

SHOSHONE OUTAGE PROTOCOL
AGREEMENT NUMBER 13XX6C0129

INCLUDING THE

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION,
THE STATE OF COLORADO, DIVISION OF WATER RESOURCES,
THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF
WATER COMMISSIONERS,
THE COLORADO RIVER WATER CONSERVATION DISTRICT,
THE MIDDLE PARK WATER CONSERVANCY DISTRICT,
THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT,
THE MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER
CONSERVANCY DISTRICT,
THE GRAND VALLEY WATER USERS ASSOCIATION,
THE ORCHARD MESA IRRIGATION DISTRICT, AND
THE GRAND VALLEY IRRIGATION COMPANY

THIS AGREEMENT is made this 27th day of June, 2016, and includes the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION (Reclamation), the STATE OF COLORADO DIVISION OF WATER RESOURCES (DWR), THE CITY AND COUNTY OF DENVER acting by and through its BOARD OF WATER COMMISSIONERS (Denver Water), the COLORADO RIVER WATER CONSERVATION DISTRICT (River District), the MIDDLE PARK WATER CONSERVANCY DISTRICT (Middle Park), the NORTHERN COLORADO WATER CONSERVANCY DISTRICT (Northern Water), the MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT (Subdistrict), the GRAND VALLEY WATER USERS ASSOCIATION, the ORCHARD MESA IRRIGATION DISTRICT, and the GRAND VALLEY IRRIGATION COMPANY, hereinafter collectively referred to as the "Parties".

I. EXPLANATORY RECITALS

The following statements are made in explanation:

- A. When the Shoshone Power Plant is operating, the Shoshone Call can command the flow in the Colorado River and its tributaries in certain stream conditions by exercising the Shoshone Water Rights against upstream junior water rights. When the Shoshone Call is being administered, junior water rights cannot store or divert water without providing replacement water to offset their depletions to the river system as necessary to prevent injury.
- B. Whenever the Shoshone Power Plant is subject to a shutdown for repair, maintenance, or other reasons, the Shoshone Call cannot be exercised, and river flows may drop.
- C. Certain Parties desire to keep the flow regime of the Colorado River as it has been historically influenced by the Senior Shoshone Call.

- D. The Parties agree to implement the operational procedures described in this agreement during a Shoshone Outage.
- E. This Agreement will provide greater certainty for the administration of water rights.
- F. As is explicitly provided for in this Agreement, certain Parties to this Agreement are only agreeing to be bound by specifically identified sections of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants hereinafter set forth, the Parties hereto agree as follows:

II. DEFINITIONS

Where used herein, unless specifically expressed otherwise or obviously inconsistent with the intent herein, the following definitions apply to this Agreement. Nothing in these definitions alters or amends any existing or future agreement between all or various Parties to this Agreement:

- A. “15-Mile Reach” is the reach of the Colorado River which extends from the point at which the tailrace common to the Grand Valley Power Plant and the Orchard Mesa Irrigation District pumping plant returns to the Colorado River below the Grand Valley Irrigation Company diversion dam, downstream to the confluence of the Colorado River and Gunnison River (definition verbatim from the Stipulation and Agreement incorporated into the decree entered in Case No. 91CW247, Colorado Water Division 5).
- B. “2007 Shoshone Agreement” is an 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.
- C. “Dotsero Gauge” is Gauge Number 09070500 on the Colorado River, near Dotsero, Colorado, which is operated by the United States Geological Survey, Colorado Water Science Center.
- D. “End of Fill Season” is the end of the Green Mountain Reservoir fill season as defined in the Green Mountain Reservoir Administrative Protocol.
- E. “Grand Valley Entities” are the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, and the Grand Valley Irrigation Company.
- F. “Green Mountain Reservoir 1935 First Fill Storage Right” is the storage right for Green Mountain Reservoir with a priority date of August 1, 1935, from the Blue River and its tributaries in the amount of 154,645 acre-feet (AF).
- G. “Green Mountain Reservoir 1935 Senior Refill Storage Right” is the storage refill right for Green Mountain Reservoir with a priority date of August 1, 1935, from the Blue River and its tributaries in the amount of 6,316 AF.

