River at one of the following places:

i. A dam located in Section 30, Township 7 South, Range 69 West, 6th P.M. in the bed of the South Platte River, or

ii. A dam to be located in Section 1, Township 8 South, Range 70 West, 6th P.M. across the bed of the South Fork of the South Platte River.

(j) Cheesman Reservoir – is formed by a dam across the South Fork of the South Platte River located in the Southwest quarter (SW1/4) of Section 6, Township 10 South, Range 70 West, of the 6th P.M., in Douglas and Jefferson Counties.

(k) Eleven Mile Canon Reservoir – located in the stream above an arch type dam across the bed of the South Fork of the South Platte River located near the center of the Southwest quarter (SW1/4) of Section 20, Township 13 South, Range 72 West, 6th P.M., in Park County, Colorado.

(l) Antero Reservoir – located in the stream above a dam across the bed of the South Fork of the South Platte River in Sections 21 and 28, Township 12 South, Range 76 West, 6th P.M. in Park County, Colorado.

(2) Williams Fork Power Conduit. The point of diversion for the Williams Fork Power Conduit is located in the Williams Fork Reservoir Dam, the Southeast end of the dam which is at a point whence Southeast corner of Section 23, Township 1 North, Range 79 West, 6th P.M. bears South 24º53' East a distance of 2,175 feet.

(3) Moffat Tunnel Collection System.

Points of Diversion:

(a) Meadow Creek Meadow Creek – a point on the South bank of said creek from which point the Northwest corner of Section 15, Township 1 North, Range 75 West, 6th P.M., bears North 44°14.2' West 2,689.6 feet.

(b) Trail Creek – a point on the South bank of said creek from which point the Southeast corner of Section 15, Township 1 North, Range 75 West, 6th P.M., bears South 60°26.5' East 1,149.3 feet.

(c) Hurd Creek – a point on the South bank of said creek from which point the Southwest corner of Section 26, Township 1 North, Range 75 West, 6th P.M., bears South 83°8.4' West a distance of 2,105.5 feet.

(d) Hamilton Creek – a point on the South bank of said creek from which point the Northeast corner of Section 2, Township 1 South, Range 75 West, 6th P.M., bears North 76°52.1' East 2,642.8 feet.

(e) Cabin Creek – a point on the North bank of said creek from which point the Northeast corner of Section 2, Township 1 South, Range 75 West, 6th P.M., bears North 21°29.2' East 4,930.4 feet.

(f) Little Cabin Creek – a point on the South bank of said creek from which point the Northeast corner of Section 11, Township 1 South, Range 75 West 6th P.M., bears North 20°27.5'East 2,580.4 feet.

(g) Beaver Creek – a point on the North bank of said creek from which point the Southeast corner of Section 14, Township 1 South, Range 75 West, 6th P.M., bears South 7°38.3' East 2,633.4 feet.

Places of storage in Water Division No. 5:

(h) Meadow Creek Reservoir – a dam to be constructed across Meadow Creek, the right abutment of which is at a point from which the Northwest corner of Section 14, Township 1 North, Range 75 West, 6th P.M., bears North 84°09.1' West 4,226.1 feet.

(i) Cabin Creek Reservoir – a dam to be constructed across Cabin Creek, the right abutment of which is at point from which the Northeast corner of Section 2, Township 1 South, Range 75 West, 6th P.M., bears North 17°21' East a distance of 4,517.8 feet.

Places of storage in Water Division No. 1:

(j) Gross Reservoir – a dam constructed across the bed of South Boulder Creek in Boulder County, Colorado located in Tracts 48 and 49, Township 1 South, Range 71 West, 6th P.M. (where the North half (N1/2) of the Southeast quarter of Section 20, Township 1 South, Range 71 West, the 6th P.M., would be located by ordinary survey practices) and will create a

reservoir covering parts of Tracts 47,48, 49, 44, 45, 63, 107, 108, 109, 110, the south half (Sl/2) of the south half of Section 18, Section 19, Section 30, South half (S1/2) of the Northeast quarter (NE1/4) of Section 25, the East half (E1/2) of the Southeast quarter (SE 1/4) of Section 24, all in Township 1 South, Range 71 West, of the 6th P.M. in Boulder County, Colorado.

(k) Ralston Reservoir – a dam for which is located on or near the East side of the Northeast quarter (NE1/4) of the Southeast quarter (SE1/4) of Section 43, Township 2 South, Range 70 West, of the 6th P.M., and creates a reservoir which covers parts of Section 32, Township 2 South, Range 70 West, 6th P.M., in Sections 5 and 6, Township 3 South, Range 70 West, of the 6th P.M., in Jefferson County, Colorado.

(l) Marston Reservoir – the dam for which is located in Jefferson County, Colorado in Township 5 South, Range 69 West, of the 6th P.M.

(m) Two Forks Reservoir – a dam to be constructed across the South Platte River at one of the following places:

i. A dam located in Section 30, Township 7 South, Range 69 West, 6th P.M., in the bed of the South Platte River; or

ii. A dam to be located in Section 1, Township 8 South, Range 70 West, of the 6th P.M., across the bed of the South Fork of the South Platte River.

(n) Cheesman Reservoir – is formed by a dam across the South Fork of the South Platte River located in the Southwest quarter (SE1/4) of Section 6, Township 10 South, Range 70 West, 6th P.M., in Douglas and Jefferson Counties.

(o) Eleven Mile Canõn Reservoir – located in the stream above an arch-type dam across the bed of the South Fork of the South Platte River located near the center of the Southwest quarter (S1/4) of Section 20, Township 13 South, Range 72 West, 6th P.M., in Park County, Colorado.

(p) Antero Reservoir – located in the stream above a dam across the bed of the South Fork of the South Platte River in Sections 21 and 28, Township 12 South, Range 76 West, 6th P.M., in Park County, Colorado.

13. Source.

(1) Darling Creek Enlargement and Ext ension of the Williams Fork Diversion Project. West Branch of Darling Creek, North Fork of Darling Creek, South Fork of Darling Creek, Eleventh Creek and tributary and intervening tributary drainage thereto and unnamed streams between those streams which are named and the point of connection of the system with Claimant's present facilities at McQueary Creek.

(2) Williams Fork Power Conduit. Williams Fork River.

(3) Moffat Tunnel Collection System. Tributaries of the Fraser River and intervening drainage thereto.

14. Appropriation Dates.

(1) Darling Creek Enlargement and Ext ension and Extension of the Williams Fork Diversion Project. August 26, 1953

(2) Williams Fork Reservoir Power Conduit. October 9, 1956

(3) Moffat Tunnel Collection System. August 30, 1963

15. Amount.

(1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project.

(a) For direct and immediate use from.

(i) West Branch Darling Creek. 5 c.f.s., conditional

(ii) North Fork of Darling Creek. 25 c.f.s., conditional

(iii) South Fork of Darling Creek. 25 c.f.s., conditional

(iv) Eleventh Creek and tributary drainage. 35 c.f.s., conditional

Total: 90 c.f.s., conditional

(b) For Storage for later use, the f ollowing amounts to be stored in.

(i) Gross Reservoir. 113,078 ac. ft.

(ii) Ralston Reservoir. 12,758 ac. ft.

(iii) Marston Reservoir. 19,800 ac. ft.

(iv) Two Forks Reservoir. 600,000 ac. ft.

(v) Cheesman Reservoir. 79,000 ac. ft.

(vi) Eleven Mile Canon Reservoir. 97,779 ac. ft.

(vii) Antero Reservoir. 85,564 ac. ft.

(2) Williams Fork Reservoir Power Conduit.

For direct and immediate use:

105 c.f.s., conditional
295 c.f.s., absolute
400 c.f.s. total

(3) Moffat Tunnel Collection System for direct and immediate use.

(a) For direct and immediate use from.

100 c.f.s., conditional

(b) For storage and alter use, the following amounts to be stored in.

(i) Meadow Creek Reservoir. 5,100 ac. ft.

(ii) Cabin Creek Reservoir. 4,250 ac. ft.

(iii) Gross Reservoir. 113, 078 ac. ft.

(iv) Ralston Reservoir. 12,758 ac. ft.

(v) Marston Reservoir. 19,800 ac. ft.

(vi) Two Forks Reservoir. 600,000 ac. ft.

(vii) Cheesman Reservoir. 79,000 ac. ft.

(viii) Eleven Mile Canon Reservoir. 81,917 ac. ft.

(ix) Antero Reservoir. 85,564 ac. ft.

16. Use:

(1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project. All municipal uses, including domestic use, mechanical use, manufacturing use, generation of electric power, power generally, fire protection, use for sewage treatment, street sprinkling, watering of parks, lawns and grounds, maintaining of adequate storage reserves, irrigation, exchange, replacement and the adjustment and regulation of the units of the Denver Municipal Water System within themselves and with other water users.

(2) Williams Fork Reservoir Power Conduit. The mechanical purpose of generating electric energy, and in part as an adjunct to additional uses, through exchange for the following purposes:

All municipal uses, including domestic use, mechanical use, manufacturing use, generation of electric power, power generally, fire protection, sewage treatment, street sprinkling, watering of parks, lawns and grounds, maintaining of adequate storage reserves, irrigation, exchange, replacement and the adjustment and regulation of the units of the Denver Municipal Water System within themselves and with other water users.

(3) Moffat Tunnel Collection System. All municipal uses, including domestic use, mechanical use, manufacturing use, generation of electric power, power generally, fire protection, sewage treatment, street sprinkling, watering of parks, lawns and grounds, maintaining of adequate storage reserves, irrigation, exchange, replacement and the adjustment and regulation of the units of the Denver Municipal Water System within themselves and with other water users.

17. Integration with Existing Municipal Water System. The water collected in the Darling Creek Enlargement of the Williams Fork Collection System can be transported through the Jones Pass Tunnel to Clear Creek or redirected at the Vasquez Tunnel for transportation to the Moffat Tunnel to South Boulder Creek. Water diverted in the Moffat Tunnel Collection System facilities connects to Denver Water's Ranch Creek collection system for transportation to the Moffat Tunnel to South Boulder Creek. Once in the South Platte watershed, Denver Water can directly store the Subject Water Rights in Gross and Ralston Reservoirs; and by exchange, to Strontia Springs Reservoir, the proposed Two Forks Reservoir; Cheesman, Eleven Mile Cañon, and Antero Reservoirs. Denver Water can then deliver these waters to its intake structures on South Boulder Creek or Waterton Canyon (Strontia Springs or Conduit 20) for treatment at Moffat, Foothills or Marston Water Treatment Plants. After treatment, Denver Water can deliver potable water to any part of its service area by means of conduits, pumping plants, and clear water reservoirs. Effluent from the use of water diverted under the Subject Water Rights can be recaptured at Denver Water's gravel pit reservoirs for exchange into its municipal water system or treated at Denver Water's Recycle Water Plant for further non-potable uses. Power generated at the Williams Fork Power Plant is used to pay power interference under the Blue River Decree.

## APPLICANT'S CLAIM FOR FINDING OF REASONABLE DILIGENCE

18. Denver has been Reasonably Diligent. On February 2, 2001, the Water Judge for Water Division No. 5, in Case No. 98CW189, confirmed and approved the ruling of the referee, which found that Denver Water had diligently prosecuted work toward the completion of the Subject Water Rights. In finding that Denver Water had been reasonably diligent in the development of the Subject Water Rights, the court continued the conditional Subject Water Rights in full force and effect and ordered Denver Water to file an Application for Finding of Reasonable Diligence on or before the last day of February 2007. On February 27, 2007, Denver Water filed this Application for a finding of reasonable diligence and to make absolute, in accordance with the Order of the court dated February 2, 2001, and C.R.S. § 37-92-301(4).

19. The Subject Water Rights are Part of Denver Water's Integrated System. The Fraser River Diversion Project and the Williams Fork Diversion Project are integral parts of the Denver Municipal Water System. The projects are large and intricate, require extensive scientific research and development, and necessarily take many years to complete in a sequence established and executed by Denver Water and its employees to bring about the complete utilization of all the waters involved, expeditiously and with reasonable diligence. Denver Water has demonstrated a steady application of effort to complete the appropriation of the Subject Water Rights. Work on the facilities necessary to put the subject waters to

their decreed beneficial uses has progressed continuously and without interruption, and in the most expedient and efficient fashion possible under the circumstances. Work accomplished toward the completion of the Subject Water Rights and application of water to the beneficial uses for which they are decreed includes work which has been done on the design, construction, and integration of structures for the storage, treatment, distribution, and reuse and successive use of the waters which are the subject of this proceeding. Such work has progressed continuously and without interruption and with reasonable dispatch.

20. Diligence Activities. The Darling Creek Enlargement and Extension of the Williams Fork Diversion Project, the Williams Fork Power Conduit and the Moffat Tunnel Collection System are an integral part of the Denver Municipal Water Works System. Denver Water has regularly operated the Williams Fork Power Conduit and the Moffat Tunnel Collection System during the diligence period. Completion of the conditional portions of the Subject Water Rights will depend upon future hydrologic circumstances and demands in the Denver Municipal Water System. No evidence was presented of any circumstance that would prevent waters under the conditional water right from being diverted, stored, or otherwise captured, possessed and controlled and applied to beneficial use within a reasonable time. The activities completed by Denver Water during the most recent diligence period are set forth in paragraph 4 of the Application filed in this matter. The diligence activities described in the Application and are incorporated herein by this reference.

21. Need. Based on the evidence considered by the court in connection with the following factors, the court finds that Denver Water continues to have a non-speculative need for the conditional portion of the Subject Water Rights that are the subject of this decree.

(1) Denver Water has a Reasonable Water Supply Planning Period. Denver Water's current water supply planning period extends to 2050. The court finds that this is a reasonable water supply planning period, particularly considering the size of Denver Water, both in population and geography, and Denver Water's contractual commitments within and outside of its service area.

(2) Denver Water's Substantiated Population/Rate of Growth Projections. Denver Water bases its demand projections on an econometric model that relies on numerous factors, including population growth within the Denver Metropolitan Area as predicted by the Denver Regional Council of Governments ("DRCOG") in 2030, and the U.S. Census Bureau as projected in 2050. The court finds that Denver Water reasonably relied on the rate of population growth used by DRCOG and the U.S. Census Bureau. Population growth factor is one of several factors considered by

Denver Water's model. Denver Water relies on a model that interrelates water usage with demographics and various other socio-economic factors. This includes the rate of usage for single-family households in the future, so that total single-family usage can be determined by multiplying that usage rate by the future number of single-family households. The model assumes a rate of growth of 0.8 percent per year from 2005 through 2050, and a population of 1.57 million residents in 2050. In addition, the model projects employment in the service area to increase to a total of 1.33 million jobs by 2050, reflecting an average annual job growth rate of a little over 0.9 percent from 2005 through 2050. The court finds that the model assumes a water demand projection based on a reasonable rate of population and employment growth.

(3) Water Required to Meet Denver Water's Reasonably Anticipated Needs. Denver Water demonstrated that the remaining amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of Denver Water for the planning period, above its current water supply.

(a) Implementation of Reasonable Water Conservation Measures During Planning Period. Denver Water has adopted an accelerated conservation plan intended to achieve by 2016 the 29,000 acre-feet of savings targeted in its 1996 Integrated Resource Plan for 2045. To achieve these goals, Denver Water has instituted a new customer information system that provides customers with access to monthly consumption information rather than the by-monthly consumption data historically provided by Denver Water to its customers. Denver Water has also instituted a rebates and incentives program to encourage customers to convert to low water use appliances, plumbing fixtures, irrigation systems and more efficient landscapes. Denver Water has developed a rate structure that encourages conservation through price signals, and allows for more effective demand management during peak summer irrigation use and severe droughts. In addition, Denver Water is engaged in educational outreach to provide customers with information to reduce their consumption through best-practices for irrigation and other water use. The court finds that these conservation measures are reasonable

(b) Reasonably Expected Land Use Mixes during the Planning Period. Denver Water's demand model considers three types of customers, which could be characterized as land use mixes. These uses include: (1) single-family residences; (2) commercial, multi-family and industrial users; (3) and government and institutional users. The court finds that these are reasonable land use mixes to consider for the planning period.

(c) Reasonably Attainable Per Capita Usage Projections for Indoor and Outdoor Use Based on the Land Use Mixes During the Planning Period. In year 2000, Denver Water's system-wide metered water use was 204 gallons per capita per day. Denver Water's forecast projects that system-wide metered use will decline to 171 gallons per capita per day by 2050. Along with other economic and demographic factors, this decline reflects the impact of natural replacement of older, less efficient fixtures. Traditionally, 60 percent of Denver Water's use is for indoor purposes and 40 percent is for outdoor purposes. Denver Waters projections represent the exercise of informed judgment.

(d) Amount of Consumptive Use Reasonably Necessary to Serve the Increased Population. The court finds that Denver Water's past and planned future demands account for a reasonable amount of consumptive use to serve its customers.

(e) Denver Water's Future Demand Projections. Denver Water presented an econometric demand model and projections of future water demands for Denver Water's service area and its fixed-amount contractual commitments. The model, which projects unconstrained water demand, meaning water demand without emergency water restrictions, forecasts Denver Water's water demands through 2050 by utilizing socioeconomic forecasts, historical data, and U.S. Census data. Specifically, the model relies on socioeconomic projections made by DRCOG, which projects future population as far as 2030, and then extends the socioeconomic forecasts through 2050 based on national projections from the U.S. Census Bureau and other sources, such as historic relationships between service area growth and national trends. To determine, Denver Water's 2050 demand, the DRCOG data is extended forward to 2050 using U.S. Census Bureau data and projections. In order to accurately forecast Denver Water's demand, the model uses separate equations to measure (1) single family water use per household customers; (2) multi-family, commercial and industrial customers; and (3) institutional (governmental) customers. The data for these three types of customers is based on annual water use data collected by Denver Water and its distributors from 1973 to 1999. Denver Water's model projects that Denver Water's 2050 treated water demand at the customers' meters would be 370,000 acre feet, including a 5 percent calibration adjustment. To estimate Denver Water's total system-wide demand water requirements a number of adjustments must be made. First, system losses and unaccounted for water use, which is estimated to average six percent, must be added

(22,000 acre feet). Second, 39,000 acre feet must be subtracted to account for improved efficiency of water using fixtures. Third, 67,000 acre feet in fixed and special commitments with customers outside of Denver Water's service area must be added. Fourth, pursuant to Denver Water's policy of maintaining a 30,000 acre foot safety factor, 30,000 acre feet was added. With these adjustments Denver Water's total system-wide demand in 2050 is 450,000 acre feet. Denver Water analyzed the demand forecast results. Such analysis included evaluation of overall usage and demographic metrics of the forecast in comparison to historical statistics. The court concludes that the Applicant has engaged in a thoughtful planning process and has properly taken into account both its own experience and expertise, and analysis by outside experts.

(4) Denver Water's Current Water Supply. Denver Water's future projected demands are in excess of the water supply currently available from its Municipal Water System. Denver Water generally uses its direct flow water rights first before using its reservoir storage to meet its water supply needs. During the period of 1998-2007, Denver Water's storage declined to a point where Denver Water's storage reserves were drawn down to less than its annual demand. The Subject Water Rights are a key part in meeting this future demand.

(5) Safety Factor. The court finds that Denver Water's 30,000 acre foot safety factor (30,000 acre-feet/year of a four-year drought) is reasonable and prudent amount of water to store in reserve in light of the number of customers which rely on Denver Water's system and the importance of Denver Water to the economic development of the State.

## II. CONCLUSIONS OF LAW

Based upon the Findings of Fact set forth above, this Court concludes as a matter of law that:

22. Incorporation of Findings of Fact. The foregoing Findings of Fact are incorporated herein to the extent they constitute Conclusions of Law.

23. Denver Water has been Reasonably Diligent. Denver Water has been reasonably diligent in developing the Subject Water Rights. The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the

development of water rights for all features of the entire project or system. C.R.S. § 37-92-301(4)(b) (2010).

A water court makes a case-by-case consideration of several factors to determine whether an applicant has made the required effort. *See City of Lafayette v. New Anderson Ditch Co*., 962 P.2d 955, 961 (Colo.1998) (citing *Dallas Creek v. Huey*, 933 P.2d 27, 36 (Colo.1997)). These factors include but are not limited to: (1) economic feasibility; (2) the status of requisite permit applications and other required governmental approvals; (3) expenditures made to develop the appropriation; (4) the ongoing conduct of engineering and environmental studies; (5) the design and construction of facilities; and (6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Dallas Creek*, 933 P.2d at 36.

All acts necessary to complete the appropriation need not be accomplished in the same diligence period. What must be demonstrated is continued intent and progress toward finalizing the conditionally decreed appropriation. The existence of a plan, capability, and need for the water is examined periodically by the water court, at the close of each diligence period, to determine whether the applicant is entitled to retain the antedated priority. Monitoring of use and need for the conditional appropriation is a proper role of the water court in a diligence proceeding. *Dallas Creek*, 933 P.2d at 36. Denver Water has shown a continued intent and progress toward finalizing the conditional decreed appropriation, and has established that it has a plan, capability and need for the water.

24. Can and Will. Denver Water can and will divert, store, or otherwise capture, possess, and control and beneficially use the Subject Water Rights. C.R.S. § 37-92-305(9)(b) (2010). Denver Water demonstrated a "substantial probability that within a reasonable time the facilities necessary to affect the appropriation can and will be completed with diligence, and that as a result water will be applied to a beneficial use. *Id*. Proof of such a substantial probability necessarily involves imperfect predictions of future events and conditions. The can and will requirement should not be applied rigidly to prevent beneficial uses where an applicant otherwise satisfies the legal standard of establishing a non-speculative intent to appropriate for a beneficial use. Further, the existence of contingencies does not prevent the can and will test from being satisfied. *City of Black Hawk v. City of Central,* 97 P.3d 951 (Colo. 2004); *City of Thornton v. Bijou Irr. Co*., 926 P.2d 1, 43-45 (Colo. 1996). Neither current economic conditions beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right or the proposed use of water from a conditional water right nor the fact that one or more governmental permits or approvals have not been obtained shall be considered sufficient to deny a diligence application, so long as other facts and circumstances which show diligence are present. C.R.S. § 37-92-301(4)(c) (2010).

25. Anti-Speculation. Denver Water does not have speculative intent in using the remaining conditional portions of the Subject Water Rights. Denver Water is a governmental agency which will serve persons proposed to be benefited by the Subject Water Rights, and therefore does not need to demonstrate a legally vested interest in the lands or facilities to be served. C.R.S. § 37-92-103(3)(a)(I) (2010). Denver Water demonstrated its intent to make a non-speculative use of the conditional appropriation based on: (1) a reasonable water supply planning period; (2) that its substantiated population projections are based on a normal rate of growth for that period; and (3) the amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of the governmental agency for the planning period, above its current water supply. C.R.S. § 37-92-103(3)(a) (2010). *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 219 P.3d 774, 780 (Colo. 2009); *Pagosa Area Water & Sanitation District v. Trout Unlimited*, 170 P.3d 307, 309-310, 312 (Colo. 2007).

26. Burden of Proof Met. Denver Water has complied with all requirements and met all standards and burdens of proof, including but not limited to C.R.S. §§ 37-92-302(1); 37-92-103(3); 37-92-305(9) (2010) to adjudicate its claim for the Subject Water Rights and is therefore entitled to a conditional decree confirming and approving its conditional water storage rights as described in the Findings of Fact.

27. All other requirements. Denver Water has satisfied all other statutory and legal requirements to support a finding of reasonable diligence.

## III. JUDGMENT AND DECREE

The Court incorporates its findings of fact and concludes that Denver Water has met the requirements of law for a finding of diligence.

28. The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

29. Denver Water has been reasonably diligent in the development of the remaining conditionally decreed water rights in C.A. 1430; namely, Darling Creek Enlargement and Extension of the Williams Fork Diversion Project, Williams Fork Power Conduit and the Moffat Tunnel Collection System since the last Finding of Diligence, and the said conditionally decreed water rights and priorities are hereby continued in full force and effect and no order or decree is directed or entered for the cancellation of them in whole or in part.

30. Pursuant to C.R.S. § 37-92-301(4), Denver Water shall file an Application for Finding of Reasonable Diligence on or before the last day of _____, 2017, so long as Denver Water desires to maintain those conditionally decreed water rights or until a determination has been made that these conditionally decreed water rights have become absolute water rights by reason of the completion of the appropriation.

DATED this ___ day of ____, 2011.

_____
James Boyd
Water Judge
Water Division No. 5
State of Colorado

ATTACHMENT Q

| | |
|---|---|
| DISTRICT COURT, WATER DIVISION 5, COLORADO<br>Garfield County Courthouse<br>109 8th Street, Suite 104<br>Glenwood Springs, CO 81601 | **DRAFT**<br>**April 5, 2012**<br><br>CRE 408: FOR PURPOSES OF COMPROMISE AND SETTLEMENT |
| CONCERNING THE APPLICATION FOR WATER RIGHTS OF:<br><br>THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS<br><br>IN GRAND COUNTY. | ▲COURT USE ONLY▲<br><br>Case No: 2007CW30<br><br>(CA657; 80CW162; 84CW087; 88CW209; 98CW214)<br><br>Div.: 5 |

**FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT**

THIS MATTER comes before the Court concerning the Application for Finding of Reasonable Diligence for the Carr No. 2 Ditch by the Applicant, City and County of Denver, acting by and through its Board of Water Commissioners (hereinafter "Denver Water"). Having reviewed and considered the pleadings, documentary and other evidence, the stipulations of several parties, and the arguments of counsel, the Court finds, determines and decrees that:

## I. FINDINGS OF FACT

The Court having received and considered all evidence offered, pleadings, and arguments by counsel, hereby makes the following findings:

### GENERAL MATTERS

1. Applicant.

City and County of Denver,
acting by and through its
Board of Water Commissioners
1600 West 12th Avenue,
Denver, Colorado 80204

(303) 628-6000

Denver Water is a home rule municipal corporation of the State of Colorado. Denver Water derives its authority and power to operate a water supply system under the state constitution, the Denver City Charter and provisions of state law. Pursuant to the Denver City Charter, Denver Water provides all treated and raw water necessary for the full development of land within the City and County of Denver. Pursuant to perpetual water service agreements, Denver Water serves as the water utility for other governmental entities outside the City and County of Denver, but within Denver Water's Service Area, providing all treated and raw water necessary to serve the full development of all land within the Service Area depicted in Exhibit ___. Denver Water also has commitments to provide nearly 68,000 acre-feet of treated and raw water to customers outside its Service Area under perpetual fixed amount contracts listed on Exhibit ___. The entities receiving water under fixed amount contracts are all located within the Counties of Adams, Arapahoe, Douglas and Jefferson and the City and County of Broomfield. From time to time, Denver Water provides treated and raw water to customers under temporary arrangements.

Denver Water operates extensive raw water collection systems including the South Platte Collection System, the Roberts Tunnel Collection System, the Moffat Tunnel Collection System and the Williams Fork Diversion System. On the South Platte River, Denver Water typically stores water at Antero, Eleven Mile, Cheesman and Chatfield reservoirs for delivery or exchange of water to either Strontia Springs Reservoir or Conduit 20 intakes in Waterton Canyon. Denver Water stores and diverts Colorado River water at Dillon Reservoir and delivers this water through the Roberts Tunnel to the North Fork of the South Platte River above Strontia Springs Reservoir. Denver Water also collects water from the Fraser and Williams Fork Rivers for delivery through the Moffat Tunnel for storage in Gross Reservoir and delivery to Ralston Reservoir via the South Boulder Diversion Canal.

Raw water diverted from these systems is treated at Foothills, Marston and Moffat treatment plants and delivered to Denver Water's customers in the metropolitan area. Denver Water also delivers raw water to a number of customers. After indoor use by customers, the water is discharged back to the South Platte River as treated effluent from the Littleton-Englewood or the Metropolitan Reclamation District Wastewater Treatment Plant. Water used outdoors returns to the South Platte River by means of lawn irrigation return flows. Denver Water possesses and controls water from the various streams and rivers by diversion, storage, treatment and delivery and also through contractual provisions in its treated and raw water leases with various water suppliers.

Denver Water operates exchanges of its water to and from various facilities in its system including Strontia Springs Diversion facility (a/k/a Roxborough Diversion facility), Cheesman Reservoir and Chatfield Reservoir. Denver Water diverts by exchange water otherwise out of priority, replacing an equivalent amount of water to the river to satisfy the calling senior water right. Denver Water has various types of replacement water available in its system, including releases from storage, Colorado River sources, reusable wastewater return flows and lawn irrigation return flows.

2. Water Rights at Issue. The water rights at issue in this matter are the Carr No. 2 Ditch water rights decreed in Civil Action No. 657, Grand County District Court, November 5, 1937 (the "Subject Water Rights").

The Carr No. 2 Ditch water right was one of several water rights acquired by Denver Water in the mid-1980's in connection with the purchase of the John Kemp Ranch, located near Williams Fork Reservoir, in Grand County, Colorado. The point of diversion for the Carr No. 2 Ditch is downstream of Williams Fork Reservoir near a point on the east bank of the Williams Fork River in the SW1/4, Section 13, TIN, R79W of the 6th P.M., in Grand County, Colorado.

In 1985, Denver Water acquired the Kemp Ranch, comprised of approximately 1,783 acres of land, and numerous water rights that diverted from Williams Fork River, the Colorado River, Little Muddy Creek and Smith Gulch. Included in this acquisition was the Carr Ditch and the Carr No. 2 Ditch that had been previously decreed 5.4 cfs absolute, and the 16 cfs (power portion) as conditional.

The Carr Ditch and Carr Ditch No. 2 have historically diverted water from the Williams Fork River downstream of Williams Fork Reservoir. The Carr No. 2 Ditch was used to irrigate land east of the Williams Fork River. The Carr No. 2 Ditch was originally decreed for 21.4 cfs, conditional, of which 5.4 cfs was for irrigation purposes and 16.0 cfs was for power purposes to raise the irrigation water approximately 65 feet in elevation to the lands irrigated.

After Denver Water's acquisition of the Kemp Ranch and associated water rights in 1985, the property and certain water rights were conveyed to the Colorado Division of Wildlife in 1993, while Denver Water retained ownership of the Carr and Carr No. 2 Ditches. Denver Water entered into a lease agreement with the Colorado Division of Wildlife for the continued use of the Carr Ditch on the Kemp Ranch property. The conveyance allowed public access to the Williams Fork River downstream of Williams Fork Dam that had previously been closed to the public.

The Carr No. 2 Ditch was originally decreed in CA-657, Water Division No. 5, with the claimant William Carr. By that decree, it was granted an appropriation

date of October 15, 1933, with a conditional Priority No. 22 on the Williams Fork River. As such, the Carr No. 2 Ditch is senior to Williams Fork Reservoir, but junior to Shoshone and Cameo Colorado River main stem calls. John Kemp subsequently acquired the ranch and water rights in the mid-1960's, and, in Case 80CW162, Water Division No. 5, was granted a decree declaring 3.0 cfs as absolute diverted for irrigation of about 70 acres, with the remaining 18.4 cfs as conditional.

John Kemp then was granted an additional 2.4 cfs as absolute, totaling 5.4 cfs absolute, and the remaining 16 cfs conditional, in Case No 84CW087. It was determined that the applicant at the time had exercised reasonable diligence efforts that included purchase of a water pump, aluminum water pipe, a fuel tank for the water pump and construction work on the penstock for the water power system.

Since Denver Water's acquisition of the Kemp Ranch and associated water rights in 1985, Denver Water has secured diligence decrees in Case No.'s 88CW209 and 98CW214. The State Engineer's Office 2001 Abandonment List included the 5.4 cfs of the Carr No. 2 Ditch that had previously been decreed absolute. Denver Water did not protest this inclusion of this portion of the Carr No. 2 Ditch on the abandonment list. The 16.0 cfs conditional water right remains an active water right.

3. Application. The Application at issue in this matter is the Application filed by Denver Water on February 27, 2007, for finding of reasonable diligence in Case No. 2007CW30.

4. Jurisdiction. The Court has subject matter jurisdiction over the Application and this proceeding, and personal jurisdiction over all persons who would have standing to appear as parties, regardless of whether they have appeared.

5. Notice. Timely and adequate notice of the pendency of this proceeding in rem has been given in the manner required by law. The Application was published in the March 2007 resume. Newspaper notice of the application was also provided in the Grand Junction Daily Sentinel, the Glenwood Springs Post Independent, and the Granby Sky-High News during the month of March 2007. Denver Water also provided notice to owners or reputed owners of land upon which any new diversion or storage structures, including the United States of America, Bureau of Land Management; and State of Colorado, Division of Wildlife.

6. Statements of Opposition. The following Objectors filed timely statements of opposition: Trout Unlimited; Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise; Grand Valley Water Users Association; Orchard Mesa

Irrigation District; Intrawest-Winter Park Operations Corporation; and the Colorado River Water Conservation District.

7. Withdrawals of Statements of Opposition. On May 7, 2007, Intrawest-Winter Park Operations Corporation withdrew its statement of opposition in this matter.

8. Stipulations. The following Objectors have stipulated to a form of this Decree under stipulations entered into with Denver Water: Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise; Grand Valley Water Users Association; Orchard Mesa Irrigation District; and the Colorado River Water Conservation District. These Objectors and other West Slope entities entered into an agreement with Denver Water dated _____, 2012, which is the basis upon which the Objectors have entered the stipulations and provided their consent to these Findings of Fact, Conclusions of Law, and Judgment and Decree.

9. Summary of Consultation. A Summary of Consultation by the Division Engineer for Water Division 5 was issued on May 11, 2007. Denver Water served the Summary of Consultation on all parties to this matter on June 8, 2007.

## DESCRIPTION OF SUBJECT WATER RIGHT

10. Description of Subject Water Right. On November 5, 1937, in Civil Action No. 657, the Grand County District Court awarded to Carr No. 2 Ditch, Structure No. 417, Priority No. 22 on the Williams Fork River, a conditional water right not to exceed 21.4 cubic feet of water per second of time for the purpose of operating a water wheel to elevate 5.4 cubic feet of water per second of time for the irrigation of 110 acres of land, with appropriation date of October 15, 1933.

11. Date of Original Decree and Case No. November 5, 1937, Civil Action No. 657, District Court of Grand County.

12. Location. The headgate is located at a point on the east bank of the Williams Fork River whence the Southwest corner of Section 13, Township 1, North, Range 79 West of the 6th P.M. bears South 56°45' West 1920 feet.

13. Source. Williams Fork River, tributary to the Colorado River.

14. Appropriation date. October 15, 1933.

15. Amount. 5.4 cfs absolute

16.0 cfs conditional
21.4 cfs total

16. Use. Irrigation and power purposes.

**APPLICANT'S CLAIM FOR FINDING OF REASONABLE DILIGENCE**

17. Denver Water has been Reasonably Diligent. On February 8, 2001, the Water Judge for Water Division No. 5, in Case No. 98CW214, confirmed and approved the ruling of the referee, which found that Denver Water had diligently prosecuted work toward the completion of the Subject Water Right. In finding that Denver Water had been reasonably diligent in the development of the Subject Water Right, the court continued the conditional Subject Water Right in full force and effect and ordered Denver Water to file an Application for Finding of Reasonable Diligence on or before the last day of February 2007. On February 27, 2007, Denver Water filed this application for a finding of reasonable diligence in accordance with the Order of the court dated February 8, 2001, and C.R.S. § 37-92-301(4).

