

RESOLUTION NO. 64-20

A RESOLUTION APPROVING THE AMENDED AND RESTATED GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL AGREEMENT BETWEEN COLORADO SPRINGS, THE UNITED STATES OF AMERICA, DENVER WATER, THE COLORADO RIVER WATER CONSERVATION DISTRICT, THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT, THE MIDDLE PARK WATER CONSERVANCY DISTRICT, THE GRAND VALLEY WATER USERS ASSOCIATION, THE ORCHARD MESA IRRIGATION DISTRICT, THE GRAND VALLEY IRRIGATION COMPANY, THE PALISADE IRRIGATION DISTRICT, CLIMAX MOLYBDENUM COMPANY, THE UTE WATER CONSERVANCY DISTRICT, AND THE COLORADO DIVISION OF WATER RESOURCES

WHEREAS, the City Council of the City of Colorado Springs approved the Green Mountain Reservoir Administrative Protocol and the Green Mountain Reservoir Administrative Protocol Agreement in 2013; and

WHEREAS, the Green Mountain Reservoir Administrative Protocol is a document that governs certain water rights operations related to the 1955 Blue River Decree and Green Mountain Reservoir and the Agreement outlines the procedures necessary to implement the Green Mountain Reservoir Administrative Protocol; and

WHEREAS, the Green Mountain Reservoir Administrative Protocol Agreement requires the parties to collectively file actions in State Water Court and Federal District Court seeking approval of the Green Mountain Reservoir Administrative Protocol; and

WHEREAS, the parties to the Green Mountain Reservoir Protocol Agreement filed the required actions in State Water Court and Federal District Court; and

WHEREAS, the Federal District Court has discontinued its jurisdiction over the Blue River Decree and the parties' action seeking approval of the Green Mountain Reservoir Protocol in that Court was administratively closed; and

WHEREAS, the parties negotiated required amendments to the Green Mountain Reservoir Administrative Protocol Agreement that reflect the need to seek approval of the Green Mountain Reservoir Protocol only in State Water Court; and

WHEREAS, said amendments are set forth in the Amended and Restated Green Mountain Reservoir Administrative Protocol Agreement; and

WHEREAS, Colorado Springs Utilities requests that City Council: (1) approve the Amended and Restated Green Mountain Reservoir Administrative Protocol Agreement; and (2) authorize the President of City Council to execute the Amended and Restated Green Mountain Reservoir Administrative Protocol Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. City Council finds and determines that approving the Amended and Restated Green Mountain Reservoir Administrative Protocol Agreement is in the best interest of the City.

Section 2. City Council hereby approves the Amended and Restated Green Mountain Reservoir Administrative Protocol Agreement in the form attached hereto and authorizes the President of City Council to execute said Amended and Restated Agreement.

Dated at Colorado Springs, Colorado, this 11th day of August 2020.

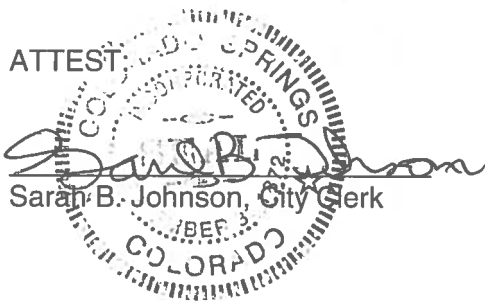


Council President

ATTEST



Sarah B. Johnson, City Clerk



Amended and Restated Green Mountain Reservoir Administrative Protocol Agreement

THIS Amendment and Restatement to the Green Mountain Reservoir Agreement (“Amended and Restated Agreement”) is made and entered into effective February 22, 2013, the effective date of the original Green Mountain Reservoir Administrative Protocol Agreement, 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.

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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. GVVUA, 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. The SEO adopted an Interim Policy for the administration of the Green Mountain Water Rights under the Blue River Decree. Some of the Parties have disagreed with the Interim Policy.