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- H. “Green Mountain Reservoir 1935 Direct Flow Hydropower Right” is the 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 (cfs) for the generation of electrical power at the Green Mountain Power Plant.
- I. “Green Mountain Reservoir Administrative Protocol” is the protocol for administration of Green Mountain Reservoir that will result from the procedures that will be specified in the Green Mountain Reservoir Protocol Agreement by and among Reclamation, Denver Water, Northern Water, the Subdistrict, the City of Colorado Springs acting through its Utilities Department, River District, Middle Park, Grand Valley Water Users Association, Orchard Mesa Irrigation District, Grand Valley Irrigation Company, Palisade Irrigation District, Climax Molybdenum Company, Ute Water Conservancy District, and the State Engineer and Division Engineer for Water Division 5, Colorado Division of Water Resources.
- J. Green Mountain Reservoir Historic User Pool Operating Criteria is the operating criteria set forth in Exhibit D of the Orchard Mesa Check Case Stipulation and Agreement.
- K. “Green Mountain Reservoir Marketing Allocation” is a 20,000 AF marketable yield available for contracting from the Power Pool.
- L. “Green Mountain Reservoir Operating Policy” is the Operating Policy for Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado (Volume 48, No. 247 Federal Register December 22, 1983; as amended in Volume 52, No. 176 Federal Register September 11, 1987).
- M. “Historic Users’ Pool” (“HUP”) is water to be released from the Green Mountain Reservoir Power Pool as described in paragraphs 2 and 3 of the Green Mountain Reservoir Operating Policy.
- N. “Non-Winter Season” is the period of any year from March 25 through November 10 of any year.
- O. “Orchard Mesa Check Case Stipulation and Agreement” is the September 4, 1996, agreement incorporated into the decree entered October 1, 1996 in Case No. 91CW247, District Court, Colorado, Water Division 5.
- P. “Power Pool” is 100,000 AF of water stored primarily for power purposes in Green Mountain Reservoir and available for such other uses in western Colorado as provided in Senate Document 80.
- Q. “Senate Document 80” is the “Manner of Operation of Project Facilities and Auxiliary Features” section of the Synopsis of Report document referenced in the Act of August 9, 1937, 50 Stat 564, 75 Congress, 1st Session, which authorized the Colorado-Big Thompson Project.

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- R. “Senior Shoshone Call” is a request to the state water officials to curtail diversions of junior water rights to produce a flow at the Dotsero Gauge sufficient for diversion at the Shoshone Dam of 1,250 cfs for power purposes at the Shoshone Power Plant.
- S. “Shepherded Streamflow Reservoir Releases” are those reservoir releases in rate and volume made for the reservoir owners’ purposes of increasing stream flows either at the Shoshone Power Plant, in the 15-Mile Reach, or at other stream locations at rates and volumes in excess of the stream flows that would exist at these locations in the absence of such reservoir releases (including streamflows that may exist as a result of releases, power diversions, or bypasses made pursuant to this Agreement), provided such releases are made for decreed beneficial uses for instream or in-channel purposes at any such locations including, but not limited to, endangered fish species purposes within the 15-Mile Reach.
- T. “Shoshone Call” is a request to the state water officials to curtail diversions of junior water rights to produce a flow for beneficial use at the Shoshone Power Plant pursuant to the Shoshone Senior Right or the Shoshone Junior Right.
- U. “Shoshone Junior Right” is the water right decreed for and associated with the Shoshone Power Plant adjudicated for 158 cfs on February 7, 1956, with an appropriation date of May 15, 1929.
- V. “Shoshone Outage” is whenever the Senior Shoshone Call cannot be fully exercised because the Shoshone Power Plant is subject to a shutdown for repair, maintenance, or other reasons. For the purposes of this Agreement, a Shoshone Outage does not include a cumulative total of 17 days during January and February of each Winter Season, when the Shoshone Senior Right is not calling for water due to regularly scheduled maintenance at the Shoshone Power Plant.
- W. “Shoshone Outage Protocol” is a combination of the respective described actions to be taken by each of the Parties.
- X. “Shoshone Power Plant” is owned and operated by Public Service Company of Colorado, d/b/a/ Xcel Energy (“Xcel”), and is located on the mainstem of the Colorado River in Glenwood Canyon. The Shoshone Power Plant produces hydroelectric energy by means of the Shoshone Water Rights.
- Y. “Shoshone Senior Right” is the water right decreed for and associated with the Shoshone Power Plant adjudicated for 1,250 cfs on December 9, 1907, with an appropriation date of January 7, 1902.
- Z. “Shoshone Water Rights” are both the Shoshone Senior Right and the Shoshone Junior Right.