18. Denver Water Operates an Integrated Waterworks System. Denver Water's Municipal Water System provides for the diversion, storage, purification, delivery, use, and reuse of the waters of the State of Colorado. These waters will be used for the various beneficial purposes to which Denver Water's municipal water system have been appropriated and deemed.

19. Activities Demonstrating Reasonable Diligence. The Carr No. 2 Ditch is an existing structure. Denver Water has regularly operated the Subject Water Right during the diligence period. Completion of this appropriation will depend upon future hydrologic circumstances and demands in the Denver Municipal Water System. No evidence was presented of any circumstance that would prevent waters under the conditional portion of the Subject Water Right from being diverted, stored, or otherwise captured, possessed and controlled and applied to beneficial use within a reasonable time. The activities completed by Denver Water during the most recent diligence period are set forth in paragraph 4 of the Application filed in this matter.

20. Can and Will. Denver Water can and will divert and put the remaining conditional portion of the Subject Water Right to beneficial use. Denver Water established that the waters can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time.

21. No Speculative Intent. Denver Water is a governmental agency, and has a specific plan and intent to divert, store, or otherwise capture, possess, and control the conditional water right for specific beneficial uses decreed herein.

The Carr No. 2 Ditch power right for 16.0 cfs, conditional, could be an integral component of the hydro-electric power generating facility operation located at the base of Williams Fork Dam. The water right, if changed to a new point of diversion, specifically the Williams Fork Power Conduit, located approximately 4,000 feet upstream of the Carr No. 2 Ditch headgate, at the Williams Fork Dam, would allow for the beneficial use of this water right.

Under current administration by the Office of the State Engineer, a water user may store water whenever the water is physically available, its water right is in-priority, and the amount of the water storage right has not been satisfied. Under Colorado court decisions and current administrative practices, a reservoir may only be filled once during each year, unless a decree provides for refill rights or for storage in the reservoir under multiple rights with different priorities.

Because the Carr No. 2 Ditch water right is senior to Williams Fork Reservoir's 1935 and 1956 storage priorities, water used for power generation can be allocated to the Carr No. 2 water right, rather than allocated to Williams Fork storage priorities as bypassed storable inflow. If the water released from the reservoir for power generation is allocated as bypassed storable inflow then Williams Fork Reservoir would be administered as having achieved its first annual fill without actually physically filling with water. By allocating all or a portion of the water released from Williams Fork Reservoir for power generation towards the Carr No. 2 Ditch water right, rather than bypassed storable inflow, the ability for Williams Fork Reservoir to physically achieve its first annual fill is enhanced. The amount of water preserved under the Williams Fork Reservoir storage priorities is that amount of water used for power generation that would be allocated towards the Carr No. 2 Ditch water right. Based on the foregoing description of Denver Water's plan to utilize the conditional portion of the Carr No. 2 Ditch water right, the court finds that Denver Water has a non-speculative need for the Subject Water Right.

## II. CONCLUSIONS OF LAW

Based upon and fully incorporating the Findings of Fact set forth above, this Court concludes as a matter of law that:

## NOTICE AND JURISDICTION

22. Application was Timely. The Application for a Finding of Diligence and to Make Absolute was timely filed with the Water Clerk pursuant to C.R.S. §37-92-301(4) (2010).

23. Notice. Denver Water satisfied all requirements for notice under C.R.S. §37-92-302(3) (2010).

24. Denver Water has been Reasonably Diligent. Denver Water has been reasonably diligent in developing the Subject Water Right. The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system. C.R.S. § 37-92-301(4)(b) (2010).

A water court makes a case-by-case consideration of several factors to determine whether an applicant has made the required effort. *See City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961 (Colo.1998) (citing *Dallas Creek v. Huey*, 933 P.2d 27, 36 (Colo.1997)). These factors include but are not limited to: (1) economic feasibility; (2) the status of requisite permit applications and other required governmental approvals; (3) expenditures made to develop the appropriation; (4) the ongoing conduct of engineering and environmental studies; (5) the design and construction of facilities; and (6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Dallas Creek*, 933 P.2d at 36.

All acts necessary to complete the appropriation need not be accomplished in the same diligence period. What must be demonstrated is continued intent and progress toward finalizing the conditionally decreed appropriation. The existence of a plan, capability, and need for the water is examined periodically by the water court, at the close of each diligence period, to determine whether the applicant is entitled to retain the antedated priority. Monitoring of use and need for the conditional appropriation is a proper role of the water court in a diligence proceeding. *Dallas Creek*, 933 P.2d at 36. Denver Water has shown a continued intent and progress toward finalizing the conditional decreed appropriation, and has established that it has a plan, capability and need for the water.

25. Can and Will. Denver Water can and will divert, store, or otherwise capture, possess, and control and beneficially use the Subject Water Right. C.R.S. § 37-92-305(9)(b) (2010). Denver Water demonstrated a "substantial probability that within a reasonable time the facilities necessary to affect the appropriation can and will be completed with diligence, and that as a result water will be applied to a beneficial use. *Id*. Proof of such a substantial probability necessarily involves imperfect predictions of future events and conditions. The can and will requirement should not be applied rigidly to prevent beneficial uses where an applicant otherwise satisfies the legal standard of establishing a non-speculative intent to appropriate for a beneficial use. Further, the existence of contingencies does not prevent the can and will test from being satisfied. *City of Black Hawk v. City of Central,* 97 P.3d 951 (Colo. 2004); *City of Thornton v. Bijou Irr. Co*., 926 P. 2d 1, 43-45 (Colo. 1996). Neither current economic conditions beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right or the proposed use of water from a conditional water right nor the fact that one or more governmental permits or approvals have not been obtained shall be considered sufficient to deny a diligence application, so long as other facts and circumstances which show diligence are present. C.R.S. § 37-92-301(4)(c) (2010).

26. Anti-Speculation. Denver Water does not have speculative intent in appropriating the Subject Water Right. Denver Water is a governmental agency which will serve persons proposed to be benefited by the Subject Water Rights, and therefore does not need to demonstrate a legally vested interest in the lands or facilities to be served. C.R.S. § 37-92-103(3)(a)(I) (2010). Denver Water demonstrated its intent to make a non-speculative use of the conditional appropriation based on: (1) a reasonable water supply planning period; (2) that its substantiated population projections are based on a normal rate of growth for that period; and (3) the amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of the governmental agency for the planning period, above its current water supply. C.R.S. § 37-92-103(3)(a) (2010). *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 219 P.3d 774, 780 (Colo. 2009); *Pagosa Area Water & Sanitation District v. Trout Unlimited*, 170 P.3d 307, 309-310, 312 (Colo. 2007).

27. Burden of Proof Met. Denver Water has complied with all requirements and met all standards and burdens of proof, including but not limited to C.R.S. §§ 37-92-302(1); 37-92-103(3); 37-92-305(9) (2010) to adjudicate its claim for the Subject Water Rights and is therefore entitled to a conditional decree confirming and approving its conditional water storage rights as described in the Findings of Fact.

28. All other requirements. Denver Water has satisfied all other statutory and legal requirements to support a finding of reasonable diligence.

## III. JUDGMENT AND DECREE

The Court incorporates its findings of fact and concludes that Denver Water has met the requirements of law for a finding of diligence.

29. The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

30. Denver Water has been reasonably diligent in the development of the Carr No. 2 Ditch water right since the last Finding of Diligence, and the said conditionally decreed water rights and priorities are hereby continued in full force and effect and no order or decree is directed or entered for the cancellation of them in whole or in part.

31. Pursuant to C.R.S. § 37-92-301(4), Denver Water shall file an Application for Finding of Reasonable Diligence on or before the last day of _____, 2017, so long as Denver Water desires to maintain those conditionally decreed water rights or until a determination has been made that these conditionally decreed water rights have become absolute water rights by reason of the completion of the appropriation.

DATED this ___ day of ____, 2012.

_____
Holly K. Strabilzky
Water Referee
Water Division No. 1

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: _____

_____
James Boyd
Water Judge
Water Division No. 5
State of Colorado

ATTACHMENT Q

| | |
|---|---|
| DISTRICT COURT, WATER DIVISION 5, COLORADO<br>Garfield County Courthouse<br>109 8th Street, Suite 104<br>Glenwood Springs, CO 81601 | **DRAFT**<br>**April 5, 2012**<br><br>**CRE 408: FOR PURPOSES OF COMPROMISE AND SETTLEMENT**<br><br>▲COURT USE ONLY▲ |
| CONCERNING THE APPLICATION FOR WATER RIGHTS OF:<br><br>THE CITY AND COUNTY OF DENVER ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS<br><br>IN GRAND COUNTY. | Case No. 2007CW031<br><br>Div.: Water Division No. 5<br><br>(98CW190; 90CW113; 86CW218; 82CW125; W-736-78; W-736-74; W-736; W-737; W-741; W-751; W-155; W-156; C.A.657) |

**FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT**

THIS MATTER comes before the Court concerning the Application for Finding of Reasonable Diligence and to Make Absolute by the Applicant, City and County of Denver, acting by and through its Board of Water Commissioners (hereinafter "Denver Water"). Having reviewed and considered the pleadings, documentary and other evidence, the stipulations of several parties, and the arguments of counsel, the Court finds, determines and decrees that:

## I. FINDINGS OF FACT

The Court having received and considered all evidence offered, pleadings, and arguments by counsel, hereby makes the following findings:

### GENERAL MATTERS

1. Applicant.

City and County of Denver,
acting by and through its
Board of Water Commissioners
1600 West 12th Avenue,
Denver, Colorado 80204
(303) 628-6000

Denver Water is a home rule municipal corporation of the State of Colorado. Denver Water derives its authority and power to operate a water supply system under the state constitution, the Denver City Charter and provisions of state law. Pursuant to the Denver City Charter, Denver Water provides treated and raw water for all uses and purposes necessary for the full development of land within the City and County of Denver. Pursuant to perpetual water service agreements, Denver Water serves as the water utility for other governmental entities outside the City and County of Denver, but within Denver Water's Service Area, providing all treated and raw water necessary to serve the full development of all land within the Service Area depicted in Exhibit ___. Denver Water also has commitments to provide nearly 68,000 acre-feet of treated and raw water to customers outside its Service Area under perpetual fixed amount contracts listed on Exhibit ___. The entities receiving water under fixed amount contracts are all located within the Counties of Adams, Arapahoe, Douglas and Jefferson and the City and County of Broomfield. From time to time, Denver Water provides treated and raw water to customers under temporary arrangements.

Denver Water operates extensive raw water collection systems including the South Platte Collection System, the Roberts Tunnel Collection System, the Moffat Tunnel Collection System and the Williams Fork Diversion System. On the South Platte River, Denver Water typically stores water at Antero, Eleven Mile, Cheesman and Chatfield reservoirs for delivery or exchange of water to either Strontia Springs Reservoir or Conduit 20 intakes in Waterton Canyon. Denver Water stores and diverts Colorado River water at Dillon Reservoir and delivers this water through the Roberts Tunnel to the North Fork of the South Platte River above Strontia Springs Reservoir. Denver Water also collects water from the Fraser and Williams Fork Rivers for delivery through the Moffat Tunnel for storage in Gross Reservoir and delivery to Ralston Reservoir via the South Boulder Diversion Canal.

Raw water diverted from these systems is treated at Foothills, Marston and Moffat treatment plants and delivered to Denver Water's customers in its Combined Service Area. Denver Water also delivers raw water to a number of customers outside of its Combined Service Area within the Denver Metropolitan Area. After indoor use by customers, the water is discharged back to the South Platte River as treated effluent from

the Littleton-Englewood or the Metropolitan Reclamation District Wastewater Treatment Plant. Water used outdoors returns to the South Platte River by means of lawn irrigation return flows. Denver Water possesses and controls water from the various streams and rivers by diversion, storage, treatment and delivery and also through contractual provisions in its treated and raw water leases with various water suppliers.

Denver Water operates exchanges of its water to and from various facilities in its system including Strontia Springs Diversion facility (a/k/a Roxborough Diversion facility), Cheesman Reservoir and Chatfield Reservoir. Denver Water diverts by exchange water otherwise out of priority, replacing an equivalent amount of water to the river to satisfy the calling senior water right. Denver Water has various types of replacement water available in its system, including releases from storage, Colorado River sources, reusable wastewater return flows and lawn irrigation return flows.

2. Water Rights at Issue. The water rights at issue in this matter are the Fraser River Diversion Project and Williams Fork Diversion Project water rights decreed in Civil Action No. 657, Grand County District Court, November 5, 1937, as modified and supplemented March 4, 1940, and April 15, 1946 (collectively referred to herein as the "Subject Water Rights").

3. Application. The Application at issue in this matter is the Application filed by Denver Water on February 27, 2007, for finding of reasonable diligence and to make absolute in Case No. 2007CW031, Water Division 5.

4. Jurisdiction. The court has subject matter jurisdiction over the Application and this proceeding, and personal jurisdiction over all persons who would have standing to appear as parties, regardless of whether they have appeared.

5. Notice. Timely and adequate notice of the pendency of this proceeding in rem has been given in the manner required by law. The Application was published in the March 2007 resume. Newspaper notice of the Application was also provided in the Grand Junction Daily Sentinel, the Glenwood Springs Post Independent, and the Granby Sky-High News during the month of March 2007. Denver Water also provided notice to the United States of America, which is an owner or reputed owner of land upon which any new diversion or storage structures.

6. Statements of Opposition. The following Objectors filed timely statements of opposition: Trout Unlimited; Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise; Grand Valley Water Users Association; Orchard Mesa

Irrigation District; Middle Park Water Conservancy District; Intrawest-Winter Park Operations Corporation; and the Colorado River Water Conservation District.

7. Withdrawals of Statements of Opposition. On May 7, 2007, Intrawest-Winter Park Operations Corporation withdrew its statement of opposition in this matter.

8. Stipulations. The following Objectors have stipulated to a form of this Decree under stipulations entered into with Denver Water: Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise; Grand Valley Water Users Association; Orchard Mesa Irrigation District; Middle Park Water Conservancy District; and the Colorado River Water Conservation District. These Objectors and other West Slope entities entered into an agreement with Denver Water dated __ _____, 2012, which is the basis upon which the Objectors have entered the stipulations and provided their consent to these Findings of Fact, Conclusions of Law, and Judgment and Decree.

9. Summary of Consultation. A Summary of Consultation by the Division Engineer for Water Division 5 was entered on May 11, 2007. Denver Water served the Summary of Consultation on all parties to this matter on June 8, 2007.

## DESCRIPTION OF SUBJECT WATER RIGHTS

10. Subject Water Rights. The water rights involved in this proceeding are those conditionally decreed to the Fraser River Diversion Project and the Williams Fork Diversion Project, by Decree of the District Court of Grand County, Colorado in Civil Action No. 657, entered November 5, 1937 as modified and supplemented March 4, 1940, and April 15, 1946.

11. Locations of Points of Diversion and Places of Storage.

(1) Fraser River Diversion Project.

(a) The location of the several points of diversion of the canals of the Fraser River Diversion Project are as follows:

(i) West Canal Line intake from the Fraser River at a point on the East bank of said river whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M. bears North 22°22' West 18,656 feet;

(ii) Jim Creek feeder at a point on the North bank of said creek whence the sout heast corner of Section 33, Township 1 south, Range 75 West, 6th P.M. bears North 41°50' West 13,863 feet;

(iii) Little Vasquez Creek feeder at a point on the East bank of said creek whence angle point No. 2 of Tract 37, Township 2 South, Range 75 West, 6th P.M., bears South 63°48'03" West 526.84 feet;

(iv) West Canal Line intake from Vasquez Creek at a point on the East bank of said creek whence angle point No. 2 of Tract 37, Township 2 South, Range 75 West, 6th P.M., bears North 37°58' East 11,416.58 feet;

(v) West Canal Line intake from Cooper Creek at a point where said canal crosses said creek whence angle point No.1 of Tract 37, Township 2 South, Range 75 West, 6th P.M., bears South 80°56' West 729.10 feet;

(vi) West Canal Line intake from St. Louis Creek at a point on the East bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears North 69°47' East 36,547 feet;

(vii) West Canal Line intake from West St. Louis Creek at a point on the East bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears North 79°01' East 36,009 feet;

(viii) East Canal Line intake from Buck Creek at a point on the South bank of said creek where said canal crosses the creek 957 feet approximately due North of the mouth of the intake shaft of the Moffat Water Tunnel;

(ix) East Canal Line intake from Faun Creek at a point on the West bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears South 61°35' West 7,801 feet;

(x) East Canal Line intake from South Ranch Creek at a point on the West bank of said creek whence the southeast corner of

Section 33, Township 1 South, Range 75 West, 6th P.M., bears South 45°37' West 13,221 feet;

(xi) East Canal Line intake from Ranch Creek at a point on the West bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears South 40°22' West 16,151 feet;

(xii) East Canal Line intake from North Ranch Creek at a point on the South bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears south 33°0' West 19,000 feet.

(b) The locations of the several western slope reservoirs of the Fraser River Diversion Project are as follows:

(i) Vasquez Reservoir in Sections 18 and 19, Township 2 South, Range 75 West, 6th P.M., with the east end of the dam at a point whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears North 45°3' East 15,551 feet.

(ii) St. Louis Reservoir in Sections 16 and 21, Township 2 South, Range 76 West, 6th P.M., with the East end of the dam at a point whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears North 69°47' East, 36,547 feet.

(c) The locations of the several eastern slope reservoirs in which the waters of the Fraser River Diversion Project are and will be stored are as follows:

(i) Ralston Creek Reservoir in Sections 32 and 33, Township 2 South, and Sections 5 and 6, Township 3 South, all in Range 70 West, 6th P.M.;

(ii) Cheesman Reservoir in Township 10 South, Ranges 70 and 71 West, 6th P.M.;

(iii) Eleven Mile Canyon Reservoir in Township 13 South, Ranges 72 and 73 West, 6th P.M.;

(iv) Marston Reservoir in Township 5 South, Range 69 West, 6th P.M.;

(v) Antero Reservoir in Township 12 South, Ranges 76 and 77 West, 6th P.M.;

(vi) Gross Reservoir in Township 1 South, Range 71 West, 6th P.M. in Boulder County, Colorado.

(2) Williams Fork Diversion Project.

(a) The locations of the several points of diversion of the canals of the Williams Fork Diversion Project are as follows:

(i) North Canal Line, Section 1 from McQueary Creek at a point on the South bank of said creek whence the United States Location Monument Wilson near Minnehaha Gulch, LaPlata mining district Grand County, Colorado, (hereinafter referred to as the Wilson Monument) bears South 31°56'15" East 8,333.32 feet;

(ii) North Canal Line, Section 2, from Jones Creek at a point on the South bank of said creek whence the Wilson Monument bears South 66°29' 40" East 1,983.49 feet;

(iii) North Canal Line, Section 3 receives its water through Sections 1 and 2 and from tributary drainage and has no independent point of diversion on any stream;

(iv) South Canal Line, Section 1 from Bobtail Creek at a point on the East bank of said creek whence the Wilson Monument bears North 65°34'50" East 2,007.47 feet;

(v) South Canal Line, Section 2, From Steelman Creek at a point on the East bank of said creek whence Wilson Monument bears North 78°46' 45" East 9,525.25 feet;

(vi) South Canal Line, Section 3 receives its water through Sections 1 and 2 and has no independent point of diversion on any stream;

(vii) South Canal Line, Section 4 from Bobtail Creek at a point on the East bank of said creek whence the Wilson Monument bears North 62°23' East 1,967.2 feet;

(viii) South Canal Line, Section 5 from Steelman Creek at a point on the East bank of said creek whence the Wilson Monument bears North 75°07' East 9,715.3 feet;

(ix) South Canal Line, Section 6 receives its water through Section 7 and from tributary drainage and has no independent point of diversion on any stream;

(x) South Canal Line, Section 7 from the Middle Fork of the Williams Fork River at a point on the East bank of said Middle Fork whence Ptarmigan Peak Monument bears South 73°33' East 23,868 feet;

(xi) South Canal Line, Section 8, from Allen Creek at a point on the North bank of said creek whence the Ptarmigan Monument bears North 86°07' East 20,897 feet;

(xii) South Canal Line, Section 9 receives its water through Section 8 and has no independent point of diversion on any stream;

(xiii) South Canal Line, Section 10 from the South Fork of the Williams Fork River at a point on the North bank of said South Fork whence the Ptarmigan Peak Monument bears North 50°47' East 11,999 feet;

(xiv) Middle Fork Feeder Ditch of the South Canal Line receives its water from tributary drainage and has no point of diversion on any stream.

(b) The locations of the several eastern slope reservoirs in which waters of the Williams Fork Diversion Project will be stored are as follows:

(i) Empire Reservoir in Section 29, Township 3 South, Range 74 West, 6th P.M.;

(ii) Cheesman Reservoir in Township 10 South, Ranges 70 and 71 West, 6th P.M.;

(iii) Eleven Mile Canon Reservoir in Township 13 South, Ranges 72 and 73 West, 6th P.M.;

(iv) Marston Reservoir in Township 5 South, Range 69 West, 6th P.M.;

(v) Antero Reservoir in Township 12 South, Ranges 76 and 77 West, 6th P.M.

(vi) Gross Reservoir in Township 1 South, Range 71 West, 6th P.M.

(vii) Ralston Creek Reservoir in Sections 32 and 33, Township 2 South, and Sections 5 and 6, Township 3 South, all in Range 70 West, 6th P.M.

12. Dates of Appropriation.

(1) Fraser River Diversion Project. July 4, 1921 except as to the enlargement of the Vasquez Reservoir, which date is July 7, 1936.

(2) Williams Fork Diversion Project. July 4, 1921.

13. Amounts of Water.

| | | |
|---|---|---|
| (1) | Fraser River Diversion Project: | 352 cfs conditional<br>928 cfs absolute<br>1280 cfs total |
| (2) | Williams Fork Diversion Project: | 406 cfs conditional<br>214 cfs absolute<br>620 cfs total |

See attached tables I, II, III and IV for amounts remaining conditionally decreed for direct flow and storage rights for each of the within described features of the Fraser River and Williams Fork Diversion Projects.

14. The Sources of Water and Amounts for Intake Rights.

(1) Fraser River Diversion Project. The Fraser River, a tributary of the Colorado River, and those of its several tributaries from which intakes have been or will be constructed and also tributary drainage.

(a) From St. Louis Creek, East St. Luis Creek, Fool Creek, King Creek, East King Creek, West Elk Creek, Elk Creek, and tributary drainage above the canal, the maximum amount of 700 c.f.s., through the West Canal Line intake from said St. Louis Creek;

(b) From West St. Louis Creek, Byers Creek, and tributary drainage above the canal, the maximum amount of 112 c.f.s., through the West Canal Line intake from said West St. Louis Creek;

(c) From Faun Creek, and tributary drainage above the canal, the maximum amount of 280 c.f.s., through the East Canal Line intake from said Faun Creek;

(d) From South Ranch Creek, and tributary drainage above the canal, the maximum amount of 180 c.f.s., through the East Canal Line intake from said South Ranch Creek;

(e) From Ranch Creek, and tributary drainage above the canal, the maximum amount of 112 c.f.s., through the East Canal Line intake from said Ranch Creek; and

(f) From North Ranch Creek, and tributary drainage above the canal, the maximum amount of 112 c.f.s., through the East Canal Line intake from said North Ranch Creek;

Provided that the total diversions by means of the twelve sources described above shall be limited at any one time to the maximum of 1280 c.f.s..

(2) Williams Fork Diversion Project. The Williams Fork River, a tributary of the Colorado River and its several tributaries from which intakes have been or will be constructed and also tributary drainage.

(a) From McQueary Creek, the maximum amount of 70 c. f.s., through the North Canal Line, Section 1;

(b) From Jones Creek, the maximum amount of 25 c.f.s., through the North Canal Line, Section 2;

(c) From McQueary and Jones Creeks, and tributary drainage above the canal, the maximum amount of 115 c.f.s., through the North Canal Line, Section 5;

(d) From Bobtail Creek, the maximum amount of 115 c.f.s., through the South Canal Line, Section 1;

(e) From Steelman Creek, the maximum amount of 90 c.f.s., through the South Canal Line, Section 2;

(f) From Bobtail Creek, the maximum amount of 195 c.f.s., through the South Canal Line, Section 4, but this amount shall be inclusive of the amount from said creek through Section 1 of the South Canal Line as mentioned in subsection (d) herein;

(g) From Steelman Creek, the maximum amount of 150 c.f.s., through the South Canal Line, Section 5, but this amount shall be inclusive of the amount from said creek through Section 2 of the south canal line as mentioned in subsection (e) herein;

(h) From the Middle Fork of the Williams Fork River and from tributary drainage above the canal, the maximum amount of 400 c.f.s., through the South Canal Line, Section 6, but this amount shall be inclusive of the amount from said Middle Fork through Section 7 of the South Canal Line as mentioned in subsection (j) herein;

(i) From the Middle Fork of Williams Fork River, the maximum amount of 350 c.f.s., through the South Canal Line, Section 7;

(j) From Allen Creek, the maximum amount of 250 c.f.s., through the South Canal Line, Section 8;

(k) From the South Fork of the Williams Fork River, the maximum amount of 200 c.f.s., through the South Canal Line, Section 10;

(l) From tributary drainage above t he feeder, the maximum amount of 50 c.f.s., through the Middle Fork Feeder Ditch;

Provided, however, that the total diversions by means of the twelve priorities awarded in subsection (a) to (l), shall be limited at any one time to the maximum of 620 c.f.s., which is the total capacity of the Williams Fork Tunnel.

15. Storage Amounts and Sources.

(1) The following West Slope reservoirs of the Fraser River Diversion Project are entitled to store water from the following sources and i n the following amounts, under the Reservoir Appropriation 11A and their respective priorities:

(a) In St. Louis Reservoir, from the waters of St. Louis Creek, Byers Creek and West St. Louis Creek, under and by virtue of original construction, the maximum amount of 50,000,000 cubic feet, 1,150 acre feet, under priority date July 4, 1921.

(b) In Vasquez Reservoir, from the waters of Vasquez, Elk West Elk, East King, King, Fool, East St. Louis, St. Louis, Byers and West St. Louis Creeks, under and by virtue of original construction the maximum amount of 12,000,000 cubic feet, 275 acre feet, under priority date of July 4, 1921;

(c) In Vasquez Reservoir, from the waters of Vasquez, Elk, West Elk, East King, King, Fool, East St. Louis, St. Louis, Byers and West St. Louis Creeks, under and by virtue of enlargement, the maximum amount of 276,201,400 cubic feet, 6,341 acre feet, under priority date July 7, 1936;

(2) The following Eastern Slope Reservoirs of the Denver Munic ipal Water System are ent itled to store the following amounts of water under Reservoir Appropriation No. 11, as part of the Fraser River Diversion Project, for the benefit of the persons lawfully entitled thereto:

(a) In Ralston Creek Reservoir 12,758 acre feet;

(b) In Cheesman Reservoir 79,000 acre feet;

(c) In Eleven Mile Cañon Reservoir 81,971 acre feet;

(d) In Marston Reservoir 19,800 acre feet;

(e) In Empire Reservoir 6,494.39 acre feet;

(f) In Gross Reservoir 113,077.7 acre feet; and

(g) In Antero Reservoir 33,000 acre feet.

(3) The following Eastern Slope Reservoirs of the Denver Municipal Water System are entitled to store the following amounts of water under Reservoir Appropriation No. 25, as part of the Williams Fork Diversion Project, for the benefit of the persons lawfully entitled thereto:

(a) In Empire Reservoir, 6,494.39 acre feet;

(b) In Cheesman Reservoir, 79,000 acre feet;

(c) In Eleven Mile Cañon Reservoir, 81,917 acre feet;

(d) In Marston Reservoir, 19,800 acre feet;

(e) In Antero Reservoir, 33,000 acre feet.

(f) In Ralston Creek Reservoir 12,758 acre feet; and

(g) In Gross Reservoir 113,077.7 acre feet.

16. Use. Municipal uses, including domestic use, fire protection, sewage treatment, sanitation, street sprinkling, watering of parks, lawns and grounds, mechanical uses and every other type of municipal uses, generation of electrical energy, and for maintaining adequate storage reserves, and regulation of direct flow of water to meet the exigencies of fluctuating demands for the above named uses; together with the right to fill, refill, regulate and replace losses by reason of evaporation for the listed purposes.

17. The Denver Municipal System is an Integrated System. Denver Water operates an integrated Municipal Water System. This system provides for the diversion, storage, purification, delivery, use, and reuse of the waters of the State of Colorado. These waters will be used for the various beneficial purposes to which Denver Water's municipal water system have been appropriated and decreed. The widely fluctuating and unpredictable flows of water in the streams of Colorado require the incorporation of

storage reservoirs into this system. These reservoirs must be able to store a sufficient amount of water that will guarantee a continuous annual supply of water for all municipal uses and purposes.

## CLAIM TO MAKE ABSOLUTE

18. Denver's Claim to Make Absolute a Portion of the Williams Fork Diversion Project. The court finds that on June 4, 2006, Denver Water legally diverted and put to beneficial use 254 cfs of water under the Williams Fork Diversion Project, in compliance with the decree in C.A. 657.

19. Date water applied to beneficial use. June 4, 2006.

20. Amount. 254 cfs.

21. Use. All decreed beneficial uses.

22. Description of place of use where water was applied to beneficial use. The water was placed to beneficial use in the area served by the Denver Municipal Water System including areas served by fixed contracts.

## CLAIM FOR FINDING OF REASONABLE DILIGENCE

23. Denver has been Reasonably Diligent. On February 2, 2001, the Water Judge for Water Division No. 5, in Case No. 98CW190, confirmed and approved the ruling of the referee, which found that Denver Water had diligently prosecuted work toward the completion of the Subject Water Rights. In finding that Denver Water had been reasonably diligent in the development of the Subject Water Rights, the court continued the conditional Subject Water Rights in full force and effect and ordered Denver Water to file an Application for Finding of Reasonable Diligence on or before the last day of February 2007. On February 27, 2007, Denver Water filed this Application for a finding of reasonable diligence and to make absolute, in accordance with the Order of the court dated February 2, 2001, and C.R.S. § 37-92-301(4).

24. The Subject Water Rights are Part of Denver Water's Integrated System. The Fraser River Diversion Project and the Williams Fork Diversion Project are integral parts of the Denver Municipal Water System. The projects are large and intricate, require extensive scientific research and development, and necessarily take many years to complete in a sequence established and executed by Denver Water and its employees to bring about the complete utilization of all the waters involved, expeditiously and with

reasonable diligence. Denver Water has demonstrated a steady application of effort to complete the appropriation of the Subject Water Rights. Work on the facilities necessary to put the subject waters to their decreed beneficial uses has progressed continuously and without interruption, and in the most expedient and efficient fashion possible under the circumstances. Work accomplished toward the completion of the Subject Water Rights and application of water to the beneficial uses for which they are decreed includes work which has been done on the design, construction, and integration of structures for the storage, treatment, distribution, and reuse and successive use of the waters which are the subject of this proceeding. Such work has progressed continuously and without interruption and with reasonable dispatch.

25. Activities Demonstrating Reasonable Diligence. In support of its Application, Denver Water performed activities and made expenditures during this last diligence period sufficient to demonstrate reasonable diligence toward the development of its conditionally decreed water rights. The activities referred to in this paragraph are listed in the Application and are incorporated herein by this reference. The activities listed in the Application are evidence of Denver Water's continued reasonable diligence in developing the conditional portion of the Subject Water Rights, and evidence the continuous efforts of development and construction of the facilities necessary to divert, store and use the Subject Water Rights.

26. Need. Based on the evidence considered by the court in connection with the following factors, the court finds that Denver Water continues to have a non-speculative need for the conditional Subject Water Rights that are the subject of this decree.

(1) Denver Water has a Reasonable Water Supply Planning Period. Denver Water's current water supply planning period extends to 2050. The court finds that this is a reasonable water supply planning period, particularly considering the size of Denver Water's Combined Service Area, in population and geography, and Denver Water's contractual commitments outside of its Combined Service Area.

(2) Denver Water's Substantiated Population/Rate of Growth Projections. Denver Water bases its demand projections on an econometric model that relies on numerous factors, including population growth within the Denver Metropolitan Area as predicted by the Denver Regional Council of Governments ("DRCOG") in 2030, and the U.S. Census Bureau as projected in 2050. The court finds that Denver Water reasonably relied on the rate of population growth used by DRCOG and the U.S. Census Bureau. Population growth factor is one of

several factors considered by Denver Water's model. Denver Water relies on a model that interrelates water usage with demographics and various other socio-economic factors. This includes the rate of usage for single-family households in the future, so that total single-family usage can be determined by multiplying that usage rate by the future number of single-family households. The model uses a projected growth rate of 1.0 percent per year for the years 2005 through 2050, and a population of 1.74 million residents in 2050. In addition, the model projects employment in the service area to increase to a total of 1.25 million jobs by 2050, reflecting an average annual job growth rate of just under 0.9 percent from 2005 through 2050. The court finds that the model assumes a water demand projection based on a reasonable rate of population and employment growth.

(3) Water Required to Meet Denver Water's Reasonably Anticipated Needs. Denver Water demonstrated that the remaining amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of Denver Water for the planning period, above its current water supply.

(a) Implementation of Reasonable Water Conservation Measures During Planning Period. Denver Water has adopted an accelerated conservation plan intended to achieve by 2016 the 29,000 acre-feet of savings targeted in its 1996 Integrated Resource Plan for 2045. To achieve these goals, Denver Water has instituted a new customer information system that provides customers with access to monthly consumption information rather than the by-monthly consumption data historically provided by Denver Water to its customers. Denver Water offers rebates and incentives to encourage customers to convert to low water use appliances, plumbing fixtures, irrigation systems and more efficient landscapes. Denver Water has developed a rate structure that encourages conservation through price signals, and allows for more effective demand management during peak summer irrigation use and severe droughts. In addition, Denver Water is engaged in educational outreach to provide customers with information to reduce their consumption through best-practices for irrigation and other water use. The court finds that these conservation measures are reasonable.

(b) Reasonably Expected Land Use Mixes during the Planning Period. Denver Water's demand model considers three types of customers, which could be characterized as land use mixes. These uses include (1) single-family residences; (2) commercial, multi-family and industrial users;

(3) and government and institutional users. The court finds that these are reasonable land use mixes to consider for the planning period.

(c) Reasonably Attainable Per Capita Usage Projections for Indoor and Outdoor Use Based on the Land Use Mixes During the Planning Period. In year 2000, Denver Water's system-wide metered water use was 220 gallons per capita per day. Denver Water's forecast projects that system-wide metered use will decline to 181 gallons per capita per day by 2050. Along with other economic and demographic factors, this decline reflects the conservation savings from natural replacement of older, less efficient fixtures. Traditionally, 60 percent of Denver Water's use is for indoor purposes and 40 percent is for outdoor purposes. Denver Waters projections represent the exercise of informed judgment.