K. In order to resolve numerous disputes over the years as to how various water rights should be administered pursuant to the Blue River Decree, the United States, Denver Water, CS-U, CRWCD, NCWCD, MPWCD, GVVUA, GVIC, OMID, and PID (the "Blue River Decree Parties"), Ute, and Climax 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.

L. The resolution of long-standing disputes regarding the proper administration of water rights pursuant to 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

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utilization of the waters of the State, reducing litigation costs of the Parties, and providing clarity as to water rights administration.

M. The Blue River Decree Parties and Climax sought 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.

N. On or about February 22, 2013, the Parties entered into the Green Mountain Reservoir Administrative Protocol Agreement ("Agreement") to resolve numerous disputes over the years as to how water rights should be administered pursuant to the Blue River Decree.

O. The Parties intended (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 agreed to the judicial proceedings described in the Agreement, including the application by the Federal Court of the 1969 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.

P. At paragraph 3 of the Agreement, the Parties agreed that the Blue River Decree Parties and Climax would file a Water Court application in State Water Court and a Petition in the Federal Court under its retained jurisdiction and pursuant to an August 1977 Order to determine that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree; and (2) in the Federal Court only, a determination that Section IV of the Administrative Protocol is consistent with the Blue River Decree.

Q. On November 15, 2013, the Blue River Decree Parties and Climax filed an Application for a determination of water rights: confirmation of administrative protocol for Green Mountain Reservoir and other water rights with the State Water Court seeking a determination from the Water Court that Articles I through III of the Green Mountain Reservoir Administrative Protocol ("Administrative Protocol") are consistent with the Blue River Decree..

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R. On November 15, 2013, the Blue River Decree Parties filed a Petition seeking a determination from the Federal Court that Articles I through IV of the Administrative Protocol are consistent with the Blue River Decree.

S. The Federal Court expressed concern whether it had jurisdiction over the action filed and had the parties in that matter brief the issue of the Federal Court's jurisdiction over the Petition. Briefing was complete in February 2014.

T. On March 22, 2017, in a separate action brought in Consolidated Case Nos. 2782, 5016 and 5017, the Federal Court issued its Opinion and Order Granting, in part, Motion for Entry of Decree, Vacating Order Reserving Future Jurisdiction and Closing Case. The Federal Court determined, in part, that the merits of the August 4, 1977 Order are no longer operative, and vacated the 1977 Order thereby (1) "bifurcating the "companion cases" [Civil Nos. 5016 and 5017] from the underlying case [Civil Nos. 2782], and (2) discontinuing this Court's exercise of jurisdiction over issues of showing of due diligence or applications to make conditional decrees absolute. The Federal Court stated that the only future proceeding in the Consolidated Cases that the Federal Court would have jurisdiction would be those in which the United States asserts a claim under 28 U.S.C. § 1345. The Federal Court's March 22, 2017 Opinion and Order did not expressly address the Petition filed on November 15, 2013 or the briefing of the federal jurisdiction issue, but the Federal Court took no further action relating to the Petition and the action was administratively closed.

U. At paragraph 3.4 of the Agreement, the Parties agreed that in event that the Federal Court determines that it lacks jurisdiction, or otherwise declines to exercise jurisdiction, to adjudicate the Federal Court Petition in whole or in part, the Parties would confer and determine how to proceed on obtaining the participation and judicial confirmations contemplated herein.

V. Pursuant to paragraph 3.4 of the Agreement, the Parties have conferred and determined that the State Water Court has the authority to interpret the Blue River Decree and may proceed and adjudicate the Administrative Protocol pursuant to the terms set forth below under the original effective date of the Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Purposes of the Amended and Restated Agreement. Due to the apparent refusal of the Federal District Court to exercise jurisdiction over the Petition filed in Federal District Court, the Parties have agreed that the Blue River Decree Parties and Climax will seek a determination from State Water Court as to the entirety of the Administrative Protocol. However, the intent of the Blue River Decree Parties, Ute, and Climax remains the same as in the Agreement, i.e. the Administrative Protocol is to clarify and implement certain

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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 water of the State in accordance with a final judgment and decree as to Sections I, II and III of the Administrative Protocol as provided below. As provided in Section 1.B.1 of the Administrative Protocol, 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 the Administrative Protocol. The determination, accounting, and operation of the Cities' Replacement Obligations 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 Blue River Decree parties agree that the methodology to calculate the volume of replacement water to be provided by the Cities to satisfy their replacement obligations in a manner consistent with the Administrative Protocol is set forth in Section IV of the Administrative Protocol.