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- AA. “Start of Fill Date” is the date between April 1 and May 15 fixed annually by the Secretary of the Interior as the start of fill of Green Mountain Reservoir.
- BB. “Windy Gap Project” and “Windy Gap Firming Project” shall have the meanings defined in the Windy Gap Firming Project Intergovernmental Agreement (“WGFP IGA”).
- CC. “Winter Season” is the period from November 11 of any calendar year through March 24 of the next calendar year.

III. TERM OF AGREEMENT

- A. This Agreement will remain in effect for 40 years unless terminated sooner pursuant to paragraph III.B, below. Any of the Parties have the right to request renewal of this agreement for an additional 40-year term upon written request to all other Parties on or before two years prior to the expiration of this agreement. The Parties agree to negotiate any requests for renewal in good faith.
- B. This Agreement may be terminated upon written mutual agreement of all Parties.
- C. This Agreement may be amended at any time by written consent of all Parties hereto.
- D. Notwithstanding paragraph III.B, Reclamation may, at any time, terminate its participation in this Agreement for just cause upon providing written notice to all other Parties.

**IV. DESCRIPTION OF SHOSHONE OUTAGE PROTOCOL
ACTION BY PARTIES**

- A. Actions by the River District, Middle Park and Denver Water.
 - 1. This Section IV.A is an Agreement between the River District, Middle Park and Denver Water. Other parties are not bound by this Section IV.A.
 - 2. Outage During the Non-Winter Season. If a Shoshone Outage occurs during the Non-Winter Season and results in a flow of the Colorado River at the Dotsero Gauge below 1,250 cfs (not including Shepherded Streamflow Reservoir Releases), then the River District, Middle Park and Denver Water agree that they will operate their water resources as if the Senior Shoshone Call was being administered in order to result in a flow of not more than 1,250 cfs at the Dotsero Gauge (not including Shepherded Streamflow Reservoir Releases).
 - 3. Denver Water, the River District, and Middle Park will not participate in the Shoshone Outage Protocol during periods of certain very dry Non-Winter Seasons that meet the definition of a Water Shortage in accordance with this paragraph IV.A.3. For the purposes of this paragraph IV.A, a Water Shortage exists when the following two conditions exist:

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- a. Using the procedures described in Exhibit A of the 2007 Shoshone Agreement (copy attached hereto for reference) and based on the "normal" scenario, Denver Water 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 (NRCS) or jointly by NRCS and the Colorado Basin River Forecast Center (or such other forecast that the River District, Denver Water and Middle Park agree to use) indicates that the April – July undepleted 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.
4. Denver Water will make projections prior to March 25th, and again in early May and late June to determine whether a Water Shortage exists.
- a. If a projection made under paragraph IV.A.3 above 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 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.
 - b. If the projection made in June under paragraph IV.A.3 above meets the conditions for a Water Shortage, then the Shoshone Outage Protocol will not apply during the remainder of the Non-Winter 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 Non-Winter Season that year.
5. Outage During Winter Season. If a Shoshone Outage occurs during the Winter Season and flows at the Dotsero Gauge are at or below 900 cfs, the River District, Denver Water, and Middle Park agree that they will operate their water resources as if the Senior Shoshone Call were on the Colorado River in the amount of 900 cfs, 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 Agreement, the reservoirs that will be considered in determining overall storage for Denver Water are those reservoirs listed in Exhibit A to the 2007 Shoshone Agreement (Antero, Eleven Mile, Cheesman, Marston, Chatfield, Gross, Ralston,

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Dillon, Williams Fork, and Wolford Mountain), 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% of capacity, 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 cfs under the full operation of the Shoshone Outage Protocol, Denver Water would be required to bypass or replace 30 cfs 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% of capacity, 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% of capacity, then the Shoshone Outage Protocol will not be applied during that Winter Season.
6. As between the River District, Denver Water, and Middle Park, releases from Wolford Mountain Reservoir shall be accounted to the various accounts at Wolford Mountain Reservoir in the same manner that would have occurred if the Shoshone Senior Right had been exercised.
 7. Prior to any final decree that is entered to amend the Windy Gap Project water rights to implement the Windy Gap Firming Project, Middle Park's water resources in this Shoshone Outage Protocol will be limited to water released on Middle Park's behalf from Wolford Mountain Reservoir. Subsequent to any final decree that is entered to amend the Windy Gap Project water rights to implement the Windy Gap Firming Project, Middle Park's water resources in this Shoshone Outage Protocol may include water released on its behalf from Wolford Mountain Reservoir, and Windy Gap Project water released from Granby Reservoir. Any such release of Middle Park's Windy Gap Project water resources will be consistent with the water court decrees for such resources and with any final Windy Gap Firming Project Intergovernmental Agreement by and between the Municipal Subdistrict, its Windy Gap Firming Project Water Activity Enterprise, Board of County Commissioners of Grand County, Middle Park, River District, and Northwest Colorado Council of Governments.