(d) Amount of Consumptive Use Reasonably Necessary to Serve the Increased Population. The court finds that Denver Water's past and planned future demands account for a reasonable amount of consumptive use to serve its customers.

(4) Denver Water's Future Demand Projections. Denver Water presented an econometric demand model and projections of future water demands for Denver Water's Service Area and its fixed-amount contractual commitments. The model, which projects unconstrained water demand, meaning water demand without emergency water restrictions, forecasts Denver Water's water demands through 2050 by utilizing socioeconomic forecasts, historical data, and U.S. Census data. Specifically, the model relies on socioeconomic projections made by DRCOG, which projects future population as far as 2030, and then extends the socioeconomic forecasts through 2050 based on national projections from the U.S. Census Bureau and other sources, such as historic relationships between service area growth and national trends. To determine Denver Water's 2050 demand, the DRCOG data is extended forward to 2050 using U.S. Census Bureau data and projections. In order to accurately forecast Denver Water's demand, the model uses separate equations to measure (1) single family water use per household customers; (2) multi-family, commercial and industrial customers; and (3) institutional (governmental) customers. The data for these three types of customers is based on annual water use data collected by Denver Water and its distributors from 1973 to 1999. Denver Water's model projects that Denver Water's 2050 treated water demand at the customers' meters would be 370,000 acre feet, including a 5 percent calibration adjustment. To estimate Denver Water's total system-wide demand water requirements a number of adjustments

must be made. First, system losses and unaccounted for water use, which is estimated to average six percent, must be added (22,000 acre feet). Second, 39,000 acre feet must be subtracted to account for improved efficiency of water using fixtures. Third, 67,000 acre feet in fixed and special commitments with customers outside of Denver Water's Combined Service Area must be added. Fourth, pursuant to Denver Water's policy of maintaining a 30,000 acre foot safety factor, 30,000 acre feet was added. With these adjustments Denver Water's total system-wide demand in 2050 is 450,000 acre feet. Denver Water has analyzed the demand forecast results. Such analysis included evaluation of overall usage and demographic metrics of the forecast in comparison to historical statistics. The court concludes that the Applicant has engaged in a thoughtful planning process and has properly taken into account both its own experience and expertise, and analysis by outside experts.

(5) Denver Water's Current Water Supply. Denver Water's projected future demands are in excess of the water supply currently available from its Municipal Water System. Denver Water generally uses its direct flow water rights first before using its reservoir storage to meet its water supply needs. During the period of 1998-2007, Denver Water's storage declined to a point where Denver Water's storage reserves were drawn down to less than its annual demand. The Subject Water Rights are a key part in meeting this future demand.

(6) Safety Factor. The court finds that Denver Water's 30,000 acre foot safety factor (30,000 acre-feet/year of a four-year drought) is reasonable and prudent amount of water to store in reserve in light of the number of customers which rely on Denver Water's system and the importance of Denver Water to the economic development of the State.

27. Capability. The structures necessary to divert the waters of the Fraser River Diversion Project and the Williams Fork Diversion Project to the beneficial uses for which the appropriations are decreed have been constructed at the locations described in the Decree as nearly as reasonably may be, or are of a nature or location such as not to create a greater burden on the watershed of the Fraser River and its tributaries and the Williams Fork River and its tributaries than as provided for in said Decree.

All facilities required to directly divert the Subject Water Rights have been constructed and are in operation. All of the storage facilities have also been constructed and are currently operational and capable of storing the Subject Water Rights, except for Empire Reservoir, which has not been constructed. However, there are no

insurmountable hurdles which would prevent the permitting and construction of Empire Reservoir.

Denver Water has demonstrated that the remaining conditionally decreed amounts can and will be diverted, stored or otherwise captured, possessed, and controlled; and that the waters will be beneficially used.

## II. CONCLUSIONS OF LAW

Based upon the Findings of Fact set forth above, this Court concludes as a matter of law that:

28. The foregoing Findings of Fact are incorporated herein to the extent they constitute Conclusions of Law.

29. Denver Water has been Reasonably Diligent. Denver Water has been reasonably diligent in developing the Subject Water Rights. The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system. C.R.S. § 37-92-301(4)(b) (2010).

A water court makes a case-by-case consideration of several factors to determine whether an applicant has made the required effort. *See City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961 (Colo.1998) (citing *Dallas Creek v. Huey*, 933 P.2d 27, 36 (Colo.1997)). These factors include but are not limited to: (1) economic feasibility; (2) the status of requisite permit applications and other required governmental approvals; (3) expenditures made to develop the appropriation; (4) the ongoing conduct of engineering and environmental studies; (5) the design and construction of facilities; and (6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Dallas Creek*, 933 P.2d at 36.

All acts necessary to complete the appropriation need not be accomplished in the same diligence period. What must be demonstrated is continued intent and progress toward finalizing the conditionally decreed appropriation. The existence of a plan, capability, and need for the water is examined periodically by the water court, at the close

of each diligence period, to determine whether the applicant is entitled to retain the antedated priority. Monitoring of use and need for the conditional appropriation is a proper role of the water court in a diligence proceeding. *Dallas Creek*, 933 P.2d at 36. Denver Water has shown a continued intent and progress toward finalizing the conditional decreed appropriation, and has established that it has a plan, capability and need for the water.

30. Can and Will. Denver Water can and will divert, store, or otherwise capture, possess, and control and beneficially use the Subject Water Rights. C.R.S. § 37-92-305(9)(b) (2010). Denver Water demonstrated a "substantial probability that within a reasonable time the facilities necessary to affect the appropriation can and will be completed with diligence, and that as a result water will be applied to a beneficial use." *Id*. Proof of such a substantial probability necessarily involves imperfect predictions of future events and conditions. The can and will requirement should not be applied rigidly to prevent beneficial uses where an applicant otherwise satisfies the legal standard of establishing a non-speculative intent to appropriate for a beneficial use. Further, the existence of contingencies does not prevent the can and will test from being satisfied. *City of Black Hawk v. City of Central,* 97 P.3d 951 (Colo. 2004); *City of Thornton v. Bijou Irr. Co.*, 926 P. 2d 1, 43-45 (Colo. 1996). Neither current economic conditions beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right or the proposed use of water from a conditional water right nor the fact that one or more governmental permits or approvals have not been obtained shall be considered sufficient to deny a diligence application, so long as other facts and circumstances which show diligence are present. C.R.S. § 37-92-301(4)(c) (2010).

31. Anti-Speculation. Denver Water does not have speculative intent in using the remaining conditional portions of the Subject Water Rights. Denver Water is a governmental agency which will serve persons proposed to be benefited by the Subject Water Rights, and therefore does not need to demonstrate a legally vested interest in the lands or facilities to be served. C.R.S. § 37-92-103(3)(a)(I) (2010). Denver Water demonstrated its intent to make a non-speculative use of the conditional appropriation based on: (1) a reasonable water supply planning period; (2) that its substantiated population projections are based on a normal rate of growth for that period; and (3) the amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of the governmental agency for the planning period, above its current water supply. C.R.S. § 37-92-103(3)(a) (2010). *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 219 P.3d 774, 780 (Colo. 2009); *Pagosa Area Water & Sanitation District v. Trout Unlimited*, 170 P.3d 307, 309-310, 312 (Colo. 2007).

32. Perfection of Water Rights. With regard to its claim to make absolute, Denver Water demonstrated that it: (1) captured, possessed, and controlled water; and (2) the applied the water to a beneficial use. *City of Lafayette v. New Anderson Ditch Co*., 962 P.2d 955, 961-962 (Colo.1998) (citing *City & County of Denver v. Northern Colo. Water Conservancy Dist.,* 276 P.2d 992, 998-99 (Colo. 1954)). Denver Water has lawfully petitioned the Water Court to declare the right absolute for purposes of fixing its place in the priority system in relation to all other appropriators. *New Anderson Ditch Co*., 962 P.2d 962; C.R.S. § 37-92-306 (2010).

33. Burden of Proof Met. Denver Water has complied with all requirements and met all standards and burdens of proof, including but not limited to C.R.S. §§ 37-92-302(1); 37-92-103(3); 37-92-305(9) (2010) to adjudicate its claim for the Subject Water Rights and is therefore entitled to a conditional decree confirming and approving its conditional water storage rights as described in the Findings of Fact.

34. All other requirements. Denver Water has satisfied all other statutory and legal requirements to support a finding of reasonable diligence.

## III. JUDGMENT AND DECREE

The Court incorporates its findings of fact and concludes that Denver Water has met the requirements of law for a finding of diligence.

35. The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

36. Denver Water has been reasonably diligent in the development of the Fraser River and Williams Fork Diver Projects since the last Finding of Diligence, and the said conditionally decreed water rights and priorities are hereby continued in full force and effect and no order or decree is directed or entered for the cancellation of them in whole or in part.

37. Denver Water demonstrated that it lawfully diverted the amount of 254 c.f.s. under the Williams Fork Diversion Project and put said amount to beneficial use by customers served by the Denver Municipal Water System. The amount of 254 c.f.s., as depicted on Exhibit A, is hereby decreed absolute, and no additional showing of diligence is required with regard to said amount.

38. Pursuant to C.R.S. § 37-92-301(4), Denver Water shall file an Application for Finding of Reasonable Diligence on or before the last day of _____, 2017, so long as the Applicant desires to maintain those conditionally decreed water rights or until

a determination has been made that these conditionally decreed water rights have become absolute water rights by reason of the completion of the appropriation.

DATED this ___ day of ____, 2011.

_____
Holly K. Strabilzky
Water Referee
Water Division No. 1

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: _____

_____
James Boyd
Water Judge
Water Division No. 5
State of Colorado

# ATTACHMENT Q

TABLE I
(Case No. 07CW31 WD5)
FRASER RIVER DIVERSION PROJECT
Amounts Conditionally Decreed for Direct Flow Diversion

| Paragraph No. in Decreed Portion of Original Decree Civil Action No. 657 | Sources | Amount Conditionally Decreed in cubic feet per second | Amount Remaining Conditionally Decreed in cubic feet per second |
|---|---|---|---|
| 1(a-f) &1a | Fraser River, Jim, Little Vasquez, Vasquez, Cooper and Buck | 335 | 260.0 |
| 2(a) | St. Louis Creek, East St. Louis, Fool, King, East King, West, Elk and Elk Creeks, and tributary drainage above the West Canal | 700 | 486.0 |
| 2(b) | West St. Louis Creek, Byers Creek and tributary drainage above the East Canal | 112 | 70.0 |
| 2(c) | Faun Creek (shown as South Ranch Creek on current U.S.G.S. mapping) and tributary drainage above the East Canal | 280 | 230.0 |
| 2(d) | South Ranch Creek (shown as Middle Ranch Creek on current U.S.G.S. mapping) and tributary drainage above the East Canal | 180 | 114.0 |
| 2(e) | Ranch Creek and tributary drainage above the East Canal | 112 | 63.0 |
| 2(f) | North Ranch Creek and tributary drainage above the East Canal | 112 | 79.0 |
| 6 | Total diversion through the Moffat Tunnel from all sources described in paragraphs 1 and 2 of Civil Action No. 657 | 1,280 | 352.0 |

TABLE II
(Case No. 07CW31 WD5)
FRASER RIVER DIVERSION PROJECT
Amounts Conditionally Decreed for Storage

| Paragraph No. in Decreed Portion of Original Decree Civil Action No. 657 | Name | Sources | Amount Remaining Conditionally Decreed c.f.s. |
|---|---|---|---|
| 3(a) | St. Louis Reservoir | St. Louis, Byers, West St. Louis Creeks | 1,150.0 |

| | | | |
|---|---|---|---|
| 3(b) | Vasquez Reservoir | Vasquez, Elk, West Elk, East King, King, Fool, East St. Louis, St. Louis, Byers, West St. Louis Creeks | 275.0 |
| 3(c) | Vasquez Reservoir | Vasquez, Elk, West Elk, East King, King, Fool, East St. Louis, St. Louis, Byers, West St. Louis Creeks | 6,341.0 |
| 5 | Antero Reservoir | Fraser River and its tributaries diverted by Fraser River Diversion Project | 33,000.0 |
| * | Gross Reservoir | Fraser River and its tributaries diverted by Fraser River Diversion Project | 71,266.70 |

*Gross Reservoir, originally known as Reservoir No. 22, was decreed in "Supplemental Finding and Decree for Other Than Irrigation Purposes Respecting Reservoir No. 22 of the City and County of Denver" in Civil Action No. 657 by Decree of the Court entered April 15, 1946.

TABLE III
(Case No. 07CW31 WD5)
WILLIAMS FORK DIVERSION PROJECT
Amounts Conditionally Decreed for Direct Flow Diversion

| Paragraph No. in Decreed Portion of Original Decree Civil Action No. 657 | Sources | Amount Conditionally Decreed in cubic feet per second | Amount Remaining Conditionally Decreed in cubic feet per second |
|---|---|---|---|
| 1(a) | McQueary Creek | 70 | 21.4 |
| 1(b) | Jones Creek | 25 | 3.5 |
| 1(c) | McQueary Creek and Jones Creek and tributary drainage of McQueary Creek and Jones Creek | 115 | 45 |
| 1(f) | Bobtail Creek plus tributary drainage | 195 | 80 |
| 1(g) | Steelman Creek plus tributary drainage | 150 | 60 |
| 1(h) | Middle Fork – Williams Fork River | 550 | 550 |
| | | 350 | 350 |

| | | | |
|---|---|---|---|
| 1(i) | Middle Fork – Williams Fork River plus tributary drainage | | |
| 1(j) | Allen Creek | 250 | 250 |
| 1(k) | South Fork Williams Fork River | 200 | 200 |
| 1(l) | Middle Fork Feeder and tributary drainage | 50 | 50 |
| Last paragraph under paragraph 1on page 8 | Total diversions through the Williams Fork Tunnel by means of priorities listed in subsections (a)to (l) of paragraph 1 of the decree | 620 | 366.00 |

TABLE IV
(Case No. 07CW31 WD5)
WILLIAMS FORK DIVERSION PROJECT
Amounts Conditionally Decreed for Storage

| Paragraph No. in Decreed Portion of Original Decree Civil Action No. 657 | Name | Sources | Amount Remaining Conditionally Decreed c.f.s. |
|---|---|---|---|
| 2(a) | Empire Reservoir | Williams Fork River and its tributaries | 6,494.39 |
| 2(e) | Antero Reservoir | Williams Fork River and its tributaries | 33,000.00 |

**GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL**
**February 22, 2013**

# GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

## I. BLUE RIVER DECREE BACKGROUND

**I.A. Definitions**. The following definitions apply for purposes of this Administrative Protocol ("Protocol"). In addition, terms defined elsewhere in this Protocol shall have the meanings there provided.

**I.A.1. "Blue River Decree":** means the Findings of Fact, Conclusions of Law, and Final Judgment entered on October 12, 1955, in Consolidated Cases No. 5016 and 5017 and the Findings of Fact and Conclusions of Law and Final Decree entered on October 12, 1955, in Consolidated Cases Nos. 2782, 5016, and 5017 ("Consolidated Cases") by the United States District Court, District of Colorado ("1955 Decree"), and all supplemental or amendatory orders, judgments, and decrees in said cases, including, without limitation, the Decree entered on April 16, 1964, therein ("1964 Decree") and the Supplemental Judgment and Decree dated February 9, 1978 ("1978 Judgment").

**I.A.2. "Blue River Decree Parties":** means, for purposes of this Protocol, the following: the United States of America ("United States"), the Cities, the Northern Colorado Water Conservancy District, the Colorado River Water Conservation District, the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, the Palisade Irrigation District, the Grand Valley Irrigation Company, and the Middle Park Water Conservancy District.

**I.A.3. "Blue River Decree Stipulations" or "Stipulations":** means the 1955 Stipulation and 1964 Stipulation entered into among the parties to the Consolidated Cases in connection with the Blue River Decree, which are further defined as follows:

**I.A.3.a.** "1955 Stipulation": means the Stipulation among the parties to the Consolidated Cases entered into on October 5, 1955, and amended on October 10, 1955, which is set forth in full in paragraph 17 of the Findings of Fact and Conclusions of Law of the 1955 Decree.

**I.A.3.b.** "1964 Stipulation": means the Stipulation among the Stipulating Parties dated April 16, 1964, in the Consolidated Cases.

**I.A.4. "Bypassed Storage Water":** means bypasses of inflow to Green Mountain Reservoir between the Start of Fill Date and End of Fill Season that have been accounted toward the 1935 First Fill Storage Right pursuant to direction from the Division Engineer because they were neither used to generate electrical energy at the Green Mountain Reservoir Powerplant nor bypassed to satisfy senior water rights. Bypasses made at any time to the extent necessary to satisfy a legal demand or call of a senior downstream water right and bypasses of up to 60 c.f.s. made from May 1st through the end of the irrigation season shall not be considered Bypassed Storage Water, nor shall such bypasses be accounted toward any of the Green Mountain Reservoir Storage Rights.



**EXHIBIT A**

**I.A.5.** **"C.A. 1710 Water Rights":** means those water rights decreed on October 26, 1937, by the Summit County District Court in Civil Action No. 1710, including water rights adjudicated by Climax Molybdenum Company, a Delaware Corporation ("Climax"), for milling and mining purposes at the Climax mine near Leadville, Colorado ("Climax C.A. 1710 Water Rights"). The Climax C.A. 1710 Water Rights are as follows:

| Water Right | Appropriation Date | Adjudication Date | Amount |
|---|---|---|---|
| **Supply Canal No. 1** | | | |
| Humbug Creek | 08-15-1935 | 10-26-1937 | 20.0 cfs |
| Mayflower Creek | 08-15-1935 | 10-26-1937 | 30.0 cfs |
| Clinton Creek | 08-15-1935 | 10-26-1937 | 50.0 cfs |
| Other Drainages into Canal | 08-15-1935 | 10-26-1937 | 20.0 cfs |
| **Supply Canal No. 2** | | | |
| Searle Gulch | 08-15-1935 | 10-26-1937 | 35.0 cfs |
| Kokomo Gulch | 08-15-1935 | 10-26-1937 | 25.0 cfs |
| Other Drainages into Canal | 08-15-1935 | 10-26-1937 | 10.0 cfs |
| **Tenmile Diversion Ditch No. 1** | | | |
| McNulty Ditch | 06-04-1936 | 10-26-1937 | 15.0 cfs |
| Transferred to West Gravity Line | 06-04-1936 | 10-26-1937 | 20.0 cfs |
| **Tenmile Diversion Ditch No. 2** | | | |
| Transferred to West Gravity Line | 06-04-1936 | 10-26-1937 | 20.0 cfs |
| **Storage of the amounts above in:** | | | |
| Robinson Reservoir | | | 3,136 ac-ft |
| Chalk Mountain Reservoir | | | 204.1 ac-ft |

The water rights listed above are subject to the change of water rights decreed January 8, 2001, in consolidated Cases No. 92CW233 and 92CW336.

**I.A.6.** **"Cities":** means the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water"), and the City of Colorado Springs, acting through its Utilities Enterprise ("CS-U").

**I.A.7.** **"Cities' Depletions":** means diversions or storage by the Cities in the exercise of their decreed water rights pursuant to the Blue River Decree and Blue River Decree Stipulations. The Cities must pay power interference charges to the United States on account of the Cities' Depletions in accordance with the Power Interference Agreements, and must hold water in storage to the extent of the Cities' Depletions and provide replacement water to assure the satisfaction of the 1935 First Fill Storage Right. In certain circumstances as provided in this Protocol, all or part of the Cities' Depletions may be considered to "Deplete Against the 1935 First Fill Storage Right." The Cities' Depletions are separate from the Contract Depletions.

**I.A.8.** **"Cities' Replacement Obligation":** is defined in Paragraph IV.A.1.b of this Protocol.

**I.A.9.** **"Contract Depletions":** means depletions resulting from diversions or storage upstream from Green Mountain Reservoir by certain West Slope water users ("City

Contract Beneficiaries") pursuant to contractual arrangements by which Denver Water or CS-U replaces such depletions ("City Replacement Contracts"). The Cities must pay power interference charges to the United States on account of the Contract Depletions in accordance with the Power Interference Agreements, and must hold water in storage to the extent of the Contract Depletions and provide replacement water to assure the satisfaction of the 1935 First Fill Storage Right. Responsibility for payment of power interference charges, as between the Cities and the City Contract Beneficiaries, shall be in accordance with the City Replacement Contracts, and nothing in this Protocol is intended to alter the terms of the City Replacement Contracts. In certain circumstances as provided in this Protocol, all or part of the Contract Depletions may be considered to "Deplete Against the 1935 First Fill Storage Right." The Contract Depletions are separate from the Cities' Depletions.

**I.A.10. "CS-U's 1948 Blue River Water Rights":** means the following water rights:

**I.A.10.a.** "Continental-Hoosier Project storage rights": means the May 13, 1948 storage water rights adjudicated to Upper Blue Lake, Lower Blue Lake, Spruce Lake Reservoir, and Mayflower Lake Reservoir in Civil Actions No. 1805 and 1806 by the Summit County District Court on March 10, 1952, and confirmed by the Blue River Decree.

**I.A.10.b.** "Continental-Hoosier Project direct flow water rights": means the May 13, 1948 direct flow water rights through the Crystal Ditch, Spruce Ditch, McCullough Ditch, East Hoosier Ditch, Hoosier Ditch, and Hoosier Tunnel adjudicated in Civil Actions No. 1805 and 1806 by the Summit County District Court on March 10, 1952, and confirmed by the Blue River Decree.

**I.A.11. "Deplete Against the 1935 First Fill Storage Right":** means the method, pursuant to the 1955 Stipulation, 1955 Decree, paragraph 4 of the 1964 Decree, and the Power Interference Agreements, by which the Cities may, with the approval of the Secretary, notwithstanding a river call instituted by the United States pursuant to this Protocol, deplete water upstream from Green Mountain Reservoir through exercise of the Cities' water rights pursuant to the Blue River Decree and Stipulations in an amount up to the volume the United States would otherwise have stored in Green Mountain Reservoir pursuant to the 1935 First Fill Storage Right, without simultaneously releasing water from replacement storage. Water that the Cities Deplete Against the 1935 First Fill Storage Right is not accounted toward the satisfaction of the 1935 First Fill Storage Right, but is included in the determination of the End of Fill Season pursuant to the provisions of Paragraph II.A.3.b.v below. The provisions of Paragraph II.D below apply in the administration of the 1935 First Fill Storage Right when the Cities' Depletions and Contract Depletions are considered to Deplete Against the 1935 First Fill Storage Right.

**I.A.12.** **"Denver Water's 1946 Blue River Water Rights":** means the following water rights[1]:

**I.A.12.a.** "1946 Dillon Reservoir storage right": means the June 24, 1946 storage water right adjudicated in Civil Action Nos. 1805 and 1806 by the Summit County District Court on March 10, 1952, and confirmed by the Blue River Decree.

**I.A.12.b.** "1946 Blue River Diversion Project direct flow water right": means the June 24, 1946 direct flow water right through the Harold D. Roberts Tunnel (a/k/a Montezuma Tunnel) adjudicated in Civil Action Nos. 1805 and 1806 by the Summit County District Court on March 10, 1952, and confirmed by the Blue River Decree.

**I.A.13.** **"Discretionary Power Diversions":** is defined in Paragraph IV.A.1.f of this Protocol.

**I.A.14.** **"End of Fill Season":** means the date on which the Fill Season for the 1935 First Fill Storage Right is deemed ended, pursuant to Paragraph II.A.3 of this Protocol.

**I.A.15.** **"Exchange and Deplete Upstream":** means the method by which the Cities, in accordance with Paragraph II.C below, and subject to the approval of the Secretary, may, in the exercise of the Cities' water rights, release water from replacement storage (e.g., Williams Fork Reservoir) to satisfy[2] the requirements of a calling water right downstream on the Colorado River and, to the extent that such replacement water is made available to meet the requirement of such calling right,[3] deplete an equivalent volume of water, at an equivalent rate of flow, at their facilities. In certain circumstances, the Cities may Exchange and Deplete Upstream to effectuate their obligations to the City Contract Beneficiaries under the City Replacement Contracts.

**I.A.16.** **"Fill Level":** means the water level elevation in Green Mountain Reservoir determined by the Secretary, in the exercise of the Secretary's reasonable discretion pursuant to applicable law, to be the fill of Green Mountain Reservoir for that water year. The Fill Level is determined by the Secretary, and is not necessarily determined by any restriction or limitation on the maximum operating water surface elevation that may be maintained in Green Mountain Reservoir in a given year because of maintenance, repairs, or dam safety. The Fill Level is not a storage volume.

**I.A.17.** **"Fill Schedule":** is defined in Paragraph II.A.1.a of this Protocol.

---

[1] Nothing in this Protocol should be construed or applied to preclude Denver Water's exercise of its Dillon Reservoir Refill water right adjudicated in Case No. 87CW376 (Water Division No. 5).

[2] As used in this Protocol, the term "satisfy" in relation to calls by senior water rights refers to the amount of water required to be bypassed or delivered to the calling right and not necessarily the amount needed to supply the full decreed rate of flow of the calling right.

[3] Nothing in this Protocol shall limit the Division Engineer's authority to assess reasonable transit losses on the delivery of replacement water as provided by law.

**I.A.18.** **"Fill Season":** means the period between the Start of Fill Date and the End of Fill Season.

**I.A.19.** **"Green Mountain Reservoir Storage Rights":** means the 1935 First Fill Storage Right, the 1935 Senior Refill Storage Right, and the Junior Refill Storage Right.

**I.A.20.** **"Green Mountain Reservoir Water Rights":** means the following water rights:

**I.A.20.a.** "1935 First Fill Storage Right": means the Green Mountain Reservoir storage right with a priority date of August 1, 1935, from the Blue River and its tributaries[4] in the amount of 154,645 acre-feet.

**I.A.20.b.** "1935 Senior Refill Storage Right": means the Green Mountain Reservoir storage refill right with a priority date of August 1, 1935, from the Blue River and its tributaries in the amount of 6,316 acre-feet.[5]

**I.A.20.c.** "1935 Direct Flow Power Right": means the Green Mountain Reservoir Powerplant direct flow right with a priority date of August 1, 1935, from the Blue River and its tributaries in the amount of 1,726 cubic feet per second ("c.f.s.") for the generation of electrical power at the Green Mountain Reservoir Powerplant.

**I.A.20.d.** "Junior Refill Storage Right": means the Green Mountain Reservoir storage refill right with an appropriation date of January 1, 1985, from the Blue River and its tributaries in the amount of 154,645 acre-feet.[6]

**I.A.21.** **"Power Interference Agreements":** means the agreements entered into between the United States and the Cities as part of, or pursuant to, the Blue River Decree and Stipulations for replacement of, or compensation for, electrical energy at the Green Mountain Reservoir Powerplant.

**I.A.22.** **"Probable Run-off":** is defined in Paragraph II.A.1 of this Protocol.

**I.A.23.** **"Secretary":** means the Secretary of the Interior, or the Secretary's designee.

---

[4] For purposes of the definitions in this Paragraph I.A.20, "the Blue River and its tributaries" means all tributaries of the Blue River upstream of Green Mountain Reservoir, as well as Elliott Creek by diversion through the Elliott Creek Feeder Canal, which has a decreed capacity of 90 c.f.s.

[5] The administration and accounting for the United States' exercise of the 1935 Senior Refill Storage Right is not addressed by this Protocol. Agreements among the Blue River Decree Parties regarding water stored pursuant to the 1935 Senior Refill Storage Right are addressed in Section IV.

[6] The administration and accounting for the United States' exercise of the Junior Refill Storage Right is not addressed by this Protocol.

**I.A.24.** **"Senate Document 80":** means Senate Document No. 80, 75th Congress, 1st Session, January 15, 1937, entitled "Colorado-Big Thompson Project, Synopsis of Report on Colorado-Big Thompson Project, Plan of Development and Cost Estimate Prepared by the Bureau of Reclamation, Department of the Interior."

**I.A.25.** **"Start of Fill Date":** means the date between April 1st and May 15th fixed by the Secretary as the start of fill of Green Mountain Reservoir under the 1935 First Fill Storage Right.

**I.A.26.** **"Substitution Agreements":** means the following agreements, as they may be renewed:

**I.A.26.a.** Memorandum of Agreement No. 2-AG-60-01560 dated December 30, 1991, "Establishing Principles for the Substitution of Water between Green Mountain Reservoir and Williams Fork Reservoir";

**I.A.26.b.** Memorandum of Agreement No. 2-AG-60-01550 dated December 30, 1991, "Among the City and County of Denver, the U. S. Bureau of Reclamation, Northern Colorado Water Conservancy District, and the Colorado River Water Conservation District";

**I.A.26.c.** Memorandum of Agreement No. 09AG6C0027 dated February 22, 2010, "Between the United States of America and Colorado Springs Utilities Establishing Principles for the Substitution of Water to Green Mountain Reservoir", and ratifying and approving the Plan of Substitution set forth in:

**I.A.26.d.** Memorandum of Agreement effective May 15, 2003, between CS-U, the Colorado River Water Conservation District, Denver Water, the Northern Colorado Water Conservancy District, the County of Summit, Vail Summit Resorts, Inc., and the Town of Breckenridge; and in:

**I.A.26.e.** Memorandum of Agreement effective October 15, 2003, between CS-U, the County of Summit, Vail Summit Resorts, Inc., and the Town of Breckenridge.

**I.A.27.** **"Upstream of Dillon Junior Beneficiary Rights":** are defined in Paragraph I.B.3 of this Protocol and are identified in Exhibit 1 attached hereto.

**I.A.28.** **"Ute":** means the Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise ("Ute Water Conservancy District").

**I.B.** **Cities' Operations.**

**I.B.1.** Pursuant to the Blue River Decree and Stipulations, in order to divert water of the Blue River during the Fill Season notwithstanding their respective priority dates, the Cities must hold water in storage to the extent of the Cities' Depletions and the Contract Depletions until such time as (a) Green Mountain Reservoir achieves a fill pursuant to paragraph 4 of the 1964 Decree; or (b) the Secretary advises the Cities that such water is not necessary to

assure the fill. Further, if Green Mountain Reservoir does not achieve a fill, the Cities must provide replacement water to assure the fill. The obligations of the Cities to hold water in storage and to provide replacement water, if necessary, are express conditions on the exercise of the Cities' water rights under the Blue River Decree and this Protocol. The determination, accounting, and operation of the Cities' Replacement Obligation under the Blue River Decree and Stipulations and Substitution Agreements are governed by the terms of those documents and of decrees providing for such substitution operations. The methodology to calculate the volume of replacement water to be provided by the Cities to satisfy their replacement obligations is addressed in Section IV of this Protocol.

**I.B.2.** The Cities have entered into the City Replacement Contracts, by which they undertake to replace Contract Depletions or store water for the benefit of the City Contract Beneficiaries upstream of Green Mountain Reservoir as a part of the Cities' Replacement Obligation. Accordingly, for the purposes of this Protocol, the Cities' Replacement Obligation includes the Contract Depletions, and, therefore, the Contract Depletions are excluded from the Senate Document 80 "beneficiary" depletions that are addressed in paragraphs II.A.3.a.iii, II.A.3.b.iii, II.B.1.d, II.B.2.b, II.B.6, II.D.1.c, II.E.1, II.E.2, IV.A.3.a.ii, and IV.A.3.b.i.(c) of this Protocol.

**I.B.3.** To ensure the satisfaction of paragraph 2 of the 1964 Stipulation, the Cities have agreed to permit certain West Slope water rights that are (a) located upstream of Dillon Reservoir; (b) junior in priority to June 23, 1946; and (c) not City Contract Beneficiaries (the "Upstream of Dillon Junior Beneficiary Rights") to divert by exchange against the 1946 Dillon Reservoir storage right or the 1946 Blue River Diversion Project direct flow right under certain circumstances and to the extent of a maximum of 80 acre feet of depletions annually. Such diversions and depletions are addressed in Paragraph II.B.3 and Section IV of this Protocol.

**I.B.4.** Operations by the Cities pursuant to Sections I, II, and III of this Protocol are consistent with the terms and conditions of the Blue River Decree. Section IV of this Protocol addresses the Cities' Replacement Obligation in order to meet certain requirements of the Stipulations and Blue River Decree.

**I.C.** **Downstream Calls.** Pursuant to the Blue River Decree and Stipulations, in order to divert water of the Blue River notwithstanding their priority dates, the Cities must at all times bypass water in quantities sufficient to meet all legal calls of downstream water rights on the Blue River and within Colorado below the confluence of the Blue River and the Colorado River. To satisfy this obligation, the Cities are permitted under the Blue River Decree and Stipulations either: (1) to bypass the lesser of (a) inflow or (b) flow sufficient to satisfy the call, at the Cities' respective diversion structures subject to the call; or (2) with the approval of the Secretary, to provide replacement water to satisfy such legal calls by exchanges from replacement storage in the upper Colorado River basin. To effectuate these operations in satisfaction of the Cities' obligation, such legal calls by water rights with priorities senior to those of the Cities will be administered through Green Mountain Reservoir to curtail the Cities' diversions as provided for herein, regardless of whether the Green Mountain Reservoir Storage Rights are then being exercised.

**I.C.1.** Paragraph 7(a) of the 1955 Stipulation provides for CS-U to exercise CS-U's Blue River Water Rights notwithstanding the exercise of Denver Water's 1946 Blue River Water Rights, subject to certain terms and conditions. To ensure satisfaction of this provision at times when Denver Water's 1946 Blue River Water Rights are subject to partial curtailment in response to a downstream call, Denver Water and CS-U will operate as provided in Paragraph II.C.3 below.

**I.D.** **No Exchanges Adjudicated.** While this Protocol recognizes that certain exchanges may occur pursuant to the Blue River Decree, the Stipulations, and Substitution Agreements, judicial approval or adjudication of this Protocol shall not adjudicate any appropriative rights of exchange and shall not form the basis for appropriation or adjudication of any appropriative rights of exchange.

## II. ADMINISTRATIVE PROTOCOL

### II.A. The Fill Schedule and the End of Fill Season.

**II.A.1.** **Preparation of the Fill Schedule**. Pursuant to paragraphs 4.A and 4.B of the 1964 Decree, and paragraph 4(a) of the 1955 Stipulation, the Secretary shall prepare a fill schedule for Green Mountain Reservoir as follows: each year the Secretary shall determine the quantity of water required to fill Green Mountain Reservoir as of the Start of Fill Date and the probable run-off of the Blue River above Green Mountain Reservoir ("Probable Run-off"), and shall prepare a schedule for the filling of Green Mountain Reservoir in accordance with the United States' rights as provided for in the Blue River Decree. For purposes of this Protocol, the Secretary is not limited to any particular level of probability in determining the Probable Run-off.

**II.A.1.a.** Satisfaction of the 1935 First Fill Storage Right requires that there be an amount of water (after provision for all prior rights) that, added to the water in storage in Green Mountain Reservoir on the Start of Fill Date (excluding water held in temporary storage pursuant to excess capacity or "if and when" contracts), would equal 154,645 acre-feet. The Secretary shall prepare the fill schedule and a plan of operation based upon such fill schedule (together, referred to as the "Fill Schedule"), with the goals of achieving the fill of Green Mountain Reservoir as provided in Paragraph II.A.3.a below, and also, pursuant to paragraph 4 of the 1964 Decree, permitting as much water as possible to be available for upstream rights without impairment of the United States' right to fill Green Mountain Reservoir and to use that reservoir as provided in the documents (as that term is defined in the 1964 Decree), and without impairment of legal calls of downstream water rights.