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 proceeding described in paragraph 3 and 4 below. In the event that the State 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.

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3. Judicial Proceedings. The Blue River Decree Parties and Climax shall seek a determination in the State Water Court that the entirety of the Green Mountain Reservoir Protocol is consistent with the Blue River Decree as follows:

3.1. Water Court Proceeding. The Blue River Decree Parties shall file an Amended Application in Case No. 2013CW3077 currently pending before the Water Court, adding a request for a determination, binding only on the Blue River Decree Parties, that Section IV of the Administrative Protocol is consistent with the Blue River Decree. Unless otherwise required by the Water Court, notice of the added claim concerning Section IV 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 Amended Application, the Blue River Decree Parties and Climax shall pursue a determination in the Water Court that Articles I, II, and III of the Administrative Protocol is consistent with the Blue River Decree. The Blue River Decree Parties will pursue a determination, binding only on the Blue River Decree Parties, that Section IV of the Administrative Protocol is consistent with the Blue River Decree.

3.2. [Intentionally deleted].

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 to the Water Court Application or Amended Application shall be entitled to participate fully in the judicial proceedings to determine whether Sections I, II, III and IV 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 with the Water Court, and shall not oppose any motion to intervene in proceedings regarding whether Sections I, II, III, and IV 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 Water Court Application that may be impaired or impeded if Climax does not have the ability to protect its interests as a party to the Water 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 Water 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.

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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 the Water Court. The SEO shall not file a statement of opposition to, or otherwise file any documents opposing the determination in the Water 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 the Water 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 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. As to Section IV of the GMR Protocol, the Blue River Decree Parties will only seek a determination, binding only on the Blue River Decree Parties, that Section IV of the GMR Protocol is consistent with the Blue River Decree. If a dispute under Section IV arises between the Blue River Decree Parties, the Blue River Parties will not request that the SEO address or otherwise resolve such dispute.

3.3.3. In order to become a party to the Water Court Application, Ute filed a statement of opposition in support of a determination that Sections I, II, III, and IV of the Administrative Protocol are consistent with the Blue River Decree. 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. The Statement of Opposition filed by Ute to the Water Court Application and the Common Interest Agreement entered between

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the Blue River Decree Parties and Ute in this matter remain in full force and effect. The Parties agree that Ute does not need to file a statement of opposition to the Amended Application and its original statement of opposition will be treated as applying to the Amended Application.

3.4. Judicial Proceedings Inconsistent with the Intent of the Parties. In the event that the Water Court determines that it lacks jurisdiction, or otherwise declines to exercise jurisdiction, to adjudicate the Amended Application in whole or in part, 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 Amended and Restated Agreement, and to request that the procedures set forth in this paragraph 3 be adopted and implemented by the Water Court, nothing in this Amended and Restated 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 Blue River Decree subjects that are not the Administrative Protocol.

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 Amended and Restated 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, 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 for relief from judgment or order under C.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.

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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 Amended and Restated 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, survive (a) any partial or complete invalidation of Sections I and II of the Administrative Protocol, and (b) the termination of this Amended and Restated 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 Amended and Restated 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,

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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 Agreement and the Amended and Restated Agreement, and the Federal Court and Water Court proceedings discussed herein.

9. No Precedent in Other Matters. The Parties further agree that they do not intend this Amended and Restated 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated Agreement.