B. Actions by the Subdistrict.

1. The Municipal Subdistrict agrees to the operation by Reclamation of Green Mountain Reservoir as contemplated by this Agreement and will not object to the operation of Green Mountain Reservoir in the manner described in this Agreement, unless any person or entity (other than the Municipal Subdistrict or Northern Water):

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- a. Objects, in any judicial or administrative forum, to the operation of the Windy Gap Project or Windy Gap Firming Project in the manner described in this Agreement;
 - b. Asserts, in any judicial or administrative forum, that an historic or a future operation of the Windy Gap Project or Windy Gap Firming Project including, without limitation, the performance of this Shoshone Outage Protocol in accordance with this Agreement, is in violation of Senate Document No. 80, the Blue River Decree, or the decrees for the Windy Gap Project or Windy Gap Firming Project; or
 - c. Asserts, in any judicial or administrative forum, that bypasses of water otherwise divertible by the Windy Gap Project count toward Windy Gap Project diversions.
2. Operation of Windy Gap Project.
- a. Nothing in this Agreement shall alter or amend the Intergovernmental Agreement between the Subdistrict, Grand County, Middle Park, the Northwest Colorado Council of Governments (NWCCOG) and the River District fully executed in 2016 (“WGFP IGA”), including, without limitation, Paragraph IV.K. of the WGFP IGA, which remains in full force and effect and provides, with respect to the subject of the Shoshone Outage Protocol, that [abbreviations and short-forms in the quoted text below rely on definitions set forth in the WGFP IGA]:

K. Shoshone Outage Protocol.

- 1) For purposes of this WGFP IGA, the Shoshone Outage Protocol means that the Windy Gap Project and WGFP will operate as described in this paragraph IV.K.1), IV.K.2), and IV.K.3) during periods when the Shoshone Power Plant is shutdown or otherwise not able to divert the full amount of its 1,250 cfs senior water right due to repair, maintenance, or other reasons (“Shoshone Outage”). When the Windy Gap Project’s participation in the Shoshone Outage Protocol is in effect pursuant to this WGFP IGA, the Windy Gap Project and WGFP will bypass the amount of water that the Windy Gap Project and WGFP would have been required to bypass if the Senior Shoshone Call had been in effect in order to result in a flow of not more than 1,250 cfs at the Dotsero gage on the Colorado River (not including any water released for endangered fish species purposes). For purposes of this WGFP IGA, a Shoshone Outage does not include a shutdown of the Shoshone Power Plant for regularly scheduled maintenance for a cumulative period of 17-days during the period of November 1 through March 15.

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- 2) The Windy Gap Project and WGFP will operate in accordance with the Shoshone Outage Protocol from July 16-April 14 of each year. Prior to WGFP Completion, the Windy Gap Project and WGFP may operate in accordance with the Shoshone Outage Protocol during the period of April 15-July 15 on a voluntary cooperative basis. Following WGFP Completion, the Windy Gap Project and WGFP will operate in accordance with the Shoshone Outage Protocol during the period April 15 – July 15 at any time during this period when the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of WGFP Participants in Granby Reservoir is greater than 50% of the Active Capacity of Chimney Hollow Reservoir.
 - 3) Participation in the Shoshone Outage Protocol by the Windy Gap Project and WGFP during the period of April 15-July 15 will be limited to a total maximum volume of foregone pumping equal to 10,000 acre feet (30 days with one pump running) in one year, a total of 20,000 acre feet (60 days with one pump running) in any 3 consecutive year period, and a total of 30,000 acre feet (90 days with one pump running) in any 5 consecutive year period.
 - 4) The Subdistrict agrees that it will participate in good faith in negotiations to achieve permanent management of the flow of the Colorado River to address certain flow changes that result during a Shoshone Outage.
3. Nothing in this Agreement shall create, modify, alter or amend the contractual relationships between Reclamation and the Municipal Subdistrict.
 4. No Waiver.
 - a. Except as expressly provided herein, this Agreement shall never 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 Windy Gap Project and Windy Gap Firming Project. This Agreement shall not have the effect of precedent or preclusion on any factual or legal issue in any other matter. The Subdistrict expressly reserves its rights to assert any legal or factual position or challenge the legal or factual position taken by any other party on any other matter