**II.A.1.b.** To that end, the Fill Schedule will set forth: (i) the volume of Probable Run-off; (ii) the volume of water that, added to the water in storage in Green Mountain Reservoir on the Start of Fill Date (excluding water held in temporary storage pursuant to excess capacity or "if and when" contracts) would equal 154,645 acre-feet; (iii) the volume of Probable Run-off available and allocated for power generation during the Fill Season; and (iv) the projected date of fill of Green Mountain Reservoir.

**II.A.2.** **Review and Modification of the Fill Schedule.**

**II.A.2.a.** Prior to April 1st of each year, the Secretary will submit a preliminary operating plan for the ensuing Fill Season to the Blue River Decree Parties and the Division Engineer for their comments. At such time as the Secretary has determined a tentatively designated Start of Fill Date, the Secretary will provide notice to the Blue River Decree Parties and the Division Engineer of (1) the tentative Start of Fill Date and (2) whether the initial Fill Schedule is likely to include an allocation of some volume of water for power generation. Subsequently, the Secretary shall fix the Start of Fill Date and prepare the initial Fill Schedule, and shall provide such information to the Blue River Decree Parties and the Division Engineer. During any period between the tentative Start of Fill Date and the date the Secretary notifies the Division Engineer of the fixed Start of Fill Date and the initial Fill Schedule, the accounting and administration under Section II of this Protocol shall be based on the notice provided by the Secretary of the tentative Start of Fill Date and whether the Fill Schedule is likely to include an allocation of some volume of water for power generation.

**II.A.2.b.** The Secretary shall thereafter modify the Fill Schedule, including, but not limited to, the projected date of fill of Green Mountain Reservoir, from time to time during the snowmelt season as, and as frequently as, actual run-off conditions and other pertinent considerations indicate that the waters available for filling Green Mountain Reservoir and/or the Probable Run-off available for power generation are materially more or less than originally estimated. The Secretary shall notify the Blue River Decree Parties and the Division Engineer when material modifications have been made to the Fill Schedule.

**II.A.3.** **The End of Fill Season**. The End of Fill Season shall be the earlier of the dates established by Paragraphs II.A.3.a or II.A.3.b below:

**II.A.3.a.** The date when either the water level elevation in Green Mountain Reservoir reaches the Fill Level or the following volumes total 154,645 acre-feet:

**II.A.3.a.i** the water in storage in Green Mountain Reservoir (excluding water held in temporary storage pursuant to excess capacity or "if and when" contracts) on the Start of Fill Date; plus

**II.A.3.a.ii** the water stored in Green Mountain Reservoir under the 1935 First Fill Storage Right after the Start of Fill Date (including water so stored pursuant to Paragraph II.D.2 below); plus

**II.A.3.a.iii** the water depleted by exchange upstream of Green Mountain Reservoir, and accounted toward the satisfaction of the 1935 First Fill Storage Right, by Senate Document 80 "beneficiary" water rights with priority dates junior to June 23, 1946, after the Start of Fill Date; plus

**II.A.3.a.iv** Bypassed Storage Water.

**II.A.3.b.** The date when a legal call by a water right with a priority date senior to August 1, 1935, fully curtails the 1935 First Fill Storage Right, for seven (7) consecutive days, after the following volumes total 154,645 acre-feet:

**II.A.3.b.i** the water in storage in Green Mountain Reservoir (excluding water held in temporary storage pursuant to excess capacity or "if and when" contracts) on the Start of Fill Date; plus

**II.A.3.b.ii** the water stored in Green Mountain Reservoir under the 1935 First Fill Storage Right after the Start of Fill Date (including water so stored pursuant to Paragraph II.D.2 below); plus

**II.A.3.b.iii** the water depleted by exchange upstream of Green Mountain Reservoir, and accounted toward the satisfaction of the 1935 First Fill Storage Right, by Senate Document 80 "beneficiary" water rights with priority dates junior to June 23, 1946, after the Start of Fill Date; plus

**II.A.3.b.iv** Bypassed Storage Water; plus

**II.A.3.b.v** the Cities' Depletions and the Contract Depletions (either directly or by storage) after the Start of Fill Date.

**II.A.3.c.** After the End of Fill Season, the United States may no longer exercise the 1935 First Fill Storage Right until the next Start of Fill Date.

**II.B. General Administration During and After the Fill Season.**

**II.B.1. Administration/Diversions During the Fill Season When the Fill Schedule Allocates Probable Run-off to Power Generation.** At any time during the Fill Season when the Fill Schedule, as initially prepared or as modified during the snowmelt season, allocates Probable Run-off to power generation, water rights shall be administered as follows:

**II.B.1.a.** The 1935 First Fill Storage Right will be deemed satisfied, in the context of daily administration, in accordance with the contemplated satisfaction of the 1935 First Fill Storage Right pursuant to the Fill Schedule, as the same may be modified from time to time during the Fill Season; and

**II.B.1.b.** Water diverted by the United States through the Green Mountain Reservoir Powerplant (other than water released from storage) shall be considered to be diverted in exercise of the 1935 Direct Flow Power Right, with the United States exercising the 1935 Direct Flow Power Right against all water rights with priority dates junior to June 23, 1946, and such power right shall be deemed to be satisfied by flows available as a result of curtailment of

water rights with priority dates junior to June 23, 1946.[7] This operation does not constitute, or result in, a subordination of the water right priority of the 1935 Direct Flow Power Right, the 1935 First Fill Storage Right, or the 1935 Senior Refill Storage Right, but allows "as much water as possible to be available for upstream rights without impairment of the United States' right to fill Green Mountain Reservoir and to use that reservoir as provided in" the 1955 Decree and Senate Document 80, as directed by paragraph 4 of the 1964 Decree;

**II.B.1.b.i** Such water diverted through the Green Mountain Reservoir Powerplant shall neither be accounted toward, nor deemed to satisfy, the 1935 First Fill Storage Right; and

**II.B.1.c.** All water rights located upstream of Green Mountain Reservoir with priority dates between August 1, 1935, and June 23, 1946, shall be allowed to divert in priority unaffected by the exercise of the 1935 Direct Flow Power Right, and the depletions from such diversions shall neither be accounted toward, nor deemed to satisfy, the 1935 First Fill Storage Right; and

**II.B.1.d.** All Senate Document 80 "beneficiary" water rights with priority dates junior to June 23, 1946, that are located upstream of Green Mountain Reservoir and that are not Upstream of Dillon Junior Beneficiary Rights may continue to divert by exchange, and depletions from such diversions (other than Contract Depletions) shall be accounted toward the 1935 First Fill Storage Right; and

**II.B.1.e.** The Cities, with the authorization of the Secretary, may divert against the 1935 Direct Flow Power Right pursuant to the Blue River Decree and Stipulations and their Power Interference Agreements, and the City Contract Beneficiaries may continue to divert in accordance with their City Replacement Contracts. The Cities' Depletions and the Contract Depletions shall be considered to be made against the 1935 Direct Flow Power Right and shall neither be accounted toward, nor deemed to satisfy, the 1935 First Fill Storage Right; provided:

**II.B.1.e.i** that at any time when the cumulative daily average rate of flow of (a) the United States' diversions through the Green Mountain Reservoir Powerplant, (b) the Cities' Depletions, and (c) the Contract Depletions exceeds 1,726 c.f.s., then that portion of the combined Cities' Depletions and Contract Depletions that is diverted at a daily average rate of flow that, when added to the daily average rate of flow of the United States' diversions through the Green Mountain Reservoir Powerplant, exceeds 1,726 c.f.s. shall be considered to Deplete Against the 1935 First Fill Storage Right, and the provisions of Paragraph II.D below shall apply; and

[7] For the duration of the time when the 1935 First Fill Storage Right is being administered under an October 12, 1955 administrative priority pursuant to Paragraph II.D.2, the 1935 Direct Flow Power Right shall be administered under the same October 12, 1955 administrative priority.

**II.B.1.e.ii** that on any day after the Start of Fill Date when the cumulative volume of (a) the Cities' Depletions (that are not, pursuant to Paragraph II.B.1.e.i above, considered to Deplete Against the 1935 First Fill Storage Right) and (b) the Contract Depletions (that are not, pursuant to Paragraph II.B.1.e.i above, considered to Deplete Against the 1935 First Fill Storage Right), and (c) the United States' diversions through the Green Mountain Reservoir Powerplant exceeds the volume of Probable Run-off that is allocated to power generation by the Fill Schedule as it exists on that day, then that portion of the cumulative volume of Cities' Depletions (that are not, pursuant to Paragraph II.B.1.e.i above, considered to Deplete Against the 1935 First Fill Storage Right) and Contract Depletions (that are not, pursuant to Paragraph II.B.1.e.i above, considered to Deplete Against the 1935 First Fill Storage Right) that exceeds the volume allocated to power generation by the Fill Schedule shall be considered to Deplete Against the 1935 First Fill Storage Right, and the provisions of Paragraph II.D below shall apply.

**II.B.2.** **Administration/Diversions During the Fill Season When the Fill Schedule Does Not Allocate Probable Run-off to Power Generation**. At any time during the Fill Season when the Fill Schedule, as initially prepared or as modified during the snowmelt season, does not allocate Probable Run-off to power generation, the United States shall be considered to be exercising the 1935 First Fill Storage Right; and

**II.B.2.a.** The Cities' Depletions and Contract Depletions shall be considered to Deplete Against the 1935 First Fill Storage Right and the provisions of Paragraph II.D below shall apply; and

**II.B.2.b.** All Senate Document 80 "beneficiary" water rights with priority dates junior to August 1, 1935, that are located upstream of Green Mountain Reservoir may continue to divert by exchange, and depletions from such diversions (other than Contract Depletions) shall be accounted toward the 1935 First Fill Storage Right.

**II.B.3.** **Upstream of Dillon Junior Beneficiary Rights.**

**II.B.3.a.** In satisfaction of paragraph 2 of the 1964 Stipulation, Upstream of Dillon Junior Beneficiary Rights may continue to divert, when a call is placed by the Cities that would otherwise curtail such diversions, by exchange against the 1946 Dillon Reservoir storage right, or the 1946 Blue River Diversion Project direct flow water right to the extent of a cumulative total of 80 acre-feet of depletions annually. The depletions from such diversions shall be accounted toward the annual fill of the 1946 Dillon Reservoir storage right.

**II.B.3.b.** The Upstream of Dillon Junior Beneficiary Rights are identified in Exhibit 1 attached hereto and incorporated herein by this reference (Exhibit 1 is not intended to determine, and shall not be interpreted to establish a definition of, or otherwise set criteria for, water rights that qualify as Senate Document 80 "beneficiaries"). Upon agreement of the United States, the Cities, the Colorado River Water Conservation District, and the Division Engineer for Water Division No. 5, qualifying water rights inadvertently not identified on Exhibit 1, or included but not qualifying, may be added to or removed from the Exhibit as Upstream of Dillon Junior Beneficiary Rights, subject, however, to the annual 80 acre feet limitation of depletions

from such rights that are accounted toward the annual fill of the 1946 Dillon Reservoir storage right as set forth in Paragraph II.B.3.a above.

**II.B.4.** **Decreed Plans for Augmentation.** The depletions of water rights located upstream of Green Mountain Dam that are fully replaced upstream of Green Mountain Dam pursuant to decreed plans for augmentation shall not be accounted toward the Green Mountain Reservoir Water Rights unless so provided in any such decreed plan for augmentation.

**II.B.5.** **Cities' Replacement Obligation.** In satisfaction of the Blue River Decree and Stipulations, the Cities shall be obligated to make replacement water available to Green Mountain Reservoir as addressed in Section IV of this Protocol. The Cities will coordinate the accomplishment of any required replacement with the Secretary and the Division Engineer.

**II.B.6.** **Administration/Power Operations After the End of Fill Season.** After the End of Fill Season, the United States may call for water to satisfy the 1935 Direct Flow Power Right. In such case, the Cities, with the authorization of the Secretary, may continue to divert against the 1935 Direct Flow Power Right pursuant to the Blue River Decree and Stipulations and their Power Interference Agreements, and the City Contract Beneficiaries may continue to divert in accordance with their City Replacement Contracts. When the Cities are so diverting, water diverted by the United States through the Green Mountain Reservoir Powerplant (other than water released from storage) shall be considered to be diverted in exercise of the 1935 Direct Flow Power Right, with the United States exercising the 1935 Direct Flow Power Right against all water rights with priority dates junior to June 23, 1946, and such power right shall be deemed to be satisfied by flows available as a result of curtailment of water rights with priority dates junior to June 23, 1946. Nothing in this paragraph shall alter or affect any rights of Senate Document 80 "beneficiary" water rights that are located upstream of Green Mountain Reservoir to divert against the 1935 Direct Flow Power Right in accordance with Senate Document 80, the Blue River Decree, Green Mountain Reservoir water service contracts, or Section I.B.3 of this Protocol.

**II.B.6.a.** Use of the 1935 Direct Flow Power Right after the End of Fill Season shall not restrict or limit the United States' ability or right, in the discretion of the Secretary, to exercise the 1935 Senior Refill Storage Right, to place a call under the 1935 Senior Refill Storage Right, to exercise the 1935 Senior Refill Storage Right without placing a call, or to exercise the 1935 Senior Refill Storage Right under a priority co-equal to the administrative priority of the 1935 Direct Flow Power Right.

**II.C.** **Operation of Green Mountain Reservoir and the Cities' Water Rights in Response to Downstream Calls Senior to the Cities' Water Rights.** If a call senior to the Cities' water rights is in effect during the Fill Season when the Fill Schedule (as initially prepared or as modified) has allocated water to power generation, then the administration of the United States' and the Cities' operations will vary, depending on whether 154,645 acre-feet has been accounted for in accordance with Paragraph II.A.3.b above, whether the call is senior to August 1, 1935, and whether the call fully or partially curtails the affected water rights.

Accordingly, legal calls of water rights on the Blue River below Green Mountain Reservoir and on the Colorado River within Colorado below the confluence with the Blue River with priority dates senior to the priorities of the Cities' Blue River water rights will be administered as follows:

**II.C.1.** **Call Before 154,645 Acre-Feet Has Been Accounted For in accordance with Paragraph II.A.3.b.** If the call is in effect when the volumes specified in Paragraph II.A.3.b.i-b.v above total less than 154,645 acre-feet, then the following applies:

**II.C.1.a.** Senior Call; Full Curtailment of the 1935 First Fill Storage Right. During the time when the call by a water right with a priority senior to August 1, 1935, fully curtails the 1935 First Fill Storage Right, the United States cannot exercise the 1935 First Fill Storage Right, but may exercise the 1935 Direct Flow Power Right to divert the water that is passed to the calling right through the Green Mountain Reservoir Powerplant. In this circumstance, the Cities will:

**II.C.1.a.i** bypass the inflow at the Cities' respective diversion structures that are subject to the call (and the United States will pass the bypassed water and the water flowing into the Blue River between Dillon Reservoir and Green Mountain Reservoir ("Intervening Inflow") through Green Mountain Reservoir, while in its discretion exercising the 1935 Direct Flow Power Right to divert the water that is so passed to satisfy the calling right through the Green Mountain Reservoir Powerplant); and/or

**II.C.1.a.ii** Exchange and Deplete Upstream (and the volume of water Exchanged and Depleted Upstream shall not be accounted toward the satisfaction of the 1935 First Fill Storage Right, but shall be accounted, for purposes of the Cities' Power Interference Agreements, as a depletion against the 1935 Direct Flow Power Right).

**II.C.1.b.** Senior Call; 1935 First Fill Storage Right Partially Curtailed. During the time when the call by a water right with a priority senior to August 1, 1935, partially curtails the 1935 First Fill Storage Right, the United States will exercise the 1935 First Fill Storage Right to the extent not curtailed[8], and will pass through Green Mountain Reservoir only such volume of water as is needed to satisfy the call. The United States may, in its discretion, exercise the 1935 Direct Flow Power Right to divert the water that is passed to the calling right through the Green Mountain Reservoir Powerplant. In this circumstance, the Cities will:

**II.C.1.b.i** bypass the inflow at the Cities' respective diversion structures that are subject to the call; and/or

**II.C.1.b.ii** Exchange and Deplete Upstream against the water the United States must pass through Green Mountain Reservoir to satisfy the call (and the volume of water

[8] This operation will continue until such time as the volumes specified in Paragraph II.A.3.b.i-b.v total 154,645 acre feet, at which time Paragraph II.C.2 will apply.

Exchanged and Depleted Upstream shall not be accounted toward the 1935 First Fill Storage Right, but shall be accounted, for purposes of the Cities' Power Interference Agreements, as a depletion against the 1935 Direct Flow Power Right); and/or

**II.C.1.b.iii** Deplete Against the 1935 First Fill Storage Right, and the provisions of Paragraph II.D below shall apply.

**II.C.1.c.** Senior Call; 1935 First Fill Storage Right Not Curtailed, Cities Partially or Fully Curtailed. During the time when the call by a water right with a priority senior to August 1, 1935, partially or fully curtails the Cities' rights, but does not curtail the 1935 First Fill Storage Right, the United States will exercise an August 1, 1935 priority call under the 1935 First Fill Storage Right to store all flows legally available to that right.[9] [10] In this circumstance the Cities will:

**II.C.1.c.i** bypass at the Cities' respective diversion structures that are subject to the call the lesser of (a) the inflow, or (b) the flow sufficient to satisfy the call; and/or

**II.C.1.c.ii** Deplete Against the 1935 First Fill Storage Right, and the provisions of Paragraph II.D below shall apply.

**II.C.1.d.** Junior Call; Cities Partially or Fully Curtailed. During the time when the call by a water right with a priority between August 1, 1935, and June 23, 1946, partially or fully curtails the Cities' rights, the United States will exercise an August 1, 1935 priority call under the 1935 First Fill Storage Right to store all flows legally available to that right.[11] In this circumstance, the Cities will:

**II.C.1.d.i** bypass at the Cities' respective diversion structures that are subject to the call the lesser of (a) the inflow or (b) the flow sufficient to satisfy the call; and/or

**II.C.1.d.ii** Deplete Against the 1935 First Fill Storage Right, and the provisions of Paragraph II.D below shall apply.

**II.C.1.e.** Consensus Operations When There Is A High Probability of Fill. In the circumstances described in Paragraphs II.C.1.b, II.C.1.c, and II.C.1.d above, if the Secretary determines in the exercise of the Secretary's reasonable discretion, that there is a high probability

---

[9] This operation will continue until such time as the volumes specified in Paragraph II.A.3.b.i-b.v total 154,645 acre feet, at which time Paragraph II.C.2 will apply.

[10] In the event that the United States is unable to exercise the 1935 First Fill Storage Right due to physical operational limitations lawfully established by the Secretary or the State Engineer and instead passes water, then the Cities may Exchange and Deplete Upstream against the water that the United States otherwise would have stored in Green Mountain Reservoir (and the volume of water Exchanged and Depleted Upstream shall not be accounted toward the 1935 First Fill Storage Right, but shall be accounted, for purposes of the Cities' Power Interference Agreements, as a depletion against the 1935 Direct Flow Power Right).

[11] This operation will continue until such time as the volumes specified in Paragraph II.A.3.b.i-b.v total 154,645 acre feet, at which time Paragraph II.C.2 will apply.

of filling Green Mountain Reservoir, then upon consultation with and the concurrence of the Blue River Decree Parties, Ute and the Division Engineer for Water Division No. 5, the United States may choose not to exercise the 1935 First Fill Storage Right to store all flows legally available to that right, and may instead exercise the 1935 Direct Flow Power Right. If the United States chooses to exercise the Green Mountain Reservoir Water Rights in this manner, such diversions shall be considered as Discretionary Power Diversions for purposes of determining the Cities' Replacement Obligation addressed in Section IV of this Protocol. In such circumstances, the Cities may Exchange and Deplete Upstream against the exercise of the 1935 Direct Flow Power Right.

**II.C.2.** **Call After 154,645 Acre Feet Has Been Accounted For in Accordance With Paragraph II.A.3.b**. If the call is in effect after the volumes specified in Paragraph II.A.3.b.i-b.v above total 154,645 acre-feet or more, but before the End of Fill Season, then the following applies[12]:

**II.C.2.a.** Senior Call; Full Curtailment of the 1935 First Fill Storage Right. During the time when the call by a water right with a priority senior to August 1, 1935, fully curtails the 1935 First Fill Storage Right, the United States cannot exercise the Green Mountain Reservoir Storage Rights, but may exercise the 1935 Direct Flow Power Right to divert water that is passed through the Green Mountain Reservoir Powerplant. In this circumstance, the Cities will:

**II.C.2.a.i** bypass the inflow at the Cities' respective diversion structures that are subject to the call (and the United States will pass the bypassed water and the Intervening Inflow through Green Mountain Reservoir, while in its discretion exercising the 1935 Direct Flow Power Right to divert water that is so passed to satisfy the calling right through the Green Mountain Reservoir Powerplant); and/or

**II.C.2.a.ii** Exchange and Deplete Upstream (and the volume of water Exchanged and Depleted Upstream shall not be accounted toward the 1935 First Fill Storage Right, but shall be accounted, for purposes of the Cities' Power Interference Agreements, as a depletion against the 1935 Direct Flow Power Right).

**II.C.2.b.** Senior Call; 1935 First Fill Storage Right Partially Curtailed. During the time when the call by a water right with a priority senior to August 1, 1935, partially curtails the 1935 First Fill Storage Right, the United States will pass through Green Mountain Reservoir such volume of water as is needed to satisfy the call, while in its discretion exercising the 1935 Direct Flow Power Right to divert the water that is so passed to satisfy the calling right through the Green Mountain Reservoir Powerplant. The United States may, in its discretion, exercise (a) the 1935 First Fill Storage Right to store water that is not passed to satisfy the call,

[12] The provisions of Paragraphs II.C.2.a-d only apply when the 1935 First Fill Storage Right is operating pursuant to its August 1, 1935 priority. When the 1935 First Fill Storage Right is operating under an October 12, 1955 administrative priority pursuant to Paragraph II.D.2, the provisions of Paragraph II.C.2.e apply.

and/or (b) the 1935 Direct Flow Power Right to divert water that is not required to satisfy the call through the Green Mountain Reservoir Powerplant. In this circumstance, the Cities will:

**II.C.2.b.i** bypass the inflow at the Cities' respective diversion structures that are subject to the call; and/or

**II.C.2.b.ii** Exchange and Deplete Upstream (and the volume of water Exchanged and Depleted Upstream shall not be accounted toward the 1935 First Fill Storage Right, but shall be accounted, for purposes of the Cities' Power Interference Agreements, as a depletion against the 1935 Direct Flow Power Right).

**II.C.2.c.** Senior Call; 1935 First Fill Storage Right Not Curtailed; Cities Partially or Fully Curtailed. During the time when the call by a water right with a priority senior to August 1, 1935, partially or fully curtails the Cities' rights, but does not curtail the 1935 First Fill Storage Right, the United States will, to the extent that it can generate power through the exercise of the 1935 Direct Flow Power Right, pass through the Powerplant such volume of water as the Cities have bypassed to satisfy the call. With respect to any additional water at Green Mountain Reservoir that has not been bypassed and that is not required to be used to generate power in accordance with the preceding sentence, the United States may, in its discretion, exercise (a) the 1935 First Fill Storage Right to store such water, and/or (b) the 1935 Direct Flow Power Right to divert such water through the Green Mountain Reservoir Powerplant. In this circumstance, the Cities will:

**II.C.2.c.i** bypass at the Cities' respective diversion structures that are subject to the call the lesser of (a) the inflow or (b) the flow sufficient to satisfy the call; and/or

**II.C.2.c.ii** Exchange and Deplete Upstream (and the volume of water Exchanged and Depleted Upstream shall be accounted for in accordance with the provisions of Paragraph II.B.1.e above).

**II.C.2.d.** Junior Call; Cities Partially or Fully Curtailed. During the time when the call by a water right with a priority between August 1, 1935, and June 23, 1946, partially or fully curtails the Cities' rights, the Cities will:

**II.C.2.d.i.** bypass at the Cities' respective diversion structures that are subject to the call the lesser of (a) the inflow or (b) the flow sufficient to satisfy the call, and the United States may, in its discretion, exercise (a) the 1935 First Fill Storage Right to store flows legally available at Green Mountain Reservoir, and/or (b) the 1935 Direct Flow Power Right to divert flows through the Green Mountain Reservoir Powerplant; and/or

**II.C.2.d.ii.** Exchange and Deplete Upstream (and the volume of water Exchanged and Depleted Upstream shall be accounted for in accordance with the provisions of Paragraph II.B.1.e above), and the United States may, in its discretion, exercise (a) the 1935 First Fill Storage Right to store Intervening Inflow at Green Mountain Reservoir, and/or (b) the 1935 Direct Flow Power Right to divert the Intervening Inflow through the Green Mountain Reservoir Powerplant.

**II.C.2.e.** Junior Call; 1935 First Fill Storage Right Operating Under an October 12, 1955 Administrative Priority is Fully or Partially Curtailed. When the 1935 First Fill Storage Right is operating under an October 12, 1955 administrative priority pursuant to Paragraph II.D.2., the provisions of Paragraphs II.C.2.a-d will not apply. During the time when the call by a water right with a priority senior to October 12, 1955, fully or partially curtails the 1935 First Fill Storage Right operating under an October 12, 1955 administrative priority, the United States will pass through Green Mountain Reservoir such volume of water as is needed to satisfy the call, while in its discretion exercising the 1935 Direct Flow Power Right to divert the water that is so passed to satisfy the calling right through the Green Mountain Reservoir Powerplant. The United States may, in its discretion, exercise (a) the 1935 First Fill Storage Right to store water that is not passed to satisfy the call, and/or (b) the 1935 Direct Flow Power Right to divert water that is not required to satisfy the call through the Green Mountain Reservoir Powerplant. In this circumstance, to the extent that the Cities are subject to the call, the Cities will:

**II.C.2.e.i** bypass the inflow at the Cities' respective diversion structures to the extent they are subject to the call; and/or

**II.C.2.e.ii.** Exchange and Deplete Upstream (and the volume of water Exchanged and Depleted Upstream shall not be accounted toward the 1935 First Fill Storage Right, but shall be accounted, for purposes of the Cities' Power Interference Agreements, as a depletion against the 1935 Direct Flow Power Right).

**II.C.3.** **Swing Call on Cities.** In satisfaction of paragraph 7(a) of the 1955 Stipulation, at times when either Denver Water's 1946 Blue River Water Rights or CS-U's 1948 Blue River Water Rights would be partially curtailed (e.g. a so-called "swing call") in response to a downstream call from a water right other than the Green Mountain Reservoir Water Rights, Denver Water's 1946 Blue River Water Rights will be deemed satisfied for the purposes of daily administration under an administrative priority co-equal with the May 13, 1948 priority of CS-U's 1948 Blue River Water Rights. This operation does not constitute, or result in, a subordination of Denver Water's 1946 Blue River Water Rights, but administratively implements paragraph 7(a) of the 1955 Stipulation during a swing call on the Cities. Under such administration, both CS-U and Denver Water will be partially curtailed, but both may continue to divert, provided that they satisfy the call by effectuating the following bypass obligations:

**II.C.3.a.** For purposes of this calculation, "Called Water" refers to the total flow of water required to be bypassed by the Cities for delivery to the calling right and "Potential Diversions" refers to the flow that could, absent the swing call, be depleted at Denver Water's and CS-U's respective Blue River facilities under their respective 1946 and 1948 Blue River Water Rights (but not including evaporation from Dillon Reservoir or from CS-U's Continental-Hoosier System, or flows that could not be diverted as a result of operational or system constraints).

**II.C.3.b.** The Denver Water bypass obligation equals: (Called Water) x (Denver Water Potential Diversions/ (Denver Water Potential Diversions plus CS-U Potential Diversions)).

**II.C.3.c.** The CS-U bypass obligation equals: (Called Water) x (CS-U Potential Diversions/ (Denver Water Potential Diversions plus CS-U Potential Diversions)).

**II.C.3.d.** The Cities will respond to downstream calls and satisfy their respective bypass obligations as provided in Paragraphs II.C.1 and II.C.2 above. In appropriate circumstances as provided in Paragraphs II.C.2 above, the Cities may satisfy such bypass obligations by Exchanging and Depleting Upstream.

**II.C.3.e.** By way of example, if the call is by the 1940 Shoshone power water right and the amount required to be delivered (Called Water) is 100 c.f.s. and the CS-U Potential Diversions and Denver Water Potential Diversions are 50 c.f.s. and 300 c.f.s. respectively, then Denver Water's bypass obligation is 100 x (300/350), or 85.7 c.f.s., and CS-U's bypass obligation is 100 x (50/350), or 14.3 c.f.s., and Denver Water may divert 214.3 c.f.s and CS-U may divert 35.7 c.f.s., and the Cities may satisfy their respective bypass obligations (totaling 100 c.f.s.), in whole or in part, by Exchanging and Depleting Upstream in accordance with the terms of Paragraphs II.C.1 or II.C.2 above, as applicable.

**II.D. Administration If Water is Depleted Against the 1935 First Fill Storage Right**. In any water year in which water is Depleted Against the 1935 First Fill Storage Right:

**II.D.1.** The 1935 First Fill Storage Right will be administered pursuant to an August 1, 1935 priority in accordance with the foregoing provisions of this Protocol until the following volumes total 154,645 acre-feet:

**II.D.1.a.** the water in storage in Green Mountain Reservoir (excluding water held in temporary storage pursuant to excess capacity or "if and when" contracts) on the Start of Fill Date; plus

**II.D.1.b.** the water stored in Green Mountain Reservoir under the 1935 First Fill Storage Right after the Start of Fill Date; plus

**II.D.1.c.** the water depleted by exchange upstream of Green Mountain Reservoir, and accounted toward the satisfaction of the 1935 First Fill Storage Right, by Senate Document 80 "beneficiary" water rights with priority dates junior to June 23, 1946, after the Start of Fill Date; plus

**II.D.1.d.** Bypassed Storage Water; plus

**II.D.1.e.** the water Depleted Against the 1935 First Fill Storage Right.

**II.D.2.** From the date when the volumes of water specified in Paragraph II.D.1.a-e above total 154,645 acre-feet until the End of Fill Season, the 1935 First Fill Storage Right will

be administered with an October 12, 1955 administrative priority and shall be deemed to be satisfied by flows available as a result of curtailment of water rights with priority dates junior to October 12, 1955. This operation does not constitute, or result in, a subordination of the water right priority of the 1935 First Fill Storage Right, but allows "as much water as possible to be available for upstream rights without impairment of the United States' right to fill Green Mountain Reservoir and to use that reservoir as provided in" the 1955 Decree and Senate Document 80, as directed by paragraph 4 of the 1964 Decree, and without impairment of legal calls of downstream water rights.

**II.E. Operation of Senate Document 80 "Beneficiary" Water Rights During the Fill Season in Response to Calls Downstream of Green Mountain Reservoir Prior To, and After, 154,645 Acre-Feet Has Been Accounted For in accordance with Paragraph II.A.3.b.**

**II.E.1.** If a call is placed by a water right downstream from Green Mountain Reservoir during the Fill Season but before the volumes specified in Paragraph II.A.3.b.i-b.v above total 154,645 acre-feet, then all Senate Document 80 "beneficiary" water rights with priority dates junior to August 1, 1935, that are located upstream of Green Mountain Reservoir, and that are otherwise subject to a call by the 1935 First Fill Storage Right or by the downstream calling water right, may continue to divert by exchange, and the depletions from such diversions (other than Contract Depletions) shall either (a) be accounted toward the 1935 First Fill Storage Right, or (b) be replaced to the downstream calling water right by release of water previously stored in Green Mountain Reservoir.

**II.E.2.** If a call is placed by a water right downstream from Green Mountain Reservoir during the Fill Season but after the volumes specified in Paragraph II.A.3.b.i-b.v total 154,645 acre-feet, (a) all Senate Document 80 "beneficiary" water rights with priority dates senior to June 23, 1946, and senior to such call may continue to divert as against the 1935 Direct Flow Power Right, and the depletions from such diversions shall not be accounted toward the 1935 First Fill Storage Right, and (b) all Senate Document 80 "beneficiary" water rights with priority dates junior to the downstream calling right that are located upstream of Green Mountain Reservoir, and that are not City Contract Beneficiaries, may continue to divert by exchange, and the depletions from such diversions shall either be (1) accounted toward the 1935 First Fill Storage Right, or (2) replaced to the downstream calling right by a release of water previously stored in Green Mountain Reservoir.

## III. BLUE RIVER DECREE PRIORITY ADMINISTRATION IN WATER DISTRICT 36 AND WATER DIVISION NO. 5 (CLIMAX C.A. 1710 WATER RIGHTS)

**III.A.** The Final Judgment entered by the United States District Court on October 12, 1955, in Consolidated Cases No. 5016 and 5017 (removed Summit Court District Court Civil Action Nos. 1805 and 1806 ("C.A. 1805 and 1806"), which were supplemental general adjudication proceedings in former Water District No. 36) assigned priority numbers to the Elliott Creek Feeder Canal, Green Mountain Reservoir, and Green Mountain Reservoir Hydroelectric Plant water rights as if those water rights had been adjudicated in the removed Summit County District Court cases and junior to priorities adjudicated in prior proceedings in

Water District No. 36. At the same time, the Court also decreed all of the Colorado-Big Thompson Project ("C-BT") facilities, including the Elliott Creek Feeder Canal, Green Mountain Reservoir, and Green Mountain Reservoir Hydroelectric Plant water rights, as having an August 1, 1935 date of priority, and recognized these rights as senior in priority to Denver Water's facilities, including Williams Fork Reservoir in Water District No. 51, which has a date of appropriation of November 10, 1935. The Final Judgment of October 12, 1955, both confirms an August 1, 1935 priority without postponement for the C-BT facilities and postpones the priority for certain facilities within Water District No. 36.

**III.B.** In Case No. 88CW382, filed concurrently in the Division 5 Water Court and the United States District Court, the United States sought confirmation of appropriative water rights of exchange, using water provided from Green Mountain Reservoir's 52,000 acre-foot and 100,000 acre-foot pools to meet the needs of Senate Document 80 "beneficiaries," and requested that those exchanges be administered with an August 1, 1935 priority date, and without postponement. The decree entered on that application by the United States District Court specified both that the 1955 Decree "evidences the priority dates of the direct flow, storage and exchange water rights for the operation of the Colorado-Big Thompson Project as August 1, 1935, and those rights shall be administered with said priority date as though adjudicated in the first available adjudication following that date," and that the decree in Case No. 88CW382 "shall not modify or change the stipulations, judgments, orders and decrees" in the Consolidated Cases . . . ." Accordingly, to the extent that the Final Judgment of October 12, 1955, effected a postponement of the Green Mountain Reservoir Water Rights within Water District No. 36, such postponement was not affected by the decree in Case No. 88CW382.