12. Appropriation and Spending Limitations. In accord with the Colorado Springs City Charter, performance of CS-U's obligations under this Amended and Restated 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated Agreement or the applicable spending limit, whichever is less, and shall notify the other Parties as soon as reasonably

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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 Amended and Restated 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated Agreement. Neither this Amended and Restated Agreement nor any provision of this Amended and Restated Agreement shall be construed against any Party, regardless of whether a Party drafted or participated in the drafting of any provision of this Amended and Restated Agreement.

16. Counterparts. This Amended and Restated 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. Amendment. This Amended and Restated Agreement supersedes the Green Mountain Reservoir Agreement dated February 22, 2013, in its entirety.

18. Effective Date. The effective date of this Amended and Restated Agreement shall continue to be the February 22, 2013, effective date of the Agreement.

Dated this _____ day of _____, 2020.

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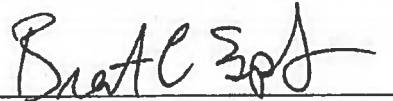
June 22, 2020

**UNITED STATES OF AMERICA
JEAN E. WILLIAMS
DEPUTY 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: 

**Regional Director, Missouri Basin and
Arkansas-Rio Grande-Texas Gulf Regions
U.S. Bureau of Reclamation**

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Dated this 2nd day of JULY, 2020.

PALISADE IRRIGATION DISTRICT

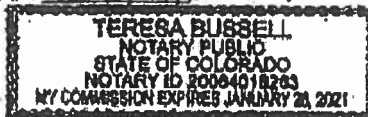
By: John Krizman
President

AND ITS ATTORNEYS

By: Nathan A. Kever
Nathan A. Kever
Dufford, Waldeck, Milburn & Krohn, LLP

State of Colorado County of MESA The foregoing instrument was acknowledged before me this JULY 2, 2020.

Teresa Buswell
(Notary's official signature) Teresa Buswell



January 20, 2021
(Commission Expiration)

for JOHN KRIZMAN

Notary
Seal

Green Mountain Reservoir
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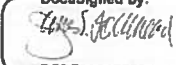
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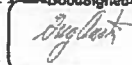
8/19/2020

Dated this _____ day of _____, 2020.

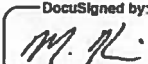
ATTEST:

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

DocuSigned by:

BY: _____
DEDE0A34B77B484
SECRETARY

DocuSigned by:

BY: _____
44286A888895454
PRESIDENT

APPROVED:

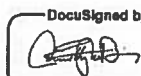

DocuSigned by:

BY: _____
D08201CC989440B
CHIEF OF EXTERNAL AFFAIRS

APPROVED AS TO FORM:

DocuSigned by:

BY: _____
0DD3A1802F8A44D
OFFICE OF GENERAL COUNSEL

REGISTERED AND COUNTERSIGNED:

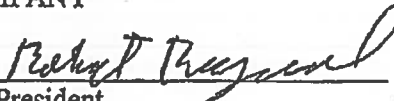
DocuSigned by:
 
BY: _____
D8CB7E81E4174C0
TIMOTHY M. O'BRIEN, CPA
AUDITOR
CITY AND COUNTY OF DENVER

Green Mountain Reservoir
Amended and Restated Administrative Protocol Agreement

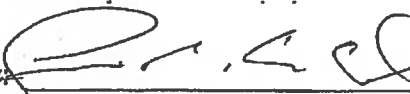
June 22, 2020

Dated this 7 day of 2, 2020.

GRAND VALLEY IRRIGATION
COMPANY

By: 
President

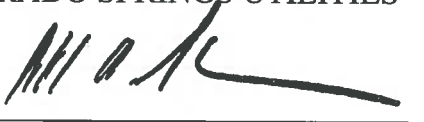
AND ITS ATTORNEYS

By:  7/2/2020
Frederick G. Aldrich

Green Mountain Reservoir
Amended and Restated Administrative Protocol Agreement

Dated this 11th day of August, 2020.