C. Actions by Northern Water.

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1. Northern Water agrees to the operation by Reclamation of Green Mountain Reservoir, as contemplated by this Agreement and will not object to the operation of Green Mountain Reservoir in the manner described in this Agreement, unless any person or entity (other than the Municipal Subdistrict or Northern Water):
 - a. Objects, in any judicial or administrative forum, to the operation of Green Mountain Reservoir in the manner described in the Shoshone Protocol Agreement; or
 - b. Asserts, in any judicial or administrative forum, that an historic or a future operation of Green Mountain Reservoir or the Colorado-Big Thompson Project including, without limitation, the performance of this Shoshone Outage Protocol in accordance with this Agreement, is in violation of Senate Document No. 80 or the Blue River Decree.
2. This Agreement meets the requirements of the first sentence of Paragraph 3 of the Intergovernmental Agreement between Northern Water, Grand County, Middle Park, and the River District fully executed in 2016.
3. Nothing in this Agreement shall create, modify, alter or amend the contractual relationships between Reclamation and Northern Water.

D. Actions by Reclamation.

1. Subject to the provisions of paragraph IV.G.4 of this Agreement, Reclamation will participate in the Shoshone Outage Protocol when either of the following conditions are met:
 - a. The Shoshone Outage occurs between the Start of Fill Date and the End of Fill Season and Reclamation projects with 90% probability that a total of 154,645 AF will be accounted toward the volumes of water calculated in accordance with paragraphs II.A.3.b.i through II.A.3.b.v of the Green Mountain Reservoir Administrative Protocol prior to the Green Mountain Reservoir End of Fill Season, and that Reclamation projects with a 90% probability that after the End of Fill Season any volume of Bypassed Storage Water Owed To Green Mountain Reservoir by the Cities will be available to Reclamation pursuant to the Green Mountain Reservoir Administrative Protocol.or;
 - b. The Shoshone Outage occurs after the End of Fill Season and a total of 154,645 acre feet have been accounted toward the volumes of water identified in paragraphs II.A.3.b.i through II.A.3.b.v of the Green Mountain Reservoir Administrative Protocol and that any Bypassed Storage Water

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Owed to Green Mountain Reservoir by the Cities will be available to Reclamation.

- c. Capitalized terms in paragraphs IV.D.1.a and b have the same meaning as set forth in the Green Mountain Reservoir Administrative Protocol.
2. Green Mountain Releases Under Shoshone Outage Protocol: Reclamation will bypass storable inflow, exercise the Green Mountain Reservoir 1935 Direct Flow Hydropower Right, and/or make releases from previously stored water in its Power Pool as follows:
- a. The daily total reservoir release will be equivalent to the amount that would have been required had the Senior Shoshone Call been in place on that day in the amount of 1,250 cfs during the Non-Winter Season and 900 cfs during the Winter Season, subject to the following conditions:
 - i. The daily total release will not exceed the release that would have been made had the Senior Shoshone Call been in place on that day and all junior water rights had been curtailed or the appropriate amount of replacement or augmentation water made available.
 - ii. In order to prevent any unintended impact to the HUP by this Agreement, during a Shoshone Outage, the Grand Valley Entities will not request any direct delivery of HUP water without first placing a call with the Division 5 Engineer's Office, unless Reclamation and the Grand Valley Entities agree that such a call is not necessary to prevent impacts to the HUP.
 - b. Except as provided in paragraph IV.D.2.c, below, the total volume of storage water released from the Power Pool for Shoshone Outage Protocol purposes from the Start of Fill Date will not exceed the sum of the following:
 - i. 2,000 AFplus;
 - ii. The amount of uncontracted water in the Green Mountain Reservoir Marketing Allocation.plus;
 - iii. The amount of water that would have been released for HUP beneficiary purposes had the Senior Shoshone Call been in place during the Shoshone Outage period.