**III.C.** Climax holds water rights decreed on October 26, 1937, by the Summit County District Court in Civil Action No. 1710 ("C.A. 1710"), an adjudication proceeding in Water District No. 36 prior to the removed C.A. 1805/1806 Summit County District Court cases. In order to effectuate the foregoing provisions of the 1955 Final Judgment in the removed Summit County District Court adjudication, the Blue River Decree, and the decree in Case No. 88CW382, the following shall apply: within former Water District No. 36, the C.A. 1710 Water Rights, including the Climax C.A. 1710 Water Rights, will be administered as senior to the Green Mountain Reservoir Water Rights when a water right call originating within Water District 36 is being administered. Such administration of the C.A. 1710 Water Rights as senior to the Green Mountain Reservoir Water Rights shall not affect the administration of C-BT facilities as having a priority date of August 1, 1935, outside of Water District No. 36. The Blue River Decree recognizes and decrees that the priority date for the C-BT facilities is senior to the priority dates for Denver Water's 1946 Blue River Water Rights and Williams Fork Reservoir, as well as CS-U's 1948 Blue River Water Rights. The Blue River Decree, as well as the Decree in Case No. 88CW382, require that the C-BT facilities decreed with an appropriation date of August 1, 1935, be administered with an August 1, 1935 date of priority without postponement. Administration of C-BT facilities, including Green Mountain Reservoir, with an August 1, 1935 date of priority without postponement, subject to the foregoing administration within Water District No. 36, is consistent with paragraph (g) of the Final Decree in the Consolidated Cases which provides, in part, that "the 100,000 acre-feet of storage in said reservoir shall be

considered to have the same date of priority of appropriation as that for water diverted or stored for transmountain diversion."

**III.D.** In consideration of the agreement by the Blue River Decree Parties of the foregoing Paragraphs III.A – III.C, Climax, in settlement of disputed issues of priority, agrees to the following regarding the Climax C.A. 1710 Water Rights:

**III.D.1.** The water diverted pursuant to the Climax C.A. 1710 Water Rights during the Fill Season will be held in storage for non-consumptive purposes until there is a determination by the Secretary that the volumes of water set forth in Paragraph II.A.3.b.i through II.A.3.b.v plus Discretionary Power Diversions as defined in Paragraph IV.A.1.f of this Protocol will total 154,645 acre feet. The Secretary will provide timely notice to Climax of such determination. If the Secretary determines that the volumes of water set forth in Paragraph II.A.3.b.i through II.A.3.b.v plus Discretionary Power Diversions will total 154,645 acre feet, then Climax may consume water it has diverted under the Climax C.A. 1710 Water Rights during the Fill Season. If the Secretary determines that the volumes of water set forth in Paragraph II.A.3.b.i through II.A.3.b.v plus Discretionary Power Diversions will total less than 154,645 acre feet, then Climax shall provide substitution water to Green Mountain Reservoir as follows:

**III.D.1.a.** Climax shall provide substitution water in an amount equivalent to the amount of water that would be depleted under the Climax C.A. 1710 Water Rights that Fill Season. The first source of substitution water will be provided from a six-hundred acre foot account in either Williams Fork Reservoir, pursuant to contract between Denver Water and Climax, or the Henderson Mine's East Branch Reservoir. The account will be filled with fully consumptive water owned or controlled by Climax from Henderson's "Skylark Rights," which were changed in Case No. 96CW3681 (Water Division No. 5), and which will be further changed to enable use for Green Mountain Reservoir substitution purposes, and for storage in Williams Fork Reservoir, including all municipal uses by Denver Water. The Parties to the Blue River Decree and Ute consent to such changes by Climax, provided that such parties may file statements of opposition in any proceeding to adjudicate such changes to ensure consistency with the terms and conditions of the decree in Case No. 96CW3681, and compliance with Colo. Rev. Stat. §§ 37-80-120(3) and 37-92-305(5). If any portion of the Climax C.A. 1710 Water Rights is transferred to an unaffiliated third party by Climax, Climax and/or the transferee (or its successors in interest) shall continue to provide substitution water using the Skylark Rights as provided herein, or shall provide substitution water from another source, provided that the substitution water is fully consumable and the water rights that will provide such substitution water are decreed for Green Mountain Reservoir substitution purposes. Any transferee shall secure any new source of substitution water in the order of preference set forth in Paragraph III.D.1.b below.

**III.D.1.b.** If Climax does not have sufficient water stored in the above-referenced storage account to offset the amount of the Climax C.A. 1710 Water Rights that otherwise would be depleted that year, then Climax will reduce its consumption of water diverted under the Climax C.A. 1710 Water Rights by the amount of the shortfall until such time

as (a) the Secretary determines that volumes of water set forth in Paragraph II.A.3.b.i through II.A.3.b.v plus Discretionary Power Diversions will total 154,645 acre feet, or (b) an acceptable and lawfully available replacement source is secured and notice of such source is provided to the United States and the Colorado River Water Conservation District ("River District"). The following sources of water shall be deemed acceptable replacement sources, in order of preference, and subject to the timely and good faith action of Climax, the River District, and the United States:

**III.D.1.b.i** A replacement source acceptable to Climax, the United States, and the River District located upstream from Shoshone;

**III.D.1.b.ii** A short-term contract for release of the shortfall from the River District's Ruedi Reservoir marketing supply;

**III.D.1.b.iii** A short-term contract for release of the shortfall from other sources located downstream from Shoshone.

**III.D.1.c.** If Climax does not obtain the substitution water from the above sources, it shall release the amount of the shortfall to Tenmile Creek from storage at the Climax Mine. Such releases shall be bypassed downstream (e.g., past Denver Water's Blue River System) to Green Mountain Reservoir or, subject to the Secretary's approval, substituted by Denver Water.

**III.D.2.** Climax's right of diversion and substitution of water pursuant to this Paragraph III.D shall be administered as senior in priority to the Cities' rights of diversion and substitution under the Blue River Decree, the Stipulations, and this Protocol.

**III.D.3.** The foregoing provisions of Paragraph III.D shall burden and benefit successors and assigns of the Climax C.A. 1710 Water Rights in perpetuity, and shall be a title covenant on the Climax C.A. 1710 Water Rights.

## IV. THE CITIES' REPLACEMENT OPERATIONS

### IV.A. Replacement Obligations – 1935 First Fill Storage Right.

#### IV.A.1. Definitions.

**IV.A.1.a. "Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities":** means bypasses of inflow to Green Mountain Reservoir between the Start of Fill Date (if the Start of Fill Date occurs prior to May 1) and May 1, up to a maximum volume of 120 acre-feet per day, that are accounted toward the 1935 First Fill Storage Right pursuant to direction from the Division Engineer because they are neither used to generate electrical energy at the Green Mountain Reservoir Powerplant nor bypassed to satisfy senior water rights.

**IV.A.1.b.** **"Cities' Replacement Obligation":** means the collective Replacement Obligations of Denver Water and CS-U.

**IV.A.1.c.** **"City Refill Water":** means the water the Cities must hold available for potential release to the United States on account of the Cities' Depletions or Contract Depletions or storage that is accounted toward the satisfaction of the 1935 Senior Refill Right pursuant to Paragraph IV.B below.

**IV.A.1.d.** **"CS-U's Replacement Obligation":** means the volume of water CS-U is obligated to make available to the United States to assure the satisfaction of the 1935 First Fill Storage Right under the terms of the Blue River Decree and Stipulation, CS-U's Substitution Agreements and decrees, and CS-U's City Replacement Contracts, and to refill any Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities.

**IV.A.1.e.** **"Denver Water's Replacement Obligation":** means the volume of water Denver Water is obligated to make available to the United States to assure the satisfaction of the 1935 First Fill Storage Right under the terms of the Blue River Decree and Stipulation, Denver Water's Substitution Agreements and decrees, and Denver's City Replacement Contracts, and to refill any Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities.

**IV.A.1.f.** **"Discretionary Power Diversions":** means the water diverted by the United States through exercise of the 1935 Direct Flow Power Right in excess of 60 c.f.s. during the Fill Season, but Discretionary Power Diversions do not include water passed through the Green Mountain Reservoir Powerplant (a) to meet legal calls by water rights senior to the 1935 First Fill Storage Right, (b) to meet the Cities' obligations to water rights downstream of Green Mountain Reservoir pursuant to Paragraph II.C of this Protocol, or (c) to meet any flow requirements agreed to by the Secretary pursuant to any Shoshone Outage Protocol agreement consummated and effectuated among the appropriate parties ("SHOP"). Discretionary Power Diversions also do not include any Bypassed Storage Water.

**IV.A.1.g.** **"Fill and Delivery Year":** means the Fill and Delivery Year for Green Mountain Reservoir that begins on the Start of Fill Date in one calendar year and continues until the Start of Fill Date in the following calendar year.

**IV.A.1.h.** **"Fill Deficit":** means the volume of water that is computed by subtracting the volumes of water in Paragraphs IV.A.3.b.i(a),i(b),i(c),i(e),i(f),i(g) and i(h) of this Protocol from 154,645 acre-feet. This definition may not apply when a Maximum Water Elevation Limitation is imposed on Green Mountain Reservoir.

**IV.A.1.i.** **"Maximum Water Elevation Limitation":** means a restriction or limitation on the maximum operating water surface elevation that may be maintained in Green Mountain Reservoir in a given year because of maintenance, repairs, or dam safety.

**IV.A.1.j.** **"Power Use Fill Shortage":** means the lesser of the Fill Deficit or the Discretionary Power Diversions.

**IV.A.2.** **Replacement Obligation-Accounting Dates.** Within ten days of the End of Fill Season, the Secretary shall initially calculate the Cities' Replacement Obligation. The Secretary shall thereafter recalculate and adjust the obligation immediately prior to the commencement date described in Paragraph IV.A.7 below.

**IV.A.3.** **Calculation of Replacement Obligation-Quantification.**

**IV.A.3.a.** **No Replacement Year.** There is no Cities' Replacement Obligation for a Fill and Delivery Year if the volume of water in storage in Green Mountain Reservoir (excluding water held in temporary storage pursuant to excess capacity or "if and when" contracts) on the Start of Fill Date, *plus* the amounts listed below, equals 154,645 acre-feet or achieves the Fill Level:

**IV.A.3.a.i** the volume of water physically stored in Green Mountain Reservoir during the Fill Season;

**IV.A.3.a.ii** the volume of water exchanged from Green Mountain Reservoir to Senate Document 80 "beneficiary" water rights that is accounted toward the fill of the 1935 First Fill Storage Right pursuant to the provisions of this Protocol; and

**IV.A.3.a.iii** the volume of water physically stored in Green Mountain Reservoir under the 1935 Senior Refill Storage Right and/or Junior Refill Storage Right to refill Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities as provided in Paragraph IV.A.5 below.

**IV.A.3.b.** **Replacement Year.** If the criteria set forth in Paragraph IV.A.3.a above are not satisfied, it is a Replacement Year, and the Cities' Replacement Obligation[13] shall be calculated as 154,645 acre-feet:

**IV.A.3.b.i** *minus* the following amounts:

**IV.A.3.b.i(a)** the volume of water in storage in Green Mountain Reservoir (excluding water held in temporary storage pursuant to excess capacity or "if and when" contracts) on the Start of Fill Date; and

**IV.A.3.b.i(b)** the volume of water stored in Green Mountain Reservoir under the 1935 First Fill Storage Right between the Start of Fill Date and the End of Fill Season; and

[13] Provided, however, that this calculation of the Cities' Replacement Obligation may not apply when a Maximum Water Elevation Limitation is imposed on Green Mountain Reservoir.

**IV.A.3.b.i(c)** the volume of water exchanged from Green Mountain Reservoir to Senate Document 80 "beneficiary" water rights that is accounted toward the fill of the 1935 First Fill Storage Right pursuant to the provisions of this Protocol; and

**IV.A.3.b.i(d)** the volume of Discretionary Power Diversions; and

**IV.A.3.b.i(e)** the lesser of (1) 80 acre feet, or (2) the volume of water depleted by Upstream of Dillon Junior Beneficiary Rights that is accounted toward the annual fill of the 1946 Dillon Reservoir storage right pursuant to Paragraph II.B.3 above; and

**IV.A.3.b.i(f)** the difference between: (1) the volume of Bypassed Storage Water and (2) the volume of (a) Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities plus (b) any water released pursuant to a SHOP; and

**IV.A.3.b.i.(g)** the volume of Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities that has been refilled through storage in Green Mountain Reservoir under the 1935 Senior Refill Storage Right or the Junior Refill Storage Right as provided in Paragraph IV.A.5 below; and

**IV.A.3.b.i.(h)** the volume of City Refill Water that was released by the Cities on demand of the Secretary during the same Fill and Delivery Year as the City Refill Water accrued, and that was thereafter released from Green Mountain Reservoir prior to the Start of Fill Date of the ensuing Fill and Delivery Year solely for discretionary power purposes and/or for non-Project discretionary purposes;

**IV.A.3.b.ii** *plus* the Power Diversion Adjustment as determined pursuant to Paragraph IV.A.4 below;

**IV.A.3.b.iii** *subject* to such other reasonable adjustments as deemed appropriate by the Secretary; and

**IV.A.3.b.iv** *provided* that the Cities' Replacement Obligation shall be no greater than the volume of the Cities' Depletions and the Contract Depletions after the Start of Fill Date.

**IV.A.4.** **Power Diversion Adjustment.** Under normal operations, the Secretary prepares the Fill Schedule with the goals of filling Green Mountain Reservoir during the Fill Season without spilling water from the reservoir and of permitting as much water as possible to be available for upstream rights without impairment of legal calls of downstream water rights. While effectuating these goals, the United States may exercise the 1935 Direct Flow Power Right concurrently with the 1935 First Fill Storage Right, thereby making Discretionary Power Diversions during the Fill Season. However, over-estimating the amount of water available for Discretionary Power Diversions may result in a Power Use Fill Shortage. Accordingly, the Blue River Decree Parties, Climax, and Ute have agreed that the Cities'

Replacement Obligation shall be increased by the amount of the Power Diversion Adjustment, which shall be calculated as follows:

**IV.A.4.a.** **Normal Operations.** Under normal operations, the Power Diversion Adjustment is one-half (50%) of the Power Use Fill Shortage.

**IV.A.4.b.** **Conservative Operations-Power Loss Replacement Offer.** By making a "Power Loss Replacement Offer" to pay power interference charges on account of power generation foregone when water that would be used to generate power under normal operations is either spilled at Green Mountain Reservoir or released through Green Mountain Reservoir at a rate that precludes power generation, the Cities may request that the United States shift to "Conservative Operations" and reduce Discretionary Power Diversions. Power Loss Replacement Offers and Conservative Operations will be effected as follows:

**IV.A.4.b.i** A Power Loss Replacement Offer shall require a commitment to compensate the United States for a specific volume of water, not less than 5,000 acre-feet, that may be spilled and/or released from Green Mountain Reservoir in a manner that precludes power generation as a result of the Conservative Operations. Power Loss Replacement Offers may be made jointly by both Denver Water and CS-U, or individually by one of the Cities.

**IV.A.4.b.ii** A Power Loss Replacement Offer may be made at any time; however, if the offer is made when it is not hydrologically and operationally possible for the United States to operate conservatively so as to store the full volume of water stated in the offer, then the "credit" described below shall be limited to the volume of additional storage actually achieved by the United States as a result of the Conservative Operations from the time the Power Loss Replacement Offer is made.

**IV.A.4.b.iii** If the Conservative Operations requested result in releases from Green Mountain Reservoir that preclude power generation (e.g., releases at a rate less than 100 c.f.s.), then the City making the offer, or the Cities if it is a joint offer, will, as a part of the Power Loss Replacement Offer, compensate the United States, in replacement power or money, for the loss of 120 acre-feet per day of power generation. Beyond such compensation, the power interference compensation due to the Conservative Operations will be determined based on the actual amount of water spilled or released from Green Mountain Reservoir in such manner as to preclude power generation.

**IV.A.4.b.iv** If the Power Loss Replacement Offer is for the minimum volume of 5,000 acre-feet, then the City making the offer, or the Cities if it is a joint offer, shall receive a credit of 5,000 acre-feet against any Power Use Fill Shortage, unless the credit is limited pursuant to Paragraph IV.A.4.b.ii above. If the Power Loss Replacement Offer exceeds 5,000 acre-feet, then the credit against the Power Use Fill Shortage shall be 5,000 acre-feet, plus the volume of water actually stored in excess of 5,000 acre-feet in Green Mountain Reservoir as a result of the Power Loss Replacement Offer, unless such credit is limited pursuant to Paragraph IV.A.4.b.ii above.

**IV.A.4.b.v** Under Conservative Operations as provided herein, the Power Diversion Adjustment to the Cities' Replacement Obligation will be computed as:

*(x + y)/2 minus z = Power Diversion Adjustment (this amount cannot be less than zero),* where:

x = Power Use Fill Shortage

y = additional amount stored as a result of the Conservative Operations

z = greater of 5,000 acre-feet (if hydrologically and operationally available[14]) or water stored under Conservative Operations due to the Power Loss Replacement Offer.

Examples of the application of this equation are provided in the attached Exhibit 2.

**IV.A.4.b.vi** If the Power Loss Replacement Offer is made by one City only, the resulting credit will be allocated to the City that made the offer, by adjusting the allocation of the Cities' Replacement Obligation among Denver Water and CS-U. Further, in case of a SHOP the Cities will adjust any requests for Conservative Operations to ensure consistency with such agreement.

**IV.A.4.c.** **Colorado River Water Conservation District Offer**: Nothing herein shall prevent the Colorado River Water Conservation District from making a Power Loss Replacement Offer to the United States on terms and conditions similar to those set forth in Paragraph IV.A.4.b above. The terms of any such Power Loss Replacement Offer will be negotiated among the United States, the Colorado River Water Conservation District and the Cities at such time as the offer is made.

**IV.A.5.** **Green Mountain Reservoir Storage Rights – Bypassed Storage Water.** As soon as possible after the End of Fill Season, the United States will exercise the 1935 Senior Refill Storage Right and/or the Junior Refill Storage Right to refill and store the volume of Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities. Pursuant to Paragraph IV.A.3.b.i(g) above, the amount of the Cities' Replacement Obligation that is attributable to Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities will be reduced by the volume of water so stored in Green Mountain Reservoir between the End of Fill Season and September 15.

**IV.A.6.** **Quantification of Each City's Respective Replacement Obligation.** Once the Cities' Replacement Obligation is quantified as described above, Denver Water's Replacement Obligation and CS-U's Replacement Obligation shall be quantified as each

[14] If the water is not hydrologically or operationally available for storage under the Power Loss Replacement Offer, then z shall be limited to water actually stored under Conservative Operations.

City's prorated share of the Cities' Replacement Obligation, taking account of: (1) their respective diversions; (2) the Contract Depletions for which each is responsible pursuant to the City Replacement Contracts; (3) the provisions of Paragraph II.B.3.a above (deduction of up to 80 acre-feet of depletions by Upstream of Dillon Junior Beneficiary Rights from Denver Water's Replacement Obligation); and (4) the provisions of Paragraph IV.A.4.b above (Power Loss Replacement Offers). The quantification of the Cities' respective shares of the Cities' Replacement Obligation herein is in substantial compliance with, and is contemplated by, the Substitution Agreements and decrees.

**IV.A.7. Satisfaction of Replacement Obligations-Commencement Date.** The Cities shall satisfy their respective shares of the Cities' Replacement Obligation as provided in their respective Substitution Agreements and decrees, commencing on the date after the End of Fill Season when the Secretary directs the Cities to begin substitution operations to effectuate such satisfaction.

**IV.B. 1935 Senior Refill Storage Right.**

**IV.B.1. Cities' Diversions.** In accordance with this Paragraph IV.B, the United States will permit the Cities and the City Contract Beneficiaries to deplete and store water at their respective upstream facilities while the United States is exercising the 1935 Senior Refill Storage Right. If water so depleted or stored by the Cities and the City Contract Beneficiaries is accounted by the Division Engineer toward the satisfaction of the 1935 Senior Refill Storage Right, then the Cities will hold that volume of water ("City Refill Water") in storage and available for release (including, as necessary, release by substitution) to the United States if the United States is unable to refill a total of 6,316 acre-feet in Green Mountain Reservoir[15] as follows:

**IV.B.1.a. Administrative Priority of 1935 Senior Refill Storage Right.** The United States will seek to store a total of 6,316 acre-feet of water in Green Mountain Reservoir by exercising the 1935 Senior Refill Storage Right pursuant to its August 1, 1935 priority, or pursuant to such junior administrative priority as may be authorized by the Division Engineer. The Blue River Decree Parties, Ute, and Climax will not oppose the use of an administrative priority date between August 1, 1935, and October 12, 1955, for the exercise of the 1935 Senior Refill Storage Right for the purpose of reducing or eliminating the Cities' obligation with regard to City Refill Water in accordance with IV.B.1.b.i below; provided that such administrative priority shall not affect the relative priorities of the Climax C.A. 1710 Water Rights described in Paragraph III.C.

**IV.B.1.b. Reduction of City Refill Water.** The City Refill Water will be reduced by the following amounts:

[15] To the extent that the 1935 Senior Refill Storage Right is administered with a priority equal or junior to the Cities' water rights, and the Cities' Depletions and Contract Depletions are not accounted against the 1935 Senior Refill Storage Right, the provisions of this Paragraph IV.B.1 do not apply, although such depletions are still subject to repayment under the Power Interference Agreements.

**IV.B.1.b.i** the volume of water that is stored in Green Mountain Reservoir under a junior administrative priority that is consistent with Paragraph IV.B.1.a above authorized by the Division Engineer for the 1935 Senior Refill Storage Right;

**IV.B.1.b.ii** the volume of water that is stored in Green Mountain Reservoir under the Junior Refill Storage Right;

**IV.B.1.b.iii** the volume of City Refill Water that is released by the Cities on demand of the Secretary;

**IV.B.1.b.iv** the volume of water that is released from storage in Green Mountain Reservoir solely for discretionary power purposes and/or for non-Project discretionary purposes after the End of Fill Season but during the same Fill and Delivery Year in which the City Refill Water accrued, other than any volume that may be released pursuant to any SHOP; and

**IV.B.1.b.v.** the volume of water in excess of 60 c.f.s. that, after the End of Fill Season in the Fill and Delivery Year in which the City Refill Water accrued, and before the Start of Fill Date in the Fill and Delivery Year following the Fill and Delivery Year in which the City Refill Water accrued, is (1) diverted by the United States through exercise of the 1935 Direct Flow Power Right or (2) discretionarily bypassed by the United States and not used to generate electrical energy at the Green Mountain Reservoir Powerplant; *provided* that the City Refill Water will not be reduced if such water is (1) passed to meet legal demands or calls by water rights downstream of Green Mountain Reservoir; (2) passed to meet the Cities' obligations to satisfy legal demands or calls by water rights downstream of Green Mountain Reservoir; or (3) passed pursuant to a SHOP.

**IV.B.2.** **Maximum City Refill Water Release**.

**IV.B.2.a.** Release in Same Fill and Delivery Year. The Secretary may demand the release of the City Refill Water at any time in the Fill and Delivery Year in which the City Refill Water accrued. The maximum volume of City Refill Water that the Secretary may require the Cities to release in the same Fill and Delivery Year in which the City Refill Water accrued shall be the volume of City Refill Water remaining after any reduction pursuant to Paragraph IV.B.1.b above;

**IV.B.2.b.** Release in Subsequent Fill and Delivery Year. The maximum volume of City Refill Water that the Secretary may require the Cities to release in the Fill and Delivery Year after the Fill and Delivery Year in which the City Refill Water accrued shall be the least of:

**IV.B.2.b.i** the volume of City Refill Water remaining after any reduction pursuant to Paragraph IV.B.1.b above;

**IV.B.2.b.ii** the volume needed to achieve the Fill Level for the then-current Fill and Delivery Year; and

**IV.B.2.b.iii** the volume needed to bring the volumes in Paragraphs II.A.3.b.i-b.v above, minus the volume of Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities that is not refilled pursuant to Paragraph IV.A.5 above, to 154,645 acre-feet in the then-current Fill and Delivery Year.

**IV.B.2.c.** If by the date when the Secretary directs the Cities to begin substitution operations or determines that it is not a Replacement Year in the Fill and Delivery Year following the Fill and Delivery Year in which the City Refill Water accrued, the Secretary makes no demand for the release of City Refill Water, then all remaining City Refill Water that accrued in the preceding Fill and Delivery Year shall be considered among the Blue River Decree Parties, Ute, and Climax to have been diverted pursuant to the Power Interference Agreements, and no further release by the Cities of such City Refill Water shall be required.

**IV.B.3. Effect of Paragraph IV.B.** Nothing in the depletion, accounting or management of the City Refill Water shall limit the exercise of the 1935 Senior Refill Storage Right in the Fill and Delivery Year following the accrual of any City Refill Water. Further, the Cities' agreement to guarantee the satisfaction of the 1935 Senior Refill Right as provided in this Paragraph IV.B is the result of a negotiated settlement and agreement, and shall not be taken as precedent regarding any party's interpretation of the rights or obligations related to the 1935 Senior Refill Storage Right.

**IV.C. Other Provisions**

**IV.C.1. No Waiver Regarding the Power Use Fill Shortage.** Nothing in this Section IV shall ever give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the obligation of the United States annually to complete the fill of the 1935 First Fill Storage Right.

**IV.C.2. 60 c.f.s. Bypasses.** The Blue River Decree Parties, Ute, and Climax agree among themselves that they shall not assert in any forum that bypasses of inflow to Green Mountain Reservoir up to 60 c.f.s. should be accounted toward the administrative fill of the Green Mountain Reservoir Storage Rights.

**IV.C.3. No Modification of Sections I-III.** Nothing in this Section IV is intended to modify the administrative and accounting provisions of Sections I, II, and III above.

**IV.C.4. Consistency with the Blue River Decree.** The operations, administration of water rights, and management of the Cities' Replacement Obligations set forth in Sections I, II, III, and IV of this Protocol are consistent with the terms and conditions of the Blue River Decree and Stipulations.

**IV.C.5. Power Replacement**. For the duration of the time when the 1935 First Fill Storage Right is being administered under an October 12, 1955 administrative priority pursuant to Paragraph II.D.2 above, the 1935 Direct Flow Power Right also may be administered under an identical date. To the extent that the 1935 Direct Flow Power Right is administered

with a priority date identical or junior to those of the Cities' water rights, the Cities' Depletions and Contract Depletions shall be treated, for purposes of the Cities' Power Interference Agreements, as depletions against the 1935 Direct Flow Power Right.

# Exhibit 1

## Upstream of Dillon Junior Beneficiary Rights

As Referred to in the Green Mountain Administrative Protocol, Paragraph II.B.3.b.

| Water Right | Adjudication Date | Previous Adjudication | Apropriation Date | Case No. | Administration Number | rate absolute (cfs) | volume absolute (af) |
|---|---|---|---|---|---|---|---|
| ADRIAN THEATER WELL NO 1 | 12/31/1981 | 12/31/1980 | 6/1/1961 | 81CW0064 | 47847.40694 | 0.066 | 0 |
| ALTIMARI WELL | 12/31/1972 | | 8/1/1968 | W0843 | 43312 | 0.018 | 0 |
| B AND L DITCH | 5/31/1972 | 3/10/1952 | 5/31/1929 | CA2371 | 37324.29005 | 5 | 0 |
| BAKRS TNK PG SPRING | 12/31/1972 | | 8/12/1958 | W0467 | 39670 | 0.001 | 0 |
| BILLS RANCH LAKE | 12/31/1971 | 12/31/1970 | 12/31/1933 | W0380 | 44194.3068 | 0 | 16.83 |
| BRECKENRIDGE WELL NO 1 | 12/31/1972 | | 12/31/1963 | W1338 | 41637 | 0.089 | 0 |
| BURGER WELL | 12/31/1972 | 12/31/1971 | 4/3/1962 | W1475 | 44559.41 | 0.066 | 0 |
| CHICAGO LODE TUNNEL SPG | 12/31/1972 | 12/31/1971 | 11/30/1969 | W1647 | 44559.43798 | 0.015 | 0 |
| CORONET SPG AND PL | 5/31/1972 | 3/10/1952 | 5/8/1962 | CA2371 | 41035 | 1.39 | 0 |
| COUNTRY BOY MINE SPRING | 12/31/1982 | 12/31/1981 | 3/15/1973 | 82CW0436 | 48212.44999 | 0.033 | 0 |
| DAWDY WELL | 12/31/1983 | 12/31/1982 | 6/12/1961 | 83CW0173 | 48577.40705 | 0.066 | 0 |
| DILLON HI COUNTRY WELL 1 | 12/31/1972 | | 6/30/1968 | W1319 | 43280 | 0.044 | 0 |
| DODGE WELL | 12/31/1972 | | 12/7/1967 | W1354 | 43074 | 0.033 | 0 |
| FRIDAY TUNNEL | 12/31/1972 | | 8/15/1972 | W1660 | 44787 | 0.033 | 0 |
| GBRSN BY FPL WELL | 12/31/1972 | | 12/3/1971 | W0467 | 44531 | 0.002 | 0 |
| GOODBODY WELL | 12/31/1972 | | 10/18/1966 | W1305 | 42659 | 0.002 | 0 |
| GUIDA WELL A | 12/31/1972 | | 6/3/1965 | W1456 | 42157 | 0.033 | 0 |
| HARRIS WELL | 12/31/1972 | | 6/15/1967 | W0646 | 42899 | 0.044 | 0 |
| HEATN BAY CG WELL | 12/31/1972 | | 12/31/1967 | W0467 | 43098 | 0.011 | 0 |
| HIGH COUNTRY WELL NO 1 | 12/31/1972 | | 12/16/1970 | W0994 | 44179 | 0.088 | 0 |
| HIGH COUNTRY WELL NO 2 | 12/31/1972 | | 4/13/1971 | W0994 | 44297 | 0.067 | 0 |
| HIGH TOR CONDO WELL | 5/31/1972 | | 12/27/1968 | CA2371 | 43460 | 0.018 | 0 |
| HYNA WELL | 12/31/1972 | 12/31/1971 | 5/27/1966 | W1491 | 44559.42515 | 0.045 | 0 |
| INDRFT SPG 1 | 12/31/1972 | | 12/31/1972 | W0467 | 44925 | 0.003 | 0 |
| JANKOVSKY WELL | 12/31/1972 | | 7/25/1962 | W1370 | 41113 | 0.011 | 0 |
| JEFFREY WELL | 12/31/1972 | | 7/31/1957 | W1413 | 39293 | 0.022 | 0 |
| KEYTOP WELL NO 1 | 12/31/1972 | | 11/17/1969 | W1365 | 43785 | 0.067 | 0 |
| KEYTOP WELL NO 2 | 12/31/1972 | | 11/30/1971 | W1363 | 44528 | 0.067 | 0 |
| LANCER WELL NO 1 | 12/31/1972 | | 10/26/1967 | W1418 | 43032 | 0.044 | 0 |
| LANCER WELL NO 2 | 12/31/1972 | | 10/18/1966 | W1418 | 42659 | 0.022 | 0 |
| LANCER WELL NO 3 | 12/31/1972 | | 5/13/1961 | W1418 | 40675 | 0.044 | 0 |
| LOWRY AFB OC WELL | 12/31/1972 | | 9/20/1967 | W0467 | 42996 | 0.005 | 0 |
| MAID OF ORLEANS SPRING | 12/31/1982 | 12/31/1981 | 10/19/1978 | 82CW0314 | 48212.47043 | 0.022 | 0 |
| MEXICAN CREEK DITCH | 12/31/1972 | 12/31/1971 | 12/31/1933 | W1371 | 44559.3068 | 0.111 | 0 |
| NORTHFIELD WELL | 12/31/1972 | | 5/11/1961 | W0948 | 40673 | 0.067 | 0 |
| OFFERSON WELL NO 1 | 12/31/1981 | 12/31/1980 | 8/22/1961 | 81CW0064 | 47847.40776 | 0.044 | 0 |
| OFFICERS GULCH POND | 12/31/1977 | 12/31/1976 | 12/31/1900 | 80CW0330 | 46386.18627 | 0 | 100 |
| OLD IRONSIDES WELL | 12/31/1980 | | 10/5/1972 | 80CW0437 | 44838 | 0.033 | 0 |
| PEAK ONE CG WELL | 12/31/1972 | | 6/11/1965 | W0467 | 42165 | 0.008 | 0 |
| PLYMOUTH SPRING | 12/31/1972 | 12/31/1971 | 9/30/1950 | W1410 | 44559.36797 | 0.066 | 0 |
| PLYMOUTH WELL | 12/31/1972 | | 9/30/1950 | W1412 | 36797 | 0.066 | 0 |
| QUALY WELL | 12/31/1972 | | 3/19/1966 | W0993 | 42446 | 0.088 | 0 |
| REVETTE SPRINGS | 12/31/1973 | 12/31/1972 | 1898-12-31 | W1900 | 44925.17897 | 1.017 | 0 |
| ROWLEY WELL | 12/31/1972 | | 3/17/1967 | W0851 | 42809 | 0.011 | 0 |
| SEYMOUR WELL | 12/31/1972 | | 12/31/1964 | W0902 | 42003 | 0.033 | 0 |
| SKI CLUB WELL | 12/31/1972 | | 7/31/1965 | W1383 | 42215 | 0.044 | 0 |
| STRAUSS WELL | 12/31/1972 | | 6/28/1967 | W0883 | 42912 | 0.044 | 0 |
| SWAN WELL | 12/31/1972 | | 12/31/1958 | W1037 | 39811 | 0.044 | 0 |
| TERRILL WELL NO 10309 | 12/31/1983 | 12/31/1982 | 9/10/1965 | 83CW0275 | 48577.42256 | 0.044 | 0 |

# Exhibit 1

## Upstream of Dillon Junior Beneficiary Rights

As Referred to in the Green Mountain Administrative Protocol, Paragraph II.B.3.b.

| Water Right | Adjudication Date | Previous Adjudication | Apropriation Date | Case No. | Administration Number | rate absolute (cfs) | volume absolute (af) |
|---|---|---|---|---|---|---|---|
| TOURNIER WELL | 12/31/1979 | | 1/15/1965 | 79CW0316 | 42018 | 0.077 | 0 |
| TYROLLEAN TERRACE WELL#2 | 12/31/1972 | 12/31/1971 | 11/6/1965 | W1496 | 44559.42313 | 0.022 | 0 |
| UC OF C OC WELL | 12/31/1972 | | 9/15/1967 | W0467 | 42991 | 0.005 | 0 |
| VALLEY OF THE BLUE RES 1 | 12/31/1972 | 12/31/1971 | 10/19/1966 | W1416 | 44559.4266 | 0 | 4.2 |
| VER PLOEG SPRING | 12/31/1974 | 12/31/1973 | 7/31/1963 | W2230 | 45290.41484 | 0.011 | 0 |
| WELL NO 18192 | 5/31/1972 | | 9/11/1963 | CA2371 | 41526 | 0.007 | 0 |
| WELL NO 25607 | 5/31/1972 | | 9/11/1963 | CA2371 | 41526 | 0.022 | 0 |
| WELL NO P-5389 | 5/31/1972 | | 3/20/1964 | CA2371 | 41717 | 0.111 | 0 |
| WHATLEY SPRING NO 2 | 12/31/1982 | 12/31/1981 | 12/31/1938 | 82CW0047 | 48212.32506 | 0.044 | 0 |
| WHEATON WELL NO 1 | 12/31/1972 | | 3/21/1965 | W1372 | 42083 | 0.009 | 0 |
| WHEATON WELL NO 2 | 12/31/1972 | | 3/31/1965 | W1372 | 42093 | 0.007 | 0 |
| WHEATON WELL NO 3 | 12/31/1972 | | 3/31/1965 | W1372 | 42093 | 0.022 | 0 |
| WINCHELL WELL | 12/31/1972 | | 10/5/1968 | W1260 | 43377 | 0.111 | 0 |

**Notes:**

1) During development of the Green Mountain Reservoir Administrative Protocol the water rights in this list were judged by the Cities, the Colorado River Water Conservation District and the Division Engineer to be Upstream of Dillon Junior Beneficiary Rights that hold priority dates junior to June 23, 1946, and are not City Contract Beneficiaries.