CITY OF COLORADO SPRINGS ACTING
BY AND THROUGH ITS ENTERPRISE
COLORADO SPRINGS UTILITIES

By: 

Richard Skorman
President of City Council

APPROVED AS TO FORM

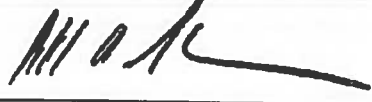
OFFICE OF THE CITY ATTORNEY

By: 

Green Mountain Reservoir
Amended and Restated Administrative Protocol Agreement

Dated this 14th day of August, 2020.

CITY OF COLORADO SPRINGS ACTING
BY AND THROUGH ITS ENTERPRISE
COLORADO SPRINGS UTILITIES

By: 
Richard Skorman
President of City Council

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY

By: 
Bethany Buzen

Green Mountain Reservoir
Amended and Restated Administrative Protocol Agreement

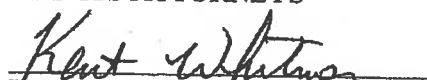
June 22, 2020

Dated this 8 day of July, 2020.

MIDDLE PARK WATER
CONSERVANCY DISTRICT

By: 
President

AND ITS ATTORNEYS


Kent Whitmer
The Whitmer Law Firm, LLC

Green Mountain Reservoir
Amended and Restated Administrative Protocol Agreement

June 22, 2020

Dated this 9 day of July, 2020.

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

By: *Mike Applegate*
President and Chairman

AND ITS ATTORNEYS

By: *Bennett Raley*
Bennett Raley
Trout Raley Montano Witwer &
Freeman, PC

Green Mountain Reservoir
Amended and Restated Administrative Protocol Agreement

June 22, 2020

Dated this 6th day of August, 2020.

ORCHARD MESA IRRIGATION
DISTRICT

By: Melanie D. Reilly
President

AND ITS ATTORNEYS

By: K.M. Kurath
Kirsten M. Kurath
Williams, Turner & Holmes, P.C.

Green Mountain Reservoir
Amended and Restated Administrative Protocol Agreement

June 22, 2020

Dated this 23rd day of July, 2020.

COLORADO RIVER WATER
CONSERVATION DISTRICT

By: David H. Merritt
President David H. Merritt

AND ITS ATTORNEYS

Peter C. Fleming
Peter C. Fleming
Colorado River Water Conservation District

Green Mountain Reservoir
Amended and Restated Administrative Protocol Agreement

June 22, 2020

Dated this 5th day of July, 2020.

COLORADO DIVISION OF WATER
RESOURCES

By: Kevin G. Rein
Kevin G. Rein, State Engineer

AND ITS ATTORNEY

By: Paul L. Benington
Paul L. Benington
First Assistant Attorney General
Colorado Attorney General's Office

Green Mountain Reservoir
Amended and Restated Administrative Protocol Agreement

June 22, 2020

Dated this 24th day of August, 2020.

CLIMAX MOLYBDENUM COMPANY

By: 

Francis McAllister
Vice President, Land & Water
Freeport McMoRan

AND ITS ATTORNEYS

By: 

Brian Mazareus
NAZARENUS STACK &
WOMBACHER

Green Mountain Reservoir
Amended and Restated Administrative Protocol Agreement

June 22, 2020

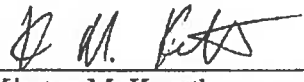
Dated this 8th day of July, 2020.

UTE WATER CONSERVANCY
DISTRICT, ACTING BY AND THROUGH
THE UTE WATER ACTIVITY
ENTERPRISE

By: 

President

AND ITS ATTORNEYS

By: 

Kirsten M. Kurath
Williams, Turner & Holmes, P.C.

Green Mountain Reservoir
Amended and Restated Administrative Protocol Agreement

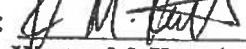
June 22, 2020

Dated this 9th day of June, 2020.

GRAND VALLEY WATER USERS
ASSOCIATION

By: 
President

AND ITS ATTORNEYS

By: 
Kirsten M. Kurath
Williams, Turner & Holmes, P.C.