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- c. Reclamation may, at its own discretion, bypass storable inflow, exercise the Green Mountain Reservoir 1935 Direct Flow Power Right, or release additional water from the Power Pool to assist in meeting the purposes of Shoshone Outage Protocol if it deems that conditions make additional water available.
3. Accounting: The Green Mountain Reservoir releases, bypasses, and power diversions shall be accounted for as follows:
- a. Bypass of Inflow and Power Diversions: Reclamation will bypass storable inflow or exercise the Green Mountain Reservoir 1935 Direct Flow Hydropower Right to the extent that a bypass of inflow would have been required by a Senior Shoshone Call. The accounting of discretionary power releases and bypassed storable inflow will be consistent with the Green Mountain Reservoir Administrative Protocol.
 - b. Release of Stored Water: All releases of stored water shall be charged to the aggregate Power Pool rather than individual allocations in the Power Pool. However, the HUP allocation will be reduced by the amount of water that was released from Green Mountain Reservoir in accordance with paragraph IV.D.2.b.iii, above.
- E. Actions by the Grand Valley Entities and Reclamation.
- 1. This Section IV.E is an Agreement between the Grand Valley Entities and Reclamation. Other parties are not bound by this Section IV.E.
 - 2. Subject to the provisions of Paragraph IV.E.3, below, the Grand Valley Entities and Reclamation agree, solely for purposes of paragraph 3.b.(3) of the Orchard Mesa Check Case Stipulation and Agreement, that the Shoshone Water Rights continue to be exercised in a manner substantially consistent with their historical operation for hydropower production at their currently decreed point of diversion.
 - 3. Paragraph IV.E.2, above, shall not be effective:
 - a. During any period of time in which any Party is not in compliance with their obligations described in this Agreement; or
 - b. During any period of time in which storage releases or bypasses of water made pursuant to this Agreement are being diverted or exchanged in a manner that results in flow at the Dotsero Gauge that is materially lower than the flow that otherwise would have been produced by the Shoshone Senior Call; or

- c. If the United States terminates its participation in this Agreement pursuant to Paragraph III.D., above.

F. Actions by DWR.

The DWR shall administer water released, bypassed, or diverted for power purposes pursuant to this Agreement as follows:

1. Reservoir releases from Wolford Mountain Reservoir shall be administered as Shepherded Streamflow Reservoir Releases for in-channel recreation and fishery purposes and, as directed by the River District for subsequent consumptive uses, within the boundaries of the River District pursuant to the decree entered in Case No. 87CW283, Water Division 5. The River District will provide information to the Division Engineer for Water Division 5 to support the intended in-channel recreation and fishery purposes. Bypasses of storable inflow at Wolford Mountain Reservoir will be accounted toward the fill of the Wolford Mountain Reservoir storage decree for the then-current storage season on an instantaneous store and release accounting basis. Any bypasses made pursuant to this Agreement shall not be accounted toward the next fill season's storage volume for Wolford Mountain Reservoir. If a hydroelectric power facility is constructed to use inflow to Wolford Mountain Reservoir, then any diversions used to generate power may be accounted toward the exercise of the direct flow power right decreed in Case No. 87CW283 and will not count toward the fill of the then-current fill season's storage account for Wolford Mountain Reservoir provided the direct flow power right is operated and administered under the same priority as the storage right.
2. Reservoir releases and direct diversions at Williams Fork Reservoir to generate power will be accounted as releases or diversions made for power purposes and will not be accounted toward the decreed storage volume for Williams Fork Reservoir. Bypasses of storable inflow at Williams Fork Reservoir that are not used to generate power will be accounted toward the fill of the Williams Fork Reservoir storage decree for the then-current storage season on an instantaneous store and release accounting basis. Any such bypasses made pursuant to this Agreement shall not be accounted toward the next fill season's storage volume for Williams Fork Reservoir.
3. Reservoir releases, diversions for power purposes, and the bypass of storable inflow from Green Mountain Reservoir without power generation will be accounted for in accordance with the Green Mountain Reservoir Administration Protocol. Releases and the bypass of storable inflow shall be administered as Shepherded Streamflow Reservoir Releases to the Shoshone Power Plant or to and through the 15-Mile Reach as directed by Reclamation.
4. Bypasses of water otherwise divertible by the Windy Gap Project will not count toward the diversion amount for the Windy Gap Project. Releases of Windy Gap Project water from storage will be accounted in accordance with the then current

Windy Gap Project water right decrees, and subject to paragraph IV.A.7 of this Agreement.