2) Upon agreement of the United States, the Cities, the Colorado River Water Conservation District, and the Division Engineer for Water Division No. 5, qualifying water rights inadvertently not identified on this Exhibit or included but not qualifying may be added to or removed from the Exhibit as Upstream of Dillon Junior Beneficiary Rights.

# Exhibit 2
## Power Diversion Adjustment Examples
## (Reference Green Mountain Reservoir Administrative Protocol Paragraph IV.A,4., Power Diversion Adjustment)

The Green Mountain Administrative Protocol in Paragraph IV.A.4. sets forth how the Cities' Replacement Obligation may be adjusted by the Power Diversion Adjustment when the Cities make a Power Loss Replacement Offer requesting that the United States shift to Conservative Operations to reduce Discretionary Power Diversions[1]. This exhibit provides examples of how the Power Diversion Adjustment is calculated.

There are two types of Power Use Fill Shortage operations:

- "Normal Operations" means the Cities do not make a Power Loss Replacement Offer. Under Normal Operations the Power Diversion Adjustment is one-half (50%) of the Power Use Fill Shortage.

- "Conservative Operations" means the Cities make a "Power Loss Replacement Offer" whereby the Cities agree to pay for lost power generation that might occur in exchange for Reclamation agreeing to make less discretionary power. The minimum Power Loss Replacement Offer the Cities can make is 5,000 AF. That is, the Cities agree to pay for at least 5,000 AF of water if it is spilled and/or released from Green Mountain reservoir in a manner that precludes power generation as a result of Conservative Operations. The Power Loss Replacement Offer, together with the volume of additional storage achieved by the United States as a result of Power Loss Replacement Offer results in a "Power Diversion Adjustment" to the Cities' Replacement Obligation.

**POWER DIVERSION ADJUSTMENT EQUATION**

The methodology for calculating a Power Diversion Adjustment to the Cities' Replacement Obligation is set forth in paragraph IV.A.4.b. of the Green Mountain Administrative Protocol. In the event the Cities make a Power Loss Replacement Offer, the equation for calculating a Power Diversion Adjustment is:

$$[(x + y) \div 2] - z = \text{Power Diversion Adjustment}$$

Where: x = Volume of the Power Use Fill Shortage.
y = additional volume stored as a result of the Conservative Operations
z = the greater of 5,000 AF (if hydrologically and operationally available[2]) or the volume of water stored under Conservative Operations due to the Power Loss Replacement Offer.

---

[1] This exhibit uses multiple terms that are defined in the Green Mountain Administrative Protocol (e.g. Cities' Replacement Obligation, Power Diversion Adjustment, Power Loss Replacement Offer, Conservative Operations, Discretionary Power Diversions, Power Use Fill Shortage). The definition of the terms used in this exhibit is identical to the definition of the same terms in the Protocol.

[2] If the water is not hydrologically or operationally available for storage under the Power Loss Replacement Offer, then z is limited to water actually stored under Conservative Operations.

Exhibit 2

Power Diversion Adjustment Examples

(Reference Green Mountain Reservoir Administrative Protocol Paragraph IV.A,4., Power Diversion Adjustment)

**POWER DIVERSION ADJUSTMENT EXAMPLES**

Examples are shown for both Normal Operations and Conservative Operations. Under Normal Operations, the Power Diversion Adjustment is one-half (50%) of the Power Use Fill Shortage. Under Conservative Operations the Power Diversion Adjustment varies as shown in the examples.

1. **Normal Operations:** Under normal operations, the Power Diversion Adjustment is one-half (50%) of the Power Use Fill Shortage.

   Example: The Cities do not make a Power Loss Replacement Offer and there is a 12,000 AF Power Use Fill Shortage at the End of Fill Season.

   Cities' Power Diversion Adjustment = 6,000 AF

2. **Conservative Operations:** The Cities may request that the United States reduce Discretionary Power Diversions (a shift to Conservative Operations) by committing to pay power interference charges on account of power generation foregone as a result of such reduced Discretionary Power Diversions (Power Loss Replacement Offer).

   Example 1: The Cities offer to compensate the United States for 5,000 AF of lost power generation. Reclamation stores 5,000 AF rather than making discretionary power, and there is a 7,000 AF Power Use Fill Shortage at the End of Fill Season.

   $$[(x + y) \div 2] - z = \text{Power Diversion Adjustment}$$

   $x = 7{,}000$ AF
   $y = 5{,}000$ AF
   $z = 5{,}000$ AF

   $$[(7{,}000 \text{ AF} + 5{,}000 \text{ AF}) \div 2] - 5{,}000 \text{ AF} = 1{,}000 \text{ AF}$$

   Cities' Power Diversion Adjustment = 1,000 AF

   Example 2: The Cities offer 10,000 AF, Reclamation stores 5,000 AF, the entire amount hydrologically and operationally available, rather than making discretionary power. There is a 7,000 AF Power Use Fill Shortage at the End of Fill Season.

   $$[(x + y) \div 2] - z = \text{Power Diversion Adjustment}$$

   $x = 7{,}000$ AF
   $y = 5{,}000$ AF

Exhibit 2
Power Diversion Adjustment Examples
(Reference Green Mountain Reservoir Administrative Protocol
Paragraph IV.A,4., Power Diversion Adjustment)

z = 5,000 AF

[(7,000 AF + 5,000 AF) ÷ 2] – 5,000 AF = 1,000 AF

Cities' Power Diversion Adjustment = 1,000 AF

Example 3: The Cities offer 5,000 AF, Reclamation chooses to store only 3,000 AF even though the entire 5,000 AF was hydrologically and operationally available to store. There is a 9,000 AF Power Use Fill Shortage at the End of Fill Season.

[(x + y) ÷ 2] – z = Power Diversion Adjustment

x = 9,000 AF
y = 3,000 AF
z = 5,000 AF

[(9,000 AF + 3,000 AF) ÷ 2] – 5,000 AF = 1,000 AF

Cities' Power Diversion Adjustment = 1,000 AF

Example 4: The Cities offer 5,000 AF, Reclamation stores 3,000 AF, the entire amount hydrologically and operationally available, rather than making discretionary power. There is a 9,000 AF Power Use Fill Shortage at the End of Fill Season.

[(x + y) ÷ 2] – z = Power Diversion Adjustment

x = 9,000 AF
y = 3,000 AF
z = 3,000 AF

[(9,000 AF + 3,000 AF) ÷ 2] – 3,000 AF = 3,000 AF

Cities' Power Diversion Adjustment = 3,000 AF

Example 5: The Cities offer 10,000 AF, Reclamation stores 7,000 AF, rather than making discretionary power, even though 10,000 AF was hydrologically and operationally available. There is a 5,000 AF Power Use Fill Shortage at the End of Fill Season.

[(x + y) ÷ 2] – z = Power Diversion Adjustment

x = 5,000 AF
y = 7,000 AF

Exhibit 2

Power Diversion Adjustment Examples

(Reference Green Mountain Reservoir Administrative Protocol Paragraph IV.A,4., Power Diversion Adjustment)

z = 7,000 AF

[(5,000 AF + 7,000 AF) ÷ 2] – 7,000 AF = -1,000 AF

Cities' Power Diversion Adjustment = 0.0 AF[3]

Example 6: The Cities offer 10,000 AF, Reclamation stores 10,000 AF, rather than making discretionary power, and there is a 2,000 AF Power Use Fill Shortage at the End of Fill Season.

[(x + y) ÷ 2] – z = Power Diversion Adjustment

x = 2,000 AF
y = 10,000 AF
z = 10,000 AF

[(2,000 AF + 10,000 AF) ÷ 2] – 10,000 AF = -4,000 AF[4]

Cities' Power Diversion Adjustment = 0.0 AF

[3] The Cities Power Diversion Adjustment cannot be a negative volume. That is, the Cities Replacement Obligation cannot be reduced by more than ½ of the Power Use Fill Shortage that would have existed absent Conservative Operations. Regardless of the Cities Power Loss Replacement Offer, or the amount stored under Conservative Operations, the Cities Power Diversion Adjustment is limited to ½ of the Power Use Fill Shortage that would have existed without Conservative Operations.

[4] ibid

# Green Mountain Reservoir Administrative Protocol Agreement

THIS AGREEMENT is made and entered into as of the effective date (as defined in paragraph 17 below), by and among the United States of America ("United States"), the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water"), the City of Colorado Springs, acting through its enterprise Colorado Springs Utilities ("CS-U"), the Colorado River Water Conservation District ("CRWCD"), the Northern Colorado Water Conservancy District ("NCWCD"), the Middle Park Water Conservancy District ("MPWCD"), the Grand Valley Water Users Association ("GVWUA"), the Orchard Mesa Irrigation District ("OMID"), the Grand Valley Irrigation Company ("GVIC"), the Palisade Irrigation District ("PID"), Climax Molybdenum Company ("Climax"), the Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise ("Ute"), and the State Engineer and Division Engineer for Water Division 5, Colorado Division of Water Resources ("SEO") (each individually, a Party and collectively, the Parties).

## RECITALS

A. The United States is the owner and operator of Green Mountain Reservoir, an on-channel reservoir located on the Blue River in Summit County, Colorado, and is a party to the Findings of Fact, Conclusions of Law, and Final Judgment in Consolidated Cases No. 5016 and 5017 and the Findings of Fact and Conclusions of Law and Final Decree in Consolidated Cases Nos. 2782, 5016, and 5017 ("Consolidated Cases"), United States District Court for the District of Colorado ("Federal Court"), dated October 12, 1955 ("Blue River Decree"), which adjudicated water rights for Green Mountain Reservoir and the Green Mountain Powerplant (together "Green Mountain Water Rights");

B. Denver Water is a home rule municipal corporation created and existing under Article XX, section 1 of the Colorado State Constitution, the Charter of the City and County of Denver and other applicable Colorado law and is a party to the Blue River Decree;

C. The City of Colorado Springs is a home rule city and municipal corporation of the State of Colorado and is a party to the Blue River Decree;

D. CRWCD is a political subdivision of the State of Colorado pursuant to Colo. Rev. Stat. (C.R.S.) §§ 37-46-101 et seq. and is a party to the Blue River Decree;

E. NCWCD is a water conservancy district organized pursuant to C.R.S. §§ 37-45-101 et seq. and is a party to the Blue River Decree;

F. MPWCD is a water conservancy district organized pursuant to C.R.S. §§ 37-45-101 et seq. and is a party to the Blue River Decree;

G. GVWUA, GVIC, OMID, and PID are parties to the Blue River Decree;

H. Climax is a Delaware corporation that owns water rights adjudicated by the Summit County District Court in Civil Action 1710 ("C.A. 1710") for use at the mine and mill located near Leadville, Colorado ( the "Climax C.A. 1710 Water Rights");

I. The Ute Water Conservancy District is a water conservancy district organized pursuant to C.R.S. §§ 37-45-101 et seq.;

J. The SEO is responsible for the administration of water and water rights in the State of Colorado ("State") in Water Division No. 5;

K. Numerous disputes have arisen over the years as to how Green Mountain Water Rights should be administered under the Blue River Decree;

L. The SEO adopted an Interim Policy for the administration of the Green Mountain Water Rights under the Blue River Decree;

M. Some of the Parties have disagreed with the Interim Policy;

N. The United States, Denver Water, CS-U, CRWCD, NCWCD, MPWCD, GVWUA, GVIC, OMID, and PID (the "Blue River Decree Parties"), Ute, and Climax have negotiated an administrative protocol for the administration of the Green Mountain Water Rights and the Climax C.A. 1710 Water Rights ("Administrative Protocol"), a copy of which is attached hereto, which is intended and considered by them to be consistent with the terms of the Blue River Decree and the relative priorities of Green Mountain Water Rights and those water rights adjudicated in C.A. 1710, including the Climax C.A. 1710 Water Rights, and which is intended to reduce or eliminate the likelihood of expensive, protracted, and contentious litigation amongst the Parties;

O. The resolution of long-standing disputes regarding the proper administration of the Green Mountain Water Rights and the Blue River Decree provides significant benefits for water users on both the east and west slopes of the State, including, but not limited to, optimum utilization of the waters of the State, reducing litigation costs of the Parties, and providing clarity as to water rights administration;

P. The Blue River Decree Parties and Climax intend to seek judicial confirmation that the Administrative Protocol is consistent with the Blue River Decree and that the Climax C.A. 1710 Water Rights can be administered as provided in the Administrative Protocol without injury to the Green Mountain Water Rights or other water rights; and

Q. The Parties intend (1) that the Federal Court, consistent with its retained jurisdiction to interpret and implement the Blue River Decree, exercise such jurisdiction to determine whether the Administrative Protocol is consistent with the terms of the Blue River Decree; and (2) that all interested parties have notice and an opportunity to participate in such determination with regard to Sections I, II, and III, only, of the Administrative Protocol, pursuant to the procedures of the Colorado Water Right Determination and Administration Act of 1969, C.R.S. §§ 37-92-101 et seq. ("1969 Act"). To that end, the Parties agree to the judicial proceedings described herein, including the application by the Federal Court of the1969 Act procedures in determining whether Sections I, II, and III of the Administrative Protocol are consistent with the terms of the Blue River Decree, which is consistent with the Federal Court's prior practice of proceeding in consonance with the 1969 Act in matters regarding the Blue River Decree.

NOW, THEREFORE, the Parties agree as follows:

1. Purposes of the Agreement. The intent of the Blue River Decree Parties, Ute, and Climax in agreeing to the Administrative Protocol is to clarify and implement certain provisions of the Blue River Decree by (1) setting forth a protocol for, among other things: (a) the preparation, review, and modification of a fill schedule for Green Mountain Reservoir; (b) definition and administration of a fill season for exercise of the 1935 First Fill Storage Right; (c) administration of water rights during the fill season; and (d) operation of the Green Mountain Water Rights and Denver Water and CS-U's (the Cities) water rights in response to downstream calls senior to the Cities' water rights; (2) making as much water as possible available for upstream use, including use by the Cities, without impairment of the fill of Green Mountain Reservoir and without impairment of legal calls of downstream water rights; (3) providing a clear definition of the Cities' replacement obligation operations; (4) ensuring that the administration of water rights

does not allow the water rights of the Cities to "hide behind" or otherwise benefit from the Green Mountain Reservoir Water Rights; (5) reducing as much as possible or potentially eliminating the extent to which the Green Mountain Reservoir 60 c.f.s. bypass is accounted toward the fill of the Green Mountain Reservoir Storage Rights, and assuring, to the extent possible, the refilling of Green Mountain Reservoir to the extent that such bypass is accounted toward the fill of the Green Mountain Reservoir Storage Rights; and (6) addressing the relative priority of the Green Mountain Water Rights, the Cities' water rights, and Climax's C.A. 1710 Water Rights in a manner agreed by the Blue River Decree Parties and Climax; all in a manner that is consistent with the Blue River Decree. The SEO has negotiated with the Blue River Decree Parties, Ute, and Climax regarding Sections I, II and III of the Administrative Protocol, and agrees to be bound by, and to administer, distribute, and regulate the waters of the State in accordance with a final judgment and decree as provided below.

2. Approval of Administrative Protocol by Blue River Decree Parties, Climax, and Ute. The Blue River Decree Parties, Climax, and Ute approve the Administrative Protocol attached hereto as Exhibit A and agree that the Administrative Protocol shall govern the matters set forth therein, unless it is disapproved or materially modified as a result of the proceedings described in paragraphs 3 and 4 below. In the event that the Federal Court or the District Court in and for Water Division 5 ("Water Court") does not approve or materially modifies the Administrative Protocol, or refuses to rule on the proceedings filed by the Blue River Decree Parties and Climax, then paragraph 4 shall apply.

3. Judicial Proceedings. Within 60 days of the effective date of this Agreement, the Blue River Decree Parties and Climax will concurrently institute judicial proceedings in the Water Court and the Federal Court as follows:

3.1. Water Court Proceeding. The Blue River Decree Parties and Climax will file an application for determination of water right, pursuant to C.R.S. § 37-92-302(1)(a), requesting a determination that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree ("Water Court Application"). Notice of the Water Court Application, including the full text of Sections I, II, and III of the Administrative Protocol, shall be provided in the resume of applications filed in Water Division No. 5 in accordance with C.R.S. § 37-92-302(3)(a), and by newspaper publication in Summit, Grand, Garfield, Eagle, Pitkin, Routt, Gunnison, Rio Blanco, and Mesa Counties as well as in any other county in which publication is ordered by the water judge.

3.1.1. Upon expiration of the statutory time for filing statements of opposition to the Water Court Application, the Blue River Decree Parties shall immediately move to stay the Water Court proceeding and shall pursue the Federal Court proceeding described in paragraph 3.2 below.

3.2. Federal Court Proceeding. The Blue River Decree Parties will file, concurrent with the filing of the Water Court Application, an application and/or petition, pursuant to the Federal Court's retained jurisdiction to interpret and implement the Blue River Decree, requesting (1) a determination that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree; and (2) a determination that Section IV of the Administrative Protocol is consistent with the Blue River Decree ("Federal Court Application"). Immediately upon filing the Federal Court Application, the Blue River Decree Parties will request entry by the Federal Court of a procedural order specifying that the procedure set forth in the Federal Court's Order Regarding Further Proceedings Consonant With the Colorado Water Right Determination and Administration Act of 1969 entered on August 4, 1977, shall apply to that part of the Federal Court Application requesting a determination that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree, and to that part of the Federal Court Application only. If the Federal Court makes a determination that Sections I, II, and III are consistent with the Blue River Decree, and no motion is filed pursuant to paragraph 4, the Blue River Decree Parties will request the Federal Court to serve its judgment or order on its determination regarding Sections I, II and III on the Clerk of the Water Court with a request that the Water Court enter such judgment or order as a judgment or decree of the Water Court.

3.3. Participation in Judicial Proceedings.

3.3.1. It is the intent of the Parties that all persons and entities filing statements of opposition (whether in the Water Court or the Federal Court) to the Water Court Application shall be entitled to participate fully in the judicial proceedings to determine whether Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree, but that the scope of any such party's participation (whether in the Water Court or the Federal Court) shall be limited to whether Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree. To that end, the Parties shall not challenge the standing of any person filing a timely statement of opposition to the Water Court Application (whether in the Water Court or the Federal Court), and shall not oppose any motion to intervene in proceedings regarding whether Sections I, II and III of the Administrative Protocol are consistent with the Blue River Decree that are filed prior to the due date for filing of the opposers' initial mandatory disclosures under the Rules of Civil Procedure applicable to the proceeding. The Blue

River Decree Parties acknowledge that Climax has a direct, substantial and legally protectable interest relating to the subject matter of the Federal Court Application that may be impaired or impeded if Climax does not have the ability to protect its interests as a party to the Federal Court determination that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree. The Blue River Decree Parties therefore shall not oppose and shall consent to any motion to intervene by Climax in the Federal Court Application for the limited purpose of determining whether Sections I, II and III of the Administrative Protocol are consistent with the Blue River Decree. The Blue River Decree Parties will give Climax the opportunity to review and comment on drafts of the application and/or petition for the Federal Court Proceeding prior to its filing with the Federal Court for the purpose of insuring that such pleadings sufficiently acknowledge Climax's interests in Sections I, II, and III of the Administrative Protocol.

3.3.2. The Blue River Decree Parties, or their designated representative, shall serve the SEO and the First Attorney General of the Water Resources Unit of the Natural Resources and Environment Section of the Colorado Attorney General's Office (or such other attorney as designated in writing from time to time by the First Attorney General), with copies of all papers filed in either the Water Court or the Federal Court proceedings. The SEO shall not file a statement of opposition to, or otherwise file any documents opposing the determination (in either the Water Court or the Federal Court) that the Administrative Protocol is consistent with the Blue River Decree; provided that Sections I, II, and III of the Administrative Protocol are not materially modified during the course of, or as a result of, such proceedings in either the Water Court or the Federal Court. If those sections are modified, then the Blue River Decree Parties, Ute, Climax, and the SEO shall confer. If the Parties agree that the modification is material, the Blue River Decree Parties, Ute, and Climax shall not oppose upon any grounds, including timeliness, the intervention of the SEO either as an intervention of right or a permissive intervention under the applicable Rules of Civil Procedure in the original or any remanded judicial proceeding concerning Sections I, II, and III of the Administrative Protocol. If the Parties do not agree as to the materiality of the modification, their dispute shall be resolved by the presiding court in ruling upon any motion to intervene filed by the SEO. Upon intervention, the SEO shall limit its participation to matters raised by the material modification of Sections I, II, and III of the Administrative Protocol. The SEO may also move to intervene in the judicial proceedings in the event any provision of this Agreement is breached by any non-SEO Party, and the Parties shall not oppose such intervention upon any grounds. Subject to paragraph 4 below, the SEO shall not object to or appeal the entry of a final judgment and decree by either the Federal Court or the Water Court in response to the request for a determination that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree. Pursuant to C.R.S. §§ 37-92-301(1), -304(8), and -501(1),

the SEO shall be bound by, and shall administer, distribute, and regulate the waters of the State in accordance with any final judgment and decree entered in response to the request for a determination that Sections I. II, and III of the Administrative Protocol are consistent with the Blue River Decree, subject to any appellate review.

3.3.3. In order to become a party to the Water Court Application, Ute may file a statement of opposition in support of a determination that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree. Ute may also participate in the Federal Court proceeding to the same extent as any other party that files a statement of opposition in the Water Court proceeding. Notwithstanding the fact that a pleading filed by Ute is captioned as a statement of opposition, all Parties recognize and agree that Ute's position in the judicial proceedings herein will be aligned with the position of the Blue River Decree Parties and Climax. Prior to the filing of the judicial proceedings herein, the Blue River Decree Parties. Climax, and Ute will undertake to document their common interest herein by means of a formal common interest agreement allowing them to share confidential information and otherwise to cooperate in obtaining determinations from the Water Court and/or the Federal Court that the Administrative Protocol is consistent with the Blue River Decree.

3.4. Judicial Proceedings Inconsistent with the Intent of the Parties. In the event that the Federal Court determines that it lacks jurisdiction, or otherwise declines to exercise jurisdiction, to adjudicate the Federal Court Application in whole or in part, or the Water Court declines to stay the proceedings in Water Court. the Parties will confer and determine how to proceed in obtaining the participation and judicial confirmations contemplated herein.

3.5. No Precedent. While the Parties have agreed to follow the procedures set forth in this paragraph 3, and to request that such procedures be adopted and implemented by the Water Court and the Federal Court, nothing in this Agreement, or in the Parties' participation in those procedures in this instance, shall have the effect of precedent or preclusion on any Party in any other proceeding with respect to whether the Water Court or the Federal Court has primary jurisdiction over the subject matter of this Agreement and the Blue River Decree.

4. If a Party Believes a Judgment and Decree is Not Consistent With, Materially Modifies, or Does Not Approve the Administrative Protocol. Within 14 days of entry of any final judgment and decree or other court order in the proceedings contemplated in paragraph 3 of this Agreement, any Party may notify the other Parties that it believes the judgment and decree or other court order(s) is not consistent with, materially modifies, or does not approve the Administrative Protocol. Such Party shall

simultaneously file a motion under C.R.C.P. 59, F.R.C.P. 59, or other appropriate rule seeking a stay of the proceedings pending the negotiations or mediation contemplated by this paragraph and requesting an enlargement of time to file additional motions as appropriate. The other Parties shall be deemed to have consented to any such motion. Upon such notification, the Parties will confer in good faith and endeavor to resolve the inconsistency, modification, or failure of approval in a manner consistent with the Administrative Protocol or in a manner that comes as close as possible to the intention of the Administrative Protocol. If the Parties are not able to reach a unanimous consensus resolution to any inconsistency, material modification, or failure of approval, then the Parties shall submit the disputed issue to a third party mediator. If the disputed issue cannot be resolved through good faith mediation, then the Parties may pursue any available legal or administrative recourse, including but not limited to a motion for post-trial relief under C.R.C.P. 59 or F.R.C.P. 59, or for relief from judgment or order under C.R.C.P. 60 or F.R.C.P. 60, as appropriate. to vacate the judgment and decree or to request another court order.

5. Administration of CBT Project Priorities and Climax C.A. 1710 Water Priorities.

5.1. The Parties agree that, pursuant to the Stipulation for Decree in the United States District Court for the District of Colorado, Consolidated Case Nos. 2782, 5016, and 5017 and District Court, Water Division No. 5, State of Colorado, Case No. 88CW382, dated August 7, 1992, and pursuant to the Findings of Fact, Conclusions of Law and Judgment and Decree in the same matter, dated November 10, 1992, the direct flow, storage and exchange water rights for the operation of the Colorado-Big Thompson Project shall be administered with a priority date of August 1, 1935 as though adjudicated in the first available adjudication following that date, with the exception of a subsequent state or federal court confirmation of the limited exception within Water District 36 that is explicitly stated in Section III.C of the Administrative Protocol, and further subject to the provisions of the Blue River Decree and the provisions of the Manner of Operation Section of Senate Document No. 80. Notwithstanding the provisions of paragraphs 9 and 10 below, this Paragraph 5.1 shall survive any partial or complete invalidation of the Administrative Protocol and shall survive the termination of this Agreement.

5.2. The SEO further agrees that the administration within Water District 36 that is explicitly stated in Section III.C of the Administrative Protocol is consistent with Colorado law and may be implemented without injury to vested water rights. In consideration of the settlement of the disputed issues of priority in Water District 36, the Blue River Decree parties, Ute, and Climax agree to the administration specified in Section III.C of the Administrative Protocol contingent upon Climax and its successors

complying with Section III.D of the Administrative Protocol. Notwithstanding the provisions of paragraphs 9 and 10 below, the provisions of Section III of the Administrative Protocol, and the foregoing provisions of this paragraph regarding Sections III.C and III.D of the Administrative Protocol, shall, to the extent consistent with any judicial rulings regarding Section III of the Administrative Protocol in the Water Court or Federal Court proceedings under paragraph 3 above, survive (a) any partial or complete invalidation of Sections I and II of the Administrative Protocol, and (b) the termination of this Agreement.

6. No Assertion that Protocol or Protocol Agreement Violates Senate Document No. 80 or Blue River Decree. The Blue River Decree Parties, Ute, and Climax agree that they will never assert, in any forum or for any purpose, that either the Protocol Agreement or the implementation of the Administrative Protocol is a violation of any obligation of any of the Parties under Senate Document No. 80 or the Blue River Decree.

7. No Estoppel Except as Provided. The Blue River Decree Parties, Ute, and Climax agree that except as expressly provided in paragraphs 5 and 6 above, nothing herein shall ever give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the Parties' respective positions regarding the operation of the Colorado-Big Thompson Project, Senate Document No. 80, the 1938 Repayment Contract for the Colorado-Big Thompson Project, Reclamation Law, the Blue River Decree, the 1984 Green Mountain Operating Policy, or Colorado law.

8. Fees and Costs. The Parties shall each be responsible for their own attorneys' fees, engineering fees, and any other costs and fees associated with the Water Court and Federal Court proceedings discussed in paragraphs 3 and 4 above.

9. No Precedent in Other Matters. The Parties further agree that they do not intend this Agreement or the Administrative Protocol to have the effect of precedent or preclusion on any factual or legal issue in any other matter.

10. No Precedent if Decree is Determined No Force or Effect. In the event that all or a portion of any decree confirming the Administrative Protocol is determined to be of no force or effect, neither the existence of such decree, nor the fact that any Party was willing to sign this Agreement, or not to object to or otherwise challenge the decree or the Administrative Protocol, shall ever be used against any Party in any manner in any forum.

11. Reforming the Agreement. If any provision or part of this Agreement is held to be void or unenforceable by a court with jurisdiction, the Parties will confer in good faith and endeavor to reform the Agreement to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the void or unenforceable provision. The Parties acknowledge that such endeavors may not succeed in reforming the Agreement.

12. Appropriation and Spending Limitations. In accord with the Colorado Springs City Charter, performance of CS-U's obligations under this Agreement is expressly subject to appropriation of funds by the Colorado Springs City Council. In the event funds are not appropriated in whole or in part sufficient for performance of CS-U's obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then CS-U will thereafter have no obligations in excess of CS-U's authorized appropriation for this Agreement or the applicable spending limit, whichever is less. CS-U will notify the other parties as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable. Any other Party subject to an appropriation or lawful expenditure limitation will likewise have no obligations in excess of its authorized appropriation for this Agreement or the applicable spending limit, whichever is less, and shall notify the other Parties as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

13. Waiver. A waiver by any Party of a default by any other Party and/or of the performance of any other Party's obligations contained in this Agreement shall not be deemed a waiver of the performance of any other obligations or of any subsequent default in the performance of the same or any other obligation contained in this Agreement. Further, a waiver by any Party of a default by any other Party or of the performance of any other Party's obligations contained in this Agreement shall not constitute a waiver by any other Party.

14. Captions. The captions of the paragraphs hereof are for convenience only and shall not govern or influence the interpretation hereof.

15. Construction. All Parties were represented by counsel and participated in the drafting of this Agreement. Neither this Agreement nor any provision of this Agreement shall be construed against any Party, regardless of whether a Party drafted or participated in the drafting of any provision of this Agreement.

16. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

17. Effective Date. The effective date of this Agreement shall be the date of the execution of this Agreement if executed by all the Parties on the same date. If the Agreement is not executed by all the Parties on the same date, then the effective date of this Agreement shall be the date on which all the Parties have executed this Agreement.

Dated this 16th day of August, 2013.

UNITED STATES OF AMERICA

ROBERT G. DREHER
Acting Assistant Attorney General

By: _____
JAMES J. DUBOIS, #13206
U.S. Department of Justice
Environmental and Natural Resources
Division

Attorneys for the United States of America

By: _____
MICHAEL J. RYAN
Regional Director, Great Plains Region
U.S. Bureau of Reclamation

Dated this 1st day of March, 2013.

PALISADE IRRIGATION DISTRICT

By: John Kuzman
President

AND ITS ATTORNEYS

By: Nathan A. Keever
Nathan A. Keever
Dufford, Waldeck, Milburn & Krohn, LLP

Dated this 27th day of February 2013.

ATTEST:

BY: _____
SECRETARY

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

BY: _____
PRESIDENT

APPROVED:

BY: _____
DIRECTOR OF PLANNING

APPROVED AS TO FORM:

BY: _____
LEGAL DIVISION

REGISTERED AND COUNTERSIGNED:

BY: _____
AUDITOR
CITY AND COUNTY OF DENVER

Dated this 14th day of March, 2013.

GRAND VALLEY IRRIGATION COMPANY

By: _____
President

AND ITS ATTORNEYS

By: _____
Frederick G. Aldrich
Aldrich Law Firm, LLC

Dated this 26 day of March, 2013.

CITY OF COLORADO SPRINGS
ACTING BY AND THROUGH ITS
ENTERPRISE COLORADO SPRINGS
UTILITIES

By: _____
Scott Hente
President of City Council

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY

By: _____

Dated this 12 day of March, 2013

MIDDLE PARK WATER
CONSERVANCY DISTRICT

By: Duane Shull
President

AND ITS ATTORNEYS

Stanley W. Cazier
Cazier, McGowan & Walker

Dated this 1st day of April, 2013.

NORTHERN COLORADO WATER CONSERVANCY DISTRICT

By: _____
President and Chairman

AND ITS ATTORNEYS

By: _____
Bennett Raley
Trout Raley Montano Witwer & Freeman, PC

Dated this 4th day of March, 2013.

ORCHARD MESA IRRIGATION DISTRICT

By: Larry Sullen
President

AND ITS ATTORNEYS

By: Mark A Hermundstad
Mark A. Hermundstad
Williams, Turner & Holmes, P.C.

Dated this 19th day of June, 2013.

COLORADO RIVER WATER
CONSERVATION DISTRICT

By: _____
President, James Newberry

AND ITS ATTORNEYS

_____
Peter C. Fleming
Colorado River Water Conservation
District

Dated this 15th day of August, 2013.

COLORADO DIVISION OF WATER RESOURCES

By: _____
Dick Wolfe, State Engineer

AND ITS ATTORNEY

By: _____
Paul L. Benington
First Assistant Attorney General
Water Resources Unit
Natural Resources & Environment Section
Colorado Department of Law

Dated this 17 day of September, 2013.

CLIMAX MOLYBDENUM COMPANY

By: _____
David H. Thornton
President

AND ITS ATTORNEYS

By: _____
Brian Nazarenus
Rylcy Carlock and Applewhite

Dated this 13th day of March, 2013.

UTE WATER CONSERVANCY DISTRICT, ACTING BY AND THROUGH THE UTE WATER ACITIVITY ENTERPRISE

By: _____
President

AND ITS ATTORNEYS

By: _____
Mark A. Hermundstad
Williams, Turner & Holmes, P.C.

Dated this 7th day of March. 2013.

GRAND VALLEY WATER USERS ASSOCIATION

By: D. Kim Alberton
President

AND ITS ATTORNEYS

By: Mark A Hermundstad
Mark A. Hermundstad
Williams. Turner & Holmes. P.C.

ATTACHMENT S

Please reference the following number on all billings or payments.
Contract # 102664

AGREEMENT CONCERNING
REDUCTION OF SHOSHONE CALL

This Agreement is between the City and County of Denver, acting by and through its Board of Water Commissioners (Board), and Public Service Company of Colorado d/b/a Xcel Energy (Company).

**Recital**

The Board's ability to store water in its reservoirs for beneficial use by its customers is adversely impacted, especially in dry years, by the Company's Shoshone Call. Following the drought year of 2002, a brief relaxation of the Shoshone Call during the spring of 2003 provided some benefit to storage reservoirs operated by both west slope and east slope entities, including the Board. Although a more comprehensive and long-term agreement on relaxation achieved through multi-party negotiations may be desirable, the Company and the Board agree to a relaxation of the Call under the provisions in this Agreement. The Company agrees to participate in developing a long-term program of relaxation, including a relaxation of the junior Shoshone Call, with the Board, other water users on the Colorado River and appropriate west slope entities.