Shepherded Streamflow Reservoir Releases shall be shepherded and protected by DWR under C.R.S. §§ 37-87-102(4) and 37-87-103 or as otherwise provided by law to accomplish the reservoir owners' purposes for making such releases as is consistent with the reservoir owners' legal use of such stored or storable waters. The intent is to continue the historical practice of administering such releases to produce increased flows in the 15-Mile Reach above the flows that would otherwise occur in the 15-Mile Reach, and to accommodate any new releases to be made for such or similar purposes.

G. Notice and Cooperation.

1. Notification to DWR. The Parties will work cooperatively to timely notify DWR, through the Division Engineer for Water Division 5, of operations pursuant to the Shoshone Outage Protocol.
2. The Parties will not divert or exchange any of the water released, diverted for power purposes, or bypassed by any of the Parties pursuant to this Agreement at any location upstream of the current location of the Shoshone Power Plant, or otherwise operate their systems or water rights in a manner that will diminish the benefit to the stream system at any location upstream of the current location of the Shoshone Power Plant of the releases, diversions for power purposes, and bypasses of water made pursuant to this Agreement.
3. Subject to the express conditions and limitations of this Agreement, the Parties will cooperate in good faith to achieve the goals of this Agreement of managing the flow of the Colorado River to maintain the historical flow regime of the Colorado River influenced by the exercise of the Shoshone Senior Right and to mitigate the impacts of any Shoshone Outage. If any party believes that the goals of this Agreement are not being met, including but limited to circumstances where water released or bypassed pursuant to this Agreement during a Shoshone Outage is diverted or exchanged by persons or entities who are not parties to this Agreement at locations upstream of the Dotsero Gauge, then any Party may, in its discretion and in good faith, issue a written notice to the other Parties of such circumstances. Upon such notice, the Parties will meet promptly and work together in good faith to identify such actions as may be necessary to alleviate the conditions that led to the written notice and to implement such actions to which the Parties may agree or any such actions that can be implemented by a subset of the Parties to which that subset may agree.
4. Notwithstanding any provision in this Agreement to the contrary, none of the Parties are obligated by this Agreement to participate in the Shoshone Outage Protocol

during such periods that a Shoshone call reduction is in effect pursuant to the terms of the 2007 Shoshone Agreement (copy attached for reference).

V. SEVERABILITY AND REFORM

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 Parties 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 Parties.

VI. COMPENSATION

Consideration for the actions pursuant to this Agreement is in providing greater certainty in the administration of water rights, and in the resolution among some of the Parties of certain unresolved issues. There will be no charge for water released under this agreement.

VII. GREEN MOUNTAIN RESERVOIR

Subject only to the express exceptions provided herein, the Parties agree not to challenge Reclamation's operation of Green Mountain Reservoir under this Agreement as inconsistent with Senate Document 80 or the Green Mountain Reservoir Operating Policy. The Parties will work in good faith to address any conflicts that may arise between the operations contemplated by this Agreement and the Green Mountain Reservoir Administrative Protocol. Any conflict that may arise shall be resolved in a manner that is consistent with Senate Document 80, the Blue River Decree, the Green Mountain Reservoir Operating Policy, and the Green Mountain Reservoir Administrative Protocol.

VIII. COLORADO RIVER COOPERATIVE AGREEMENT

Nothing in this Agreement shall be interpreted to constitute compliance with, or satisfaction of, the obligations of Article VI.C of the Colorado River Cooperative Agreement between Denver Water and seventeen West Slope entities.

IX. NO WAIVER

The Parties agree that nothing contained in this Agreement including, but not limited to, any Party's forbearance in the exercise of any Party's right to divert, store, and beneficially use water pursuant to its decrees, is intended nor shall it be construed to 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 the operation of such Parties' water rights.

The Parties agree that except as expressly provided herein, this Agreement shall never 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. The Parties further agree that they do not intend this Agreement to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The Parties expressly reserve their rights to assert any legal or factual position or challenge the legal or factual position taken by any other Party or third-party on any other matter.

X. REGULATION AND DISTRIBUTION OF WATER

Nothing in this Agreement abridges the obligations of the DWR established by Section 37-92-304(8), Colorado Revised Statutes (2011), or other applicable law.

XI. PRIOR VERSIONS.

This Agreement replaces and supersedes the 2013 Shoshone Outage Protocol Agreement that was executed by some, but not all, of the Parties to this Agreement.

XII. SIGNATURES of PARTIES

UNITED STATES DEPARTMENT OF THE INTERIOR

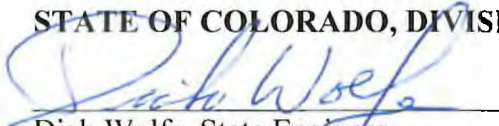
By:



Michael J. Ryan, Regional Director
Great Plains Regional Office
Bureau of Reclamation
P.O. Box 36900
Billings, MT 59107-6900
(406) 247-7600

STATE OF COLORADO, DIVISION OF WATER RESOURCES

By:

 7-12-16

Dick Wolfe, State Engineer
1313 Sherman Street, Suite 821
Denver, CO 80203
(303) 866-3581

AGREEMENT NUMBER 13XX6C0129

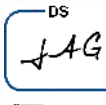
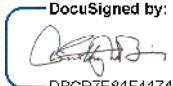
DENVER WATER

By: 
James S. Lochhead, CEO/Manager
1600 W. 12th Avenue
Denver, CO 80204-3412
(303) 628-6000


APPROVED AS TO FORM


LEGAL DIVISION

**REGISTERED AND COUNTERSIGNED:
CITY AND COUNTY OF DENVER**

By:  
Timothy M. O'Brien, CPA
Auditor

COLORADO RIVER WATER CONSERVATION DISTRICT


By:  _____

Eric Kuhn, General Manager
P.O. Box 1120
Glenwood Springs, CO 81602
(970) 945-8522


MIDDLE PARK WATER CONSERVANCY DISTRICT

By: Duane Scholl
Duane Scholl, President
P.O. Box 145
Granby, CO 80446
(970) 887-3376

NORTHERN COLORADO WATER CONSERVANCY DISTRICT

By: 
Eric Wilkinson, General Manager
220 Water Avenue
Berthoud, CO 80513
(800) 369-7246


**MUNICIPAL SUBDISTRICT,
NORTHERN COLORADO WATER CONSERVANCY DISTRICT**

By: 
Eric Wilkinson, General Manager
220 Water Avenue
Berthoud, CO 80513
(800) 369-7246

AGREEMENT NUMBER 13XX6C0129


GRAND VALLEY WATER USERS ASSOCIATION

By:



Mark Harris, Manager
1147 24 Road
Grand Junction, CO 81505-9639
(970) 242-5065

ORCHARD MESA IRRIGATION DISTRICT

By: 

Max Schmidt, Manager
668 38 Road
Palisade, CO 81526
(970) 464-7885

GRAND VALLEY IRRIGATION COMPANY

By:

Phil Bertrand

Phil Bertrand, Superintendent

668 26 Road

Grand Junction, CO 81506

(970) 242-2762

2007 SHOSHONE AGREEMENT
(as referenced in
Agreement Number 13XX6C0129)

Please reference the following
number on all billings or payments.
Contract # 10766A

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**

Carol J. Peterson
Carol J. Peterson
Asst. Secretary

By: *Paul V. White*
President and CEO
Public Service Company of Colorado

Reviewed
Legal

03/13/2006

3/31/06 PML

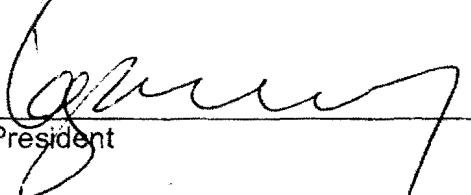
4

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

ATTEST:

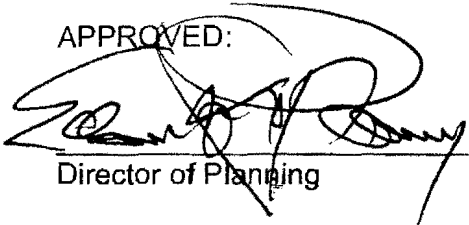


Secretary

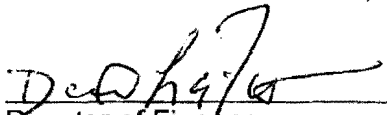


President

APPROVED:




Director of Planning



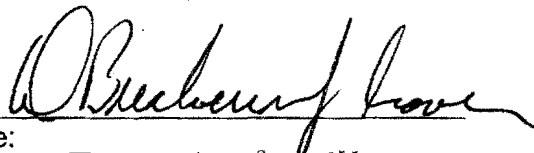
Director of Finance

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 the 10 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.