**Agreement**

1. Agreement to Relax Call. When a water shortage occurs, as defined in Paragraph 2, the Company agrees to reduce the Shoshone Call to a one-turbine call of 704 cfs. If the Call is relaxed and the flow of the Colorado River at the Shoshone Power Plant, together with flows contributed by intervening tributaries, is not sufficient to meet the then-current demand of the major Grand Valley water rights, up to 1950 cfs (commonly referred to as the "Cameo Call"), then the level of the Shoshone Call will be adjusted to an amount greater than 704 cfs so as to avoid the initiation of a Cameo Call.

2. Water Shortage Defined. For purposes of this Agreement, a water shortage occurs when the following two conditions are met:

a. Using its regular methodology and based on the "normal" scenario, the Board predicts that reservoir storage in its system on July 1 will be at or below 80% full; and

b. The Most Probable forecast of streamflow prepared by the Natural Resources Conservation Service (NCRS) or jointly by NCRS and the Colorado Basin River Forecast Center indicates that the April – July flow of the Colorado River at the Kremmling gage will be less than or equal to 85% of average. If no forecast for the Kremmling gage is available, then the Dotsero gage will be used.

3. Timing of Relaxation of Call. If the two forecasts described in paragraph 2 occur in March, then the call will be relaxed beginning March 14 until May 20, inclusive, in accordance with this Agreement. If the two conditions described in paragraph 2 occur in April or May forecasts, then the Call will be relaxed in accordance with this Agreement until May 20, inclusive. The methodology that the Board uses to predict system storage shall be substantially the same as that described in the attached Exhibit A.

4. Power Interference. The Board agrees to pay power interference to compensate the Company for its incremental cost of replacement power and energy as a result of relaxing the Shoshone Call, regardless of which entity ultimately stores the water not called. The procedure for determining power interference is shown in Exhibit B.

5. Potential for Longer Call Relaxation. The Company agrees to consider a longer period of relaxation when water supplies are more severely impacted than described in paragraph 1, if such longer period is defined cooperatively between the Board, the Company and appropriate west slope entities.

6. Water for the Company's Facilities. The Board agrees to deliver water as described in this paragraph to the Company's Cherokee, Arapahoe, or Zuni Power Plants or a future Company power plant located within the Board's Combined Service Area. The Company will select the plant or plants to which the water will be delivered. Deliveries to the Arapahoe, Zuni or a future plant will be made to the South Platte River. Deliveries to the Cherokee plant will be made, at the Board's choice, to the South Platte River or through the Board's Recycled Water Plant. The Board may choose in its discretion the type of water delivered to these facilities, so long as the water is suitable for their use. The Board will not deliver water under this paragraph to the South Platte River downstream of the Cherokee plant's diversion structures. Any water delivered by the Board to the Company under this paragraph shall be used by the Company only at the plants listed in this paragraph 6 and only for purposes for which the Board's water rights have been decreed.

6.1 Amount of Water. The Board shall deliver under this paragraph 6 an amount of water equivalent to 15% of the "net water" it is able to store or divert as a direct result of the reduction of the Shoshone Call. "Net water" is defined as the total amount of water the Board is able to store or divert as a direct result of the reduction of the Shoshone Call at the following facilities, less any deductions described below:

a. Water stored or diverted at the Board's Dillon Reservoir, less any water spilled from Dillon after filling and any water bypassed from Dillon for flood management purposes; and

b. Water stored or diverted at the Board's Williams Fork Reservoir, less any water spilled from Williams Fork after filling and any water bypassed from Williams Fork for flood management purposes; and

c. Water stored in the Board's account in Wolford Reservoir, less any water spilled from the Board's account after filling; and

d. Water diverted through the Board's Moffat Tunnel, less any water spilled from the Fraser Collection System in excess of the Forest Service minimum bypass flow requirements; and

e. Water stored or diverted at any western slope reservoir or storage account acquired or constructed by the Board after the date of this agreement, less any water spilled after filling and any water bypassed for flood management purposes.

6.2 Schedule for 15% Water Delivery. The Board shall make deliveries under this paragraph 6 between June 1 in the same calendar year as the Shoshone Call is reduced and March 31 of the following calendar year. The delivery schedule will be subject to approval by the Company.

6.3 Cost of Water Delivered. For each acre foot of water delivered to the Company under this paragraph 6, the Company shall reimburse the Board for the Board's power interference payments at the same rate per acre foot as the Board paid to the Company under paragraph 4.

7. Water for West Slope Entities. The Board agrees to make available to entities on the west slope, at no charge to the recipients, an amount of water equivalent to 10% of the "net water" it is able to store or divert as a direct result of the reduction of the Shoshone Call. "Net water" is defined in paragraph 6.1. The Board may choose in its discretion the method of delivery that is consistent with its water right decrees, so long as the delivery method is suitable for each recipient's desired use. The Board shall deliver the water in the same calendar year as the Shoshone Call is reduced. The Board agrees to cooperate with the Colorado River Water Conservation District to determine the particular west slope entities and the proportionate share of the water to be made available to each entity.

8. Additional East Slope Participants. The Board and the Company agree to make a good faith effort to secure commitments from the Municipal Subdistrict of the Northern Colorado Water Conservancy District, the City of Aurora and Colorado Springs Utilities to deliver to the Company, at no charge, 15% of their additional water diversions that result from a relaxation of the Shoshone Call, in accordance with paragraph 6, and to deliver 10% of the water diverted or stored to west slope entities in accordance with paragraph 7.

9. Priority System. Water made available by the relaxation of the Shoshone Call will be allocated in accordance with the priority system.

10. No Warranties. The Company is not warranting or representing that the diversion and use by the Board of additional water as a result of the relaxation of the Shoshone Call is administrable or lawful. To the extent that the State Engineer or a court with jurisdiction determines that the diversion and use by the Board of additional water as a result of the relaxation of the Shoshone Call is not administrable or lawful, the Company can continue to place the Shoshone Call notwithstanding this Agreement.

11. Increased Call for Company Operations. If the Company in its sole discretion determines that additional river flow is required for safe operation of the Shoshone Hydroelectric Station or the Company's electrical system, then the Company may increase the Call, notwithstanding this Agreement.

12. Operational Meeting. The Company agrees to meet with the Board each October to discuss operation of the Shoshone Call and any planned outages of the Shoshone Plant for repair or maintenance during the following twelve months so that the parties may better coordinate their activities.

13. Sale of Shoshone Water Rights. In the event the Company should determine that it is in its best interest to sell the Shoshone water rights, it agrees to do so only on an open bidding basis in which the Board shall have an equal opportunity to purchase the water rights as all others. If the Company sells the Shoshone water rights to an entity other than the Board, the new owner shall have the right to terminate this Agreement two years after closing of the sale.

14. Term. This Agreement shall be effective as of January 1, 2007 and will terminate on February 28, 2032.

15. Prior Agreement. The previous Letter Agreement between the Company and the Board dated April 14, 1986, is hereby terminated in its entirety.

IN WITNESS WHEREOF, the Board and the Company have executed this Agreement.

ATTEST:

**PUBLIC SERVICE COMPANY OF COLORADO d/b/a XCEL ENERGY**

Asst. Carol J. Peterson
Secretary

By: Ptc C Vhlen
President and CEO
Public Service Company of Colorado

Reviewed
Legal
3/31/06 PtC

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

ATTEST:

Secretary

President

APPROVED:

Director of Planning

Director of Finance

APPROVED AS TO FORM:

Legal Division

REGISTERED AND COUNTERSIGNED
Dennis J. Gallagher, Auditor

By:

Title: Deputy Auditor

# Exhibit A

## DESCRIPTION OF PROCEDURES USED BY THE BOARD FOR RESERVOIR PROJECTIONS

Denver Water projects future reservoir levels monthly in the springtime and less frequently throughout the rest of the year. Active storage levels (excluding the dead storage pools) for the10 largest reservoirs in Denver's system (Antero, Eleven Mile, Cheesman, Marston, Chatfield, Gross, Ralston, Dillon, Williams Fork, and Wolford Mountain) are forecasted. Calculations of gross and net aggregate reservoir contents are made. The calculation of net reservoir contents excludes any water in Denver's system owed to others (primarily Green Mountain Reservoir). The net active storage of the 10 reservoirs will be used in the forecast for the Shoshone call reduction.

The reservoir projections are based on natural streamflow forecasts produced primarily by the Natural Resources Conservation Service (NRCS). However, streamflow forecasts produced by other organizations including the Colorado Basin River Forecast Center, the Bureau of Reclamation, the Northern Colorado Water Conservancy District and Denver Water are also used.

The reservoir projections utilize correlations between natural streamflow and divertible streamflow to estimate how much of the natural streamflow can be diverted under Denver's water rights. Other factors incorporated in the reservoir projections include projections of treated water use, raw water deliveries, evaporation (based on rates approved by the State Engineer's Office), minimum bypass and release requirements, carriage losses assessed by the State Engineer's Office, existing capacities of diversion and conveyance facilities, system outages and river calls. The assumed treated water use considers any water use restrictions approved by the Denver Water Board at the time of the forecast.

Usually, three levels of reservoir projections are produced. These projections are based on three scenarios after the forecast date: "dry", "normal" and "wet" conditions. The "dry" scenario is based on the "reasonable minimum" streamflow forecasts, which have a 90% chance of being exceeded. The "normal" scenario is based on the "most probable" streamflow forecasts, which have a 50% chance of being exceeded. The "wet" scenario is based on the "reasonable maximum" streamflow forecasts, which have a 10% chance of being exceeded. The "normal" scenario will be used for the Shoshone call reduction.

# Exhibit B

## COMPENSATION FOR POWER INTERFERENCE

The Board agrees to pay power interference to compensate the Company for its incremental cost of replacement power and energy as a result of relaxing the Shoshone Call. The procedure for determining power interference is shown below.

Depletions to Shoshone Power Plant

The Board will compensate the Company for each acre-foot of net turbine flow depletion caused to the Shoshone Power Plant through the relaxation of the Shoshone Call. Net depletions are defined as gross depletions caused by the Board and all other water users upstream of the Shoshone power plant, less any water subsequently released from Green Mountain and Wolford Reservoirs utilized to generate power at the Shoshone plant. Some of the water stored in Green Mountain and Wolford as a result of relaxation of the Call will later be released, run through the Shoshone Plant for power generation, and delivered for use below the plant; such amounts of water do not constitute a net depletion for purposes of calculating power interference. Similarly, amounts of water spilled from Dillon Reservoir, Williams Fork Reservoir, the Board's account in Wolford Reservoir, or a new west slope reservoir or storage account described in Paragraph 6.1(e), and run through the Shoshone Plant for power generation, do not constitute a net depletion for purposes of calculating power interference. Depletions will be calculated at the Shoshone plant and will be adjusted for stream carriage losses assessed by the State Engineer in water rights administration.

Reimbursement to Xcel

The Board will reimburse the Company for power interference at the rate of at least $5.00 per acre-foot of the net depletion described above. The $5.00 per acre-foot minimum will be adjusted on a monthly basis (but not below $5.00 per acre-foot) by the change in the Price of Spot Gas Delivered to Pipelines for Colorado Interstate Gas, Rocky Mountain (Index) as published in "Platts Inside FERC Gas Market Report," compared to a baseline representing the average Index for the first three months of 2006.

Accounting and Payment.

After the Call relaxation has ended, the Board will prepare an accounting of the power interference and provide it to the Company for review. Once final accounting as been determined, the Board will make payment to the Company within 60 days. Upon mutual agreement and the development of mutually agreeable terms, the Board may substitute a delivery of energy to the Company for the payment of power interference.

## ATTACHMENT T

MIDDLE PARK WATER CONSERVANCY DISTRICT
WATER RIGHTS - CONDITIONAL

| Structure | Adjudication | Appropriation Date | Use | Amount | Case No. |
|---|---|---|---|---|---|
| Haypark Canal Headgate No. 1 | 9/5/1964 | 8/5/1959 | Irrigation, Municipal, Industrial, Recreation, Fisher, Domestic, Livestock | 145 cfs (conditional) (Alternate point for 45 cfs (absolute) at East Fork Ditch Headgate)(Alternate) point for 30 cfs (absolute) at East For Ditch Headgate) | 946<br>81CW269<br><br>83CW83 |
| Haypark Canal Headgate No. 2 | 9/5/1964 | 8/5/1959 | Irrigation, Municipal, Industrial, Recreation, Fisher, Domestic, Livestock | 145 cfs (conditional) Alternate point for Headgate No. 1 | 946 |
| Haypark Reservoir | 9/5/1964 | 8/5/1959 | Irrigation, Municipal, Industrial, Recreation, Fisher, Domestic, Livestock | 20,115.9 ac ft (conditional) | 946 |
| Kirtz Ditch No. 2 Enlargement | 9/5/1964 | 8/5/1959 | Irrigation, Municipal, Industrial, Recreation, Fisher, Domestic, Livestock | 82.55 cfs (conditional) | 946 |
| Kremmling Canal | 9/5/1964 | 8/5/1959 | Irrigation, Municipal, Industrial, Recreation, Fisher, Domestic, Livestock | 35 cfs (conditional) | 946 |

| Structure | Adjudication | Appropriation Date | Use | Amount | Case No. |
|---|---|---|---|---|---|
| Fraser Valley Downstream Reservoir | 08/20/1990 | 12/12/1986 | Hydroelectric Power Production Replacement, Recreation, Domestic, Irrigation, Stock Watering, Industrial and Municipal | 170 Acre Feet | 86CW363 |
| Fraser Valley Upstream Reservoir | 08/20/1990 | 12/12/1986 | Hydroelectric Power Production Replacement, Recreation, Domestic, Irrigation, Stock Watering, Industrial and Municipal | 170 Acre Feet | 86CW363 |
| Fraser Valley Downstream Ditch No. 1 | 08/20/1990 | 12/12/1986 | Hydroelectric Power Production Replacement, Recreation, Domestic, Irrigation, Stock Watering, Industrial and Municipal | 170 cfs | 86CW364 |
| Fraser Valley Upstream Ditch No. 1 | 08/20/1990 | 12/12/1986 | Hydroelectric Power Production Replacement, Recreation, Domestic, Irrigation, Stock Watering, Industrial and Municipal | 170 cfs | 86CW364 |

## ATTACHMENT T

### Grand County Conditional Water Rights

| Water Right | Source | Amount | Application Date | Adjudicaton Date | Case No. |
|---|---|---|---|---|---|
| Landfill Well No.1 and Exchange | groundwater tributary to Colorado River | 15 gpm | 1/23/2006 | 10/5/2008 | 06CW217 |
| Hot Sulphur Springs Whitewater Park | Colorado River | Not to exceed 900 cfs | 12/21/2010 | pending | 10CW298 |
| Gore Canyon Whitewater Park | Colorado River | Not to exceed 2,500 cfs | 12/21/2010 | Pending | 10CW298 |
| Gross Reservoir Storage Substitution | Fraser/Williams Fork Rivers and tributaries | 1,375 af | 09/23/2010 | Pending | 11CW152 |
| Williams Fork Reservoir Storage | Williams Fork River | 2,500 af | 09/23/2010 | Pending | 11CW152 |
| Wolford and Green Mountain Reservoirs Exchange and Substitution | Muddy Creek and Blue River | 3,500 af | 11/22/2011 | Pending | 11CW152 |

## ATTACHMENT T

**Summit County**
**Conditional Water Rights**

| Name | Amount | Source | Appropriation Date | Case No. |
|---|---|---|---|---|
| Swan River Reservoir | 11,560 AF, conditional | Swan River | July 22, 1982 | 06CW222 (82CW386, 93CW287, 00CW74) |
| Lower Mohawk Reservoir | 1,530 AF, conditional | Spruce Creek | | |
| Old Dillon Reservoir, First Enlargement | 150 AF, at a rate of 10 c.f.s., conditional | Salt Lick Gulch | August 24, 1982 | 10CW102 (93CW288, 03CW36) |
| Windy Gap, Old Dillon Reservoir Exchange | 10 c.f.s., conditional, with a total volumetric limit on exchange of 53.4 AF per year | Blue River and Salt Lick Gulch<br><br>Replacement water from Granby Reservoir | December 23, 1993 | |
| Summit County Augmentation Plan Exchanges | 6 c.f.s. (2700 g.p.m.), conditional , limited to a total of 208.4 consumptive acre-feet per year | Various | September 18, 1985 | 10CW149 (95CW122) |
| Blumenhein Well Nos. 1 and 2 | 0.50 c.f.s. each, conditional | Ground water tributary to Blue River | June 26, 1972 | 07CW211 (pending) (W-1204, W-1204-76, 80CW268, 84CW211, 88CW243, 95CW007, 01CW153) |
| Old Dillon Reservoir, Second Enlargement | 60 acre-feet, conditional, with a 10 c.f.s. rate of diversion for filling | Salt Lick Gulch | December 11, 2007 | 07CW223 (pending) |
| Summit County Old Dillon Reservoir Exchanges | 8 c.f.s. conditional, with a total volumetric limit on the exchange of 388 acre-feet per year | Salt Lick Gulch<br><br>Replacement water from Clinton Gulch, Dillon, and Upper Blue Reservoirs | December 11, 2007 | 07CW226 (pending) |

**Summit County**
**Conditional Water Rights**
**Page 2**

| Name | Amount | Source | Appropriation Date | Case No. |
|---|---|---|---|---|
| Old Dillon Reservoir, Third Enlargement | 30 acre-feet, conditional, with a 10 c.f.s. rate of diversion for filling | Salt Lick Gulch | December 16, 2008 | 08CW201 (pending) |
| Old Dillon Reservoir, Refill | 45 acre-feet, conditional , to replace gross evaporative loss, with a 10 c.f.s. rate of diversion for filling | | | |
| Summit County Wolford Mountain Reservoir to Old Dillon Reservoir Exchange | 8 c.f.s., conditional, with a total volumetric limit on the exchange of 300 acre-feet per year | Blue River and Salt Lick Gulch<br><br>Replacement water from Wolford Mountain Reservoir | December 16, 2008 | 08CW202 (pending) |
| Peru Creek Reservoir | 2,050 acre-feet, conditional, together with a right to successive refills in the cumulative amount of 2,050 acre-feet, conditional | Peru Creek and its tributaries, tributary to the Blue River | February 23, 2010 | 10CW43 (pending) |
| Vidler – Peru Creek Reservoir Exchange | 14.6 c.f.s., conditional | Peru Creek and its tributaries, tributary to the Blue River | | |
| Vidler Tunnel Unit, diversion points G-ZZ | 14.6 c.f.s., conditional | Various named and unnamed tributaries of Peru Creek, tributary to the Blue River | July 28, 1959 | 10CW44 (pending) (01CW177, 95CW06, 87CW246, 83CW78, W-3865, CA 2371) |

## ATTACHMENT T

**Eagle Park Reservoir Company**
**Conditional Water Rights**

| Water Right | Source | Amount Conditional | Case No. |
|---|---|---|---|
| Eagle Park Reservoir | East Fork of the Eagle River, including run-off, surface flow, and seepage from the area above the reservoir and tributary thereto; and water tributary to Tenmile Creek, a tributary of the Blue River, including water from Humbug Creek, Mayflower Creek, Searle Creek, and Kokomo Creek | 2,152 af | 92CW340 |
| Eagle Park Reservoir First Enlargement | East Fork of the Eagle River, including run-off, surface flow, and seepage from the area above the reservoir and tributary thereto; and water tributary to Tenmile Creek, a tributary of the Blue River, including water from Humbug Creek, Mayflower Creek, Searle Creek, and Kokomo Creek | 22,300 af | 93CW301 |
| Pando Feeder Canal | Eagle River and the East Fork of the Eagle River, including runoff, surface flow and seepage from the area above the reservoir and tributary thereto, and water from the Ten Mile Creek drainage, a tributary of the Blue River diverted through the Chalk Mountain Interceptor | 80 cfs | Civil Action No. 1193 |
| East Fork Pumping Plant Exchange | Various upstream and downstream terminus of exchange reaches | 5,010.7 af | 03CW211 |

**ATTACHMENT T**
**Eagle River Water & Sanitation District**
**Conditional Water Rights**

| Water Right | Source | Amount Conditional | Case No. |
|---|---|---|---|
| Red Sandstone Reservoir | Red Sandstone Creek, trib. to Gore Creek | 160 af | W-3667 |
| Vail Valley Middle Creek Diversion System | Middle Creek Trib. to Gore Creek | 60 cfs | 81CW353 |
| Vail Valley Reservoir | Middle Creek Trib. to Gore Creek | 5,500 af | 81CW353 |
| Black Lake | Black Gore Creek trib. to Gore Creek | 125 af | CA4003 |
| Black Lake No. 2 | Black Gore Creek trib. to Gore Creek | 15.6 af | CA4003 |
| Black Lake No. 2, 1st Enl. | Black Gore Creek trib. to Gore Creek | 51 af | CA4003 |
| Gore Creek Intake for BCTP, 1st Enlargement | Gore Creek | 1.51 cfs | W-3730 |
| Gore Creek Intake for BCTP | Gore Creek | 0.81 cfs | W-2167 |
| Main Gore Municipal Ditch & Pipeline | Gore Creek | 6.9 cfs | CA1529 |
| Plow Spring | Mill Creek trib. to Gore Creek | 0.165 cfs | W-2167 |
| Number 245 Pumphouse & Pond | Mill Creek trib. to Gore Creek | 1.78 cfs | W-2167 |
| Log Chute Pump Station | Mill Creek trib. to Gore Creek | 0.09 cfs | W-2167 |
| Hoyt Pipeline | Black Gore Creek trib. to Gore Creek | 5.5 cfs | CA1529 |
| KAC Reservoir | Gore Creek | 72.2 af | W3603 |
| ECDC Reservoir | Black Gore Creek trib. to Gore Creek | 112 af | CA1529 |
| Hoyt Reservoir | Black Gore Creek trib. to Gore Creek | 240.25 af | CA1529 |
| Wolcott Municipal Diversion | Eagle River | 7 cfs | 08CW77 |
| The Town of Vail Whitewater Park | Gore Creek | Mar: 54 cfs, Apr: 227 cfs, May - Jul: 400 cfs, Aug: 218 cfs, Sept: 67 cfs, Oct: 48 cfs | 00CW259 |

## ATTACHMENT T

**Upper Eagle Regional Water Authority (UERWA)**
**Conditional Water Rights**

| Name of Structure | Source | Amount Conditional | Case No. |
|---|---|---|---|
| UERWA Pipeline (aka UERWA Point A) | Lake Creek | 11.6 cfs | 93CW291 |
| Edwards Drinking Water Facility Diversion | Eagle River | 0.40 cfs | 02CW403 |
| Arrowhead Dam | McCoy Creek | 30 af | 79CW360 |
| HA Nottingham & Sons Water Treatment & Storage Project | Beaver Creek | 3.0 cfs | W-327 |
| Avon Metro Mun. Water System | Eagle River & Buck Creek | 1.0 cfs | W-3666 |
| Avon Metro Mun. Water System 1st Enl. | Eagle River | 5.0 cfs | 84CW225 |
| June Creek Ranch Well No. 1 | Groundwater trib. to June Creek | 0.1114 cfs | W-3999 |
| June Creek Ranch Well No. 3 | Groundwater trib. to June Creek | 0.2227 cfs | W-3999 |
| June Creek Ranch Well No. 4 | Groundwater trib. to June Creek | 0.2227 cfs | W-3999 |
| June Creek Ranch Well No. 5 | Groundwater trib. to June Creek | 0.2227 cfs | W-3999 |
| June Creek Ranch Well No. 6 | Groundwater trib. to June Creek | 0.379 cfs | W-3999 |
| Cordillera Reservoir No. 1 | Unnamed trib. of Squaw Creek | 10 af | 87CW309 |
| Cordillera Reservoir No. 2 | Unnamed trib. of Squaw Creek | 10 af | 87CW309 |
| Cordillera Reservoir No. 3 | Unnamed trib. of Squaw Creek | 10 af | 87CW309 |
| Cordillera Reservoir No. 4 | Unnamed trib. of Squaw Creek | 10 af | 87CW309 |
| Cordillera Reservoir No. 5 | Unnamed trib. of Squaw Creek | 10 af | 87CW309 |
| Cordillera Reservoir No. 6 | Unnamed trib. of Squaw Creek | 10 af | 87CW309 |
| SCR Diversion Pt. No. 1 | West Lake Creek | 5.0 cfs | 89CW218 |
| SCR Diversion Pt. No. 7 | Squaw Creek | 5.0 cfs | 91CW76 |
| Eagle River Diversion Pt. No. 2 | Eagle River | 5.0 cfs | 91CW76 |
| Eagle River Diversion Pt. No. 3 | Eagle River | 5.0 cfs | 91CW76 |
| Squaw Creek Recreation Reservoir No. 6 | Unnamed trib. of Squaw Creek | 10 af | 00CW76 |

**Upper Eagle Regional Water Authority (UERWA)**
**Conditional Water Rights**
**Page 2**

| | | | |
|---|---|---|---|
| Squaw Creek Recreation Reservoir No. 7 | Unnamed trib. of Squaw Creek | 10 af | 00CW76 |
| Squaw Creek Recreation Reservoir No. 8 | Unnamed trib. of Squaw Creek | 10 af | 00CW76 |
| Stag Gulch Wellfield | Groundwater trib. to Eagle River | 450 gpm | 91CW77 |
| Eagle-Vail Mun Water System | Stone Creek | 2.332 cfs | W-3289 |
| Edwards Water Dist Well No. 2 | Groundwater trib. to Eagle River | 0.13 cfs | 81CW161 |
| Edwards Water Dist Well No. 3 | Groundwater trib. to Eagle River | 0.44 cfs | 81CW161 |
| Edwards Village Mun Pipeline | Groundwater trib. to Lake Creek | 0.686 cfs | 80CW550 |
| Williams Reservoir | Eagle River | 8.0 af | W-3135 |
| Edwards Village Pond No. 1 | Lake Creek | 2.4 af | 80CW550 |
| Edwards Village Pond No. 2 | Lake Creek | 1.7 af | 80CW550 |
| Edwards Village Pond No. 3 | Lake Creek | 0.7 af | 80CW550 |
| Edwards Village Pond No. 4 | Lake Creek | 0.7 af | 80CW550 |
| Edwards Village Pond No. 5 | Lake Creek | 0.5 af | 80CW550 |
| Homestead Reservoir | E. Fork Lake Creek trib. to Lake Creek | 20.0 af | 81CW266 |
| Williams Ditch | Eagle River | 0.5 cfs | W-3134 |
| Creamery Ditch Homestead Res. Enl. | E. Fork of Lake Creek trib. to Lake Creek | 5.0 af | 81CW265 |
| Metcalf Ditch Headgate | Eagle River | 3.343 cfs | 97CW306 |
| Raw Water Booster Pump | Eagle River | 3.333 cfs | 97CW306 |
| The Village (at Avon) Lake No. 1 | Surface drainage trib. to Eagle River and Eagle River surface diversions | 27 af | 97CW306 |
| The Village (at Avon) Lake No. 2 | Surface drainage trib. to Eagle River and Eagle River surface diversions | 27 af | 97CW306 |

**ATTACHMENT T**
**Ute Water Conservancy District**
**Conditional Water Rights**

| Name | Amount | Source | Appropriation Date | Case No. (Original Decree) |
|---|---|---|---|---|
| Atwell East Ditch, Supplemental Point of Diversion | 2.82 c.f.s., abs. for irrigation, cond. for all other uses | Seeps and springs in an unnamed drain, tributary to Coon Creek, Plateau Creek, Colorado River. | September 21, 1978 | W-3966 (Div 5) |
| Atwell Waste & Seep Ditch | 0.30 c.f.s. absolute, 0.06 c.f.s., conditional | Spring Draw, Mesa Creek, Plateau Creek, Colorado River | May 1, 1908 | CA 2635 (Mesa County District Ct) |
| Big Park Reservoir | 5,650 AF, conditional | Leon Creek and Park Creek, Plateau Creek, Colorado River | September 17, 1970 | W-253 (Div 5) |
| Bridges Switch Pumping Plant and Pipeline | 30 c.f.s. conditional | Colorado River | June 2, 1981 | 81CW222 (Div 5) |
| Buzzard Creek Dam & Reservoir (Ute Water owns an undivided 22.5% interest) | 20,000 AF conditional | Buzzard Creek Plateau Creek, Colorado River | April 17, 1964 | CA 13368 (Mesa County District Ct) |
| Coon Creek Pipeline | 4.1 c.f.s. absolute, 0.4 c.f.s. conditional | Coon Creek and/or Plateau Creek, Colorado River. | September 1, 1978 | W-3921 (Div 5) |
| Coon Creek Pipeline Enlargement | 1.5 c.f.s. conditional | Coon Creek Plateau Creek, Colorado River. | September 1, 1978 | 83CW223 (Div 5) |
| Jerry Creek Reservoir No. 2 (Jerry Creek Priority) | 7,791 AF conditional | Jerry Creek Plateau Creek, Colorado River. | October 7, 1977 | W-3884 (Div 5) |
| Kirkendall reservoir (aka Hunter Reservoir) | 110 AF abs., 582.49 AF conditional | Leon Creek Plateau Creek, Colorado River | July 24, 1952 for conditional right. | CA 8303 (Mesa County District Ct) |
| Kirkendall Reservoir, Ute Water Enlargement | 1,340 AF conditional | Leon Creek and springs and natural runoff, tributary to Plateau Creek, Colorado River. | December 12, 2001 | 06CW246 (Div 5) |
| Monument Reservoir No. 1, Ute Water Enlargement | 4,682 AF, conditional | Monument Creek, springs and natural runoff, trib. to Leon Creek, Plateau Creek, Colorado River | July 1, 2005 | 09CW30 (Div 5) (Decree Pending) |
| Owens Creek Reservoir (Ute Water owns an undivided 22.5% interest) | 31,786.10 AF, conditional | Owens Creek and Buzzard Creek, Plateau Creek, Colorado River | July 21, 1959 | CA 13368 (Mesa County District Ct) |
| Ute Pumping Station & Pipeline | 50 c.f.s. conditional | Colorado River | October 22, 1962 | CA 13368 (Mesa County District Ct) |
| Willow Creek Reservoir | 19,448 AF, conditional | Willow Creek and springs and natural runoff, tributary to Buzzard Creek, Plateau Creek, Colorado River. | July 1, 2007 | 09CW29 (Div 5) (Decree Pending) |

## ATTACHMENT T

### City of Glenwood Springs
### Conditional Water Rights

| Structure | Case No. | Amount | Appro. Date | Adjud. Date | Uses |
|---|---|---|---|---|---|
| Grizzly Creek Reservoir | CA 1416 | 3879.8 AF, conditional | 9/13/1967 | 7/9/1960 | Municipal |
| Four Mile Pipeline | CA 5884 | 2.91 c.f.s., conditional | 11/5/1971 | 11/2/1967 | Domestic, irrigation, municipal and other beneficial purposes |
| Atkinson Canal Diversion | 94CW358 | 5.0 c.f.s, conditional | 5/31/1987 | 1/7/1997 | All municipal purposes, including domestic, irrigation, commercial, industrial, sanitary, recreation, fire protection and storage |
| Seventh Street Diversion Structure | 94CW358 | 15.0 c.f.s., conditional (8.66 c.f.s.absolute, 6.34 c.f.s. conditional) | 5/31/1987 | 1/7/1997 | All municipal purposes, including domestic, irrigation, commercial, industrial, sanitary, recreation, fire protection and storage |
| South Glenwood Diversion Structure | 94CW358 | 15.0 c.f.s., conditional | 5/31/1987 | 1/7/1997 | All municipal purposes, including domestic, irrigation, commercial, industrial, sanitary, recreation, fire protection and storage |
| South Glenwood Irrigation Structure | 00CW213 | 4.0 c.f.s., conditional | 8/19/1999 | 6/4/2001 | All municipal purposes on approx 100 acres within the service area of GWS |
| Hughes Garden Ditch Exchange | 00CW213 | 3.0 c.f.s., conditional | 8/19/1999 | 6/4/2001 | Irrigation |
| West Glenwood Spring No. 1 | 87CW210 | 1.0 c.f.s., conditional | 9/9/1987 | 12/31/1987 | Irrigation, municipal, industrial, commercial, fire protection |
| West Glenwood Spring No. 2 | 87CW245 | 1.0 c.f.s., conditional | 10/30/1987 | 2/18/1988 | Municipal, industrial, commercial, irrigation, fire protection |

## ATTACHMENT T

**City of Rifle**
**Conditional Water Rights**

| Structure | Case No. | Amount | Appropriation Date | Adjudication Date | Uses |
|---|---|---|---|---|---|
| Rifle Pipeline | CA 4004 | 15 c.f.s. (7.5 c.f.s. absolute, 7.5 c.f.s., conditional) | 2/5/1949 | 9/5/1952 | Municipal |
| Colorado Intake Enlargement | 81CW437 | 23.1 conditional | 12/16/1981 | 6/14/1982 | Municipal |
| Rifle Pond Well | 04CW193 | 0.07 c.f.s. (31.5 gpm), conditional | 12/18/2002 | 1/16/2008 | Evaporation, recreation & piscatorial |

# Attachment T
# Denver Water's Conditional Water Rights

| Division/District and Name of Structure or Water Right Name | Source | Appropriation Date | Decree Date | Amount | Case No. |
|---|---|---|---|---|---|
| Water Division No. 1 | | | | | |
| Lawn Irrigation Return Flow Project | Reusable return flow | N/A | Pending | 200 cfs | 2004CW121 |
| District No. 2 Storage Rights | | | | | |
| Denver Water/South Adams County | | | | | |
| Reservoir Water Supply Project | | | | | |
| North Reservoir Complex - Fill and refill | South Platte River | 10/15/1996 | Pending | 17,747 AF | 2001CW286 |
| South Reservoir Complex - Fill and refill | South Platte River | 10/15/1996 | Pending | 2,400 AF | 2001CW286 |
| South Reservoir Complex - Enlargement | South Platte River | 10/15/1996 | Pending | 1,129 AF | 2009CW264 |
| Lupton Lakes Storage Complex - Fill and refill | South Platte River | 7/12/2006 | Pending | 11,400 AF | 2007CW322 |
| District No. 2 Direct Flow Rights | | | | | |
| Gravel Pit Exchange | South Platte River | 10/15/1996 | Pending | 80 cfs | 2009CW123 |
| Recycling Plant Intake | South Platte River | 10/15/1996 | Pending | 70.0 cfs | 2001CW287 |
| Recycling Plant Intake exch. and subs. | South Platte River | 10/15/1996 | Pending | 70.0 cfs | 2001CW287 |
| 5K Direct Flow Right | South Platte River | 10/31/1999 | Pending | 150 cfs | 2001CW285 |
| District No. 6 Storage Rights | | | | | |
| Gross Reservoir | | | | | |
| Storage Right | South Boulder Creek | 05/10/1945 | 09/28/1953 | 113,078 AF [A] | C.A.12111 |
| Refill Right | South Boulder Creek | 05/10/1945 | 09/28/1953 | 113,078 AF [A] | C.A.12111 |
| Ralston Creek Reservoir | | | | | |
| Priority 33C Storage Right | South Boulder Creek | 10/31/1932 | 09/28/1953 | 3,210 AF | C.A.12111 |
| District No. 6 Direct Flow Rights | | | | | |
| South Boulder Diversion Conduit | South Boulder Creek | 01/01/1930 | 09/28/1953 | 789 cfs | C.A.12111 |
| Denver Power Conduit No. 1 | South Boulder Creek | 05/10/1945 | 09/28/1953 | 350 cfs [A] | C.A.12111 |
| District No. 7 Storage Rights | | | | | |
| Ralston Creek Reservoir | Ralston Creek | 01/01/1930 | 10/18/1978 | 4,055 AF | W-7561 |
| Long Lake No. 1 (Upper) | Ralston Creek | 06/06/1909 | 05/13/1936 | 575.8 AF | C.A. 60052 |
| Long Lake No. 2 (Lower) | Ralston Creek | 06/06/1909 | 05/13/1936 | 716.3 AF | C.A. 60052 |
| District No. 7 Direct Flow Rights | | | | | |
| Ralston Creek Intake | Ralston Creek | 01/01/1930 | 10/18/1978 | 148 cfs | W-7561 |
| District No. 8 Storage Rights | | | | | |
| Chatfield Reservoir | | | | | |
| Storage | South Platte River | 12/28/1977 | 08/29/1994 | 55,000 AF [A] | W-8783-77 |
| Storage | South Platte River | 12/28/1977 | 08/29/1994 | 156,200 AF | W-8783-77 |
| Exchange | South Platte River | 12/28/1977 | 08/29/1994 | 55,000 AF [A] | W-8783-77 |
| Exchange | South Platte River | 12/28/1977 | 08/29/1994 | 156,200 AF | W-8783-77 |
| Two Forks Reservoir | South Platte River | 01/18/1905 | 03/24/1953 | 145,133 AF | C.A. 3286 |
| Two Forks Reservoir | South Platte River | 05/01/1926 | 03/24/1953 | 191,235 AF | C.A. 3286 |
| Two Forks Reservoir Exchange | South Platte River | 04/01/1935 | 03/24/1953 | 336,369 AF | C.A. 3286 |
| Two Forks Reservoir Refill Right | South Platte River | 12/31/1929 | 03/24/1953 | 336,369 AF | C.A .3286 |
| Exchange w/in Denver Water System | South Platte River | 07/04/1921 | 05/18/1972 | 3,000 cfs [A] | C.A. 3635 |
| Foothills Tunnel and Conduit No. 26 | South Platte River | 03/21/1962 | 12/19/1983 | 774 cfs [A] | 80CW408 |
| Waterton Canyon Management | South Platte River | 8/16/1978 | Pending | 7,864 AF | 2005CW316 |

# Attachment T
# Denver Water's Conditional Water Rights

| Division/District and Name of Structure or Water Right Name | Source | Appropriation Date | Decree Date | Amount | Case No. |
|---|---|---|---|---|---|
| District No. 23 Storage Rights | | | | | |
| Eleven Mile Canon Reservoir | | | | | |
| 2nd Enlargement | South Fork South Platte River | 12/09/1957 | 04/27/1972 | 17,810 AF | C.A. 3701 |
| | | | | | |
| Water Division No. 5 | | | | | |
| District No. 36 Storage Rights | | | | | |
| Refill Right | Blue R, Snake R, Ten Mile Cr | 01/01/1985 | 08/23/1999 | 175,000 AF [A] | 87CW376 |
| | | | | | |
| District No. 36 Direct Flow Rights | | | | | |
| Blue River Diversion Project | Blue R, Snake R, Ten Mile Cr | 06/24/1946 | 03/10/1952 | 788 cfs [A] | Cons. 2782, 5016, 5017 |
| | | | | | |
| Straight Creek Unit Roberts Tunnel | Straight Creek | 1/21/1957 | 1/21/1987 | 115 cfs | C.A. 2371 |
| | | | | | |
| District No. 37 Storage Rights | | | | | |
| Eagle-Colorado Project | | | | | |
| Eagle River Unit | Eagle River | 12/31/2007 | 9/17/2010 | 500 cfs | 2007CW214 |
| Colorado River Unit | Colorado River | 12/31/2007 | 9/17/2010 | 600 cfs | 2007CW214 |
| Eagle - Colorado Reservoir | Eagle and Colorado Rivers and Alkali Cr. | 12/31/2007 | 9/17/2010 | 350,000 AF | C.A. 1529 & 1548 |
| | | | | | |
| District No. 51 Storage Rights | | | | | |
| Meadow Creek Reservoir - Moffat Tunnel Collection System | Meadow Creek | 08/30/1963 | 05/30/1972 | 5,100 AF | C.A.1430 |
| Fraser River Diversion Project | | | | | |
| Vasquez Reservoir | Fraser River & Tributaries | 07/04/1921 | 11/05/1937 | 275 AF | C.A. 657 |
| Vasquez Reservoir Enlargement | Fraser River & Tributaries | 07/07/1936 | 11/05/1937 | 6,341 AF | C.A. 657 |
| St. Louis Reservoir | Fraser River & Tributaries | 07/04/1921 | 11/05/1937 | 1,150 AF | C.A. 657 |
| | | | | | |
| District No. 51 Direct Flow Rights | | | | | |
| Fraser River Diversion Project | Fraser River & Tributaries | 07/04/1921 | 11/05/1937 | 1280 cfs [A] | C.A.657 |
| | | | | | |
| Moffat Tunnel Collection System | Fraser River & Tributaries | 08/30/1963 | 05/30/1972 | 100 cfs | C.A.1430 |
| | | | | | |
| Williams Fork Power Conduit | Williams Fork River & Tribs | 10/09/1956 | 05/30/1972 | 400 cfs [A] | C.A.1430 |
| Williams Fork Diversion Project | Williams Fork River & Tribs | 07/04/1921 | 11/05/1937 | 355 cfs | C.A.657 |
| Darling Creek Enlargement | Darling Creek & Williams Fork River Tribs | 08/26/1953 | 05/30/1972 | 90 cfs | C.A. 1430 |
| | | | | | |
| Wolford Mountain Reservoir | | | | | |
| Substitution | Muddy Creek | | 03/05/1996 | 200 cfs | 91CW252 |
| Emergency Exchange | Muddy Creek | 03/03/1987 | 03/05/1996 | 200 cfs | 91CW252 |
| | | | | | |
| District No. 70 Storage Rights | | | | | |
| Sulphur Gulch Reservoir | Colorado River | 12/10/1999 | 10/8/2007 | 16,000 AF | 99CW279 |
| | | | | | |

**NOTE: The information contained in this table is for descriptive purposes only, and is not intended to represent an interpretation, admission or modification of any of the water right decrees.**

A. Water right is partially conditional and partially absolute.

ATTACHMENT T

**COLORADO RIVER WATER CONSERVATION DISTRICT**
**(Colorado River District or CRWCD)**
**CONDITIONAL WATER RIGHTS**
**DECEMBER 2011**

Some of the identified water rights listed in this table are conditional in part and absolute in part. It is possible that other conditional water rights, not identified on this table, may be owned by the Colorado River District. The information contained in this table is for descriptive purposes only, and is not intended to represent an interpretation, admission or modification of any of the water right decrees, or as an admission that the rights identified on this table are the only conditional rights owned by the Colorado River District.

| NAME OF STRUCTURE | DATE OF ORIGINAL DECREE | COURT/CASE NO. | SOURCE | APPROPRIATION DATE | CONDITIONAL AMOUNT |
|---|---|---|---|---|---|
| **BASALT PROJECT (Water Division 5):** | | | | | |
| Basalt Conduit | 06/20/1958 | Garfield, 4613 | Fryingpan River | 07/29/1957 | 446.7 c.f.s. |
| Basalt Power Plant & Penstock | 06/20/1958 | Garfield, 4613 | Fryingpan River | 07/29/1957 | 400 c.f.s. |
| Landis Canal | 06/20/1958 | Garfield, 4613 | Fryingpan River | 07/29/1957 | 78 c.f.s. |
| Ruedi Reservoir Second Filling | 04/08/1985 | W.D. 5, 81CW34 | Fryingpan River | 01/22/1981 | 101,280 a.f. |
| Spring Valley Siphon | 06/20/1958 | Garfield, 4613 | Landis Canal | 07/29/1957 | [1] |
| Stockmen's Ditch Ext. & Enlargement Headgates 1 & 2 | 06/20/1958 | Garfield, 4613 | Sopris Creek; Basalt Conduit; Landis Canal | 07/29/1957 | 30 c.f.s |
| **BATTLEMENT MESA PROJECT (Water Division 5):** | | | | | |
| Brush Creek Canal | 04/13/1972 | Mesa, 13368 | Buzzard Creek, tributary to Plateau Creek, tributary to Colorado River | 01/13/1964 | 35 c.f.s. |
| Buzzard Creek Dam & Reservoir | 04/13/1972 | Mesa, 13368 | Buzzard Creek, tributary to Plateau Creek, tributary to Colorado River | 04/17/1964 | 20,000 a.f. |
| Colorado Canal | 04/13/1972 | Mesa, 13368 | Buzzard Creek, tributary to Plateau Creek, tributary to Colorado River | 07/21/1959 | 123 c.f.s. |
| Harrison Canal | 04/13/1972 | Mesa, 13368 | Buzzard Creek, tributary to Plateau Creek, tributary to Colorado River | 12/12/1963 | 65 c.f.s. |
| Owens Creek Reservoir | 04/13/1972 | Mesa, 13368 | Owens & Buzzard Creek, tributary to Plateau Creek, tributary to Colorado River | 07/21/1959 | 31,786.1 a.f. |
| **BLUESTONE PROJECT (Water Division 5):** | | | | | |
| Kobe Canal | 11/10/1970 | Garfield, C.A. 6404 | Colorado River | 06/30/1936 | 50 c.f.s. |
| Kobe Canal Alternate Point | 02/28/1985 | W.D. 5, 84CW348 | Colorado River | 06/30/1936 | 50 c.f.s. |
| Mount Logan Canal | 11/10/1970 | Garfield, C.A. 6404 | Mt. Logan Dam & Reservoir | 06/30/1936 | 40 c.f.s. |
| Mount Logan Dam & Reservoir | 11/10/1970 | Garfield, C.A. 6404 | Roan Creek | 06/30/1936 | 10,000 a.f.[2] |
| Roan Creek Feeder Canal | 11/10/1970 | Garfield, C.A. 6404 | Roan Creek | 06/30/1936 | 75 c.f.s. |
| **EAGLE VALLEY PROJECT (Water Division 5):** | | | | | |
| Hat Creek Feeder Canal | 07/09/1979 | Eagle, 1529 | Hat Creek, tributary to East Brush Creek | 06/10/1966 | 27 c.f.s |
| Nolan Feeder Canal | 07/09/1979 | Eagle, 1529 | Nolan Creek | 06/10/1966 | 38.5 c.f.s |
| **ELKHEAD PROJECT (Water Division 6):** | | | | | |
| Elkhead Creek Reservoir | 05/05/2005 | Routt/Moffat, 02CW109 | Elkhead Creek & its tributaries | 10/16/2002 | 13,800 a.f. |
| Elkhead Creek Reservoir,2nd Enlargement | 05/05/2005 | Routt/Moffat, 02CW109 | Elkhead Creek & its tributaries | 10/16/2002 | 13,000 a.f. |
| Elkhead Creek Reservoir Enlargement Power Right | 05/09/2005 | Routt/Moffat, 02CW109 | Elkhead Creek & its tributaries | 10/16/2002 | 200 c.f.s. |

[1] Located on the Landis Canal and serves only to convey water across Spring Valley to Spring Valley bench.
[2] 800 a.f. dead storage.

**COLORADO RIVER WATER CONSERVATION DISTRICT**
**(Colorado River District or CRWCD)**
**CONDITIONAL WATER RIGHTS**
**DECEMBER 2011**

Some of the identified water rights listed in this table are conditional in part and absolute in part. It is possible that other conditional water rights, not identified on this table, may be owned by the Colorado River District. The information contained in this table is for descriptive purposes only, and is not intended to represent an interpretation, admission or modification of any of the water right decrees, or as an admission that the rights identified on this table are the only conditional rights owned by the Colorado River District.

| NAME OF STRUCTURE | DATE OF ORIGINAL DECREE | COURT/CASE NO. | SOURCE | APPROPRIATION DATE | CONDITIONAL AMOUNT |
|---|---|---|---|---|---|
| **FLATTOPS PROJECT (Water Division 5):** | | | | | |
| Strawberry Creek Pipeline | 07/29/1974 | W.D. 5, W-2137 | White River | 06/16/1972 | 400 c.f.s. |
| Strawberry Creek Dam & Reservoir | 07/29/1974 | W.D. 5, W-2140 | White River and Strawberry Creek | 06/16/1972 | 75,957 a.f. |
| Wray Gulch Dam & Reservoir | 07/29/1974 | W.D. 5, W-2138 | Wray Gulch, tributary to White River | 07/19/1972 | 29,374 a.f. |
| Wray Gulch Pipeline | 07/29/1974 | W.D. 5, W-2139 | White River | 07/19/1972 | 450 c.f.s. |
| Strawberry Creek Dam & Reservoir Alternate Point | 12/16/1981 | W.D. 5, W-3854 | White River and Strawberry Creek | 10/31/1961 | 75,957 a.f. |
| **FRASER VALLEY PROJECT (Water Division 5):** | | | | | |
| Fraser Feeder Canal | 06/18/1987 | W.D. 5, 84CW552 | Fraser River | 11/09/1984 | 150 c.f.s. |
| Fraser Pumping Plant & Pipeline | 06/18/1987 | W.D. 5, 84CW553 | Fraser River | 11/09/1984 | 35 c.f.s. |
| **GREAT NORTHERN PROJECT (Water Division 6):** | | | | | |
| California Park Reservoir | 05/30/1972 | Moffat, C.A. 2259 | Elkhead Creek & its tributaries | 08/07/1962 | 36,536.1 a.f. |
| Elkhead Canal | 05/30/1972 | Moffat, C.A. 2259 | California Park Reservoir & N. Elkhead Crk | 08/07/1962 | 145 c.f.s |
| Elkhead Lateral | 05/30/1972 | Moffat, C.A. 2259 | Elkhead Canal | 08/07/1962 | 40 c.f.s. |
| Hansen Canal | 05/30/1972 | Moffat, C.A. 2259 | Fortification Creek | 08/07/1962 | 70 c.f.s. |
| North Elkhead Feeder Canal | 05/30/1972 | Moffat, C.A. 2259 | North Elkhead Creek | 08/07/1962 | 145 c.f.s. |
| Rampart Reservoir | 05/30/1972 | Moffat, C.A. 2259 | Fortification Creek & its tributaries | 08/07/1962 | 12,133.3 a.f. |
| Rampart Reservoir, 2nd Filling | 04/22/1982 | Moffat, 81CW261 | Yampa River & its tributaries | 02/27/1981 | 11,692 a.f. |
| **JUNIPER-CROSS PROJECT (Water Division 6):** | | | | | |
| Cross Mountain Power Plant & Penstock | 05/30/1975 | Moffat, W-792-75 | Cross Mountain Reservoir & Yampa River | 07/25/1974 | 2,200 c.f.s. |
| Cross Mountain Power Plant & Penstock Enlargement | 10/15/1981 | Moffat, 79CW196 | Cross Mountain Reservoir & Yampa River | 08/14/1979 | 3,100 c.f.s. |
| Cross Mountain Reservoir | 04/22/1975 | Moffat, W-772-74 | Yampa River & its tributaries | 07/25/1974 | 142,000 a.f. |
| Cross Mountain Reservoir Enlargement | 09/03/1981 | Moffat, 79CW194 | Yampa River & its tributaries | 08/14/1979 | 66,000 a.f. |
| Cross Mountain Reservoir, 2nd Filling | 04/22/1982 | Moffat, 81CW265 | Yampa River & its tributaries | 02/27/1981 | 125,500 a.f. |
| Deadman Bench Canal | 09/01/1960 | Moffat, C.A. 1278 | Yampa River & its tributaries, Juniper Res. | 07/06/1959 | 550 c.f.s. |
| Juniper Power Plant | 09/01/1960 | Moffat, C.A. 1278 | Juniper Reservoir & Yampa River & its tributaries | 07/06/1959 | 1,000 c.f.s. |
| Juniper Power Plant & Penstock Enlargement | 10/15/1981 | Moffat, 79CW195 | Left abutment of Juniper Dam | 08/14/1979 | 5,000 c.f.s. |
| Juniper Power Plant & Penstock, 2nd Enlargement | 01/28/1982 | Moffat, 79CW205 | Left abutment of Juniper Dam | 12/05/1979 | 1,000 c.f.s. |
| Juniper Reservoir | 09/01/1960 | Moffat, C.A. 1278 | Yampa River & its tributaries | 07/06/1959 | 844,294 a.f. |
| Juniper Reservoir Enlargement | 06/30/1975 | Moffat, W-771-74 | Yampa River & its tributaries | 07/25/1974 | 235,700 a.f. |
| Juniper Reservoir Enlargement, 2nd Filling | 04/22/1982 | Moffat, 81CW262 | Yampa River & its tributaries | 02/27/1981 | 1,006,768 a.f. |
| **REDCLIFF PROJECT (Water Division 5):** | | | | | |
| Cross Creek Extension of the Fall & Peterson Creek | 01/31/1979 | W.D. 5, W-3472 | Cross Creek | 07/01/1976 | 300 c.f.s. |
| Iron Mountain Reservoir | 12/16/1965 | Eagle, C.A. 1193 | Homestake Creek, Eagle River, Peterson & Fall Creeks | 08/10/1956 | 68,042.72 a.f. |

**COLORADO RIVER WATER CONSERVATION DISTRICT**
**(Colorado River District or CRWCD)**
**CONDITIONAL WATER RIGHTS**
**DECEMBER 2011**

Some of the identified water rights listed in this table are conditional in part and absolute in part. It is possible that other conditional water rights, not identified on this table, may be owned by the Colorado River District. The information contained in this table is for descriptive purposes only, and is not intended to represent an interpretation, admission or modification of any of the water right decrees, or as an admission that the rights identified on this table are the only conditional rights owned by the Colorado River District.

| NAME OF STRUCTURE | DATE OF ORIGINAL DECREE | COURT/CASE NO. | SOURCE | APPROPRIATION DATE | CONDITIONAL AMOUNT |
|---|---|---|---|---|---|
| **REDCLIFF PROJECT (Water Division 5):** | | | | | |
| Iron Mountain Reservoir, 2nd Filling | 06/18/1986 | W.D. 5, 81CW345 | Homestake Creek, Eagle River, Peterson & Fall Creeks | 07/29/1981 | 68,043 a.f. |
| Pando Feeder Canal | 12/16/1965 | Eagle, C.A. 1193 | Eagle River | 08/10/1956 | 400 c.f.s. |
| **SAVORY POTHOOK PROJECT (Water Division 6):** | | | | | |
| Boone Lateral | 05/27/1972 | Moffat, C.A. 2269 | Two Bar Canal | 06/05/1959 | 16 c.f.s. |
| Deer Lodge Lateral | 05/27/1972 | Moffat, C.A. 2269 | Two Bar Canal | 06/05/1959 | 23 c.f.s. |
| Pothook Canal | 06/23/1964 | Moffat, C.A. 1598 | Four Mile Creek | 06/05/1959 | 260 c.f.s. |
| Pothook Canal Enlargement | 05/30/1972 | Moffat, C.A. 2504 | Slater Creek | 04/19/1966 | 400 c.f.s. |
| Pothook Reservoir | 06/23/1964 | Moffat, C.A. 1598 | Slater Creek | 06/05/1959 | 73,580.6 a.f. |
| Pothook Reservoir Enlargement | 05/30/1972 | Moffat, C.A. 2504 | Slater Creek | 04/19/1966 | 100,000 a.f. |
| Pothook Reservoir, 2nd Filling | 03/15/1982 | Moffat, 81CW259 | Slater Creek | 04/19/1966 | 166,458.6 a.f. |
| Two Bar Canal | 05/27/1972 | Moffat, C.A. 2269 | Storage releases from Savery Reservoir & Pot Hook Reservoir and direct flow of the Little Snake River | 06/05/1959 | 100 c.f.s. |
| **WEST DIVIDE PROJECT (Water Division 5):** | | | | | |
| Avalanche Canal & Siphon | 06/20/1958 | Garfield, C.A. 4613 | Crystal River and Avalanche Creek | 04/22/1957 | 2,000 c.f.s. |
| Avalanche Power Plant | 06/20/1958 | Garfield, C.A. 4613 | Crystal River | 04/22/1957 | 170 c.f.s. |
| Dry Hollow Feeder Canal | 03/20/1981 | Garfield, W-3888 | Colorado River | 06/20/1958 | 250 c.f.s. |
| Dry Hollow Reservoir | 03/20/1981 | Garfield, 79CW308 | East & West Divide Creeks, Crystal and Colorado Rivers | 04/27/1957 | 45,000 a.f. |
| Four Mile Canal | 11/05/1971 | Garfield, C.A. 5884 | N. Thompson Creek & Yank Creek Reservoir | 08/11/1950 | 85 c.f.s. |
| Four Mile Canal & Siphon | 06/20/1958 | Garfield, C.A. 4613 | Crystal River & Four and Three Mile Creeks | 04/27/1957 | 830 c.f.s. |
| Horsethief Canal | 07/09/1965 | Garfield, C.A. 4954 | W. Divide Creek & Canal, Kendig Reservoir, East Mamm Creek, Beaver Creek, Cache Creek & Battlement Creek | 04/22/1957 | 750 c.f.s. |
| Kendig Reservoir | 07/09/1965 | Garfield, C.A. 4954 | W. Divide Creek & Canal | 04/22/1957 | 15,450 a.f. |
| Kendig Reservoir 1st Enlargement | 03/20/1981 | Garfield, 79CW315 | W. Divide Creek and Crystal and Colorado Rivers | 06/18/1979 | 2,610 a.f. |
| Placita Reservoir | 06/20/1958 | Garfield, C.A. 4613 | Crystal River | 04/22/1957 | 62,009 a.f. |
| Placita Power Plant | 06/20/1958 | Garfield, C.A. 4613 | Crystal River | 04/22/1957 | 1,000 c.f.s. |
| West Mamm Creek Reservoir | 07/09/1965 | Garfield, C.A. 4954 | W. Mamm Creek & Horsethief Canal | 04/22/1957 | 6,500 a.f. |
| West Divide Canal | 07/09/1965 | Garfield, C.A. 4954 | Garfield Creek & Tunnel, Baldy Creek, East Divide Creek | 04/22/1957 | 300 c.f.s. |
| Yank Creek Reservoir | 11/05/1971 | Garfield, C.A. 5884 | North Thompson Creek | 08/11/1950 | 13,695.04 a.f. |

ATTACHMENT T

**COLORADO RIVER WATER CONSERVATION DISTRICT**
**(Colorado River District or CRWCD)**
**CONDITIONAL WATER RIGHTS**
**DECEMBER 2011**

Some of the identified water rights listed in this table are conditional in part and absolute in part. It is possible that other conditional water rights, not identified on this table, may be owned by the Colorado River District. The information contained in this table is for descriptive purposes only, and is not intended to represent an interpretation, admission or modification of any of the water right decrees, or as an admission that the rights identified on this table are the only conditional rights owned by the Colorado River District.

| NAME OF STRUCTURE | DATE OF ORIGINAL DECREE | COURT/CASE NO. | SOURCE | APPROPRIATION DATE | CONDITIONAL AMOUNT |
|---|---|---|---|---|---|
| **WOLCOTT PROJECT (Water Division 5):** | | | | | |
| Wolcott Reservoir | 07/09/1979 | Eagle, C.A. 1529 | Ute Creek & Eagle River | 04/27/1966 | 65,975 a.f. |
| Wolcott Pumping Pipeline | 07/09/1979 | Eagle, C.A. 1529 | Eagle River | 04/27/1966 | 500 c.f.s. |
| **WOLFORD MOUNTAIN RESERVOIR PROJECT (Water Division 5):** | | | | | |
| Gunsight Pass Reservoir (WMR) | 11/20/1989 | W.D. 5, 87CW283 | Muddy Creek tributary to the Colorado River | 12/14/1987 | 59,993 a.f. |
| Gunsight Pass Reservoir Power Right (WMR) | 11/20/1989 | W.D. 5, 87CW284 | Muddy Creek tributary to the Colorado River & Gunsight Pass Reservoir | 12/14/1987 | 600 c.f.s. |
| WMR 2nd Enlargement | Pending | W.D. 5, 03CW302 | Muddy Creek tributary to the Colorado River | 11/17/2003 | 9,775 a.f. |
| WMR Refill Right | 07/06/2000 | W.D. 5, 98CW237 | Muddy Creek tributary to the Colorado River | 11/17/1998 | 30,000 a.f. |
| WMR-GMR/Dillon/Roberts Exchange | 03/05/1996 | W.D. 5, 91CW252 | Muddy Creek | **03/03/1987 or 12/14/1987?** | 200 c.f.s.[3] |
| WMR Wetlands Irrigation (Tyler Tailwater Ditch) | 11/18/1999 | W.D. 5, 98CW236 | Muddy Creek tributary to the Colorado River | 04/22/1998 | 5 c.f.s. |
| WMR Moser Exchange | 04/14/2011 | W.D. 5, 05CW265 | Boulder Creek tributary to Blue River | 10/15/2008 | 73 a.f. |

[3] To a maximum exchange in any given year of 26,000 a.f.

Addendum to Colorado River Cooperative Agreement

The Signatories recognize that they have a history of cooperation with water users of all descriptions, adjusting their operations and providing water on a temporary basis to respond to the operational needs and emergency circumstances of others. The Signatories will work in good faith to support such cooperative efforts. Except as specifically described below, the following activities are not intended to be governed or constrained by the CRCA:

- Emergency potable water interconnect agreements that allow other municipal water providers to make a physical interconnection with the Denver Water's water system to allow the Denver Water's water to be delivered on a temporary basis to such provider during emergency conditions;

- Water made available temporarily by Denver Water without charge during an emergency situation that poses a risk to public safety, public health or the environment;

- Exchanges of water by Denver Water with another entity to accommodate operational constraints caused by maintenance, repair or other similar activities where the entity agrees to replace, rather than purchase, the water. Such exchanges shall be treated as spot sales for the purposes of and subject to Article I.B.3.a.ii, 3.a.iii, and 3.a.iv.

No failure on the part of a party to exercise, and no delay in exercising, any right, privilege or power under the CRCA shall ever give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, issue or claim preclusion, stare decisis, promissory estoppel, equitable estoppel, laches, unclean hands or any other similar position or defense concerning any factual or legal position, or to any administrative or judicial practice or precedent, by or against any of the Signatories.

**FIRST AMENDMENT TO THE COLORADO RIVER COOPERATIVE AGREEMENT**
**(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)**

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:

DocuSigned by:
DEDE0A24B77B484...
Secretary

DocuSigned by:
2DD327B8894843E...
President

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

APPROVED AS TO FORM:

By: DocuSigned by: Daniel J. Arnold
F251B67846FB43C...
General Counsel

By: DocuSigned by:
DBCB7E81F4174C8...
DS JAG

**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

**FIRST AMENDMENT TO THE COLORADO RIVER COOPERATIVE AGREEMENT**
**(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)**

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:

_____
Secretary

_____
President

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

APPROVED AS TO FORM:

By: _____
General Counsel

By: _____

**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

**FIRST AMENDMENT TO THE COLORADO RIVER COOPERATIVE AGREEMENT**
**(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)**

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:

_____
Secretary

_____
President

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

APPROVED AS TO FORM:

By: _____
General Counsel

By: _____

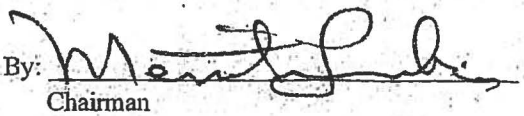
**BOARD OF COUNTY COMMISSIONERS, COUNTY OF SUMMIT**

By: _____
Chairman

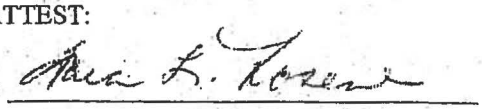
ATTEST:

By: _____
Summit County Manager

**BOARD OF COUNTY COMMISSIONERS, COUNTY OF GRAND**

By: 
Chairman

ATTEST:

By: 
Grand County Clerk and Recorder

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

**CLINTON DITCH & RESERVOIR COMPANY**

By: Bruce Hodson
Chairman

**MIDDLE PARK WATER CONSERVANCY DISTRICT**

By: _____
President

**BOARD OF COMMISSIONERS OF EAGLE COUNTY**

By: _____
Chairman

**EAGLE RIVER WATER & SANITATION DISTRICT**

By: Stephen B. Friedl
Chairman

**UPPER EAGLE REIONAL WATER AUTHORITY**

By: George Gregory
Chairman

**EAGLE PARK RESEROVIR COMPANY**

By: George Gregory
President

**COLORADO RIVER WATER CONSERVATION DISTRICT**

By: _____
President

**CITY OF GLENWOOD SPRINGS**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

**CITY OF RIFLE**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

**CLINTON DITCH & RESERVOIR COMPANY**

By: _____
Chairman

**MIDDLE PARK WATER CONSERVANCY DISTRICT**

By: _____
President

**BOARD OF COMMISSIONERS OF EAGLE COUNTY**

By: _____
Chairman

**EAGLE RIVER WATER & SANITATION DISTRICT**

By: _____
Chairman

**UPPER EAGLE REIONAL WATER AUTHORITY**

By: _____
Chairman

**EAGLE PARK RESEROVIR COMPANY**

By: _____
President

**COLORADO RIVER WATER CONSERVATION DISTRICT**

By: _____
President

**CITY OF GLENWOOD SPRINGS**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

**CITY OF RIFLE**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

**CLINTON DITCH & RESERVOIR COMPANY**

By: _____
Chairman

**MIDDLE PARK WATER CONSERVANCY DISTRICT**

By: _____
President

**BOARD OF COMMISSIONERS OF EAGLE COUNTY**

By: DocuSigned by: Kathy Chandler-Henry 86A681FFEB84403...
Chairman

**EAGLE RIVER WATER & SANITATION DISTRICT**

By: _____
Chairman

**UPPER EAGLE REIONAL WATER AUTHORITY**

By: _____
Chairman

**EAGLE PARK RESEROVIR COMPANY**

By: _____
President

**COLORADO RIVER WATER CONSERVATION DISTRICT**

By: _____
President

**CITY OF GLENWOOD SPRINGS**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

**CITY OF RIFLE**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

**CLINTON DITCH & RESERVOIR COMPANY**

By:_____
Chairman

**BOARD OF COMMISSIONERS OF EAGLE COUNTY**

By:_____
Chairman

**UPPER EAGLE REGIONAL 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

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

**CLINTON DITCH & RESERVOIR COMPANY**

By: Bruce Hodson
Chairman

**MIDDLE PARK WATER CONSERVANCY DISTRICT**

By: _____
President

**BOARD OF COMMISSIONERS OF EAGLE COUNTY**

By: _____
Chairman

**EAGLE RIVER WATER & SANITATION DISTRICT**

By: Stephen B. Fiel
Chairman

**UPPER EAGLE REIONAL WATER AUTHORITY**

By: George Sugay
Chairman

**EAGLE PARK RESEROVIR COMPANY**

By: George Sugay
President

**COLORADO RIVER WATER CONSERVATION DISTRICT**

By: _____
President

**CITY OF GLENWOOD SPRINGS**

By: _____
Mayor

**CITY OF RIFLE**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

ATTEST:

By: Catherine Hyther Fletcher
City Clerk

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

**CLINTON DITCH & RESERVOIR COMPANY**

By: _____
Chairman

**MIDDLE PARK WATER CONSERVANCY DISTRICT**

By: _____
President

**BOARD OF COMMISSIONERS OF EAGLE COUNTY**

By: _____
Chairman

**EAGLE RIVER WATER & SANITATION DISTRICT**

By: _____
Chairman

**UPPER EAGLE REIONAL WATER AUTHORITY**

By: _____
Chairman

**EAGLE PARK RESEROVIR COMPANY**

By: _____
President

**COLORADO RIVER WATER CONSERVATION DISTRICT**

By: _____
President

**CITY OF GLENWOOD SPRINGS**

By: _____
Mayor

**CITY OF RIFLE**

By: _____
Mayor

ATTEST:

By: _____
City Clerk

**ATTEST:**

By: _____
City Clerk

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

GRAND VALLEY IRRIGATION COMPANY

By: _____
President

GRAND VALLEY WATER USERS ASSOCIATION

By: _____
President

MESA COUNTY IRRIGATION DISTRICT

By: _____
President

PALISADE IRRIGATION DISTIRCT

By: _____
President

ORCHARD MESA IRRIGATION DISTRICT

By: _____
President

UTE WATER CONSERVANCY DISTRICT

By: _____
President

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

**GRAND VALLEY IRRIGATION COMPANY**

By: _____
President

**GRAND VALLEY WATER USERS ASSOCIATION**

By: _____
President

**MESA COUNTY IRRIGATION DISTRICT**

By: _____
President

**PALISADE IRRIGATION DISTIRCT**

By: _____
President

**ORCHARD MESA IRRIGATION DISTRICT**

By: _____
President

**UTE WATER CONSERVANCY DISTRICT**

By: _____
President

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

**GRAND VALLEY IRRIGATION COMPANY**

By:_____
President

**GRAND VALLEY WATER USERS ASSOCIATION**

By:_____
President

**MESA COUNTY IRRIGATION DISTRICT**

By: Dave Voorhees
President

**PALISADE IRRIGATION DISTIRCT**

By:_____
President

**ORCHARD MESA IRRIGATION DISTRICT**

By:_____
President

**UTE WATER CONSERVANCY DISTRICT**

By:_____
President

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

**GRAND VALLEY IRRIGATION COMPANY**

By: _____
President

**GRAND VALLEY WATER USERS ASSOCIATION**

By: _____
President

**MESA COUNTY IRRIGATION DISTRICT**

By: _____
President

**PALISADE IRRIGATION DISTIRCT**

By: John Krugman
President

**ORCHARD MESA IRRIGATION DISTRICT**

By: _____
President

**UTE WATER CONSERVANCY DISTRICT**

By: _____
President

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

**GRAND VALLEY IRRIGATION COMPANY**

By: _____
President

**GRAND VALLEY WATER USERS ASSOCIATION**

By: _____
President

**MESA COUNTY IRRIGATION DISTRICT**

By: _____
President

**PALISADE IRRIGATION DISTIRCT**

By: _____
President

**ORCHARD MESA IRRIGATION DISTRICT**

By: Bruce Talbott
President

**UTE WATER CONSERVANCY DISTRICT**

By: _____
President

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

**GRAND VALLEY IRRIGATION COMPANY**

By: _____
President

**GRAND VALLEY WATER USERS ASSOCIATION**

By: _____
President

**MESA COUNTY IRRIGATION DISTRICT**

By: _____
President

**PALISADE IRRIGATION DISTIRCT**

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

**CLINTON DITCH AND RESERVOIR COMPANY**

By: _____
President

Date: 9/20/18

ATTEST:

By: _____
DocuSigned by:
DEDE6A34B77B484...
Secretary

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

By: _____
DocuSigned by:
2DD3279B804843F...
President

Date: 11/8/2018

Approved as to Form:

DocuSigned by:
Daniel J. Arnold
F261B67846FB43C...
Office of General Counsel